

# STATE OF NEW YORK

3904

2023-2024 Regular Sessions

## IN ASSEMBLY

February 8, 2023

Introduced by M. of A. BICHOTTE HERMELYN, COOK, DINOWITZ, SIMON, OTIS, McDONOUGH, HYNDMAN, STECK, LAVINE -- Multi-Sponsored by -- M. of A. GLICK, RAMOS, THIELE -- read once and referred 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:

1 Section 1. Paragraphs (h) and (j) of subdivision 2 of section 2851 of  
2 the education law, as added by chapter 4 of the laws of 1998, are  
3 amended to read as follows:

4 (h) The rules and procedures by which students may be disciplined,  
5 including but not limited to expulsion or suspension from the school,  
6 which shall be consistent with the requirements of [~~due process~~] section  
7 thirty-two hundred fourteen of this chapter and with federal laws and  
8 regulations governing the placement of students with disabilities, and  
9 pursuant to subdivision four of section twenty-eight hundred fifty-four  
10 of this article. The application shall also include a code of conduct  
11 consistent with section twenty-eight hundred one of this title.

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

21 (ii) Notwithstanding the provisions of subparagraph (i) of this para-  
22 graph, an applicant to establish a charter school to be located in New

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

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1 York city shall include the specific community school district such  
2 proposed charter school will be located within and whether such appli-  
3 cant will request co-location or private space for the facilities to be  
4 used by the school. If the application is approved, such charter school  
5 shall not be located within any community school district other than  
6 such district provided on such application.

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

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

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

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

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

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

27 (b) improve student learning and achievement;

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

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

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

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

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

49 (d) A student may withdraw from a charter school at any time pursuant  
50 to a written form created by the department in which the parent or legal  
51 guardian of the student certifies that the parent or legal guardian is  
52 willingly and knowingly withdrawing the student from the charter school  
53 without any undue pressure or influence by any owner or employee of the  
54 charter school, and enroll in a public school. A charter school may  
55 refuse admission to any student who has been expelled or suspended from  
56 a public school until the period of suspension or expulsion from the

1 public school has expired, consistent with the requirements of due proc-  
2 ess.

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

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

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

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

23 (ii) Where a student has been suspended in accordance with this para-  
24 graph, the charter school shall, within five days of the suspension,  
25 inform the superintendent of the school district or, in the city school  
26 district of the city of New York, of a community school district, where  
27 the charter school is located shall, upon being notified of the suspen-  
28 sion, who shall forthwith designate a hearing officer to hear and deter-  
29 mine the proceeding. The hearing officer shall be authorized to adminis-  
30 ter oaths and to issue subpoenas in conjunction with the proceeding  
31 before him or her. A record of the hearing shall be maintained, but no  
32 stenographic transcript shall be required and a tape recording shall be  
33 deemed a satisfactory record. The hearing officer shall make findings of  
34 fact and a recommendation on the appropriate measure of discipline to  
35 the chief executive officer of the charter school. The chief executive  
36 officer may reject, confirm or modify the conclusions of the hearing  
37 officer. A parent may appeal the decision of the chief executive officer  
38 to the board of trustees of the charter school.

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

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

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

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

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

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

15 6. Parent or guardian representation. Within three years from the  
16 effective date of this subdivision, half of the membership of the board  
17 of a charter school shall be composed of parents or guardians of  
18 students enrolled at such charter school. Such parent or guardian board  
19 positions shall be elected directly by the parents and guardians of  
20 students enrolled at such charter school. The commissioner shall promul-  
21 gate rules and regulations regarding the timing and conducting of such  
22 elections.

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

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

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

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

17 (e) (i) A charter school shall be subject to the provisions of arti-  
18 cles six and seven of the public officers law.

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

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

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

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

37 § 7. The opening paragraph and paragraphs (a), (d) and (e) of subdivi-  
38 sion 1 of section 2855 of the education law, the opening paragraph and  
39 paragraphs (a) and (d) as amended and paragraph (e) as added by chapter  
40 101 of the laws of 2010, are amended and three new paragraphs (f), (g)  
41 and (h) are added to read as follows:

42 The charter entity, or the board of regents, [~~may~~] shall terminate a  
43 charter upon any of the following grounds:

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

49 (d) When the public employment relations board makes a determination  
50 that the charter school demonstrates a practice and pattern of egregious  
51 and intentional violations of subdivision one of section two hundred  
52 nine-a of the civil service law involving interference with or discrimi-  
53 nation against employee rights under article fourteen of the civil  
54 service law; [~~or~~]

55 (e) [~~Repeated failure~~] Failure to comply with the requirement to meet  
56 or exceed enrollment and retention targets of students with disabili-

1 ties, English language learners, and students who are eligible appli-  
2 cants for the free and reduced price lunch program pursuant to targets  
3 established by the board of regents or the board of trustees of the  
4 state university of New York[~~as applicable~~] pursuant to subparagraph  
5 (i) of paragraph (b) of subdivision nine-a of section twenty-eight  
6 hundred fifty-two of this article. Provided, however, if no grounds for  
7 terminating a charter are established pursuant to this section other  
8 than pursuant to this paragraph, and the charter school demonstrates  
9 that it has made extensive efforts to recruit and retain such students,  
10 including outreach to parents and families in the surrounding communi-  
11 ties, widely publicizing the lottery for such school, and efforts to  
12 academically support such students in such charter school, then the  
13 charter entity or board of regents may retain such charter[~~as applicable~~];

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

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

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

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

35 (a) a charter school report card, which shall include measures of the  
36 comparative academic and fiscal performance of the school, as prescribed  
37 by the commissioner in regulations adopted for such purpose. Such meas-  
38 ures shall include, but not be limited to, the total number of openings  
39 for new students at the beginning of the school year, by grade; the  
40 total number of applicants for each such opening; the total number of  
41 students accepted for the school year; the number of students accepted  
42 for enrollment who are English language learners, are eligible for the  
43 free or reduced price lunch program or are students with disabilities;  
44 the number of students who were dismissed, expelled, dropped out or  
45 withdrew during the school year, including the reasons for the dismissal  
46 or withdrawal, and including the number of such students who were  
47 suspended, dismissed, expelled, dropped out or withdrew or are English  
48 language learners, are eligible for the free or reduced price lunch  
49 program or are students with disabilities; graduation rates[~~drop~~out  
50 rates,]; performance of students on standardized tests[~~as applicable~~]; college entry  
51 rates[~~as applicable~~]; the total number of teachers and administrators employed at  
52 the school at the beginning of the school year and the number of teach-  
53 ers and administrators who were terminated, dismissed or resigned during  
54 the reporting period, and the reasons therefor; the annual salary paid  
55 to each teacher and administrator of the school; and total spending per  
56 pupil and administrative spending per pupil. Such measures shall be

1 presented in a format that is easily comparable to similar public  
2 schools. In addition, the charter school and the commissioner shall  
3 ensure that such information is easily accessible to the community  
4 including making it publicly available by transmitting it to local news-  
5 papers of general circulation, posting it on the department's website  
6 and making it available for distribution at board of trustee meetings.

7 4. The board of regents shall review the educational effectiveness of  
8 the charter school approach authorized by this article and the effect of  
9 charter schools on the public and nonpublic school systems. Not later  
10 than December thirty-first, two thousand [~~three~~] twenty-four, and every  
11 two years thereafter, the [~~board of regents~~] commissioner shall report  
12 to the governor, the temporary president of the senate, the speaker of  
13 the assembly and the board of regents with recommendations to modify,  
14 expand, or terminate that approach. Such report shall include, for each  
15 charter school, a copy of the school's mission statement[7]; attendance  
16 statistics; dismissal, expulsion and dropout rates[7]; student perform-  
17 ance on standardized assessment tests[7]; projections of financial  
18 stability[7]; the number of students with disabilities, English language  
19 learners and students who are eligible for the free and reduced price  
20 lunch program; the total amount spent for administrative expenses; and,  
21 wherever practicable, comparisons to other public schools located in the  
22 same school district or, in the city school district of New York, the  
23 same community school district.

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

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

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

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

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

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

52 (d) Not later than December thirty-first, two thousand twenty-four,  
53 and every two years thereafter, the comptroller shall audit the informa-  
54 tion reported by each charter school pursuant to paragraph (a) of this  
55 subdivision, provided, however, that for a charter school located in New  
56 York city, such audit shall be carried out by the New York city comp-

1 troller. A component of such audit shall include selecting a sample of  
2 students who were dismissed or withdrew from such charter school and  
3 assess the accuracy of the reported reasons for such dismissal or with-  
4 drawal.

5 7. The department shall appoint an ombudsperson whose responsibilities  
6 shall be to support and advise parents and guardians of charter school  
7 students who have specific issues and complaints, and to investigate and  
8 resolve such complaints. Such ombudsperson shall regularly report to  
9 the board of regents the number of complaints received, the types of  
10 complaints, and if and how such complaints were resolved.

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

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

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

25 (e) the charter school described in the application has received the  
26 approval of the local board of education where such proposed charter  
27 school shall be located prior to submitting such application, provided,  
28 however, that in the case of a proposed charter school to be located in  
29 New York city, such approval shall be from the community education coun-  
30 cil of the district in which such proposed school shall be located.

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

40 § 11. This act shall take effect immediately.