

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015**

**HOUSE BILL 334  
RATIFIED BILL**

AN ACT TO MAKE CHANGES TO VARIOUS CHARTER SCHOOL STATUTES AND OTHER EDUCATION STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 115C-218 reads as rewritten:

**"§ 115C-218. Purpose of charter schools and schools; establishment of North Carolina Charter Schools Advisory Board and North Carolina Office of Charter Schools.**

(a) Purpose of Charter Schools. – The purpose of this Article is to authorize a system of charter schools to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently of existing schools, as a method to accomplish all of the following:

- (1) Improve student learning;
- (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically gifted;
- (3) Encourage the use of different and innovative teaching methods;
- (4) Create new professional opportunities for teachers, including the opportunities to be responsible for the learning program at the school site;
- (5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
- (6) Hold the schools established under this Article accountable for meeting measurable student achievement results, and provide the schools with a method to change from rule-based to performance-based accountability systems.

(b) North Carolina Charter Schools Advisory Board. –

- (1) Advisory Board. – There is created the North Carolina Charter Schools Advisory Board, hereinafter referred to in this Article as the Advisory Board. The Advisory Board shall be located administratively within the Department of Public Instruction and shall report to the State Board of Education.
- (2) Membership. – The State Superintendent of Public Instruction, or the Superintendent's designee, shall be the secretary of the Advisory Board and a nonvoting member. The Chair of the State Board of Education shall appoint a member of the State Board to serve as a nonvoting member of the Advisory Board. The Advisory Board shall consist of the following 11 voting members:
  - a. Three members appointed by the Governor, including the chair of the Advisory Board.
  - b. Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121.
  - c. Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121.



- d. One member appointed by the State Board of ~~Education~~ Education who is not a current member of the State Board of Education and who is a charter school advocate in North Carolina.
- e. The Lieutenant Governor or the Lieutenant Governor's designee.
- (3) Covered board. – The Advisory Board shall be treated as a board for purposes of Chapter 138A of the General Statutes.
- (4) Qualifications of members. – Members appointed to the Advisory Board shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, assessment, curriculum and instruction, public charter schools, and public education law. All appointed members of the Advisory Board shall have demonstrated an understanding of and a commitment to charter schools as a strategy for strengthening public education.
- (5) Terms of office and vacancy appointments. – Appointed members shall serve four-year terms of office beginning on July 1. No appointed member shall serve more than eight consecutive years. Vacancy appointments shall be made by the appointing authority for the remainder of the term of office.
- (6) Presiding officers and quorum. – The Advisory Board shall annually elect a vice-chair from among its membership. The chair shall preside over the Advisory Board's meetings. In the absence of the chair, the vice-chair shall preside over the Advisory Board's meetings. A majority of the Advisory Board constitutes a quorum.
- (7) Meetings. – Meetings of the Advisory Board shall be held upon the call of the chair or the vice-chair with the approval of the chair.
- (8) Expenses. – Members of the Advisory Board shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).
- (9) Removal. – Any appointed member of the Advisory Board may be removed by a vote of at least two-thirds of the members of the Advisory Board at any duly held meeting for any cause that renders the member incapable or unfit to discharge the duties of the office.
- (10) Powers and duties. – The Advisory Board shall have the following duties:
  - a. To make recommendations to the State Board of Education on the adoption of rules regarding all aspects of charter school operation, including time lines, standards, and criteria for acceptance and approval of applications, monitoring of charter schools, and grounds for revocation of charters.
  - b. To review applications and make recommendations to the State Board for final approval of charter applications.
  - c. To make recommendations to the State Board on actions regarding a charter school, including renewals of charters, nonrenewals of charters, and revocations of charters.
  - d. To undertake any other duties and responsibilities as assigned by the State Board.
- (11) Duties of the chair of the Advisory Board. – In addition to any other duties prescribed in this Article, the chair of the Advisory Board, or the chair's designee, shall advocate for the recommendations of the Advisory Board at meetings of the State Board upon the request of the State Board.
- (c) North Carolina Office of Charter Schools. –
  - (1) Establishment of the North Carolina Office of Charter Schools. – There is established the North Carolina Office of Charter Schools, hereinafter referred to in this Article as the Office of Charter Schools. The Office of Charter Schools shall be administratively located in the Department of Public Instruction, subject to the supervision, direction, and control of the State Board of Education. The Office of Charter Schools shall consist of an executive director appointed by the State Board of Education and such other professional, administrative, technical, and clerical personnel as may be necessary to assist the Office of Charter Schools in carrying out its powers and duties.

- (2) Executive Director. – The Executive Director shall report to and serve at the pleasure of the State Board of Education at a salary established by the State Board within the funds appropriated for this purpose. The duties of the Executive Director shall include presenting the recommendations of the Advisory Board at meetings of the State Board upon the request of the State Board.
- (3) Powers and duties. – The Office of Charter Schools shall have the following powers and duties:
- a. Serve as staff to the Advisory Board and fulfill any task and duties assigned to it by the Advisory Board.
  - b. Provide technical assistance and guidance to charter schools operating within the State.
  - c. Provide technical assistance and guidance to nonprofit corporations seeking to operate charter schools within the State.
  - d. Provide or arrange for training for charter schools that have received preliminary approval from the State Board.
  - e. Assist approved charter schools and charter schools seeking approval from the State Board in coordinating services with the Department of Public Instruction.
  - f. Other duties as assigned by the State Board.
- (4) Agency cooperation. – All State agencies and departments shall cooperate with the Office of Charter Schools in carrying out its powers and duties as necessary in accordance with this Article."

**SECTION 1.(b)** Within 90 days of the date this act becomes law, the State Board of Education shall appoint an executive director of the Office of Charter Schools. The initial appointment of the Executive Director shall be upon the recommendation to the State Board of Education by a search committee comprised of the Lieutenant Governor, who will serve as chair of the committee, the vice-chair of the State Board of Education, and one other member of the State Board of Education appointed by the State Board of Education.

**SECTION 1.(c)** This section is effective when it becomes law. The Chair of the State Board of Education shall make the appointment to the North Carolina Charter Schools Advisory Board of the nonvoting member as required by G.S. 115C-218(b)(2), as amended by this act, within 45 days of the date this act becomes law. The State Board of Education shall make the appointment to the North Carolina Charter Schools Advisory Board of a member meeting the qualifications of G.S. 115C-218(b)(2), as amended by this act, within 45 days of the date this act becomes law.

**SECTION 2.** G.S. 115C-218.1(b)(13) reads as rewritten:

"(13) The number of students to be served, which number shall be at least ~~65~~80, and the minimum number of teachers to be employed at the school, which number shall be at least three. However, the charter school may serve fewer than ~~65-80~~ students or employ fewer than three teachers if the application contains a compelling reason, such as the school would serve a geographically remote and small student population."

**SECTION 3.(a)** G.S. 115C-218.1(b) reads as rewritten:

"(b) The application shall contain at least the following information:

...  
 (15) The process for conducting a weighted lottery that reflects the mission of the school if the school desires to use a weighted lottery."

**SECTION 3.(b)** G.S. 115C-218.45(e) reads as rewritten:

"(e) Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, ~~disability, race, creed, national origin, religion, or ancestry, or disability.~~ A charter school shall not limit admission to students on the basis of race, creed, national origin, religion, or ancestry. A charter school whose mission is single-sex education may limit admission on the basis of sex. Within one year after the charter school begins operation, the charter school shall make efforts for the population of the school to reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local

school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit."

**SECTION 3.(c)** G.S. 115C-218.45 is amended by adding a new subsection to read:

"(g1) If a procedure for a weighted lottery reflecting the mission of the school has been approved by the State Board as part of the charter, and a lottery is needed under subsection (h) of this section, the lottery shall be conducted according to the procedure in the charter."

**SECTION 4.(a)** Article 14A of Chapter 115C of the General Statutes is amended by adding a new section to read:

**"§ 115C-218.2. Opportunity to correct applications; opportunity to address Advisory Board.**

(a) The State Board of Education and the Advisory Board shall provide timely notification to an applicant of any format issues or incomplete information in the initial application and provide the applicant at least five business days to correct those issues in the initial application. If the applicant submits the corrections within the five business days, equal consideration shall be given to that application.

(b) Before taking action regarding a charter school or charter school applicant, including recommendations on preliminary or final approval of charter applications, renewals of charters, nonrenewals of charters, and revocations of charters, the Advisory Board or a committee of the Advisory Board shall provide an opportunity for the applicant or charter board member to address the Advisory Board or its committee, if present, at a meeting."

**SECTION 4.(b)** The Advisory Board shall make recommendations on guidance for implementation of this section to the State Board. The State Board shall develop guidance for implementation of this section no later than October 15, 2015.

**SECTION 5.** G.S. 115C-218.5 reads as rewritten:

**"§ 115C-218.5. Final approval of applications for charter schools.**

- (a) The State Board may grant final approval of an application if it finds the following:
- (1) The application meets the requirements set out in this Article and such other requirements as may be adopted by the State Board of Education.
  - (2) The applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner.
  - (3) Granting the application would achieve one or more of the purposes set out in ~~G.S. 115C-269.1~~G.S. 115C-218.

In reviewing applications for the establishment of charter schools within a local school administrative unit, the State Board 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.

(b) The State Board shall make final decisions on the approval or denial of applications by August 15 of a calendar year on all applications it receives prior to a date established by the Office of Charter Schools for receipt of applications in that application cycle. The State Board may make the final decision for approval contingent upon the successful completion of a planning period prior to enrollment of students.

(c) The State Board of Education may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The State Board of Education may grant the initial charter for a period not to exceed 10 years. The State Board of Education ~~may shall~~ renew the charter upon the request of the chartering entity for subsequent periods of 10 years ~~each. The renewal may be for less than 10 years if any years, unless~~ one of the following applies:

- (1) The charter school has not provided financially sound audits for the prior three years.
- (2) The charter school's student academic outcomes for the past three years have not been comparable to the academic outcomes of students in the local school administrative unit in which the charter school is located.
- (3) The charter school is ~~not not~~, at the time of the request for renewal of the charter, substantially in compliance with State law, federal law, the school's own bylaws, or the provisions set forth in its charter granted by the State Board of Education.

The State Board of Education shall review the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards.

(e) A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education.

Except as provided in subsection (f) of this section, enrollment growth shall be considered a material revision of the charter application, and the State Board may approve such additional enrollment growth of greater than twenty percent (20%) only if the State Board finds all of the following:

- (1) The actual enrollment of the charter school is within ten percent (10%) of its maximum authorized enrollment.
- (2) The charter school has commitments for ninety percent (90%) of the requested maximum growth.
- (3) The charter school is not currently identified as low-performing.
- (4) The charter school meets generally accepted standards of fiscal management.
- (5) ~~It is otherwise appropriate to approve the enrollment growth.~~ The charter school is, at the time of the request for the enrollment increase, substantially in compliance with State law, federal law, the charter school's own bylaws, and the provisions set forth in its charter granted by the State Board.

(f) It shall not be considered a material revision of a charter application and shall not require prior approval of the State Board for a charter school to do any of the following:

- (1) Increase its enrollment during the charter school's second year of operation and annually thereafter by up to twenty percent (20%) of the school's previous year's enrollment.
- (2) Increase its enrollment during the charter school's second year of operation and annually thereafter in accordance with planned growth as authorized in its charter.
- (3) Expand to offer one grade higher or lower than the charter school currently offers if the charter school has (i) operated for at least three years and years, (ii) has not been identified as having inadequate performance as provided in G.S. 115C-218.95(b)-G.S.115C-218.95(b), and (iii) has been in financial compliance as required by the State Board of Education.
- (4) Expand to offer one grade higher or lower than the charter school currently offers if the charter school meets all of the following criteria:
  - a. The charter school's student academic outcomes for the year prior to the expansion must have been at least comparable to the academic outcomes of students in the local school administrative unit in which the charter school is located.
  - b. The charter school has provided financially sound audits for the year prior to the expansion.
  - c. The charter school is in compliance with State law, federal law, the school's own bylaws, or the provisions set forth in its charter granted by the State Board of Education.
  - d. The charter school has been in operation for less than three years.

The charter school shall provide documentation of the requirements of this subdivision to the State Board of Education. The charter school shall be permitted to expand to offer the higher or lower grade unless the State Board of Education finds that the charter school has failed to meet the requirements of this subdivision or other exceptional circumstances exist which justify not permitting the grade expansion."

**SECTION 6.(a)** G.S. 115C-218.15 reads as rewritten:

**"§ 115C-218.15. Charter school operation.**

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. All charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the

application. The board of directors of the charter schools shall adopt a conflict of interest and anti-nepotism policy that includes, at a minimum, the following:

- (1) The requirements of Chapter 55A of the General Statutes related to conflicts of interest.
- (2) A requirement that before any immediate family, as defined in G.S. 115C-12.2, of any member of the board of directors or a charter school employee with supervisory authority shall be employed or engaged as an employee, independent contractor, or otherwise by the board of directors in any capacity, such proposed employment or engagement shall be (i) disclosed to the board of directors and (ii) approved by the board of directors in a duly called open-session meeting. The burden of disclosure of such a conflict of interest shall be on the applicable board member or employee with supervisory authority. If the requirements of this subsection are complied with, the charter school may employ immediate family of any member of the board of directors or a charter school employee with supervisory authority.
- (3) A requirement that a person shall not be disqualified from serving as a member of a charter school's board of directors because of the existence of a conflict of interest, so long as the person's actions comply with the school's conflict of interest policy established as provided in this subsection and applicable law.

(c) A charter school shall operate under the written charter signed by the State Board and the applicant. A charter school is not required to enter into any other contract. The charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) The board of directors of the private nonprofit corporation operating the charter school may have members who reside outside of the State. However, the State Board of Education may require by policy that a majority of the board of directors and all officers of the board of directors reside within the State."

**SECTION 6.(b)** G.S. 115C-47 is amended by adding a new subdivision to read:

"(17a) To adopt anti-nepotism policies. – Local boards of education shall adopt policies requiring that before any immediate family, as defined in G.S. 115C-12.2, of any board of education member or central office staff administrator, including directors, supervisors, specialists, staff officers, assistant superintendents, area superintendents, superintendents, or principals, shall be employed or engaged as an employee, independent contractor, or otherwise by the board of education in any capacity, such proposed employment or engagement shall be (i) disclosed to the board of education and (ii) approved by the board of education in a duly called open-session meeting. The burden of disclosure of such a conflict of interest shall be on the applicable board member or central office staff administrator."

**SECTION 6.(c)** This section becomes effective March 1, 2016.

**SECTION 7.** G.S. 115C-218.50 reads as rewritten:

**"§ 115C-218.50. Charter school nonsectarian.**

(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, except that a charter school may charge any fees that are charged by the local school administrative unit in which the charter school is located. operations. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(b) A charter school shall not charge tuition or fees except as follows:

- (1) A charter school may charge any fees that are charged by the local school administrative unit in which the charter school is located.
- (2) A charter school, upon approval by the board of directors of the charter school, may establish fees for extracurricular activities, except those fees

shall not exceed the fees for the same extracurricular activities charged by a local school administrative unit in which forty percent (40%) or more of the students enrolled in the charter school reside."

**SECTION 8.(a)** G.S. 115C-218.100(a) reads as rewritten:

"(a) Funds Reserved for Closure Proceedings. – A charter school ~~shall maintain, that has~~ elected to participate in the North Carolina Retirement System pursuant to G.S. 135-5.3 shall, for as long as the charter school continues to participate in the North Carolina Retirement System, maintain for the purposes of ensuring payment of expenses related to closure proceedings in the event of a voluntary or involuntary dissolution of the charter school, one or more of the options set forth in this subsection. The minimum aggregate value of the options chosen by the charter school shall be fifty thousand dollars (\$50,000). The State Board of Education shall not allocate any funds under G.S. 115C-218.105 to a charter school unless the school has provided documentation to the State Board that the charter school has met the requirements of this subsection. Permissible options to satisfy the requirements of this subsection include one or more of the following:

- (1) An escrow account.
- (2) A letter of credit.
- (3) A bond.
- (4) A deed of trust."

**SECTION 8.(b)** The State Board of Education shall study and develop a proposed policy regarding circumstances in which a charter school, approved by the State Board pursuant to G.S. 115C-218.5, should be subject to a minimum value requirement of fifty thousand dollars (\$50,000) for the purposes of ensuring payment of expenses related to closure proceedings. The State Board shall also consider whether certain charter schools should be provided with a total or partial waiver of such a requirement and shall examine criteria for potentially eligible charter schools, such as the years of operation of the charter school, proven compliance with finance, governance, academic requirements of its charter, State law, and State Board policy requirements, as well as appropriate documentation to show the charter school's financial health and sustainability.

**SECTION 8.(c)** By February 15, 2016, the State Board of Education shall report to the Joint Legislative Education Oversight Committee on the results of the study and a proposed policy as required by subsection (b) of this section, including any legislative recommendations.

**SECTION 8.(d)** If House Bill 97, 2015 Regular Session, becomes law, Section 8.28 of that bill is repealed.

**SECTION 8.(e)** This section is effective when it becomes law. Subsection (a) of this section applies to charter schools that submitted applications for an initial charter or the renewal of a charter to the State Board of Education on or after August 2, 2014.

**SECTION 9.(a)** By January 15, 2016, upon written recommendations made by the Charter Schools Advisory Board (Advisory Board), the State Board of Education shall amend the process and rules for replication of high-quality charter schools established in North Carolina State Board of Education Policy TCS-U-016 (Fast Track Replication of High Quality Charter Schools) to authorize consideration for fast-track replication of a charter application from a board of directors of a North Carolina nonprofit corporation who agrees to contract with an education management organization or charter management organization currently operating a charter school or schools in the State for at least a year, regardless of whether the board of directors has previously operated a charter school within the State. The State Board of Education shall report to the Joint Legislative Education Oversight Committee by February 15, 2016, on the amendment to the process and rules for charter school replication as required by this section.

**SECTION 9.(b)** By January 15, 2016, the Advisory Board shall study and make recommendations on a process for allocating allotments made pursuant to G.S. 115C-218.105 for schools which increase enrollment pursuant to G.S. 115C-218.5(f), as amended by this act, to the State Board of Education. The State Board of Education shall review the Advisory Board's recommendations and shall report to the Joint Legislative Education Oversight Committee by February 15, 2016, on recommendations for policy or legislation needed for that process.

**SECTION 9.(c)** By January 15, 2016, upon written recommendations made by the Advisory Board, the State Board of Education shall adopt a policy on the process for determining whether a school is in substantial compliance as required under

G.S. 115C-218.5(d)(3), (e), and (f) as amended by this act. The State Board of Education shall report to the Joint Legislative Education Oversight Committee by February 15, 2016, on the adoption of the policies required by this section.

**SECTION 9.(d)** By January 15, 2016, upon written recommendations made by the Advisory Board, the State Board of Education shall adopt a policy on the submission of certain proposed rules and other guidance related to charter schools for review by the Advisory Board and a requirement for the Advisory Board to provide recommendations to the State Board of Education on covered matters. The State Board of Education shall report to the Joint Legislative Education Oversight Committee by February 15, 2016, on the adoption of the policies required by this section.

**SECTION 10.(a)** G.S. 115C-112.6(c) reads as rewritten:

"(c) ~~Student Reevaluation.~~ Continuing Eligibility. – After an eligible student's initial receipt of a scholarship, the Authority shall ensure that the ~~student is reevaluated~~ student's continuing eligibility is assessed at least every three years by ~~the local educational agency in order to verify that the student continues to be a child with a disability.~~ one of the following:

- (1) The local educational agency. – The local school educational agency shall assess if the child continues to be a child with a disability and verify the outcome on a form to be provided to the Authority.
- (2) A licensed psychologist with a school psychology focus. – The psychologist shall assess, after review of appropriate medical and educational records, if the education and related services received by the student in the nonpublic school setting have improved the child's educational performance and if the student would continue to benefit from placement in the nonpublic school setting. The psychologist shall verify the outcome of the assessment on a form to be provided to the Authority."

**SECTION 10.(b)** G.S. 115C-112.9(2) reads as rewritten:

"(2) Provide ~~reevaluations~~ assessments for continuing eligibility to identified children with disabilities receiving scholarships as provided in Part 1H of this Article at the request of the parent or guardian to ensure compliance with G.S. 115C-112.6(c)."

**SECTION 10.(c)** This section is effective when it becomes law and applies to students required to be assessed on or after January 1, 2015.

**SECTION 11.** Sections 2, 3, 4, 5, and 7 of this act apply beginning with the 2015-2016 school year. Except as otherwise provided, the remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of September, 2015.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

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Pat McCrory  
Governor

Approved \_\_\_\_\_, m. this \_\_\_\_\_ day of \_\_\_\_\_, 2015