

## CONCISE EXPLANATORY STATEMENT

### New WACs 180-19-220, 180-19-230, 180-19-240, 180-19-250, and 180-19-260

This document has been prepared in compliance with RCW 34.05.325, the concise explanatory statement requirement of the Administrative Procedure Act. Included are: (1) The reasons for adopting the rules; (2) a description of any differences between the text of the proposed rules as published in the Register and the text of the final rules, and (3) a summary of all comments received, and responses to the comments by subject matter.

#### 1. Reasons for Adopting the Rules

RCW 28A.710.120 assigns responsibility to the State Board of Education to oversee of the performance and effectiveness of school districts that it has approved to be authorizers of charter schools under the process outlined in RCW 28A.710.090. Subsection (1) is a broad declaration of the Board's responsibility for oversight of district authorizers. The four succeeding subsections set out specific powers and duties for SBE oversight. These include:

- Conduct a "special review," triggered by "persistently unsatisfactory performance of an authorizer's (i.e., school district's) portfolio of charter schools, a pattern of well-founded complaints about the authorizer or its charter schools, or other objective circumstances."
- Notify the authorizer in writing of identified problems, and give the authorizer reasonable opportunity to respond and remedy the problems.
- Notify the authorizer, if it persists after due notice in violating a material provision of a charter contract or its authorizing contract, or fails to remedy other identified problems, that it intends to revoke its chartering authority unless it demonstrates a timely and satisfactory remedy for the violation or deficiencies.
- Revoke the authorizing contract, based on material or persistent failure by an authorizer to carry out its duties in accordance with nationally recognized standards for quality charter authorizing.
- In the event of revocation, manage the timely and orderly transfer of each charter contract held by the authorizer to another authorizer, with the mutual agreement the charter school and the new authorizer. (Because the only other eligible authorizer under law is the Washington Charter School Commission, this concerns transfer of a charter contract from a school district to the Commission.)

Subsection (7) directs the SBE to establish timelines and a process for taking actions under this section in response to performance deficiencies by an authorizer.

Rules are needed to:

- 1) Establish a process and timeline for special reviews under subsection (2), and define the three enumerated grounds for a special review under this subsection.
- 2) Establish a process and timelines for notice to authorizers of identified problems, and for response by the authorizer to the notification.

- 3) Establish a process and timeline for notification of intent to revoke chartering authority, and for response by the authorizer to the notification of intent to revoke. Rules should also provide clarity to the authorizer about the statutory grounds for revocation.
- 4) Establish a process and timeline for notice of revocation of chartering authority, and for due process for the school district whose chartering authority has been revoked.
- 5) Establish a process and timeline for transfer of the charter contract, in the event of revocation, and for procedures in the event that mutual agreement is not achieved on transfer of the contract, and the school is closed.
- 6) Establish procedures for general oversight of district authorizers by the SBE under (1), such as, for example, access by the Board to relevant information about the charter schools and the use of site visits.

The intent of the rules is to provide clear guidance to the SBE, school district authorizers, charter school governing boards, and the public on implementation of RCW 28A.710.120, while leaving reasonable flexibility to the Board to respond to specific cases which may not be anticipated.

## **2. Differences between Proposed and Final Rules**

There are the following differences between the Proposed and Final Rules:

- WAC 180-19-230(2)(a), (b) and (c). Clarifies that a repeated failure constituting persistently unsatisfactory performance of an authorizer's portfolio of charter schools may occur during a contract term or consecutive term.
- WAC 180-19-230(2)(a), (b) and (c). Clarifies that repeated failure to meet expectations for academic performance, financial performance or organizational performance may trigger a special review.
- WAC 180-19-250(2)(b). Provides that the authorizer must show that it has implemented, or will implement within 60 days, a sufficient remedy for the violation or deficiencies that are the grounds for the SBE's notice of intent to revoke chartering authority. Gives the SBE 30 days to provide notice to the authorizer whether it finds the proposed remedy sufficient.
- WAC 180-19-260(6). Adds a new subsection prescribing responsibilities of the SBE and the school district in the event that mutual agreement is not reached between the charter school and the Commission to transfer the charter contract to the new authorizer. Includes requirements for development and implementation of a termination protocol by the school district, addressing such items as notification of parents, staff and the community of the closure of the charter school; options for student transfer to another public school; retention of records; resolution of financial obligations, and disposition of public funds.
- Various corrections to language, punctuation and WAC citations.

The purposes of the changes are to make rule provisions clearer and more specific in order to better protect the interests of school district authorizers, charter school students and the public, to address omissions in the rules as drafted that otherwise might have adverse consequences for students enrolled in charter schools, and to make necessary technical corrections. The reasons for the individual changes are explained in part 3.

### 3. Summary of All Comments and Responses

The State Board of Education received one written comment on proposed WACs 180-19-220 through 180-19-260, which was a compilation of comments by several persons. The SBE also received comments through telephone conversations. No public testimony was submitted at the public hearing on the proposed rules held on January 9, 2014.

The comments are categorized as follows, with SBE response:

1. **COMMENT:** In proposed WAC 180-19-220, Sec. 1(2), reference should be made to the most recent edition of *Principles & Standards for Quality Charter School Authorizing*, by the National Association of Charter School Authorizers (NACSA), rather than specifically to the 2012 edition, to avoid the need to amend the rules when a subsequent edition is published.

**RESPONSE:** The SBE believes it inappropriate, for purposes of evaluating the performance of authorizers against nationally recognized principles and standards, to reference a source for those principles and standards which has not yet been published. Such a reference does not serve the purposes of clarity and transparency for school districts that have been approved by the SBE as authorizers nor provide the districts with the opportunity to review and comment on any revised principles and standards during the rule making process. The SBE, in due course, will review any subsequent edition of NACSA *Principles & Standards* and determine whether an amendment is required to the WAC to reference it in place of the 2012 edition. The public will be afforded an opportunity for public comment on any amendment prior to its adoption.

2. **COMMENT:** In proposed WAC 180-19-230(2), “Persistently unsatisfactory performance” should be defined temporally, in order to give better assurance to the public of timely action and effective oversight by the SBE in the matter of special reviews.

**RESPONSE:** The SBE agrees with this comment, and accordingly has amended (a), (b) and (c) of this subsection to provide that “repeated failure” constituting “persistently unsatisfactory performance of an authorizer’s portfolio of charter schools” may be during a charter contract term or consecutive terms. This change also responds to a suggestion from Board members.

3. **COMMENT:** In proposed WAC 180-19-230(2), the rule should clarify that a repeated failure to meet expectations for (a) academic performance, (b) financial performance, *or* (c) organizational performance may constitute “persistently unsatisfactory performance,” and that IT would not require evidence of all three to trigger a special review.

**RESPONSE:** The SBE agrees with this comment, and has amended to insert “or” after (b). This was the intent of the rule as drafted. The suggested change more clearly effects that intent.

4. **COMMENT:** In proposed WAC 180-19-250(2), concerning notice of intent to revoke, the phrase “the authorizer has implemented or will promptly implement” is too vague. The rule should define the time within which the authorizer must show it will implement a sufficient remedy for the identified violation or deficiencies..

**RESPONSE:** The SBE agrees with this comment, and has amended to provide that the authorizer must show that has implemented or will implement a sufficient remedy within 60 days of the written response. This change gives greater assurance to the SBE and the public that the authorizer will act promptly to address identified violations or deficiencies.

5. **COMMENT:** In proposed WAC 180-19-260(4), concerning transfer of a charter contract in the event of revocation, the rules should specify that transfer of student records should be done in accordance with applicable state and federal laws.

**RESPONSE:** While this change may restate current law, the SBE finds the clarification to be of value to students, parents and the public. Accordingly, it has included language in the new subsection (6) providing that the transfer of all student records must be in accordance with privacy rules set forth in the federal Family Educational Rights and Privacy Act (FERPA) and any applicable state laws and school district policies.

6. **COMMENT:** Proposed WAC 180-19-260(5) make no provision for a potential outcome in which a charter school and a new authorizer (i.e., the Washington Charter School Commission) are unable to reach mutual agreement on transfer of a charter contract after revocation by the SBE of a school district's chartering authority.

**RESPONSE:** The SBE acknowledges this omission, which was also a concern of members, and agrees that it should be addressed in rules to this RCW. Proposed WAC 180-19-260 accordingly is amended to add a subsection (6) setting forth provisions applying in the event that mutual agreement on transfer of the charter contract is not obtained under RCW 28A.710.120(6), , and the charter school consequently is closed for lack of an authorizer and a contract. The provisions include a requirement that the school district develop and implement a termination protocol including components as specified in (a) through (f), a requirement that the district provide a copy of the protocol to the SBE, and the opportunity for the SBE to request changes to the protocol.

NEW SECTION

**WAC 180-19-220 Oversight of authorizers—General provisions.** (1)

The state board of education is responsible under RCW 28A.710.120 for oversight of the performance and effectiveness of all authorizers approved under RCW 28A.710.090. This oversight is ongoing and is not limited to the specific actions and procedures described in these rules. For the purposes of the board's rules governing the oversight of authorizers, the term "authorizer" means a school district board of directors that has been approved to be a charter school authorizer under RCW 28A.710.090.

(2) In reviewing or evaluating the performance of authorizers against nationally recognized principles and standards for quality authorizing, the board will compare the authorizer's performance to the standards for quality set forth in the *Principles and Standards for Quality Charter School Authorizing*, 2012 edition, published by the National Association of Charter School Authorizers. A link to this publication shall be posted on the board's public web site.

(3) In carrying out its responsibilities for overseeing the performance and effectiveness of authorizers under RCW 28A.710.120, the board shall utilize information including, but not limited to, the annual authorizer reports submitted to the board under RCW 28A.710.100, all reports and data submitted to the office of the superintendent of public instruction under chapter 28A.710 RCW, charter contracts, and the findings of any special review conducted under RCW 28A.710.120(2). The board will require submission of, or access to, materials or data from the authorizer deemed reasonably necessary to evaluate the performance and effectiveness of the authorizer.

(4) The board may contract for services with persons or entities having relevant expertise in the performance of its duties under RCW 28A.710.120.

(5) The board may conduct site visits to charter schools in an authorizer's portfolio for the purpose of conducting oversight of the performance of an authorizer under these rules. The board shall provide reasonable notice to the authorizer and the charter governing board prior to a site visit.

(6) In carrying out its duties for oversight of the performance and effectiveness of authorizers under RCW 28A.710.120, the board shall respect the principal role and responsibility of the authorizer for monitoring and oversight of the charter school under RCW 28A.710.100, and the authority of the charter school board to manage and operate the charter school under RCW 28A.710.030 and the terms of its charter contract.

NEW SECTION

**WAC 180-19-230 Oversight of authorizers—Special review.** (1)

The board is authorized, upon a determination of persistently unsatisfactory performance of an authorizer's portfolio of charter schools, a pattern of well-founded complaints about the authorizer or its charter schools, or other objective circumstances, to conduct a special review of an authorizer's performance. The purpose of the special review is

to determine the need for additional action by the board as provided in these rules.

(2) "Persistently unsatisfactory performance of an authorizer's portfolio of charter schools" shall consist, for any school or schools, of:

(a) Repeated failure during a contract term, or consecutive contract terms, to meet the expectations for academic performance set forth in the charter contract including, but not limited to, applicable state and federal accountability requirements, without evidence of a trend indicating the school will meet those expectations;

(b) Repeated failure during a contract term, or consecutive contract terms, to meet the financial performance targets within the charter contract;

(c) Repeated failure during a contract term, or consecutive contract terms, to meet the targets for organizational performance within the charter contract.

(3) "A pattern of well-founded complaints" means multiple complaints that are found by the board to be supported by sufficient factual information alleging that an authorizer is not in compliance with a charter contract, its authorizing contract, or its authorizer duties, including the failure to develop and follow nationally recognized principles and standards for charter authorizing.

(a) Any individual or entity may submit a written complaint to the board about an authorizer or its charter schools. The complaint should state in specific terms the alleged violation of law, failure to comply with a charter contract or its authorizing contract, or failure to develop and follow nationally recognized principles and standards for charter authorizing. The complaint must be signed and dated and provide contact information for use by the board in requesting additional information as deemed needed. The board shall post a standard form for submission of complaints on its public web site.

(b) Upon receipt, the board shall transmit the complaint to the authorizer for its written response, which shall be submitted to the board within thirty days of receipt.

(c) The board may request additional information from the complainant or the authorizer as deemed necessary to investigate the complaint.

(d) If the complaint is determined not to be well-founded, the board shall notify the complainant in writing and the board shall not be required to take further action.

(e) If the complaint is determined to be well-founded, the board shall provide written notification of such determination to the complainant and the authorizer.

(4) "Other objective circumstances" include, but are not limited to, failure of the authorizer or its charter schools to comply with an applicable state or federal law or regulation, or evidence that a charter school is not operating in a manner that fulfills the requirements of its charter contract or has a substantial risk of becoming operationally unable to fulfill those requirements.

(5) The board must provide written notice to the authorizer of initiation of a special review, documenting the reasons for the decision to conduct the review. The board must provide opportunity for the authorizer to respond in writing to the specific determinations of the need for the review.

(6) The board shall submit a written report of the results of the special review to the authorizer and other interested persons. The re-

port may include recommended corrective actions. The report shall be posted on the board's public web site.

NEW SECTION

**WAC 180-19-240 Oversight of authorizers—Notice of identified problems.** (1) If at any time the board finds that an authorizer is not in compliance with a charter contract, its authorizing contract, or the authorizer duties under RCW 28A.710.100, it shall provide the authorizer with written notification of the identified problems with specific reference to the charter contract, the authorizing contract, or the authorizer duties under RCW 28A.710.100.

(2) The authorizer shall respond to the written notification and remedy the problems within a specific time frame as determined reasonable by the board under the circumstances.

(3) Nothing in this section requires the board to conduct a special review under WAC 180-19-230 before providing an authorizer with notice of identified problems.

NEW SECTION

**WAC 180-19-250 Oversight of authorizers—Revocation of authorizing contract.** (1) Evidence of material or persistent failure by an authorizer to carry out its duties according to nationally recognized principles and standards for charter authorizing is grounds for revocation of an authorizer's chartering contract. This may include:

(a) Failure to comply with the terms of the authorizing contract between the authorizer and the board;

(b) Violation of a term of the charter contract between the authorizer and a charter school;

(c) Demonstrated failure to develop and follow chartering policies and practices that are consistent with the principles and standards for quality charter authorizing developed by the National Association of Charter School Authorizers in any of the following areas, as required by RCW 28A.710.100:

(i) Organizational capacity;

(ii) Soliciting and evaluating charter applications;

(iii) Performance contracting;

(iv) Ongoing charter school oversight and evaluation;

(v) Charter renewal decision making.

(2) Notice of intent to revoke. If the board makes a determination, after due notice to the authorizer and reasonable opportunity to effect a remedy, that the authorizer continues to be in violation of a material provision of a charter contract or its authorizing contract, or has failed to remedy other identified authorizing problems:

(a) The board shall notify the authorizer in writing that it intends to revoke the authorizer's chartering authority under RCW 28A.710.120. The notification to the authorizer shall explain and document the reasons for the intent to revoke chartering authority.

(b) The authorizer shall, within thirty days of notification, submit a written response showing that the authorizer has implemented

or will implement within sixty days of submitting the written response, a sufficient remedy for the violation or deficiencies that are the stated grounds for the intent to revoke chartering authority. The board shall within thirty days of receipt provide written notice to the authorizer whether it finds the proposed remedy sufficient to correct the violation or deficiencies.

(3) Notice of revocation. If the authorizer fails to provide a timely written response or if the response is found insufficient by the board to meet the requirement set forth in subsection (1) of this section:

(a) The board shall provide the authorizer with written notice of revocation of the authorizer's chartering authority. The notice of revocation shall state the effective date of revocation, which shall not be sooner than twenty days from the date of receipt of the notice of revocation by the authorizer unless a timely notice of a request for an adjudicative proceeding is filed as set forth herein.

(b) The authorizer may request an adjudicative proceeding to contest the revocation. The request for an adjudicative proceeding must be submitted in writing by the authorizer to the board within twenty days of receipt of the notice of revocation at the following address:

Old Capitol Building  
P.O. Box 47206  
600 Washington St. S.E., Room 253  
Olympia, Washington 98504

Any adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act (APA).

#### NEW SECTION

**WAC 180-19-260 Authorizer oversight—Transfer of charter contract.** (1) In the event that a notice of revocation is provided to the authorizer under WAC 180-19-250, any charter contract held by that authorizer shall be transferred, for the remaining portion of the charter term, to the Washington charter school commission on documentation of mutual agreement to the transfer by the charter school and the commission.

(2) Documentation of mutual agreement shall consist of a written agreement between the charter school board and the commission, signed and dated by the chair or president of the charter school board and the chair of the commission. The agreement shall include any modification or amendment of the charter contract as may be mutually agreed upon by the charter school board and the commission.

(3) The commission shall submit the agreement to the state board of education. The board shall review the agreement and on a determination that the requirements of these rules have been met, issue written certification of the transfer of the charter contract to the charter school governing board and the commission.

(4) On certification by the board of the transfer of the charter contract, the prior authorizer shall transfer to the commission all student records and school performance data collected and maintained in the performance of its duties as an authorizer under RCW 28A.710.100 and 28A.710.170.

(5) The commission, in consultation with the charter school governing board, shall develop and implement a procedure for timely notification to parents of the transfer of the charter contract and any modifications or amendments to the charter included in the written agreement executed under subsection (2) of this section.

(6) If mutual agreement is not obtained on the transfer of the charter contract under RCW 28A.710.120(6) and this section, the charter school shall be closed under the provisions of RCW 28A.710.210. The district shall develop and implement a 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 include, at a minimum, a plan for addressing the following:

(a) Adequate and timely communication with parents, school staff and the community regarding the closing of the charter school and the options for student transfer to another public school;

(b) Retention of student, personnel, governance and financial records in compliance with all applicable laws and policies;

(c) The transfer of all student records in accordance with privacy rules set forth in the Family Educational Rights and Privacy Act (FERPA) and any applicable state laws and school district policies;

(d) Resolution of all financial obligations associated with the closure of the charter school;

(e) Return of the public funds in the possession of the charter school as provided for in RCW 28A.710.201(2), or as required by any other state law; and

(f) A plan for the disposition of all other assets, in compliance with applicable state and federal laws or district policies governing the assets.

The protocol must specify tasks, timelines, and responsible parties, including delineating the respective duties of the charter school and the authorizer. The district shall provide the board with a copy of the termination protocol. The board may review the protocol and request revisions for implementation.