SPONSOR: Sen. Sokola & Rep. Scott

DELAWARE STATE SENATE

147th GENERAL ASSEMBLY

SENATE BILL NO. 234
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO CHARTER SCHOOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 503 Legal status.

A charter school is a public school including 2 or more of grade kindergarten through 12 ~~and having at least 200 students (provided, however, that a charter school may enroll fewer than 200 but no less than 100 students in its first 2 years of operation or for a charter school serving at-risk or special education students),~~ managed by a board of directors, which operates independently of any school board, under a charter granted for an initial period of 4 school years of operation and renewable every 5 school years thereafter by a public school district or the State Department of Education (hereinafter in this chapter, "Department") with the approval of the State Board of Education (hereinafter in this chapter, "State Board"), pursuant to this chapter. For purposes of this chapter as it relates to the management of a charter school, the board of directors of a charter school shall be a public body subject to the requirements of Chapter 100 of Title 29 and shall have the same standing and authority as a Reorganized School District Board of Education, except the power to tax. ~~The Department with the approval of the State Board of Education may also approve a charter school which plans to enroll fewer than 200 students in special circumstances, such as an on-site charter school proposed by a business as an extension of an on-site early learning or day care center~~.

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§ 504A. Powers.

Consistent with its charter and the provisions of its certificate of incorporation, bylaws or membership agreements, the board of directors of a charter school or schools shall, as to each charter that the board holds, have the power to:

(9) Establish an application and admissions process which shall enable the charter school to provide the local districts in which its students reside with a preliminary roster of its students for the subsequent school year on or before May 1 of each year. ~~To the extent practicable, each~~ Each charter school shall make the timetable for its application and admissions process identical to any such timetable set forth by this Code for the operation of a public school choice program.

§ 506. Restrictions.

(a) A charter school shall not:

(3) Restrict student admissions except:

a. By age and grade;

b. By lottery in the case of over-enrollment;

c. By gender in the case of a same-gender school~~.~~, except that there may not be more than one same-gender school for each gender operating simultaneously, and any same-gender charter school authorized prior to June 30, 2014 may have their charter renewed and continue to operate. ~~Notwithstanding any provisions to the contrary, the Department of Education, with approval of the State Board of Education, shall be considered the approving authorizer of Prestige Academy, a same-gender school, and shall provide oversight to such school. The Department of Education, with the approval of the State Board, may waive any provisions in this Chapter that would limit the school from opening for the 2008-2009 school year.~~ Any subsequent same-gender charter school that seeks to operate in the state shall make its application to the Department of Education and the State Board of Education.

~~d. Within a reasonable amount of time as determined by the Department of Education, but no longer than 2 years after commencement of operations of any same-gender charter school in the State, there shall be approved and operating a same-gender charter school of the opposite gender, substantially equal to the prior-approved, same-gender charter school, matching in grade level and marketed towards similar demographics of the prior-approved, same-gender charter school. The Department of Education shall work with the education community on a plan for recruitment and technical assistance for applicants of a same-gender charter school of the opposite gender. The Department of Education shall provide such report regarding the recruitment plan to the General Assembly on an annual basis.~~

~~e. The same-gender charter school provisions shall sunset, for any new charter applications, on June 30, 2013, unless the General Assembly has otherwise acted to extend such date prior to its expiration.~~

~~f. The Department of Education shall provide a written report to the Governor and the respective Education Committees of the state House of Representatives and Senate with a proposal for an experienced research and evaluation entity to conduct an evaluation of single-gender charter schools in the State. The study proposal shall cause to be examined factors including, but not limited to, academic results, social factors, and psychological factors. The cost of the evaluation shall be included in the Department of Education's proposal and provided to the Governor for consideration for inclusion in the FY 2010 state budget. The Department of Education is encouraged also to seek grant funding for the evaluation.~~

~~g. A single-gender charter school shall report on an annual basis, with the first report to be provided to the Department of Education and the respective Education Committee of the state House of Representatives and the Senate within 1 calendar year after commencement of operations by the charter school, and such report shall include, among other things, the efforts made by the charter school to further advancement of its students' education, as well as quantitative analysis of its efforts and results in recruiting and retaining economically-disadvantaged students, regardless of race~~.

(e) If at any time during any fiscal year of its existence, a charter school knows or reasonably should know that it has or will become unable to pay in full its projected expenses as they fall due, the school shall immediately so advise the Department of Education and its authorizer, and shall provide the Department with all financial information relating to revenues and expenses of the school necessary for the Department to determine the extent and cause of any potential operating deficit. If a charter school should fail to provide the notice to the Department of Education and authorizer required by this subsection or shall fail to cooperate with the Department in the production of financial information pursuant to this subsection, the ~~Department~~ Authorizer shall subject the school's charter to formal review pursuant to the provisions of § 515 of this title in order to determine whether grounds exist to take remedial measures.

§ 507. Labor relations.

(c) Labor relations between the charter school and its employees shall be governed by Chapter 40 of this title, and a charter school and its employees may agree through the collective bargaining process to abide by other provisions of this title or Code. Except as otherwise provided in this section, all teachers working in charter schools shall hold an appropriate teaching certificate and license. Notwithstanding the foregoing, for any school year with respect to which there is no "qualified alternative certification," as hereinafter defined, in effect, a charter school may, where it deems it beneficial to the success of its educational program, hire teachers that are not fully certified and licensed so long as such

teachers have at least a bachelor's degree in the content area in which they are teaching and comprise no more than 35 percent of the teachers at the school. If teaching 1 or primarily 1 specific content area, a teacher shall have a bachelor's degree in that content area.

For purposes of this section, a "qualified alternative certification program" shall be one which aligns with all requirements as specified in §1260 thru §1264 of this Title and pursuant regulations.~~:~~

~~(1) Establishes alternative routes of certification available for candidates at all grade levels 7-12 inclusive, and in all disciplines (except special education);~~

~~(2) Allows a candidate, under the supervision of a mentor teacher, to commence employment as a teacher holding a limited standard certificate with:~~

~~a. A bachelor's degree from an accredited college or university appropriate to the instructional field;~~

~~b. Completion of a full-time seminar/practicum of no less than 20 days duration which takes place prior to the time the candidate takes full responsibility for a classroom; and~~

~~c. A passing score on the prescribed state certification exam applicable for the candidate seeking to teach in the field and at the grade level sought by the candidate;~~

~~(3) Requires that the candidate participate in a period of intensive, on-the-job supervision — requiring that the candidate be visited and critiqued no less than one time every 2 weeks by a certified teacher — beginning the 1st day on which the candidate assumes full responsibility for a classroom and continuing for a period of at least 10 weeks;~~

~~(4) Requires that the candidate participate in a period of continued supervision and evaluation of no less than 20 weeks duration — requiring that the candidate be visited and critiqued at least 4 times;~~

~~(5) Requires of the candidate satisfactory completion of at least 200 hours of formal instruction in the areas of curriculum, student development and learning, and classroom management; and~~

~~(6) Allows for the candidate to become fully certified upon:~~

~~a. Successful completion of 1 year of employment as a teacher holding a limited standard certificate; and~~

~~b. Receipt of a satisfactory performance evaluation from a review committee consisting of teachers and administrators within the school where such provisional teaching employment has occurred.~~

§ 509. School financing.

(b) A charter school shall receive a payment with respect to each of its students equal to:

(1) From the State on or before ~~November 30~~ December 31, the funding equivalent to the Division I staffing, including fractional funding of partial units, excluding funding for a Superintendent, Division II — All Other

Costs and Energy funding, minor capital improvements and school building maintenance funded generated by the annual student unit count conducted on September 30 of each year in accordance with Department of Education regulations. Minor capital improvements shall be funded in the same manner as the Vocational Technical School Districts. In the case of Division III — Equalization, a charter school shall receive from the State an amount that is determined by weighting the Division III per unit values that would have been generated by its students had they been counted in their district of residence. In addition, a charter school shall receive a prorated portion of any other funds appropriated to the Department of Education that are intended to be allocated on a student, employee or school state share. For the purposes of calculating such funding, each charter school student shall be counted in a separately reported unit count of the charter school, and not counted for any purposes in the student's district of residence. For any partially funded unit generated at a charter school, the charter school is free to negotiate the use of such unit with the chartering district, and other public school districts, in order to purchase central custodial, administrative, clerical, direct teaching or educationally related services. If such an agreement is not negotiated, a payment based on the average State cost per unit shall be payable to both the charter school and the district issuing the charter, provided that the sum of both fractions justifies an additional unit. The State shall advance 75% of the anticipated funding pursuant to this subsection at the beginning of each fiscal year, provided that the charter school has provided the Department of Education with a preliminary roster of its students on or before May 1 of such year, and does not maintain the status of formal review or probation. The status of formal review or probation shall prompt the Department of Education to advance a level of funding appropriate to pending administrative action. A final roster shall be due September 30. Notwithstanding the above, a charter school in its first year of operation shall receive 50% of the anticipated funding pursuant to this subsection at the beginning of the fiscal year, provided that the charter school has provided the Department of Education with a preliminary roster of its students on or before May 1 of such year. The charter school shall receive an additional 25% of the funding due pursuant to this subsection on October 1 of its first year in operation and shall receive the remaining 25% on February 1 of its first year in operation, provided that the school has completed and posted the required standardized financial report forms and the Department has reviewed those forms and determined that the school's finances will not at that time lead the Department to submit the school for formal review pursuant to § 515 of this title. A determination that the school will be submitted for formal review shall prompt the Department of Education to advance a level of funding appropriate to pending administrative action. The percentage of funding to be provided to charter schools on July 1 and October 1 pursuant to the above may be increased in the Secretary's discretion.

(2) From the school districts in which its students reside on or before ~~November 30~~ December 31 of each year, the local cost per student (regular or special education, as the case may be), net of transportation expenses provided for pursuant to § 508 of this title. The school districts in which its students reside shall advance at least 35% of the anticipated funding pursuant to this subsection at the beginning of each fiscal year provided that the charter school has provided the school districts of residence with a preliminary roster of its students on or before May 1 of such year. This advance may be paid from Division III — Equalization funds if the district's prior fiscal year current expense local funds balance was 20% or less pursuant to § 1507 of this title. A final roster shall be due September 30. In the event of the failure of a school district to make timely payments to a charter school as required in this paragraph, the Department of Education shall have the authority to direct transfer of such funds from future State funding allocations after the school district receives reasonable notice and an opportunity to be heard, as set forth in the rules and regulations established by the Department.

(k) A charter school shall display on its website all ~~standardized financial report forms for the current fiscal year and the final monthly standardized financial report forms for each previous fiscal year of operation. Charter schools that are required to file Internal Revenue Service Form 990 shall post the current and prior year Form 990 on the website as well.~~ financial reporting documents as specified in §513 of this title.

§ 511. Approval procedure.

(a) An approved charter school application, together with such conditions imposed pursuant to subsection (l) of this section, shall be the basis for a charter granted to the charter school by the approving authority pursuant to this chapter and shall be governed by the terms of this chapter. Upon approval of a charter school application, the Department of Education shall present applicants seeking a charter from the state with a charter contract ("Charter Contract") that clearly defines the respective roles, powers, and responsibilities of the school and the approving authority and incorporates the provisions of the performance agreement entered into between the charter school and its approving authority pursuant to CDR 14-200-275. Other approving authorities may choose to present applications they approve with such a Charter Contract. Where a Charter Contract is utilized, both the school and the approving authority shall execute the Charter Contract. Notwithstanding anything in this chapter to the contrary, the initial term of a newly approved charter shall expire at the end of the fifth fiscal year following the fiscal year in which the charter was initially approved, and any subsequent charter renewal term shall expire at the end of each successive fifth fiscal year thereafter unless extended pursuant to § 514A(b) of this title. If an approved charter is modified to delay the initial opening of the school, then the expiration date of the initial term of the charter shall be adjusted accordingly, to ensure that the charter has four years of instructional operation prior to its charter expiration.

(b)(3) In addition to meeting the approval criteria established in § 512 of this title, an authorizer considering an application for a new charter school or for a modification as described in paragraph (b)(2) of this section in which the increased enrollment will occur less than 18 months from the date of application (an "expansion"), shall also consider the potential positive and negative impact of the proposed new school or expansion on the schools and the community from which the charter school's new students will likely be drawn. In reviewing the impact, the authorizer shall consider all information furnished to it during the ~~new charter school~~ application process and may exercise its reasonable discretion in determining whether the proposed new school or expansion is contrary to the best interests of the community to be served, including both those students likely to attend the charter school and those students likely to attend traditional public schools in the community.

(d) The Department shall make an initial review of all new charter school and charter school modification applications it receives in order to assess the completeness and ~~viability~~ quality of each such application based on the application submission criteria established in this title. Upon a finding that an application does not warrant a full review, the Department shall notify the applicant in writing of the deficiency or deficiencies and the application shall receive no further consideration. Each district that is asked by an applicant to serve as an approving authority may, in its discretion, undertake such an initial sufficiency review and make such an initial sufficiency determination.

(g)(1) Except as noted in paragraph (g)(2) of this section, new charter school applications shall be submitted to an approving authority between November 1 and December 31 for schools to be established and prepared to admit students on or after the second August 1 thereafter.

(2) Applications by a highly successful charter school operator as described in subsection (p) of this section shall be submitted to an approving authority between November 1 and December 31 for schools to be established and prepared to admit students on or after the August 1 thereafter. The application submission dates in this subsection may be amended by agreement of the authorizer and the applicant if necessary to allow the applicant to serve students who would otherwise be displaced due to the closure of an existing charter school.

(3) Applications to renew a charter shall be submitted to the approving authority on or before September ~~1~~ 30 of the year immediately preceding the calendar year in which the school's current charter term will expire~~, except that all applications to renew a charter that expires on or before December 31, 2012, shall be submitted to the approving authority on or before October 15, 2011~~.

(k) After giving 15 days public notice, the approving authority shall hold public hearings to assist in its decision whether to approve a charter application. At least 1 such hearing shall be held prior to the issuance of the accountability committee's final report on ~~that~~ each new application. The approving authority shall, in advance of the 15-day public

notice period, post any and all charter applications under consideration on a public website maintained by the approving authority, and during this public notice period shall accept electronically submitted and written comments from the public.

(p) "Highly successful charter school operator" means an entity that currently operates or whose principals currently operate 1 or more highly successful charter schools showing sustained high levels of student growth and achievement and sustained fiscal stewardship, as further defined by Department regulation. Notwithstanding the provisions of this chapter, for purposes of this definition the phrase "charter school" shall include public schools operated under a charter regardless of whether the schools are located or organized in Delaware. A highly successful charter school operator may be authorized to operate a charter school in the timeframe provided by paragraph (g)(2) of this section ~~provided that the~~ including when an application is submitted for the purpose of operating a charter school at the site of and serving students currently attending a charter school whose charter has been revoked, has not been renewed, or whose charter is on formal review and whose board has agreed to abandon their charter.

§ 512. Approval criteria.

Subject to the process prescribed in § 511 of this title, charter school applications shall be in the form established by the approving authority and shall be approved if, after the exercise of due diligence and good faith, the approving authority finds that the proposed charter demonstrates that:

(8) The plan for the school is economically viable, based on a review of the school's proposed budget of projected revenues and expenditures for the first 3 years, the plan for starting the school, and the major contracts planned for equipment and services, leases, improvements, purchases of real property and insurance, and enrollment of no less than 200 students at full enrollment and no less than 100 students during the first 2 years of operation or for a school with an enrollment preference to primarily serve special needs students;

(9) The school's financial and administrative operations meet or exceed the same standards, procedures and requirements as a school district. If a charter school proposes to operate outside the State's pension and/or benefits systems, a specific memorandum of understanding shall be developed and executed by the charter school, the approving authority, the Director of the Office of Management and Budget, the Controller General and the Secretary of Finance to assure that the State's fiduciary duties and interests in the proper use of appropriated funds and as a benefits and pension trustee are fulfilled and protected, the State's financial reporting requirements are satisfied, and the interests of charter school employees are protected. All charter schools shall operate within the ~~Delaware Financial Management System (DFMS)~~ state's official financial management system and be subject to all of the same policies and procedures which govern other agencies operating within such system~~, except that any charter~~

~~school previously approved to operate outside of the DFMS may continue to so operate subject to the terms of its memorandum of understanding until such time as the school's charter is renewed pursuant to this chapter~~;

§ 513. Reporting and oversight.

(a) On or before December 1, each charter school ~~not seeking renewal of its charter~~ shall produce an annual report for the school year ending the previous June, which shall:

(1) Discuss the school's progress in meeting overall student performance goals and standards;

(2) Discuss the innovation occurring at the charter school, including but not limited to the areas of curriculum development, instruction, student culture and discipline, community and parental involvement, teacher and staff development, school operations and management, and extracurricular and after-school programming; and

(3) Contain a financial statement setting forth by appropriate categories the school's revenues and expenditures and assets and liabilities.

(4) In the case of a single gender school, the report shall include the efforts made by the charter school to further advance its students' education and a quantitative analysis of its efforts and results in recruiting and retaining economically-disadvantaged students, regardless of race.

Each charter school seeking renewal of its charter shall produce ~~an~~ the annual report as outlined above on or before September 30. The approving authority may, in its discretion and for good cause shown, elect to accept an annual report submitted subsequent to this deadline. To ensure that such reports provide parents and approving authorities with clear and comparable information about the performance of charter schools, the Department of Education shall prescribe a uniform format for such reports, which may be supplemented by requirements set by the approving authority for schools it has chartered. The charter school shall contract to have an audit of the business and financial transactions, records, and accounts after July 1 for the prior fiscal year. The results of the audit shall be shared with the Department of Education by October 1. A charter school shall display on its website the annual report including financial statement and audit required by this subsection. A charter school shall also display on its website all standardized financial report forms for the current fiscal year and the final monthly standardized financial report forms for each previous fiscal year of operation. Charter schools that are required to file Internal Revenue Service Form 990 shall post the current and prior year Form 990 on the website as well.

(c) The Department of Education, the State Board, and the approving authority may conduct financial, programmatic, or compliance ~~audits~~ reviews of a charter school. In cooperation with the Department, the approving authority shall conduct such ~~audits~~ reviews no less often than every 3 years. The State Auditor shall conduct an audit of all charter school funds annually on the same basis as applied to regular school districts.

§ 514A. Renewals and nonrenewals.

(f) No later than September 30, the governing board of a charter school seeking renewal shall submit a renewal application to the approving authority pursuant to the renewal application guidance issued by the approving authority. The approving authority shall ~~rule by resolution on~~ decide upon the renewal application no later than ~~30~~ 60 working days after the filing of the renewal application.

§ 515. Oversight and revocation process.

(c) The approving authority shall issue its decision within ~~90~~ 60 working days of giving the charter school notice ~~pursuant to this subsection (c)~~. An accountability committee appointed by the approving authority shall conduct the initial review pursuant to subsection (b) ~~or (c)~~ of this section. The accountability committee's reports to the approving authority shall address the relevant criteria set forth in §§ 512 and 516 of this title. The committee shall meet with the applicant in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's initial report 15 days before it is issued to the approving authority. The committee's final report shall be provided to the applicant, the approving authority, and made available to the public.

(d) If the accountability committee's report~~s~~ presents probable grounds for remedial measures ~~pursuant to subsection (g) of this section~~, the approving authority shall hold public hearings to assist in its decision whether the criteria set forth for remedial action in § 516 of this title have been satisfied, after giving the charter school ~~30~~15 days notice. The school shall be given the opportunity to respond to the accountability committee's final report at the ~~meeting~~ hearing. Members of the public shall be given the opportunity to comment at the ~~meeting~~ hearing.

(e) If the accountability committee's report~~s~~ asserts that the school has complied with its charter and the criteria set forth in § 512 of this title, the approving authority shall approve or disapprove ~~it's~~ the final report's conclusion at a public meeting after giving the charter school ~~30~~ 15 days' notice. If the approving authority disapproves the report, it shall identify the reasons for that decision with particularity. Thereafter, the approving authority shall hold a hearing, within 30 days, to ~~decide~~ assist in its decision of the appropriate remedy pursuant to subsection (f) of this section.

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