STATE OF NEW YORK

3621

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. BICHOTTE HERMELYN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to charter entities; and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 3 of section 2851 of the education law, as amended by chapter 101 of the laws of 2010, is amended to read as follows:

3. An applicant shall submit the application to a charter entity for approval. For purposes of this article, a charter entity shall be:

(a) The board of education of a school district eligible for an apportionment of aid under subdivision four of section thirty-six hundred two of this chapter, provided that a board of education shall not approve an application for a school to be operated outside the school district's geographic boundaries and further provided that in a city having a population of one million or more, the chancellor of any such city school district shall be the charter entity established by this paragraph; **or**

(b) [~~The board of trustees of the state university of New York; or~~ ~~(c)~~] The board of regents.

The board of regents shall be the only entity authorized to issue a charter pursuant to this article. Notwithstanding any provision of this subdivision to the contrary, an application for the conversion of an existing public school to a charter school shall be submitted to, and may only be approved by, the charter entity set forth in paragraph (a) of this subdivision. Notwithstanding any law, rule or regulation to the contrary, any such application for conversion shall be consistent with this section but shall not be subject to the process pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article, and the charter entity shall require that the parents or guardians of a

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

LBD02296-01-1

majority of the students then enrolled in the existing public school vote in favor of converting the school to a charter school.

§ 1-a. Subdivision 5 of section 2851 of the education law is REPEALED.

§ 2. 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 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.

§ 3. Subdivision 5-b of section 2852 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

5-b. If the board of regents returns a proposed charter to the charter entity pursuant to the provisions of subdivision five-a of this section, such charter entity shall reconsider the proposed charter, taking into consideration the comments and recommendation of the board of regents. Thereafter, the charter entity shall resubmit the proposed charter to the board of regents with modifications, provided that the applicant consents in writing to such modifications, resubmit the proposed charter to the board of regents without modifications, or abandon the proposed charter. The board of regents shall review each such resubmitted proposed charter in accordance with the provisions of subdivision five-a of this section[~~; provided, however, that it shall be the duty of the board of regents to approve and issue a proposed charter resubmitted by the charter entity described in paragraph (b) of subdivision three of section twenty-eight hundred fifty-one of this article within thirty days of the resubmission of such proposed charter or such proposed charter shall be deemed approved and issued at the expiration of such period~~].

§ 4. Subdivision 9 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:

9. The total number of charters issued pursuant to this article statewide shall not exceed four hundred sixty. (a) All charters issued on or after July first, two thousand fifteen and counted toward the numerical limits established by this subdivision shall be issued by the board of regents upon application directly to the board of regents [~~or on the recommendation of the board of trustees of the state university of New York~~] pursuant to a competitive process in accordance with subdivision nine-a of this section. Fifty of such charters issued on or after July first, two thousand fifteen, and no more, shall be granted to a charter for a school to be located in a city having a population of one million

or more. The failure of any body to issue the regulations authorized pursuant to this article shall not affect the authority of a charter entity to propose a charter to the board of regents or the board of regents' authority to grant such charter. A conversion of an existing public school to a charter school, or the renewal or extension of a charter approved by any charter entity, shall not be counted toward the numerical limits established by this subdivision.

(b) A charter that has been surrendered, revoked or terminated on or before July first, two thousand fifteen, including a charter that has not been renewed by action of its charter entity, may be reissued pursuant to paragraph (a) of this subdivision by the board of regents either upon application directly to the board of regents [~~or on the recommendation of the board of trustees of the state university of New York~~] pursuant to a competitive process in accordance with subdivision nine-a of this section. Provided that such reissuance shall not be counted toward the statewide numerical limit established by this subdivision, and provided further that no more than twenty-two charters may be reissued pursuant to this paragraph.

(c) For purposes of determining the total number of charters issued within the numerical limits established by this subdivision, the approval date of the charter entity shall be the determining factor.

(d) Notwithstanding any provision of this article to the contrary, any charter authorized to be issued by chapter fifty-seven of the laws of two thousand seven effective July first, two thousand seven, and that remains unissued as of July first, two thousand fifteen, may be issued pursuant to the provisions of law applicable to a charter authorized [~~to be issued~~] by [~~such~~] a chapter [~~in effect as of June fifteenth, two thousand fifteen~~] of the laws of two thousand twenty-one that amended this section; provided however that nothing in this paragraph shall be construed to increase the numerical limit applicable to a city having a population of one million or more as provided in paragraph (a) of this subdivision, as amended by a chapter of the laws of two thousand fifteen which added this paragraph.

§ 5. 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:

9-a. (a) The board of regents is hereby authorized and directed to issue four hundred sixty charters statewide upon [~~either~~] applications submitted directly to the board of regents [~~or upon the recommendation of the board of trustees of the state university of New York~~] pursuant to a competitive request for proposals process.

The board of regents shall make a determination to issue a charter pursuant to a request for proposals no later than December thirty-first of each year.

(b) The board of regents [~~and the board of trustees of the state university of New York~~] shall [~~each~~] develop such request for proposals in a manner that facilitates a thoughtful review of charter school applications, considers the demand for charter schools by the community, and seeks to locate charter schools in a region or regions where there may be a lack of alternatives and access to charter schools would provide new alternatives within the local public education system that would offer the greatest educational benefit to students. Applications shall be evaluated in accordance with the criteria and objectives contained within a request for proposals. The board of regents [~~and the board of trustees of the state university of New York~~] shall not consid-

er any applications which do not rigorously demonstrate that they have met the following criteria:

(i) that the proposed charter school would meet or exceed 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; and

(ii) that the applicant has conducted public outreach, in conformity with a thorough and meaningful public review process prescribed by the board of regents [~~and the board of trustees of the state university of New York,~~] to solicit community input regarding the proposed charter school and to address comments received from the impacted community concerning the educational and programmatic needs of students.

(c) The board of regents [~~and the board of trustees of the state university of New York~~] shall grant priority based on a scoring rubric to those applications that best demonstrate how they will achieve the following objectives, and any additional objectives the board of regents [~~and the board of trustees of the state university of New York,~~] may prescribe:

(i) increasing student achievement and decreasing student achievement gaps in reading/language arts and mathematics;

(ii) increasing high school graduation rates and focusing on serving specific high school student populations including, but not limited to, students at risk of not obtaining a high school diploma, re-enrolled high school drop-outs, and students with academic skills below grade level;

(iii) focusing on the academic achievement of middle school students and preparing them for a successful transition to high school;

(iv) utilizing high-quality assessments designed to measure a student's knowledge, understanding of, and ability to apply, critical concepts through the use of a variety of item types and formats;

(v) increasing the acquisition, adoption, and use of local instructional improvement systems that provide teachers, principals, and administrators with the information and resources they need to inform and improve their instructional practices, decision-making, and overall effectiveness;

(vi) partnering with low performing public schools in the area to share best educational practices and innovations;

(vii) demonstrating the management and leadership techniques necessary to overcome initial start-up problems to establish a thriving, financially viable charter school;

(viii) demonstrating the support of the school district in which the proposed charter school will be located and the intent to establish an ongoing relationship with such school district.

(d) [~~No later than November first, two thousand ten, and of each succeeding year, after a thorough review of applications received, the board of trustees of the state university of New York shall recommend for approval to the board of regents the qualified applications that it has determined rigorously demonstrate the criteria and best satisfy the objectives contained within a request for proposals, along with supporting documentation outlining such determination.~~

~~(e)~~] Upon receipt of a proposed charter to be issued pursuant to this subdivision submitted by a charter entity, the board of regents [~~or the board of trustees of the state university of New York,~~] shall review, recommend and issue, as applicable, such charters in accordance with the standards established in this subdivision.

[~~(f)~~] **(e)** The board of regents shall be the only entity authorized to issue a charter pursuant to this article. The board of regents shall consider applications submitted directly to the board of regents [~~and applications recommended by the board of trustees of the state university of New York~~]. Provided, however, that all such recommended applications shall be deemed approved and issued pursuant to the provisions of subdivisions five, five-a and five-b of this section.

[~~(g)~~] **(f)** Each application submitted in response to a request for proposals pursuant to this subdivision shall also meet the application requirements set out in this article and any other applicable laws, rules and regulations.

[~~(h)~~] **(g)** During the development of a request for proposals pursuant to this subdivision the board of regents [~~and the board of trustees of the state university of New York~~] shall [~~each~~] afford the public an opportunity to submit comments and shall review and consider the comments raised by all interested parties.

§ 6. Subdivision 10 of section 2852 of the education law, as added by section 3 of part D-2 of chapter 57 of the laws of 2007, is amended to read as follows:

10. Except in the case of a charter school formed by a school district as a charter entity pursuant to paragraph (a) of subdivision three of section twenty-eight hundred fifty-one of this article, a charter school formed by approval of the regents [~~or by operation of law~~] on or after March fifteenth in any school year shall not commence instruction until July of the second school year next following.

§ 7. Subdivision 2-a of section 2853 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

2-a. For schools approved by an entity described in paragraph (b) [~~or (c)~~] of subdivision three of section twenty-eight hundred fifty-one of this article, the school district in which the charter school is located shall have the right to visit, examine into, and inspect the charter school for the purpose of ensuring that the school is in compliance with all applicable laws, regulations and charter provisions. Any evidence of non-compliance may be forwarded by such school district to the board of regents [~~and the charter entity~~] for action pursuant to section twenty-eight hundred fifty-five of this article.

§ 8. Paragraph (e) of subdivision 1 of section 2855 of the education law, as added by chapter 101 of the laws of 2010, is amended to read as follows:

(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.

§ 9. Paragraph (d) of subdivision 2 of section 2857 of the education law, as added by chapter 101 of the laws of 2010, is amended to read as follows:

(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 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.

§ 10. Subdivision 2-a of section 355 of the education law is REPEALED.

§ 11. Nothing in this act shall revoke or terminate any charters that have been authorized by the board of trustees of the state university of New York prior to the effective date of this act unless cause for revocation or termination is warranted pursuant to section 2855 of the education law and provided further, that all applications for charter renewals after the effective date of this act shall be approved by the board of regents.

§ 12. All obligations to oversee and supervise charters authorized by the trustees of the state university of New York prior to the effective date of this act shall be transferred to the board of regents on the effective date of this act.

§ 13. This act shall take effect immediately.