



Public Schools of North Carolina
State Board of Education
Department of Public Instruction

Report to the North Carolina General Assembly

Update on Status of Various
Legislated Charter Schools Policy
Directives pursuant to S.L. 2015-248
(HB 334)

Date Due: February 15, 2016

Report # 38

DPI Chronological Schedule, 2014-2015

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June St. Clair Atkinson, Ed.D., State Superintendent

301 N. Wilmington Street :: Raleigh, North Carolina 27601-2825

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Report to Joint Legislative Education Oversight Committee (JLEOC) on Status of Various Legislated Charter Schools Policy Directives pursuant to SL 2015-248 ([HB 334](#))

This report provides the JLEOC with updates on the status of various legislated charter schools policy directives contained in S.L. 2015-248 (HB 334). The sections below document each directive and its associated reporting requirement, followed by an update on the status of each activity designed to meet its respective directive.

8(c). By February 15, 2016, SBE shall report to JLEOC on the results of the \$50,000 study and a proposed policy as required by subsection (b) of this section, including any legislative recommendations.

- ***The SBE adopted this policy during its February 2016 meeting (see attached – Study of Charter School Closure Funds and/or Appendix A).***

9.(a) By January 15, 2016, upon written recommendations made by the Charter Schools Advisory Board (CSAB), SBE shall amend the process and rules for replication of high-quality charter schools established in NC SBE 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. SBE shall report to the JLEOC by February 15, 2016, on the amendment to the process and rules for charter school replication as required by this section.

- ***The CSAB has made its recommendation to the SBE and the process is being amended. The SBE received the recommendations at its January 2016 meeting, and the policy is currently undergoing review and technical revision for clarity. The SBE will discuss the revised policy at its March 2016 meeting.***

9.(b) By January 15, 2016, CSAB 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 SBE. SBE shall review the CSAB recommendations and shall report to the JLEOC by February 15, 2016, on recommendations for policy or legislation needed for that process.

- ***The CSAB studied the process for allocating allotments during its November 17, 2015 meeting and recommended unanimously that no changes be made to the process.***

9.(c) By January 15, 2016, upon written recommendations made by the CSAB, SBE 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. SBE shall report to JLEOC by February 15, 2016, on the adoption of the policies required by this section.

- ***In November 2015, the CSAB recommended unanimously a definition of substantial compliance constructed with input from the Office of Charter Schools and State Board legal staff (see Appendix B). The CSAB will use this definition in reviewing request for renewals beginning in 2016.***

9.(d) By January 15, 2016, upon written recommendations made by CSAB, SBE shall adopt a policy on the submission of certain proposed rules and other guidance related to charter schools for review by CSAB and a requirement for CSAB to provide recommendations to SBE on covered matters. SBE shall report to JLEOC by February 15, 2016, on the adoption of the policies required by this section.

- ***The CSAB made a recommendation in November 2015 and the SBE adopted a policy at its January 2016 meeting (see attached [Policy on Charter Schools Policy Process](#) and/or Appendix C).***

Study of Charter School Closure Funds

This report provides the legislation related to the charter school requirement to maintain \$50,000 to cover costs in the event of the school closing, a review of the current processes and recommendations to modify the \$50,000 requirement.

Background

The requirement that charter schools maintain “closure funds” is established in *G.S. 115C-218.100 Dissolution of a charter school (as modified in SL 2015-248 [HB334])* which directs the following:

(a) Funds Reserved for Closure Proceedings

A charter school 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 (\$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.

The closure fund requirement G.S. 115C-218.100(a) applies only to charters that are members of the North Carolina Retirement System (TSERS) that submitted applications for one of the following:

- an initial charter on or after August 2, 2014
- a renewal of a charter on or after August 2, 2014.

Therefore, the first initial charters that this applied to are those charter schools that were approved as fast track charters opening in 2015-16 school year. The first renewals that this applied to, are those that are renewed starting in the 2016-17 school year.

Section 8.28 of Session Law 2015-248 (H334) requires the State Board of Education to study the closure fund statute and develop a proposed policy, as follows:

“The State Board of Education shall study and develop a proposed policy regarding circumstances in which a charter school, approved by the State Board, shall not be subject to the minimum value requirement of \$50,000 as required by G.S. 115C-218.100 for purposes of ensuring payment expenses related to closure proceedings.

The State Board shall consider providing certain charter schools with a total or partial waiver of the requirement and shall examine criteria such as the years of operation, proven compliance with finance governance, academic requirements of its charter, State law and State Board of Education policy requirements as well as appropriate documentation to show the charter school's financial health and sustainability.

The State Board shall report by February 15th, 2016, to the Joint Education Oversight Committee on the results of the study and a proposed policy, including legislative recommendations.”

NC Department of Public Instruction (NCDPI) Study of the Closure Fund Requirement

In determining which charter schools should be eligible for a waiver of the closure fund requirement, NCDPI's study considered the following key factors for charter schools:

- Years of operation
- Compliance with State and federal laws
- Compliance with State Board of Education policy
- Financial health and sustainability
- Other evaluations that are performed on charter schools as part of the decision to approve an initial charter and renewal of a charter
- New State legislation affecting charter schools and TSERS (such as S.L. 2015-168)

Recommendation

New Charter Schools

The State Board of Education recommends that new charter schools, which request participation in TSERS at the initial charter application or within the first year of operation, are required to provide \$50,000 closure funds at the time of the provisional entry in to TSERS.

Renewals

The State Board of Education recommends that charter schools, which participate in TSERS and are provided a charter renewal of 10 years or more, are waived from the \$50,000 closure funds requirement.

In the event that a charter school applies to participate in the TSERS after the initial year of operation, the \$50,000 closure funds requirement is waived.

Appendix: Charter Schools Law, Policy, and Procedure Considered as part of Study

I. Initial Charter

A. Legislation related to the initial charter

The State Board of Education may grant the initial charter for a period not to exceed 10 years.

In most cases the state Board of Education grants initial charters for 5 years.

B. Process related to the initial charter

The process to approve a charter is thorough involving; a comprehensive application submitted by the applicant; a review of the application by multiple independent reviewers; interviews with the CSAB members; and successful completion of training requirements during the planning year.

Even with this thorough vetting process, as with any new business, there are unforeseen factors and unanticipated events that can cause a school to perform poorly or fail.

Without the benefit of historical data to evaluate a charter school's performance at the initial charter approval time, it is difficult to determine the risk of closure or future failure or the appropriateness of a waiver of the closure funds.

C. New legislation affecting charter school entry in to TSERS

Session Law 215-168 changed the law allowing charter schools to become a participant of the TSERS. S.L. 2105-168 states:

A charter school seeking to become a participating employer in the Retirement System prior to the end of the initial year of operation shall be granted provisional entry into the Retirement System for one year. In the event the employee or employer contributions required under G.S. 135-8(f) are not received by the date set by the Board of Trustees, the Board of Trustees may revoke the charter school's provisional entry into the Retirement System. The Board must notify a charter school in writing not less than 90 days prior to revoking a charter school's provisional entry into the Retirement System. One year after the charter school was granted provisional entry into the Retirement System, the charter school shall undergo an actuarial and financial review as required by the Board of Trustees.

Therefore, charter schools may elect to participate in TSERS anytime within the first year of operation which puts the timing of requiring the closure funds out of synch with the charter approval. In this case, the closure funds would be required at the time of provisional entry in to TSERS.

II. Renewals

A. Legislation related to the renewal of a charter

G.S. 115C-218.5 states that the State Board of Education may 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 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 in compliance with State law, federal law, the schools own bylaws, or the provisions set forth in its charter granted by the State Board of Education.

B. Process related to the renewal

As part of the current renewal process, the Department of Public Instruction (DPI):

- Performs a five-year review and evaluation of the financial health of the charter school including short term and sustainability ratios and trends.
- Performs a five-year review of the average daily membership, noting the trends and volatility of the student body.
- Performs a three-year review of the academic performance of the charter school including the growth of the students and a comparison to the schools in the local education agency.
- Compiles a report of non-compliance issues is applicable, from finance, exceptional children, school nutrition and governance areas.
- Performs a site visit at the charter school.

The above information is provided to the Charter School Advisory Board (CSAB) for their consideration in recommending the renewal term to the State Board of Education. CSAB developed criteria as a guideline for the recommended term of the renewal. These are only guidelines and other factors may affect the recommendation. Following are those guidelines:

10-year renewal

- No Current Substantial Noncompliance Issues
- Financially sound audits last 3 years
- Academic outcomes have been comparable to the local school administrative unit the last 3 years or have exceeded growth last 3 years.

7-year renewal

- No Substantial Compliance Issues last 2 years
- Financially sound audits last 2 years
- Academic outcomes have been comparable to the local school administrative unit at least 2 of 3 years or have exceeded growth last 2 of 3 years.

3-year renewal (with stipulations)

- Compliance Issues more than 1 year creating a pattern
- Financially sound audits for at least 1 year of the last three
- Academic outcomes have been comparable to the local school administrative unit at least 1 year of the last 3 years or met growth 2 of 3 years.

No renewal

- Current and persistent pattern of compliance issues
- Financially unsound audits last 2 years
- Academic outcomes have not been comparable to the local school administrative unit in any of the last 2 years and the school has not met growth in the last two years.

Charter schools who are not provided a 10-year renewal based on their performance data, may be invited to the CSAB to present their school and answer questions from the members.

The recommendations from the CSAB are presented to the State Board of Education who may approve the recommendation, request the CSAB to reconsider, or override the CSAB recommendation. A difference between the CSAB recommendation and the State Board of Education decision is usually due to additional information coming to light between the CSAB recommendation and the final State Board of Education decision.

C. New legislation affecting charter school entry in to TSERS

Session Law 215-168 changed the law for charter schools who want to be a participant in to the TSERS after the first year of operation. S.L. 2105-168 (b4) states:

A charter school seeking to become a participating employer in the Retirement System after the end of the initial year of operation shall undergo an actuarial and financial review as required by the Board of Trustees prior to entry into the Retirement System.

The charter school will be required to pay an amount not to exceed \$2,500 for the actuarial review.

The financial review will be based on financial statements and independent audit reports held by the Local Government Commission or functionally equivalent financial statements and independent audit reports submitted to the Board of Trustees by the charter school. The Board of Trustees may grant final approval of the application if it finds the following:

- (1) The application meets the requirements set out in this Article.
- (2) All members of the board of directors of the charter school have signed a written statement acknowledging and accepting the estimate of the amount of the withdrawal liability that would be required under G.S. 135-8(i) to cease participation in the Retirement System after five years and the amount that would be required to cease participation after 10 years and the provisions of G.S. 135-8(i).
- (3) The charter school has not been identified as inadequate by the State Board of Education as provided in G.S. 115C-218.95(b).
- (4) The charter school's most recent audited financial statements and independent audit report demonstrate that it is financially sound and can meet the financial obligations of participation in the Retirement System.

Process for Determining Substantial Compliance of a Charter School for Renewals and Enrollment Increase and Grade Expansion

I. Determining “substantial compliance” pursuant to G.S. 115C-218.5(d)(3) and (e)(5).

(a) The process to determine whether a charter school is not in “substantial compliance” with state and federal laws, the school’s bylaws, or the charter school’s provisions, shall include input from the relevant Department of Public Instruction staff working with the school and the Charter School Advisory Board.

(b) The State Board of Education shall also consider whether the charter school has violated any of the following:

- (1) Any applicable state law including but not limited to:
 - a. Open Meetings Law;
 - b. Public Records Law;
 - c. Laws pertaining to the admission of students including the application, enrollment, lottery, suspension and expulsion practices;
 - d. Laws governing reporting requirements;
 - e. Health and safety laws and regulations;
 - f. Laws and regulations governing testing and accountability.
 - (2) Any applicable federal law or regulation, including, but not limited to:
 - a. Individuals with Disabilities Education Act (IDEA);
 - b. Section 504;
 - c. Americans with Disabilities Act (ADA);
 - d. Family Educational Rights and Privacy Act (FERPA);
 - e. Applicable provisions of the U.S. Constitution.
 - (3) Any and all applicable State Board of Education policies, the Charter, the school’s application and the school’s bylaws.
- (c) Based on the foregoing factors, the State Board of Education will determine whether, at the time of the request for renewal or enrollment increase, the charter school fails to comply with the essential law(s) and regulation(s) such that it:
- (1) Is failing to improve or sustain student learning;
 - (2) Is failing to provide parents and the community access to public education in accordance with the laws governing such access;
 - (3) Is subject to, or under consideration for, disciplinary action or sanctions by any regulatory agency;
 - (4) Is providing an unsafe environment for students, employees, or the public;
 - (5) Is not operating in a fiscally sound manner such that its ability to meet financial obligations is jeopardized; or
 - (6) Is not operating in an educationally sound manner such that the students’ opportunity to obtain a sound basic education is jeopardized; or

(7) Any combination of the above.

II. Determining Financial Compliance pursuant to G.S. 115C-218.5 (f)(3)

The process for determining whether a charter school is in “financial compliance” shall include input from the Chief Financial Officer of the Department of Public Instruction. In addition, the State Board of Education shall consider the following factors in determining financial compliance:

- (a) The existence or nonexistence of a current year budget deficit,
- (b) The stability of the school’s student membership,
- (c) The existence or nonexistence of delinquent debt,
- (d) Any material weakness(es) identified in the audited financial statements,
- (e) Placement on financial noncompliance ,
- (f) Compliance with student accounting policies and Uniform Education Reporting System (UERS),
- (g) Any sanctions or warning issued by other financial regulatory agencies,
- (h) Any other factor deemed relevant by the State Board of Education.

Policy on Charter Schools Policy Process**TCS-U-019**

- (a) It is the intent of the State Board of Education to consult, where practical, with the Charter School Advisory Board (CSAB) on matters related to charter schools. The CSAB shall provide policy recommendations to the State Board of Education (SBE) as directed or requested by the SBE. The CSAB shall make recommendations regarding the adoption of SBE policies in the following areas:
- (1) Charter school applications and recommendations for approval or denial;
 - (2) Requirements and standards for reviewing initial applications and renewal applications;
 - (3) Provisions of the Charter;
 - (4) Standards for monitoring and overseeing charter school operations;
 - (5) Process for terminating, revoking or non-renewing charter schools; and
 - (6) Any other areas assigned or requested by the SBE.
- (b) Absent a specified need to expedite the adoption of a recommended policy all policy recommendations will be submitted to the SBE for discussion one month, open for public input for 30 days and shall be considered for action at the next SBE meeting. All policies recommended by the CSAB shall be subject to the SBE's policy review process.
- (c) Nothing herein shall preclude the SBE from adopting rules or policies or taking any other action consistent with its obligation under the NC Constitution to supervise and maintain the system of free public schools.
- (d) Nothing herein shall preclude the SBE from taking any action consistent with its statutory authority under G.S. 115C-218 *et seq.* to approve charter applications to grant charters, to oversee and monitor charter schools and to revoke charters when necessary or appropriate.