



THE WASHINGTON STATE BOARD OF EDUCATION

Governance | Accountability | Achievement | Oversight | Career & College Readiness

Title:	Transfer of Charter Contracts: Rules to RCW 28A.710.210(3)	
As Related To:	<input type="checkbox"/> Goal One: Effective and accountable P-13 governance. <input type="checkbox"/> Goal Two: Comprehensive statewide K-12 accountability. <input type="checkbox"/> Goal Three: Closing achievement gap.	<input checked="" type="checkbox"/> Goal Four: Strategic oversight of the K-12 system. <input type="checkbox"/> Goal Five: Career and college readiness for all students. <input type="checkbox"/> Other
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Policy Considerations / Key Questions:	<ul style="list-style-type: none"> • How prescriptive should the SBE be in rules to the provision of the charter school on petitions to the Board for transfers of charter contracts? • What specific issues need to be addressed in rule-making? • How can the Board ensure transparency and accountability in reviews and decisions on transfers of charter contracts? • How much guidance can be taken from laws, rules and practices of other states on transfer of charter contracts? • What should be the timetable for drafting, hearing and adoption of rules to this section? 	
Possible Board Action:	<input type="checkbox"/> Review <input type="checkbox"/> Adopt <input type="checkbox"/> Approve <input checked="" type="checkbox"/> Other	
Materials Included in Packet:	<input checked="" type="checkbox"/> Memo <input type="checkbox"/> Graphs / Graphics <input checked="" type="checkbox"/> Third-Party Materials <input checked="" type="checkbox"/> PowerPoint	
Synopsis:	<p>RCW 28A.710.210(3) provides that a charter authorizer, charter school, or nonprofit applicant may petition the State Board of Education for transfer of a charter contract to another authorizer or another applicant. The SBE must review such petitions on a case-by-case basis, and may grant transfer requests in response to “special circumstances” and evidence that the transfer “would serve the best interests of the charter school’s students.</p> <p>In the memo that follows, staff discuss the requirements of this provision of the charter school law, outline issues for implementation that are likely to require rule-making, and provide background on the reasons for this provision in Washington’s law and the prevalence and nature of such provisions in other states’ laws.</p> <p>The purpose of the presentation is to familiarize members with RCW 28A.710.210(3) and initiate Board discussion of rules to implement its duties under this section.</p> <p>In your packet you will find a memo and a copy of RCW 28A.710.210.</p>	



RULES TO RCW 28A.710.210(3) TRANSFERS OF CHARTER CONTRACTS

Policy Consideration

The Board will review RCW 28A.710.210(3) and offer initial direction to staff on the development of rules to implement this section of Washington's charter school law.

Summary

RCW 28A.710.210 stipulates measures that must be taken in the event of a decision by an authorizer not to renew or to revoke a charter contract, and in the event of dissolution of the nonprofit corporation that operates the school. Subsection (3) addresses the transfer of a charter contract during the term of the contract, and sets out specific duties for the State Board of Education for such transfers. It provides that

(3) A charter contract may not be transferred from one authorizer to another or from one charter school applicant to another before the expiration of the charter contract term except by petition to the state board of education by the charter school or its authorizer. The state board of education must review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the charter school's students.

Notably the section refers to two kinds of transfers: (1) From one authorizer to another, as between a school district and the Charter School Commission, and (2) From one charter school applicant to another, with "applicant" defined in the statute as a nonprofit corporation that has submitted an application to an authorizer.

As with RCW 28A.710.120, on oversight of district authorizers, the duties assigned to the SBE are quite broad, leaving a great deal to rule-making. Considerations for implementation to be addressed in rule may include but are not limited to the following.

- The content and format of the petition to the Board. The petition or petitions would need to satisfy the requirements of:
 - (1) An authorizer wishing to transfer a charter contract to another authorizer;
 - (2) A charter school wishing to transfer its charter contract to another authorizer;
 - (3) An authorizer wishing to transfer a charter contract from one applicant to another;
 - (4) A charter school wishing to transfer a charter from one applicant to another.
- The timeline for review and decisions by the Board on a petition for transfer.

- The process to be followed by the Board in reviewing the petition, including, for example, provision for public notice and comment.
- The criteria for making a decision whether to approve or deny the transfer, including determination of what would constitute “special circumstances” and “evidence that such a transfer would serve the best interests of the charter school’s students.”
- The due process to be accorded an authorizer when a charter school petitions for transfer to another authorizer.
- The manner in which authorizers should be involved in a decision by the SBE whether to transfer a charter contract they hold from one applicant to another.
- Disposition of funds, property and assets when a charter contract is transferred to another applicant.
- The use of consultants or expert panels to support the SBE in decisions whether to approve charter transfers.
- The data that should be reported and reviewed to inform the Board’s decision.
- Whether a charter contract could or should be amended in the transfer from one authorizer to another, or from one applicant to another.

Next steps in rule-making to RCW 28A.710.210(3) are:

1. Continued research by staff, with consulting support from NACSA.
2. Solicitation of public comment.
3. Initial draft of rules by staff and counsel, in coordination with member leads.
4. Establishment of a schedule for public hearing and adoption.

Background

Initiative 1240 and the legislative bills it’s descended from lean heavily on the “New Model Law for Supporting the Growth of High-Quality Public Charter Schools,” developed by a working group of experts convened by the National Alliance for Public Charter Schools, and published by the National Alliance in 2009. The provision in RCW 28A.710.210 on charter transfers appears in the Model Law.

In the narrative explaining the rationale for each component of the model law, the National Alliance says that “In some situations, it makes sense for a public charter school to transfer its contract from one authorizer to another before the expiration of its term, especially when its current authorizer has decided it no longer has the commitment or capacity to effectively perform its duties.” However, the authors add, “There are other situations in which it should be impermissible – for example a low-performing charter school facing probation or closure from a high-quality authorizer seeks to transfer its charter to a less-exacting one authorizer that will not place it on probation or close the school.” (p. 18.)

In other words, a charter transfer should not be a way for a low-performing school to dodge revocation or non-renewal by moving its contract to another, less-demanding authorizer.

Such a result would be inimical to the purposes of Washington's charter school law, and contrary to the responsibility of the State Board for strategic oversight of public schools.

"Understanding that it is difficult to make hard-and-fast rules about when transfers should be allowed," the model law leaves specific procedures for implementation to state rule and policy-making.

As always, we look to other charter states for guidance, and as so often, there is little to be found. Few states have provisions like our own, and none identified so far have rules to them.

Hawaii has nearly the same language in its 2012 charter school law as ours, with the difference that it does not reference transfers of contracts from one applicant to another. It's adopted no rules to this provision (Haw. Rev. Statutes 302B.)

Maine's law, enacted in 2011, provides that "A charter school law and its oversight may not be transferred from one authorizer to another before the expiration of the charter contract term except by mutual agreement of all parties. (MRS 20A, C 112, S 2411(9).) But it's adopted no rules governing how that would happen.

Minnesota law provides, in similar vein, that "If the authorizer and the charter school board mutually agree to terminate or not renew a contract, a change in authorizers is allowed if the commissioner [of the Department of Education] approves the change to a different eligible authorizer to authorize the charter school." (Minnesota Statutes 124D.10. 23(4)(d).) Major differences from our law are that charter contracts may only be transferred between authorizers when the contract is up for renewal, not during a contract term, and there is no provision for transfers between applicants. MDOE has instructions for transfer of contracts under this section, but no rule.

Colorado has detailed rules on charter transfers tailored to the purposes of its Charter School Institute (CSI), created in 2004 as an independent agency of the state Department of Education to operate public charter schools as a sort of statewide school district. Part of CSI's mission is to work with charter schools interested in transferring from their original school district authorizer to the state agency. While the circumstances may be quite different from those behind our RCW 28A.710.210, there nevertheless may be provisions in Colorado rule to be considered for emulation, for example the letter of intent to transfer from the charter school's board, the transfer application (analogous to our petition), specific steps in the transfer review process, the CSI Board hearing procedure, and the timeline for decisions. (22-30.5 -510 C.R.S.)

Staff has held one telephone meeting with staff to an education agency in another state, and will seek more such opportunities in the following weeks.

Action

None.

RCW 28A.710.210

Charter school termination protocol — Dissolution of nonprofit corporation applicant — Transfer of charter contract.

(1) Before making a decision to not renew or to revoke a charter contract, authorizers must develop a charter school termination protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, as necessary, and proper disposition of public school funds, property, and assets. The protocol must specify tasks, timelines, and responsible parties, including delineating the respective duties of the charter school and the authorizer.

(2) In the event that the nonprofit corporation applicant of a charter school should dissolve for any reason including, without limitation, because of the termination of the charter contract, the public school funds of the charter school that have been provided pursuant to [RCW 28A.710.220](#) must be returned to the state or local account from which the public funds originated. If the charter school has comingled the funds, the funds must be returned in proportion to the proportion of those funds received by the charter school from the public accounts in the last year preceding the dissolution. The dissolution of an applicant nonprofit corporation shall otherwise proceed as provided by law.

(3) A charter contract may not be transferred from one authorizer to another or from one charter school applicant to another before the expiration of the charter contract term except by petition to the state board of education by the charter school or its authorizer. The state board of education must review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the charter school's students.

[2013 c 2 § 221 (Initiative Measure No. 1240, approved November 6, 2012).]