STATE OF NEW YORK

1972

2021-2022 Regular Sessions

IN SENATE

January 16, 2021

Introduced by Sens. JACKSON, BIAGGI, MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to the enrollment of students at charter schools, the suspension of students at charter schools and the administration of charter schools

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

Section 1. Paragraphs (h) and (j) of subdivision 2 of section 2851 of the education law, as added by chapter 4 of the laws of 1998, are 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~~] **section thirty-two hundred fourteen of this chapter** and with federal laws and regulations governing the placement of students with disabilities**, and pursuant to subdivision four of section twenty-eight hundred fifty-four of this article. The application shall also include a code of conduct consistent with section twenty-eight hundred one of this title**.

(j) **(i)** Information regarding the facilities to be used by the school, including the location of the school, if known, and the means by which pupils will be transported to and from the school. If the facilities to be used by the proposed school are not known at the time the application is submitted, the applicant shall notify the charter entity and, if applicable, the board of regents within ten business days of acquiring facilities for such school; provided, however, that the charter school must obtain a certificate of occupancy for such facilities prior to the date on which instruction is to commence at the school.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, an applicant to establish a charter school to be located in New York city shall include the specific community school district such

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

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proposed charter school will be located within and whether such applicant will request co-location or private space for the facilities to be used by the school. If the application is approved, such charter school shall not be located within any community school district other than such district provided on such application.

§ 2. Paragraph (c) of subdivision 4 of section 2851 of the education law, as added by chapter 4 of the laws of 1998, is amended and a new paragraph (f) is added to read as follows:

(c) Copies of each of the annual reports of the charter school required by [~~subdivision~~] subdivisions two and six of section twenty-eight hundred fifty-seven of this article, including the charter school report cards and the certified financial statements.

(f) Notwithstanding the provisions of subdivision two of section twenty-eight hundred fifty-three of this article, an audit report by an independent certified public accountant or independent public accountant on the operations of the charter school, including compliance with the applicable provisions of this chapter and the not-for-profit corporation law, and with all other applicable laws, regulations and charter provisions.

§ 3. Section 2851 of the education law is amended by adding a new subdivision 6 to read as follows:

6. Notwithstanding the provisions of subdivision four of this section, no charter shall be renewed if the charter school has failed to:

(a) meet the student achievement goals for the school educational program, as required in the application;

(b) improve student learning and achievement;

(c) materially further the purposes set forth in subdivision two of section twenty-eight hundred fifty of this article; or

(d) maintain enrollment, suspension and attrition rates of either all students or specifically students who are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities, as reported pursuant to subdivision six of section twenty-eight hundred fifty-seven of this article, which are within five percent of such rates for the school district in which such charter school is located. For the purposes of a charter school located within a city with a population of one million or more the school district used for comparison shall be the community school district in which such charter school is located; or

(e) pass an audit, carried out pursuant to subdivision six of section twenty-eight hundred fifty-seven of this article, which finds such charter school has been encouraging students to leave or pushing students out of the school for illegitimate reasons; or

(f) to follow the provisions of articles six and seven of the public officers law.

§ 4. Paragraph (d) of subdivision 2 of section 2854 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(d) A student may withdraw from a charter school at any time pursuant to a written form created by the department in which the parent or legal guardian of the student certifies that the parent or legal guardian is willingly and knowingly withdrawing the student from the charter school without any undue pressure or influence by any owner or employee of the charter school, 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.

§ 5. Section 2854 of the education law is amended by adding three new subdivisions 4, 5 and 6 to read as follows:

4. Suspension of a student. (a) A charter school shall suspend an enrolled student pursuant to subdivisions two-a and three of section thirty-two hundred fourteen of this chapter, and only in accordance with the procedures set forth in this subdivision.

(b) The principal of the charter school where the student attends shall have the power to suspend the student for a period not to exceed five school days pursuant to the due process procedures set forth in paragraph b of subdivision three of section thirty-two hundred fourteen of this chapter. The student or the person in parental relation to such student may appeal the final decision of the principal to the board of trustees of the charter school.

(c)(i) No student enrolled in a charter school may be suspended for a period in excess of five school days unless such student and the person in parental relation to such student shall have had an opportunity for a hearing, upon reasonable notice, at which such student shall have the right of representation by counsel, with the right to question witnesses against such student and to present witnesses and other evidence on his or her behalf.

(ii) Where a student has been suspended in accordance with this paragraph, the charter school shall, within five days of the suspension, inform the superintendent of the school district or, in the city school district of the city of New York, of a community school district, where the charter school is located shall, upon being notified of the suspension, who shall forthwith designate a hearing officer to hear and determine the proceeding. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him or her. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and a recommendation on the appropriate measure of discipline to the chief executive officer of the charter school. The chief executive officer may reject, confirm or modify the conclusions of the hearing officer. A parent may appeal the decision of the chief executive officer to the board of trustees of the charter school.

(d) A student with a disability as such term is defined in section forty-four hundred one of this chapter or a student presumed to have a disability for discipline purposes, may be suspended or removed from his or her current educational placement for violation of school rules only in accordance with the procedures established in paragraph g of subdivision three of section thirty-two hundred fourteen of this chapter, the regulations of the commissioner implementing such paragraph, and subsection (k) of section 1415 of title 20 of the United States code and the federal regulations implementing such statute, as such federal law and regulations are from time to time amended.

(e) Any teacher shall have the power and authority to remove a disruptive student pursuant to the procedures set forth in subdivision three-a of section thirty-two hundred fourteen of this chapter.

(f) Where a student has been suspended pursuant to this subdivision and such student is of compulsory attendance age, immediate steps shall be taken for his or her attendance upon instruction at home or elsewhere. A charter school shall provide full-time alternative instruction for the time period that the student is suspended. The student and the

parents or guardians of such student shall be provided notice of the time and location of the alternative instruction.

5. Posting of charter and policies. (a) A charter school shall post its charter, including its disciplinary policies, conspicuously on its website, and make such charter and policies available to the parents or guardians of the students upon request free of charge within five days of such request.

(b) A charter school shall develop and post conspicuously on its website a clear and simple process for parents or guardians of students to file complaints and appeals. Such process posted shall include at a minimum, contact information, including but not limited to an e-mail address, a description of how to file a complaint and/or appeal a suspension, and a schedule of deadlines for responses by such charter school to complaints and appeals.

6. Parent or guardian representation. Within three years from the effective date of this subdivision, half of the membership of the board of a charter school shall be composed of parents or guardians of students enrolled at such charter school. Such parent or guardian board positions shall be elected directly by the parents and guardians of students enrolled at such charter school. The commissioner shall promulgate rules and regulations regarding the timing and conducting of such elections.

§ 6. Paragraphs (c), (d) and (e) of subdivision 1 of section 2854 of the education law, paragraph (c) as amended by section 10-b of part A of chapter 56 of the laws of 2014, and paragraphs (d) and (e) as added by chapter 4 of the laws of 1998, are amended to read as follows:

(c) A charter school shall be subject to the financial audits, the audit procedures, and the audit requirements set forth in the charter, and shall be subject to audits of the comptroller of the city school district of the city of New York for charter schools located in New York city, and to the audits of the comptroller of the state of New York for charter schools located in the rest of the state, at his or her discretion, with respect to the school's financial operations. Any such audits shall include an audit to determine whether the financing received by the charter school pursuant to section twenty-eight hundred fifty-six of this article is consistent with the number of qualified students who are eligible to enroll, and are actually enrolled in such charter school, including whether such enrolled students meet the residency requirements for enrollment. In the event of an overpayment, the office of the state comptroller shall be authorized to recover the excess in payment by deducting from any state funds which become due to such charter school or refer the matter to the state attorney general to initiate a civil action against the charter school to recover the overpayment. Such procedures and standards shall be consistent with generally accepted accounting and audit standards. Independent fiscal audits shall be required at least once annually.

(d) A charter school shall design its educational programs to meet or exceed the student performance standards adopted by the board of regents and the student performance standards contained in the charter. Students attending charter school shall be required to take regents examinations to the same extent such examinations are required of other public school students. A charter school shall utilize the same methods as used by the school district such charter school is located in to ensure blind scoring of the mandated state exams, including in New York city, cooperative grading sites, and shall also be subject to any other methods the state or district may use to ensure integrity of results, including, but

not limited to, independent monitors and erasure analysis. A charter school offering instruction in the high school grades may grant regents diplomas and local diplomas to the same extent as other public schools, and such other certificates and honors as are specifically authorized by their charter, and in testimony thereof give suitable certificates, honors and diplomas under its seal; and every certificate and diploma so granted shall entitle the conferee to all privileges and immunities which by usage or statute are allowed for similar diplomas of corresponding grade granted by any other public school. A charter school shall be subject to performance audits, the audit procedures, and the audit requirements set forth in the charter, and shall be subject to audits of the comptroller of the city school district of the city of New York for charter schools located in New York city, and to the audits of the comptroller of the state of New York for charter schools located in the rest of the state, at his or her discretion, with respect to the school's performance.

(e) (i) A charter school shall be subject to the provisions of articles six and seven of the public officers law.

(ii) Notwithstanding any other law to the contrary, the board meetings of a charter school, its networks and charter management organization shall be subject to the provisions of article seven of the public officers law, and shall publicly post in a prominent place on its website the time and location of meetings at least seventy-two hours in advance. A charter school shall also retain a mailing list of persons who request notification of its meetings and send such information to the persons on such list at least seventy-two hours in advance of any meeting.

(iii) A charter school and its board shall keep a public archive of all such announcements required under subparagraph (ii) of this paragraph. Board meeting minutes shall be posted online and be available in print upon request.

(iv) Notwithstanding any other law to the contrary, any contract between a charter school and a charter management organization shall be subject to the provisions of article six of the public officers law.

(v) No charter school shall include a non-disclosure agreement as part of a contract with any employee except in regards to specific curricular proprietary information.

§ 7. The opening paragraph and paragraphs (a) and (e) of subdivision 1 of section 2855 of the education law, the opening paragraph and paragraph (a) as amended and paragraph (e) as added by chapter 101 of the laws of 2010, are amended and three new paragraphs (f), (g) and (h) are added to read as follows:

The charter entity, or the board of regents, [~~may~~] shall 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 equals or 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;

(e) [~~Repeated failure~~] 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~~] pursuant to subparagraph (i) of paragraph (b) of subdivision nine-a of section twenty-eight hundred fifty-two of this article. 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[~~,~~]; or

(f) Failure to maintain enrollment, suspension and attrition rates of either all students or specifically students who are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities, as reported pursuant to subdivision six of section twenty-eight hundred fifty-seven of this article, which are within five percent of such rates for the school district in which such charter school is located. For the purposes of a charter school located within a city with a population of one million or more the school district used for comparison shall be the community school district in which such charter school is located; or

(g) When an audit, carried out pursuant to subdivision six of section twenty-eight hundred fifty-seven of this article, finds such charter school has been encouraging students to leave or pushing students out of the school for illegitimate reasons; or

(h) Repeated failure to follow the provisions of articles six and seven of the public officers law.

§ 8. Paragraph (a) of subdivision 2, and subdivisions 4 and 5 of section 2857 of the education law, paragraph (a) of subdivision 2 as amended and subdivision 5 as added by chapter 101 of the laws of 2010, subdivision 4 as added by chapter 4 of the laws of 1998, are amended and two new subdivisions 6 and 7 are added to read as follows:

(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, the total number of openings for new students at the beginning of the school year, by grade; the total number of applicants for each such opening; the total number of students accepted for the school year; the number of students accepted for enrollment who are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities; the number of students who were dismissed, expelled, dropped out or withdrew during the school year, including the reasons for the dismissal or withdrawal, and including the number of such students who were suspended, dismissed, expelled, dropped out or withdrew or are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities; graduation rates[~~, dropout rates,~~]; performance of students on standardized tests[~~,~~]; college entry rates[~~,~~]; the total number of teachers and administrators employed at the school at the beginning of the school year and the number of teachers and administrators who were terminated, dismissed or resigned during the reporting period, and the reasons therefor; the annual salary paid to each teacher and administrator of the school; and total spending per pupil 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 and the commissioner 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, posting it on the department's website and making it available for distribution at board of trustee meetings.

4. The board of regents shall review the educational effectiveness of the charter school approach authorized by this article and the effect of charter schools on the public and nonpublic school systems. Not later than December thirty-first, two thousand [~~three~~] twenty-two, and every two years thereafter, the [~~board of regents~~] commissioner shall report to the governor, the temporary president of the senate, the speaker of the assembly and the board of regents with recommendations to modify, expand, or terminate that approach. Such report shall include, for each charter school, a copy of the school's mission statement[~~,~~]; attendance statistics; dismissal, expulsion and dropout rates[~~,~~]; student performance on standardized assessment tests[~~,~~]; projections of financial stability[~~,~~]; the number of students with disabilities, English language learners and students who are eligible for the free and reduced price lunch program; the total amount spent for administrative expenses; and, wherever practicable, comparisons to other public schools located in the same school district or, in the city school district of New York, the same community school district.

5. The [~~board of regents~~] commissioner shall on an annual basis review and make available to school districts best educational practices employed by charter schools. If the commissioner fails to identify any best practices employed by charter schools, the commissioner shall report such absence or lack of best practices in the report required pursuant to subdivision four of this section.

6. (a) Each charter school shall submit to the department an annual report on or before the first day of August each year for the preceding school year. Such report shall be in such form as shall be prescribed by the commissioner and shall at a minimum include:

(i) enrollment, suspension and attrition rates of all students, including the reasons for the suspension, dismissal or withdrawal.

(ii) enrollment, suspension and attrition rates of students who are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities, including the reasons for the suspension, dismissal or withdrawal.

(b) Reporting of suspension rates as required pursuant to paragraph (a) of this subdivision shall specify the number of out-of-school suspensions and in-school suspensions, and shall include both the total number of suspensions and the number of individual students who receive suspensions.

(c) Not later than December thirty-first, annually, the commissioner shall submit a report to the governor, the temporary president of the senate, the speaker of the assembly and the board of regents containing the information received pursuant to paragraph (a) of this subdivision and such report shall include a comparison of the rates reported by a charter school to such rates of the school district in which such charter school is located.

(d) Not later than December thirty-first, two thousand twenty-two, and every two years thereafter, the comptroller shall audit the information reported by each charter school pursuant to paragraph (a) of this subdivision, provided, however, that for a charter school located in New York city, such audit shall be carried out by the New York city comptroller. A component of such audit shall include selecting a sample of students who were dismissed or withdrew from such charter school and assess the accuracy of the reported reasons for such dismissal or withdrawal.

7. The department shall appoint an ombudsperson whose responsibilities shall be to support and advise parents and guardians of charter school students who have specific issues and complaints, and to investigate and

resolve such complaints. Such ombudsperson shall regularly report to the board of regents the number of complaints received, the types of complaints, and if and how such complaints were resolved.

§ 9. Paragraphs (c) and (d) of subdivision 2 of section 2852 of the education law, paragraph (c) as amended and paragraph (d) as added by section 2 of part D-2 of chapter 57 of the laws of 2007, are amended and a new paragraph (e) is added to read as follows:

(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 (ii) the school district in which the charter school will be located consents to such application[~~.~~]**; and**

(e) the charter school described in the application has received the approval of the local board of education where such proposed charter school shall be located prior to submitting such application, provided, however, that in the case of a proposed charter school to be located in New York city, such approval shall be from the community education council of the district in which such proposed school shall be located.

§ 10. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 11. This act shall take effect immediately.