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2 88th General Assembly

# A Bill

3 Regular Session, 2011

SENATE BILL 436

4

5 By: Senator G. Baker

6

7

## For An Act To Be Entitled

8

AN ACT TO REQUIRE A PUBLIC CHARTER SCHOOL TO SUBMIT  
9 PERIODIC REPORTS; TO AMEND VARIOUS PROVISIONS OF  
10 ARKANSAS LAW CONCERNING PUBLIC CHARTER SCHOOLS; TO  
11 PROTECT PUBLIC CHARTER SCHOOLS FROM CERTAIN  
12 LIABILITIES; TO DECLARE AN EMERGENCY; AND FOR OTHER  
13 PURPOSES.

14

15

16

## Subtitle

17

TO AMEND VARIOUS PROVISIONS OF ARKANSAS  
18 LAW CONCERNING PUBLIC CHARTER SCHOOLS; TO  
19 PROTECT PUBLIC CHARTER SCHOOLS FROM  
20 CERTAIN LIABILITIES; AND TO DECLARE AN  
21 EMERGENCY.

22

23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25

26 SECTION 1. Arkansas Code § 6-17-1113(a), concerning the School Worker  
27 Defense Program, is amended to read as follows:

28 (a)(1) The Department of Education ~~is authorized and directed to~~ shall  
29 establish a School Worker Defense Program for the protection under  
30 subdivision (a)(2) of this section of:

31

~~(1)~~(A) Education service cooperatives;

32

~~(2)~~(B) Education service cooperative board members;

33

~~(3)~~(C) School districts;

34

(D) Public charter schools;

35

~~(4)~~(E) School board members;

36

~~(5)~~(F) School treasurers and bookkeepers;



1                   ~~(6)~~(G) School nurses;

2                   ~~(7)~~(H) School secretaries;

3                   ~~(8)~~(I) Substitute teachers;

4                   ~~(9)~~(J) Authorized volunteers;

5                   ~~(10)~~(K) Volunteers in a registered volunteers program;

6                   ~~(11)~~(L) School custodians;

7                   ~~(12)~~(M) Food service workers employed by public schools;

8                   ~~(13)~~(N) Bus drivers and mechanics employed by public

9 schools;

10                  ~~(14)~~(O) Maintenance personnel employed by public schools;

11                  ~~(15)~~(P) Each employee of the following who is required to

12 hold a teaching certificate issued by the department:

13                   ~~(A)~~(i) A public school district;

14                   ~~(B)~~(ii) The Arkansas School for Mathematics,

15 Sciences, and the Arts;

16                   ~~(G)~~(iii) The Arkansas School for the Deaf; and

17                   ~~(D)~~(iv) The Arkansas School for the Blind,

18 ~~who is required to hold a teaching certificate issued by the department;~~

19                   (Q) A public charter school teacher;

20                  ~~(16)~~(R) Each teacher's aide and each student teacher:

21                   ~~(A)~~(i) In a public school district;

22                   (ii) In a public charter school;

23                   ~~(B)~~(iii) In the Arkansas School for Mathematics,

24 Sciences, and the Arts;

25                   ~~(G)~~(iv) In the Arkansas School for the Deaf; ~~or~~ and

26                   ~~(D)~~(v) In the Arkansas School for the Blind; and

27                  ~~(17)~~(S) Each member of the dormitory staff of:

28                   ~~(A)~~(i) The Arkansas School for Mathematics,

29 Sciences, and the Arts;

30                   ~~(B)~~(ii) The Arkansas School for the Deaf; ~~or~~ and

31                   ~~(G)~~(iii) The Arkansas School for the Blind.

32                  (2) This section provides protection against civil liability,

33 attorney's fees, and costs of defense for acts or omissions of each employee

34 or volunteer in the performance of his or her duties as a volunteer or his or

35 her official duties as a school employee, including civil liability for

36 administering corporal punishment to students, in the amount of two hundred

1 fifty thousand dollars (\$250,000) for incidents which occurred prior to July  
2 1, 1999, and one hundred fifty thousand dollars (\$150,000) for each incident  
3 which occurs after June 30, 1999.

4  
5 SECTION 2. Arkansas Code § 6-20-2305(b)(4)(B)(i)(a), concerning  
6 national school lunch state categorical funding, is amended to read as  
7 follows:

8 (B)(i)(a)(1) Except as provided under subdivision  
9 (b)(4)(B)(i)(c) of this section, ~~National~~ national school lunch state  
10 categorical funding under this subdivision (b)(4) shall be based on the  
11 number of national school lunch students for the immediately preceding school  
12 year determined under § 6-20-2303(12)(A).

13 (b) If the school district is participating  
14 under 42 U.S.C. § 1759a, funding under this subdivision (b)(4) is based on  
15 the percentage determined in § 6-20-2303(12)(B) multiplied by the number of  
16 enrolled students for the immediately preceding school year.

17 (c) The per-student national school lunch  
18 state categorical funding for an open-enrollment public charter school shall  
19 be based upon the current school year enrollment:

20 (1) In the initial year of operation for  
21 an open-enrollment public charter school; or

22 (2) In a year in which an open-  
23 enrollment public charter school adds a grade.

24  
25 SECTION 3. Arkansas Code Title 6, Chapter 23, Subchapter 1 is amended  
26 to add an additional section to read as follows:

27 6-23-107. Reporting requirements.

28 (a) Within ten (10) calendar days of the close of the first quarter of  
29 each school year, a public charter school shall submit a written report to  
30 the Department of Education that contains the following information for the  
31 current school year:

32 (1) The number of applications for enrollment received;

33 (2) The number of applicants with a disability identified under  
34 the Individuals with Disabilities Act, 20 U.S.C. § 1400 et seq.; and

35 (3) The number of applications for enrollment the public charter  
36 school denied and an explanation of the reason for each denial.

1 (b) Within ten (10) calendar days of the close of the fourth quarter  
2 of each school year, a public charter school shall submit a written report to  
3 the department that contains the following information for the current school  
4 year:

5 (1) The number of students in each of the following categories:

6 (A) Students who dropped out of the public charter school  
7 during the school year;

8 (B) Students who were expelled during the school year by  
9 the public charter school; and

10 (C) Students who were enrolled in the public charter  
11 school but for a reason other than those cited in subdivisions (b)(1)(A) and  
12 (B) did not complete the school year at the public charter school; and

13 (2)(A) For all students enrolled in the public charter school,  
14 the scores for assessments required under the Arkansas Comprehensive Testing,  
15 Assessment, and Accountability Program Act, § 6-15-401 et seq., including  
16 without limitation benchmark assessments and end-of-course assessments.

17 (B) If there is any discrepancy in the number of students  
18 for whom scores are reported under this subdivision (b)(2) and the number of  
19 students enrolled at the beginning of the school year, the public charter  
20 school shall explain in the report the reason for the discrepancy.

21 (c) The department shall not exempt a public charter school from the  
22 reporting required under this section.

23 (d) The department shall publish a copy of each report on the  
24 department's website.

25 (e) If a public charter school fails to comply with this section, the  
26 department shall note the failure in the annual evaluation of the public  
27 charter school.

28  
29 *SECTION 4. Arkansas Code § 6-23-301(c), concerning the requirement for*  
30 *a petition indicating parental support for an open-enrollment public charter*  
31 *school is repealed:*

32 ~~*(e) As part of the application procedure, the state board may require*~~  
33 ~~*a petition supporting a charter for an open-enrollment public charter school*~~  
34 ~~*signed by a specified number of parents or guardians of school-age children*~~  
35 ~~*residing in the area in which an open-enrollment public charter school is*~~  
36 ~~*proposed, or it may hold a public hearing to determine parental support for*~~

1 ~~the school.~~

2  
3 SECTION 5. Arkansas Code § 6-23-302 is amended to read as follows:  
4 6-23-302. Application for an open-enrollment public charter school.

5 (a) Pursuant to the provisions of this chapter, an eligible entity may  
6 apply to the State Board of Education to grant a charter for an open-  
7 enrollment public charter school to operate in a facility of a commercial or  
8 nonprofit entity or a public school district.

9 (b) The application to the state board for an open-enrollment public  
10 charter school shall be made in accordance with a schedule approved by the  
11 state board.

12 (c) The application shall:

13 (1)(A) Describe the results of a public hearing called by the  
14 applicant for the purpose of assessing support for an application for an  
15 open-enrollment public charter school.

16 (B)(i) Notice of the public hearing shall be published one  
17 (1) time a week for three (3) consecutive weeks in a newspaper having general  
18 circulation in ~~each~~ the public school district ~~from~~ in which the open-  
19 enrollment public charter school is likely to ~~draw students for the purpose~~  
20 ~~of enrollment~~ be located.

21 (ii) The last publication of notice shall be no less  
22 than seven (7) days prior to the public meeting.

23 (iii) The notice shall not be published in the  
24 classified or legal notice section of the newspaper.

25 ~~(iv) The notice shall be published in no less than~~  
26 ~~ten point type and shall be no less than two by four inches (2'' x 4'')~~ ~~or~~  
27 ~~four by two inches (4'' x 2'').~~

28 (C)(i) Within seven (7) calendar days following the first  
29 publication of notice required under subdivision (c)(1)(B) of this section,  
30 letters announcing the public hearing shall be sent to the superintendent of  
31 each of the public school districts from which the open-enrollment public  
32 charter school is likely to draw students for the purpose of enrollment and  
33 the superintendent of any public school district that is contiguous to the  
34 public school district in which the open-enrollment public charter school  
35 will be located.

36 (ii) An affected school district may submit written

1 *comments concerning the application to the state board to be considered at*  
2 *the time of the state board's review of the application;*

3 *(2) Describe a plan for academic achievement that addresses how*  
4 *the open-enrollment public charter school will improve student learning and*  
5 *meet the state education goals;*

6 *(3) Outline the proposed performance criteria that will be used*  
7 *during the initial five-year period of the open-enrollment public charter*  
8 *school operation to measure its progress in improving student learning and*  
9 *meeting or exceeding the state education goals;*

10 *(4) List the specific provisions of this title and the specific*  
11 *rules and regulations promulgated by the state board from which the open-*  
12 *enrollment public charter school seeks to be exempted;*

13 *(5)(A) Describe the facility to be used for the open-enrollment*  
14 *public charter school and state the facility's current use ~~and the facility's~~*  
15 *~~use for the immediately preceding three (3) years.~~*

16 *(B) If the facility to be used for an open-enrollment*  
17 *public charter school is a public school district facility, the open-*  
18 *enrollment public charter school must operate in the facility in accordance*  
19 *with the terms established by the local school board of the public school*  
20 *district in an agreement governing the relationship between the open-*  
21 *enrollment public charter school and the public school district.*

22 *(C) If the facility that will be used for the open-*  
23 *enrollment public charter school is owned by or leased from a sectarian*  
24 *organization, the terms of the facility agreement must be disclosed to the*  
25 *state board; and*

26 *(6) Include a detailed budget and a governance plan for the*  
27 *operation of the open-enrollment public charter school.*

28 *(d)(1)(A) The application ~~shall be first~~ may be reviewed and approved*  
29 *by the local school board of the public school district in which the proposed*  
30 *open-enrollment public charter school will operate.*

31 *(B) The applicant may submit to the state board for*  
32 *expedited review an application approved by the local school board under*  
33 *subdivision (d)(1)(A) of this section.*

34 *(2)(A) However, if the local school board disapproves the*  
35 *application, the applicant shall have an immediate right to proceed with a*  
36 *written notice of appeal to the state board.*

1                   (B) The state board shall hold a hearing within forty-five  
2 (45) calendar days after receipt of the notice of appeal or a request for  
3 review.

4                   (C) All interested parties may appear at the hearing and  
5 present relevant information regarding the application.

6                   (e) A ~~certified~~ licensed teacher employed by a public school district  
7 in the school year immediately preceding the effective date of a charter for  
8 an open-enrollment public charter school operated at a public school facility  
9 may not be transferred to or be employed by the open-enrollment public  
10 charter school over the ~~certified~~ licensed teacher's objections.

11  
12                   SECTION 6. Arkansas Code § 6-23-304(d), concerning the requirements  
13 for approval of an open-enrollment public charter school, is amended to read  
14 as follows:

15                   ~~(d)(1) The General Assembly recognizes by established relevant~~  
16 ~~demonstrated educational accountability measures that the Knowledge Is Power~~  
17 ~~Program (KIPP) Delta College Preparatory Open Enrollment Charter School has:~~

18                   ~~(A) Improved student learning through innovative ideas and~~  
19 ~~techniques;~~

20                   ~~(B) Increased learning opportunities for all students; and~~

21                   ~~(C) Created special emphasis on expanded learning~~  
22 ~~experiences for students who were previously identified as low-achieving.~~

23                   ~~(2) As a result, the Knowledge Is Power Program is recognized as~~  
24 ~~an effective method for:~~

25                   ~~(A) Meeting the statutory intent of this chapter;~~

26                   ~~(B) Closing the achievement gap in public schools for~~  
27 ~~economically disadvantaged, racial, and ethnic subgroups, which is addressed~~  
28 ~~by the Arkansas Comprehensive Testing, Assessment, and Accountability Program~~  
29 ~~Act, § 6-15-401 et seq., and § 6-15-1601 et seq.; and~~

30                   ~~(C) Otherwise providing an alternative education that has~~  
31 ~~been proven adequate and equitable to Arkansas students.~~

32                   ~~(3)(d) Therefore, a~~ A charter applicant that receives an approved  
33 open-enrollment public charter may petition the state board for additional  
34 licenses to establish an open-enrollment public charter school in any of the  
35 various congressional districts in Arkansas if the applicant meets the  
36 following conditions, ~~subject to the normal application, review, and approval~~

1 ~~process of the state board:~~

2 ~~(A)(1)~~ The approved open-enrollment public charter applicant has  
3 demonstrated success in student achievement gains, as defined by the state  
4 board;

5 ~~(B)(2)~~ The approved open-enrollment public charter applicant has  
6 not:

7 ~~(i)(A)~~ Been subject to any disciplinary action by the  
8 state board;

9 ~~(ii)(B)~~ Been classified as in school improvement or  
10 academic or fiscal distress; and

11 ~~(iii)(C)~~ Had its open-enrollment public charter  
12 placed on charter school probation or suspended or revoked under § 6-23-105;  
13 and

14 ~~(G)(3)~~ The state board determines in writing by majority of a  
15 quorum of the state board present that the open-enrollment public charter  
16 applicant has generally established the educational program results and  
17 criteria set forth in this ~~subdivision (d)(3)~~ subsection.

18  
19 SECTION 7. Arkansas Code § 6-23-306(14), concerning admissions  
20 requirements in an application for an open-enrollment public charter school,  
21 is amended to read as follows:

22 (14)(A) Specify methods for applying for admission, enrollment  
23 criteria, and student recruitment and selection processes.

24 (B)(i)(a) Except as provided in subdivision (14)(C) of  
25 this section, if more eligible students apply for a first-time admission than  
26 the open-enrollment public charter school is able to accept by the annual  
27 deadline that the open-enrollment public charter school has established for  
28 the receipt of applications for the next school year, the open-enrollment  
29 public charter must require the open-enrollment public charter school to use  
30 a random, anonymous student selection method that shall be described in the  
31 charter application.

32 (b)(1) If there are still more applications  
33 for admissions than the open-enrollment public charter school is able to  
34 accept after the completion of the random, anonymous student selection  
35 method, then the open-enrollment public charter school shall place the  
36 applicants on a waiting list for admission.



1 (2) The waiting list is valid until the  
 2 next time the open-enrollment public charter school is required to conduct a  
 3 random, anonymous student selection.

4 (ii) However, an open-enrollment public charter  
 5 school may allow a preference for:

6 (a)(1) Children of the founding members of the  
 7 eligible entity.

8 (2) The number of enrollment preferences  
 9 granted to children of founding members shall not exceed ten percent (10%) of  
 10 the total number of students enrolled in the open-enrollment public charter  
 11 school; and

12 (b) Siblings of students currently enrolled in  
 13 the open-enrollment public charter school.

14 (C) The open-enrollment public charter may ~~allow use of~~ a  
 15 weighted lottery in the student selection process only when necessary to  
 16 comply with a:

17 (i) Federal court order; or

18 (ii) Federal administrative order issued by an  
 19 appropriate federal agency having proper authority to enforce remedial  
 20 measures necessary to comply with Title VI of the federal Civil Rights Act of  
 21 1964, Title IX of the federal Education Amendments of 1972, the equal  
 22 protection clause of the Fourteenth Amendment to the United States  
 23 Constitution, ~~a court order, or a federal or state law requiring~~  
 24 ~~desegregation, as permitted by the Charter Schools Program, Title V, Part B,~~  
 25 ~~Non-Regulatory Guidance of the United States Department of Education, July,~~  
 26 ~~2004; and~~

27  
 28 SECTION 8. Arkansas Code § 6-23-307 is amended to read as follows:  
 29 6-23-307. Renewal of charter.

30 After the initial five-year period of an open-enrollment public  
 31 charter, the State Board of Education ~~is authorized to~~ may renew the open-  
 32 enrollment public charter on a one-year or multiyear basis, not to exceed  
 33 ~~five (5)~~ twenty (20) years.

34  
 35 SECTION 9. Arkansas Code § 6-23-402(b)(2), concerning enrollment  
 36 numbers and deadlines for open-enrollment public charter schools, is amended

1 to read as follows:

2 (2) However, if a student enrolled by July 30 should no longer  
3 choose to attend the open-enrollment public charter school or if the open-  
4 enrollment public charter school has not yet met its enrollment cap, the  
5 open-enrollment public charter school may enroll a number of replacement  
6 student or additional students not to exceed the enrollment cap of the open-  
7 enrollment public charter school.

8

9 SECTION 10. Arkansas Code § 6-23-404(b), concerning the annual  
10 evaluation of open-enrollment public charter schools, is amended to read as  
11 follows:

12 (b) An annual evaluation shall include, ~~but not be limited to,~~ without  
13 limitation consideration of:

14 (1) Student scores under the statewide assessment program  
15 described in § 6-15-433;

16 (2) Student attendance;

17 (3) Student grades;

18 (4) Incidents involving student discipline;

19 (5) Socioeconomic data on students' families;

20 (6) Parental satisfaction with the schools; ~~and~~

21 (7) Student satisfaction with the schools; and

22 (8) The open-enrollment public charter school's compliance with  
23 § 6-23-107.

24

25 SECTION 11. Arkansas Code Title 6, Chapter 23, Subchapter 4, is  
26 amended to add additional sections to read as follows:

27 6-23-405. Monthly reports.

28 An open-enrollment public charter school in its initial school year of  
29 operation shall provide monthly reports on its enrollment status and  
30 compliance with its approved budget for the current school year to the  
31 Department of Education.

32

33 6-23-406. Department of Education review.

34 The Department of Education shall:

35 (1) Conduct an end-of-semester review of each open-enrollment

36 public charter school that is in its initial school year of operation at the

1 end of the first semester and at the end of the school year; and

2 (2) Report to the State Board of Education on the open-  
3 enrollment public charter school's:

4 (A) Overall financial condition; and

5 (B) Overall condition of student enrollment.

6  
7 SECTION 12. Arkansas Code § 6-23-501(a)(2)(A)(i), concerning funding  
8 for open-enrollment public charter schools, is amended to read as follows:

9 (i) ~~The initial funding estimate shall be based on~~  
10 ~~enrollment as of July 30 preceding the school year in which the students are~~  
11 ~~to attend classes~~ July 1 of the current school year;

12  
13 SECTION 13. Arkansas Code § 6-23-501(a)(3)(A), concerning funding for  
14 open-enrollment public charter schools, is amended to read as follows:

15 (3) National school lunch state categorical funding under § 6-  
16 20-2305(b)(4) shall be provided to an open-enrollment public charter school  
17 as follows:

18 (A) For the first year of operation and in any year when a  
19 grade is added, free or reduced-price meal eligibility data as reported by  
20 October 1 of the current school year will be used to calculate the national  
21 school lunch state categorical funding under the state board rules governing  
22 special needs funding; and

23  
24 SECTION 14. Arkansas Code § 6-23-501(a)(4), concerning professional  
25 development funding for open-enrollment public charter schools, is amended to  
26 read as follows:

27 (4) Professional development funding under § 6-20-2305(b)(5)  
28 shall be provided to an open-enrollment public charter school for the first  
29 year of operation and in any year in which a grade is added as follows:

30 (A)(i) In the first year of operation the open-enrollment  
31 public charter school shall receive professional development funding based  
32 upon the initial projected enrollment student count as of ~~July 30 preceding~~  
33 ~~the school year in which the students are to attend,~~ July 1 of the current  
34 school year multiplied by the per-student professional development funding  
35 amount under § 6-20-2305(b)(5) for that school year.

36 (ii) For the second year and each school year

1 thereafter, professional development funding will be based upon the previous  
2 year's average daily membership multiplied by the per-student professional  
3 development funding amount for that school year.

4  
5 SECTION 15. Arkansas Code § 6-23-601(e)(1), concerning the annual  
6 evaluation of a limited public charter school, is amended to read as follows:

7 (e)(1) Limited public charter schools shall be evaluated annually by  
8 the department based on criteria approved by the state board, ~~including, but~~  
9 ~~not limited to,~~ including without limitation:

10 (A) ~~student~~ Student performance data in order to determine  
11 progress in student achievement that has been achieved by the limited public  
12 charter school; and

13 (B) The limited public charter school's compliance with §  
14 6-23-107.

15  
16 SECTION 16. Arkansas Code § 10-4-413(b)(1), concerning the audits of  
17 schools, is amended to read as follows:

18 (b)(1)(A) A school may retain the services of a licensed certified  
19 public accountant or a licensed accountant in public practice in good  
20 standing with the Arkansas State Board of Public Accountancy to conduct an  
21 annual financial audit in accordance with auditing standards generally  
22 accepted in the United States and Government Auditing Standards issued by the  
23 Comptroller General of the United States.

24 (B) If the school is an open-enrollment public charter  
25 school in its first year of operation, the Legislative Auditor shall prepare  
26 the required annual financial audit for the school unless:

27 (i) The open-enrollment public charter school  
28 chooses to retain the services of a licensed certified public accountant or  
29 licensed accountant in public practice under subdivision (b)(1)(A) of this  
30 section; and

31 (ii) The State Board of Education approves the open-  
32 enrollment public charter school's use of an entity other than the  
33 Legislative Auditor to prepare the annual financial audit.

34 ~~(B)(C)~~ The report shall include a report on internal  
35 control over financial reporting and on compliance and other matters based on  
36 an audit of financial statements performed in accordance with the Government

1 *Auditing Standards.*

2  
3 *SECTION 17. Arkansas Code § 21-9-301(a), concerning tort liability and*  
4 *immunity for political subdivisions in the state, is amended to read as*  
5 *follows:*

6 *(a) It is declared to be the public policy of the State of Arkansas*  
7 *that all counties, municipal corporations, school districts, public charter*  
8 *schools, special improvement districts, and all other political subdivisions*  
9 *of the state and any of their boards, commissions, agencies, authorities, or*  
10 *other governing bodies shall be immune from liability and from suit for*  
11 *damages except to the extent that they may be covered by liability insurance.*

12  
13 *SECTION 18. EMERGENCY CLAUSE. It is found and determined by the*  
14 *General Assembly of the State of Arkansas that it is the state's*  
15 *constitutional obligation to provide a general, suitable, and efficient free*  
16 *system of public schools in the state; that the public school funding*  
17 *distribution changes in this act are needed to ensure that proper funding is*  
18 *provided to the affected public charter schools; and that this act is*  
19 *immediately necessary so that the affected public charter schools will*  
20 *receive the amount of funding provided under this act for the current school*  
21 *year. Therefore, an emergency is declared to exist and this act being*  
22 *immediately necessary for the preservation of the public peace, health, and*  
23 *safety shall become effective on:*

24 *(1) The date of its approval by the Governor;*

25 *(2) If the bill is neither approved nor vetoed by the Governor,*  
26 *the expiration of the period of time during which the Governor may veto the*  
27 *bill; or*

28 *(3) If the bill is vetoed by the Governor and the veto is*  
29 *overridden, the date the last house overrides the veto.*

30  
31 */s/G. Baker*  
32  
33  
34  
35  
36