**§ 2852. Issuance of charter.** 1. A charter entity that receives an application for approval of a charter school shall act on each request received prior to July first of a calendar year on or before January first of the succeeding calendar year, and a proposed charter between the applicant and the charter entity resulting from such application shall be executed on or before February first of such succeeding year. Nothing in this subdivision shall be construed to prevent a charter entity from receiving or acting upon an application at any time. This subdivision shall not apply to applications that are submitted pursuant to subdivision nine-a of this section.

2. An application for a charter school shall not be approved unless the charter entity finds 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;

(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) for applicants for an initial charter pursuant to paragraph (b-1) of subdivision nine of this section in a school district located in a city with a population of one million or more, the total enrollment of students attending charter schools within the community district in which the charter school will be located in the base year is less than or equal to fifty-five percent of the total public school enrollment attending within such community district in the base year.

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.

3. A charter entity is not required to approve a charter and may require an applicant to modify or supplement an application as a condition of approval. An existing private school shall not be eligible to convert to a charter school. In determining whether an application involves the conversion of an existing private school, the charter entity and the board of regents shall consider such factors as: (a) whether the charter school would have the same or substantially the same board of trustees and/or officers as an existing private school; (b) whether a substantial proportion of employees of the charter school would be drawn from such existing private school; (c) whether a substantial portion of the assets and property of such existing private school would be transferred to the charter school; (d) whether the charter school would be located at the same site as such existing private school; (e) upon renewal only, whether such private school closed within one year of establishment of the charter school; and (f) upon renewal only, whether a substantial portion of the charter school's students were drawn from such existing private school.

4. Each individual applicant seeking to establish a charter school shall submit a full set of fingerprints to the charter entity for the purpose of obtaining a state and federal criminal records check. The division of criminal justice services is authorized to provide this information to the federal bureau of investigation and to perform a state and federal criminal records check on each applicant and report the results to the charter entity and the board of regents. The criminal records check shall be completed to the satisfaction of the charter entity prior to approval of the application. The department and the division of criminal justice services shall enter into any memoranda of agreement necessary to implement the requirements of this subdivision.

5. 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) 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) in the case of charters to be issued pursuant to subdivision nine-a of this section, information required by such subdivision, (c) any other terms or conditions required by applicable laws, rules and regulations, and (d) 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.

5-a. Upon receipt of a proposed charter submitted by a charter entity, the board of regents shall review such proposed charter in accordance with the standards set forth in subdivision two of this section, and any other applicable specifications required by this article. The board of regents shall either (a) approve and issue the charter as proposed by the charter entity or (b) return the proposed charter to the charter entity for reconsideration with the written comments and recommendations of the board of regents. If the board of regents fails to act on such proposed charter within ninety days of its submission to the board of regents in accordance with the previous sentence, the proposed charter shall be deemed to have been approved and issued by the board of regents at the expiration of such period.

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.

6. The denial of an application for a charter school by a charter entity shall be in writing and shall state the reasons for the denial. Notwithstanding any provision of law to the contrary, such denial is final and shall not be reviewable in any court or by any administrative body.

7. (a) A revision of a charter shall be made only upon the approval of the charter entity and the board of regents in accordance with the provisions of subdivisions five-a and five-b of this section.

(b) When a revision of a charter involves the relocation of a charter school to a different school district, the proposed new school district shall be given at least forty-five days notice of the proposed relocation. In addition, the applicant shall provide an analysis of the community support for such relocation and of the projected programmatic and fiscal impact of the charter school on the proposed new school district of location and other public and nonpublic schools in the area.

8. A charter entity shall not charge a fee or require reimbursement of expenses for considering a charter application, for approving a charter application or for providing oversight of a charter school.

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.

(b-1) A charter that has been surrendered, revoked or terminated after January first, two thousand fifteen, but before July first, two thousand twenty-two, including a charter that has not been renewed by action of its charter entity, may be reissued once 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 numerical limits established by this subdivision, and provided further that no more than twenty-two charters may be reissued pursuant to this paragraph, provided that fourteen of such reissued charters shall be allocated for, and shall not be counted toward the numerical limit in, a city having a population of one million or more established in paragraph (a) of this subdivision. Nothing herein shall be construed to allow more

than fourteen such charters to be reissued in a city having a population of one million or more.

(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 chapter in effect as of June fifteenth, two thousand fifteen; 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.

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 consider

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) 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) 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) 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.

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.