

§ 2854. General requirements. 1. Applicability of other laws. (a) Notwithstanding any provision of law to the contrary, to the extent that any provision of this article is inconsistent with any other state or local law, rule or regulation, the provisions of this article shall govern and be controlling.

(b) A charter school shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in this article. A charter school shall be exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education, school districts and political subdivisions, including those relating to school personnel and students, except as specifically provided in the school's charter or in this article. Nothing in this subdivision shall affect the requirements of compulsory education of minors established by part one of article sixty-five of this chapter.

(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. 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 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.

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

(f) A charter school shall be subject to the provisions of sections eight hundred, eight hundred one, eight hundred two, eight hundred three, eight hundred four, eight hundred four-a, eight hundred five, eight hundred five-a, eight hundred five-b and eight hundred six of the general municipal law to the same extent such sections apply to school districts.

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

(b) Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. Applications for admission to a charter school shall be submitted on a uniform application form created by the department and shall be made available by a charter school in languages predominately spoken in the community in which such charter school is located. The school shall enroll each eligible student who submits a timely application by the first day of April each year, unless the number of applications exceeds the capacity of the grade level or building. In such cases, students shall be accepted from among applicants by a random selection process, provided, however, that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school. Preference may also be provided to children of employees of the charter school or charter management organization, provided that such children of employees may constitute no more than fifteen percent of the charter school's total enrollment. The commissioner shall establish regulations to require that the random selection process conducted pursuant to this paragraph be performed in a transparent and equitable manner and to require that the time and place of the random selection process be publicized in a manner consistent with the requirements of section one hundred four of the public officers law and be open to the public. For the purposes of this paragraph and paragraph (a) of this subdivision, the school district in which the charter school is located shall mean, for the city school district of the city of New York, the community district in which the charter school is located.

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

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

3. School personnel. (a) An employee of a charter school shall be an employee of the education corporation formed to operate the charter school and not an employee of the local school district in which the charter school is located. An employee of a charter school shall be deemed to be a public employee solely for purposes of article fourteen of the civil service law, except for section two hundred twelve of such law, and for no other purposes unless otherwise specified in this article, the board of trustees of the charter school shall constitute a board of education solely for purposes of article fourteen of the civil service law, except for section two hundred twelve of such law, and for no other purposes unless otherwise specified in this article, a charter school shall be deemed to be a public employer solely for purposes of article fourteen of the civil service law, except for section two hundred twelve of such law, and for no other purposes unless otherwise specified in this article, and the chief executive officer of the charter school shall be the person designated as such by the board of trustees of the charter school.

(a-1) The board of trustees of a charter school shall employ and contract with necessary teachers, administrators and other school personnel. Such teachers shall be certified in accordance with the requirements applicable to other public schools; provided, however, that a charter school may employ as teachers (i) uncertified teachers with at least three years of elementary, middle or secondary classroom teaching experience; (ii) tenured or tenure track college faculty; (iii) individuals with two years of satisfactory experience through the Teach for America program; and (iv) individuals who possess exceptional business, professional, artistic, athletic, or military experience, provided, however, that such teachers described in clauses (i), (ii), (iii), and (iv) of this paragraph shall not in total comprise more than the sum of: (A) thirty per centum of the teaching staff of a charter school, or five teachers, whichever is less; plus (B) five teachers of mathematics, science, computer science, technology, or career and technical education; plus (C) five additional teachers. A teacher certified or otherwise approved by the commissioner shall not be included in the numerical limits established by the preceding sentence.

(a-2) (i) The board of trustees of a charter school shall require, for

purposes of a criminal history record check, the fingerprinting of all prospective employees pursuant to section three thousand thirty-five of this chapter, who do not hold valid clearance pursuant to such section or pursuant to section three thousand four-b of this chapter or section five hundred nine-cc or twelve hundred twenty-nine-d of the vehicle and traffic law. Prior to initiating the fingerprinting process, the prospective employer shall furnish the applicant with the form described in paragraph (c) of subdivision thirty of section three hundred five of this chapter and shall obtain the applicant's consent to the criminal history records search. Every set of fingerprints taken pursuant to this paragraph shall be promptly submitted to the commissioner for purposes of clearance for employment.

(ii) Upon the recommendation of the chief executive officer of the charter school, the board of trustees of a charter school may conditionally appoint a prospective employee. A request for conditional clearance shall be forwarded to the commissioner along with the prospective employee's fingerprints, as required by subparagraph (i) of this paragraph. Such appointment shall not commence until notification by the commissioner that the prospective employee has been conditionally cleared for employment and shall terminate forty-five days after such notification of conditional clearance or when the prospective employer is notified of a determination by the commissioner to grant or deny clearance, whichever occurs earlier, and may not be extended or renewed unless the commissioner issues a new conditional clearance after finding that there was good cause for failing to obtain clearance within such period, provided that if clearance is granted, the appointment shall continue and the conditional status shall be removed. Prior to commencement of such conditional appointment, the prospective employer shall obtain a signed statement for conditional appointment from the prospective employee, indicating whether, to the best of his or her knowledge, he or she has a pending criminal charge or criminal conviction in any jurisdiction outside the state.

(iii) Upon the recommendation of the chief executive officer of the charter school, the board of trustees of a charter school may make an emergency conditional appointment when an unforeseen emergency vacancy has occurred. When such appointment is made, the process for conditional appointment pursuant to subparagraph (ii) of this paragraph must also be

initiated. Emergency conditional appointment may commence prior to notification from the commissioner on conditional clearance but shall terminate twenty business days from the date such appointment commences or when the prospective employer is notified by the commissioner regarding conditional clearance, whichever occurs earlier, provided that if conditional clearance is granted, the appointment shall continue as a conditional appointment. Prior to the commencement of such appointment, the prospective employer must obtain a signed statement for emergency conditional appointment from the prospective employee, indicating whether, to the best of his or her knowledge, he or she has a pending criminal charge or criminal conviction in any jurisdiction. An unforeseen emergency vacancy shall be defined as: (1) a vacancy that occurred less than ten business days before the start of any school session, including summer school, or during any school session, including summer school, without sufficient notice to allow for clearance or conditional clearance; (2) when no other qualified person is available to fill the vacancy temporarily; and (3) when emergency conditional appointment is necessary to maintain services which the charter school is legally required to provide or services necessary to protect the health, education or safety of students or staff. The provisions of clause one of this subparagraph shall not apply if the board finds that the charter school has been unable to fill the vacancy despite good faith efforts to fill such vacancy in a manner which would have allowed sufficient time for clearance or conditional clearance.

(iv) Shall develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency conditional appointment.

(a-3) The board of trustees of a charter school shall upon commencement and termination of employment of an employee by the charter school district, provide the commissioner with the name of and position held by such employee.

(b) The school employees of a charter school that has been converted from an existing public school who are eligible for representation under article fourteen of the civil service law shall be deemed to be included within the negotiating unit containing like titles or positions, if any, for the school district in which such charter school is located and shall be subject to the collective bargaining agreement covering that

school district negotiating unit; provided, however, that a majority of the members of a negotiating unit within a charter school may modify, in writing, a collective bargaining agreement for the purposes of employment in the charter school with the approval of the board of trustees of the charter school.

(b-1) The employees of a charter school that is not a conversion from an existing public school shall not be deemed members of any existing collective bargaining unit representing employees of the school district in which the charter school is located, and the charter school and its employees shall not be subject to any existing collective bargaining agreement between the school district and its employees. Provided, however, that (i) if the student enrollment of the charter school on the first day on which the charter school commences student instruction exceeds two hundred fifty or if the average daily student enrollment of such school exceeds two hundred fifty students at any point during the first two years after the charter school commences student instruction, all employees of the school who are eligible for representation under article fourteen of the civil service law shall be deemed to be represented in a separate negotiating unit at the charter school by the same employee organization, if any, that represents like employees in the school district in which such charter school is located; (ii) the provisions of subparagraph (i) of this paragraph may be waived in up to ten charters issued on the recommendation of the charter entity set forth in paragraph (b) of subdivision three of section twenty-eight hundred fifty-one of this article; (iii) the provisions of subparagraph (i) of this paragraph shall not be applicable to the renewal or extension of a charter; and (iv) nothing in this sentence shall be construed to subject a charter school subject to the provisions of this paragraph or its employees to any collective bargaining agreement between any public school district and its employees or to make the employees of such charter school part of any negotiating unit at such school district. The charter school may, in its sole discretion, choose whether or not to offer the terms of any existing collective bargaining to school employees.

(c) The employees of the charter school may be deemed employees of the local school district for the purpose of providing retirement benefits, including membership in the teachers' retirement system and other

retirement systems open to employees of public schools. The financial contributions for such benefits shall be the responsibility of the charter school and the school's employees. The commissioner, in consultation with the comptroller, shall develop regulations to implement the provisions of this paragraph in a manner that allows charter schools to provide retirement benefits to its employees in the same manner as other public school employees.

(c-1) Reasonable access. (i) If employees of the charter school are not represented, any charter school chartered pursuant to this article must afford reasonable access to any employee organization during the reasonable proximate period before any representation question is raised; or

(ii) If the employee organization is a challenging organization, reasonable access must be provided to any organization seeking to represent employees beginning with a date reasonably proximate to a challenge period. Reasonableness is defined, at a minimum, as access equal to that provided to the incumbent organization.

(c-2) Employer neutrality. It shall be an improper practice for a charter school board of directors, chief administrative officer and their agents to commit any of the acts set forth in subdivision one of section two hundred nine-a of the civil service law and could in accordance with section twenty-eight hundred fifty-five of this article, result in the revocation of the charter.

(d) A teacher employed by a school district may make a written request to the board of education for an extended leave of absence to teach at a charter school. Approval for such a leave of absence for a period of three years or less shall not be unreasonably withheld. If such approval is granted to a teacher by the school district, the teacher may return to teach in the school district during such period of leave without the loss of any right of certification, retirement, seniority, salary status or any other benefit provided by law or by collective bargaining agreement. If an appropriate position is unavailable, the teacher's name shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position similar to the one such teacher filled in such school district immediately prior to the leave of service.

(d-1) In a school district of a city having a population of one

million or more, a principal employed by such school district may make a written request to the board of education for an extended leave of absence to serve as a principal of a charter school. Approval for such a leave of absence for a period of three years or less shall not be unreasonably withheld. If such approval is granted to a principal by the school district, the principal may return to serve as a principal in the school district during such period of leave without the loss of any right of certification, retirement, seniority, salary status or any other benefit provided by law or by collective bargaining agreement. If an appropriate position is unavailable, the principal's name shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position similar to the one such principal filled in such school district immediately prior to the leave of service.