

## **CHAPTER 15.1-40 PUBLIC CHARTER SCHOOLS**

### **15.1-40-01. Definitions.**

As used in this chapter:

1. "At-risk student" means a student with an economic or academic disadvantage requiring additional services or assistance to succeed in educational programs, including special education students and English language learners.
2. "Charter performance agreement" means an agreement for a fixed term between a public charter school and the superintendent of public instruction describing academic, operational, and financial performance expectations, defining operational responsibilities, and outlining the autonomy and accountability for each party to the agreement.
3. "Education service provider" means a for-profit or nonprofit entity a public charter school intends to enter a performance agreement with for education services and resources, including academic program design and implementation, educational services and resources, administrative support, charter implementation, or management.
4. "Public charter school" means a public school operating to achieve specific educational objectives according to the charter performance agreement as authorized and overseen by the superintendent of public instruction.
5. "Public meeting" means a meeting subject to the requirements for public meetings under chapter 44-04.

### **15.1-40-02. Public charter schools - Authority - Governance - Requirements.**

A public charter school formed under this chapter:

1. Is a public school within the state's public education system.
2. May decide matters related to budgeting, curriculum, and operating procedures, subject to the school's charter performance agreement.
3. Shall obtain insurance against loss or damage to its property, liability resulting from the use of its property, and liability from the acts or omissions of its officers and employees.
4. Is under the control of a governing board, the members of which are elected or selected pursuant to the school's charter performance agreement.
5. Is established by a charter performance agreement between the governing board and the superintendent of public instruction.
6. Is a school to which a parent or guardian may choose to send the parent or guardian's child.
7. Provides a program of education that:
  - a. Meets or exceeds state performance standards, instructional hours, and graduation requirements.
  - b. Includes one or more grade levels from kindergarten through grade twelve.
  - c. May focus on at-risk students, including English language learners, students in foster care, and students involved with the juvenile justice system.
  - d. May include a specific academic approach or theme.
8. May receive and disburse funds for school purposes.
9. May enter an agreement or cooperate with a public or nonpublic entity for services for students with special needs, English language learners, and other specialized populations or administrative services.
10. May sue and be sued in its name.
11. May not engage in religious practices in its educational program, admissions, employment policies, or operations.
12. May not charge tuition or fees for any services provided for students, except fees for field trips, clubs, organizations, and athletic participation.
13. Must be an in-person school. A public charter school may not provide online, virtual, or home education as the primary method of educational programming.

14. Is responsible for collecting, analyzing, and reporting student data from state assessments administered by the superintendent of public instruction under section 15.1-21-08 in accordance with the performance framework in the approved charter performance agreement.
15. Is subject to the public school approval requirements under section 15.1-06-06.

**15.1-40-03. Applicability of other laws, rules, and regulations.**

1. Except as provided in this chapter, a public charter school is not subject to a state or local law, rule, regulation, policy, or procedure related to education.
2. A public charter school is subject to federal laws and authorities related to education.

**15.1-40-04. Superintendent of public instruction - Information - Guidance - Rules.**

The superintendent of public instruction:

1. Shall publish information and procedures regarding forming and operating a public charter school and enrolling students in a public charter school.
2. May provide assistance and guidance for developing effective authorization and oversight procedures.
3. Shall adopt rules in accordance with chapter 28-32 to implement this chapter.

**15.1-40-05. Charter schools - Eligibility - Enrollment.**

1. A prospective student is eligible to enroll in a public charter school if the prospective student resides in the state.
2. A public charter school:
  - a. Shall enroll all students who wish to attend the school, unless the number of students exceeds the enrollment capacity of a program, class, grade level, or building.
  - b. Shall determine admission by a lottery if initial capacity is insufficient to enroll all students who timely submit an application. The selection process must take place in a public setting. An applicant must have a fair opportunity to be selected in the lottery. The lottery must be randomized and conducted competently, transparently, and impartially.
  - c. May not base admissions on ethnicity, national origin, religion, gender, income level, disabling condition, proficiency in the English language, or academic or athletic ability, except as provided under this section.
  - d. May limit enrollment to students to a given age group, grade level, or pursuant to a special emphasis stated in the school's application for a charter performance agreement.
  - e. Shall give enrollment preference to students and the siblings of students enrolled in the public charter school the previous school year.
  - f. May give enrollment preference to children of a public charter school's employees, if the students constitute no more than ten percent of the total student population.

**15.1-40-06. Superintendent of public instruction - Powers and duties - Report to the legislative management.**

1. The superintendent of public instruction shall:
  - a. Evaluate an application from the organizer of a proposed public charter school.
  - b. Deny an application that does not meet identified educational needs.
  - c. Determine whether a charter school application merits approval, conditional approval, renewal, or revocation.
  - d. Negotiate and execute a charter performance agreement with an approved public charter school.
  - e. Monitor the performance and compliance of a public charter school.
2. The superintendent of public instruction shall provide to the legislative management a report within three years of approving the first public charter school summarizing the:

- a. Strategic vision and progress of each public charter school.
  - b. Performance of each operating public charter school, according to the performance measures and expectations specified in the charter performance agreement.
  - c. Status of charter applications, including charter schools that were not approved, not renewed, and closed.
  - d. Oversight and services provided by the superintendent of public instruction to public charter schools.
  - e. Total amount of fees collected from each public charter school, how the funds were expended to support the public charter school, and the costs incurred by the superintendent of public instruction to oversee each public charter school.
3. To cover costs of overseeing public charter schools in accordance with this chapter, the superintendent of public instruction may:
    - a. Expend resources available to the department of public instruction, seek grant funds, and establish partnerships.
    - b. Charge an administrative fee of up to three percent of annual per student allocations received by each public charter school.
  4. An employee of the superintendent of public instruction may not serve as an employee, trustee, agent, representative, or vendor of a public charter school.
  5. The superintendent of public instruction is not liable for the acts, omissions, debts, or other obligations of a public charter school.

**15.1-40-07. Establishment of a public charter school - Conversion to a public charter school - Application requirements.**

1. To establish a public charter school, the organizer of a public charter school shall submit an application to the superintendent of public instruction and notify the board of the school district where the public charter school will be located of the intent to establish a public charter school.
2. For a school seeking to convert to a public charter school, the application must demonstrate support for the proposed public charter school conversion with a petition signed by a majority of teachers and parents or guardians of students at the existing school. Students who attended the school before conversion to a public charter school may be given enrollment preference.
3. The superintendent of public instruction shall create an application to establish a public charter school or convert to a public charter school, which must include the following essential elements:
  - a. School mission and vision.
  - b. Academic program.
  - c. Grade levels to be offered and growth plan.
  - d. Student evaluation plans.
  - e. Governance plan.
  - f. Organization chart.
  - g. Plan to serve at-risk students.
  - h. Community input and involvement.
  - i. Finances and audits.
  - j. Student policies, including discipline plans.
  - k. Staff policies.

**15.1-40-08. Education service providers.**

If a proposed public charter school intends to enter an agreement with an education service provider for education or management services, in addition to the other application requirements, a public charter school organizer shall:

1. Explain the selection process and reasoning for selecting the education service provider.
2. Provide evidence of the education service provider's success in serving student populations similar to the targeted population, including demonstrated academic

achievement and, if applicable, successful management of nonacademic school functions.

3. Provide information on the proposed duration of the service performance agreement, roles, responsibilities, and scope of services and resources to be provided by the education service provider, performance evaluation measures and timelines, compensation structure, methods of performance agreement oversight and enforcement, and conditions for renewal and termination of the performance agreement.
4. Explain the relationship between the governing board, the school's leadership and management team, and the education service provider, specifying how the governing board and the school's leadership and management team will monitor and evaluate the performance of the education service provider.
5. Provide a statement of assurance the governing board and the school's leadership and management team are legally and operationally independent from the education service provider.
6. Ensure faculty performance agreements are separate from management performance agreements.
7. Ensure the governing board retains the right to terminate the performance agreement for failure to meet defined performance standards after notice has been given to the education service provider, a reasonable cure period has expired, and material deficiencies have not been cured.
8. Disclose and explain any existing or potential conflicts of interest between the governing board, the school's leadership and management team, and the education service provider or any affiliated business entities.

**15.1-40-09. Application review process - Approval decisions.**

1. The application review process must include a thorough evaluation of the application and an in-person interview with the applicant at a public meeting.
2. The superintendent of public instruction shall:
  - a. Grant charters to applicants demonstrating competence in the charter application.
  - b. Base decisions on documented evidence collected through the application review process.
  - c. Follow charter granting policies and practices that are transparent, merit based, and avoid a conflict of interest or the appearance of a conflict of interest.
3. No later than ninety days after the deadline for filing applications, the superintendent of public instruction shall approve or deny each application. The superintendent of public instruction shall publicly notice and publish public charter school application decisions.
4. An approval decision may include reasonable conditions the applicant must meet before a charter performance agreement may be executed. Reasonable conditions may not include enrollment caps.
5. If the superintendent of public instruction conditionally approves or denies an application, the superintendent of public instruction clearly shall state the reasons in writing.
6. The superintendent of public instruction shall maintain a list of approved charter applications in chronological order by date of approval.
7. An approved application is not a charter performance agreement.

**15.1-40-10. Charter performance agreements - Performance-based accountability - Data reporting.**

1. If an application is approved, the superintendent of public instruction and the governing board of the public charter school shall execute a charter performance agreement no later than sixty days after approval, including:
  - a. Academic, operational, and fiscal performance expectations and measures by which the public charter school will be judged.
  - b. A description of the standards and processes under which the superintendent of public instruction will oversee and monitor the public charter school.

- c. Actions the superintendent of public instruction may pursue to revoke a charter performance agreement.
- 2. A charter performance agreement must be signed by the superintendent of public instruction and the public charter school's governing board.
- 3. A public charter school may not commence operations without a charter performance agreement executed in accordance with this section and approved in a public meeting.
- 4. A public charter school governing board or its designee may negotiate with the superintendent of public instruction to amend a charter performance agreement. The superintendent of public instruction's review of the charter performance agreement must be limited to the proposed request for amendments.
- 5. The charter performance agreement must include:
  - a. Indicators related to student academic proficiency, student academic growth, attendance, recurrent enrollment, readiness for success upon graduation, financial performance, governance performance, and family and community engagement.
  - b. Annual performance targets to support the public charter school's compliance with federal and state requirements.
- 6. More than one public charter school may be authorized under a charter performance agreement as approved by the superintendent of public instruction, if the public charter schools are separate and distinct from one another.

**15.1-40-11. Charter performance agreement - Terms - Delayed opening.**

- 1. An initial charter performance agreement term is five years. The term commences on the public charter school's first day of operation.
- 2. A public charter school may delay its opening for up to one school year after approval. If the public charter school requires an opening delay of more than one school year, the public charter school shall request an extension from the superintendent of public instruction, which may be granted at the discretion of the superintendent.
- 3. The superintendent of public instruction may grant renewal of a charter performance agreement for successive terms of five years.

**15.1-40-12. Superintendent of public instruction - Monitoring - Annual evaluation - Opportunity for remediation.**

- 1. The superintendent of public instruction shall monitor the performance and legal compliance of the public charter schools, including an annual evaluation for each public charter school according to the charter performance agreement.
- 2. If a public charter school's performance or legal compliance is unsatisfactory, the superintendent of public instruction promptly shall notify the public charter school and provide a reasonable opportunity for the school to remedy the problems identified by the superintendent of public instruction. A public charter school must be given at least fifteen days to respond to the superintendent of public instruction's notification.

**15.1-40-13. Public charter school performance report - Renewal responsibilities.**

- 1. The superintendent of public instruction shall issue a public charter school performance report for each five-year term of a charter performance agreement no later than seventy-five days before a public charter school's fourth year of operation begins.
- 2. The report must include renewal application guidance, as needed, and notice of any concerns that may jeopardize the public charter school's position in seeking renewal if not timely rectified.
- 3. A public charter school must be given at least thirty days to respond to the performance report and submit any corrections or clarifications for the report.

**15.1-40-14. Renewal application - Decision.**

1. The superintendent of public instruction shall create a uniform renewal application and evaluation process.
2. The governing board shall submit a renewal application to the superintendent of public instruction no later than the first day of instruction of a public charter school's final authorized year of operation.
3. The renewal application must include:
  - a. A performance report and additional evidence in support of renewal.
  - b. Improvements undertaken or planned for the school.
  - c. Plans for the next charter term.
4. Renewal decisions must be supported by evidence of the public charter school's performance under the performance framework in the charter performance agreement.
5. The superintendent of public instruction shall render a decision on a renewal application no later than forty-five days after the renewal application was filed.
6. The public charter school is entitled to a public meeting with the superintendent of public instruction regarding the renewal decision.
7. The superintendent of public instruction shall provide to the public charter school and publish a report summarizing the basis for each decision, including supporting evidence.

**15.1-40-15. Charter performance agreement - Revocation - Nonrenewal.**

1. A charter performance agreement may be revoked at any time or not renewed if the superintendent of public instruction determines the public charter school:
  - a. Failed to comply with this chapter or other law.
  - b. Committed a material violation of a term, condition, standard, or procedure required under the charter performance agreement.
  - c. Failed to meet or make sufficient progress toward the performance expectations under the charter performance agreement.
  - d. Failed to meet accepted standards of fiscal management.
2. Revocation may not occur before a public meeting with the charter holder occurs, unless the superintendent of public instruction determines the continued operation of the public charter school presents an imminent public safety issue, in which case the charter performance agreement may be revoked immediately.
3. A public charter school has thirty days to respond to the superintendent of public instruction's notice to revoke the school's charter performance agreement.
4. If the superintendent of public instruction revokes or does not renew a charter performance agreement, the superintendent of public instruction shall publish the reasons for the revocation or nonrenewal.

**15.1-40-16. School closure and dissolution.**

If a public charter school intends to close and dissolve, the school shall:

1. Notify the parents or guardians of students of the intent to close and dissolve.
2. Transition students and student records as necessary.
3. Properly distribute the public charter school's assets, first to satisfy outstanding payroll obligations for employees of the public charter school and then to other creditors of the public charter school. If the assets of the public charter school are insufficient to pay creditors, the distribution of assets may be determined by court order.

**15.1-40-17. Local education agency status.**

A public charter school:

1. Is a local education agency for purposes related to the funding of special education services within the limits of legislative appropriations.
2. Shall provide services to students in public charter schools as required by federal, state, and local law and the charter performance agreement.

**15.1-40-18. Governing board.**

1. A governing board:
  - a. May enter more than one charter performance agreement concurrently.
  - b. Shall adopt a viable conflict of interest policy and code of ethics.
  - c. Shall adopt a policy to avoid nepotism in hiring and supervision. The policy must require disclosure to the board of potential nepotism in hiring and supervision. An individual with a nepotism conflict may not be involved in the hiring decision or supervision of an employee.
  - d. Shall have access to education service provider records to oversee the education service provider contract.
  - e. Is a public entity under chapter 44-04.
2. Individuals compensated by an education service provider are prohibited from serving as a voting member on a governing board contracting with the education service provider, except if approved by the superintendent of public instruction.

**15.1-40-19. Public school employees.**

1. Public charter school teachers must be licensed by the education standards and practices board and must meet the requirements under chapter 15.1-18.
2. An employee of a public charter school is eligible to participate in retirement and benefits programs of the state, if the public charter school elects to participate and satisfies the requirements of the internal revenue service.

**15.1-40-20. Generally accepted accounting principles - Independent audits.**

A public charter school shall:

1. Adhere to generally accepted accounting principles.
2. Engage a qualified certified public accountant or public accountant to independently audit the public charter school's finances once every six months. The public charter school shall submit the audit to the superintendent of public instruction.

**15.1-40-21. Funding - Categorical aid - Transportation.**

1. A public charter school shall certify to the superintendent of public instruction its student enrollment in accordance with section 15.1-27-02.
2. The state shall pay to the public charter school an amount equal to the statewide average amount distributed per student under subsection 5 of section 15.1-27-04.1 for the previous year for each student enrolled in the public charter school.
3. The state shall pay the proportionate share of moneys derived from federal and state categorical aid programs to public charter schools with students or teachers who are eligible for such aid. A public charter school that receives categorical aid shall comply with related reporting requirements.
4. A public charter school may enter a contract with a local school district or private provider to provide transportation to students of the public charter school.
5. Any moneys remaining in an account of a public charter school at the end of a budget year must remain in the account for use by the public charter school during subsequent budget years.
6. This chapter does not prohibit any person from providing funding or other assistance to a public charter school. The governing board of a public charter school may accept gifts, donations, and grants and may expend or use gifts, donations, and grants in accordance with the conditions prescribed by the donor, if the condition is not contrary to law or the charter performance contract.

**15.1-40-22. Facilities - Activities.**

1. A public charter school may enter an agreement with a public or private entity for the use of the entity's facility.

2. A public charter school holds a right of first refusal to part or all of an unused state-owned facility or property located in the state. The superintendent of public instruction shall maintain a list of available buildings.
3. A facility or part of a facility that is the location of a public charter school is exempt from property taxes under subsection 6 of section 57-02-08.
4. A public charter school may enter a cooperative agreement with a public or private school to facilitate athletics and other activities.
5. A public charter school may become a member of the North Dakota high school activities association.