

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 379*
Committee Substitute Favorable 4/24/97

Short Title: Amend Charter Sch. Laws.

(Public)

Sponsors:

Referred to:

March 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS GOVERNING CHARTER SCHOOLS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 115C-238.29B is amended by adding the following new
5 subsection to read:

6 "(c1) Unless an applicant submits its application under subsection (c) of this section
7 to the local board of education of the local school administrative unit in which the charter
8 school will be located, the applicant shall submit a copy of its application to that local
9 board by November 10. The local board may offer any information or comment
10 concerning the application it considers appropriate to the chartering entity. The local
11 board shall deliver this information to the chartering entity no later than January 1 of the
12 next calendar year. The applicant shall not be required to obtain or deliver this
13 information to the chartering entity on behalf of the local board."

14 Section 2. Part 6A of Article 16 of Chapter 115C of the General Statutes is
15 amended by adding the following new section to read:

16 **"§ 115C-238.29C1. Criminal history checks.**

17 (a) As used in this section:

18 (1) 'Criminal history' means a county, state, or federal criminal history of
19 conviction of a crime, whether a misdemeanor or a felony, that indicates

1 an individual (i) poses a threat to the physical safety of students or
2 personnel, or (ii) has demonstrated that he or she does not have the
3 integrity or honesty to fulfill his or her duties as the operator of a charter
4 school. These crimes include the following North Carolina crimes
5 contained in any of the following Articles of Chapter 14 of the General
6 Statutes: Article 5A, Endangering Executive and Legislative Officers;
7 Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8,
8 Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious
9 Injury or Damage by Use of Explosive or Incendiary Device or
10 Material; Article 14, Burglary and Other Housebreakings; Article 15,
11 Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery;
12 Article 18, Embezzlement; Article 19, False Pretense and Cheats;
13 Article 19A, Obtaining Property or Services by False or Fraudulent Use
14 of Credit Device or Other Means; Article 20, Frauds; Article 21,
15 Forgery; Article 26, Offenses Against Public Morality and Decency;
16 Article 26A, Adult Establishments; Article 27, Prostitution; Article 28,
17 Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office;
18 Article 35, Offenses Against the Public Peace; Article 36A, Riots and
19 Civil Disorders; Article 39, Protection of Minors; and Article 60,
20 Computer-Related Crime. These crimes also include possession or sale
21 of drugs in violation of the North Carolina Controlled Substances Act,
22 Article 5 of Chapter 90 of the General Statutes, and alcohol-related
23 offenses such as sale to underage persons in violation of G.S. 18B-302
24 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-
25 138.5. In addition to the North Carolina crimes listed in this
26 subdivision, such crimes also include similar crimes under federal law
27 or under the laws of other states.

28 (2) 'School personnel' means any:

- 29 a. Member of the board of directors of a charter school,
30 b. Employee of a charter school, or
31 c. Independent contractor or employee of independent contractor of
32 a charter school if the independent contractor carries out duties
33 customarily performed by school personnel,
34 whether paid with federal, State, local, or other funds, who has
35 significant access to students or who has responsibility for the fiscal
36 management of a charter school.

37 (b) The State Board of Education shall adopt a policy on whether and under what
38 circumstances school personnel shall be required to be checked for a criminal history
39 after an application for a charter school has received preliminary approval under G.S.
40 115C-238.29C. The Board shall apply its policy uniformly in requiring school personnel
41 to be checked for a criminal history. The Board may grant conditional approval of an
42 application while the Board is checking a person's criminal history and making a decision
43 based on the results of the check.

1 The State Board shall not require school personnel to pay for the criminal history
2 check authorized under this section.

3 (c) The Board of Education shall require the person to be checked by the
4 Department of Justice to (i) be fingerprinted and to provide any additional information
5 required by the Department of Justice to a person designated by the State Board, or to the
6 local sheriff or the municipal police, whichever is more convenient for the person, and
7 (ii) sign a form consenting to the check of the criminal record and to the use of
8 fingerprints and other identifying information required by the repositories. The State
9 Board shall consider refusal to consent when deciding whether to grant final approval of
10 an application under G.S. 115C-238.29D and when making an employment
11 recommendation. The fingerprints of the individual shall be forwarded to the State
12 Bureau of Investigation for a search of the State criminal history record file, and the State
13 Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
14 Investigation for a national criminal record check. The Department of Justice shall
15 provide to the State Board of Education the criminal history from the State and National
16 Repositories of Criminal Histories of any school personnel for which the Board requires a
17 criminal history check.

18 The State Board shall not require school personnel to pay for being fingerprinted as
19 authorized under this section.

20 (d) The State Board shall review the criminal history it receives on an individual.
21 The State Board shall determine whether the results of the review indicate that the
22 individual (i) poses a threat to the physical safety of students or personnel, or (ii) has
23 demonstrated that he or she does not have the integrity or honesty to fulfill his or her
24 duties as school personnel and shall use the information when deciding whether to grant
25 final approval of an application for a charter school under G.S. 115C-238.29D and for
26 making an employment recommendation to the operator of a charter school. The State
27 Board shall make written findings with regard to how it used the information when
28 deciding whether to grant final approval under G.S. 115C-238.29D and when making an
29 employment recommendation.

30 (e) The State Board shall notify in writing the school's board of directors of the
31 determination by the State Board as to whether the school personnel is qualified to be
32 employed by a charter school based on the criminal history it receives on any person who
33 is or who is applying for employment as an employee or independent contractor of the
34 charter school. At the same time, the State Board shall provide to the board of directors
35 the written findings the Board makes in subsection (d) of this section and its employment
36 recommendation. If the State Board recommends dismissal or nonemployment of any
37 person, the operator of the charter school shall dismiss or refuse to employ that person.
38 In accordance with the law regulating the dissemination of the contents of the criminal
39 history file furnished by the Federal Bureau of Investigation, the State Board shall not
40 release nor disclose any portion of the school personnel's criminal history to the operator
41 of the charter school or to any member of its board of directors. The State Board also
42 shall notify the school personnel of the procedure for completing or challenging the

1 accuracy of the criminal history and personnel's right to contest the Board's determination
2 in court.

3 (f) All the information received by the State Board of Education or the operator of
4 a charter school in accordance with subsection (e) of this section through the checking of
5 the criminal history is privileged information and is not a public record but is for the
6 exclusive use of the State Board of Education. The State Board of Education may
7 destroy the information after it is used for the purposes authorized by this section after
8 one calendar year.

9 (g) There shall be no liability for negligence on the part of the State Board of
10 Education, or its employees, or the operator of the charter school or its employees, arising
11 from any act taken or omission by any of them in carrying out the provisions of this
12 section. The immunity established by this subsection shall not extend to gross
13 negligence, wanton conduct, or intentional wrongdoing that would otherwise be
14 actionable. The immunity established by this subsection shall be deemed to have been
15 waived to the extent of indemnification by insurance, indemnification under Articles 31A
16 and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is
17 waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the
18 General Statutes."

19 Section 3. G.S. 115C-238.29D(d) reads as rewritten:

20 "(d) The State Board of Education may grant a-the initial charter for a period not to
21 exceed five-10 years and may renew the charter upon the request of the chartering entity
22 for subsequent periods not to exceed five years each. If the State Board grants the initial
23 charter for a period greater than five years, the Board shall review the status of the charter
24 school five years after it grants the initial charter. A material revision of the provisions of
25 a charter application shall be made only upon the approval of the State Board of
26 Education. The State Board shall establish a policy to enable a charter school to increase
27 the number of students to be served in years following the initial year of a charter
28 school's operation in a manner that would not be considered a material revision of a
29 charter application and would not require the Board's approval."

30 Section 4. G.S. 115C-238.29E(a) reads as rewritten:

31 "(a) A charter school that is approved by the State shall be a public school within
32 the local school administrative unit in which it is located. It shall be accountable to the
33 local board of education-its chartering entity, or to the State Board if the chartering entity
34 denied preliminary approval, for purposes of ensuring compliance with applicable laws
35 and the provisions of its charter."

36 Section 5. G.S. 115C-238.29E(c) reads as rewritten:

37 "(c) A charter school shall operate under a written contract signed by the local board
38 of education-chartering entity, or by the State Board if the chartering entity denied
39 preliminary approval, and the applicant. The contract shall incorporate at a minimum the
40 information provided in the application, as modified during the charter approval process,
41 and any terms and conditions imposed on the charter school by the State Board of
42 Education.

1 If the local board of education does not sign the contract, the State Board may sign on
2 behalf of the local board."

3 Section 6. G.S. 115C-238.29E(e) reads as rewritten:

4 "(e) ~~A charter school shall be located in the local school administrative unit with which it~~
5 ~~signed the contract. Its~~ A charter school's specific location shall not be prescribed or
6 limited by a local board or other authority except a zoning authority. The school may
7 lease space from a local board of education, from a public or private nonsectarian
8 organization, education or as is otherwise lawful in the local school administrative unit in
9 which the charter school is located. At the request of the charter school, the local board
10 of education of the local school administrative unit in which the charter school will be
11 located shall lease any available building or land to the charter school unless the board
12 demonstrates that the lease is not economically or practically feasible or that the local
13 board does not have adequate classroom space to meet its enrollment needs. In the event
14 that a public school converts to a charter school, the local board of education of the local
15 school administrative unit in which the school is located shall lease to the charter school
16 the school facilities that have been used by that public school unless the board
17 demonstrates that the lease is not economically or practically feasible or that the local
18 board does not have adequate classroom space to meet its enrollment needs."

19 Section 7. G.S. 115C-238.29F(g) reads as rewritten:

20 "(g) Admission Requirements. –

- 21 (1) Any child who is qualified under the laws of this State for admission to
22 a public school is qualified for admission to a charter school.
- 23 (2) No local board of education shall require any student enrolled in the
24 local school administrative unit to attend a charter school.
- 25 (3) Admission to a charter school shall not be determined according to the
26 school attendance area in which a student resides, except that any local
27 school administrative unit in which a public school converts to a charter
28 school shall give admission preference to students who reside within the
29 former attendance area of that ~~school~~ school, and any private school that
30 becomes a charter school may give admission preference to former
31 students of that school during the first year of the charter school's
32 operation so long as admission is not limited to only those students.
- 33 (4) Admission to a charter school shall not be determined according to the
34 local school administrative unit in which a student resides, ~~except that~~
35 ~~the provisions of G.S. 115C-366(d) shall apply to a student who wishes~~
36 ~~to attend a charter school in a county other than the county in which the~~
37 ~~student resides.~~
- 38 (5) A charter school shall not discriminate against any student on the basis
39 of ethnicity, national origin, gender, or disability. Except as otherwise
40 provided by law or the mission of the school as set out in the contract,
41 the school shall not limit admission to students on the basis of
42 intellectual ability, measures of achievement or aptitude, athletic ability,
43 disability, race, creed, gender, national origin, religion, or ancestry.

1 However, so long as admission is not limited to only these children, the
2 school may give enrollment priority to the siblings of a pupil currently
3 enrolled in the charter school, the children of the employees of the
4 charter school, the children of the members of the school's board of
5 directors, and the children of the applicants for the charter school.

6 Within one year after the charter school begins operation, the population
7 of the school shall reasonably reflect the racial and ethnic composition
8 of the general population residing within the local school administrative
9 unit in which the school is located or the racial and ethnic composition
10 of the special population that the school seeks to serve residing within
11 the local school administrative unit in which the school is located. The
12 school shall be subject to any court-ordered desegregation plan in effect
13 for the local school administrative unit.

14 (6) The school shall enroll an eligible student who submits a timely
15 application, unless the number of applications exceeds the capacity of a
16 program, class, grade level, or building. In this case, students shall be
17 accepted by lot.

18 (7) Notwithstanding any law to the contrary, a charter school may refuse
19 admission to any student who has been expelled or suspended from a
20 public school under G.S. 115C-391 until the period of suspension or
21 expulsion has expired."

22 Section 8. G.S. 115C-238.29F(h) reads as rewritten:

23 "(h) ~~Transportation. – The charter school shall provide transportation for students~~
24 ~~enrolled at the school who reside in the local school administrative unit in which the~~
25 ~~school is located. The charter school may provide transportation for students enrolled at~~
26 ~~the school who reside in different local school administrative units.~~ school. The charter
27 school shall develop a transportation plan so that transportation is not a barrier to any
28 student who resides in the local school administrative unit in which the school is located.
29 The charter school is not required to provide transportation to any student who lives
30 within one and one-half miles of the school. The local board of the local school
31 administrative unit in which the charter school is located is encouraged to contract with
32 the charter school for the provision of transportation if the board operates a school bus
33 transportation system."

34 Section 9. G.S. 115C-238.29F(i) reads as rewritten:

35 "(i) Assets. – Upon dissolution of the charter school or upon the nonrenewal of the
36 charter, all net assets of the charter school purchased with public funds shall be deemed
37 the property of the local school administrative unit in which the charter school is
38 located."

39 Section 10. G.S. 115C-238.29H(a) reads as rewritten:

40 "(a) The State Board of Education shall allocate to each charter school (i) an
41 amount equal to the average per pupil allocation for average daily membership from the
42 local school administrative unit allotments in which the charter school is located for each
43 child attending the charter school except for the allocation for children with special needs

1 and (ii) an additional amount for each child attending the charter school who is a child
2 with special needs. In accordance with its policy adopted under G.S. 115C-238.29D(d),
3 the State Board shall allow for annual adjustments to the amount allocated to a charter
4 school based on its enrollment growth in school years subsequent to the initial year of
5 operation.

6 In the event a child with special needs leaves the charter school and enrolls in a public
7 school during the first 60 school days in the school year, the charter school shall return
8 the additional State funds allocated for that child to the State Board, and the State Board
9 shall reallocate those funds to the local school administrative unit in which the public
10 school is located.

11 Funds allocated by the State Board of Education shall not be used to purchase land or
12 buildings. may be used to enter into operational leases for real property or mobile
13 classroom units for use as school facilities for charter schools and may be used for
14 interest payments on loans to the charter school for facilities or equipment. However,
15 funds allocated by the State Board of Education shall not be used to obtain any other
16 interest in real property or mobile classroom units. As used in this subsection, the term
17 'operational leases' is defined according to generally accepted accounting principles. The
18 school may own land and buildings it ~~obtained~~ obtains through non-State sources."

19 Section 11. This act is effective when it becomes law.