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AGO  
General Services HLB

**Re: Request for a Formal AGO Opinion**

Dear Attorney General Brown:

1. Can charter public schools be granted waivers from the requirements of a program of basic education by the Office of Superintendent of Public Instruction (OSPI) or the State Board of Education (SBE) under RCW 28A.300.750, where the language of RCW 28A.300.750 gives OSPI and SBE authority to grant waivers to *school districts*, but does not include charter public schools? [*This request is not intended to address emergency waivers under RCW 28A.230.320.\**]
2. Can the Charter School Commission grant waivers to charter public schools through the charter contract, where the Charter School Act (RCW 28A.710) requires charter public schools to provide a program of basic education, and does not provide the Charter School Commission the authority to waive any basic education requirements?

**Reason for the Request:**

The Legislature has previously taken the position that an amendment to RCW 28A.300.750(1) is not needed for charter public schools to obtain waivers from basic education requirements, and that the Commission can allow waivers through its charter contract. However, my understanding is that OSPI and SBE also take the position that they do not have authority to grant waivers to charter public schools absent a legislative change (such as an amendment to RCW 28A.300.750(1) and (2)). The Commission does not believe it has the authority under the Charter School Act to grant waivers to the basic education requirements, and that a simple Legislative amendment to add "charter schools" to the language of RCW 28A.300.750(1) is needed for OSPI and SBE to be able to grant charter schools waivers under RCW 28A.300.750(1).

**Charter School Act:**

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\* Charter public schools are explicitly allowed to seek emergency waivers under RCW 28A.230.320.

Charter public schools are non-profit corporations that enter into a contract with an authorizer to operate a charter public school. RCW 28A.710.010(1), (5). Under the Charter Schools Act, charter public schools are required to comply with the Charter Schools Act and the charter school's contract. RCW 28A.710.020(3); RCW 28A.710.030(1); RCW 28A.710.040(1), (3); RCW 28A.710.160(2). The Charter School Commission is the only authorizer in the State of Washington that had the authority to authorize charter public schools anywhere in the State of Washington. RCW 28A.710.070(1)(a). For charter public schools authorized by the Commission, the charter contract is a contract between the charter public school and the Charter School Commission. RCW 28A.710.010(3), (4).

Charter public schools must provide a program of basic education. RCW 28A.710.040(2)(b). The Washington State Supreme Court in *El Centro De La Raza v. State*, 192 Wn.2d 103, 428 P.3d 1143 (2018), upheld the constitutionality of the Charter School Act in part because the Charter School Act was found to meet the requirements of the Basic Education Act (BEA) (including but not limited to RCW 28A.150.220, which is the "the minimum program of basic education"). *El Centro De La Raza*, 192 Wn.2d at 115–17. Similarly, charter public schools that offer high school must comply with the state high school graduation requirements under RCW 28A.230.090. RCW 28A.710.030(1)(g).

This is consistent with the structure of the Charter Schools Act, in which the Charter School Commission oversees charter public schools in the same way a school district oversees schools (RCW 28A.710.070(2)), but where charter public schools are also "subject to the supervision" of OSPI and SBE "to the same extent as other public schools, except as otherwise provided" in the Charter School Act. RCW 28A.710.040(5). While the Charter School Commission may make *additional* laws applicable to charter public schools through the charter contract (RCW 28A.710.040(3)), the Charter School Act does not allow the Charter School Commission to waive any of the requirements of a program of basic education, or the requirements for high school graduation. Instead, the Legislature has given the waiver authority to OSPI and SBE. RCW 28A.300.750(1).

As explained further below, at this time, it does not appear that charter public schools can seek waivers from OSPI or SBE (absent limited exceptions, such as emergency waivers set forth in RCW 28A.230.320, where for purposes of that section, the definition of "school district" *explicitly* includes charter schools). This inability to obtain waivers can have a disproportionate financial impact on charter public schools. For example, common public schools may obtain waivers from the 180 day requirement for use in parent-teacher conferences under certain circumstances ([180-Day School Year Waivers \(ospi.k12.wa.us\)](https://ospi.k12.wa.us)), meaning that districts can receive funding for a certain number of days for parent-teacher conferences and those days will count towards the 180 day minimum. In contrast, charter public schools cannot receive funding for those days, and cannot count them towards the 180 day minimum. This results in a financial hardship for charter public schools, who are already at an economic disadvantage due to the lack of funding for charter school facilities.

Allowing charter public schools the same ability to request waivers from OSPI and SBE would allow charter public schools to access funding for parent-teacher conferences would be one way to help reduce the financial burdens on charter public schools and the students they serve.

As public schools, charter schools are intended to be part of the broader public education ecosystem, serving students and families alongside traditional district schools. However, the structural differences in policy and funding access create inequities in how families experience public education, often based solely on the type of public school their child attends. For instance, a traditional public school just down the street from a charter may be able to implement waivers that support flexible scheduling for family engagement or instructional innovation.

Families and educators in that traditional public school benefit from increased access to resources and policy tools that help meet student needs. Meanwhile, charter public school families and staff—despite being part of the same public system are excluded (charters on average serve more black, brown, indigenous and special education students, thus causing more intentional inequity from a systemic level at families) from those same opportunities, even when serving similar communities. This divergence undermines the principle of equitable access and support within the public education system and limits the ability of charter schools to serve their students on an equal footing.

#### **Background on Waivers:**

**Hours and 180 day requirement waivers.** These waivers are waivers from the minimum hours or instructional days required as part of a program of basic education. See, for example, RCW 28A.150.220(2) (minimum hours required), RCW 28A.150.220(5) (minimum school days required is 180 days). [180-Day School Year Waivers \(ospi.k12.wa.us\)](https://ospi.k12.wa.us/); [Chapter 180-18 WAC](#).

**Credit or credit distribution waivers.** These waivers are from the specific credits required to graduate from high school or specific credit distribution requirements. See, for example, RCW 28A.150.220(3)(b) (24 credits required to graduate from high school, credit distribution requirements for high school graduation under RCW 28A.230.090). [Waivers | SBE](#); [Chapter 180-18 WAC](#).

Before 2018, the State Board of Education (SBE) was authorized to grant waivers to *school districts* under RCW 28A.305.140. In 2018, the authority to grant waivers was split between Office of Superintendent of Public Instruction (OSPI) and SBE. [2824-S.SL.pdf \(wa.gov\)](#). The change was codified in RCW 28A.300.750. Under RCW 28A.300.750(1)(a), OSPI can grant waivers to “school districts” from the requirements of RCW 28A.150.200 through RCW 28A.150.220, *except as provided in RCW 28A.300.750(1)(b)*. Under RCW 28A.300.750(1)(b), SBE has the authority to grant different waivers. While (1)(b) does not explicitly limit (1)(b) to *school districts*, the language of RCW 28A.300.750(1)(a) and (1)(b) need to be read together. Reading (1)(a), and (1)(b) together is consistent with the legislative

intent to transfer duties from SBE to OSPI, not to expand the statute. See, for example RCW 28A.305.905(1).

In terms of the most common categories of waivers, since 2018, OSPI has had the authority to grant waivers to the instructional hours and the instructional days requirement. RCW 28A.300.750(1)(a); RCW 28A.150.220(2), (5). Since 2018, SBE’s authority to grant waivers has been in categories such as high school credit graduation requirements, and credit distribution requirements. RCW 28A.300.750(1)(b); RCW 28A.150.220(3)(b); RCW 28A.230.090.

However, the language of RCW 28A.300.750(1) still limits the authority of OSPI and SBE to grant waivers to “school districts” and does not include charter public schools. Where the Legislature has intended to expand the availability of waivers beyond school districts, the Legislature has explicitly expanded the authority. For example, emergency waivers include more than just school districts. RCW 28A.230.320 (for purposes of the section, school district was defined to include school district, charter schools, state-tribal education compact schools, private schools, etc.). Similarly, in 2024, the Legislature expanded the availability of waivers from the requirements of RCW 28A.150.220, by allowing state-tribal education compact schools to obtain waivers if the waiver “is expressly included within the state-tribal education compact”. RCW 28A.715.020(3)(a). The Charter School Commission does *not* have similar authority under the Charter School Act (RCW 28A.710), and given the structure of the Charter School Act, the authority to grant waivers should remain with OSPI and SBE. For example, the Charter School Act explicitly states that charter public schools “are subject to the supervision” of OSPI and SBE “except as otherwise provided” in the Charter School Act. RCW 28A.710.040(5). This is also consistent with *El Centro*, 192 Wn.2d 103, and OSPI’s role in overseeing a general and uniform system of public education.

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