

§2412. Operations

1. Legal status. Notwithstanding any provision of law to the contrary, to the extent that any provision of this chapter is inconsistent with any other state or local law, rule or regulation, the provisions of this chapter govern and are controlling.

A. A public charter school is subject to all federal laws and authorities, to local law not inconsistent with this chapter and to the charter contract. [PL 2011, c. 414, §5 (NEW).]

B. A charter contract may include one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract must be separate and distinct from any others. [PL 2011, c. 414, §5 (NEW).]

C. A single governing board may be issued one or more charter contracts. Each public charter school operating under its own contract is a discrete legal entity, separate and distinct from any others. [PL 2011, c. 414, §5 (NEW).]

[PL 2011, c. 414, §5 (NEW).]

2. Local educational agency status. The following provisions govern the status of public charter schools as local educational agencies.

A. In the case of a public charter school authorized by a local school board:

(1) The school administrative unit in which the public charter school is located remains the local educational agency and the public charter school is a school within that local educational agency;

(2) The public charter school receives services, resources and support in the same manner as other school administrative unit noncharter public schools, except that the public charter school is treated as a local educational agency for purposes of applying for competitive federal grants; and

(3) The school administrative unit retains responsibility for special education and serves students in public charter schools in a manner consistent with local educational agency obligations under applicable federal, state and local law and the charter contract. [PL 2011, c. 414, §5 (NEW).]

B. In the case of a public charter school authorized by the commission:

(1) The public charter school functions for all purposes as a local educational agency and is a school administrative unit independent of the school administrative unit in which the school is located. School administrative unit status does not preclude a public charter school from developing links to local school districts for services, resources and programs, by mutual agreement or by formal contract;

(2) To the extent permitted by federal, state or local laws, the public charter school is responsible for meeting the requirements of local educational agencies under applicable federal, state and local laws, including those relating to special education, receipt of funds and compliance with funding requirements; and

(3) To the extent permitted by federal, state or local laws, the public charter school has primary responsibility for special education at the school, including identification and provision of service, and is responsible for meeting the needs of enrolled students with disabilities. [PL 2011, c. 414, §5 (NEW).]

[PL 2011, c. 414, §5 (NEW).]

3. Powers of public charter schools. A public charter school has all the powers necessary for carrying out the terms of its charter contract, including the powers to:

- A. Receive and disburse funds for school purposes; [PL 2011, c. 414, §5 (NEW).]
 - B. Contract or cooperate with noncharter public schools for service for students with special needs, English language learner students and other specialized populations, as well as for mutually agreed administrative services; [PL 2011, c. 414, §5 (NEW).]
 - C. Secure appropriate insurance and enter into contracts and leases, free from prevailing wage laws; [PL 2011, c. 414, §5 (NEW).]
 - D. Contract with an education service provider for a limited scope of education services and resources related to the management and operation of the public charter school, as long as the public charter school's governing board retains authority over the oversight and management of the public charter school; [PL 2011, c. 414, §5 (NEW).]
 - E. Incur debt in reasonable anticipation of the receipt of public or private funds, except that an authorizer is not responsible for any debt incurred by the public charter school; [PL 2011, c. 414, §5 (NEW).]
 - F. Pledge, assign or encumber its assets to be used as collateral for loans or extensions of credit; [PL 2011, c. 414, §5 (NEW).]
 - G. Solicit and accept any gifts or grants for public charter school purposes subject to applicable laws and the terms of its charter contract; [PL 2011, c. 414, §5 (NEW).]
 - H. Acquire real property for use as its facility or facilities from public or private sources; and [PL 2011, c. 414, §5 (NEW).]
 - I. Sue and be sued in its own name. [PL 2011, c. 414, §5 (NEW).]
- [PL 2011, c. 414, §5 (NEW).]

4. General requirements. A public charter school is subject to the general requirements set out in this subsection.

- A. A public charter school may not discriminate against any person on the basis of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin or on any other basis that would be unlawful if done by a noncharter public school. [PL 2011, c. 414, §5 (NEW).]
 - B. A public charter school may not engage in any religious practices in its educational program, admissions or employment policies or operations. [PL 2011, c. 414, §5 (NEW).]
 - C. A public charter school may not charge tuition and may only charge such fees as may be imposed by other noncharter public schools in the State. A public charter school may charge tuition to an out-of-state student admitted to the school on a space-available basis. [PL 2011, c. 414, §5 (NEW).]
 - D. A public charter school must have a plan that describes how the school will provide transportation for its students who reside in the school's catchment area and what assistance, if any, it will provide to meet the transportation needs of its students who reside outside the catchment area of the school. [PL 2011, c. 570, §13 (AMD).]
 - E. The powers, obligations and responsibilities set forth in a charter contract may not be delegated or assigned by either party, except as provided in section 2411, subsection 9. [PL 2011, c. 414, §5 (NEW).]
- [PL 2011, c. 570, §13 (AMD).]

5. Applicability of other laws, rules and regulations. The applicability of other laws, rules and regulations to public charter schools is as set out in this subsection.

A. Public charter schools are subject to the same civil rights and health and safety requirements applicable to other noncharter public schools in the State, except as otherwise specifically provided in this chapter. [PL 2011, c. 414, §5 (NEW).]

B. Public charter schools are subject to the same student assessment and accountability requirements applicable to other noncharter public schools in the State, but nothing in this chapter precludes a public charter school from establishing additional student assessment measures that go beyond state requirements if the school's authorizer approves such measures. [PL 2011, c. 414, §5 (NEW).]

C. Governing boards are subject to and must comply with sections 1002 and 1004 in the same manner as school boards and Title 1, chapter 13. [PL 2011, c. 570, §14 (AMD).]

D. Except as provided in this chapter and its charter contract, a public charter school is exempt from all statutes and rules applicable to a noncharter public school, a local school board or a school administrative unit. School administrative units may not interpret this paragraph as reducing their obligation to provide education for their residents. [PL 2011, c. 414, §5 (NEW).]

E. A public charter school is exempt from the restrictions normally associated with any state-funded categorical education funding program. [PL 2011, c. 414, §5 (NEW).]

F. Employees and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to other noncharter public schools. [PL 2011, c. 414, §5 (NEW).]

G. Public charter schools are subject to the same federal and state laws, regulations and rules regarding special education as noncharter public schools. Notwithstanding any law or rule to the contrary, a public charter school takes over responsibility for special education for a student transferring to the public charter school on the first day of school at the public charter school unless the public charter school and the transferring school agree to an earlier date. [PL 2011, c. 570, §15 (NEW).]

H. A public charter school student's eligibility for and the funding of the student's career and technical education programming are the same as if the student were attending school within that student's resident school administrative unit. If the public charter school is located outside the student's resident school administrative unit, the public charter school is responsible for ensuring that the student is transported to the career and technical education center or to a location from which the student will be transported to the career and technical education center by the resident school administrative unit, the career and technical education region or the career and technical education center. [PL 2011, c. 570, §15 (NEW).]

I. Except as provided in subparagraph (2), the commissioner may grant a public charter school a waiver of one or more requirements applicable to the public charter school upon receipt of an application from the public charter school that includes the basis for the waiver request and a plan to reduce reliance on waivers in subsequent years. A public charter school may submit an application for a waiver to the commissioner only upon receiving prior approval from the public charter school's authorizer of the same waiver request.

(1) Financial hardship is one criterion the commissioner must consider in determining whether to grant a waiver to the public charter school.

(2) A public charter school may not apply to the commissioner for a waiver of any of the following requirements:

(a) Civil rights and health and safety requirements as described in paragraph A;

(b) Student assessment and accountability requirements as described in paragraph B;

(c) Conflict of interest and public records and proceedings requirements as described in paragraph C;

(d) Criminal history record checks and fingerprinting requirements as described in paragraph F; and

(e) Special education requirements as described in paragraph G.

(3) By February 1st of each year, the commissioner shall report the number of waivers requested and the number granted and the reason for each waiver request for the prior year to the joint standing committee of the Legislature having jurisdiction over education matters and post the report on the department's publicly accessible website. [PL 2013, c. 216, §1 (NEW).]

J. Public charter schools are subject to the same diploma standards set forth in section 4722. [PL 2017, c. 466, §2 (AMD).]

K. A public charter school that operates a public preschool program must comply with department rules for basic school approval standards for public preschool programs in accordance with section 4271, subsection 4 and section 4502, subsection 9. [PL 2015, c. 40, §1 (NEW).]

L. Public charter schools are subject to the educator effectiveness requirements in chapter 508 applicable to noncharter public schools in the State. [PL 2015, c. 448, §8 (NEW).]

[PL 2017, c. 466, §2 (AMD).]

6. Teachers. This subsection governs teacher employment in a public charter school.

A. A public charter school must comply with applicable federal laws and regulations regarding the qualification of teachers and other instructional staff. [PL 2011, c. 414, §5 (NEW).]

B. All full-time teachers in a public charter school must either hold an appropriate teaching certificate or become certified within 3 years of the date they are hired, except for those with an advanced degree, professional certification or unique expertise or experience in the curricular area in which they teach. [PL 2011, c. 414, §5 (NEW).]

C. Teachers at a public charter school may choose to bargain collectively in accordance with this paragraph.

(1) Teachers who are employees of the public charter school have the same rights as other teachers in public education to organize and bargain collectively. Bargaining units at the public charter school must be separate from other bargaining units, such as a district bargaining unit. Staff at noncharter public schools converting to public charter schools have a right to employment benefits as stated in applicable collective bargaining agreements or they may vote to be represented in alternative ways.

(3) Teachers who are employees of the public charter school may not be required to be members of any existing collective bargaining agreement between a school administrative unit and its employees. A public charter school may not interfere with civil service laws or other applicable rules protecting the rights of employees to organize and be free from discrimination. [PL 2011, c. 570, §16 (AMD).]

[PL 2011, c. 570, §16 (AMD).]

7. External audit.

[PL 2011, c. 570, §17 (RP).]

SECTION HISTORY

PL 2011, c. 414, §5 (NEW). PL 2011, c. 570, §§13-17 (AMD). PL 2013, c. 216, §1 (AMD). PL 2015, c. 40, §1 (AMD). PL 2015, c. 448, §8 (AMD). PL 2017, c. 466, §2 (AMD).

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