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Legislation Establishing Charter Schools

All Relevant Provisions of the Education Reform Act of 1993

(M.G.L. Chapter 71, Section 89)

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Chapter 69. Section 1A. Powers of Commissioner

Section 1A. There shall be a department of education, hereinafter called the department, which shall be under the supervision and management of a commissioner of education, hereinafter called the commissioner. Said commissioner shall be appointed pursuant to section one of chapter fifteen and shall devote full time to the duties of the office.

The commissioner, with the approval of the board of education, hereinafter called the board, shall establish such bureaus and other offices and employ such staff and consultants as may be necessary for the proper and efficient administration of the department.

The commissioner shall propose a budget to the board; said budget shall reflect the goals and objectives of the board. Upon approval by the board, the commissioner shall submit the department's budgetary proposals simultaneously to the house and senate committees on ways and means, the joint committee on education, arts and humanities, and to the secretary of education, who shall review and transmit said budget to the secretary of administration and finance.

The commissioner shall analyze the present and future goals, needs and requirements of public early childhood, elementary, secondary and vocational-technical education in the commonwealth and recommend to the board comprehensive means to achieve a well-coordinated system of high achievement in public education in the commonwealth.

The commissioner shall prepare a five year master plan for public early childhood, elementary, secondary, and vocational-technical education in the commonwealth. The master plan shall include, but not be limited to, enrollment projections, utilization of existing facilities, promotion of research, programmatic excellence, community service activities and community school activities, recommendations for the construction or acquisition of new facilities, program distribution and the need for program revision, including the termination of absolute or unnecessarily duplicative programs. Said master plan along with an annual progress report shall reflect the goals and standards established by the board.

The commissioner shall receive reports, undertake research, and facilitate coordination among and between school districts.

The commissioner shall assist school districts in the development of school based management systems. Such assistance should focus on the implementation of participatory management systems involving all school based professionals, parents, and on the secondary level, students.

The commissioner shall encourage and facilitate the adoption of regional districts to improve the delivery of a quality public education in an economical manner. The commissioner shall encourage and facilitate the use of existing or the formation of new educational

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collaboratives to foster interdistrict cost effective purchasing, management collaboration, sharing of resources and other multipurpose educational activities.

The commissioner shall facilitate partnerships of public early childhood, elementary, secondary and vocational-technical schools with civic, conservation, business, cultural and labor organizations, and with institutions of higher education particularly through the development of regional teacher centers and the expansion of the bay state centers for global education, to enhance educational programs.

The commissioner shall assess the effectiveness and monitor the improvement of the public schools in each district, including charter schools.

The commissioner shall assess current programs of alternative education and shall develop a statewide action plan to expand and improve the delivery of alternative education programs.

The commissioner shall recommend, to the board, changes necessary to the competency determination as appropriate to reflect evolving notions of vocational education.

The commissioner shall appoint independent fact-finding teams to assess the reasons for a school or school district's under-performance under sections one J and one K of chapter sixty-nine, and shall assess the prospects for school district improvement. The commissioner shall also supervise the receiver of a school district declared to be chronically under-performing under said sections one J and one K of said chapter sixty-nine, and shall provide technical assistance to a school or school district deemed under-performing or chronically under-performing pursuant to said sections one J and one K of said chapter sixty-nine.

The commissioner shall initiate the process for selecting a list of impartial arbitrators as provided in sections thirty-eight, forty-one and forty-two of chapter seventy-one and, upon receipt of a request for review pursuant thereto, the commissioner shall provide the names of three arbitrators as provided therein.

Chapter 71. Section 89. Charter schools.

Section 89. A charter school shall be a public school, operated under a charter granted by the secretary of education, which operates independently of any school committee and is managed by a board of trustees. The board of trustees of a charter school, upon receiving a charter from the secretary of education, shall be deemed to be public agents authorized by the commonwealth to supervise and control the charter school.

The purposes for establishing charter schools are: (1) to stimulate the development of innovative programs within public education; (2) to provide opportunities for innovative learning and assessments; (3) to provide parents and students with greater options in choosing schools within and outside their school districts; (4) to provide teachers with a vehicle

for establishing schools with alternative, innovative methods of educational instruction and school structure and management; (5) to encourage performance-based educational programs and; (6) to hold teachers and school administrators accountable for students' educational outcomes.

Persons or entities eligible to submit an application to establish a charter school shall include, but not be limited to, a business or corporate entity, two or more certified teachers or ten or more parents. Said application may be filed in conjunction with a college, university, museum or other similar entity. Private and parochial schools are not eligible for charter school status.

The secretary of education shall establish the information needed in an application for the approval of a charter school; provided, however, that said application shall include the method for admission to a charter school. There shall be no application fee for admission to a charter school.

Applications to establish a charter school shall be submitted each year by February fifteenth. The secretary of education shall review the applications no later than March fifteenth.

The secretary of education shall make the final determination on granting charter school status and may condition charters on the charter school's taking certain actions or maintaining certain conditions. No more than twenty-five charter schools shall be allowed to operate in the commonwealth at any time. Of these, no more than five shall be located in the city of Boston; no more than five shall be located in the city of Springfield; and no more than two shall be located in any other city or town. Under no circumstances shall the total number of students attending charter schools in the commonwealth be allowed to be greater than three quarters of one percent of the total number of students attending public schools in the commonwealth.

A charter school established under a charter granted by the secretary shall be a body politic and corporate with all powers necessary or desirable for carrying out its charter program, including, but not limited to, the following:

(a) to adopt a name and corporate seal; provided, however, that any name selected must include the words "charter school";

(b) to sue and be sued, but only to the same extent and upon the same conditions that a town can be sued;

(c) to acquire real property, from public or private sources, by lease, lease with an option to purchase, or by gift, for use as a school facility;

(d) to receive and disburse funds for school purposes;

(e) to make contracts and leases for the procurement of services, equipment and supplies; provided, however, that if the board intends to procure substantially all educational services

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under contract with another person, the terms of such a contract must be approved by the secretary, either as part of the original charter or by way of an amendment thereto; and provided, further, that the secretary shall not approve any such contract terms, the purpose or effect of which is to avoid the prohibition of this section against charter school status for private and parochial schools.

(f) to incur temporary debt in anticipation of receipt of funds;

(g) to solicit and accept any grants or gifts for school purposes;

(h) to have such other powers available to a business corporation formed under chapter one hundred and fifty-six B that are not inconsistent with this chapter.

Charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language, and academic achievement. Charter schools may limit enrollment to specific grade levels or areas of focus of the school, such as mathematics, science, or the arts.

A charter school may establish reasonable academic standards as a condition for eligibility for applicants. Preference for enrollment in a charter school shall be given to students who reside in the city or town in which the charter school is located. If the total number of students who are eligible to attend and apply to a charter school and who reside in the city or town in which the charter school is located, or are siblings of students already attending said charter school is greater than the number of spaces available, then an admissions lottery shall be held to fill all of the spaces in that school from among said students. If there are more spaces available than eligible applicants from the city or town in which said charter school is located and who are siblings of current students, and more other eligible applicants than spaces left available, then a lottery shall be held to determine which of said applicants shall be admitted. There shall be no tuition charge for students attending charter schools.

A student may withdraw from a charter school at any time and enroll in a public school where said student resides. A student may be expelled from a charter school based on criteria determined by the board of trustees, and approved by the secretary of education, with the advice of the principal and teachers.

A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building, or any other suitable location. A charter school may own, lease, or rent its space.

A charter school shall operate in accordance with its charter and the provisions of law regulating other public schools; provided, however, that the provisions of sections forty-one and forty-two shall not apply to employees of charter schools. Charter schools shall comply

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with the provisions of chapters seventy-one A and seventy-one B; provided, however, that the fiscal responsibility of any special needs student currently enrolled in or determined to require a private day or residential school shall remain with the school district where the student resides.

Students in charter schools are required to meet the same performance standards, testing and portfolio requirements set by the board of education for students in other public schools.

The board of trustees, in consultation with the teachers, shall determine the school's curriculum and develop the school's annual budget.

Employees of charter schools shall be considered public employees for purposes of tort liability under chapter two hundred and fifty-eight and for collective bargaining purposes under chapter one hundred and fifty E. The board of trustees shall be considered the public employer for purposes of tort liability under said chapter two hundred and fifty-eight and for collective bargaining purposes under chapter one hundred and fifty E. Teachers employed by a charter school shall be subject to the state teacher retirement system under chapter thirty-two and service in a charter school shall be "creditable service" within the meaning thereof.

Each local school district shall be required to grant a leave of absence to any teacher in the public schools system requesting such leave in order to teach in charter schools. A teacher may request a leave of absence for up to two years.

At the end of the two year period, the teacher may make a request to the superintendent that such leave be extended for an additional two years, and approval for said request shall not be unreasonably withheld or he may return to his former teaching position. At the end of the fourth year, the teacher may either return to his former teaching position or, if he chooses to continue teaching at the charter school, resign from his school district position.

Notwithstanding section fifty-nine C of this chapter, the internal form of governance of a charter school shall be determined by the school's charter.

A charter school shall comply with all applicable state and federal health and safety laws and regulations.

The children who reside in the school district in which the charter school is located shall be provided transportation to the charter school by the resident district's school committee on the same terms and conditions as transportation is provided to children attending local district schools. Student who do not reside in the district in which the charter school is located shall be eligible for a transportation in accordance with section twelve B of chapter seventy-six.

Each charter school shall submit to the secretary, to each parent or guardian of its enrolled students, and to each parent or guardian contemplating enrollment in that charter school an annual report. The annual report shall be issued no later than August first of each year for

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the preceding school year. The annual report shall be in such form as may be prescribed by the secretary of education and shall include at least the following components:

(a) discussion of progress made toward the achievement of the goals set forth in the charter;

(b) a financial statement setting forth by appropriate categories, the revenue and expenditures for the year just ended;

Individuals or groups may complain to a charter school's board of trustees concerning any claimed violation of the provisions of this section by the school. If, after presenting their complaint to the trustees, the individuals or groups believe their complaint has not been adequately addressed, they may submit their complaint to the secretary of education who shall investigate such complaint and make a formal response.

A charter granted by the secretary of education shall be for five years. The secretary of education may revoke a school's charter if the school has not fulfilled any conditions imposed by the secretary of education in connection with the grant of the charter or the school has violated any provision of its charter. The secretary may place the charter school on a probationary status to allow the implementation of a remedial plan after which, if said plan is unsuccessful, the charter may be summarily revoked.

The secretary shall develop procedures and guidelines for revocation and renewal of a school's charter.

Notwithstanding the foregoing, no school building assistance funds, so called, shall be awarded to a charter school for the purpose of constructing, reconstructing or improving said school.

Charter schools shall be funded as follows: If a student attending a charter school resides in a community with a positive foundation gap, the district of the city or town in which said student resides shall pay to the charter school an amount equal to the average cost per student in said district. If a student attending a charter school resides in a community that does not have a positive foundation gap pursuant to chapter seventy, the district of the city or town in which said student resides shall pay to the charter school an amount equal to the lesser of: (1) the average cost per student in said district; and (2) the average cost per student in the district in which the charter school is located.

Chapter 76. Section 12B. School choice.

Section 12B. (a) As used in this section, the following terms shall have the following meanings:

"Above foundation reimbursement amount".

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(i) for fiscal year nineteen hundred and ninety-four, fifty percent of the net losses due to the provisions of this section provided, however, that if the amount lost by said district pursuant to subsection (f) is greater than two percent of the total school budget of said district, the amount of said reimbursement shall be equal to seventy five percent of the net losses due to the provisions of this section;

(ii) for fiscal year nineteen hundred and ninety-five, twenty-five percent of the net losses due to the provisions of this section;

(iii) for all fiscal years after nineteen hundred and ninety-five, zero.

"Receiving district", any city, town or regional school district within the commonwealth in which a child does not reside, but in which that child attends public school under the provisions of this section.

"Sending district", any city, town or regional school district within the commonwealth in which a child resides, but in which that child does not attend public school under the provisions of this section.

"State school choice limit", in fiscal year nineteen hundred and ninety-four, one percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-five, one and one-half percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-six, one and three-quarters percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-seven and thereafter, two percent of the total number of students attending public schools in the Commonwealth; provided, however, that students enrolled under the program for the elimination of racial imbalance as provided in section I of chapter fifteen shall not be counted toward these limits.

(b) Notwithstanding the provisions of section twelve, or any other special or general law to the contrary, any child may attend a public school, in a city or town where he does not reside; provided, that the receiving district shall be paid by the commonwealth a tuition rate as established in subsection (f).

(c) Not later than May first of every year, the school committee of each city, town or regional school district shall submit a report to the department stating:

(1) The capacity of each school in said city, town or regional school district for the following academic year.

(2) The number of students expected to attend each school in said city, town, or regional school district in the following academic year.

(3) The number of students attending said school district under the terms of this section in the prior school year and the number of those students who are expected no longer to be attending said school district in the next school year.

(4) The number of additional seats therefore available to non-resident students reduced by the number of students enrolled under the program for the elimination of racial imbalance as provided in section I of chapter fifteen, in said charter school or each school in said city, town or regional school district. The Board may require every district to update this report in whatever manner is required to effectuate the objectives of this section.

(d) Each city, town or regional school district shall enroll non-resident students at the school of such non-resident student's choice, provided, however, that such receiving district has seats available as stated in said report; provided, however, that this obligation to enroll non-resident students shall not apply to a district for a school year in which its school committee, prior to June first, after a public hearing, adopts a resolution withdrawing from said obligation, for the school year beginning the following September. Any such resolution of a school committee shall state the reasons therefor, and such resolution with said reasons shall be filed with the department of education; provided, however, that said department shall have no power to review any such decision by a school committee. If the city, town or regional school district operates an intra-district choice plan, non-resident students may apply for schools on the same basis as resident students, but the intra-district choice plan may give preference to resident students in assigning students to schools.

(e) Not later than the first day of July, each city, town or regional school district shall each year submit a non-resident attendance report to the board and to the state treasurer, certifying the number of non-resident applicants for each available seat in each school, the disposition of their applications, how many of said applicants will be attending the district in the next school year, the identity of the sending districts for those students, the annual amount of tuition for each such child and the total tuition owed to the district based on full or partial attendance, itemized by the amount attributable to each city or town of residence. The board may review said certification to determine that the amount of the individual tuition charged for each child is in accordance with the provisions of this section and shall inform the state treasurer of any errors. The department may also, on a post-audit basis, verify the admission and attendance of the number of children certified by each school district. Provided, further, that all said districts shall, on October first and April first, report to the board and certify to the state treasurer accurate and up to date reports of all the information required in the non-resident attendance report. If the total number of students admitted to receiving districts pursuant to this section is greater than the state school choice limit, the board shall notify all districts that no more students may be accepted pursuant to this section.

(f) For each student enrolling in a receiving district, there shall be a school choice tuition amount. Said tuition amount shall be equal to seventy-five percent of the actual per pupil spending amount in the receiving district, but not more than five thousand dollars; except that

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for special education students whose tuition amount shall remain the expense per student for such type of education as is required by such non-resident student. The state treasurer is hereby authorized and directed to deduct said school choice tuition amount from the total education aid, as defined in chapter seventy, of said student's sending district, prior to the distribution of said aid. In the case of a child residing in a municipality which belongs to a regional school district, the school choice tuition amount shall be deducted from said chapter seventy education aid of the school district appropriate to the grade level of the child. If, in a single district, the total of all such deductions exceeds the total of said education aid, this excess amount shall be deducted from other aid appropriated to the city or town. If, in a single district, the total of all such deductions exceeds the total state aid appropriated, the commonwealth shall appropriate this excess amount; provided, however, that if said district has exempted itself from the provisions of chapter seventy by accepting section fourteen of said chapter, the commonwealth shall assess said district for said excess amount.

(g) The state treasurer is further directed to disburse to the receiving district an amount equal to each student's school choice tuition as defined in subsection (f).

(h) There shall be a parent information system established, maintained and developed by the board of education to disseminate to parents detailed and comparable information about each school system participating in the school choice program, so called, which shall include, but not be limited to, information on special programs offered by the school, philosophy of the school, number of spaces available, transportation plans, class sizes, teacher/student ratios, and data and information on school performance that indicate its quality. Said information shall include the school profiles, so-called, developed pursuant to section one B of chapter sixty-nine. The board may include information regarding regional choice initiatives as deemed appropriate. The system shall have as its primary goal to ensure that all parents have an equal opportunity to participate in the program of interdistrict choice. The board of education, when disseminating this information shall encourage the parent and student to make at least one visit to the school of choice as part of the application procedure.

(i) Subject to appropriation, the board of education shall develop and administer a school choice transportation reimbursement program for the purpose of providing reimbursement for the transportation of pupils enrolled under the provisions of or this section. Pupils eligible for said reimbursement must be eligible to receive free or reduced cost lunches under eligibility guidelines promulgated by the federal government under 42 USC. section 1758. The board may limit said reimbursement to a yearly amount. The types of transportation to be reimbursed pursuant to said program shall include, but need not be limited to, the following: (1) transportation by school buses provided by the sending or receiving district; (2) transportation provided by the parent or guardian of the child; (3) transportation provided by

public transportation. All eligible pupils who attend a school district contiguous to the school district of residence of such pupil shall be eligible for said reimbursement. If cost-effective transportation alternatives exist for pupils who attend districts not contiguous to the school districts of residence of such pupil, the board may provide a transportation reimbursement. Said reimbursements may be paid to the district in which the pupil is enrolled, the district of residence of the student, or the parent, guardian, or person acting as guardian of the student; provided that said district or parent provide documentation of the transportation expenditure. The board of education shall promulgate regulations for the program to be placed on file with the joint committee on education, arts and humanities of the general court. The board of education shall disseminate information to parents and school systems detailing the availability of said transportation reimbursements. A full description of said school choice transportation reimbursement program shall be submitted to the house and senate committees on ways and means and shall not become effective until ninety days after said submission. Notwithstanding the second paragraph of section one, nothing in this section confers upon any student attending a private school any right to transportation or reimbursement therefor.

(j) School committees may establish terms for accepting non-resident students; provided, however, that if the number of non-resident students applying for acceptance to said district exceeds the number of available seats, said school committee shall select students for admission on a random basis; provided, further, that said school committee shall conduct said random selection twice: one time prior to July first and one time prior to November first; provided, further, that no school committee shall discriminate in the admission of any child on the basis of race, color, religious creed, national origin, sex, age, sexual orientation, ancestry, athletic performance, physical handicap, special need or academic performance or proficiency in the English language. The Massachusetts Commission Against Discrimination, established by section fifty-six of chapter one hundred and fifty-one B, shall have jurisdiction to enforce the provisions of this section; provided, further, that all students described in subsection (m) shall be entitled to remain in the receiving districts they are attending or have been accepted to attend. Any school committee that accepts non-resident students under the provision of this section shall notify each district from which it has accepted a non-resident student of its acceptance of that student, provided, however, that a school committee may not publicly release the names of students leaving or entering a district under the provisions of this section.

(k) Any child accepted to attend a public school in a community other than the one in which he resides pursuant to this section shall be permitted to remain in that school system until his high school graduation, except if there is a lack of funding of the program as authorized by said sections.

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(l) Notwithstanding the provisions of this section or any general or special law to the contrary, any school district which admitted children on a private tuition basis prior to June thirtieth, nineteen hundred and ninety-one may continue, on that basis, to admit any child who attended its school system prior to that date, as well as any sibling or step-sibling of such child and any foster child residing in the home of such child.

(m) Any student who, pursuant to the provisions of this section, had been attending or has been admitted to attend a public school of a city or town in which he does not reside and for whom the commonwealth had been paying tuition or, in the case of a student recently admitted, would be required to pay tuition in the coming year, shall be deemed to be a student admitted pursuant to paragraph (j) of this section, and shall be subject to all of the provisions of this section; provided, however, that said students must be allowed to remain in said school notwithstanding any determination of capacity or decision by the receiving district to withdraw made pursuant to this section.

(n) Subject to appropriation, any sending district for which the provisions of subsection (f) result in a reduction in state aid shall be eligible to apply for a school choice reimbursement from the commonwealth. If said sending district does not have a positive foundation gap, as defined in chapter seventy, the amount of said reimbursement shall be the above foundation reimbursement amount for that fiscal year. If said sending district does have a positive foundation gap, the amount of said reimbursement shall be equal to one hundred percent of the positive difference, if any, between (i) the amount transferred pursuant to subsection (f) and (ii) the product of the number of students leaving the sending district and the average per pupil expenditure in the sending district; provided, however, that if any district has exempted itself from the provisions of said chapter seventy by accepting section fourteen of said chapter, the district shall be ineligible for a reimbursement under this subsection; provided, further, that if any district that does not have a positive foundation gap becomes a sending district for the first time in fiscal year nineteen hundred and ninety-five or any year thereafter, the reimbursement amount for that district in the first year that it is a sending district shall be the fiscal year nineteen hundred and ninety-four reimbursement amount, the reimbursement amount for that district in its second year as a sending district shall be the fiscal year nineteen hundred and ninety-five reimbursement amount. Said reimbursement application shall be submitted to the department of education on or before October first of each year together with an educational corrective action plan containing information, recommendations, and suggestions relative to (1) areas needing improvement within the school system of the applicant, (2) methods of improvement to be employed, (3) goals and objectives of said improvement, (4) evaluation and control methods to be used, (5) personnel to be engaged in such improvement, (6) results intended to be accomplished within one year

from the date of application, and (7) methods of increasing parental involvement to be employed; provided that any community or regional school district that has a previously approved plan need not refile said plan; provided further, that approval of said plan by said board shall act as a condition precedent to the distribution of said reimbursement to the applicant community or regional school district. Under no circumstances shall the total amount expended pursuant to subsections (h) and (i) and to reimburse sending districts, pursuant to this paragraph, be greater than twenty million dollars. If, in any year, the total amount that would be required to reimburse said cities at said rates would be greater than twenty million dollars, then the reimbursement rates shall be reduced proportionately to those rates at which the total cost does not exceed twenty million dollars.

(o) The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of this section. Any amounts received by the school committee of any town from the federal government, from the commonwealth or from a charitable foundation or private institution shall be deposited with the treasurer of such town and held as a separate account, and may be expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. Whenever such funds are received after the submission of the annual school budget, all or any portion thereof may be expended by the school committee without further appropriation, but shall be accounted for in the next annual school budget.

Section 80 of the Education Reform Act of 1993

SECTION 80. The board of education shall prepare a plan to extend the time during which students attend school to reflect prevailing norms in advanced industrial countries and to address the educational needs of children in the commonwealth. Said plan shall encourage the establishment of charter schools pursuant to section eighty-nine of chapter seventy-one of the General Laws which fulfill the goals of said plan. Said plan shall contain a practical, but timely, proposal for implementation and detail all associated costs. Said plan and recommended legislation shall be filed with the governor and the clerks of the house and senate no later than January first, nineteen hundred and ninety-five. The board of education is directed to evaluate and define the amount of time, exclusive of extracurricular activities including but not limited to lunch, recess, and other non-instructional activities, students spend in the classroom. Said report which details findings and recommendations shall be filed with the general court no later than September thirtieth, nineteen hundred and ninety-three.

Section 104 of the Education Reform Act of 1993.

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SECTION 104. ~~No charter school, established pursuant to section eighty-nine of chapter seventy-one of the General Laws, added by section fifty-five of this act, may be authorized to open prior to the school year beginning in the fall of nineteen hundred and ninety-five. In the year nineteen hundred and ninety-eight, the general court shall study the effects of the limits on the number of charter school students and shall consider possible increases or decreases. Notwithstanding any reduction in the limit on the number of students allowed to attend charter schools, students enrolled in charter schools shall have a right to continue in that school through its highest grade level unless expelled for cause.~~