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Washington's charter schools: Officials can't agree on how to save them



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A week after the state Supreme Court declared Washington's charter schools unconstitutional, the outlook for salvaging the voter-approved system of privately run, publicly funded schools is unclear.

So far, the only concrete ideas to emerge from the state Capitol have been to ask the court to change its mind or to strengthen traditional schools so that frustrated parents don't have to seek alternatives.

Neither approach is likely to satisfy charter school supporters. Legal experts say getting the court to reverse or amend its decision — the plan announced Friday by Attorney General Bob Ferguson — is a long shot. And Gov. Jay Inslee's charge to focus instead on creating a court-ordered plan to fully fund basic education by 2018 doesn't help save the state's nine charter schools.

Eight new charter schools — including three in Tacoma — opened in August, while another school in Seattle is entering its second year. Voters approved them by passing Initiative 1240 in 2012.

Under pressure to keep them open, some lawmakers are trying to figure out how they could change the charter school law themselves to address the legal issues raised by the court. They haven't found a sure solution, not to mention the votes to pass it.

"It's, 'OK, how would you fix this?' We want to fix it, but how?" said Senate Majority Leader Mark Schoesler, R-Ritzville.

In its Sept. 4 ruling, the state Supreme Court said that charter schools don't qualify as common schools under the state constitution, and therefore can't receive public funding.

The court's reasoning was that charter schools — unlike traditional public schools — are run by board members who are appointed, rather than elected by the people.

The ruling on constitutional grounds poses a tougher challenge than charter supporters have faced elsewhere. Many of the 41 states that adopted charter school laws before Washington faced legal challenges, but this is the first time in which a state Supreme Court invalidated an entire charter law, said Todd Ziebarth, senior vice president of the National Alliance for Public Charter Schools.

"In every other state where there has been a constitutional challenge to the creation of a charter school law," he said, "those challenges have been defeated."

House Majority Leader Pat Sullivan, D-Covington, said he isn't sure whether the Legislature could fix the charter school system by merely passing a new law, or whether the process would require a constitutional amendment — something that requires the approval of two-thirds of the Legislature and a public vote. An amendment could be difficult to push through a politically divided Legislature, whose members are already weary after meeting for a record 176 days this year.

Sullivan said lawmakers first need to review all options and determine whether they'd pass legal muster.

"I think the biggest mistake would be trying to enact a legislative fix for something that requires a constitutional amendment, and have it overturned again," Sullivan said. "That just doesn't make sense."

Hugh Spitzer, an acting University of Washington law professor, said amending the state constitution would require lawmakers to jump "a high hurdle."

A middle-ground approach could be changing charter schools to resemble alternative schools that already operate in some districts, he said. Such schools could have separate site councils that help set school policies, and more flexibility with their curriculum, he said — but unlike the schools authorized by the 2012 initiative, they would be overseen by public school superintendents and locally elected school boards.

Of course, such an approach would subject the schools to state oversight and standards "that the initiative tried to avoid," Spitzer said.

A third option could be paying for charter schools with money from a separate account that doesn't include funds raised through the state's common schools levy. That's the option favored by Sen. Bruce Dammeier, R-Puyallup, who spoke Thursday night at a rally of charter school supporters in Tacoma.

"I believe there are technical fixes the Legislature can make that would provide the requisite legal cover," he said.

Dammeier said the court's argument centered around funding that comes from the state's property taxes that are set aside for common schools. But he points out that only a portion of public school funding in Washington comes from those taxes. Much of the money for schools comes from the state's general fund, generated by other taxes such as the sales tax.

Spitzer said shifting the source of funding would retain the independence of charter schools, but could open up them up to another court challenge alleging that they don't meet the constitutional requirement for a "general and uniform system of public schools."

In the court's Sept. 4 opinion, Chief Justice Barbara Madsen alluded to that possibility, noting that charter schools violate the "uniform system" requirement because they are governed differently than public schools. But she declined to elaborate further, saying the point was moot because the court was already invalidating charter schools based on their funding source.

Whatever solution lawmakers get behind, a quick fix might not be in the offing. In a letter to state lawmakers Friday, Inslee said he did not think a special session focused on charters would be in the best interest of the state.

"I did not believe that public money belongs in schools that lack public oversight and accountability," he said. "That remains my position."

Barring a special session, lawmakers won't reconvene until January.

Inslee, however, has not ruled out a special session in November to address another court ruling, the McCleary case, in which the state is being fined \$100,000 per day over the Legislature's failure to deliver a plan to fully fund basic education by 2018. Lawmakers who support charters could try to force the issue then.

Taking some pressure off legislators to act quickly is a pledge from the state Charter Schools Association that the schools will remain open temporarily with or without public funding, Sullivan said. The Washington State Charter Schools Association said it will seek grants and donations to keep the schools open temporarily.

The association has pledged to raise the money needed — an estimated \$14 million — to keep the state's nine charters open for the current school year.

Association CEO Tom Franta said Friday he did not have exact figures on how much money has been raised so far.

"I'm very confident we can fund the worst-case scenario if necessary," he said.

"There is a broad coalition of supporters across the country who are clicking on our (website) donate button now."

He said the association is also “having conversations with all the foundations involved in K-12 public education.”

One obvious possibility is the Bill and Melinda Gates Foundation, which has donated millions to charter school efforts around the country and gave several major gifts last year intended to help boost Washington's fledgling charter schools.

Charter supporters plan to ask the state Supreme Court for a legal reprieve that would last until the end of the school year, giving the Legislature more time come up with a solution, said Frank Ordway, lobbyist for the League of Education Voters.

That could mean asking the court to stay its order temporarily, said Ordway, whose organization is a respondent in the charter lawsuit that was brought by the Washington Education Association and others.

“What we need for now is near-term grace from the court, and that gives us the chance to go for the political solution,” Ordway said.

Letting charter schools close shouldn't be an option, said Dammeier, the Puyallup lawmaker.

“When you talk about shutting down programs that are engaging 1,200 students and parents – why in the world would we do that?” he said.

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