



2026 South Dakota Legislature

Senate Bill 218

Introduced by: **Senator Nelson**

1 **An Act to provide for the establishment of charter schools.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

4 Terms used in this chapter mean:

5 (1) "Authorizing entity," the board of the school district in which an approved charter
6 school is to be located or the Department of Education; and

7 (2) "Charter school," a public school that is established and operated under the terms
8 of a contract between an authorizing entity and the independent governing board
9 of a charter school pursuant to this chapter.

10 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

11 Except as otherwise provided in this chapter and §§ 13-13-10.1 and 13-37-35.1,
12 a charter school is exempt from any state law or rule pertaining to a public school, school
13 district, or the board of a school district.

14 A charter school must:

15 (1) Comply with civil rights, health, and safety requirements applicable to other public
16 schools in this state;

17 (2) Be nonsectarian in its programs, admission policies, employment practices, and all
18 other operations;

19 (3) Provide a comprehensive program of instruction for at least one grade between
20 kindergarten and grade twelve, inclusive;

21 (4) Follow the same operational term as provided for in § 13-26-2;

22 (5) Follow all applicable state and federal laws governing the provision of education to
23 children with disabilities;

24 (6) Provide for the measurement of student progress in a manner required by the
25 Department of Education;

(7) Be subject to the same student assessment and accountability requirements applicable to school districts in this state, except that nothing prevents the school from establishing additional assessments and requirements that exceed those applicable under state law;

(8) Report educational data and preserve educational financial records in the same manner as a school district pursuant to §§ 13-3-51 to 13-3-51.6, inclusive;

(9) Maintain accounting and financial functions that are separate from those of the authorizing entity;

(10) Maintain a risk management and insurance program; and

(11) Use the same standards as those established for the education of students in a school district.

An employee of a charter school is subject to the employee criminal background investigation requirements in § 13-10-12 otherwise applicable to school districts.

The authorizing entity shall conduct annual financial, compliance, and performance audits of the charter school.

A charter school and its governing board must comply with the open meetings and open records provisions otherwise applicable to school districts, pursuant to chapters 1-25 and 1-27, respectively.

Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 13:

On or before October first of each year, the Department of Education shall provide an annual report to the Governor and the Legislature regarding charter schools.

The report must provide:

(1) The academic performance of students attending each charter school;

(2) An assessment of the successes of and any challenges experienced by each charter school;

(3) Any actions that must be taken by each charter school to comply with this chapter;

(4) An assessment of charter schools with respect to their ability to meet the demand for charter school education, as calculated by admissions data and the number of students denied enrollment; and

(5) A comparison of the students' performance to that of academically, ethnically, and economically similar students in the school district in which the charter school is located.

Each charter school shall provide the information required by this section at the time and in the manner requested by the department.

Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 13:

The Department of Education shall promulgate rules, pursuant to chapter 1-26, to establish:

- (1) The form, process, and approval criteria for a charter school application;
- (2) The form and approval criteria for a charter school renewal application;
- (3) The process by which a charter school is reviewed by an authorizing entity;
- (4) The sanctions or corrective actions that the authorizing entity is permitted to impose on a charter school for unsatisfactory performance or to achieve legal compliance, pursuant to section 15 of this Act; and
- (5) The form for and required terms of a contract between an authorizing entity and the governing board of a charter school.

Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 13:

To establish a charter school, a nonprofit corporation shall file an application with an authorizing entity. The application must contain:

- (1) A mission statement for the charter school;
- (2) A description of the charter school's organizational structure;
- (3) A description of the charter school's governance structure and proposed governing board;
- (4) A location for and a description of the facility that is to be used to house the charter school;
- (5) Whether the charter school is to be located within the boundaries of a tribal reservation;
- (6) Whether the charter school proposes to prioritize serving low-income, special education, or English learner students;
- (7) The grade levels that are to be served in the charter school;
- (8) The anticipated enrollment of the charter school;
- (9) The educational objectives of the charter school;
- (10) A financial plan for the first three years of the charter school's operation;
- (11) Documentation showing community support for the proposed charter school;
- (12) If the applicant intends to serve students within a tribal reservation, documentation showing consultation with the local tribal government or tribal education department, as applicable;

1 (13) Personnel policies for the charter school, including those addressing employment
2 and qualifications;

3 (14) The criteria that are to be used to measure the performance of the charter school;
4 and

5 (15) A description of how the charter school is to provide special education and related
6 services.

7 If multiple applications are submitted to an authorizing entity to establish a charter
8 school within a tribal reservation, the authorizing entity must give priority consideration
9 to the application for a charter school that proposes to serve students in accordance with
10 the Oceti Sakowin Essential Understandings.

11 If multiple applications are submitted to an authorizing entity to establish a charter
12 school that is not to be located within a tribal reservation, the authorizing entity may give
13 priority consideration to the application for a charter school that proposes to serve
14 students in accordance with the Oceti Sakowin Essential Understandings or based on the
15 students' poverty status, special education status, or English learner status.

16 Priority consideration under this section does not affect the authorizing entity's
17 obligation to approve each application that meets the requirements of this chapter and
18 satisfies the approval criteria established by the Department of Education, pursuant to
19 sections 4 and 7 of this Act.

20 An applicant's intention to serve students in accordance with the Oceti Sakowin
21 Essential Understandings or based on the students' poverty status, special education
22 status, or English learner status must be set forth in the charter school's mission
23 statement.

24 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

25 Upon receiving an application to establish a charter school, the authorizing entity
26 has forty-five days to review and approve or deny the application. The authorizing entity
27 may ask questions of or request revisions from the applicant throughout the review period.
28 While reviewing the application, the entity must:

29 (1) Conduct an interview with the applicant or the applicant's authorized
30 representative; and

31 (2) Hold an official meeting, pursuant to chapter 1-25, to review the application, with
32 an opportunity for public comment.

33 An application to establish a charter school must be approved or denied in an open
34 meeting of the entity pursuant to chapter 1-25. The entity may not approve or deny an

1 application to establish a charter school at the same meeting at which the application was
2 initially reviewed by the entity.

3 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

4 The authorizing entity must approve an application that:

5 (1) Meets the requirements of this Act;

6 (2) Satisfies the approval criteria established by the Department of Education,
7 pursuant to section 4 of this Act; and

8 (3) Demonstrates:

9 (a) The governing body's ability to operate the school in an educationally and
10 fiscally sound manner; and

11 (b) The program by which the charter school proposes to improve student
12 achievement and any evidence that points to the program's likelihood for
13 success.

14 The entity shall base its decision to approve or deny the application on
15 documentation collected through the application process. If the entity denies an
16 application, it must notify the applicant, in writing, of the specific reasons for denial.

17 If the entity is the board of a school district, the board shall forward copies of all
18 application materials and report its determination to the department within five days of
19 the meeting at which the application was approved or denied.

20 With the agreement of the nonprofit corporation applying to establish a charter
21 school, the authorizing entity may establish conditions or other requirements to ensure
22 the charter school meets all the requirements established in the contract to open the
23 school. The entity may not require the charter school to enter into any service agreement
24 with a school district as a condition that the applicant corporation must meet before
25 executing a contract.

26 **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

27 If an authorizing entity denies an application to establish a charter school, the
28 nonprofit corporation may reapply to any other appropriate authorizing entity.

29 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

30 No later than thirty days after an application for a charter school is approved, the
31 authorizing entity must enter into a contract with the governing board of the charter

1 school. The contract must meet the form and required terms, as established by the
2 Department of Education, pursuant to section 4 of this Act, and must contain:

3 (1) A performance framework that is to guide the authorizing entity's evaluations of
4 the charter school and clearly sets forth the operational performance indicators,
5 measures, and metrics for:

6 (a) Student academic proficiency;

7 (b) Student academic growth;

8 (c) Achievement gaps in both proficiency and growth between major student
9 subgroups;

10 (d) Attendance;

11 (e) Recurrent enrollment from year-to-year;

12 (f) Postsecondary readiness;

13 (g) Mission-specific goals;

14 (h) Financial performance and sustainability; and

15 (i) Board performance and stewardship;

16 (2) The process by which the governing board of the charter school reports to the
17 authorizing entity with the information collected from the charter school under the
18 performance framework established pursuant to subdivision (1);

19 (3) The administrative relationship between:

20 (a) The authorizing entity and the charter school; and

21 (b) The nonprofit corporation applying to create the charter school and the
22 governing board of the charter school; and

23 (4) The rights and expectations of the authorizing entity and the charter school.

24 The authorizing entity may not include in the contract any other requirement in
25 addition to what is provided for in section 7 of this Act or this section. The authorizing
26 entity shall approve the contract required by this section in an open meeting, pursuant to
27 chapter 1-25.

28 If any of the conditions set by the authorizing entity, pursuant to section 7 of this
29 Act, have not been met by the charter school, the entity may provide the governing board
30 of the charter school with an additional thirty days to meet the conditions set before
31 terminating the contract or may immediately terminate the contract with the governing
32 board.

33 **Section 10. That a NEW SECTION be added to a NEW CHAPTER in title 31:**

A single nonprofit corporation may apply to create more than one charter school, and may designate a single governing board to hold the contract of each charter school authorized as a result of the nonprofit corporation's application. Each charter school that is part of a charter contract must be a discrete legal entity.

Section 11. That a NEW SECTION be added to a NEW CHAPTER in title 13:

If the authorizing entity is the board of a school district, the entity must, within fifteen days of contract approval, submit a copy of the contract to the Department of Education.

If the authorizing entity is the department, the entity must, within fifteen days of contract approval, submit a copy of the contract to the board of the school district in whose boundaries the charter school is to be located.

Section 12. That a NEW SECTION be added to a NEW CHAPTER in title 13:

An initial contract, as provided for in section 9 of this Act, must have a term of five years, beginning the first day of the school fiscal year, as defined in § 13-26-1, in which the charter school begins operation. A governing board may, upon notifying the authorizing entity, delay the effective date of the initial contract for a period of up to one year, unless the charter school obtains permission from the authorizing entity for an additional year or years.

Any subsequent contract authorized pursuant to this chapter is effective for five years, beginning the first day of the school fiscal year, as defined in § 13-26-1, after the contract is approved by the authorizing entity, unless:

- (1) A shorter duration is agreed to by the parties;
- (2) The authorizing entity shortens the term of the contract based on the performance, demonstrated capacities, and other circumstances of each charter school; or
- (3) The contract is not renewed pursuant to section 18 of this Act; or
- (4) The contract is revoked pursuant to section 19 of this Act.

A contract may contain conditions governing its continuation, provided the conditions comply with the provisions of this chapter.

Section 13. That a NEW SECTION be added to a NEW CHAPTER in title 13:

A governing board of a charter school is responsible for collecting, analyzing, and reporting all data from state assessments or other state data sources in accordance with

the performance framework described in section 9 of this Act. At the request of the governing board, the Department of Education shall assist the governing board in collecting, analyzing, and reporting all data, pursuant to this section. An authorizing entity may not require duplicative data entry and submission from a charter school and may not use the performance framework to create duplicative reporting requirements for a charter school.

If a governing board operates multiple charter schools under a single charter school contract, each school must report the charter school's performance. Each charter school operated by a governing board under a single contract must be held independently accountable for the charter school's performance.

Section 14. That a NEW SECTION be added to a NEW CHAPTER in title 13:

Subject to the approval of the authorizing entity, the governing board of a charter school shall set annual performance targets to help the school meet all applicable federal, state, and entity expectations. The performance targets may be amended by mutual agreement of the governing board of the charter school and the entity after the charter school has begun operating and has collected achievement data for students enrolled in the charter school.

The performance framework included in the charter school contract pursuant to section 9 of this Act may be amended by mutual agreement of the governing board of the charter school and authorizing entity after the charter school begins operating and has collected initial achievement data for enrolled students. The performance framework must disaggregate all student performance data by race, poverty status, special education status, and English learner status. All data must be reported in a way that meets the requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232 (January 1, 2026).

The authorizing entity of a charter school shall monitor the performance and legal compliance of the charter school and may collect data from the school to support the ongoing monitoring and evaluation, so long as those activities are consistent with this chapter, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to the charter school.

Section 15. That a NEW SECTION be added to a NEW CHAPTER in title 13:

If the authorizing entity determines that the charter school's performance or legal compliance is unsatisfactory, the entity may require the governing board of the charter

school to take action to rectify the unsatisfactory performance or legal compliance of the charter school. The entity must provide written notification to the governing board of the corrective action the charter school is required to take, stating a reasonable time by when the matter must be resolved.

If the charter school fails to rectify the unsatisfactory performance or legal compliance in the time stated in the notification, the authorizing entity may deny the renewal of or revoke the contract, pursuant to sections 18 and 19 of this Act.

Section 16. That a NEW SECTION be added to a NEW CHAPTER in title 13:

After an initial contract has been in effect for four years, the authorizing entity must provide to the governing board of the charter school a draft of a report setting forth the school's performance to date and must note any concerns that need to be addressed before the renewal process is initiated. The authorizing entity shall provide the governing board at least thirty days from the date the governing board receives the report, within which the governing board may request clarifications or corrections to the report, or to otherwise respond to the report. At the conclusion of the thirty days, the authorizing entity shall provide the governing body with the finalized report.

The authorizing entity shall provide guidance to the governing board regarding the renewal process and the criteria that the Department of Education has established, pursuant to section 4 of this Act, regarding a renewal of the contract.

To renew the contract, the governing board of a charter school must submit a renewal application. The governing board shall attach to the board's renewal application:

- (1) Additional evidence of improvements in student performance;
- (2) A description of improvements that had been undertaken, are being undertaken, or are being planned to resolve the concerns noted by the entity in the report provided pursuant to this section; and
- (3) A detailed operational plan for the ensuing contract period, outlining the continued implementation of:
 - (a) The performance framework, established pursuant to subdivision (1) of section 9 of this Act;
 - (b) The process by which the governing board of the charter school reports to the authorizing entity;
 - (c) The process by which information is collected from the charter school under the performance framework established pursuant to subdivision (1) of section 9 of this Act;

- (d) The administrative relationship between the authorizing entity and the governing board of the charter school; and
- (e) The rights and expectations of the authorizing entity, the governing board of the charter school, and the charter school.

Section 17. That a NEW SECTION be added to a NEW CHAPTER in title 13:

Upon receiving an application for the renewal of a contract, the authorizing entity shall, within forty-five days:

- (1) Conduct an interview with the governing board of the charter school or the governing board's authorized representative;
- (2) Hold a public forum on the renewal application, with an opportunity for public comment;
- (3) Examine the documentation submitted by the governing board, demonstrating the charter school's performance during the prior term of the contract; and
- (4) Provide to the charter school a report regarding the evidence provided and the decision that was reached.

The term of renewal for a charter school contract is five years, unless a shorter duration is agreed to by the parties or the authorizing entity shortens the term of the contract based on the performance, demonstrated capacities, and other circumstances of each charter school. An entity may grant the renewal of a contract subject to conditions necessary to improve the performance of the charter school.

The entity must base its decision to approve or deny the renewal application on documentation collected through the application process. The decision to approve or deny the application must be made in an open meeting of the entity.

Section 18. That a NEW SECTION be added to a NEW CHAPTER in title 13:

An authorizing entity may deny an application for renewal of a contract only if the authorizing entity determines that the charter school:

- (1) Engaged in a material breach of the contract or a substantial violation of this chapter;
- (2) Failed to meet or make sufficient progress toward the school's performance expectations, as specified in the charter contract;
- (3) Failed to meet generally accepted standards of fiscal management; or
- (4) Substantially violated any provision of law from which the charter school was not exempt.

If the authorizing entity is the board of a school district, a denial of an application under this section may be appealed to the Department of Education. The decision of the department is final if the decision pertains to an application for the renewal of a charter school when the department serves as the authorizing entity of the school or when the appeal pertains to a decision made by the board of a school district.

If the department approves a renewal application that had been previously denied by the board of a school district, the department becomes the authorizing entity for the charter school.

Section 19. That a NEW SECTION be added to a NEW CHAPTER in title 13:

An authorizing entity may revoke a contract upon the conditions set forth in section 18 of this Act, if the entity:

(1) Provides the following to the governing board of a charter school, at least fourteen days prior to the hearing required by this section:

(a) A written notice of the entity's intent to revoke the charter school contract;

(b) A written determination of the entity as to why the entity intends to revoke the charter school contract; and

(c) Documentation supporting the entity's determination;

(2) Schedules a public hearing at which the governing board of the charter school may provide testimony and documentary evidence; and

(3) Permits the hearing to be recorded.

Section 20. That a NEW SECTION be added to a NEW CHAPTER in title 13:

If a charter school is dissolved because the school's contract was revoked or not renewed or because the charter school elected to close, the assets of the school must be distributed first to the employees of the charter school to satisfy any outstanding payroll obligations, then to satisfy any other outstanding debts incurred by the charter school.

If any assets remain after satisfying any outstanding payroll obligations and debts, the remaining assets of the charter school must be forwarded to the state treasurer for deposit in the general fund.

If the assets of the charter school are insufficient to satisfy all outstanding payroll and debt obligations, the distribution of the charter school's assets is to be determined by the decree of a court of law.

Section 21. That a NEW SECTION be added to a NEW CHAPTER in title 13:

A charter school established in accordance with this chapter may, independently of its authorizing entity:

(1) Purchase or lease real property, facilities, appurtenances, and equipment;

(2) Obtain a loan;

(3) Pledge, assign, or encumber its assets to collateralize a loan or obtain credit;

(4) Accept gifts, grants, and donations for any purpose related to the establishment or operation of the school;

(5) Hire and compensate personnel;

(6) Enter into a contract with a school district or educational cooperative for the delivery of educational or other services, provided the consideration paid by the charter school for the services does not exceed the delivering entity's actual cost of providing the services; and

(7) Access any shared services offered by the state.

Section 22. That a NEW SECTION be added to a NEW CHAPTER in title 13:

At least seventy-five percent of the teachers employed by a charter school must hold a certificate as provided by chapter 13-42. If an individual is employed by a charter school as a special education teacher or other educational professional, as defined in § 13-42-1, the individual must have the certification required for the position in a school district.

An individual who is employed as an administrator of a charter school is not required to be certified as an administrator pursuant to chapter 13-42.

A charter school may not employ an individual if the individual holds a teacher, administrator, or other educational professional certificate that has been suspended or an educator permit that has been suspended, so long as the certificate or permit is suspended. A charter school may not employ an individual whose educator certificate was permanently revoked.

Section 23. That a NEW SECTION be added to a NEW CHAPTER in title 13:

A school district or any employee or board member thereof may not be held liable for:

(1) Any act or omission undertaken by the employee or member in good faith, and within the scope of authority, regarding a charter school; or

(2) Any debts incurred by or on behalf of a charter school.

An employee of a charter school is not an employee of the school district in which the charter school is located. Each charter school is responsible for any debts incurred by or on behalf of the charter school.

Section 24. That a NEW SECTION be added to a NEW CHAPTER in title 13:

Admission to a charter school must be open to any student. If the charter school has been established to serve students based on the student's poverty status, special education status, or English learner status, the charter school must give priority to an applicant that meets the charter school's mission statement, pursuant to section 5 of this Act. If a student is admitted to a charter school, the school must enroll the student for each subsequent school year until the student either completes the last grade-level served by the school, graduates, withdraws from the school, or is withdrawn from the school by the student's parent or legal guardian.

If, on a date identified by the charter school, the number of applicants seeking enrollment exceeds the capacity of a program, class, or grade level, the charter school must first enroll any applicant who is a sibling of a student currently enrolled in the charter school.

If the number of applicants who are siblings of students enrolled in the charter school is less than the capacity of the program, class, or grade level, the charter school must give preference to any applicant who is at risk of academic failure. Any remaining openings in the program, class, or grade level, must be filled by selecting applicants in a lottery.

If the number of new students in a group receiving preference exceeds the capacity of the program, class, or grade level remaining after previous groups had been enrolled, any remaining opening must be selected by lottery within the group receiving preference.

If the number of new students in the groups receiving preference does not exceed the capacity of the program, class, or grade level remaining after all of the groups receiving preference have been enrolled, any remaining opening must be selected by lottery.

A charter school conducting an admissions lottery must ensure that every student within each group designated pursuant to this section, has a fair opportunity to be considered in the lottery and that the lottery is competently conducted, randomized, transparent, and impartial so that students are accepted into a charter school without regard to academic status, athletic ability, ethnicity, familial status, gender, income, national origin, race, religion, or special needs.

1 No student may be denied admission based on the student's academic status,
2 athletic ability, ethnicity, familial status, gender, income, national origin, race, religion, or
3 special needs.

4 **Section 25. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

5 An employee of a charter school is eligible to participate in the state retirement
6 system, as set forth in chapter 3-12C.

7 **Section 26. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

8 An authorizing entity may impose an annual administrative fee upon the charter
9 school in an amount not exceeding three percent of the funding the charter school receives
10 pursuant to sections 27 and 28 of this Act.

11 The authorizing entity may use the funds provided in this section only to fulfill an
12 obligation associated with authorizing the charter school. An annual administrative fee
13 may not be counted toward any cost incurred by the authorizing entity in delivering, to
14 the charter school, a service that the charter school voluntarily purchased from the
15 authorizing entity.

16 An authorizing entity shall provide to each charter school authorized by the entity
17 an itemized description of the actual costs of oversight incurred by the entity in
18 administering the charter school. If the actual cost of oversight incurred by the entity is
19 less than the administrative fee collected by the entity pursuant to this section, the entity
20 must refund the balance to each charter school authorized by the entity, in proportion to
21 the amount initially collected from each charter school.

22 **Section 27. That a NEW SECTION be added to a NEW CHAPTER in title 13:**

23 The school district in which a charter school is located shall forward to the charter
24 school an amount equal to the per student equivalent, as calculated in accordance with
25 § 13-13-10.1, multiplied by the number of students enrolled in the charter school. The
26 charter school shall receive a share of the school district's state aid funding, pursuant to
27 chapter 13-13, local tax receipts, and county and state apportionment, based on the
28 number of the students enrolled in the charter school as a percentage of the school
29 district's average daily membership. The Department of Education shall ensure each
30 school district forwards the full per student equivalent, as defined in § 13-13-10.1, to any
31 charter school located within the district's jurisdiction.

The amount payable to a charter school in the first year of operation of the charter school is based on the projections for initial-year enrollment set forth in the charter school application. The projections must be reconciled with the actual enrollment at the end of the charter school's first year of operation, and any adjustment to the funding of the charter school must be made during the charter school's second year of operation.

The students enrolled in a charter school are included in the average daily membership of the school district in which the charter school is located in order to determine:

(1) Fall enrollment for the purposes of:

(a) General state aid for the school district, pursuant to § 13-13-10.1; and

(b) State aid for special education, pursuant to § 13-37-35.1; and

(2) The minimum enrollment for maintaining a school district, pursuant to § 13-6-97.

The district shall also forward an amount equal to the portion of funding calculated in accordance with chapter 13-37, for each student enrolled in the charter school who is entitled to special education and related services. The department shall ensure each school district forwards the full portion of special education funding, calculated in accordance with chapter 13-37, to any charter school located within the district's jurisdiction.

Section 28. That a NEW SECTION be added to a NEW CHAPTER in title 13:

The Department of Education shall ensure that a proportionate share of moneys generated under federal and state categorical aid programs, including any moneys provided through programs for tribal education, is directed to eligible charter schools. A charter school shall comply with all requirements of the aid.

Section 29. That a NEW SECTION be added to a NEW CHAPTER in title 13:

A charter school is a local education agency for the purpose of receiving funding for special education services, if the Department of Education is the authorizing entity of the charter school. If the authorizing entity of a charter school is a school district, the school district is the local education agency.

The charter school shall provide services to students as required by federal and state law and the charter school contract.