STATE OF NEW YORK

5135

2021-2022 Regular Sessions

IN ASSEMBLY

February 11, 2021

Introduced by M. of A. BENEDETTO, SIMON, GRIFFIN -- read once and referred to the Committee on Education

AN ACT to amend the education law and the state finance law, in relation to charter schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 2851 of the education law, as amended by chapter 101 of the laws of 2010, is amended to read as follows:

1. An application to establish a charter school may be submitted by teachers, parents, school administrators, community residents or any combination thereof. Such application may be filed in conjunction with a college, university, museum, educational institution, not-for-profit corporation exempt from taxation under paragraph 3 of subsection (c) of section 501 of the internal revenue code or for-profit business or corporate entity authorized to do business in New York state. Provided however, for-profit business or corporate entities shall not be eligible to submit an application to establish a charter school pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article, or operate or manage a charter school for a charter issued pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article. For charter schools established in conjunction with a for-profit **or not-for-profit** business or corporate entity, the charter shall specify the extent of the entity's participation in the management and operation of the school.

§ 2. Paragraph (h) of subdivision 2 of section 2851 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(h) The rules and procedures by which students may be disciplined[~~, including but not limited to expulsion or suspension from the school, which shall be consistent with the requirements of due process and with~~

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD02728-01-1

~~federal laws and regulations governing the placement of students with disabilities~~] shall be in accordance with the provisions of subdivisions two-a, three and three-a of section thirty-two hundred fourteen of this chapter. The charters of all charter schools that were issued on or before July first, two thousand twenty-one shall be deemed amended to require compliance with the procedures set forth in subdivisions two-a, three and three-a of section thirty-two hundred fourteen of this chapter.

§ 3. Paragraph (e) of subdivision 4 of section 2851 of the education law, as added by chapter 101 of the laws of 2010, is amended to read as follows:

(e) The means by which the charter school will meet or exceed the enrollment [~~and retention targets as prescribed by the board of regents or the board of trustees of the state university of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program which shall be considered by the charter entity prior to approving such charter school's application for renewal. When developing such targets, the board of regents and the board of trustees of the state university of New York shall ensure (1) that such enrollment targets are comparable to the enrollment figures of such categories of students attending the public schools within the school district, or in a city school district in a city having a population of one million or more inhabitants, the community school district, in which the charter school is located; and (2) that such retention targets are comparable to the rate of retention of such categories of students attending the public schools within the school district, or in a city school district in a city having a population of one million or more inhabitants, the community school district, in which the proposed charter school would be located~~] requirements of subparagraph (ii) of paragraph (b) of subdivision two of section twenty-eight hundred fifty-four of this article.

§ 4. Subdivision 2 of section 2852 of the education law, as amended by section 2 of part D2 of chapter 57 of the laws of 2007, is amended to read as follows:

2. An application for a charter school shall not be approved unless the charter entity finds in writing that:

(a) the charter school described in the application meets the requirements set out in this article and all other applicable laws, rules and regulations;

(b) the applicant can demonstrate the ability to operate the school in an educationally and fiscally sound manner;

(c) granting the application is likely to improve student learning and achievement and materially further the purposes set out in subdivision two of section twenty-eight hundred fifty of this article; and

(d) in a school district where the total enrollment of resident students attending charter schools in the base year is greater than five percent of the total public school enrollment of the school district in the base year (i) granting the application would have a significant educational benefit to the students expected to attend the proposed charter school [~~or~~] and (ii) the school district in which the charter school will be located consents to such application.

In reviewing applications, the charter entity is encouraged to give preference to applications that demonstrate the capability to provide comprehensive learning experiences to students identified by the applicants as at risk of academic failure. Upon making a determination of whether an application for a charter school shall be approved, the char-

ter entity shall provide detailed written findings related to each of the requirements in this subdivision, which shall be made available to the charter school applicant, board of regents and the school district in which the proposed charter school would be located.

§ 5. Subdivision 5 of section 2852 of the education law, as amended by chapter 101 of the laws of 2010, is amended to read as follows:

5. (a) Upon approval of an application by a charter entity, the applicant and charter entity shall enter into a proposed agreement allowing the applicants to organize and operate a charter school. Such written agreement, known as the charter, shall include [~~(a)~~] (i) the information required by subdivision two of section twenty-eight hundred fifty-one of this article, as modified or supplemented during the approval process, [~~(b)~~] (ii) in the case of charters to be issued pursuant to subdivision nine-a of this section, information required by such subdivision, [~~(c)~~] (iii) a provision prohibiting the charter school from entering into, renewing or extending any agreement with a for-profit or not-for-profit corporate or other business entity for the administration, management or operation of the charter school unless the agreement requires such entity to provide state and local officers having the power to audit the charter school pursuant to this article with access to the entity's records relating to the costs of, and fees for, providing such services to the school, (iv) any other terms or conditions required by applicable laws, rules and regulations, and [~~(d)~~] (v) any other terms or conditions, not inconsistent with law, agreed upon by the applicant and the charter entity. In addition, the charter shall include the specific commitments of the charter entity relating to its obligations to oversee and supervise the charter school. Within five days after entering into a proposed charter, the charter entity other than the board of regents shall submit to the board of regents a copy of the charter, the application and supporting documentation for final approval and issuance by the board of regents in accordance with subdivisions five-a and five-b of this section.

(b) No charter school having a charter that was issued and approved on or before the effective date of this paragraph shall enter into, renew or extend the duration of any agreement with a for-profit or not-for-profit corporate or other business entity for the administration, management or operation of the charter school unless the agreement requires such entity to provide state and local officers having the power to audit the charter school pursuant to this article with access to the entity's records relating to the costs of, and fees for, providing such services to the school. Any agreement entered into, renewed or extended in violation of this section shall be null, void and wholly unenforceable, and a violation of this section shall be grounds for revocation or termination of a charter pursuant to section twenty-eight hundred fifty-five of this article.

§ 6. Subparagraph (i) of paragraph (b) of subdivision 9-a of section 2852 of the education law, as amended by section 2 of subpart A of part B of chapter 20 of the laws of 2015, is amended to read as follows:

(i) that the proposed charter school would meet or exceed the enrollment [~~and retention targets, as prescribed by the board of regents or the board of trustees of the state university of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program. When developing such targets, the board of regents and the board of trustees of the state university of New York, shall ensure (1) that such enrollment targets are comparable to the enrollment~~

~~figures of such categories of students attending the public schools within the school district, or in a city school district in a city having a population of one million or more inhabitants, the community school district, in which the proposed charter school would be located; and (2) that such retention targets are comparable to the rate of retention of such categories of students attending the public schools within the school district, or in a city school district in a city having a population of one million or more inhabitants, the community school district, in which the proposed charter school would be located~~] **requirements of subparagraph (ii) of paragraph (b) of subdivision two of section twenty-eight hundred fifty-four of this article**; and

§ 7. Section 2853 of the education law is amended by adding a new subdivision 2-b to read as follows:

2-b. In any case where a charter school enters into, renews or extends any agreement with a for-profit or not-for-profit business or corporate entity for the administration, management or operation of a charter school, the charter school is required to have a formal contract with such entity. Any such contract shall be reviewed and approved by the charter entity.

§ 8. Paragraph (a) of subdivision 3 of section 2853 of the education law, as amended by chapter 101 of the laws of 2010, is amended to read as follows:

(a) A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building or in any other suitable location. Provided, however, before a charter school may be located in part of an existing public school building, the charter entity shall provide notice to the parents or guardians of the students then enrolled in the existing school building and shall hold a public hearing for purposes of discussing the location of the charter school. **All contracts entered into by such charter school, or any education corporation organized to operate a charter school, or any other public entity, including the state, a public benefit corporation, municipal corporation, or any private entity acting on behalf of any of these entities, involving the construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, or alteration of any charter school facility shall be subject to the requirements of section one hundred three of the general municipal law and articles eight and nine of the labor law.** A charter school may own, lease or rent its space.

§ 9. The opening paragraph and subparagraph 1 of paragraph (e) of subdivision 3 of section 2853 of the education law, as added by section 5 of part BB of chapter 56 of the laws of 2014, are amended to read as follows:

[~~In~~] **Except as provided in subparagraph seven of this paragraph,** a city school district in a city having a population of one million or more inhabitants, charter schools that first commence instruction or that require additional space due to an expansion of grade level, pursuant to this article, approved by their charter entity for the two thousand fourteen--two thousand fifteen school year or thereafter and request co-location in a public school building **and demonstrates to the city school district that the charter school does not have the financial capacity to procure adequate facilities** shall be provided access to facilities pursuant to this paragraph for such charter schools that first commence instruction or that require additional space due to an expansion of grade level, pursuant to this article, approved by their charter entity for those grades newly provided.

(1) Notwithstanding any other provision of law to the contrary, within the later of (i) five months after a charter school's written request for co-location and (ii) **provided that a charter school demonstrates that it lacks the financial capacity to procure adequate facilities,** thirty days after the charter school's charter is approved by its charter entity, the city school district shall either: (A) offer at no cost to the charter school a co-location site in a public school building approved by the board of education as provided by law, or (B) offer the charter school space in a privately owned or other publicly owned facility at the expense of the city school district and at no cost to the charter school **for three years**. The space must be reasonable, appropriate and comparable and in the community school district to be served by the charter school and otherwise in reasonable proximity.

§ 10. Paragraph (e) of subdivision 3 of section 2853 of the education law is amended by adding a new subparagraph 7 to read as follows:

(7)(A) No charter school that, either alone or in combination with any charter affiliate, has any direct or indirect interest in, or may be entitled to receive any beneficial interest from, any asset or assets of any kind or nature that alone or combined have a value exceeding one million dollars, shall be offered or entitled to receive: (i) a co-location site in a public school building at no cost; or (ii) a space in a privately or publicly owned facility at the expense of the city school district.

(B) Nothing in this subparagraph shall prohibit a charter school from receiving a co-location in a public building at fair market value unless doing so would negatively impact the size of classes in any other school in the building.

(C) As used in this subparagraph the term "charter affiliate" means: (i) any entity that is directly or indirectly controlled by, in control of, or under common control with, the charter school or (ii) any entity that provides management, fundraising or other administrative support services to the charter school.

§ 11. Paragraph (c) of subdivision 4 of section 2853 of the education law, as amended by section 1 of part BB of chapter 56 of the laws of 2014, is amended to read as follows:

(c) A charter school may contract with the governing body of a public college or university for the use of a school building and grounds, the operation and maintenance thereof. Any such contract shall provide such services or facilities at [~~cost~~] **fair market value**. [~~A school district shall permit any charter school granted approval to co-locate, to use such services and facilities without cost.~~]

§ 12. Section 2853 of the education law is amended by adding 3 new subdivisions 5, 6 and 7 to read as follows:

5. Disclosure. (a) A charter school shall report:

(i) by the fifteenth day of February of each calendar year, the name, address and total compensation paid to each person serving as a charter executive in the previous calendar year; and

(ii) within thirty days of receipt, the name and address of any individual, corporation, association, or entity providing a contribution, gift, loan, advance or deposit of one thousand dollars or more to the charter school or charter affiliate and the amount of each such contribution, gift, loan, advance or deposit.

(b) If a charter school either alone or together with any charter affiliate has any direct or indirect interest in, or may be entitled to receive any beneficial interest in, any asset or assets of any kind or

nature, alone or together, with a value in excess of one million dollars, the charter school shall:

(i) ensure that the financial statements of the charter school and each charter affiliate conform to and are reported according to generally accepted accounting principles; and

(ii) ensure that the financial statements of the charter school and any charter affiliate are audited in accordance with generally accepted auditing standards by an independent certified public accountant or an independent public accountant, that such audit receives an "unqualified" opinion as to, among other things, compliance with generally accepted accounting principles and that such audit is completed within nine months of the conclusion of the fiscal year.

(c) If a charter school either alone or together with any charter affiliate has any direct or indirect interest in, or may be entitled to receive any beneficial interest in, any asset or assets of any kind or nature, alone or together, with a value in excess of one million dollars, it shall also report by the fifteenth day of February of each ensuing calendar year the following:

(i) the most recent audited financial statements of the charter school and any charter affiliate which shall conform to and be reported according to generally accepted accounting principles;

(ii) the most recent auditor's report on the financial statements of the charter school and any charter affiliate;

(iii) the "unqualified" opinion received from the auditor of the most recent financial statements as to, among other things, compliance with generally accepted accounting principles; and

(iv) any compensation or remuneration, whether paid or given, including but not limited to salary, bonus, and deferred compensation and any benefit having monetary value, including but not limited to, perquisites, fringe benefits, employer contributions to defined contribution retirement plans and other retirement or severance benefits received by a charter executive from any source.

(d)(i) Each report required by this subdivision shall be accompanied by a statement, under oath, by the chairperson of the school's board of trustees or other appropriate member of the board of trustees, that, after the due inquiry, the reports are true and correct to the best of his or her knowledge and have been provided to each member of the school's board of trustees.

(ii) A charter school to which paragraphs (b) and (c) of this subdivision do not apply shall, by the fifteenth day of February of each calendar year, submit a statement as part of its report pursuant to subparagraph (ii) of paragraph (a) of this subdivision, under oath, by the chairperson of the school's board of trustees or other appropriate member of the board of trustees, that, after the due inquiry, the charter school either alone or together with any charter affiliate does not have any direct or indirect interest in or may be entitled to receive any beneficial interest in any asset or assets of any kind or nature, alone or together, with a value in excess of one million dollars.

(e) Any report required pursuant to this subdivision shall be made to the board of regents, the school's charter entity, and the comptroller of the city of New York for charter schools located in New York city and the comptroller of the state of New York for charter schools located outside of the city of New York. The commissioner shall ensure that such report is made publicly available via the department's official internet website within five days of its receipt.

(f) A charter school's failure to comply with the provisions of this subdivision shall be a very significant factor in determining whether the charter entity or the board of regents terminates the school's charter.

(g) As used in this subdivision:

(i) "total compensation" shall include: (A) any compensation or remuneration, whether paid or given, by or on behalf of the charter school or any charter affiliate, for services rendered to, on behalf of, or at the request of the charter school, including but not limited to salary, bonus, and deferred compensation and (B) any benefit having monetary value provided by or on behalf of the charter school or any charter affiliate, including but not limited to, perquisites, fringe benefits, employer contributions to defined contribution retirement plans and other retirement or severance benefits.

(ii) "charter affiliate" means: (A) any entity that is, directly or indirectly, controlled by, in control of, or under common control with the charter school or (B) any entity or affiliate thereof that provides management, fundraising, or other administrative support services to the charter school.

(iii) "charter executive" means: (A) an officer, director, trustee, consultant, supervisory employee of a charter school or charter affiliate or (B) anyone who exerts operational or managerial influence or control over the school including, but not limited to, influence or control over the school through a charter management company.

6. Executive compensation. (a) No charter school shall provide any compensation to any individual who is also an officer, director, trustee, consultant, or employee of a charter affiliate or to any individual who exerts operational or managerial influence or control over the school through a charter affiliate.

(b)(i) No charter school or charter affiliate shall permit the total compensation received by a charter executive to be greater than one hundred ninety-nine thousand dollars per annum, including not only state funds and state-authorized payments but also any other sources of funding, and greater than the seventy-fifth percentile of that compensation provided to charter executives of other charter schools and charter affiliates within the same or comparable geographic area as established by a compensation survey identified, provided, or recognized by the department and the director of the division of the budget.

(ii) If the department and the director of the division of the budget find good cause after considering the factors set forth in subparagraph (iv) of this paragraph, a waiver of the limit on total compensation that a charter executive may receive may be granted, provided, however, that in no event shall the total compensation exceed one hundred fifty percent of Level I of the federal government's Rates of Basic Pay for the Executive Schedule promulgated by the United States Office of Personnel Management.

(iii) The application for a waiver must be filed no later than the fifteenth day of February of the year for which the waiver is sought. The application shall be transmitted in the manner and form specified by the department and the director of the division of the budget. A waiver may be only for the single calendar year in which it is granted.

(iv) The following factors, in addition to any other deemed relevant by the department and the director of the division of the budget, shall be considered in the determination of whether good cause exists to grant a waiver:

(A) the extent to which the executive compensation that is the subject of the waiver request is comparable to that given to comparable charter executives of charter schools or charter affiliates of the same size and within the same or comparable geographic area;

(B) the extent to which the charter school would be unable to provide educational services at the same levels of quality and availability without a waiver of the limit on total compensation that a charter executive may receive;

(C) the nature, size, and complexity of the charter school or charter affiliate's operations;

(D) the charter school or charter affiliate's review and approval process for the total compensation that is the subject of the waiver, including whether such process involved a review and approval by the board of trustees of the school, whether such review was conducted by at least two independent directors or independent members of the board of trustees, whether such review included an assessment of comparability data including a compensation survey, and a contemporaneous substantiation of the deliberation and decision to approve the total compensation;

(E) the qualifications and experience possessed by or required for the charter executive's position; and

(F) the charter school or charter affiliate's efforts, if any, to secure a charter executive with the same levels of experience, expertise, and skills for the position of the charter executive at lower levels of compensation.

(v) To be considered, an application for such a waiver shall comply with this paragraph in its entirety.

(vi) Unless additional information has been requested but not received from the charter school or charter affiliate, a decision on a timely submitted waiver application shall be provided no later than sixty calendar days after submission of the application.

(vii) If granted, a waiver to a charter executive shall remain in effect for the calendar year it is issued in, but shall be deemed revoked if:

(A) the total compensation that is the subject of the waiver increases; or

(B) notice of revocation is provided to the charter executive at the discretion of the department as a result of additional relevant circumstances.

(viii) Information provided in connection with a waiver application shall be subject to public disclosure pursuant to article six of the public officers law.

(ix) Where a waiver is granted, the department shall make it publicly available via the department's official internet website within five days.

(c) No charter school shall use funds received pursuant to section twenty-eight hundred fifty-six of this article or allow a charter affiliate to use funds received from the charter school to provide a total compensation to a charter executive greater than one hundred ninety-nine thousand dollars per annum.

(d) Failure to comply with the provisions of this subdivision shall result in the assessment of a penalty against the payor in an amount equal to the amount of compensation paid or provided in violation of this subdivision.

(e) A charter school's failure to comply with the provisions of this subdivision shall be a very significant factor in determining whether

the charter entity or the board of regents terminates the school's charter.

(f) As used in this subdivision:

(i) "total compensation" shall include: (A) any compensation or remuneration, whether paid or given, by or on behalf of the charter school or any charter affiliate, for services rendered to, on behalf of, or at the request of the charter school, including but not limited to salary, bonus, and deferred compensation and (B) any benefit having monetary value provided by or on behalf of the charter school or any charter affiliate, including but not limited to, perquisites, fringe benefits, employer contributions to defined contribution retirement plans and other retirement or severance benefits.

(ii) "charter affiliate" means: (A) any entity that is, directly or indirectly, controlled by, in control of, or under common control with the charter school or (B) any entity or affiliate thereof that provides management, fundraising, or other administrative support services to the charter school.

(iii) "charter executive" means: (A) an officer, director, trustee, consultant, supervisory employee of a charter school or charter affiliate or (B) anyone who exerts operational or managerial influence or control over the school including, but is not limited to, influence or control over the school through a charter management company.

7. Notification of disenrollment. Within five business days of a student who was enrolled by the charter school ceasing to be enrolled, a charter school shall notify the superintendent of the district in which the charter school is located or, for charter schools located within the geographic area served by the city school district of the city of New York, the chancellor of the city school district of the city of New York, of the name of such student.

§ 13. Subparagraph 5 of paragraph (e) of subdivision 3 of section 2853 of the education law, as amended by section 11 of part A of chapter 54 of the laws of 2016, clause (B) as amended by section 5 of part YYY of chapter 59 of the laws of 2017, is amended to read as follows:

(5) For a new charter school whose charter is granted or for an existing charter school whose expansion of grade level, pursuant to this article, is approved by their charter entity, if the appeal results in a determination in favor of the charter school, for six years the city school district shall pay the charter school (A) for the initial three years in which aid is payable, an amount attributable to the grade level expansion or the formation of the new charter school that is equal to the lesser of:

[~~(A)~~] (i) the actual rental cost of an alternative privately owned site selected by the charter school or

[~~(B)~~] (ii) thirty percent of the product of the charter school's basic tuition for the current school year and [~~(i)~~] (I) for a new charter school that first commences instruction on or after July first, two thousand fourteen, the charter school's current year enrollment; or [~~(ii)~~] (II) for a charter school which expands its grade level, pursuant to this article, the positive difference of the charter school's enrollment in the current school year minus the charter school's enrollment in the school year prior to the first year of the expansion; and

(B) in the fourth year, the city school district shall pay ninety percent multiplied by the amount calculated pursuant to clause (A) of this subparagraph; and

(C) in the fifth year, the city school district shall pay sixty percent multiplied by the amount calculated pursuant to clause (A) of this subparagraph; and

(D) in the sixth year, the city school district shall pay thirty percent multiplied by the amount calculated pursuant to clause (A) of this subparagraph.

§ 14. Paragraph (b) of subdivision 1 of section 2854 of the education law, as amended by section 10-b of part A of chapter 56 of the laws of 2014, is amended to read as follows:

(b) A charter school shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in this article. A charter school shall be exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education, school districts and political subdivisions, including those relating to school personnel and students, except as specifically provided in the school's charter or in this article. Nothing in this subdivision shall affect the requirements of compulsory education of minors established by part one of article sixty-five of this chapter**, nor shall anything in this subdivision affect the requirements of the charter school to comply with section one hundred three of the general municipal law and articles eight and nine of the labor law with respect to the construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, or alteration of any charter school facility**.

§ 15. Subdivision 2 of section 2854 of the education law, as added by chapter 4 of the laws of 1998, paragraph (a) as amended by chapter 101 of the laws of 2010, and paragraph (b) as amended by section 3 of subpart A of part B of chapter 20 of the laws of 2015, is amended to read as follows:

2. Admissions; enrollment; students. (a) A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees; provided that a charter school may require the payment of fees on the same basis and to the same extent as other public schools. A charter school shall not discriminate against any student, employee or any other person on the basis of ethnicity, national origin, gender, or disability or any other ground that would be unlawful if done by a school. Admission of students shall not be limited on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry; provided, however, that nothing in this article shall be construed to prevent the establishment of a single-sex charter school or a charter school designed to provide expanded learning opportunities for students at-risk of academic failure or students with disabilities and English language learners; and provided, further, that the charter school shall demonstrate good faith efforts to attract and retain [~~a comparable~~] **an equal** or greater enrollment of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program when compared to the enrollment figures for such students in the school district in which the charter school is located. A charter shall not be issued to any school that would be wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine would be taught.

(b) (i) Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. Applications for admission to a charter school shall be submitted on a uniform application form created by the department and shall be made available by a charter school in languages predominately spoken in the community in which such charter school is located. [~~The~~]

(ii) A charter school shall enroll and continually keep enrolled the minimum number of students in each of the following categories: (A) students who are English language learners as defined in regulations of the commissioner, (B) students who receive or are mandated to receive any special education service, (C) students who have individual education plans that mandate they receive services for at least sixty percent of the school day outside the general education setting, (D) students who are eligible to receive free lunch in accordance with title I of the elementary and secondary education act, and (E) students who reside in temporary or transitional housing. The minimum number of students a charter school must enroll and continually keep enrolled in each such category shall be the number of students that, as a percentage of the students authorized to be served by the charter school in its charter, is equal to the percentage of students in each category that non-charter public schools in the district where the charter school is located enrolled in the preceding June in all of the grades combined which are served by the charter school. For purposes of this subparagraph, for the city school district of the city of New York, district shall mean the community school district and shall include all non-charter public schools, except those in district seventy-five, geographically located in the community school district.

(iii) Prior to a charter school selecting or enrolling students for the next school year, the commissioner shall provide the charter school with the minimum number of students it must enroll and continually keep enrolled in each category pursuant to subparagraph (ii) of this paragraph. The minimum number of students each charter school must enroll and continually keep enrolled in each category pursuant to subparagraph (ii) of this paragraph shall be made public by the commissioner no later than five business days after it has been provided to the charter school.

(iv) A charter school shall enroll each eligible student who submits a timely application by the first day of April each year[~~,~~] unless the number of applications exceeds the capacity of the grade level or building or would cause the charter school to be below the minimum number of students it must enroll and continually keep enrolled in each category pursuant to subparagraph (ii) of this paragraph. In such cases, students shall be accepted from among applicants by a random selection process, provided[~~, however,~~] that separate random selection processes shall be conducted for students that are not in any category set forth in subparagraph (ii) of this paragraph and for students in each category set forth in subparagraph (ii) of this paragraph such that a charter school enrolls at least the minimum number of students required pursuant to subparagraph (ii) of this paragraph.

(v) Where a charter school does not enroll the minimum number of students it must enroll and continually keep enrolled in each category set forth in subparagraph (ii) of this paragraph, the charter school shall hold open a sufficient number of enrollment spaces such that it is possible for the charter school, consistent with its charter, to subsequently enroll the number of students required by subparagraph (ii) of this paragraph.

(vi) A charter school may provide an enrollment preference [~~shall be provided~~] to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school provided that the charter school enrolls and continually keeps enrolled the minimum number of students required in each category pursuant to subparagraph (ii) of this paragraph and holds open the number of enrollment spaces as required by subparagraph (v) of this paragraph. Preference may also be provided to children of employees of the charter school or charter management organization, provided that the charter school enrolls and continually keeps enrolled the minimum number of students required in each category pursuant to subparagraph (ii) of this paragraph and holds open the number of enrollment spaces as required by subparagraph (v) of this paragraph and provided further that such children of employees may constitute no more than fifteen percent of the charter school's total enrollment.

(vii) For purposes of this paragraph, if a student withdraws from a charter school as a result of a voluntary decision of the student's parent or guardian and, as a direct result, the charter school no longer has the minimum number of students in each category required pursuant to subparagraph (ii) of this paragraph, the charter school shall nevertheless be considered to have continually kept enrolled the minimum number of students required by subparagraph (ii) of this paragraph if, within thirty days of the student being withdrawn, the charter school replaces the student that was withdrawn with a different student such that the charter school has the minimum number of students in each category required pursuant to subparagraph (ii) of this paragraph, provided however, that this subparagraph shall not apply (A) if the charter school was already in violation of the requirements of subparagraph (ii) of this paragraph at the time the student was withdrawn or (B) if the decision of the student's parent or guardian was substantially motivated by any action or inaction of the charter school, or any of its agents or employees, that was in violation of any law, rule, or regulation.

(viii) (A) A charter school shall report the names of any parents or guardians of students who are on a waitlist for enrollment in the charter school to the superintendent of the district in which the charter school is located or, for charter schools located within the geographic area served by the city school district of the city of New York, the chancellor of the city school district of the city of New York, whether each such student is in one of the categories set forth in subparagraph (ii) of this paragraph and, if so, which one.

(B) A charter school that, at any time, does not have enrolled the minimum number of students required in each category pursuant to subparagraph (ii) of this paragraph shall notify the superintendent of the district in which the charter school is located or, for charter schools located within the geographic area served by the city school district of the city of New York, the chancellor of the city school district of the city of New York, within five days of the date of the school being below the minimum number of students. A separate notification shall be provided each time a charter school's enrollment falls below the minimum in any category pursuant to subparagraph (ii) of this paragraph.

(C) Where the superintendent of the district or the chancellor of the city school district of the city of New York receives notification pursuant to clause (B) of this subparagraph, he or she shall first offer the enrollment spaces to any parents or guardians of students who are in a category in which the charter school is below the minimum set forth in

subparagraph (ii) of this paragraph who are on the school's waitlist, then to any parents or guardians of students who are in a category in which the charter school is below the minimum set forth in subparagraph (ii) of this paragraph who are on the waitlist of another charter school in the district in which the charter school is located or, for charter schools located within the geographic area served by the city school district of the city of New York geographically located in the community school district, and then to any other parents or guardians of students who are in a category in which the charter school is below the minimum set forth in subparagraph (ii) of this paragraph who reside in the district; such process of enrollment offers shall continue until the charter school is no longer below such minimum in any category or such superintendent or chancellor certifies there are no such students seeking enrollment.

(D) Offers made pursuant to this subparagraph shall be made in writing in the parent or guardian's primary language. Where an offer is made pursuant to this subparagraph and the parent or guardian accepts, the charter school shall enroll the student within five calendar days of the offer being accepted.

(ix) (A) For each month during the school year, a charter school shall report the number of students then enrolled, as of the first day of the month, in each category set forth in subparagraph (ii) of this paragraph and the number of students then enrolled, as of the first day of the month, that are in none of the categories set forth in subparagraph (ii) of this paragraph.

(B) Reports pursuant to this subparagraph shall be made to the board of regents, the school's charter entity, the comptroller of the city of New York for charter schools located in New York city and the comptroller of the state of New York for charter schools located outside of the city of New York, and the superintendent of the district in which the charter school is located or, for charter schools located within the geographic area served by the city school district of the city of New York, the chancellor of the city school district of the city of New York. The commissioner shall ensure that such report is made publicly available via such department's official internet website within five days of its receipt.

(C) Reports pursuant to this subparagraph shall be made on the fifth day of the ensuing month during the school year and shall be accompanied by a statement, under oath, by the chairperson of the school's board of trustees or other appropriate member of the board of trustees, that, after the due inquiry, the reports are true and correct and have been provided to each member of the school's board of trustees.

(x) The commissioner shall establish regulations to require that the random selection [~~process~~] processes conducted pursuant to this paragraph be performed in a transparent and equitable manner and to require that the time and place of the random selection process be publicized in a manner consistent with the requirements of section one hundred four of the public officers law and be open to the public. [~~For~~] Except where another definition is provided, for the purposes of this paragraph and paragraph (a) of this subdivision, the school district in which the charter school is located shall mean, for the city school district of the city of New York, the community district in which the charter school is located.

(xi) The commissioner may, by regulation, require the board of education of each school district or the chancellor of the city school district of the city of New York to provide to him or her such informa-

tion as is necessary to calculate the minimum number of students a charter school must enroll and continually have enrolled pursuant to subparagraph (ii) of this paragraph. Such information shall be made public by the commissioner within five business days of receipt.

(xii)(A) If a charter school fails to enroll the number of students required by subparagraph (ii) of this paragraph the appropriate school district shall withhold from the charter school's funding an amount equal to the additional per pupil funding the charter school would have received had each student not enrolled as required by subparagraph (ii) of this paragraph been enrolled.

(B) Money withheld by the school district in accordance with this subparagraph shall be returned to the commissioner for distribution to each of the school districts, using an equitable formula determined by the commissioner, provided the charter school or schools from which the monies are withheld shall not be entitled to the return of any money withheld pursuant to this subparagraph or any additional monies as a result of the commissioner's distribution of funds pursuant to this subparagraph.

(xiii) (A) No charter school shall first commence instruction if it is operated by, managed by, affiliated with, in the same chain as, shares the same management company as, or has any common charter applicant as, a school that has been in violation, within the last two years, of the enrollment requirements of subparagraph (ii) of this paragraph.

(B) No charter school shall expand beyond the grades with enrolled students, even if such expansion is authorized by its charter, if it has been in violation, within the last two years, of the enrollment requirements of subparagraph (ii) of this paragraph.

(C) A charter school that does not have enrolled the minimum number of students as required by subparagraph (ii) of this paragraph shall not be offered or entitled pursuant to paragraph (e) of subdivision three of section twenty-eight hundred fifty-three of this article (1) a co-location site in a public school building at no cost or (2) space in a privately owned or other publicly owned facility at the expense of the city school district. A charter school that has already been co-located in a public school building or given space in a privately owned or other publicly owned facility pursuant to this paragraph and then fails to continually have enrolled the required minimum number of students shall be required to pay the fair market value of such space for such period of time of non-compliance.

(xiv) The provisions of this paragraph shall be enforceable by the commissioner or by a court of competent jurisdiction. Any employee of the school district in which the charter school is located or the parent or guardian of a student attending the district in which the charter school is located shall have standing to enforce the provisions of this paragraph.

(xv) A charter school's failure to comply with the provisions of this paragraph shall be a very significant factor in determining whether the charter entity or the board of regents terminates the school's charter.

(b-1) Prior to submission of enrollment counts to a school district pursuant to subdivision one of section twenty-eight hundred fifty-six of this article, on or after October first of the two thousand twenty-one--two thousand twenty-two school year and October first of each school year thereafter, a charter school shall determine whether that school district is the school district of residence of each student for whom enrollment is claimed. Such residency determination shall be made in accordance with the regulations of the commissioner and the residency

policy of the school district in which the charter school is located, provided that the charter school may fulfill such requirement by requiring that the parents or other persons in parental relation register their child with the school district they have identified as their school district of residence. Notwithstanding any other provision of law to the contrary, the parents or other persons in parental relation shall not be required to annually prove their continued residency, provided that they either annually certify to the charter school and the school district of residence that their residency has not changed or notify the charter school and the school district that their residency has changed and that a new school district of residence should be identified pursuant to this paragraph. Upon making a residency determination, a charter school making its own residency determination shall promptly submit its proof of residence to the school district identified as the district of residence for purposes of enrollment of the student in such school district in accordance with subdivision one of section twenty-eight hundred fifty-six of this article, and the provision of services pursuant to subdivision four of section twenty-eight hundred fifty-three of this article. In the event of a dispute over the residency of a student, the school district shall make its own residency determination pursuant to the regulations of the commissioner after considering the proof of residency submitted by the charter school, and such determination may be appealed to the commissioner by the charter school or by the parent or other person in parental relation or both pursuant to section three hundred ten of this chapter. During the pendency of such appeal, the student shall be deemed enrolled in the school district, shall be entitled to services pursuant to subdivision four of section twenty-eight hundred fifty-three of this article, and the school district shall be liable for charter school tuition, provided that upon a final determination in such appeal that the student is not a resident of the school district, the school district may deduct the cost of such tuition and services from future payments due the charter school. The provisions of this paragraph shall not apply to charter schools located in a city having a population of one million or more.

(c) A charter school shall serve one or more of the grades one through twelve, and shall limit admission to pupils within the grade levels served. Nothing herein shall prohibit a charter school from establishing a kindergarten program.

(d) A student may withdraw from a charter school at any time and enroll in a public school. [~~A charter school may refuse admission to any student who has been expelled or suspended from a public school until the period of suspension or expulsion from the public school has expired, consistent with the requirements of due process~~]

(i) A student may only be disciplined, suspended or expelled from a charter school in accordance with the applicable provisions of subdivisions two-a, three, and three-a of section thirty-two hundred fourteen of this chapter. Every charter school shall develop a code of conduct in accordance with the provisions of section twenty-eight hundred one of this title.

(ii) Every charter school shall submit a detailed annual report regarding disciplinary measures imposed on students. The report shall be submitted to the charter entity and the board of regents as part of the annual report required pursuant to subdivision two of section twenty-eight hundred fifty-seven of this article. The report shall be in a form prescribed by the commissioner, and shall include, but not be limited to, number of classroom removals, number of in-school suspensions,

number of out-of-school suspensions, number of expulsions, and the action the student took that led to each disciplinary measure imposed. Such data shall be disaggregated by race/ethnicity, status as a student with a disability and status as an English language learner. The report shall be posted on the department's website.

(iii) For the purposes of this subdivision:

(A) the term "superintendent," "superintendent of schools," "district superintendent of schools," or "community superintendent," as used in subdivision three of section thirty-two hundred fourteen of this chapter, as such terms relate to charter schools shall mean the chairperson of the board of trustees of the charter school or the chief school officer of the charter school; and

(B) the term "board of education" or "board," as used in subdivision three of section thirty-two hundred fourteen of this chapter, as such terms relate to charter schools shall mean the board of trustees of the charter school.

§ 16. Subdivision 1 of section 2855 of the education law, as amended by chapter 101 of the laws of 2010, is amended to read as follows:

1. The charter entity, or the board of regents, may terminate a charter upon any of the following grounds:

(a) When a charter school's outcome on student assessment measures adopted by the board of regents falls below the level that would allow the commissioner to revoke the registration of another public school, and student achievement on such measures has not shown improvement over the preceding three school years;

(b) [~~Serious violations~~] A violation of law;

(c) [~~Material and substantial~~] A violation of the charter[~~, including fiscal mismanagement~~];

(d) When the public employment relations board makes a determination that the charter school [~~demonstrates a practice and pattern of egregious and intentional violations of~~] has violated subdivision one of section two hundred nine-a of the civil service law involving interference with or discrimination against employee rights under article fourteen of the civil service law; or the national labor relations board created pursuant to subchapter II of chapter seven of title twenty-nine of the United States Code, or any person or entity to whom the national labor relations board has lawfully delegated its authority, makes a determination that the charter school has violated section 158(a) of title twenty-nine of the United States Code; or

(e) [~~Repeated failure to comply with the requirement to meet or exceed enrollment and retention targets of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program pursuant to targets established by the board of regents or the board of trustees of the state university of New York, as applicable. Provided, however, if no grounds for terminating a charter are established pursuant to this section other than pursuant to this paragraph, and the charter school demonstrates that it has made extensive efforts to recruit and retain such students, including outreach to parents and families in the surrounding communities, widely publicizing the lottery for such school, and efforts to academically support such students in such charter school, then the charter entity or board of regents may retain such charter.~~] Failure to comply with the requirements of paragraph (b) of subdivision two of section twenty-eight hundred fifty-four of this article; or

(f) Failure to comply with the data reporting requirements prescribed in subdivisions two and two-a of section twenty-eight hundred fifty-seven of this article.

§ 17. Subdivision 3 of section 2855 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

3. **(a)** In addition to the provisions of subdivision two of this section, the charter entity or the board of regents may place a charter school falling within the provisions of subdivision one of this section on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the school's charter.

(b) A charter school that is placed on probationary status shall annually notify the parents or guardians of all students and applicants of the placement. The initial notice shall be distributed within two weeks of being placed on probationary status. Such notice shall be written and delivered via mail. The department shall identify all charter schools on probationary status on the department's website and shall also post the remedial action plan.

§ 18. Subdivision 4 of section 2855 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

4. **(a)** Any individual or group may bring a complaint to the board of trustees of a charter school alleging a violation of the provisions of this article, the charter, or any other provision of law relating to the management or operation of the charter school. If, after presentation of the complaint to the board of trustees of a charter school, the individual or group determines that such board has not adequately addressed the complaint, they may present that complaint to the charter entity, which shall investigate and respond. If, after presentation of the complaint to the charter entity, the individual or group determines that the charter entity has not adequately addressed the complaint, they may present that complaint to the board of regents, which shall investigate and respond. The charter entity and the board of regents shall have the power and the duty to issue appropriate remedial orders to charter schools under their jurisdiction to effectuate the provisions of this section.

(b) At the beginning of each school year, a charter school shall provide the parent or guardian of each student enrolled in the charter school information detailing the process by which a complaint can be brought against the charter school pursuant to paragraph (a) of this subdivision. In addition to detailing the process by which a complaint can be brought, the information provided shall include, but not be limited to the contact information for the board of trustees of the charter school in which the student is enrolled, the contact information for the charter entity of the charter school, and the contact information for the board of regents, if the board of regents is not the charter entity. Such information shall also be posted and updated annually on the charter school's website.

§ 19. Subdivisions 2 and 3 of section 2856 of the education law are renumbered subdivisions 3 and 4 and a new subdivision 2 is added to read as follows:

2. In the event that in any school year a charter school receives combined payments from any local, state, or federal source that exceed expenditures for such school year related to the operation of such charter school by seven percent, then any excess funds above such amount

shall be returned proportionately to all school districts that have paid tuition to such charter school.

§ 20. Subdivision 3 of section 2856 of the education law, as added by chapter 4 of the laws of 1998 and as renumbered by section nineteen of this act, is amended to read as follows:

3. (a) In the event of the failure of the school district to make payments required by this section, the state comptroller shall deduct from any state funds which become due to such school district an amount equal to the unpaid obligation. The comptroller shall pay over such sum to the charter school upon certification of the commissioner. The commissioner shall promulgate regulations to implement the provisions of this subdivision.

(b) At least thirty days prior to submission of a request for an intercept of state funds pursuant to paragraph (a) of this subdivision, the charter school shall provide the school district of residence with a list of students whose tuition is proposed to be included in the intercept and documentation of any special education services provided by the charter school, the cost of which would be included in the intercept. If the school district objects to inclusion of the tuition or cost of services in the intercept, the school district shall provide the charter school with a written statement of its reasons for objecting to the intercept that identifies the students whose costs are in dispute and the charter school shall schedule a resolution session for the purpose of resolving the dispute, which shall be held within five business days of receipt of the school district's objection. Each party shall ensure that their representatives who attend the resolution are fully authorized to bind the school district or charter school, and any agreement reached at the resolution session shall be final and binding upon both parties. In the event the school district does not notify the charter school of its objections within ten days of its receipt of the list of students or fails to participate in a resolution session, the school district shall be deemed to have waived its objections to the intercept and the charter school shall not be required to offer a resolution session. If the parties are unable to reach agreement at a resolution session, they may agree to schedule additional resolution sessions or, if one of the parties informs the other that agreement is not possible, the dispute may be raised by the district as a charter school complaint pursuant to subdivision four of section twenty-eight hundred fifty-five of this article, or, if the dispute concerns the residency of a student, an appeal may be brought pursuant to paragraph (c) of this subdivision. The department shall not process an intercept for tuition or the cost of services of a student whose costs are in dispute until the charter school notifies the department that a resolution session has been held and no agreement has been reached, or that no resolution session is required because the school district failed to provide timely notice or failed to participate in a scheduled resolution session.

(c) In the event of a dispute over the residency of a student, the school district shall make its own residency determination pursuant to the regulations of the commissioner after considering the proof of residency submitted by the charter school, and such determination may be appealed to the commissioner by the charter school or by the parent or other person in parental relation or both pursuant to section three hundred ten of this chapter. During the pendency of such appeal, the student shall be deemed enrolled in the school district, shall be entitled to services pursuant to subdivision four of section twenty-eight hundred fifty-three of this article, and the school district shall be

liable for charter school tuition, provided that upon a final determination in such appeal that the student is not a resident of the school district, the school district may deduct the cost of such tuition and services from future payments due the charter school.

§ 21. Subdivision 2 of section 2857 of the education law, as amended by chapter 101 of the laws of 2010, is amended and a new subdivision 2-a is added to read as follows:

2. Each charter school shall submit to the charter entity and to the board of regents an annual report. Such report shall be issued no later than the first day of August of each year for the preceding school year and shall be made publicly available by such date and shall be posted on both the charter school's [~~website~~] and the department's websites. The annual report shall be in such form as shall be prescribed by the commissioner and shall include at least the following components:

(a) a charter school report card, which shall include measures of the comparative academic and fiscal performance of the school, as prescribed by the commissioner in regulations adopted for such purpose. Such measures shall include, but not be limited to, graduation rates, dropout rates, performance of students on standardized tests, college entry rates, total spending per pupid and administrative spending per pupil. Such measures shall be presented in a format that is easily comparable to similar public schools. In addition, the charter school shall ensure that such information is easily accessible to the community including making it publicly available by transmitting it to local newspapers of general circulation and making it available for distribution at board of trustee meetings[~~.~~];

(b) discussion of the progress made towards achievement of the goals set forth in the charter[~~.~~];

(c) a certified financial statement setting forth, by appropriate categories, the revenues and expenditures for the preceding school year, including a copy of the most recent independent fiscal audit of the school and any audit conducted by the comptroller of the state of New York[~~.~~];

(d) efforts taken by the charter school in the existing school year, and a plan for efforts to be taken in the succeeding school year, to meet or exceed the enrollment [~~and retention targets set by the board of regents or the board of trustees of the state university of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program established pursuant to paragraph (e) of subdivision four of section twenty-eight hundred fifty-one of this article.~~] requirements of subparagraph (ii) of paragraph (b) of subdivision two of section twenty-eight hundred fifty-four of this article;

(e) for any charter school that contracts with a management company or any other entity that provides services to the charter school, a detailed statement of services provided to the charter school by the management company and/or any other entity and the amount the charter school pays for such services. The department shall post the annual reports submitted by charter schools on the department's website; and

(f) a notice of any relationship that may exist between any member of a charter school's board of trustees or charter school staff and any for-profit or not-for-profit corporate or other business entity that is responsible for the administration, management or operation of such charter school or related vendor.

2-a. Each charter school shall post contact information for the school's board of trustees as well as the name and contact information of the school's charter entity on the website of the charter school.

§ 22. Subdivision 7 of section 179-q of the state finance law, as added by chapter 166 of the laws of 1991, is amended to read as follows:

7. "Not-for-profit organization" or "organization" means a domestic corporation incorporated pursuant to or otherwise subject to the not-for-profit corporation law, a charitable organization registered with the secretary of state, a special act corporation created pursuant to chapter four hundred sixty-eight of the laws of eighteen hundred ninety-nine, as amended, a special act corporation formed pursuant to chapter two hundred fifty-six of the laws of nineteen hundred seventeen, as amended, a corporation authorized pursuant to an act of congress approved January fifth, nineteen hundred five, (33 stat. 599), as amended, a corporation established by merger of charitable organizations pursuant to an order of the supreme court, New York county dated July twenty-first, nineteen hundred eighty-six and filed in the department of state on July twenty-ninth, nineteen hundred eighty-six, or a corporation having tax exempt status under section 501(c)(3) of the United States Internal revenue code, and shall further be deemed to mean and include any federation of charitable organizations. **Provided, however, that a public educational entity within the meaning of section seventy-one of part C of chapter fifty-seven of the laws of two thousand four shall not be deemed a "not-for-profit organization" or "organization" for purposes of this article.**

§ 23. This act shall take effect immediately.