

WSR 21-11-075

PROPOSED RULES

CHARTER SCHOOL COMMISSION

[Filed May 17, 2021, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-145.

Title of Rule and Other Identifying Information: General administrative and procedural rule changes in chapters 108-30 and 108-40 WAC. Changes are proposed to WAC 108-30-020, 108-30-030, 108-40-070, and 108-40-090.

Hearing Location(s): On Thursday, June 24, 2021, at 2:00 p.m., Zoom <https://zoom.us/j/3607255511>, dial 646-558-8656, Meeting ID 360 725 5511.

Date of Intended Adoption: August 19, 2021.

Submit Written Comments to: Amanda Martinez, 1068 Washington Street S.E., Olympia, WA 98501, email amanda.martinez@k12.wa.us, by Thursday, June 24, 2021.

Assistance for Persons with Disabilities: Contact Amanda Martinez, phone 360-725-5511, TTY 800-833-6388, email amanda.martinez@k12.wa.us, by August 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to update procedural and administrative rule changes in order to clarify existing language and timelines and provide more detailed information about standards set out by the commission in adopted policies. The changes in existing rules include:

- Changes to a term from "school specific goals" to "mission specific goals";
- The updating of the process to better assist the charter public schools in navigating a renewal charter application and contract;
- Updated timeline associated with the updated renewal process;
- Updating terminology to align with state standards from "achievement index" to "school improvement framework"; and
- To update performance ratings for the organizational and financial performance frameworks to include an "approaching standard" rating.

Reasons Supporting Proposal: The changes are proposed as above to update language to align with currently used terminology. The commission has determined that an update of the renewal process should occur to align with the commission adopted policy and feedback from the inaugural process by schools and stakeholders, as the current process does not provide a streamlined timeline and order that is most relevant and meaningful for the evaluation of performance of a charter school in its fourth year of operation.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28A.710.100, 28A.710.170, 28A.710.190.

Statute Being Implemented: RCW 28A.710.170, 28A.710.190.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Charter school commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amanda Martinez, 1068 Washington Street S.E., Olympia, WA 98501, 360-725-5511.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency that is required to perform an analysis under RCW 34.05.328

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

May 17, 2021
Amanda Martinez
Chief of Staff
Executive Assistant

OTS-3033.1

AMENDATORY SECTION (Amending WSR 15-10-070, filed 5/1/15, effective 6/1/15)

WAC 108-30-020 Performance framework. (1) "Performance framework" means the standards that will be used by the commission to evaluate the performance of each charter school. The performance framework will be a source of information used by the commission to make decisions involving corrective action, renewal, modification, revocation, and/or termination of a charter school.

(2) The performance framework evaluates charter school performance and compliance in the areas of academic, financial, organizational, legal and mission specific performance and compliance. The commission will develop and post performance framework guidance for charter schools on the commission website.

(3) Academic performance and compliance. Academic performance and compliance measures whether the charter school meets or is making sufficient progress towards academic performance expectations. Academic performance and compliance includes, but is not limited to:

(a) Student achievement. Evaluation of student achievement includes evaluation of student academic proficiency in English language arts, science, and mathematics; evaluation of student achievement gaps in both proficiency and growth. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(b) Comparative performance. Comparative performance is evaluated by comparing charter school students' performance on required state and federal assessments to performance of students in traditional public schools and charter schools with similar demographics. This is a comparison of overall student performance in English language arts (reading and writing), math, and science, as well as any other subjects that will in the future be tested. To the extent data is available comparison schools may include, but are not limited to, district-of-residence schools and peer or comparable schools whether charter or noncharter. As additional data for comparisons become available, the comparative performance evaluation will be adjusted. In addition to aggregate data, when available, this information must be disaggregated

by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(c) Student progress. Student progress is evaluated using the school's median student growth percentile in reading and mathematics. As additional growth-related data become available, this evaluation will be adjusted. In addition to aggregate data, when available, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(d) Post secondary readiness (high school evaluation). Evaluation of post secondary readiness includes overall graduation rates in accordance with the state of Washington reporting requirements; comparison of charter school to district-of-residence graduation rates; comparison of charter school to peer or similar school graduation rates; and enrollment in post secondary institutions. As additional comparison data such as dual credit accrual, industry certification, 11th grade assessments, or others, become available, this evaluation will be adjusted. In addition to aggregate data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(e) State and federal accountability. Evaluation of the charter school's compliance with state and federal accountability rules, regulations, and laws and whether the school has met the targets set forth by the state accountability system including, but not limited to, provision of basic education, instruction in the essential academic learning requirements, statewide student assessments, performance improvement goals. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(f) (~~Mission~~) School specific accountability. Evaluation of whether the charter school has met (~~mission~~) school specific goals identified in its contract.

(4) Financial performance and compliance. Financial performance and compliance measures the financial health and viability of a charter school. Financial performance and compliance includes, but is not limited to:

(a) Near term indicators. Evaluation of financial performance and compliance includes evaluation of charter school's assets and liabilities, available cash; actual enrollment as compared to enrollment projection and associated budget; loan and grant status.

(b) Sustainability indicators. Evaluation of sustainability indicators includes evaluation of net income and revenue; debt to asset ratio; cash flow; debt service ratio.

(c) Audit and accounting indicators. Evaluation of audit and accounting indicators includes evaluation of the charter school's compliance with generally accepted accounting principles; audit results and findings, if any.

(5) Organizational performance and compliance. Organizational performance and compliance measures compliance with specific terms and provisions of the charter contract and state and federal legal requirements. Organizational performance and compliance includes, but is not limited to:

(a) Education program. Evaluation of the education program includes evaluation of the charter school's education program in terms

of compliance with specific performance expectations set forth in the charter contract; compliance with requirements of local education agencies and public schools under those federal laws and regulations including, but not limited to, compliance with the Individuals With Disabilities Education Act, the Rehabilitation Act, the Federal Educational Rights Privacy Act, the Elementary And Secondary Education Act, McKinney-Vento Act, and any other applicable education laws or regulations.

(b) Charter school law compliance. Evaluation of charter school law compliance includes evaluation of the charter school's compliance with chapter 28A.710 RCW. This includes review of policies and practices related to admissions, waiting lists, recruitment, security and privacy.

(c) Safety and welfare compliance. Evaluation of student and employee compliance includes evaluation of the charter school's compliance with laws concerning employment of faculty and staff including, but not limited to, certification requirements and background checks; evaluation of student and employee disciplinary policies and procedures and application of associated legal and constitutional protections; evaluation of compliance with health and safety laws and regulations.

(d) Board performance and stewardship. Evaluation of board performance and stewardship will include evaluation of compliance with all applicable laws, rules, and terms of the charter contract as well as willingness and skill in identifying issues with management of the school and taking corrective action and in implementing any corrective actions imposed by the commission.

(e) Student involvement and retention. Evaluation of student involvement and retention will include evaluation of attendance and re-current enrollment.

(f) Mission specific accountability. Evaluation of whether the charter school has met mission specific goals identified in its contract including, but not limited to, proactive public engagement in student recruitment and demonstrated execution of a mission appropriate enrollment plan.

(6) Other. The commission may also include additional rigorous, valid, and reliable indicators to augment evaluations of the charter school's performance.

[Statutory Authority: RCW 28A.710.070. WSR 15-10-070, § 108-30-020, filed 5/1/15, effective 6/1/15; WSR 13-18-017, § 108-30-020, filed 8/23/13, effective 9/23/13.]

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-30-030 Rating categories. Unless otherwise deemed appropriate, academic measures will be rated using the following categories: Exceeds standard; meets standard; does not meet standard; falls far below standard. Financial and organizational measures will be rated using the following categories: Meets standard (~~(\oplus)~~); approaching standard; does not meet standard. Each of these ratings will be defined in relation to the measure being evaluated.

[Statutory Authority: RCW 28A.710.070. WSR 13-18-017, § 108-30-030, filed 8/23/13, effective 9/23/13.]

OTS-3052.1

AMENDATORY SECTION (Amending WSR 17-08-011, filed 3/24/17, effective 4/24/17)

WAC 108-40-070 Renewal process. (1) No later than six months before the expiration of the charter school contract, the commission will issue a written performance report addressing the information outlined in WAC 108-40-080. The performance report will be sent to the school and posted on the commission's website.

(2) The school may submit a response to the performance report that corrects or clarifies information contained in the report. If the school is subject to the ineligibility presumptions enumerated in WAC 108-40-090, then the school must rebut those presumptions by demonstrating exceptional circumstances that justify renewal in the response to the performance report. If the school submits a response, it must be received by the commission within thirty days of issuance of the performance report.

(3) In conjunction with the performance report, the commission will issue renewal application guidance. The renewal application guidance will, at a minimum, provide the charter school with an opportunity to:

(a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;

(b) Describe improvements undertaken or planned for the school;
and

(c) Detail the school's plans for the next charter contract term. The renewal application guidance will also contain the criteria that will guide the commission's renewal decisions.

(4) For those renewal applications deemed eligible for renewal consideration, individuals designated by the commission may conduct a school site visit (renewal inspection) during the renewal applicant school's final school year under the existing charter contract. The renewal inspection may serve as one of the mechanisms for the commission to evaluate and document the charter school's performance and representations to inform the commission's renewal decision. The renewal inspection will include a review of the school's performance and satisfaction of its obligations under the charter contract, with specific focus on any concerns identified in the performance report. Within fourteen days following the renewal inspection, a renewal inspection report will be issued. The school will have ten days to submit a written response to the renewal inspection report.

(5) Those renewal applications deemed ineligible for renewal consideration may appeal this determination in accordance with the procedures outlined in WAC 108-40-100.

(6) Interested parties, including members of the public, may submit written comments to the commission regarding the potential renewal of a school's charter contract. The deadline for submitting comments will be posted on the commission's website.

~~(7) No later than ((May 1st, one school year before the expiration of the charter school contract)) thirty days after receiving a performance report, the charter school must notify the commission in writing of its decision to either:~~

- ~~(a) Apply for renewal of the contract; or~~
- ~~(b) Cease operation at the expiration of the contract term.~~

~~((2)) (8) If the school has decided to cease operation at the expiration of the contract term, a termination protocol shall be implemented.~~

~~((3)) (9) If the school is requesting renewal under the existing contract, ((it must submit a renewal application before the final school year begins.)) the renewal application must be submitted no later than ((June)) September 1st and must be received by the commission by 5:00 p.m.; if ((June)) September 1st falls on a weekend, the renewal application must be received by the commission no later than 5:00 p.m. on the Monday following ((June)) September 1st.~~

~~((4) Within ninety days of receiving a renewal application, the commission will issue a written performance report addressing the information outlined in WAC 108-40-080. The performance report will be sent to the school seeking renewal and posted on the commission's web site.~~

~~(5) The school may submit a response to the performance report that corrects or clarifies information contained in the report. If the school is subject to the ineligibility presumptions enumerated in WAC 108-40-090, then the school must rebut those presumptions by demonstrating exceptional circumstances that justify renewal in the response to the performance report. If the school submits a response, it must be received by the commission within thirty days of issuance of the performance report.~~

~~(6) In conjunction with the performance report, the commission will issue renewal application guidance. The renewal application guidance will, at a minimum, provide the charter school with an opportunity to:~~

- ~~(a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;~~
 - ~~(b) Describe improvements undertaken or planned for the school;~~
- and

~~(c) Detail the school's plans for the next charter contract term. The renewal application guidance will also contain the criteria that will guide the commission's renewal decisions.~~

~~(7) For those renewal applications deemed eligible for renewal consideration, individuals designated by the commission may conduct a school site visit (renewal inspection) during the renewal applicant school's final school year under the existing charter contract. The renewal inspection may serve as one of the mechanisms for the commission to evaluate and document the charter school's performance and representations to inform the commission's renewal decision. The renewal inspection will include a review of the school's performance and satisfaction of its obligations under the charter contract, with specific focus on any concerns identified in the performance report. Within fourteen days following the renewal inspection, a renewal inspection report will be issued. The school will have ten days to submit a written response to the renewal inspection report.~~

~~(8) Those renewal applications deemed ineligible for renewal consideration may appeal this determination in accordance with the procedures outlined in WAC 108-40-100.~~

~~(9) Interested parties, including members of the public, may submit written comments to the commission regarding the potential renewal of a school's charter contract. The deadline for submitting comments will be posted on the commission's web site.)~~

(10) For applications deemed eligible for renewal consideration, commission staff will review renewal applications, the renewal inspection report, and other relevant information, and make a recommendation, based on the renewal criteria, to approve, deny, or conditionally approve the renewal application. This recommendation will be provided to the school and commissioners. This recommendation shall serve as notice of the prospect of and reasons for nonrenewal. Within twenty days of issuance of this recommendation, the school may request an opportunity to respond to the recommendation in accordance with the procedures outlined in WAC 108-40-100; failure to make such a request shall constitute a waiver of the school's right to respond.

(11) The commission will pass a resolution approving, denying, or conditionally approving the renewal application. Renewal may be for a term of up to five years. This term may be shorter depending on the school's performance, demonstrated capacities and particular circumstances.

(12) Upon approval of a school's renewal application, the school must execute a new charter contract (~~within ninety days of the approval decision~~) before the expiration of the existing charter contract. The charter contract must include specific conditions that the commission determines are required for necessary improvements to the school; provided, however, if approval of the renewal application is conditional, the renewal conditions must be included in the charter contract.

(13) If circumstances warrant it, the commission may alter time frames within these rules.

[Statutory Authority: RCW 28A.710.070, 28A.710.180, 28A.710.190, and 28A.710.200. WSR 17-08-011, § 108-40-070, filed 3/24/17, effective 4/24/17; WSR 14-12-065, § 108-40-070, filed 6/2/14, effective 7/3/14.]

AMENDATORY SECTION (Amending WSR 17-08-011, filed 3/24/17, effective 4/24/17)

WAC 108-40-090 Renewal decision and presumptions. (1) In making charter contract renewal decisions, the commission will:

(a) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(b) Ensure that data used in making renewal decisions are available to the school and the public; and

(c) Provide a public report summarizing the evidence that forms the basis for its decision. Specific criteria guiding the commission's renewal decisions will be set out in the commission's renewal application guidance.

(2) Schools are presumed to be ineligible for renewal if they have:

(a) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management;

(d) Substantially violated any material provision of law from which the charter school is not exempt;

(e) Fallen in the bottom quartile of schools on the state board of education's Washington (~~achievement index~~) school improvement framework at the time of the renewal application; and

(f) Are subject to an active corrective action plan for the failures or violations listed in (a) through (f) of this subsection.

(3) The presumption of ineligibility can be rebutted if the school demonstrates exceptional circumstances that the authorizer finds justifiable. The school must satisfy this burden in its application and response to the performance report.

(4) A decision to renew, conditionally renew, or nonrenew a school's charter contract will be memorialized in a resolution that sets forth the action taken, the reasons for the decision, and assurances of compliance with the commission's procedural requirements. A report of action, with the resolution attached, must be submitted to the renewal applicant and the state board of education within ten days of the decision.

[Statutory Authority: RCW 28A.710.070, 28A.710.180, 28A.710.190, and 28A.710.200. WSR 17-08-011, § 108-40-090, filed 3/24/17, effective 4/24/17; WSR 14-12-065, § 108-40-090, filed 6/2/14, effective 7/3/14.]