

APPENDIX A

CHARTER SCHOOL PROGRAM ACT OF 1995

N.J.S.A. 18A:36A

Effective January 1996

Amended November 2000

18A:36A-1. Short title

This act shall be known and may be cited as the "Charter School Program Act of 1995."

Adopted. L.1995,c.426,s.1, effective January 11, 1996.

18A:36A-2. Findings and declarations.

The Legislature finds and declares that the establishment of charter schools as part of this State's program of public education can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom. Specifically, charter schools offer the potential to improve pupil learning; increase for students and parents the educational choices available when selecting the learning environment which they feel may be the most appropriate; encourage the use of different and innovative learning methods; establish a new form of accountability for schools; require the measurement of learning outcomes; make the school the unit for educational improvement; and establish new professional opportunities for teachers.

The Legislature further finds that the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools.

Adopted. L.1995,c.426,s.2, effective January 11, 1996.

18A:36A-3. Establishing a charter school program; definition; number of schools authorized.

a. The Commissioner of Education shall establish a charter school program which shall provide for the approval and granting of charters to charter schools pursuant to the provisions of this act. A charter school shall be a public school operated under a charter granted by the commissioner, which is operated independently of a local board of education and is managed by a board of trustees. The board of trustees, upon receiving a charter from the commissioner, shall be deemed to be public agents authorized by the State Board of Education to supervise and control the charter school.

b. The program shall authorize the establishment of not more than 135 charter schools during the 48 months following the effective date of this act. A minimum of three charter schools shall be allocated to each county. The commissioner shall actively encourage the establishment of charter schools in urban school districts with the participation of institutions of higher education.

Adopted. L.1995,c.426,s.3, effective January 11, 1996.

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18A:36A-4. Who may establish a charter school; non-profit; eligibility criteria for existing public school; applications; appeals; limitations upon student enrollment.

a. A charter school may be established by teaching staff members, parents with children attending the schools of the district, or a combination of teaching staff members and parents. A charter school may also be established by an institution of higher education or a private entity located within the State in conjunction with teaching staff members and parents of children attending the schools of the district. If the charter school is established by a private entity, representatives of the private entity shall not constitute a majority of the trustees of the school, and the charter shall specify the extent to which the private entity shall be involved in the operation of the school. The name of the charter school shall not include the name or identification of the private entity, and the private entity shall not realize a net profit from its operation of a charter school. A private or parochial school shall not be eligible for charter school status.

b. A currently existing public school is eligible to become a charter school if the following criteria are met:

(1) At least 51% of the teaching staff in the school shall have signed a petition in support of the school becoming a charter school; and

(2) At least 51% of the parents or guardians of pupils attending that public school shall have signed a petition in support of the school becoming a charter school.

c. An application to establish a charter school shall be submitted to the commissioner and the local board of education or State superintendent, in the case of a State-operated school district, in the school year preceding the school year in which the charter school will be established. Notice of the filing of the application shall be sent immediately by the commissioner to the members of the State Legislature, school superintendents, and mayors and governing bodies of all legislative districts, school districts, or municipalities in which there are students who will be eligible for enrollment in the charter school. The board of education or State superintendent shall review the application and forward a recommendation to the commissioner within 60 days of receipt of the application. The commissioner shall have final authority to grant or reject a charter application.

d. The local board of education or a charter school applicant may appeal the decision of the commissioner to the State Board of Education. The State board shall render a decision within 30 days of the date of the receipt of the appeal. If the State board does not render a decision within 30 days, the decision of the commissioner shall be deemed final.

e. A charter school established during the 48 months following the effective date of this act, other than a currently existing public school which becomes a charter school pursuant to the provisions of subsection b. of section 4 of this act, shall not have an enrollment in excess of 500 students or greater than 25% of the student body of the school district in which the charter school is established, whichever is less.

Any two charter schools within the same public school district that are not operating the same grade levels may petition the commissioner to amend their charters and consolidate into one school. The commissioner may approve an amendment to consolidate, provided that the basis for consolidation is to accommodate the transfer of students who would otherwise be subject to the random selection process pursuant to section 8 of P.L.1995, c.426 (C.18A:36A-8).

Adopted. L.1995,c.426,s.4; effective January 11, 1996. **Amended.** L. 2000,c.142,s.1, effective November 2, 2000; L. 2002 c. 123, s.1, effective December 12, 2002.

18A:36A-5. Application to establish a charter school.

The application for a charter school shall include the following information:

a. The identification of the charter applicant;

b. The name of the proposed charter school;

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- c. The proposed governance structure of the charter school including a list of the proposed members of the board of trustees of the charter school or a description of the qualifications and method for the appointment or election of members of the board of trustees;
- d. The educational goals of the charter school, the curriculum to be offered, and the methods of assessing whether students are meeting educational goals. Charter school students shall be required to meet the same testing and academic performance standards as established by law and regulation for public school students. Charter school students shall also meet any additional assessment indicators which are included within the charter approved by the commissioner;
- e. The admission policy and criteria for evaluating the admission of students which shall comply with the requirements of section 8 of this act;
- f. The age or grade range of students to be enrolled;
- g. The school calendar and school day schedule;
- h. A description of the charter school staff responsibilities and the proposed qualifications of teaching staff;
- i. A description of the procedures to be implemented to ensure significant parental involvement in the operation of the school;
- j. A description of, and address for, the physical facility in which the charter school will be located;
- k. Information on the manner in which community groups will be involved in the charter school planning process;
- l. The financial plan for the charter school and the provisions which will be made for auditing the school pursuant to the provisions of N.J.S.18A:23-1;
- m. A description of and justification for any waivers of regulations which the charter school will request; and
- n. Such other information as the commissioner may require.

AdoptedL.1995,c.426,s.5, effective January 11, 1996.

18A:36A-6. Authority of charter; compliance with Open Public Meetings Act.

A charter school established pursuant to the provisions of this act shall be a body corporate and politic with all powers necessary or desirable for carrying out its charter program, including, but not limited to, the power to:

- a. Adopt a name and corporate seal; however, any name selected shall include the words "charter school;"
- b. Sue and be sued, but only to the same extent and upon the same conditions that a public entity can be sued;
- c. Acquire real property from public or private sources, by purchase, lease, lease with an option to purchase, or by gift, for use as a school facility;
- d. Receive and disburse funds for school purposes;
- e. Make contracts and leases for the procurement of services, equipment and supplies;
- f. Incur temporary debts in anticipation of the receipt of funds;
- g. Solicit and accept any gifts or grants for school purposes; and

h. Have such other powers as are necessary to fulfill its charter and which are not inconsistent with this act or the requirements of the commissioner.

The board of trustees of a charter school shall comply with the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

Adopted. L.1995,c.426,s.6, effective January 11, 1996.

18A:36A-7. Student eligibility for enrollment; nondiscrimination.

A charter school shall be open to all students on a space available basis and shall not discriminate in its admission policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, proficiency in the English language, or any other basis that would be illegal if used by a school district; however, a charter school may limit admission to a particular grade level or to areas of concentration of the school, such as mathematics, science, or the arts. A charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school's charter.

Adopted. L.1995,c.426,s.7, effective January 11, 1996.

18A:36A-8. Enrollment preference to students residing within charter school district; tuition; continued enrollment; preference for siblings of enrollees; diversity.

a. Preference for enrollment in a charter school shall be given to students who reside in the school district in which the charter school is located. If there are more applications to enroll in the charter school than there are spaces available, the charter school shall select students to attend using a random selection process. A charter school shall not charge tuition to students who reside in the district

b. A charter school shall allow any student who was enrolled in the school in the immediately preceding school year to enroll in the charter school in the appropriate grade unless the appropriate grade is not offered at the charter school.

c. A charter school may give enrollment priority to a sibling of a student enrolled in the charter school.

d. If available space permits, a charter school may enroll non-resident students. The terms and condition of the enrollment shall be outlined in the school's charter and approved by the commissioner.

e. The admission policy of the charter school shall, to the maximum extent practicable, seek the enrollment of a cross section of the community's school age population including racial and academic factors.

Adopted. L.1995,c.426,s.8, effective January 11, 1996.

18A:36A-9. Student withdrawal from charter school.

A student may withdraw from a charter school at any time. A student may be expelled from a charter school based on criteria determined by the board of trustees, which are consistent with the provisions of N.J.S.18A:37-2, and approved by the commissioner as part of the school's charter. Any expulsion shall be made upon the recommendation of the charter school principal, in consultation with the student's teachers.

Adopted. L.1995,c.426,s.9, effective January 11, 1996.

18A:36A-10. Location and facilities of charter school

A charter school may be located in part of an existing public school building, in space provided on a public work site, in a public building, or any other suitable location. The facility shall be exempt from public school

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facility regulations except those pertaining to the health or safety of the pupils. A charter school shall not construct a facility with public funds other than federal funds.

Adopted. L.1995,c.426,s.10, effective January 11, 1996. **Amended.** L. 2002, c.10, s.1, effective March 19, 2002.

18A:36A-11. Operation in accordance with charter; exemptions from State regulations; handicapped students and compliance with N.J.S.A. 18A:46; discrimination.

a. A charter school shall operate in accordance with its charter and the provisions of law and regulation which govern other public schools; except that, upon the request of the board of trustees of a charter school, the commissioner may exempt the school from State regulations concerning public schools, except those pertaining to assessment, testing, civil rights and student health and safety, if the board of trustees satisfactorily demonstrates to the commissioner that the exemption will advance the educational goals and objectives of the school.

b. A charter school shall comply with the provisions of chapter 46 of Title 18A of the New Jersey Statutes concerning the provision of services to handicapped students; except that the fiscal responsibility for any student currently enrolled in or determined to require a private day or residential school shall remain with the district of residence.

Within 15 days of the signing of the Individualized Education Plan, a charter school shall provide notice to the resident district of any individualized education plan which results in a private day or residential placement. The resident district may challenge the placement within 30 days within accordance with the procedures established by law.

c. A charter school shall comply with applicable State and federal anti-discrimination statutes.

Adopted. L.1995,c.426,s.6, effective January 11, 1996. **Amended.** L. 2007, c. 260, s 57, effective January 13, 2008 and shall first apply to the 2008-2009 school year.

18A:36A-12. Payments by school district of residence; limitations; aid payments.

a. (Deleted by amendment, P.L.2007, c.260)

b. The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to 90% of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation. In addition, the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student and a percentage of the district's special education categorical aid equal to the percentage of the district's special education students enrolled in the charter school and, if applicable, 100% of preschool education aid. The district of residence shall also pay directly to the charter school any federal funds attributable to the student.

c. (Deleted by amendment, P.L. 2007, c. 260)

d. Notwithstanding the provisions of subsection b. of this section, in the case of a student who was not included in the district's projected resident enrollment for the school year, the State shall pay 100% of the amount required pursuant to subsection b. of this section for the first year of the student's enrollment in the charter school.

e. The State shall make payments required pursuant to subsections d. of this section directly to the charter school.

Adopted. L.1995,c.426,s.12; effective January 11, 1996. **Amended.** L. 2000,c.142,s 2, effective November 2, 2000, and shall first apply to the 2000-2001 school year; L. 2007, c. 260,s 58, effective January 13, 2008, and shall first apply to the 2008-2009 school year.

18A:36A-13. Transportation for students residing in school districts.

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The students who reside in the school district in which the charter school is located shall be provided transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district. Non-resident students shall receive transportation services pursuant to regulations established by the State board.

Adopted. L.1995,c.426,s.13, effective January 11, 1996.

18A:36A-14. Budgeting; curriculum; operating procedures; liability insurance; membership in bargaining unit; staff certification; leaves of absence; tenure; termination.

a. The board of trustees of a charter school shall have the authority to decide matters related to the operations of the school including budgeting, curriculum, and operating procedures, subject to the school's charter. The board shall provide for appropriate insurance against any loss or damage to its property or any liability resulting from the use of its property or from the acts or omissions of its officers and employees.

b. In the case of a currently existing public school which becomes a charter school pursuant to the provisions of subsection b. of section 4 of this act, all school employees of the charter school shall be deemed to be members of the bargaining unit defined in the applicable agreement and shall be represented by the same majority representative organization as the employees covered by that agreement. In the case of other charter schools, the board of trustees of a charter school shall have the authority to employ, discharge and contract with necessary teachers and nonlicensed employees subject to the school's charter. The board of trustees may choose whether or not to offer the terms of any collective bargaining agreement already established by the school district for its employees, but the board shall adopt any health and safety provisions of the agreement. The charter school and its employees shall be subject to the provisions of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.). A charter school shall not set a teacher salary lower than the minimum teacher salary specified pursuant to section 7 of P.L.1985, c.321 (C.18A:29-5.6) nor higher than the highest step in the salary guide in the collective bargaining agreement which is in effect in the district in which the charter school is located.

c. All classroom teachers and professional support staff shall hold appropriate New Jersey certification. The commissioner shall make appropriate adjustments in the alternate route program in order to expedite the certification of persons who are qualified by education and experience.

d. A public school employee, tenured or non-tenured, may request a leave of absence of up to three years from the local board of education or State district superintendent in order to work in a charter school. Approval for a leave of absence shall not be unreasonably withheld. Employees on a leave of absence as provided herein shall remain in, and continue to make contributions to, their retirement plan during the time of the leave and shall be enrolled in the health benefits plan of the district in which the charter school is located. The charter school shall make any required employer's contribution to the district's health benefits plan.

e. Public school employees on a leave shall not accrue tenure in the public school system but shall retain tenure, if so applicable, and shall continue to accrue seniority, if so applicable, in the public school system if they return to their non-charter school when the leave ends. An employee of a charter school shall not accrue tenure pursuant to N.J.S.18A:17-2, N.J.S.18A:17-3, or N.J.S.18A:28-5, but shall acquire streamline tenure pursuant to guidelines promulgated by the commissioner, and the charter shall specify the security and protection to be afforded to the employee in accordance with the guidelines.

f. Any public school employee who leaves or is dismissed from employment at a charter school within three years shall have the right to return to the employee's former position in the public school district which granted the leave of absence, provided the employee is otherwise eligible for employment in the public school.

Adopted. L.1995,c.426,s.14, effective January 11, 1996.

18A:36A-15. Complaints; hearings.

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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 act. If, after presenting the complaint to the board of trustees, the individual or group determines that the board of trustees has not adequately addressed the complaint, they may present that complaint to the commissioner who shall investigate and respond to the complaint. The board shall establish an advisory grievance committee consisting of both parents and teachers who are selected by the parents and teachers of the school to make nonbinding recommendations to the board concerning the disposition of a complaint.

Adopted. L.1995,c.426,s.15, effective January 11, 1996.

18A:36A-16. Assessment by Commissioner annually; county superintendent access for review; annual reports to local boards; public hearings in 2002.

a. The commissioner shall annually assess whether each charter school is meeting the goals of its charter, and shall conduct a comprehensive review prior to granting a renewal of the charter. The county superintendent of schools of the county in which the charter school is located shall have on-going access to the records and facilities of the charter school to ensure that the charter school is in compliance with its charter and that State board regulations concerning assessment, testing, civil rights, and student health and safety are being met.

b. In order to facilitate the commissioner's review, each charter school shall submit an annual report to the local board of education, the county superintendent of schools, and the commissioner in the form prescribed by the commissioner. The report shall be received annually by the local board, the county superintendent, and the commissioner no later than August 1.

The report shall also be made available to the parent or guardian of a student enrolled in the charter school.

c. By April 1, 2001, the commissioner shall hold public hearings in the north, central, and southern regions of the State to receive input from members of the educational community and the public on the charter school program.

d. The commissioner shall commission an independent study of the charter school program. The study shall be conducted by an individual or entity identified with expertise in the field of education and the selection shall be approved by the Joint Committee on the Public Schools. The individual or entity shall design a comprehensive study of the charter school program.

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e. The commissioner shall submit to the Governor, the Legislature, and the State Board of Education by October 1, 2001 an evaluation of the charter school program based upon the public input required pursuant to subsection c. of this section and the independent study required pursuant to subsection d. of this section. The evaluation shall include, but not be limited to, consideration of the following elements:

- (1) the impact of the charter school program on resident districts' students, staff, parents, educational programs, and finances;
- (2) the impact of the charter school program and the increased number of schools on the economics of educational services on a Statewide basis;
- (3) the fairness and the impact of the reduction of available resources on the ability of resident districts to promote competitive educational offerings;
- (4) the impact of the shift of pupils from nonpublic schools to charter schools;
- (5) the comparative demographics of student enrollments in school districts of residence and the charter schools located within those districts. The comparison shall include, but not be limited to, race, gender, socioeconomic status, enrollment of special education students, enrollment of students of limited English proficiency, and student progress toward meeting the core curriculum content standards as measured by student results on Statewide assessment tests;
- (6) the degree of involvement of private entities in the operation and financial support of charter schools, and their participation as members of charter school boards of trustees;
- (7) verification of the compliance of charter schools with applicable laws and regulations;
- (8) student progress toward meeting the goals of the charter schools;
- (9) parent, community and student satisfaction with charter schools;
- (10) the extent to which waiting lists exist for admission to charter schools and the length of those lists;
- (11) the extent of any attrition among student and faculty members in charter schools; and
- (12) the results of the independent study required pursuant to subsection d. of this section.

The evaluation shall include a recommendation on the advisability of the continuation, modification, expansion, or termination of the program. If the evaluation does not recommend termination, then it shall include recommendations for changes in the structure of the program which the commissioner deems advisable. The commissioner may not implement any recommended expansion, modification, or termination of the program until the Legislature acts on that recommendation.

Adopted. L.1995,c.426,s.6, effective January 11, 1996. **Amended.** 2000,c.142,s.3, effective November 2, 2000.

18A:36A-17. Duration of charter grants; revocation; probationary status.

A charter granted by the commissioner pursuant to the provisions of this act shall be granted for a four-year period and may be renewed for a five-year period. The commissioner may revoke a school's charter if the school has not fulfilled any condition imposed by the commissioner in connection with the granting of the charter or if the school has violated any provision of its charter. The commissioner may place the charter school on probationary status to allow the implementation of a remedial plan after which, if the plan is unsuccessful, the charter may be summarily revoked. The commissioner shall develop procedures and guidelines for the revocation and renewal of a school's charter.

Adopted. L.1995,c.426,s.17, effective January 11, 1996.

18A:36A-17.1. Commissioner's actions relative to possible loss, not granting of charter.

If at any time the commissioner determines that a board of trustees is in jeopardy of losing its charter or an applicant is in jeopardy of not being granted a charter, the commissioner shall so notify the board of trustees or the applicant. The board of trustees or the applicant shall, within 48 hours of receipt of such notification, provide to the commissioner, in writing, a complete list of the names and addresses of all students and staff currently enrolled and working in the school, or in the case of an applicant, a complete list of the names and addresses of all students and staff intending to enroll or work at the school, so the commissioner may send the appropriate notice to the parents or guardians and staff.

Adopted. L.2000,c.142,s.4, effective November 2, 2000.

18A:36A-18. Rules and regulations.

The State Board of Education shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this act.

Adopted. L.1995,c.426,s.18, effective January 11, 1996.