

# **New York State Charter Schools Act of 1998 (as amended)**

Excerpt from New York State Consolidated Laws: Education

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## **ARTICLE 56: CHARTER SCHOOLS**

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### **S 2850. Short title; purpose**

1. This article shall be known and may be cited as the "New York charter schools act of nineteen hundred ninety-eight."
2. The purpose of this article is to authorize a system of charter schools to provide opportunities for teachers, parents, and community members to establish and maintain schools that operate independently of existing schools and school districts in order to accomplish the following objectives:
  - (a) Improve student learning and achievement;
  - (b) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are at-risk of academic failure;
  - (c) Encourage the use of different and innovative teaching methods;
  - (d) Create new professional opportunities for teachers, school administrators and other school personnel;
  - (e) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and

(f) Provide schools with a method to change from rule-based to performance-based accountability systems by holding the schools established under this article accountable for meeting measurable student achievement results.

### **S 2851. Eligible applicants; applications; submission**

1. An application to establish a charter school may be submitted by teachers, parents, school administrators, community residents or any combination thereof. Such application may be filed in conjunction with a college, university, museum, educational institution, not-for-profit corporation exempt from taxation under paragraph 3 of subsection (c) of section 501 of the internal revenue code or for-profit business or corporate entity authorized to do business in New York state. For charter schools established in conjunction with a for-profit business or corporate entity, the charter shall specify the extent of the entity's participation in the management and operation of the school.

2. The information provided on the application shall be consistent with the provisions of this article and other applicable laws, rules and regulations. Such information shall include:

(a) A mission statement for the school and a description of an educational program that implements one or more of the purposes described in subdivision two of section twenty-eight hundred fifty of this article.

(b) A description of student achievement goals for the school's educational program and the chosen methods of evaluating that students have attained the skills and knowledge specified for those goals. Such educational program shall meet or exceed the student performance standards adopted by the board of regents for other public schools.

(c) The proposed governance structure of the school, including a list of members of the initial board of trustees, a description of the qualifications, terms and method of appointment or election of trustees, the organizational structure of the school, and the processes to be followed by the school to promote parental and staff involvement in school governance.

(d) Admission policies and procedures for the school, which shall be consistent with the requirements of subdivision two of section twenty-eight hundred fifty-four of this article.

(e) A proposed budget and fiscal plan for the school, including supporting evidence that the fiscal plan is sound and that sufficient start-up funds will be available to the charter school.

(f) Requirements and procedures for programmatic and independent fiscal audits at least once annually, with such audits being comparable in scope to those required of other public schools.

(g) The hiring and personnel policies and procedures of the school, including the qualifications to be used in the hiring of teachers, school administrators and other school employees, and a description of staff responsibilities.

(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 and with federal laws and regulations governing the placement of students with disabilities.

- (i) The number of students to be served by the school, which number shall be at least fifty at a single site and the minimum number of teachers to be employed at the school, which shall be at least three. Provided, however, that a charter school may serve fewer than fifty students or employ fewer than three teachers in the school's first year of operation or if the applicant presents a compelling justification, such as the school would serve a geographically remote region.
- (j) 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.
- (k) The name of the proposed charter school, which shall include the words "charter school" and which shall not include the name or identification of a for-profit business or corporate entity.
- (l) A description of the ages and grade levels to be served by the school.
- (m) Identification and background information on all applicants and proposed members of the board of trustees.
- (n) The school calendar and school day schedule, which shall provide at least as much instruction time during a school year as required of other public schools.
- (o) Types and amounts of insurance coverage to be obtained by the school, which shall include adequate insurance for liability, property loss and the personal injury of students. The commissioner and the superintendent of insurance may jointly promulgate regulations to implement the provisions of this paragraph.
- (p) The term of the proposed charter, which shall not exceed five years.
- (q) Evidence of adequate community support for and interest in the charter school sufficient to allow the school to reach its anticipated enrollment, and an assessment of the projected programmatic and fiscal impact of the school on other public and nonpublic schools in the area.
- (r) A description of the health and food services to be provided to students attending the school.
- (s) Methods and strategies for serving students with disabilities in compliance with all federal laws and regulations relating thereto.
- (t) Procedures to be followed in the case of the closure or dissolution of the charter school, including provisions for the transfer of students and student records to the school district in which the charter school is located and for the disposition of the school's assets to the school district in which the charter school is located or another charter school located within the school district.
- (u) Requirements for the grant of a diploma, if the school serves the twelfth grade.
- (v) A code of ethics for the charter school, setting forth for the guidance of its trustees, officers and employees the standards of conduct expected of them.
- (w) A description of the residential facilities, if any, provided by the charter school.

(x) Any other information relevant to the issuance of a charter required by the charter entity.

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 twelve 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;

(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. Any such application for conversion shall be consistent with this section, and the charter entity shall require that the parents or guardians of a majority of the students then enrolled in the existing public school vote in favor of converting the school to a charter school.

4. Charters may be renewed, upon application, for a term of up to five years in accordance with the provisions of this article for the issuance of such charters pursuant to section twenty-eight hundred fifty-two of this article; provided, however, that a renewal application shall include:

(a) A report of the progress of the charter school in achieving the educational objectives set forth in the charter.

(b) A detailed financial statement that discloses the cost of administration, instruction and other spending categories for the charter school that will allow a comparison of such costs to other schools, both public and private. Such statement shall be in a form prescribed by the board of regents.

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

(d) Indications of parent and student satisfaction. Such renewal application shall be submitted to the charter entity no later than six months prior to the expiration of the charter; provided, however, that the charter entity may waive such deadline for good cause shown.

### **S 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.

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; and

(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 in which the charter school will be located consents to such application.

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) any other terms or conditions required by applicable laws, rules and regulations, and (c) 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. 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 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 shall not exceed two hundred. One hundred of such charters shall be issued on the recommendation of the charter entity described in paragraph (b) of subdivision three of section twenty-eight hundred fifty-one of this article, and one hundred of such charters shall be issued on the recommendation of the other charter entities set forth in subdivision three of section twenty-eight hundred fifty-one of this article, provided that up to fifty of the additional charters authorized to be issued by the chapter of the laws of two thousand seven which amended this subdivision effective July first, two thousand seven shall be reserved for a city school district of 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 effect 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 shall not be counted toward the numerical limits established by this subdivision.

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.

### **S 2853. Charter school organization; oversight; facilities**

#### **1. Organization and legal status.**

(a) Upon the approval of a charter by the board of regents, the board of regents shall incorporate the charter school as an education corporation for a term not to exceed five years. Such certificate of incorporation shall not modify or limit any terms of the charter approved by the board of regents. Upon approval of an application to renew a charter, the board of regents shall extend the certificate of incorporation for a term not to exceed five years. Upon termination or nonrenewal of the charter of a charter school pursuant to section twenty-eight hundred fifty-

five of this article, the certificate of incorporation of the charter school shall be revoked by the board of regents pursuant to section two hundred nineteen of this chapter, provided that compliance with the notice and hearing requirements of such section twenty-eight hundred fifty-five of this article shall be deemed to satisfy the notice and hearing requirements of such section two hundred nineteen. It shall be the duty of the trustees of the charter school to obtain federal tax-exempt status no later than one year following approval of a charter school by the board of regents. For purposes of this article, "certificate of incorporation" shall mean the provisional charter issued by the board of regents to form the charter school as an educational corporation pursuant to sections two hundred sixteen and two hundred seventeen of this chapter.

(b) An education corporation organized to operate a charter school shall have all corporate powers necessary and desirable for carrying out a charter school program in accordance with the provisions of this article, other applicable laws and regulations and the terms of the charter, including all of the powers of an education corporation formed to operate an elementary or secondary school and those powers granted under the provisions of the not-for-profit corporation law that are made applicable to charter schools by section two hundred sixteen-a of this chapter. The powers of the trustees of the charter school shall include those powers specified in section two hundred twenty-six of this chapter.

(b-1) An education corporation operating a charter school shall not be authorized to operate more than one school or house any grade at more than one site, provided that:

(a) a charter school may operate in more than one building at a single site; and

(b) a charter school which provides instruction to its students at different locations for a portion of their school day shall be deemed to be operating at a single site.

(c) A charter school shall be deemed an independent and autonomous public school, except as otherwise provided in this article. The charter entity and the board of regents shall be deemed to be the public agents authorized to supervise and oversee the charter school.

(d) The powers granted to a charter school under this article constitute the performance of essential public purposes and governmental purposes of this state. A charter school shall be exempt to the same extent as other public schools from all taxation, fees, assessments or special ad valorem levies on its earnings and its property, including property leased by the charter school. Instruments of conveyance to or from a charter school and any bonds or notes issued by a charter school, together with the income therefrom, shall at all times be exempt from taxation.

(e) A charter school shall not have the power to levy taxes or to acquire property by eminent domain.

(f) The board of trustees of the charter school shall have final authority for policy and operational decisions of the school. Nothing herein shall prohibit the board of trustees of a charter school from delegating decision-making authority to officers and employees of the school in accordance with the provisions of the charter.

(g) Notwithstanding any provision of law to the contrary, no civil liability shall attach to any charter entity, the board of regents, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school. Neither the local school district, the

charter entity nor the state shall be liable for the debts or financial obligations of a charter school or any person or corporate entity who operates a charter school.

2. The board of regents and charter entity shall oversee each school approved by such entity, and may visit, examine into and inspect any charter school, including the records of such school, under its oversight. Oversight by a charter entity and the board of regents shall be sufficient to ensure that the charter school is in compliance with all applicable laws, regulations and charter provisions.

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.

### 3. Facilities.

(a) A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building or in any other suitable location. Provided, however, before a charter school may be located in part of an existing public school building, the charter entity shall provide notice to the parents or guardians of the students then enrolled in the existing school building and shall hold a public hearing for purposes of discussing the location of the charter school. A charter school may own, lease or rent its space. For purposes of local zoning, land use regulation and building code compliance, a charter school shall be deemed a nonpublic school.

(b) A charter school may pledge, assign or encumber its assets to be used as collateral for loans or extensions of credit; provided, however, that a charter school shall not pledge or assign monies provided, or to be provided, pursuant to subdivision one of section twenty-eight hundred fifty-six of this article in connection with the purchase or construction, acquisition, reconstruction, rehabilitation or improvement of a school facility.

(c) The office of general services shall annually publish a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by the state and that may be suitable for the operation of a charter school. Such list shall be provided to applicants for charter schools and to existing charter schools. At the request of a charter school or a prospective applicant, a school district shall make available a list of vacant and unused school buildings and vacant and unused portions of school buildings, including private school buildings, within the school district that may be suitable for the operation of a charter school.

### 4. Public and private assistance to charter schools.

(a) For purposes of sections seven hundred one, seven hundred eleven, seven hundred fifty-one and nine hundred twelve of this chapter, a charter school shall be deemed a nonpublic school in

the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider.

(b) For purposes of section thirty-six hundred thirty-five of this chapter, a charter school shall be deemed a nonpublic school. The charter and application therefore shall set forth the manner in which students ineligible for transportation pursuant to section thirty-six hundred thirty-five of this chapter shall be transported to and from school. Any supplemental transportation provided by a charter school shall comply with all transportation safety laws and regulations applicable to other public schools. A school district may enter into a contract for the provision of supplemental transportation services to a charter school, and any such services shall be provided by the school district at cost.

(c) A charter school may contract with a school district or the governing body of a public college or university for the use of a school building and grounds, the operation and maintenance thereof. Any such contract shall provide such services or facilities at cost.

(d) Private persons and organizations are encouraged to provide funding and other assistance to the establishment or operation of charter schools.

(e) The school district of residence of children attending a charter school may, but is not required to, allow such children to participate in athletic and extra-curricular activities of the district's schools.

## **S 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 and school districts, 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 as set forth in section thirty-three of the general municipal law. 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.

## 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; 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 and limited English proficient students 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. 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. 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 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 thirty per centum of the teaching staff of a charter school, or five teachers, whichever is less. 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 when the prospective employer is notified of a determination by the commissioner to grant or deny clearance, 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.

[\* Effective until July 1, 2009]

[\*] (a-2) 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.

[\* Effective July 1, 2009]

(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 instructional 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.

## **S 2855. Causes for revocation or termination**

1. The charter entity, or the board of regents, may terminate a charter upon any of the following grounds:

(a) When a charter schools' outcome on student assessment measures adopted by the board of regents 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:

(b) Serious violations of law;

(c) Material and substantial violation of the charter, including fiscal mismanagement; or

(d) When the public employment relations board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of subdivision one of section two hundred nine-a of the civil service law involving interference with or discrimination against employee rights under article fourteen of the civil service law.

2. Notice of intent to revoke a charter shall be provided to the board of trustees of a charter school at least thirty days prior to the effective date of the proposed revocation. Such notice shall include a statement of reasons for the proposed revocation. The charter school shall be allowed at least thirty days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, a charter school shall be provided an opportunity to be heard, consistent with the requirements of due process. Upon the termination of a charter, the charter school shall proceed with dissolution pursuant to the procedures of the charter and direction of the charter entity and the board of regents.

3. In addition to the provisions of subdivision two of this section, the charter entity or the board of regents may place a charter school falling within the provisions of subdivision one of this section on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the school's charter.

4. Any individual or group may bring a complaint to the board of trustees of a charter school alleging a violation of the provisions of this article, the charter, or any other provision of law relating to the management or operation of the charter school. If, after presentation of the complaint to the board of trustees of a charter school, the individual or group determines that such board has not adequately addressed the complaint, they may present that complaint to the charter entity, which shall investigate and respond. If, after presentation of the complaint to the charter entity, the individual or group determines that the charter entity has not adequately addressed the complaint, they may present that complaint to the board of regents, which shall

investigate and respond. The charter entity and the board of regents shall have the power and the duty to issue appropriate remedial orders to charter schools under their jurisdiction to effectuate the provisions of this section.

5. The regulatory power of the board of regents and the commissioner shall not extend to charter schools except as otherwise specifically provided in this article.

### **S 2856. Financing of charter schools**

1. The enrollment of students attending charter schools shall be included in the enrollment, attendance and, if applicable, count of students with disabilities of the school district in which the pupil resides. The charter school shall report all such data to the school districts of residence in a timely manner. Each school district shall report such enrollment, attendance and count of students with disabilities to the department. The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the school district an amount equal to one hundred percent of the amount calculated pursuant to paragraph f of subdivision one of section thirty-six hundred two of this chapter for the school district for the year prior to the base year increased by the percentage change in the state total approved operating expense calculated pursuant to subdivision eleven of section thirty-six hundred two of this chapter from two years prior to the base year to the base year. The school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this subdivision may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. Payments made pursuant to this subdivision shall be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. Amounts payable under this subdivision shall be determined by the commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.

2. In the event of the failure of the school district to make payments required by this section, the state comptroller shall deduct from any state funds which become due to such school district an amount equal to the unpaid obligation. The comptroller shall pay over such sum to the charter school upon certification of the commissioner. The commissioner shall promulgate regulations to implement the provisions of this subdivision.

3. Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a charter school. The board of trustees of a charter school is authorized to accept gifts, donations or grants of any kind made to the charter school and to expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor; provided, however, that no gift, donation or grant may be accepted if subject to a condition that is contrary to any provision of

law or term of the charter.

**S 2857. Notice; review and assessment**

1. The board of regents shall distribute information announcing the availability of the charter school process described in this article to each local school district and public postsecondary educational institution. At each significant stage of the chartering process, the charter entity and the board of regents shall provide appropriate notification to the school district in which the charter school is located and to public and nonpublic schools in the same geographic area as the proposed charter school. Such notification shall be provided by each charter entity within thirty days of its receipt of an application for formation of a new charter school or for renewal of an existing charter school, and at least forty-five days prior to initial approval of the charter application by the charter entity. Prior to the issuance, revision, or renewal of a charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing shall be held within the community potentially impacted by the proposed charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold such hearing. In addition, such school districts shall be given an opportunity to comment on the proposed charter to the charter entity and such charter entity shall consider any comments raised and submit any such comments to the board of regents with the application for issuance, revision, or renewal of a charter.

1-a. In the event the school district fails to conduct a public hearing, the board of regents shall conduct a public hearing to solicit comments from the community in connection with the issuance, revision, or renewal of a charter.

2. Each charter school shall submit to the charter entity and to the board of regents an annual report. Such report shall be issued no later than the first day of August of each year for the preceding school year. The annual report shall be in such form as shall be prescribed by the commissioner and shall include at least the following components:

(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, graduation rates, dropout rates, performance of students on standardized tests, college entry rates, 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 shall ensure that such information is easily accessible to the community.

(b) discussion of the progress made towards achievement of the goals set forth in the charter.

(c) a certified financial statement setting forth, by appropriate categories, the revenues and expenditures for the preceding school year, including a copy of the most recent independent

fiscal audit of the school.

3. The board of regents shall report annually to the governor, the temporary president of the senate, and the speaker of the assembly the following information:

(a) The number, distribution, and a brief description of new charter schools established during the preceding year;

(b) The department's assessment of the current and projected programmatic and fiscal impact of charter schools on the delivery of services by the school districts;

(c) The academic progress of students attending charter schools, as measured against comparable public and nonpublic schools with similar student population characteristics wherever practicable;

(d) A list of all actions taken by a charter entity on charter application[s] and the rationale for the renewal or revocation of any charters; and

(e) Any other information regarding charter schools that the board of regents deems necessary.

The format for this annual report shall be developed in consultation with representatives of school districts and charter school officials.

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, the board of regents 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 and dropout rates, student performance on standardized assessment tests, projections of financial stability, and, wherever practicable, comparisons to other public schools.