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HOUSE BILL 438

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

W. C. "Dub" Williams

AN ACT

**RELATING TO EDUCATION; AMENDING THE 1999 CHARTER SCHOOLS ACT
TO PROVIDE FOR ACCOUNTABILITY TO LOCAL SCHOOL BOARDS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 22-8B-3 NMSA 1978 (being Laws 1999,
Chapter 281, Section 3) is amended to read:**

**"22-8B-3. PURPOSE. -- The 1999 Charter Schools Act is
enacted to enable individual schools to restructure their
educational curriculum to encourage the use of different and
innovative teaching methods that are based on reliable
research and effective practices or have been replicated
successfully in schools with diverse characteristics; to allow
the development of different and innovative forms of measuring
student learning and achievement; to address the needs of all
students, including those determined to be at risk; to create**

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1 new professional opportunities for teachers, including the
2 opportunity to be responsible for the learning program at the
3 school site; to improve student achievement; to provide
4 parents and students with an educational alternative to create
5 new, innovative and more flexible ways of educating children
6 within the public school system; to encourage parental and
7 community involvement in the public school system; to develop
8 and use site-based budgeting; and to hold charter schools
9 accountable to the local school board for meeting state board
10 and school district minimum educational standards and fiscal
11 requirements. "

12 Section 2. Section 22-8B-4 NMSA 1978 (being Laws 1999,
13 Chapter 281, Section 4, as amended) is amended to read:

14 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
15 OPERATION. --

16 A. A charter school shall be subject to all
17 federal and state laws and constitutional provisions
18 prohibiting discrimination on the basis of disability, race,
19 creed, color, gender, national origin, religion, ancestry or
20 need for special education services.

21 B. A charter school shall be administered and
22 governed by a governing body in the manner set forth in the
23 charter; provided that the governing body shall be accountable
24 to the local school board.

25 C. A charter school shall be responsible for its

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1 own operation, including preparation of a budget, contracting
2 for services and personnel matters, subject to final approval
3 of the local school board.

4 D. With the approval of the local school board, a
5 charter school may [~~negotiate or~~] contract with a [~~local~~]
6 school district, a university or college or any third party
7 for the use of a facility, its operation and maintenance and
8 the provision of any service or activity that the charter
9 school is required to perform in order to carry out the
10 educational program described in its charter.

11 E. In no event shall a charter school be required
12 to pay rent for space that is deemed available, as negotiated
13 by contract, in school district facilities; provided that the
14 facilities can be made available at no cost to the district.
15 All costs for the operation and maintenance of the facilities
16 used by the charter school shall be subject to negotiation
17 between the charter school and the district.

18 F. A charter school shall negotiate with a [~~local~~]
19 school district to provide transportation to students eligible
20 for transportation under the provisions of the Public School
21 Code. The [~~local~~] school district, in conjunction with the
22 charter school, may establish a limit for student
23 transportation to and from the charter school site not to
24 extend beyond the [~~local~~] school district boundary.

25 [~~G. A charter school may negotiate with a local~~

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1 ~~school district for capital expenditures.~~

2 ~~H.-]~~ G. A charter school shall be a nonsectarian,
3 nonreligious and non-home-based public school that operates
4 within a [~~public~~] school district.

5 ~~[I.-]~~ H. Except as otherwise provided in the Public
6 School Code, a charter school shall not charge tuition or have
7 admission requirements.

8 ~~[J.-]~~ I. A charter school shall be subject to the
9 provisions of Sections 22-1-6 and 22-2-8 NMSA 1978.

10 ~~[K.-]~~ J. A charter school may acquire, pledge and
11 dispose of property; provided that, upon termination of the
12 charter, all assets of the charter school shall revert to the
13 local school board that authorized the charter.

14 ~~[L.-]~~ K. A charter school may accept or reject any
15 charitable gift, grant, devise or bequest; provided that no
16 such gift, grant, devise or bequest shall be accepted if
17 subject to any condition contrary to law or to the terms of
18 the charter. The particular gift, grant, devise or bequest
19 shall be considered an asset of the charter school to which it
20 is given.

21 ~~[M.-]~~ L. With the approval of the local school
22 board, a charter school may contract and sue and be sued. [~~A~~
23 ~~local school board that approves a charter school shall not be~~
24 ~~liable for any acts or omissions of the charter school.~~

25 ~~N.-]~~ M. A charter school shall comply with all

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1 state and federal health and safety requirements applicable to
2 public schools. "

3 Section 3. Section 22-8B-5 NMSA 1978 (being Laws 1999,
4 Chapter 281, Section 5) is amended to read:

5 "22-8B-5. CHARTER SCHOOLS--LOCAL SCHOOL BOARD
6 AUTHORITY--STATE BOARD AUTHORITY.--

7 A. The local school board may waive only locally
8 imposed school district requirements.

9 B. The state board shall waive requirements
10 relating to individual class load and teaching load, length of
11 the school day, staffing patterns, subject areas and the
12 purchase of instructional material. The state board may waive
13 state board requirements or rules and provisions of the Public
14 School Code pertaining to graduation requirements, evaluation
15 standards for school personnel, school principal duties and
16 driver education. Any waivers granted pursuant to this
17 section shall be for the term of the charter granted.

18 C. A charter school shall be a public school,
19 accredited by the state board and shall be accountable to the
20 school district's local school board for purposes of ensuring
21 compliance with applicable laws, rules and charter provisions.

22 D. No local school board shall require any
23 employee of the school district to be employed in a charter
24 school.

25 E. No local school board shall require any student

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1 residing within the geographic boundary of its district to
2 enroll in a charter school.

3 F. A student who is suspended or expelled from a
4 charter school shall be deemed to be suspended or expelled
5 from the school district in which the [~~student resides~~]
6 charter school is located. "

7 Section 4. Section 22-8B-7 NMSA 1978 (being Laws 1999,
8 Chapter 281, Section 7) is amended to read:

9 "22-8B-7. CHARTER SCHOOL APPLICATION APPEAL--
10 PROCEDURES. --

11 A. The state board, upon receipt of a notice of
12 appeal or upon its own motion, shall review decisions of any
13 local school board concerning charter schools in accordance
14 with the provisions of this section.

15 B. A charter applicant or governing body of a
16 charter school that wishes to appeal a decision of a local
17 school board concerning the denial, nonrenewal or revocation
18 of a charter school or the imposition of conditions that are
19 unacceptable to the charter school or charter school applicant
20 shall provide the state board with a notice of appeal within
21 thirty days after the local school board's decision. The
22 charter school applicant or governing body of the charter
23 school bringing the appeal shall limit the grounds of the
24 appeal to the grounds for denial, nonrenewal or revocation
25 specified by the local school board. The notice shall include

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1 a brief statement of the reasons the charter school applicant
2 contends the local school board's decision was in error. The
3 appeal and review process shall be as follows:

4 (1) within sixty days after receipt of the
5 notice of appeal, the state board, at a public hearing that
6 may be held in the school district in which the proposed
7 charter school has applied for a charter, shall review the
8 decision of the local school board and make its findings. [~~If~~
9 ~~the state board finds that the local school board's decision~~
10 ~~was contrary to the best interests of the students, school~~
11 ~~district or community]~~ The state board shall remand the
12 decision to the local school board with written instructions
13 for [approval of the charter. The instructions shall include
14 specific recommendations concerning approval of the charter.
15 The decision of the state board shall be final and not subject
16 to appeal] a rehearing if the state board finds:

17 (a) the local school board acted
18 fraudulently, arbitrarily or capriciously;

19 (b) based upon the whole record on
20 review, the decision of the local school board was not
21 supported by substantial evidence;

22 (c) the action of the local school
23 board was outside of its scope of authority; or

24 (d) the action of the local school
25 board was otherwise not in accordance with law; and

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1 (2) within thirty days following the remand
2 of a decision by the state board, the local school board, at a
3 public hearing, shall ~~[approve the charter]~~ consider the state
4 board's findings.

5 C. The state board, on its own motion, may review
6 a local school board's decision to grant a charter. Within
7 sixty days after the making of a motion to review by the state
8 board, the board, at a public hearing that may be held in the
9 district in which the proposed charter school has applied for
10 a charter, shall review the decision of the local school board
11 and determine whether the decision was arbitrary and
12 capricious or whether the establishment or operation of the
13 proposed charter school would:

14 (1) violate any federal or state laws
15 concerning civil rights;

16 (2) violate any court order;

17 (3) threaten the health and safety of
18 students within the school district; or

19 (4) violate the provisions of Section ~~[11 of~~
20 ~~the 1999 Charter Schools Act]~~ 22-8B-11 NMSA 1978, prescribing
21 the permissible number of charter schools.

22 D. If the state board determines that the charter
23 would violate the provisions set forth in Subsection C of this
24 section, the state board shall remand the decision to the
25 local school board with instructions to deny the charter

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1 application. The state board may extend the time lines
2 established in this section for good cause. [~~The decision of~~
3 ~~the state board shall be final and not subject to appeal.~~]"

4 Section 5. Section 22-8B-8 NMSA 1978 (being Laws 1999,
5 Chapter 281, Section 8) is amended to read:

6 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
7 school application, whether for a start-up school or a
8 conversion school, shall be a proposed agreement between the
9 local school board and the charter school and shall include:

- 10 A. the mission statement of the charter school;
- 11 B. the goals, objectives and student performance
12 standards to be achieved by the charter school;
- 13 C. a description of the charter school's
14 educational program, student performance standards and
15 curriculum that must meet or exceed the state [~~board of~~
16 ~~education's~~] board's educational standards and must be
17 designed to enable each student to achieve those standards;
- 18 D. a description of the way a charter school's
19 educational program will meet the individual needs of the
20 students, including those students determined to be at risk;
- 21 E. a description of the charter school's plan for
22 evaluating student performance, the types of assessments that
23 will be used to measure student progress toward achievement of
24 the state's standards and the school's student performance
25 standards, the time line for achievement of the standards and

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1 the procedures for taking corrective action in the event that
2 student performance falls below the standards;

3 F. evidence that the plan for the charter school
4 is economically sound, including a proposed budget for the
5 term of the charter and a description of the manner in which
6 the annual audit of the financial and administrative
7 operations of the charter school is to be conducted;

8 G. evidence that the fiscal management of the
9 charter school complies with all applicable federal and state
10 laws and regulations relative to fiscal procedures;

11 H. evidence of a plan for the displacement of
12 students, teachers and other employees who will not attend or
13 be employed in the conversion school;

14 I. a description of the governing body and
15 operation of the charter school, including how the governing
16 body will be selected, the nature and extent of parental,
17 professional educator and community involvement in the
18 governance and operation of the school and the relationship
19 between the governing body and the local school board;

20 J. an explanation of the relationship that will
21 exist between the proposed charter school and its employees,
22 including evidence that the terms and conditions of employment
23 will be addressed with affected employees and their recognized
24 representatives, if any; provided that the relationship shall
25 be consistent with the policy of the school district;

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1 K. the employment and student discipline policies
2 of the proposed charter school; provided that the policies
3 shall be consistent with those of the school district;

4 [~~L.~~] ~~an agreement between the charter school and~~
5 ~~the local school board regarding their respective legal~~
6 ~~liability and applicable insurance coverage;~~

7 ~~M.]~~ L. a description of how the charter school
8 plans to meet the transportation and food service needs of its
9 students;

10 [~~N.]~~ M a description of the waivers that the
11 charter school is requesting from the local school board and
12 the state board and the charter school's plan for addressing
13 these waiver requests;

14 [~~O.]~~ N. a description of the facilities the
15 charter school plans to use; and

16 [~~P.]~~ O. any other information reasonably required
17 by the local school board. "

18 Section 6. Section 22-8B-9 NMSA 1978 (being Laws 1999,
19 Chapter 281, Section 9) is amended to read:

20 "22-8B-9. CHARTER SCHOOL-- [~~CONTRACT~~] CHARTER CONTENTS--
21 RULES. --

22 A. An approved charter [~~application shall be a~~
23 ~~contract~~] shall describe the relationship between the charter
24 school and the local school board.

25 B. The [~~contract between the charter school and~~

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1 ~~the local school board~~ charter shall reflect all agreements
2 regarding the release of the charter school from school
3 district policies.

4 C. The [~~contract between the charter school and~~
5 ~~the local school board~~] charter shall reflect all requests for
6 release of the charter school from state board rules or the
7 Public School Code. Within ten days after the [~~contract~~]
8 charter is approved by the local school board, any request for
9 release from state board rules or the Public School Code shall
10 be delivered by the local school board to the state board. If
11 the state board grants the request, it shall notify the local
12 school board and the charter school of its decision. If the
13 state board denies the request, it shall notify the local
14 school board and the charter school that the request is denied
15 and specify the reasons for denial.

16 D. Upon approval of the charter by the local
17 school board, the charter school shall be waived from the
18 Public School Code provisions relating to individual class
19 load and teaching load requirements, length of school day,
20 staffing patterns, subject areas and purchase of instructional
21 materials.

22 E. The charter school shall participate in the
23 public school insurance authority unless the charter school is
24 located within a school district with a student enrollment in
25 excess of sixty thousand students.

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1 F. Any revision or amendment to the terms of the
2 [~~contract~~] charter may be made only with the approval of the
3 local school board [~~and the governing body of the charter~~
4 ~~school~~].

5 G. The charter shall include procedures [~~agreed~~
6 ~~upon by the charter school and the local school board~~] for the
7 resolution of disputes between the [~~charter school and the~~
8 ~~local school board~~] governing body and the school district
9 administration.

10 H. The charter shall include procedures that shall
11 be agreed upon by the charter school and the local school
12 board in the event that [~~such~~] the board determines that the
13 charter shall be revoked pursuant to the provisions of Section
14 [~~12 of the 1999 Charter Schools Act~~] 22-8B-12 NMSA 1978. "

15 Section 7. Section 22-8B-10 NMSA 1978 (being Laws 1999,
16 Chapter 281, Section 10) is amended to read:

17 "22-8B-10. CHARTER SCHOOLS-- [~~EMPLOYEE OPTIONS~~] HIRING
18 AND FIRING.--

19 A. Notwithstanding the provisions of Section
20 22-5-4 NMSA 1978, a charter school shall hire its own
21 employees, [~~The provisions of the School Personnel Act shall~~
22 ~~otherwise apply to such employees~~] who shall be deemed to be
23 employees of the school district and subject to the provisions
24 of the School Personnel Act.

25 [~~B. An employee of a conversion school who was~~

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1 ~~previously an employee of the school district in which the~~
2 ~~conversion school is located shall be considered to be on a~~
3 ~~one-year leave of absence from the school district. The leave~~
4 ~~of absence shall commence on the initial date of employment~~
5 ~~for the charter school. Upon request of the employee, the~~
6 ~~one-year leave of absence shall be renewed for up to two~~
7 ~~additional one-year periods, absent good cause.~~

8 C. ~~The time during which an employee is on a leave~~
9 ~~of absence shall be counted for longevity credit on the school~~
10 ~~district's salary schedule.~~

11 D. ~~During the period of time that an employee is~~
12 ~~on a leave of absence from the school district and is actively~~
13 ~~employed by the charter school, the charter school shall~~
14 ~~continue the retirement or other benefits previously granted~~
15 ~~to the employee.~~

16 E. ~~A leave of absence shall not be considered a~~
17 ~~break in service with the school district with which an~~
18 ~~employee was previously employed.~~

19 F. ~~An employee who is on a leave of absence and~~
20 ~~actively teaching at a charter school and who submits a notice~~
21 ~~of intent to return to the school district in which the~~
22 ~~employee was employed immediately prior to employment in the~~
23 ~~charter school shall be given employment preference by the~~
24 ~~school district if:~~

25 (1) ~~the employee's notice of intent to return~~

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1 ~~is submitted to the school district within three years after~~
2 ~~ceasing employment with the school district; and~~

3 ~~(2) if the employee is a teacher, a position~~
4 ~~for which the teacher is certified or is qualified to become~~
5 ~~certified is available. If the employee is not a teacher, a~~
6 ~~position for which the employee is qualified is available.~~

7 ~~G.]~~ B. An employee who is [~~on leave of absence~~
8 ~~and]~~ employed by a charter school and is discharged or
9 terminated for just cause by the charter school shall be
10 considered discharged or terminated by the school district,
11 subject to the provisions of the School Personnel Act."

12 Section 8. Section 22-8B-11 NMSA 1978 (being Laws 1999,
13 Chapter 281, Section 11) is amended to read:

14 "22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER
15 ESTABLISHED.--

16 A. Local school boards shall authorize the
17 approval of both conversion and start-up charter schools
18 within their school districts.

19 B. No more than fifteen start-up schools and five
20 conversion schools may be established per year statewide. The
21 number of charter school slots remaining in that year shall be
22 transferred to succeeding years up to a maximum of seventy-
23 five start-up schools and twenty-five conversion schools in
24 any five-year period. The state board shall promptly notify
25 the local school board of each school district when the limits

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1 set forth in this section have been reached.

2 C. The total number of students enrolled in
3 charter schools in a school district shall not exceed more
4 than two percent of the total enrollment in the district."

5 Section 9. Section 22-8B-12 NMSA 1978 (being Laws 1999,
6 Chapter 281, Section 12) is amended to read:

7 "22-8B-12. CHARTER SCHOOLS--TERM-RENEWAL OF CHARTER--
8 GROUNDS FOR NONRENEWAL OR REVOCATION.--

9 A. A charter school may be approved for an initial
10 term of five years. A charter may be renewed for successive
11 periods of five years each. Approvals of less than five years
12 can be [~~agreed to between the charter school and~~] given at the
13 discretion of the local school board.

14 B. No later than January 1 of the year prior to
15 the year in which the charter expires, the governing body of a
16 charter school may submit a renewal application to the local
17 school board. The local school board shall rule in a public
18 hearing on the renewal application no later than March 1 of
19 the year in which the charter expires, or on a mutually agreed
20 date.

21 C. A charter school renewal application submitted
22 to the local school board shall contain:

23 (1) a report on the progress of the charter
24 school in achieving the goals, objectives, student performance
25 standards, state board minimum educational standards and other

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1 terms of the initial approved charter application, including
2 the accountability requirements set forth in Section 22-1-6
3 NMSA 1978;

4 (2) a financial statement that discloses the
5 costs of administration, instruction and other spending
6 categories for the charter school that is understandable to
7 the general public, that will allow comparison of costs to
8 other schools or comparable organizations and that is in a
9 format required by the state board;

10 (3) contents of the charter application set
11 forth in Section [~~8 of the 1999 Charter Schools Act~~] 22-8B-8
12 NMSA 1978;

13 (4) a petition in support of the charter
14 school renewing its charter status signed by not less than
15 sixty-five percent of the employees in the charter school; and

16 (5) a petition in support of the charter
17 school renewing its charter status signed by a majority of the
18 households whose children are enrolled in the charter school.

19 D. A charter may be revoked or not renewed by the
20 local school board if the board determines that the charter
21 school did any of the following:

22 (1) committed a material violation of any of
23 the conditions, standards or procedures set forth in the
24 charter;

25 (2) failed to meet or make substantial

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1 progress toward achievement of the state board minimum
2 educational standards or student performance standards
3 identified in the charter application;

4 (3) failed to meet generally accepted
5 standards of fiscal management; or

6 (4) violated any provision of law from which
7 the charter school was not specifically exempted.

8 E. If a local school board revokes or does not
9 renew a charter, the local school board shall state in writing
10 its reasons for the revocation or nonrenewal.

11 F. A decision to revoke or not to renew a charter
12 may be appealed by the governing body of the charter school
13 pursuant to Section [7 of the 1999 Charter Schools Act]
14 22-8B-7 NMSA 1978. "

15 Section 10. Section 22-8B-13 NMSA 1978 (being Laws 1999,
16 Chapter 281, Section 13) is amended to read:

17 "22-8B-13. CHARTER SCHOOL FINANCING. --

18 A. The amount of funding allocated to the charter
19 school shall be [not less than ninety-eight percent of] the
20 school-generated program cost less the average cost for
21 administrative support services provided by the school
22 district.

23 B. That portion of money from state or federal
24 programs generated by students enrolled in a charter school
25 shall be allocated to charter schools serving students

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1 eligible for that aid. Any other public school program not
2 offered by the charter school shall not be entitled to the
3 share of money generated by a charter school program.

4 C. All services centrally or otherwise provided by
5 the ~~[local]~~ school district, including custodial, maintenance
6 and media services, libraries and warehousing, shall be
7 subject to ~~[negotiation between the charter school and the~~
8 ~~local school district. Any services for which a charter~~
9 ~~school contracts with a school district]~~ the provisions of
10 Subsection A of this section. Any services provided by the
11 school district to the charter school shall be provided by the
12 district at a reasonable cost. "