

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 731
HOUSE BILL 955

AN ACT TO INCREASE EDUCATIONAL OPPORTUNITY BY AUTHORIZING
THE CREATION AND FUNDING OF CHARTER SCHOOLS, WHICH ARE
DEREGULATED SCHOOLS UNDER PUBLIC CONTROL.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the "Charter Schools Act of 1996".

Sec. 2. Article 16 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 6A. Charter Schools.

"§ 115C-238.29A. Purpose.

The purpose of this Part 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 Part accountable for meeting measurable student achievement results, and provide the schools with a method to change from rule-based to performance-based accountability systems.

"§ 115C-238.29B. Eligible applicants; contents of applications; submission of applications for approval.

(a) Any person, group of persons, or nonprofit corporation seeking to establish a charter school within a local school administrative unit may apply to establish a charter school on behalf of a private nonprofit corporation. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the

school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.

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

- (1) A description of a program that implements one or more of the purposes in G.S. 115C-238.29A.
- (2) A description of student achievement goals for the school's educational program and the method of demonstrating that students have attained the skills and knowledge specified for those student achievement goals.
- (3) The governance structure of the school including the process to be followed by the school to ensure parental involvement.
- (4) Admission policies and procedures.
- (5) A proposed budget for the school and evidence that the plan for the school is economically sound.
- (6) Requirements and procedures for program and financial audits.
- (7) A description of how the school will comply with G.S. 115C-238.29F.
- (8) Types and amounts of insurance coverage, including bonding insurance for the principal officers of the school, to be obtained by the charter school.
- (9) The term of the contract.
- (10) The qualifications required for individuals employed by the school.
- (11) The procedures by which students can be excluded from the charter school and returned to a public school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.
- (12) The number of students to be served, which number shall be at least 65, 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 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.
- (13) Information regarding the facilities to be used by the school and the manner in which administrative services of the school are to be provided.
- (14) A description of whether the school will operate independently of the local board of education or whether it agrees to be subject to some supervision and control of its administrative operations by the local board of education. In the event the charter school elects to operate independently of the local board of education, the application must specify which employee benefits will be offered to its employees and how the benefits will be funded.

(c) An applicant shall submit the application to a chartering entity for preliminary approval. A chartering entity may be:

- (1) The local board of education of the local school administrative unit in which the charter school will be located;
- (2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or
- (3) The State Board of Education.

Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school.

"§ 115C-238.29C. Preliminary approval of applications for charter schools.

(a) The chartering entity that receives a request for preliminary approval of a charter school shall act on each request received prior to November 1 of a calendar year by February 1 of the next calendar year.

(b) The chartering entity shall give preliminary approval to the application if the chartering entity determines that (i) information contained in the application meets the requirements set out in this Part or adopted by the State Board of Education, (ii) the applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner, and (iii) granting the application would improve student learning and would achieve one of the other purposes set out in G.S. 115C-238.29A. In reviewing applications for the establishment of charter schools within a local school administrative unit, the chartering entity 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. If the chartering entity approves more than one application for charter schools located in a local school administrative unit, the chartering entity may state its order of preference among the applications that it approves.

(c) If a chartering entity other than the State Board disapproves an application, the applicant may appeal to the State Board of Education prior to February 15. The State Board shall consider the appeal at the same time it is considering final approval in accordance with G.S. 115C-238.29D. The State Board shall give preliminary approval of the application if it finds that the chartering entity acted in an arbitrary or capricious manner in disapproving the application, failed to consider appropriately the application, or failed to act within the time set out in G.S. 115C-238.29C.

If the chartering entity, the State Board of Education, or both, disapprove an application, the applicant may modify the application and reapply subject to the application deadline contained in subsection (a) of this section.

"§ 115C-238.29D. Final approval of applications for charter schools.

(a) The State Board shall grant final approval of an application if it finds that the application meets the requirements set out in this Part or adopted by the State Board of Education and that granting the application would achieve one or more of the purposes set out in G.S. 115C-238.29A. The State Board shall act by March 15 of a calendar year on all applications and appeals it receives prior to February 15 of that calendar year.

(b) The State Board shall authorize no more than five charter schools per year in one local school administrative unit. The State Board shall authorize no more than 100 charter schools statewide. If more than five charter schools in one local school administrative unit or more than 100 schools statewide meet the standards for final approval, the State Board shall give priority to applications that are most likely to further State education policies and to strengthen the educational program offered in the local school administrative units in which they are located.

(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 a charter for a period not to exceed five years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed five years each. A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education.

"§ 115C-238.29E. 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. It shall be accountable to the local board of education for purposes of ensuring compliance with applicable laws and the provisions of its charter.

(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.

(c) A charter school shall operate under a written contract signed by the local board of education and the applicant. The contract shall incorporate at a minimum 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.

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

(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) A charter school shall be located in the local school administrative unit with which it signed the contract. Its specific location shall not be prescribed or limited by a local board or other authority except a zoning authority. The school may lease space from a local board of education, from a public or private nonsectarian organization, or as is otherwise lawful in the local school administrative unit in which the charter school is located.

(f) Except as provided in this Part and pursuant to the provisions of its contract, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.

"§ 115C-238.29F. General requirements.

(a) Health and Safety Standards. – A charter school shall meet the same health and safety requirements required of a local school administrative unit.

(b) School Nonsectarian. – A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. –

(1) The board of directors of a charter school may sue and be sued. The board of directors shall obtain at least the amount of and types of insurance required by the contract.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school. In the event a charter school has not elected total independence from the local board of education under subsection (e) of this section, the immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(d) Instructional Program. –

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the contract with the local board of education.

(3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes; except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its contract.

(e) Employees. –

(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these

teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

- (2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.
- (3) If a teacher employed by a local school administrative unit makes a written request for an extended leave of absence to teach at a charter school, the local school administrative unit shall grant the leave. The local school administrative unit shall grant a leave for any number of years requested by the teacher, shall extend the leave for any number of years requested by the teacher, and shall extend the leave at the teacher's request. The local school administrative unit may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. A teacher who has career status under G.S. 115C-325 prior to receiving an extended leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).
- (4) In the event a charter school, in its application, elects total independence from the local board of education, its employees shall not be deemed to be employees of the local school administrative unit and shall not be entitled to any State-funded employee benefits, including membership in the North Carolina Teachers' and State Employees' Retirement System or the Teachers' and State Employees' Comprehensive Major Medical Plan. In the event a charter school, in its application, agrees to be subject to some supervision and control of its administrative operations by the local board of education, the employees of the charter school will be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The Board of Trustees of the Teachers' and State Employees' Retirement System, in consultation with the State Board of Education, shall determine the degree of supervision and control necessary to qualify the employees of the applicant for membership in the Retirement System. In no event

shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. –

- (1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the State Board of Education for charter schools.
- (2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.
- (3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. –

- (1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.
- (2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.
- (3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.
- (4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides, except that the provisions of G.S. 115C-366(d) shall apply to a student who wishes to attend a charter school in a county other than the county in which the student resides.
- (5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the contract, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. Within one year after the charter school begins operation, the population of the school shall 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.

- (6) The school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students shall be accepted by lot.
- (7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) Transportation. – The charter school shall provide transportation for students enrolled at the school who reside in the local school administrative unit in which the school is located. The charter school may provide transportation for students enrolled at the school who reside in different local school administrative units.

(i) Assets. – Upon dissolution of the charter school or upon the nonrenewal of the charter, all assets of the charter school shall be deemed the property of the local school administrative unit in which the charter school is located.

"§ 115C-238.29G. Causes for nonrenewal or termination.

The State Board of Education, or a chartering entity subject to the approval of the State Board of Education, may terminate or not renew a contract upon any of the following grounds:

- (1) Failure to meet the requirements for student performance contained in the contract;
- (2) Failure to meet generally accepted standards of fiscal management;
- (3) Violations of law;
- (4) Material violation of any of the conditions, standards, or procedures set forth in the contract;
- (5) Two-thirds of the faculty and instructional support personnel at the school request that the contract be terminated or not renewed; or
- (6) Other good cause identified.

The State Board of Education shall develop and implement a process to address contractual and other grievances between a charter school and its chartering entity during the time of its charter.

"§ 115C-238.29H. State and local funds for a charter school.

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

Funds allocated by the State Board of Education shall not be used to purchase land or buildings. The school may own land and buildings it obtained through non-State sources.

(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per

pupil local current expense appropriation to the local school administrative unit for the fiscal year.

"§ 115C-238.29I. Notice of the charter school process; review of charter schools; Charter School Advisory Committee.

(a) The State Board of Education shall distribute information announcing the availability of the charter school process described in this Part to each local school administrative unit and public postsecondary educational institution and, through press releases, to each major newspaper in the State.

(b) The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations the following information:

- (1) The current and projected impact of charter schools on the delivery of services by the public schools;
- (2) Student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation; and
- (3) Best practices resulting from charter school operations.

The State Board of Education shall base its report in part upon the annual reports submitted by the charter schools under G.S. 115C-238.29F(f)(3). To the extent possible, the State Board of Education shall present the information in disaggregated form relative to the race, gender, grade level, and economic condition of the students.

(c) The State Board of Education shall review the educational effectiveness of the charter school approach authorized under this Part and the effect of charter schools on the public schools in the local school administrative unit in which the charter schools are located and, not later than January 1, 1999, shall report to the Joint Legislative Education Oversight Committee with recommendations to modify, expand, or terminate that approach. Analysis of the reports submitted under subsection (b) of this section shall be the predominant factor in determining whether the number of charter schools shall be increased and the conditions under which any increase or continued operation shall be allowed. If the analysis indicates demonstrable, substantial success, the General Assembly shall consider expanding the number of charter schools that may be established.

(d) The State Board of Education may establish a Charter School Advisory Committee to assist with the implementation of this Part. The Charter School Advisory Committee may (i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a contract, (v) make recommendations concerning grievances between a charter school and its chartering entity, (vi) assist with the review under subsection (c) of this section, and (vii) provide any other assistance as may be required by the State Board.

"§ 115C-238.29J. Public and private assistance to charter schools.

(a) Local boards of education are authorized and encouraged to provide administrative and evaluative support to charter schools located within their local school administrative units and to contract with those charter schools to provide student transportation.

(b) Private persons and organizations are encouraged to provide funding and other assistance to the establishment or operation of charter schools.

(c) The State Board of Education shall direct the Department of Public Instruction to provide guidance and technical assistance, upon request, to applicants and potential applicants for charters."

Sec. 3. G.S. 135-40.1(6) reads as rewritten:

"(6) Employing Unit. – A North Carolina School System; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean a charter school in accordance with Part 6A of Chapter 115C of the General Statutes whose employees are deemed to be public employees and members of a State-Supported Retirement System."

Sec. 4. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act. In addition, all charters granted and all contracts entered into under this act are subject to any future appropriations and subsequent legislative changes.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives