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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent,

and

WASHINGTON STATE CHARTER SCHOOLS ASSOCIATION, LEAGUE OF EDUCATION VOTERS, DUCERE GROUP, CESAR CHAVEZ CHARTER SCHOOL, INITIATIVE 1240 SPONSOR TANIA DE SA CAMPOS, and MATT ELISARA,

Respondents/Intervenors.

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**INTERVENORS' REPLY BRIEF ON CROSS APPEAL**

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Harry J. F. Korrell, WSBA #23173  
Michele Radosevich, WSBA #24282  
Joseph P. Hoag, WSBA #41971  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
(206) 622-3150 Phone  
(206) 757-7700 Fax

Attorneys for Intervenors

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## I. INTRODUCTION

The Constitution requires the state to provide a common school system open to all children on a non-discriminatory basis that is free, publicly funded, supervised by the State, and provides a basic education. Beyond these broad parameters, the Constitution says nothing about the structure or details of the required education system. It imposes on the Legislature the duty, guided by these “broad educational concepts,” to provide for the education of all children in Washington, and it leaves to the Legislature the responsibility for “select[ing] the *means* of discharging that duty.” *McCleary v. State*, 173 Wn.2d 477, 516-17, 541-42 (2012) (citing *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 515, 520 (1978)). As this Court has held, the Legislature’s duty includes the requirement to establish an educational system that meets the needs of today’s students. *Seattle Sch. Dist.* at 516-17.

Washington’s traditional public schools are failing many of the State’s most vulnerable children, including impoverished, minority, and special needs students. For example, over 14,000 students who began as ninth graders in the 2008-2009 school year dropped out of Washington’s schools by the 2012-2013 school year. A disproportionately high number of these students were Hispanic, African-American, American Indian, Pacific Islander, special education, limited English, low income, homeless,

migrant, or in foster care, at a societal cost of over \$500,000 *per dropout*.<sup>1</sup> Forty-one other states have adopted public charter schools, which have a track record of helping all students generally and particularly these underserved student groups. Recognizing this national trend, and benefiting from the experience of other states, the State acted within the broad constitutional parameters and authorized a pilot program for up to 40 public charter schools over the next five years, a significant step toward better meeting its paramount duty to educate all children, regardless of their economic status, race, sex, or national origin.

The plaintiffs below (“Charter Opponents”) fundamentally disagree about the Legislature’s authority to structure public education programs and argue that the Legislature cannot expand common school offerings to include public charter schools. In so doing, they misrepresent the Charter Schools Act, confuse and conflate constitutional and statutory requirements (including elevating a 100-year old gloss on a statutory requirement to a constitutional command), and misstate Intervenor’s and the State’s positions. But the Constitution’s directions regarding education are broad and general, and nothing in the text can reasonably be read to prohibit creating public charter schools as an option within the common

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<sup>1</sup> Office of the Superintendent of Public Instruction, *Graduation and Dropout Statistics Annual Report 2012-13* at 8, 10 (2014), available at <http://www.k12.wa.us/DataAdmin/pubdocs/GradDropout/12-13/2012-13GraduationAndDropoutStatisticsAnnualReport.pdf> (last visited July 10, 2014).

school system, just like numerous other alternative educational programs currently offered to better educate highly capable students, struggling students, and students with different learning styles. Moreover, even if the Charter Opponents are correct and public charter schools are not “common schools,” the State may fund them the same way it funds other non-common school education programs—with unrestricted general funding.

This Court should reverse the trial court’s determination that public charter schools are not common schools because they are not supervised by a local school board. This Court should also hold that public charter schools may be funded with unrestricted funds, whether they qualify as common schools or not. Finally, as argued in response to the Charter Opponents’ appeal, this Court should affirm the remainder of the lower court’s holding that the Charter Schools Act is constitutional.

## II. ARGUMENT

### A. Public Charter Schools are Common Schools.

The Charter Opponents argue that the Legislature is “uniquely... constrain[ed]” in executing its duty to provide for public education in Washington. Reply Brief of Appellants (“Appellants’ Reply”) at 1. Not so.

“While the Legislature must *act* pursuant to its constitutional mandate to discharge its duty [under article IX], the general authority to select the *means* of discharging that duty should be left to the Legislature.”

*McCleary*, 173 Wn.2d at 541-42 (quoting *Seattle Sch. Dist.*, 90 Wn.2d at 520 (emphasis in original, internal punctuation omitted)). As a co-equal branch of government with a duty to faithfully implement the Constitution, the Legislature has always had authority to shape public education within the Constitution's "broad educational concepts under article IX." *Id.* at 516-17 (quoting *Seattle Sch. Dist.*, 90 Wn.2d at 518). And nothing in the text of the Constitution can reasonably be read to prohibit offering public charter schools as part of the common school system. As explained in earlier briefing and again below, the Charter Schools Act satisfies all constitutional education requirements. Thus, this Court should defer to the legislative decision to add public charter schools as an additional option for students and parents within the common school system.

***1. The Constitution does not require that all common schools be supervised by a local school board.***

The Charter Opponents' entire common schools argument rests on one issue: does the Constitution require that a school be controlled by a local school board to be a common school? It does not.

There is no requirement in the text of the Constitution for local school board supervision of schools. This is crucial. The framers knew about school districts, school boards, superintendents, open and equal

access to public schools, and other concepts associated with public education. They enshrined some of these in the Constitution. *E.g.* Art. III, § 22 (Superintendent of Public Instruction); art. IX (State-provided public education, open and equal access). But while the framers discussed school districts in other portions of the Constitution’s original text,<sup>2</sup> they did not include direct voter control of common schools through an elected school board as a common school requirement.

Because the Charter Opponents cannot find support in the Constitution’s text, they argue that this Court made school district supervision of common schools a constitutional imperative in 1909, citing *School District No. 20 v. Bryan*, 51 Wash. 498 (1909). However, as explained below, the Charter Opponents misrepresent *Bryan*’s context and ignore its reasoning.

The Constitution requires common schools and permits “normal schools,” but defines neither. Art. IX, § 2. The Legislature, fulfilling its constitutional role of giving substantive content to the Constitution’s broad mandates created a system of common schools. *See Bryan*, 51 Wash. at 502. It also created a teacher training school that it identified as a “normal school.” *Id.* at 501. The issue in *Bryan* was whether schools ***designated by the Legislature as “normal schools”*** (a constitutional

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<sup>2</sup> *See* art. VII, § 2 (exempting school districts from taxes); art. VIII, § 6 (limitations on school district indebtedness).

category expressly separate and different from common schools) could receive funds constitutionally restricted to “common schools.” See *Bryan*, 51 Wash. at 501.

The Court held that the Legislature stepped outside its constitutional authority when it tried to fund a normal school with constitutionally protected common school funds. *Id.* at 500-01. The *Bryan* Court noted that the teacher training school failed to meet the *statutory* common school requirements—it was not open to all students, did not employ legally recognized teachers, and was not supervised by a school board. *Id.* at 503-04. The problem with the attempt to divert funding in *Bryan* was that the Legislature broke its own rules. The Court properly concluded that funds constitutionally restricted to “common schools” cannot go to a school the Legislature has by statute defined as a non-common school. *Id.* at 506-07.

In reaching this decision, the Court was clear that it was relying on the existing *statutory* definition of common schools to determine whether the teacher training school could receive restricted common school funds. *Id.* at 502 (the Legislature’s educational system “differentiates between the common school and the normal school, as does the Constitution, and, when adopted, *such system has the force of the constitutional provision which it elaborates.*”) (emphasis added). Again, the problem in *Bryan* was

that the Legislature defined common schools, then created a “normal school,” called it such, and tried to fund it with common school funds—it broke its own rules.

The Charter Opponents’ claim that *Bryan* established school board control as an essential test for common school status not only ignores the reasoning in that case, it overlooks the fact that nothing in the Constitution requires school boards or school districts in the first place. Article IX requires common schools but not school boards or districts, and this Court has recognized that school districts are creatures of statute subject to legislative definition. *Moses Lake Sch. Dist. No. 10 v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 556 (1973). Under the Constitution, the Legislature could abolish school districts altogether or create one or more state-wide or regional school districts.

Further, this Court’s jurisprudence over the last forty years has expressly required Washington’s education system to meet the educational needs of *current* students. No court in 100 years has held that common schools must be supervised by a school board, except for the trial court below.<sup>3</sup> In contrast, this Court has repeatedly stated that the Constitution’s education provisions must be interpreted based on society’s needs and demands today—what may have been sufficient a hundred years ago “may

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<sup>3</sup> *State v. Preston*, 79 Wash. 286 (1914) affirmed *Bryan* without adding any substantial analysis.

be wholly unsuited for children confronted with contemporary demands.” *Seattle Sch. Dist.*, 90 Wn.2d at 516. *See also McCleary*, 173 Wn.2d at 526 (education program “not etched in constitutional stone”); *Federal Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 524 (2009) (interpreting Article IX based on circumstances “at the present time”); *Northshore Sch. Dist. No. 417 v. Kinnear*, 84 Wn.2d 685, 729 (1975) (same). This makes sense. Students’ educational needs change as knowledge advances, teaching methods improve, the knowledge-based economy grows, and society’s needs evolve. It would be absurd to require the State to provide a quality basic education to today’s students but tie the Legislature’s hands to norms and structures from 1889 (especially when they do not appear in the text of the Constitution).<sup>4</sup> To the extent the language in *Bryan* about local school district control is inconsistent with inclusion of public charter schools in the common school system, that aspect of *Bryan* should be overturned. *See State v. Storhoff*, 133 Wn.2d 523, 532 (1997) (overturning case to the extent it is inconsistent with subsequent case law).

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<sup>4</sup> The Charter Opponents’ reliance on *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103 (1997) to demonstrate that this Court interprets constitutional provisions based on laws at or near the founding is misplaced. Appellants’ Reply at 12. *Ino Ino* evaluated differences between state and federal constitutional protections of nude dancing, not state educational provisions that have no federal counterpart. 132 Wn.2d at 116. The Court’s jurisprudence regarding modern interpretation of *education provisions* is both specific and clear.

**2. *Public charter schools will be open to all, publicly funded, and supervised by the State.***

As noted above, the Constitution has no school board control or other detailed requirement regarding the structure or operation of public education in Washington. It does, however, impose several broad requirements: the State must provide for the education of all children in Washington on a non-discriminatory basis, education must be free and publicly funded, and it must be supervised by the State. Art. III, § 22; art. IX, §§ 1, 2. Public charter schools satisfy all of these requirements.

*First*, public charter schools will be part of the K-12 common school system and will be open to all children on a non-discriminatory basis. RCW 28A.710.020(1), (2); art. IX, § 1. Attendance is voluntary—no student will be assigned or otherwise compelled to attend a public charter school. RCW 28A.710.020(4). Public charter schools have a track record of improved educational outcomes for groups currently underserved in Washington’s traditional public schools, including minority, impoverished, and special needs students. CP at 306 n.4-6, 991. Not surprisingly, a greater proportion of minority voters approved the Charter Schools Act than Washington’s general population. Answering Brief and Opening Cross-Appeal Brief of Intervenors (“Interv. Opening Br.”) at 5-6, n.3. By enhancing educational opportunities for these and

other groups, Washington may more fully satisfy its paramount duty to provide education to *all* children in Washington, and the State certainly has the discretion to try. In addition, public charter schools will be more open to all students than some existing common schools, such as public academy schools that admit students based on written applications, references, and the like. *E.g.* CP at 347-65.

**Second**, public charter schools will be free. RCW 28A.710.020(1). They will be publicly funded based on the same per-pupil formula as traditional public schools. RCW 28A.710.220(2); Laws of 2013, 2d SP. Sess., ch. 4, §§ 502-07. The Charter Opponents' argument that adding public charter schools as an option within the common school system will hurt the State's ability to fund public education is wrong because the same dollar amount will be spent on each pupil regardless of which school she attends. In addition, the fact that public charter schools have drawn millions of dollars in *additional* funding increases the total dollars available for public education. Joint Stip. ¶ 12. Speculation that authorizing a few public charter schools might make the Legislature's duty to fund public education marginally more difficult is inconsistent with the facts regarding education funding and insufficient for a facial challenge in any event. *See Tunstall v. Bergeson*, 141 Wn.2d 201, 221 (2000).

**Third**, public charter schools will be supervised by the State,

including the Superintendent of Public Instruction (“Superintendent”). The Act expressly provides that the Superintendent and the State Board of Education will oversee public charter schools.<sup>5, 6</sup> RCW 28A.710.040(5). State supervision by multiple agencies is a long established part of Washington’s common school system. The Charter Schools Act adds a layer of oversight and accountability, the Charter School Commission (“Commission”), to public charter schools. The Commission expressly recognizes the Superintendent’s supervision of public charter schools. *See* Washington State Charter School Commission, *2014 Sample Charter Contract* at 9-10 (“Sample Charter Contract”).<sup>7</sup>

**3. *Public charter schools will provide a basic education as part of the State’s public education system.***

Public charter schools will provide a basic education as part of the State’s general and uniform system of public education. RCW 28A.710.040(2)(b); art. IX, §§ 1, 2. The Charter Opponents disagree based on the assumption that some public charter schools might not meet the

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<sup>5</sup> The Charter Opponents do not dispute that the Superintendent has the authority to distribute *and withhold* public funding from public charter schools. *See State v. Preston*, 84 Wash. 79, 87 (1915) (Superintendent’s powers of supervision extend to withholding school funds from a school that did not meet attendance requirements, even though apportionment appeared mandatory under statute). Although the Superintendent’s authority over public charter schools extends beyond funding control, this power alone is sufficient to satisfy the Charter Opponents’ argument that the Superintendent must have the “power of correction or suggestion” over public charter schools. Br. of Appellants 44.

<sup>6</sup> The Superintendent is one of the State Board of Education’s sixteen members. RCW 28A.305.011(1). This does not place the Board under the Superintendent’s control.

<sup>7</sup> Available at <http://www.governor.wa.gov/issues/education/commission/documents/2014WSCSContract.pdf> (last visited July 9, 2014).

State's minimum education requirements under RCW 28A.150.220 (a component of the State's program of basic education that includes programs for English Language Learners, highly capable students, and underachieving students) or student discipline laws. The Charter Opponents are wrong.

As an initial matter, this is an argument for an as-applied challenge, not a facial challenge. If a particular school violates the Constitution in the future, the proper course is to challenge the school's specific practice at that time. Moreover, *statutory* minimum education requirements and discipline laws are not constitutional requirements—they are part of a legislative program that the Court has deemed *sufficient* to meet the State's obligation to provide for public education. But that specific program is not constitutionally *necessary*. See *Federal Way*, 167 Wn.2d at 524 & n.14 (finding that the Legislature's program of basic education satisfies article IX's General and Uniform clause, but noting that prior legislation did as well). The Legislature may add to or change the program of basic education, *McCleary*, 173 Wn.2d at 484, including by adding public charter schools as an option for students.

Finally, the prediction that public charter schools will disregard statutorily required basic education or discipline requirements is

inconsistent with the law<sup>8</sup> and what is actually happening. The Commission will not authorize a public charter school without an executed approved charter contract.<sup>9</sup> The Commission has unequivocally stated that any public charter schools' "educational program *shall meet or exceed* basic education standards....[including]: (a) Basic education, as defined in RCW 28A.150.200, .210, and .220 [which includes the minimum educational requirements]." Sample Charter Contract at 9-10 (emphasis added). Any public charter school authorized by the Commission must comply with "all applicable state and federal laws and regulations relating to student discipline including, but not limited to, RCW 28A.150.300." Sample Charter Contract at 10. The claim that public charter schools will not be subject to the existing program of basic education and student discipline laws is false and unsupported by the record.

The Charter Opponents attempt to salvage their argument by alleging that some of the approved public charter schools appear, based on their applications, to be poised to violate basic education or discipline laws. Appellants' Reply at 31-33. They are wrong. First, a public charter

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<sup>8</sup> Public charter schools must follow all nondiscrimination, civil rights, health and safety, and parental rights laws; must follow all federal laws applicable to any local education agency or public school; and are bound by the Due Process clause. RCW 28A.710.020(5), .040(2)(a).

<sup>9</sup> The Charter Opponents' basic education argument is limited to public charter schools authorized by the Commission. *See* Appellants' Reply at 31, n. 8 (acknowledging that, under WAC 180-19-030(4)(f), public charter schools authorized by school districts must satisfy RCW 28A.150.220).

school's operation is governed by its charter *contract*, not the application. Second, none of the applications suggest the schools will violate the law. For example, the Charter Opponents suggest SOAR and Rainier Prep charter schools might rush to expel minority students. There is no evidence to support this speculation and it is inconsistent with the stated purposes of both schools of serving minority and other underserved student groups.<sup>10</sup> The Charter Opponents also suggest that Excel and First Place Scholars charter schools might underprovide to English Language Learners (“ELL”). Not so. The applications submitted by Excel and First Place Scholars charter schools indicate that they intend to provide substantial assistance to ELL students when those schools open.<sup>11</sup> Further, the Commission requires that these schools provide services for students that meet the State's minimum education requirements, including ELL

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<sup>10</sup> *E.g.* SOAR Academies, 2013 WSCSC Charter School Application at 1 (“SOAR seeks to attract a highly diverse student population in a traditionally high-minority, high-poverty, and underserved area of [Tacoma]”); Rainier Prep, 2013 WSCSC Charter School Application at 2-3 (Rainier Prep committed to serving “diverse” students, “many of whom come from families in poverty”). Public charter school applications are available through the “download the submitted applications” link at <http://www.governor.wa.gov/issues/education/commission/applicantArchive.aspx> (last visited July 9, 2014).

<sup>11</sup> Excel will provide staff who speak ELL students' native languages as necessary, will employ a focused immersion program that will help ELL students learn English, and will comply with all requirements and guidelines for transitional bilingual students published by the Superintendent and the U.S. Department of Education. Excel Public Charter School, 2013 WSCSC Charter School Application at 38-39, 41. First Place Scholars will create an individualized student learning plan for each ELL student. First Place Scholars Charter School, 2013 WSCSC Charter School Application at 26. First Place Scholars' application further states that the school is examining ELL best practices nationwide, with specific examples, and will apply appropriate practices based on monitoring and a formal assessment each trimester of each ELL student's progress and success. *Id.*

requirements, under RCW 28A.150.220.

**4. *The Legislature has authority to add public charter schools to the State's common school system, just as it has added high schools, highly capable programs, STEM schools, and other programs.***

The Legislature has broad discretion in fulfilling its duty to establish the common school system it deems appropriate, “as informed by the broad educational concepts” of the Constitution. *McCleary*, 173 Wn.2d at 517 (quoting *Seattle School Dist.*, 90 Wn.2d at 505). Public charter schools are designed to help Washington meet its paramount duty of providing quality educational opportunities for all children in Washington, especially those underserved by the current system. RCW 28A.710.005(1). Adding up to a maximum of 40 public charter schools to Washington’s existing 2300 public schools is just the latest step in Washington’s history of expanding the offerings available in the common school system to meet student needs.

Under the Constitution, high schools are distinct from common schools. Art. IX, § 2 (“The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established.”). High schools existed in 1889 but the Legislature did not define them to be part of the common school system until several years later. Laws of 1895, ch. CL, § 1. The Charter

Opponents argue this change was permissible because high schools satisfied all constitutional requirements of common schools and because adding high schools to the common school system was necessary to satisfy the State's constitutional duty of educating children through their eighteenth birthday. *Id.* at 15 (citing *Tunstall*, 141 Wn.2d at 219). But this attempted explanation provides no meaningful distinction between adding high schools then and public charter schools now.

If the Legislature can define high schools, a category of school separate from common schools in the text of the Constitution, as part of the common school system then it has the authority to define public charter schools as part of that system too. Public charter schools meet all constitutional criteria, as discussed above. And while it is unclear whether a constitutional duty to educate children through their eighteenth birthday existed in 1895—*Tunstall* was decided over a hundred years later and was based on contemporary legislation, 141 Wn.2d at 218-19—there is no dispute that the State's paramount duty is to educate *all* children within its borders, regardless of race or economic status. Art. IX, § 1. Washington's current education system underserves minority, impoverished, special needs, and other student groups, and there is ample evidence that public charter schools have potential to provide, and in many cases do provide, significant educational gains, particularly for these student groups. CP at

306 n.4, 991.<sup>12</sup> Public charter schools help the State meet its duty to educate *all* children today. There is no good reason why the Legislature can add high schools (expressly *not* common schools in the Constitution), but not public charter schools, to the common school system.

The Legislature has also expanded the common school system by adding numerous other educational programs, including STEM schools, academy schools, magnet schools, Running Start, the UW highly capable student program, tribal compact schools, dropout prevention programs, online learning, and many other valuable programs. *See* Interv. Opening Br. at 11-12. Like public charter schools, these educational programs differ from traditional public schools and often focus on innovation to better educate students. Like public charter schools, many of these programs are not supervised by local school boards or may be supervised by other entities (including private entities), such as the UW highly capable program (28A.185.040), tribal compacts (chapter 28A.715 RCW), dropout prevention programs (RCW 28A.175.045, .145(2)), programs for students at-risk for expulsion (RCW 28A.150.305(1), (2)), and online

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<sup>12</sup> The Charter Opponents' attempt to dispute this evidence is limited to arguing that some studies suggest that public charter schools "fail to produce *significantly* better results than [traditional] public schools." Appellants' Reply at 6 (emphasis added). Thus, even in a worst case scenario, public charter schools likely will still improve educational outcomes. And even this worst case scenario is unlikely. Washington is the 42nd state to allow public charter schools. RCW 28A.710.005(1)(e). Learning from other jurisdictions, Washington crafted a public charter school law that, at its inception, ranked third in the nation. CP at 308 n.10, 991.

learning (RCW 28A.250.010). The Legislature properly expanded the common school system to include these and other educational programs, and it may do so regarding public charter schools as well.<sup>13</sup>

The Legislature has also expanded the common school system to include some programs, such as dropout prevention programs, programs for students at-risk for expulsion, and online learning that are operated by private or nonprofit entities, a characteristic Charter Opponents claim is fatal to public charter schools. The Charter Opponents try to distinguish these other programs by arguing that school boards retain control of these programs under WAC 392-121-188. Appellants' Reply at 19-20. But while this regulation permits school districts to retain a level of responsibility over private contractors, it does not require it.

In summary, the Legislature has repeatedly exercised its authority to structure and expand the common school system within the Constitution's broad educational concepts to meet society's evolving educational needs. Not only does the Charter Schools Act satisfy the Constitution's broad educational concepts, it will likely help the State fulfill its duty to educate *all* children in Washington, including those not well-served by traditional schools. Because nothing in the text of the

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<sup>13</sup> If these programs are not common schools but are still constitutional, then public charter schools may be funded as these programs are, regardless of public charter schools' common school status. *See* section II.B, below.

Constitution prohibits public charter schools, the Court should defer to the legislative judgment that public charter schools are an important part of the common school system that will help provide additional educational opportunities, particularly for underserved student groups.

**B. The Legislature May Fund Public Charter Schools with Unrestricted Funds.**

Charter Opponents not only want to deprive public charter schools of any restricted common school funding, they want to prohibit all funding of these innovative programs altogether. Even if public charter schools are not common schools (and they are), the Legislature has authority to fund them (or any other project or program it desires) with unrestricted general funds. All of the arguments to the contrary lack merit.

***1. Public charter schools may receive unrestricted general funds, just as any other common school or non-common school educational program.***

The Charter Opponents attempt to stop any funding for public charter school operations in two ways. Both fail.

***First***, the Charter Opponents argue that the only source of funding available to public charter schools is constitutionally restricted common school funds. This is false. Two-thirds of the State's K-12 public education budget, or \$4.5 billion, derives from unrestricted revenue sources, not constitutionally protected common school funds (revenues from the state common school tax, RCW 84.52.065; the permanent

common school fund; or the common school construction fund). Art. IX, §§ 2, 3 (protected common school funds); Laws of 2013, 2d SP. Sess., ch. 4, part V (allocations for current biennium); CP at 1029, 1032 (\$4.5 billion). This is more than enough to fund up to 40 public charter schools, or less than 2% of Washington's 2300 public schools.<sup>14</sup>

The Charter Opponents attempt to sidestep these facts by expanding the notion of restricted common school funds to include funds appropriated for any common school *use*, regardless of their *source*. As the State explains, this argument is contradicted by the Court's reasoning in *Moses Lake* and *Seattle School District* and is rooted in a statutory scheme that no longer exists. State's Reply at 16-17. The Charter Opponents' argument fails.

Moreover, public charter schools need not use funds appropriated for common schools. The Charter Opponents' argument that public charter schools will receive common school appropriations rests on RCW 28A.150.380(1). But this statute merely commands the Legislature to appropriate funds for common school use. It is not an appropriations bill, allocates no funds, does not designate any funds as common school funds, and certainly does not restrict the Legislature from funding additional, non-common school educational programs with non-common school

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<sup>14</sup> It is unclear how clarification of these facts constitutes an "accounting trick." Appellants' Reply at 9.

funds. In fact, the second half of this statute expressly *permits* appropriations for other educational programs, with no common school limitation. *See* RCW 28A.150.380(2) (Legislature may fund “special programs to enhance or enrich the program of basic education.”). Neither the Charter Schools Act funding provision nor the current public education appropriations bill refers to common schools or common school funding. RCW 28A.710.220(2); Laws of 2013, 2d SP. Sess., ch. 4, part V. The legislative budget writers’ use of a single line item for general apportionment, even though the revenues are drawn from both the unrestricted general fund and the restricted statewide common school property tax, does not change the character of either funding source and does not convert unrestricted funds to restricted ones. And if it did, the legislature could simply create two line items and eliminate the problem.

*Second*, the Charter Opponents attempt to deprive public charter schools of all funding, from any state source whatsoever, arguing that unrestricted funds may only be used to support educational programs if they are established to “meet[] the needs of a specialized segment of the student population” and are not open to all students. Appellants’ Reply at 18, 34. Nothing supports this remarkable claim, and it is contradicted by the Charter Opponents’ own authorities and briefing. *See id.* at 18 (“Nothing prevents the Legislature ... from using unrestricted funds to

support [non-common school] programs and services”); *Bryan*, 51 Wash. at 505 (Legislature may use general funds for education programs not eligible for common school funds). In addition, public charter schools are intended to address the needs of specialized segments of the student population. RCW 28A.710.005(1)(n)(ix) (the Charter Schools Act gives priority to opening public charter schools that serve at-risk student populations and those underserved by the current system).

Finally, the Charter Opponents’ vague policy argument that common school funding should be placed “above all” is wrong and could eliminate funding for existing important programs. Appellants’ Reply at 21-22. The Constitution says that Washington’s paramount duty is educating *all* children in Washington. Art. IX, § 1. This duty obviously extends to children in several programs that the Charter Opponents claim fall outside the common school system, including programs for deaf and blind children and incarcerated juveniles. *See* Appellants’ Reply at 24. It also extends to those underserved by the current common school system, including many minority, impoverished, and special needs students. If Charter Opponents’ argument here is right, then the State could not currently fund any of these special programs.

Public charter schools have a demonstrated ability to enhance educational opportunities for these and other student groups. In fact, the

first Washington public charter school scheduled to open will focus on educating children who have experienced “extreme poverty, homelessness, or the danger of becoming homeless.”<sup>15</sup> The Legislature is completely free to fund public charter schools, even if they do not qualify as common schools.

**2. *Public charter schools need not build new facilities with protected common school construction funds.***

The Charter Opponents continue to claim that the Charter Schools Act is facially unconstitutional because public charter schools might build new facilities with common school construction funds. This argument is frivolous.

No law requires public charter schools to build new buildings. The Charter Schools Act permits public charter schools to use facilities owned by *any* “public or private entity.” RCW 28A.710.230. Public charter schools may finance their own buildings without using common school construction funds, or any other public funds, if they so choose. RCW 28A.710.030(1)(e). This is a plausible scenario. *See* Joint Stip. ¶ 12 (approved Washington public charter schools have already secured over \$8 million in donations and expect to receive more). Further, if it so chooses, the State can make unrestricted funds available for public charter school construction. *See, e.g., Moses Lake*, 81 Wn.2d at 559

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<sup>15</sup> First Place Scholars Charter School application at 7. *See* footnote 9, above.

(acknowledging that traditional public school buildings may be built with unrestricted funds from the “public school construction account of the state general fund.”).

There is no basis for the Charter Opponents’ theory that assets (including buildings) purchased with common school funds can never be used for any purpose other than for common schools. Appellants’ Reply at 25. The lone authority the Charter Opponents cite for this novel proposition, *Moses Lake*, does not support their position and actually held that a building constructed by a school district *could* be transferred to a non-school district state entity. *Moses Lake*, 81 Wn.2d at 559-60. The Charter Opponents’ theory would preclude all school district buildings from being used or rented by, or sold to, any non-school district entity, including other State entities. Such a result is contrary to this Court’s precedent. *See, e.g., id.* at 563 (affirming transfer of school district building to non-school district community college).

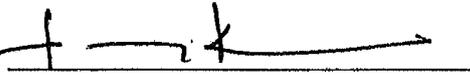
The Legislature has authority to fund public charter schools with unrestricted funds, just as it can for any non-common school program, and the People made clear through the Charter Schools Act that they want public charter schools to be funded. The Charter Opponents cannot demonstrate that public charter schools will necessarily be funded with common school funds, because there is no such requirement. If this Court

finds that public charter schools are not common schools, it should nonetheless hold that they may be funded with unrestricted funds.

### **III. CONCLUSION**

The People acting in their legislative capacity have the authority to add public charter schools as an option within the common school system. Doing so is consistent with the Constitution's broad educational requirements, and establishing public charter schools is a legitimate and reasonable approach to meeting the needs of present-day students, including underserved and vulnerable student populations. This Court should reverse the trial court and hold that public charter schools are common schools. In addition, regardless of whether public charter schools are common schools, the Legislature may fund them with unrestricted, general funds, and this Court should affirm that holding from the Court below. Lastly, the balance of the trial court's holding that rejected all of the Charter Opponents' remaining constitutional challenges should be affirmed.

RESPECTFULLY SUBMITTED this 10th day of July, 2014.

By 

Harry Korrell, WSBA #23173  
Michele Radosevich, WSBA #24282  
Joseph P. Hoag, WSBA #41971  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101  
(206) 757-7299

Counsel for Intervenors

CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on this 10<sup>th</sup> day of July 2014, I caused to be served a true and correct copy of the following **Intervenors' Reply Brief on**

**Cross Appeal** upon:

David A. Stolier, WSBA # 24071, Sr. AAG  
Chief, Education Division  
Rebecca R. Glasgow, WSBA #32886, Deputy  
Solicitor General  
1125 Washington Street SE  
P.O. Box 40100  
Olympia, WA 98504-0100  
Phone: 360-753-6200  
Email: [daves@atg.wa.gov](mailto:daves@atg.wa.gov)  
Email: [rebeccag@atg.gov](mailto:rebeccag@atg.gov)  
*Attorneys for Respondent State of Washington*

- via facsimile
- via overnight courier
- via first-class U.S. Mail (Appendix only)
- via email
- via electronic court filing
- via hand delivery

Paul J. Lawrence, WSBA #13557  
Jessica A. Skelton, WSBA #36748  
Jamie L. Lisagor, WSBA #39946  
Pacifica Law Group  
1191 Second Avenue, Ste. 2100  
Seattle, WA 98101  
Phone: 206-245-1700  
Email: [paul.lawrence@pacificallawgroup.com](mailto:paul.lawrence@pacificallawgroup.com)  
Email: [jessica.skelton@pacificallawgroup.com](mailto:jessica.skelton@pacificallawgroup.com)  
Email: [Jamie.lisagor@pacificallawgroup.com](mailto:Jamie.lisagor@pacificallawgroup.com)  
*Attorneys for Appellants*

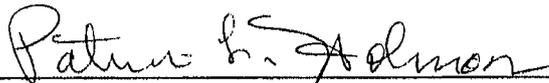
- via facsimile
- via overnight courier
- via first-class U.S. Mail (Appendix only)
- via email
- via electronic court filing
- via hand delivery

Robert M. McKenna, WSBA #18327  
Brian T. Moran, WSBA #17794  
Andrew Ardinger, WSBA #46035  
Orrick, Herrington & Sutcliffe LLP  
701 Fifth Avenue, Suite 5600  
Seattle, WA 98104-7097  
Email: [rmckenna@orrick.com](mailto:rmckenna@orrick.com)  
Email: [brian.moran@orrick.com](mailto:brian.moran@orrick.com)  
Email: [aardinger@orrick.com](mailto:aardinger@orrick.com)

- via facsimile
- via overnight courier
- via first-class U.S. Mail (Appendix only)
- via email
- via electronic court filing
- via hand delivery

*Attorneys for Amicus Stand for Children-  
Washington, Washington Roundtable,  
Technology Alliance and Teachers United*

Dated this 10<sup>th</sup> day of July, 2014.



Patricia L. Holman  
Assistant to Joseph P. Hoag  
Davis Wright Tremaine LLP  
1201 3<sup>rd</sup> Avenue, Suite 2200  
Seattle, WA 98101  
Tele: (206) 622-3150  
Email: [patriciaholman@dwt.com](mailto:patriciaholman@dwt.com)

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**Subject:** League of Women Voters v State: Cause No.: 87914-0; Intervenors' Reply Brief on Cross Appeal

Filed on behalf of Intervenors  
Harry Korrell, WSBA #23173  
Michele Radosevich, WSBA #24282  
Joseph P. Hoag, WSBA #41971  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101  
(206) 622-3150  
*Counsel for Intervenors*

Attached for filing please find "**Intervenors' Reply Brief on Cross Appeal**". The **Appendix to Intervenors' Reply Brief on Cross Appeal** has been sent via U.S. Mail to the Court and to the parties.

Please advise immediately if you have any problems opening the attachment.

Thank you.

**Patricia Holman** | Davis Wright Tremaine LLP  
Assistant to Sheehan Sullivan Weiss, Paula Simon,  
Joseph Hoag, Andrea Carino, Lissa Summers  
1201 Third Avenue, Suite 2200 | Seattle, WA 98101  
Tel: (206) 757-8503 | Fax: (206) 757-7700  
Email: [patriciaholman@dwt.com](mailto:patriciaholman@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)  
Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

JUL 11 2014

Ronald R. Carpenter *h/h*  
Clerk

NO. 89714-0

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent,

and

WASHINGTON STATE CHARTER SCHOOLS ASSOCIATION, LEAGUE OF EDUCATION VOTERS, DUCERE GROUP, CESAR CHAVEZ CHARTER SCHOOL, INITIATIVE 1240 SPONSOR TANIA DE SA CAMPOS, and MATT ELISARA,

Respondents/Intervenors.

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**APPENDIX TO INTERVENORS' REPLY BRIEF  
ON CROSS APPEAL**

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Harry J. F. Korrell, WSBA #23173  
Michele Radosevich, WSBA #24282  
Joseph P. Hoag, WSBA #41971  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
(206) 622-3150 Phone  
(206) 757-7700 Fax

Attorneys for Intervenors

Intervenors hereby submit the following authorities cited in the Intervenors' Reply Brief on Cross Appeal.

1. Office of the Superintendent of Public Instruction, *Graduation and Dropout Statistics Annual Report 2012-13* (2014), available at <http://www.k12.wa.us/DataAdmin/pubdocs/GradDropout/12-13/2012-13GraduationAndDropoutStatisticsAnnualReport.pdf> (last visited July 10, 2014).

2. Washington State Charter School Commission, *2014 Sample Charter Contract* (2014), available at <http://www.governor.wa.gov/issues/education/commission/documents/2014WSCSCSampleContract.pdf> (last visited July 9, 2014).

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of July, 2014.

By   
Harry Korrell, WSBA #23173  
Michele Radosevich, WSBA #24282  
Joseph P. Hoag, WSBA #41971  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101  
(206) 757-7299

Counsel for Intervenors



**Randy I. Dorn** • State Superintendent  
Office of Superintendent of Public Instruction  
Old Capitol Building • P.O. Box 47200  
Olympia, WA 98504-7200

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# Graduation and Dropout Statistics Annual Report

**2012–13**

Authorizing legislation: [RCW 28A.175.010](#)

(<http://apps.leg.wa.gov/rcw/default.aspx?cite=28A.175&full=true#28A.175.010>)

## **Assessment and Student Information**

**Robin G. Munson, Ph.D., Assistant Superintendent**

### **Prepared by:**

- Deb Came, Ph.D., Director ([deb.came@k12.wa.us](mailto:deb.came@k12.wa.us), 360-725-6356)
- Lisa Ireland, Research Analyst ([lisa.ireland@k12.wa.us](mailto:lisa.ireland@k12.wa.us), 360-725-6358)

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## Executive Summary

Graduation and dropout rates are important indicators of the status of K-12 education in Washington State. The Office of Superintendent of Public Instruction (OSPI) prepares an annual graduation and dropout report that includes information for all students as well as the sub-categories of students represented within the Washington State Report Card.

Graduation rates are calculated using the “adjusted cohort rate” methodology. Students are placed in a group – or cohort – based on the year they enter ninth grade for the first time. The calculation adjusts for students who transfer into a Washington public high school for the first time and join a cohort. Students are removed from the cohort if they transfer out of public school in Washington.

The adjusted cohort method tracks individual students over time and does not rely on estimates. It generally aligns with what most people think of as a graduation rate: Among a group of students who started high school together, what percent graduated in four (or five) years?

The methodology is mandated by the U.S. Department of Education. Results are produced for both four-year and five-year cohorts of students.

Washington’s four-year graduation rate is 76.0 percent for students who entered ninth grade for the first time in 2009–10. We commonly call this the Class of 2013. The rate is a decrease of 1.2 percent from the Class of 2012, which had a four-year graduation rate of 77.2 percent.

The five-year graduation rate, for students who entered ninth grade for the first time in 2008–09, is 78.8 percent. This is almost the same as the previous year, when the five-year rate was 78.9 percent.

Following are Washington’s current four- and five-year graduation rates, listed by student group:

<b>Student group</b>	<b>4-year</b>	<b>5-year</b>
American Indian	52.5%	58.5%
Asian	84.1%	85.8%
Pacific Islander	62.3%	69.6%
Black	65.4%	67.7%
Hispanic	65.6%	70.0%
White	79.4%	81.8%
Two or More Races	76.2%	88.5%
Special Education	54.4%	62.4%
Limited English	50.4%	60.2%
Low income	64.6%	69.8%
Migrant	62.3%	68.6%
504 Plan	75.1%	81.3%
Homeless	45.1%	52.6%
Foster Care	36.6%	48.1%
Female	79.9%	82.0%
Male	72.3%	75.7%

# Introduction

## Purpose

Under the guidelines of state law, RCW 28A.175.010, the Office of Superintendent of Public Instruction (OSPI) is required to report annually on the educational progress of public school students in Grades 9–12. Federal guidelines provided by the U.S. Department of Education, issued under No Child Left Behind (NCLB), require all states to determine adjusted cohort graduation results for students. To meet the state and federal reporting requirements, the Office of Superintendent of Public Instruction prepares an annual report summarizing the enrollment activity of students in high school Grades 9–12.

## Definitions

**Adjusted Cohort:** A group of students identified as beginning ninth grade in a specified year. Students are included in the cohort based on when they first enter ninth grade, regardless of their expected graduation year. The cohort of entering ninth graders is “adjusted” for transfers in and out of high school through the next four and five years.

**Dropout:** A student who leaves school for any reason, except death, before completing school with a regular diploma or transferring to another school with a known exit reason. A student is considered a dropout regardless of when dropping out occurs (i.e., during or between regular school terms). A student who leaves during the year but returns during the reporting period is not considered a dropout.

**Graduate:** A student who earns a high school diploma, a high school diploma with modifications allowed under a student’s Individualized Education Plan, or an Associate’s Degree from a community or technical college.

For information about data collection, calculations, and verification, please see the 2011–12 report which details the graduation formulas.

## Graduation Rates

### Results for Adjusted Four-Year Cohort

The adjusted four-year cohort graduation rate is calculated using the group of students identified as entering ninth grade for the first time in 2009–10 and who are reported as graduates by the end of 2012–13.

**Table 1: Adjusted Cohort Graduation Rate (four-year)**

<b>Student Group</b>	<i>Received high school diploma</i>	<i>Graduated w/ Associates Degree</i>	Total All graduates	Adjusted Cohort	<b>Adjusted 4- Year Cohort Rate</b>
All students	60,170	305	60,475	79,528	<b>76.0%</b>
Amer. Indian	664	3	667	1,270	<b>52.5%</b>
Asian/Pac Islander (Combined)	5,386	15	5,401	6,581	<b>82.1%</b>
<i>Asian</i>	5,011	15	5,026	5,979	<b>84.1%</b>
<i>Pacific Islander</i>	375	0	375	602	<b>62.3%</b>
Black	2,488	9	2,497	3,819	<b>65.4%</b>
Hispanic	8,753	20	8,773	13,373	<b>65.6%</b>
White	39,783	246	40,029	50,401	<b>79.4%</b>
Two or More Races	3,096	12	3,108	4,80	<b>76.2%</b>
Special Education	4,785	0	4,785	8,804	<b>54.4%</b>
Limited English	2,211	0	2,211	4,383	<b>50.4%</b>
Low income	24,928	103	25,031	38,727	<b>64.6%</b>
Migrant	1,270	1	1,271	2,040	<b>62.3%</b>
504 Plan	2,484	6	2,490	3,315	<b>75.1%</b>
Homeless	1,835	2	1,838	4,076	<b>45.1%</b>
Foster Care	242	0	242	661	<b>36.6%</b>
Female	31,112	215	31,327	39,194	<b>79.9%</b>
Male	29,058	90	29,148	40,334	<b>72.3%</b>

## Results for Adjusted Five-Year Cohort

The adjusted five-year cohort graduation rate is calculated using the group of students identified as entering ninth grade for the first time in 2008–09 and who are reported as graduates by the end of 2012–13. The table below shows the adjusted cohort five-year rate as well as the four-year rate for the same cohort. The difference between the two columns represents the percentage of the cohort who graduated in their fifth year of high school.

**Table 2: Adjusted Cohort Graduation Rate (five-year)**

<b>Student Group</b>	<i>Received high school diploma</i>	<i>Graduated w/ Associates Degree</i>	Total All graduates	Adjusted Cohort	Adjusted 5-Year Cohort Rate	(2012) Adjusted 4- Year Cohort Rate
All students	63,757	198	63,955	81,156	78.8%	77.2%
Amer. Indian	820	0	820	1,401	58.5%	56.8%
Asian/Pac Islander (Combined)	5,683	13	5,696	6,767	84.2%	82.5%
<i>Asian</i>	5,216	13	5,229	6,096	85.8%	84.4%
<i>Pacific Islander</i>	467	0	467	671	69.6%	64.5%
Black	2,717	1	2,718	4,012	67.7%	67.1%
Hispanic	9,273	13	9,286	13,266	70.0%	66.7%
White	42,324	161	42,485	51,922	81.8%	80.4%
Two or More Races	2,940	10	2,949	3,759	88.5%	78.1%
Special Education	5,781	2	5,783	9,269	62.4%	57.6%
Limited English	2,883	1	2,884	4,792	60.2%	53.9%
Low income	26,426	58	26,484	37,945	69.8%	66.2%
Migrant	1,594	4	1,598	2,331	68.6%	62.5%
504 Plan	2,324	1	2,325	2,861	81.3%	78.1%
Homeless	2,321	3	2,324	4,421	52.6%	*
Foster Care	309	1	310	644	48.1%	41.6%
Female	32,606	122	32,728	39,899	82.0%	80.7%
Male	31,151	76	31,227	41,257	75.7%	73.7%

\* Homeless graduation rates were not calculated prior to 2013.

## Dropout Rates

### Results for Adjusted Four-Year Cohort

Students identified as entering ninth grade for the first time in 2009–10 and who are reported as dropouts within the four-year timeframe are reported in the year in which they dropped out.

**Table 3: Adjusted Cohort Dropouts (four-year)**

<b>Student Group</b>	<b>Dropouts Year 1</b>	<b>Dropouts Year 2</b>	<b>Dropouts Year 3</b>	<b>Dropouts Year 4</b>	<b>Total Dropouts</b>	<b>Adjusted 4-Year Cohort Dropout Rate</b>
All students	691	1,106	2,517	5,991	10,305	13.0%
Amer. Indian	24	42	87	171	324	25.5%
Asian/Pac Islander (combined)	55	76	97	330	558	8.5%
<i>Asian</i>	47	70	73	248	438	7.3%
<i>Pacific Islander</i>	8	6	24	82	120	19.9%
Black	53	72	142	427	694	18.2%
Hispanic	211	273	580	1,444	2,508	18.8%
White	325	599	1,481	3,297	5,702	11.3%
Two or More Races	19	44	130	322	515	12.6%
Special Education	54	136	388	1,043	1,621	18.4%
Limited English	125	141	241	598	1,105	25.2%
Low income	380	747	1,900	4,447	7,474	19.3%
Migrant	37	37	106	255	435	21.3%
504 Plan	6	23	83	267	379	11.4%
Homeless	48	87	332	803	1,270	31.2%
Foster Care	11	22	81	161	275	41.6%
Female	321	518	1,106	2,491	4,436	11.3%
Male	370	588	1,411	3,500	5,869	14.6%

## Results for Adjusted Five-Year Cohort

Students identified as entering ninth grade for the first time in 2008–09 and who are reported as dropouts within the five-year timeframe are reported in the year in which they dropped out.

**Table 4: Adjusted Cohort Dropouts (five-year)**

Student Group	Dropouts	Dropouts	Dropouts	Dropouts	Dropouts	Total Dropouts	Adjusted 5-Year Cohort Dropout Rate
	Year 1	Year 2	Year 3	Year 4	Year 5		
All students	1,168	1,400	2,766	5,369	3,772	14,475	17.8%
Amer. Indian	68	61	83	180	120	512	36.5%
Asian/Pac Islander (combined)	93	114	141	310	215	873	12.9%
<i>Asian</i>	79	101	109	238	171	698	11.5%
<i>Pacific Islander</i>	14	13	32	72	44	175	26.1%
Black	113	114	157	361	303	1,048	26.1%
Hispanic	312	290	615	1,212	950	3,379	25.5%
White	536	763	1,672	3,028	1,980	7,979	15.4%
Two or More Races	29	51	98	277	202	657	17.5%
Special Education	122	181	470	880	720	2,373	25.6%
Limited English	158	188	269	520	448	1,583	33.0%
Low income	220	763	1,831	3,760	2,962	9,536	25.1%
Migrant	47	60	114	222	182	625	26.8%
504 Plan	0	18	57	187	135	397	13.9%
Homeless	64	89	301	666	630	1,750	39.6%
Foster Care	6	25	62	117	70	280	43.5%
Female	555	652	1,231	2,182	1,481	6,101	15.3%
Male	613	748	1,535	3,187	2,291	8,374	20.3%

## Conclusion

At the direction of the U.S. Department of Education, Washington uses the adjusted cohort graduation calculation to track a single cohort of students over four or five years. This report summarizes the graduation rates following the 2012–13 school year.

The adjusted cohort method yields a 76.0 percent four-year graduation rate for the Class of 2013, students who first began ninth grade in 2009–10. This is slightly lower than the Class of 2012, which had a graduation rate of 77.2 percent. An additional 1.6 percent of students in the Class of 2012 graduated during their fifth-year of high school (2012–13) for a total five-year rate of 78.8 percent. The cumulative dropout rate, after four years, for students entering ninth grade in 2009–10 was 13.0 percent.

## APPENDICES

Appendices A through G are available as electronic files under *Graduation and Dropout Statistics* at <http://www.k12.wa.us/DataAdmin/default.aspx>.

- Appendix A: State Level (2013 Adjusted Cohort 4-Year and 5-Year)
- Appendix B: County Level (2013 Adjusted Cohort 4-Year)
- Appendix C: District Level (2013 Adjusted Cohort 4-Year)
- Appendix D: School Level (2013 Adjusted Cohort 4-Year)
- Appendix E: County Level (2013 Adjusted Cohort 5-Year)
- Appendix F: District Level (2013 Adjusted Cohort 5-Year)
- Appendix G: School Level (2013 Adjusted Cohort 5-Year)

### **Appendix H: Estimated Benefits from Changes in Washington State's High School Graduation Rate**

*This appendix was prepared by the Washington State Institute for Public Policy. Estimate prepared February 2014.*

The 2010 Legislature directed the Washington State Institute for Public Policy (Institute) to “calculate an annual estimate of the savings resulting from any change compared to the prior school year in the extended graduation rate.”<sup>1</sup>

To produce this estimate, the Institute uses its economic model that assesses benefits and costs of public policies and outcomes. Monetary estimates are calculated for three perspectives: 1) benefits that accrue solely to high school graduates, 2) benefits received by taxpayers from having other people graduate from high school, and 3) any other measurable (non-graduate and non-taxpayer) monetary benefits. For technical details about the Institute model, visit <http://www.wsipp.wa.gov/TechnicalManual/WsippBenefitCostTechnicalManual.pdf>.

The Office of Superintendent of Public Instruction (OSPI) calculates a five-year high school graduation rate, which includes students who take more than four years to graduate. In the 2011–12 school year, this graduation rate was 78.9 percent; in 2012–13, the rate was 78.8 percent, a decrease of 0.01 percentage points, representing 77 fewer graduates (see Exhibit 1).

---

<sup>1</sup> RCW 28A.175.010 (8)

## Change in the Five-Year High School Graduation Rate in Washington State, 2011–12 to 2012–13

	Five-year Graduation Rate	Students in Cohort	Graduates (Rate * Cohort)
Actual graduates (2012–13 rate)	78.8%	81,156	63,955
Hypothetical Graduates (based on the 2011-12 rate)	78.9%	81,156	64,032
<i>Difference</i>	<i>-0.01%</i>		<i>-77</i>

*Source: Office of Superintendent of Public Instruction*

Using the Institute’s benefit-cost model, we estimate that the per-student monetary benefit associated with graduating from high school is \$514,862 (see Exhibit 2, next page).<sup>2</sup> The benefits accrue over an individual’s lifetime and the dollar amount is in net present value terms, in 2012 dollars.<sup>3</sup>

About half of the benefits go to the graduates themselves in the form of increased earnings, for which they pay taxes (represented as benefits to taxpayers). Graduating from high school is also associated with less crime. Additionally, individuals who graduate from high school are more likely to use private health care services but less likely to use publicly funded health care services.

For the 77 fewer graduates in 2012–13, the total estimated monetary benefit not realized is \$39.6 million.<sup>4</sup>

<sup>2</sup> This estimate is higher than the Institute’s 2013 estimate of the monetary benefits from graduating from high school. We have updated our estimates of labor market earnings and “spillover” economic growth (beyond an individual’s labor market earnings) associated with increased education in a society.

<sup>3</sup> To calculate net present value, we use a .035 discount rate.

<sup>4</sup>  $77 \times \$514,862 = \$39,644,374$

*OSPI provides equal access to all programs and services without discrimination based on sex, race, creed, religion, color, national origin, age, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability. Questions and complaints of alleged discrimination should be directed to the Equity and Civil Rights Director at (360) 725-6162 or P.O. Box 47200 Olympia, WA 98504-7200.*

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**Randy I. Dorn** • State Superintendent  
Office of Superintendent of Public Instruction  
Old Capitol Building • P.O. Box 47200  
Olympia, WA 98504-7200



**WASHINGTON STATE CHARTER SCHOOL  
COMMISSION  
2014 SAMPLE CHARTER CONTRACT**

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## INTRODUCTION

This agreement is executed on this \_\_\_\_ day of \_\_\_\_\_ 2\_\_\_\_ [MUST BE WITHIN 90 DAYS OF APPROVAL OF THE APPLICATION] by and between the Washington State Charter School Commission (the "Commission"), an agency of the State of Washington whose mission is to authorize high quality public charter schools throughout the state, and to ensure the highest standards of accountability and oversight for charter schools, and [SCHOOL NAME] Public Charter School, a qualified nonprofit organization, to establish and operate the [SCHOOL NAME] Public Charter School (the "School"), a public, common school under the Washington State Charter Schools law.

## II. RECITALS

**1.1** WHEREAS, pursuant to Initiative Measure No. 1240, codified at RCW 28A.710, the people of the state of Washington provided for the establishment of public charter schools in the state of Washington.

**1.2** WHEREAS, on July 15, 2014, the Commission received an application for consideration of a charter school referred to as [SCHOOL NAME] Public Charter School; and

**1.3** WHEREAS, on October 7, 2014, the Commission approved the application subject to conditions outlined in Resolution [#]; and

**1.4** WHEREAS, on [DATE], the State Board of Education certified that approval of the application is in compliance with the maximum limit on the number of charter schools allowed under RCW 28A.710.150.

NOW THEREFORE, in consideration of the mutual promises and other consideration recited in this agreement, the Parties agree as follows:

## II. AGREEMENT

### 2.1 PURPOSE

As authorized by the Washington State Charter Schools law, RCW 28A.710, the Commission authorizes the establishment of the School with the aforementioned conditions, and on the terms and conditions set forth in this Charter School Contract (the "Contract").

### 2.2 MISSION

The mission of the School is as follows: [CHARTER SCHOOL APPLICANT MUST POPULATE THIS SECTION WITH THEIR SCHOOL'S MISSION STATEMENT]

## **2.3 TERM OF AGREEMENT**

This Contract is effective [FIRST DAY OF SCHOOL], and will terminate on [FIVE-YEARS AFTER FIRST DAY OF SCHOOL], unless earlier terminated as provided herein. Funding under this agreement shall not commence until the pre-opening process described in Appendix 1: Pre-Opening Process and Conditions has been completed to the satisfaction of the Commission, and the school begins to operate.

## **2.4 SOLICITATION AND RESPONSE**

This Contract is entered into as a result of the approval of the application submitted by the School in response to the Commission's Request for Proposal (RFP). The RFP is attached as Appendix 9: Request for Proposals to this Contract and the School's application submitted in response to the RFP is attached as Appendix 10: Public Charter School Application to this Contract.

# **III. SCHOOL RIGHTS AND RESPONSIBILITIES**

## **3.1 PRE-OPENING CONDITIONS**

The School shall meet all of the Pre-Opening Conditions described in Appendix 1: Pre-Opening Process and Conditions by the identified dates. Satisfaction of pre-opening conditions are conditions precedent to the formation of a contract. The Commission may waive or modify the restrictions contained in the Pre-Opening Conditions or may grant the School an additional planning year upon good cause shown. The School may delay its opening for one school year. If the School requires a delay of more than one year, it must request an extension from the Commission in writing by the June 15, 2015.

# **IV. GOVERNANCE**

## **4.1 GOVERNANCE**

The School shall be governed by a board (the "Board") in a manner that is consistent with the terms of this Contract so long as such provisions are in accordance with state, federal, and local law. The Board shall have final authority and responsibility for the academic, financial, and organizational performance of the School, the fulfillment of the contract, and approval of the School's budgets.

The Board shall also have authority for and be responsible for policy and operational decisions of the School, and, consistent with the terms of this Contract, shall be the employer of school employees. Nothing herein shall prevent the Board from delegating decision-making authority for policy and operational decisions to officers, employees and agents of the School.

The Board shall govern the School pursuant to the following terms and conditions:

#### **4.1.1 Bylaws.**

The articles of incorporation and bylaws of the entity holding the Contract shall provide for governance of the operation of the School as a public charter school and shall at all times be consistent with all applicable law and this agreement. The articles of incorporation and bylaws are attached to this Contract as Appendix 2: Articles of Incorporation and Bylaws (initially or as amended, the "Articles and Bylaws"). Any modification of the Articles and Bylaws must be submitted to the Commission within five (5) business days of approval by the Board.

#### **4.1.2 Composition.**

The composition of the Board shall at all times be determined by and consistent with the Articles and Bylaws and all applicable law and policy. The roster of the Board and each member's disclosure form are attached to this Contract as Appendix 3: Board Roster and Disclosures (initially or as amended, the "Board Roster and Disclosures"). The Board shall notify the Commission of any changes to the Board Roster and Disclosures within five (5) business days of their taking effect and provide an amended Board Roster and Disclosures.

#### **4.1.3 Affiliation.**

Notwithstanding any provision to the contrary in the Contract, Application, or the Articles and By-laws, in no event shall the Board, at any time, be composed of voting members of whom a majority are directors, officers, employees, agents or otherwise affiliated with any single entity (with the exception of the School itself or of another charter school), regardless of whether said entity is affiliated or otherwise partnered with the School. For the purposes of this paragraph, "single entity" shall mean any individual entity, as well as any and all related entities to such entity such as parents, subsidiaries, affiliates and partners. The Commission may, at its sole discretion, waive this restriction upon a written request from the School.

#### **4.1.4 Conflicts of Interest.**

The Board adopted the Conflicts of Interest Policy attached to this agreement as Appendix 4: Conflict of Interest Policy and shall at all times comply with its provisions. Any amendment to Appendix 4: Conflict of Interest Policy must be adopted by the Board and approved in writing by the Commission, which shall not be unreasonably withheld. Any approved changes may be with made without amendment to this agreement.

#### **4.1.5 Ethics.**

The identified School representatives will adhere to the following ethical standards:

- a. No Board member, School administrator, or other School employee/representative authorized to enter contracts on behalf of the School, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

- b. No Board member or School administrator may use his or her position to secure special privileges or exemptions for himself, herself, or others.
- c. No Board member or School administrator may give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the School, for a matter connected with or related to their services as a Board member or School administrator unless otherwise provided for by law.
- d. No Board member or School administrator may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.
- e. No Board member or School administrator may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.
- f. Terms in this provision will be defined in accordance with the definitions set out in RCW 42.52.010. The Advisory Opinions of the Executive Ethics Board shall provide non-binding guidance for the parties' interpretation of this provision.

#### **4.1.6 Public Records.**

The Board shall comply with the provisions of the Public Records Act, chapter 42.56 RCW and is responsible for ensuring that the School, its employees, contractors, staff, and volunteers comply with the act and any associated Board policies.

#### **4.1.7 Record Keeping.**

The School will comply with all applicable federal, state, and Commission record keeping requirements including those pertaining to students, governance, and finance.

#### **4.1.8 Non-Commingling.**

Assets, funds, liabilities and financial records of the School shall be kept separate from assets, funds, liabilities, and financial records of any other person, entity, or organization unless approved in writing by the Commission. Additionally, public funds and assets received by the School shall be tracked and accounted for separately.

#### **4.1.9 Assets.**

The School shall maintain a complete and current inventory of all school assets that cost more than \$5,000 (including sales tax and ancillary costs) and small and attractive assets that cost \$300 or more (including sales tax and ancillary costs). Assets include land, infrastructure, improvements to land, buildings, leasehold improvements, vehicles, furnishings, equipment, collections, and all other tangible and intangible assets that are used in school operations. Small and attractive assets include, but are not limited to Optical Devices, Binoculars, Telescopes, Infrared Viewers, Rangefinders, Cameras and Photographic Projection Equipment, Desktop Computers (PCs), Laptops and Notebook Computers, Tablets and Smart Phones, Television Sets, DVD Players, Blu-ray Players, and Video Cameras (home type). The School shall update the inventory annually and shall take reasonable precautions to safeguard assets acquired with public funds. If the Contract is revoked, terminated, non-renewed or surrendered,

or the School otherwise ceases to operate, assets shall be deemed to be public assets if at least 25 percent of the funds used to purchase the asset were public funds. Public funds include, but are not limited to, funds received by the School under chapter 28A.710 RCW, as well as any state or federal grant funds. Any assets acquired wholly with private funds shall be disposed of consistent with Washington nonprofit law, provided that the School must maintain records demonstrating the percentage of public funds used to acquire assets. If the School's records fail to establish clearly whether an asset was acquired with the use of public funds, the assets shall be deemed to be public assets.

#### **4.1.10 Open Meetings.**

The Board shall maintain governing board-adopted policies, meeting agendas and minutes; shall make such documents available for public inspection in accordance with 4.1.6 Public Records., and shall otherwise conduct open meetings consistent with chapter 42.30 RCW, the Open Public Meetings Act.

## **4.2 CONTRACTING FOR SERVICES**

### **4.2.1 Services Agreements and Partnerships.**

Nothing in this Contract shall be interpreted to prevent the School from entering into contracts or other agreements with a school district, community partnership, state agency, or other entity for services related to the operation of the School consistent with the law and the terms of this Contract. The terms of such contracts for services shall be negotiated between the School and the other entity. Such contracts shall, at all times, be subject to the requirements of this Contract and will not relieve the School of its responsibilities under this Contract. This provision is subject to the limitations set out in the remainder of this Section of the Contract.

### **4.2.2 School Authorized as Part of a Charter Management Organization.**

[FOR SCHOOLS NOT AUTHORIZED AS PART OF A CHARTER MANAGEMENT ORGANIZATION]  
[Intentionally Omitted]

### **4.2.2 School Authorized as Part of a Charter Management Organization.**

In its application School was identified as a new school to be operated by [CMO NAME], a non-profit charter management organization (CMO). As such, School's relationship with [CMO NAME], is not subject to the procedures outlined in 4.2.3 Third-Party Education Service Provider Contracts School is otherwise subject to 4.2.3 Third-Party Education Service Provider Contracts and in all other instances, School and [CMO NAME] are bound by the terms of this agreement and all applicable laws.

### **4.2.3 Third-Party Education Service Provider Contracts.**

- a. **Education Service Provider Definition.** An Education Service Provider (ESP) is a nonprofit corporation that provides all or a substantial subset of all services necessary to operate and oversee the School's educational program on a fee basis and/or pursuant to a fee-based contract. This includes, but is not limited to provision of school or program design and implementation, development of pedagogical approaches, curricula, instructional materials, assessments and professional development programs, as well as comprehensive management services. School may

not contract with a for-profit ESP. For purposes of this contract, ESP does not include contracts between the School and a third-party to provide back-office functions such as fiscal services, accounting services or facilities operations, those contracts are governed by 4.2.1 Services Agreements and Partnerships.

**b. Limit to Scope of ESP Contracting.** The School shall not, without written approval of the Commission, contract with an ESP to provide substantial educational services; management services, or both on behalf of the School. Substantial is defined as the assumption of responsibility for all or most of the educational, governance, or managerial components of a School's operations.

**c. Proposed ESP Contract.** At least 90 days before the proposed effective date of an ESP contract, the ESP and the School shall enter into a legally binding and enforceable contract that is subject to approval of the Commission and the requirements of this Contract. Appendix 5: Education Service Provider (ESP) Contract Guidelines contains Education Service Provider Agreement Guidelines that the School must observe. Within 24 hours of entering into the proposed contract, the School shall forward the proposed ESP contract to the Commission for review.

**d. Required ESP Contract Terms.** The proposed ESP contract shall set forth with particularity inter alia, (i) the contingent obligations and responsibilities of each party in the event that the contract must be modified in order to obtain or maintain the School's status under state and federal law, and (ii) the extent of the ESP's participation in the organization, operation and governance of the School.

**e. Review by Commission.** The Commission shall review the proposed ESP Contract and determine, within 60 days of receiving it from the School, whether it meets approval of the Commission. Approval will be contingent on satisfaction of the terms of RCW 28A.710.130(4) and evidence that the ESP contract will not detrimentally impact the School's viability, or violate the terms of this Contract or the law.

**f. Representation by Attorney.** The School shall be represented by an attorney during the negotiation of the proposed ESP Contract. Upon submission of the ESP contract for review by the Commission it shall be accompanied by a letter from a licensed attorney representing the School stating that the Management Contract meets the attorney's approval. Such attorney may not represent or be retained by the Management Provider.

**g. Effect of ESP Contract.** The School will remain ultimately responsible and accountable for its legal and contractual obligations; an ESP contract will not relieve the School of those obligations.

### **4.3 EDUCATIONAL PROGRAM**

#### **4.3.1 Design Elements.**

The School shall implement and maintain the following essential design elements of its educational program, subject to modification with the Commission's written approval:

- a. School grade levels** [CHARTER SCHOOL APPLICANT MUST STATE GRADE LEVELS TO BE SERVED]
- b. School goals.** [CHARTER SCHOOL APPLICANT MUST IDENTIFY THE GOALS OF THE SCHOOL]
- c. School objectives.** [CHARTER SCHOOL APPLICANT MUST IDENTIFY THE OPERATIONAL AND ORGANIZATIONAL OBJECTIVES]

#### **4.3.2 Content Standards.**

The School's educational program shall meet or exceed basic education standards. The School is also subject to the supervision of the Office of the Superintendent of Public Instruction (OSPI) and the State Board of Education. Standards that must be met by the school include, but are not limited to:

- a. Basic education, as defined in RCW 28A.150.200, .210 and .220;
- b. Instruction in the essential academic learning requirements and associated standards;
- c. Participation in, and performance on, statewide student assessments;
- d. Performance improvement goals and associated requirements;
- e. Accountability measures;
- f. State graduation requirements;
- g. Academic standards applicable to noncharter public schools;
- h. Standards and requirements contained in the Performance Framework; and
- i. Other state and federal accountability requirements imposed by law, regulation, policy or this Contract.

#### **4.3.3 Curriculum.**

- a. The School shall implement the educational program and curriculum consistent with the program and curriculum presented in the Application.
- b. The School may revise and amend the educational program and curriculum at its discretion and without requiring approval from the Commission or amendment to this Contract provided that such revisions or amendments do not indicate a material change to the school's mission or its pupil performance standards.
- c. Material revisions and/or amendments to the educational program and/or curriculum shall require the Commission's approval.

#### **4.3.4 Graduation Requirements for High Schools.**

The School's curriculum shall meet or exceed all applicable graduation requirements as established by the State Board of Education.

#### **4.3.5 Staff Qualifications.**

Instructional staff, employees, and volunteers shall possess all applicable qualifications as required by state or federal law. Instructional staff shall maintain active certification in accordance with chapter 28A.410 RCW, unless instructional staff meets the requirements of RCW 28A.150.203(7). Instructional staff must also adhere to the code of professional conduct, ethical standards governing educator conduct, and associated laws and regulations. If the Board or School administrator(s) has reason to believe that an employee with a certificate or permit authorized under chapter 28A.410 RCW or chapter 28A.405 RCW, has engaged in unprofessional conduct (Chapter 181-87 WAC) or lacks good moral character (Chapter 181-86 WAC) a complaint must be submitted to the Education Service District within which the school operates stating the basis for the belief and requesting submission of the complaint to

OSPI. A copy of the School's complaint must simultaneously be sent to the Commission and OSPI's Office of Professional Practices. Certificated and licensed staff shall also be held accountable in accordance with the provisions of Title 28A RCW as well as any applicable state or federal laws.

#### **4.3.6 Staff Training.**

The School shall provide employees and staff with training required by applicable state and/or federal law.

#### **4.3.7 Student Assessment.**

The School shall participate in all testing programs required by OSPI and the State Board of Education. The School shall comply with all assessment protocols and requirements as established by the OSPI and the State Board of Education, maintain test security, and administer the tests consistent with all relevant state and Commission requirements. The School shall follow OSPI's administration and security requirements associated with those tests being administered.

#### **4.3.8 English Language Learners.**

The School shall at all times comply with all state and federal law applicable to the education of English language learners including, but not limited to, the Elementary and Secondary Education Act (ESEA), Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974 (EEOA), and any applicable state laws or regulations. The School shall provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to participate in the mainstream English language instructional program. The School shall employ and train teachers to provide appropriate services to English language learners. The School will work to assure compliance with any and all requirements of state and federal law regarding services to English language learners.

#### **4.3.9 Students with Disabilities.**

The School shall provide services and accommodations to students with disabilities as set forth in the Application and in accordance with any relevant policies thereafter adopted, as well as with all applicable provisions of the Individuals with Disabilities Education Act (20 U.S.C. § 1401 et seq.) (the "IDEA"), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (the "ADA"), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) ("Section 504"), and all applicable regulations promulgated pursuant to such federal laws. This includes providing services to attending students with disabilities in accordance with the individualized education program ("IEP") recommended by a student's IEP team. The School shall also comply with all applicable federal and State laws, rules, policies, procedures and directives regarding the education of students with disabilities including, but not limited to, chapter 28A.155 RCW.

#### **4.3.10 Student Conduct and Discipline.**

The School shall comply with the School's discipline policy and all applicable state and federal laws and regulations relating to student discipline including, but not limited to, RCW 28A.150.300.

### **4.4 SCHOOL PERFORMANCE STANDARDS**

#### **4.4.1 School Performance Framework.**

- a. Annually, the School and Commission must set performance targets designed to help the School meet its mission-specific educational and organizational goals, applicable federal, state, and Commission expectations. Once agreed upon, those performance targets shall be incorporated into the contract through amendment.
- b. The School shall annually Meet Standards or Exceed Standards on the Commission's Charter School Performance Framework set out in chapter 108-30 WAC, the requirements contained in chapter 28A.710 RCW, and as set out in this Contract. The specific terms, form and requirements of the Performance Framework, including any required indicators, measures, metrics, and targets, are determined by the Commission and will be binding on the School.
- c. The Commission will monitor and periodically report on the School's progress in relation to the indicators, measures, metrics and targets set out in the Performance Framework. Such reporting will take place at least annually in the format specified by the Commission.
- d. The School's performance in relation to the indicators, measures, metrics and targets set forth in chapter 108-30 WAC, the requirements contained in chapter 28A.710 RCW, and the School specific performance measures set out in this Contract shall provide one basis upon which the Commission will base its decisions to renew, revoke, terminate or take other action on the Contract.
- e. The Parties intend that, where this Contract references or is contingent upon state or federal laws, that they be bound by any applicable modification or amendments to such laws upon the effective date of said modifications or amendments. The specific terms, form and requirements of the Performance Framework may be modified or amended to the extent required to align with changes to applicable state or federal accountability requirements, as set forth in law. In the event that any such modifications or amendments occur, the Commission will use best efforts to apply expectations for school performance in a manner consistent with those set forth in the Performance Framework as initially established in the Charter.
- f. The Commission reserves the right to amend the Charter School Performance Framework set out in chapter 108-30 WAC in accordance with the legal requirements that govern amendment of agency rules. The School will be required to comply with any amendments of the Charter School Performance Framework.

#### **4.5 PERFORMANCE AUDITS AND EVALUATION**

##### **4.5.1 Annual Performance Review.**

The School shall be subject to a review of its academic, organizational, and financial performance at least annually and is required to comply with obligations as indicated in Appendix 6: Identification of Documentation Required for Annual Performance Report.

#### **4.6 SCHOOL OPERATIONS**

##### **4.6.1 In General.**

The School and the Board shall operate at all times in accordance with all federal, state, and local laws, ordinances, rules, regulations and Commission policies, as the same may be amended from time to time.

#### **4.6.2 Public School Status.**

The School shall be deemed a public, common school, and local education agency, subject to all applicable provisions of local, state and federal law and regulations, including but not limited to health and safety, parents' rights, civil rights, nondiscrimination laws, public records laws, student assessment, assessment administration, data collection, reporting, and remediation requirements. These requirements include, but are not limited to, those imposed under chapter 28A.642 RCW (discrimination prohibition); chapter 28A.640 RCW (sexual equality); the Individuals with Disabilities Education Improvement Act (20 U.S.C. Sec. 1401 et seq.); the Federal Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), and the Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.).

#### **4.6.3 Nonsectarian Status.**

The School shall be nonsectarian in its programs, admissions policies, employment practices and all other operations. The School shall not be to any extent under the control or direction of any religious denomination.

#### **4.6.4 Open Meetings and Public Records.**

The School shall maintain and implement policies to ensure that it complies with all applicable laws and regulations relating to public meetings and records.

#### **4.6.5 Non-discrimination.**

The School shall not discriminate against any student, employee or any other person on the basis of race, ethnicity, national origin, gender, disability or any other ground that would be unlawful if done by any other public school. It shall take all steps necessary to ensure that discrimination does not occur, as required by state and federal civil rights and anti-discrimination laws.

#### **4.6.6 Commission's Right to Review.**

The School will be subject to review of its operations and finances by the Commission, or its designee, including related records, when the Commission, in its sole discretion, deems such review necessary. While the reviews may be without notice to the school, the Commission or its designee(s) will endeavor to ensure that, to the extent possible, the reviews occur with minimal disruption of school operations.

#### **4.6.7 Administrative Records.**

The School will maintain all administrative records, including student academic records, required by law and Commission policies and procedures, to the extent no waivers apply. The School agrees to make all administrative and student records promptly available to the Commission upon request. When the request is for on site inspection of records, prompt is defined as immediate access. If the request is for reproduction of records, then the Commission will include a timeframe in which the records must be provided; adherence to this timeframe will be considered prompt.

#### **4.6.8 Encumbrances.**

The School may issue secured and unsecured debt, including pledging, assigning or encumbering its assets to be used as collateral for loans or extensions of credit (Encumber) to manage cash flow, improve operations, or finance the acquisition of real property or equipment. However, the School shall

not Encumber its assets in a manner that will jeopardize its fiscal viability. Provided that the School is prohibited from:

- a. Encumbering any public funds received or to be received pursuant to RCW 28A.710.220;
- b. Pledging the full faith and credit of the state or any political subdivision or agency of the state;
- c. Encumbering any other funds that contain a restriction or prohibition on such encumbrance; or
- d. Encumbering any funds or assets in violation of the law.

#### **4.6.9 Transactions with Affiliates.**

The School shall not, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any affiliate of the School, any member past or present of the Board, or any employee past or present of the School (except in their employment capacity), or any family member of the foregoing individuals, unless:

- a. The terms of the transaction do not violate the Schools' Code of Ethics and Conflict of Interest Policy, the fiduciary obligations applicable to non-profit boards and **4.1.5 Ethics** of this Contract;
- b. The terms of such transaction (considering all the facts and circumstances) are no less favorable to the School than those that could be obtained at the time from a person that is not such an affiliate, member or employee or an individual related thereto;
- c. The involved individual recuses him or herself from all Board discussions, and does not vote on or decide any matters related to such transaction;
- d. The Board discloses any conflicts and operates in accordance with a conflict of interest policy that has been approved by the Commission.

Affiliate means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, owns, is owned and ownership mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

#### **4.6.10 Student Welfare and Safety.**

The School shall comply with all applicable federal, state, county and city health and safety laws. Including, but not limited to, state laws regarding the reporting of child abuse, accident prevention, notification of criminal conduct to law enforcement as well as disaster response, and any applicable state and local regulations governing the operation of school facilities.

#### **4.6.11 Transportation.**

The School shall be responsible for providing students transportation in accordance with legal obligations and consistent with the plan proposed in the approved application, Appendix 10: Public Charter School Application, pages [PAGE NUMBERS OF ASSOCIATED APPLICATION].

#### **4.6.12 Notification to Commission.**

a. **Timely Notification.** The School shall timely (within 24 hours) notify the Commission (and other appropriate authorities) in the following situations:

1. The discipline of employees at the School that:
  - i. Results in suspension or termination;
  - ii. Arises from misconduct or behavior that may have endangered the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting; or
  - iii. Is based on serious or repeated violations of law.
2. Any complaints filed, or action taken, against the School by any governmental agency.

b. **Immediate Notification.** The School shall immediately notify the Commission of any of the following:

1. Known conditions that may cause it to vary from the terms of this Contract, applicable Commission requirements, federal, and/or state law;
2. Any circumstance requiring the closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, flood or other weather related event, other extraordinary emergency, or destruction of or damage to the School facility;
3. The arrest of any members of the Board or School employees for a crime punishable as a felony or any crime related to the misappropriation of funds or theft, if the Board, School, or any agent, employee, or representative thereof has reason to believe that an arrest occurred;
4. Misappropriation of school funds;
5. A known default on any obligation, which shall include debts for which payments are past due by sixty (60) days or more; or
6. Any change in its corporate status with the Washington Secretary of State's Office or status as a 501(c)(3) entity.

A condition or default is known if the School is aware of the facts or circumstances giving rise to the condition or default, or has information that would lead a reasonable person in the same situation to believe that the facts or circumstances exist.

#### **4.6.13 Compliance.**

The School shall comply with Commission policies and rules as well as:

- a. All applicable federal and state laws, rules, regulations; and
- b. All applicable local ordinances.

#### **4.6.14 Data and Reports.**

The School shall timely provide to the Commission any data, documentation, evidence and reports necessary for the Commission to meet its oversight and reporting obligations as outlined in chapter 28A.710 RCW. Required reports include, but are not limited to those listed in Appendix 6: Identification of Documentation Required for Annual Performance Report along with projected due dates for the current school year. Timely notification shall be provided when due dates are changed. Failure to

provide reports, data, documentation, or evidence by the date due is a material violation of the Contract.

#### **4.6.15 Complaints.**

The School shall establish a process for resolving public complaints, including complaints regarding curriculum, which shall include an opportunity for complainants to be heard. The final administrative appeal shall be heard by the Board, not the Commission.

### **4.7 SCHOOL CALENDAR**

The School shall adopt a School calendar with an instructional program that meets the compulsory school attendance requirements of state law, financial guidelines, and state regulations. By June 30th of each year, the School will develop a school calendar for the following year and submit it to the Commission. Any changes that cause the calendar to differ materially from the calendar proposed and approved in the School's charter application are subject to Commission approval.

### **4.8 ENROLLMENT**

#### **4.8.1 Enrollment Policy.**

The School shall make student recruitment, admissions, enrollment and retention decisions in a nondiscriminatory manner and without regard to race, color, creed, national origin, sex, marital status, religion, ancestry, disability or need for special education services. In no event may the School limit admission based on race, ethnicity, national origin, disability, gender, income level, athletic ability, or proficiency in the English language. If there are more applications to enroll in the charter school than there are spaces available, the charter school shall select students to attend using a lottery that shall be publicly noticed and open to the public; however, the School must give an enrollment preference to siblings of already enrolled students. The School shall follow the enrollment policy approved by the Commission and incorporated into this agreement as Appendix 8: Enrollment Policy.

#### **4.8.2 Maximum Enrollment.**

The maximum number of students who may be enrolled in the first year of operation of the School shall be [MAXIMUM NUMBER OF STUDENTS LISTED IN FIRST YEAR ENROLLMENT ON COVER SHEET AND ENROLLMENT PROJECTION] students, with an ability to exceed this amount by no more than 25 students, to the extent that the School's facility and staffing can accommodate such a number of students and is consistent with facilitating the academic success of students enrolled in the School and facilitating the School's ability to achieve the other objectives specified in this Contract. If the School wishes to enroll more than the maximum number of students listed above, it shall, before exceeding this number, provide evidence satisfactory to the Commission that it has the capacity to serve the larger population. The maximum enrollment shall not exceed the capacity of the School facility.

#### **4.8.3 Annual Enrollment Review.**

As necessary, the maximum enrollment of the School will be adjusted annually by the Board in consultation with the Commission and with consideration of the School's ability to facilitate the

academic success of its students, achieve the objectives specified in the Contract, and assure that its student enrollment does not exceed the capacity of its facility.

#### **4.8.4 Student Transfers and Exits.**

Any student exit out of the School shall be documented by an exit form signed by the student's parent or guardian, which affirmatively states the reason for the transfer or exit and that the student's transfer or exit is voluntary. The School shall collect and report to the Commission, in a format required or approved by the Commission, exit data on all students transferring from or otherwise exiting the school for any reason (other than graduation), voluntary or involuntary. Such exit data shall identify each departing student by name and shall document the date of and reason(s) for each student departure. In the event that the School is unable to document the reasons for a voluntary withdrawal, the School shall notify the Commission and provide evidence that it made reasonable efforts to obtain the documentation described in this section.

#### **4.8.5 Right to Remain.**

The School shall comply with the McKinney-Vento act, 42 U.S.C. 11432 et seq. Students who fail to attend the School as required by RCW 28A.225.010 may be removed from the School's rolls only after the requisite unexcused absences have been documented and all truancy procedures followed, consistent with chapter 28A.225 RCW, the provisions of the McKinney-Vento act, and Commission policy.

### **4.9 TUITION AND FEES**

The School will not charge tuition. The School shall not charge any additional fees except as allowed by state law, but may charge fees for participation in optional extracurricular events and in the same manner and to the same extent as other public schools.

### **4.10 SCHOOL FACILITIES**

#### **4.10.1 Accessibility.**

The School facilities shall conform with applicable provisions of the Americans with Disabilities Act and any other federal or state requirements applicable to public school facility access.

#### **4.10.2 Health and Safety.**

The School facilities shall meet all applicable health, safety and fire code requirements and shall be of sufficient size to safely house the anticipated enrollment.

#### **4.10.3 Location.**

The School shall provide evidence that it has secured a location that is acceptable to the Commission by [DEPENDENT ON APPLICATION AND DATE WILL BE DETERMINE DURING CONTRACT NEGOTIATIONS]. The school may move its location(s) only after obtaining written approval from the Commission, subject to such terms and conditions as may be specified. Any change in the location of the School shall be consistent with the Application and acceptable to the Commission.

**4.10.5. Construction/Renovation and Maintenance of Facilities.**

The School will be responsible for the construction/renovation and maintenance of any facilities owned or leased by it (to the extent agreed upon in any such lease). The School will be responsible for ensuring compliance with all ADA accessibility requirements.

**4.10.6 Use of the Facility by the School.**

The School will use the facility for the sole purpose of operating a public school as authorized by this Contract. The School will not conduct, nor will it permit, any activity that would threaten or endanger the health or safety of occupants, the structural integrity of the facility, or the insurability of the facility, or violate applicable state or federal law. The school shall have a policy regarding the use of the facility by third parties that is submitted to the Commission for approval.

**4.10.7 Inspections.**

The Commission will have access at all reasonable times to any facility owned, leased or utilized in any way by the School for purposes of inspection and review of the School's operation and to monitor the School's compliance with the terms of this Contract. These inspections may be announced or unannounced as deemed appropriate by the Commission, or its designee, in the fulfillment of its oversight responsibilities.

**4.10.8 Impracticability of Use.**

If use by the School of a facility is rendered impracticable by any cause whatsoever, or if the funds necessary to construct/renovate or upgrade a facility cannot be secured, the School shall be responsible for securing an alternative facility. The School may move into that facility only after obtaining written approval from the Commission, subject to such terms and conditions as may be specified by the Commission. The Commission shall not be obligated to provide an alternative facility for use by the School.

**4.11 SCHOOL FINANCE**

**4.11.1 Legal and Accounting Compliance.**

The School shall comply with all applicable state financial and budget rules, regulations, and financial reporting requirements, as well as the requirements contained in the Commission's Charter School Performance Framework, chapter 108-30 WAC. The School shall also adhere to generally accepted accounting principles and be subject to financial examinations and audits as determined by the state auditor, including annual audits for legal and fiscal compliance.

**4.11.2 Governance, Managerial and Financial Controls.**

At all times, the Charter School shall maintain appropriate governance and managerial procedures and financial controls which procedures and controls shall include, but not be limited to:

- a. commonly accepted accounting practices and the capacity to implement them;
- b. A checking account;
- c. Adequate payroll procedures;
- d. An organizational chart;
- e. Procedures for the creation and review of monthly and quarterly financial reports, which procedures shall specifically identify the individual who will be responsible for preparing such financial reports in the following fiscal year;
- f. Internal control procedures for cash receipts, cash disbursements and purchases; and
- g. Maintenance of asset registers and financial procedures for grants in accordance with applicable state and federal law.

**4.11.3 Audits.**

The school shall comply with all financial audit obligations imposed by law, but not limited to, audit requirements of the State Auditor's Office, audit requirements for non-profit corporations, and those imposed by the Commission. Within the scope of its responsibilities, the State Auditor's Office may conduct the following types of audits:

- a. Financial;
- b. Accountability;
- c. Federal single;
- d. Special investigation (includes fraud audit); and
- e. Performance.

The school shall be financially responsible for all costs associated with the audit(s). The Commission retains the discretion to require audits as it deems appropriate. The School shall provide the Commission with a copy of any audits prepared under this provision by the deadlines imposed by the Commission. Failure to comply with this provision shall be considered a material and substantial violation of the terms of this contract and may be grounds for termination, revocation or other remedy as provided by this agreement.

**4.11.4 Quarterly Reports.**

The School shall prepare quarterly financial reports for the Commission in compliance with generally accepted accounting principles. Such reports shall be submitted to the Commission by the deadlines established by the Commission at the beginning of each school year. Fourth quarter and year end reports shall be submitted with the annual independent financial audit.

**4.11.5 Accounting Methods and Records.**

The School agrees to maintain financial records in accordance with generally accepted accounting principles and to make such records available promptly to the Commission upon request. When the request is for on-site inspection of records, prompt is defined as immediate access. If the request is for reproduction of records, then the Commission will include a timeframe in which the records must be provided; adherence to this timeframe will be considered prompt.

**4.11.6 State Accounting Requirements.**

The School shall use and follow all policies and requirements issued by the Washington State Auditor's office concerning accounting for public school districts in the state of Washington. The School shall also comply with public school budget and accounting requirements, the Accounting Manual for School Districts and the Administrative Budgeting and Financial Reporting Handbook.

**4.11.7 Financial Records and Separate Accounting.**

The School shall record all financial transactions in general, appropriations, and revenue and expenditures records. In addition, the School shall make appropriate entries from the adopted budgets in the records for the respective funds, and shall maintain separate ledgers accounting for funds by funding source. Accounts must be reconciled on a monthly basis.

**4.11.8 Location and Access.**

The School shall maintain, or cause to be maintained, books, records, documents, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Commission, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The financial records must be maintained at the School CEO's administrative office and be open for public inspection during business hours.

**4.11.9 Annual Budget Statement.**

The governing board of the School shall adopt an annual budget statement that describes the major objectives of the educational program and manner in which the budget proposes to fulfill such objectives.

**4.11.10 Filing and Notice.**

The School shall comply with notice and filing requirements of non-profits.

**4.11.11 Disbursement Procedures.**

The School shall establish procedures for ensuring that funds are disbursed for approved expenditures consistent with the School's budget.

**4.11.12 Compliance with Finance Requirements.**

The School shall comply with all other legal requirements imposed on charter school finances, budgeting, accounting and expenditures. The Parties will collaborate to assure that they each remain reasonably current on the impact of any legal modifications on charter schools. The School holds ultimate responsibility for compliance with the legal requirements associated with charter school finances, budgeting, accounting and expenditures.

**4.12 BUDGET**

**4.12.1 Annual Budgets.**

On or before July 10th of each year, the School will submit to the Commission the School's proposed budget for the upcoming fiscal year (September 1 through August 31st). The School shall adopt a budget for each fiscal year, prior to the beginning of the fiscal year. The budget shall:

- a. Be presented in a summary format which is consistent with accepted practice in the field;
- b. Be presented in a summary format that will allow for comparisons of revenues and expenditures among charter schools by pupil;
- c. Be presented in a format that itemizes expenditures of the School by fund and by pupil;
- d. Show the amount budgeted for the current fiscal year;
- e. Show the amount forecasted to be expended for the current fiscal year;
- f. Show the amount budgeted for the upcoming fiscal year;
- g. Specify the proposed expenditures and anticipated revenues arising from the contracting of bonded indebtedness by a capital improvement zone, if applicable;
- h. Not allow for expenditures, inter-fund transfers, or reserves in excess of available revenues and beginning fund balances; and
- i. Reconcile beginning fund balance on a budgetary basis. Schools with under 1,000 full-time equivalent students for the preceding fiscal year may make a uniform election to be on the cash basis of revenue and expenditure recognition, except for Debt Service Funds. All other school districts shall be on the modified accrual basis for budgeting, accounting, and financial reporting. The School's reconciliation shall include but need not be limited to the liability for accrued salaries and related benefits. The reconciliation shall be included with the final version of the amended budget and the annual audited financial statements.

#### **4.12.2 School Funding.**

The School will receive funding in accordance with the provisions of chapter 28A.710 RCW and associated rules and procedures.

### **4.13 EMPLOYMENT MATTERS**

#### **4.13.1 No Employee or Agency Relationship.**

Neither the School, its employees, agents, nor contractors are employees or agents of the Commission. The Commission or its employees, agents, or contractors are not employees or agents of the School. None of the provisions of this Contract will be construed to create a relationship of agency, representation, joint venture, ownership, or control of employment between the Parties other than that of independent Parties contracting solely for the purpose of effectuating this Contract.

#### **4.13.2 Retirement Plan.**

The School is an employer and its employees are members of the public employees' retirement system to the extent authorized by law.

#### **4.13.3 Teacher Membership in Professional Organizations.**

Teachers at the School have the right to join, or refrain from joining, any lawful organization for their professional or economic improvement and for the advancement of public education.

#### **4.13.4 Background Checks.**

- a. The School will comply with the employee record check requirements in RCW 28A.400.303, and associated rules. The School will obtain and retain copies of fingerprint and background checks for all employees, contractors, volunteers, and board members who may have unsupervised access to children or who may be allowed on School premises unaccompanied when children are present. This shall be an ongoing requirement; background checks will be periodically renewed to determine whether conduct has occurred post-employment. The School shall give notice to the Commission of any employee it finds who has a prior conviction of a felony, or any crime related to theft or misappropriation of funds, and of any employee who is convicted of a felony during the term of an employee's employment. The School shall also give notice to the Commission of any employee who has been convicted of an offense enumerated or referenced in chapter 28A.410 RCW.
- b. Employee rosters and proof of background check clearance shall be provided to the Commission as required by the Charter School Performance Framework, chapter 180-30 WAC.

#### **4.14 INSURANCE AND LEGAL LIABILITIES**

##### **4.14.1 Insurance.**

The School will maintain adequate insurance necessary for the operation of the School, including but not limited to property insurance, general liability insurance, workers' compensation insurance, unemployment compensation insurance, motor vehicle insurance, and errors and omissions insurance covering the Board, School, and its employees with policy limits as set forth below:

- a. Comprehensive general liability: \$10,000,000
- b. Officers, directors and employees errors and omissions: \$50,000
- c. Professional liability insurance: \$10,000,000 per occurrence. Coverage must include coverage from claims of sexual molestation and corporal punishment and any sublimits must be approved by the Commission.
- d. Data Breach Insurance: \$1,000,000
- e. Property insurance: As required by landlord or lender
- f. Transportation/Motor vehicle liability (if appropriate): \$10,000,000 per occurrence, which must include coverage for bodily injury and property damage; any sublimits must be approved by the Commission. In addition, collision and comprehensive insurance against physical damage including theft shall be provided with a maximum deductible of \$1,000 for collision and \$1,000 for comprehensive coverage except when the cost of the coverage would exceed the value of the vehicle during the contract period.
- g. Bonding:
  1. The School shall ensure that every officer, director, or employee who is authorized to act on behalf of the School for the purpose of receiving or depositing funds into school accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be bonded to provide protection against loss.
    - i. Fidelity bonding secured pursuant to this contract shall name the Commission on behalf of the State of Washington as the beneficiary and the amount of

coverage shall be for the amount of each year's allocation based on projected enrollment.

- ii. The School shall provide, at the Commission's request, copies of bonding instruments or certifications from the bond issuing agency. The copies or certifications shall show the bonding coverage, the Commission on behalf of the State of Washington as designated Beneficiary, who is covered, and the amounts.

2. The School shall obtain and maintain for the term of this contract a Payment and Performance Bond of not less than 100% of the total amount expected to be paid to School by the State of Washington under this Agreement. School will provide proof of such bonding by August 1, 2015. The copies or certifications shall show the bonding coverage, the Commission on behalf of the State of Washington as designated Beneficiary, who is covered, and the amounts. The School shall remain solely responsible for the costs associated in securing the bond. The School may draw upon this bond for the purposes of covering damages incurred as a direct result of School's failure to meet its material obligations hereunder. The bond must be conditioned on the School's faithful performance of the Contract; the Commission must be entitled to collect on the bond if the School breaches the terms of this contract, or is terminated, revoked or closed.

- h. Workers' compensation: Prior to performing work under this Contract, the School shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in RCW Title 51, and shall maintain full compliance with RCW Title 51 during the course of this Contract.

The Commission shall be named as an additional insured on all of these insurance policies. The Commission may reasonably require the School to adjust the coverage and limits provided for under the terms of any particular contract or policy. The School will pay any deductible amounts attributable to any acts or omissions of the School, its employees, or agents.

#### **4.14.2 Insurance Certification.**

The School shall, by August 1<sup>st</sup> of each year, provide the Commission with proof of insurance as required by state law and Commission policy.

#### **4.14.3 Risk Management.**

Within 24 hours of identification of any pending or threatened claims or charges the School will inform the Commission and provide the Commission's counsel and risk manager with all notices of claims. In addition to satisfying its indemnification obligations, the School will cooperate fully with the Commission in the defense of any claims asserted against the Commission, its board members, agents or employees arising from or related to the operation of the School and comply with the defense and reimbursement provisions of all applicable insurance policies.

#### **4.14.4 Limitation of Liabilities.**

In no event will the State of Washington, or its agencies, officers, employees, or agents, including, but not limited to the Commission, be responsible or liable for the debts, acts or omissions of the School, its officers, employees, or agents.

**4.14.5 Faith and/or Credit Contracts with Third Parties.**

The School shall not have authority to extend the faith and credit of the Commission to any third party and agrees that it will not attempt or purport to do so. The School acknowledges and agrees that it has no authority to enter into a contract that would bind the Commission and agrees to include a statement to this effect in each contract or purchase order it enters into with third parties.

**4.14.6 Indemnification.**

To the fullest extent permitted by law, the School shall indemnify, defend and hold harmless the Commission, State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract by the Schools' agents, employees, representatives, or contractors. The School's obligation to indemnify, defend, and hold harmless includes any claim by Schools' agents, employees, representatives, or any contractor or its employees. The School expressly agrees to indemnify, defend, and hold harmless the Commission and State for any claim arising out of or incident to School's or any contractor's performance or failure to perform the contract. The obligation of indemnification includes all attorney fees, costs and expenses incurred by the Commission and/or State in defense of any suits, actions, grievances, charges and/or proceedings.

**4.15 ADDITIONAL SERVICES**

Except as may be expressly provided in this Contract, as set forth in any subsequent written agreement between the School and the Commission, or as may be required by law, neither the School nor the Commission shall be entitled to the use of or access to the services, supplies, or facilities of the other. Any service agreements between the Commission and the School shall be subject to all terms and conditions of this Contract, except as may be otherwise agreed in writing. The purchase of any services not expressly required under this contract or set forth in any subsequent written agreement between the School and the Commission or not required by law, shall not be a condition of the approval or continuation of this contract.

**4.16 PROVISION OF POLICIES TO THE COMMISSION**

Upon request, the School will furnish to the Commission copies of all written policies and procedures it may adopt with respect to any matter relating to its management, operations, and educational program.

**V. COMMISSION'S RIGHTS AND RESPONSIBILITIES**

**5.1.1 Oversight and Enforcement.**

The Commission will manage, supervise, and enforce this Contract. It will oversee the School's performance under this Contract and hold the School accountable to performance of its obligations as required by federal and state laws and regulations, the Performance Framework, as well as the terms of this Contract. This may include, but is not limited to, taking corrective action, development of corrective action plans, imposing sanctions, renewal, revocation, or termination of this Contract.

#### **5.1.2 Right to Review.**

The Commission is a state educational agency with oversight and regulatory authority over the schools that it authorizes as provided by the provisions of chapter 28A.710 RCW. Upon request, the Commission, or its designee, shall have the right to review all records created, established or maintained by the School in accordance with the provisions of this Contract, Commission policies and regulations, or federal and state law and regulations. This right shall be in addition to the Commission's right to require the School to submit data and other information to aid in the Commission's oversight and monitoring of the School as provided under this Contract and governing law. When the request is for on-site inspection of records, the Commission shall be granted immediate access. If the request is for reproduction of records, then the Commission will include a timeframe in which the records must be provided; the School must adhere to this timeframe.

This information, regardless of the form in which it is disclosed, will be used by the Commission, and its authorized representatives, to satisfy its obligations to audit, evaluate, and conduct compliance and enforcement activities relative to the School.

#### **5.1.3 Inquiries and Investigations.**

The Commission may conduct or require oversight activities including, but not limited to, inquiries and investigations consistent with chapter 28A.710 RCW, regulations, and the terms of this Contract.

#### **5.1.4 Notification of Perceived Problems.**

The Commission will notify the School of perceived problems about unsatisfactory performance or legal compliance within reasonable timeframes considering the scope and severity of the concern. The School will be given reasonable opportunity to respond to and remedy the problem, unless immediate revocation is warranted.

#### **5.1.5 Other Legal Obligations.**

Nothing in this Contract will be construed to alter or interfere with the Commission's performance of any obligations imposed under federal or state law.

#### **5.1.6 Oversight Fee.**

The Commission shall be paid an authorizer oversight fee in accordance with RCW 28A.710.110 and associated rules adopted by the State Board of Education (SBE).

## **VI. BREACH OF CONTRACT, TERMINATION, AND DISSOLUTION**

### **6.1.1 Breach by the School.**

Violation of any material provision of this contract may, in the discretion of the Commission, be deemed a breach and be grounds for corrective action up to and including revocation or nonrenewal of this Contract. In making this determination, the Commission will consider the underlying facts and circumstances including, but not limited to, the severity of the violation as well as the frequency of violations and adhere to the applicable procedures contained in chapter 28A.710 RCW, and its rules and procedures. Material provisions include, but are not limited to, provisions imposing a requirement to comply with the Charter Schools Act, Commission rules and policies, or any other law or regulation, whether state, local, or federal.

#### **6.1.2 Termination by the Commission.**

This Contract may be terminated, after written notice to the School, and the charter revoked by the Commission in accordance with the provisions of chapter 28A.710 RCW, and associated rules and policies. In order to minimize the disruption to students, the termination protocol developed pursuant to RCW 28A.710.210 will be followed.

The Commission may terminate the Contract for any of the following reasons:

- a. Any of the grounds provided for under chapter 28A.710 RCW, as it exists now or may be amended;
- b. A material and substantial violation of any of the terms, conditions, standards, or procedures set forth in the Contract;
- c. Failure to meet generally accepted standards of fiscal management;
- d. Substantial violation of any provision of law from which the School was not specifically exempted;
- e. Failure to meet the goals, objectives, content standards, performance framework, applicable federal requirements or other terms identified in the Contract;
- f. Bankruptcy or insolvency of the School; or
- g. The school's performance falls in the bottom quartile of schools on the State Board of Education's accountability index.

#### **6.1.3 Other Remedies.**

The Commission may impose other appropriate remedies for breach including, but not limited to, imposing sanctions or corrective action to address apparent deficiencies or noncompliance with legal requirements. These may include a requirement that the School develop and execute a corrective action plan within a specified timeframe. Failure to develop, execute, and/or complete the corrective action plan within the timeframe specified by the Commission will constitute a material and substantial violation of the Contract. This provision shall be implemented in accordance with the chapter 28A.710 RCW and the associated rules and guidance issued by the Commission.

#### **6.1.4 Termination by the School.**

Should the School choose to terminate this Contract before the end of the Contract term, it must provide the Commission with notice of the decision immediately after it is made, but no later than

ninety days before the closure of the school year. Notice shall be made in writing to the Commission. The School must comply with the Commission's termination protocol.

**6.1.5 Dissolution.**

Upon termination of this Contract for any reason by the School, upon expiration of the Contract, or if the School should cease operations or otherwise dissolve, the Commission may supervise the winding up of the business and other affairs of the School; provided, however, that in doing so the Commission will not be responsible for and will not assume any liability incurred by the School under this Contract. The Board and School personnel shall cooperate fully with the winding up of the affairs of the School. The School's obligations for following a termination protocol and winding up of the affairs of the school shall survive the term of this contract.

**6.1.6 Disposition of Assets upon Termination or Dissolution.**

All assets, including tangible, intangible, and real property in use by the School but originally owned by the state or assets purchased using up to 25 percent of public funds are the property of the state and shall be returned to the state upon termination or dissolution, in accordance with Commission policy and governing law. School owned assets, including tangible, intangible, and real property, remaining after paying the School's debts and obligations and not requiring return or transfer to donors or grantors, or other disposition in accordance with state law, will be disposed of in accordance with governing state and federal law, including, but not limited to RCW 28A.710.210, and the rules adopted thereto.

**VII. GENERAL**

**7.1.1 Merger.**

This Agreement, and all attachments, exhibits and amendments thereto, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the Parties hereto.

**7.1.2 Amendments.**

No amendment to this Contract will be valid unless ratified in writing by the Commission and the School's governing body and executed by authorized representatives of the Parties.

**7.1.3 Governing Law and Enforceability.**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**7.1.4 Severability.**

If any provision of this Contract or any application of this Contract to the School is found contrary to law or invalid, such provision or application will have effect only to the extent permitted by law and the invalidity shall not affect the validity of the other terms or conditions of this Agreement.

**7.1.5 No Waiver.**

The Parties agree that no assent, express or implied, to any breach by either party of any one or more of the provisions of this Contract shall constitute a waiver of any other breach.

**7.1.6 No Third-Party Beneficiary.**

This Contract shall not create any rights in any third parties who have not entered into this Contract, nor shall any third party be entitled to enforce any rights or obligations that may be possessed by either party to this Contract.

**7.1.7 Non-Assignment.**

Neither party to this Contract shall assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Contract unless the other party agrees in writing to any such assignment.

**7.1.8 Records Retention.**

School records shall be maintained in accordance with all applicable state and federal document and record retention requirements. If any litigation, claim or audit is started before the expiration of an applicable document retention period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**7.1.9 Confidential Information.**

a. The parties recognize that they are both bound by the requirements of the Family Educational Rights and Privacy Act Regulations (FERPA), (20 U.S.C. § 1232g; 34 C.F.R. § 99), and they will safeguard such information in accordance with the requirements of FERPA. The parties further recognize that that some of the information exchanged under this agreement will be confidential.

b. The term confidential information as used in this Contract means any and all information provide by one party to the other that is exempt from mandatory disclosure under the terms of the state public disclosure laws codified at chapter 42.56 RCW. The term "confidential information" includes, but is not limited to:

1. Any personally identifiable student-related information, including, but not limited to:
  - i. Student names;
  - ii. The name of a student's parent or other family members;
  - iii. Student addresses;
  - iv. The address of a student's family;
  - v. Personal identifiers such as a student's social security number or student number;
  - vi. Personal characteristics that would make a student's identity easily traceable;
  - vii. Any combination of information that would make a student's identity easily traceable;
  - viii. Test results for schools and districts which test fewer than ten students in a grade level; and
  - ix. Any other personally identifiable student related information, or portrayal of student related information in a personally identifiable manner. (See, in particular, RCW 42.56.230(1) which exempts personal information in files maintained for students in public schools from mandatory public disclosure; RCW 42.56.070 and 42.56.080 which recognize exemptions from mandatory

public disclosure information contained in other statutes such as the federal FERPA and its implementing regulations which prohibit the unauthorized public disclosure and re-disclosure of "personally identifiable student information" in or from student "education records"; and the provisions of this contract.

- c. Confidential information disclosed under this agreement will be used solely for legally authorized purposes including, but not limited to, the audit, evaluation of the School and associated compliance and enforcement activities.
- d. Only employees of the parties, and legally authorized individuals, will have access to confidential information described in this agreement. Any re-disclosure of personally identifiable information will occur only as authorized under this agreement and 34 C.F.R. § 99.33.
- e. Confidential information exchanged under this agreement will be destroyed when the purpose for which the information was required has been completed, and will not be duplicated or re-disclosed without specific authority to do so. Provided, however, that the parties must also comply with all legally imposed document retention requirements and litigation holds.
- f. The parties will safeguard confidential information by developing and adhering to policies governing physical, electronic, and managerial safeguards against unauthorized access to and unauthorized disclosure of confidential information.
- g. If a party receives a public records request, court order, or subpoena for Student Data, provided under this agreement the party shall, to the extent permitted by law, notify the other party within two (2) business days of its receipt thereof, and will reasonably cooperate with the party in meeting FERPA obligations in complying with or responding to said public records request, subpoena, and/or court order.

#### **7.1.10 Order of Precedence.**

The items listed below are incorporated by reference herein. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable Federal and Washington State laws and regulations;
- b. Terms and Conditions of the Contract;
- c. Appendices; and
- d. Any other provisions incorporated by reference or otherwise into the Contract.

#### **7.1.11 Taxes.**

The School shall be responsible for adherence to all state and federal tax laws and regulations including, but not limited to, all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the School's employees, contractors, staff and volunteers which shall be the sole liability of the School.

#### **7.1.12 Waiver.**

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**7.1.13 Applicable Law.**

When a provision of this Contract requires the School to comply with all federal, state, and local laws, ordinances, rules, or regulations, or some combination thereof, without specific reference or citation, it is the parties' intent that the language encompasses those laws that are applicable to charter schools. If there is a disagreement about what laws are applicable or the extent to which a given law is applicable, the parties shall engage in good faith discussions in an effort to determine applicability and the associated scope. However, the Commission shall be the ultimate authority regarding what laws apply to the charter schools it has authorized and the extent to which they apply.

**VIII. NOTICE**

**8.1.1** Any notice required or permitted under this Contract will be in writing and will be effective upon personal delivery or three days after mailing when sent by certified mail, postage prepaid, addressed as follows:

Charter School Point of Contact  
1234 Main Street  
Hill Valley, WA 12345

Joshua Halsey  
Washington Charter School Commission  
PO Box 40996  
Olympia, WA 98504-0996  
(360) 725-5511

IN WITNESS WHEREOF, the Parties have executed this Contract to be effective [FIRST DAY OF CLASSES].

APPROVED BY A QUORUM OF THE  
COMMISSION ON [MONTH DAY], 2014:

\_\_\_\_\_  
Steve Sundquist, Chair  
Washington State Charter School Commission

THE CHARTER SCHOOL BOARD:

\_\_\_\_\_  
, President  
[SCHOOL NAME] Charter School Board

## **APPENDICES**

Appendix 1: Pre-Opening Process and Conditions

Appendix 2: Articles of Incorporation and Bylaws

Appendix 3: Board Roster and Disclosures

Appendix 4: Conflict of Interest Policy

Appendix 5: Education Service Provider (ESP) Contract Guidelines

Appendix 6: Identification of Documentation Required for Annual Performance Report

Appendix 8: Enrollment Policy

Appendix 9: Request for Proposals

Appendix 10: Public Charter School Application

**Appendix 1: Pre-Opening Process and Conditions**

<b>TASK</b>	<b>DUE DATE</b>	<b>STATUS/NOTES</b>	<b>COMPLETE</b>
<b>Establishment of School:</b>			
Provide the proposed location of the School; identify any repairs/ renovations that need to be completed by school opening, the cost of these repairs, the source of funding for the repairs, and a timeline for completion.			
Written, signed copy of facility lease, purchase agreement and/or other facility agreements for primary and ancillary facilities as are necessary for School to operate for one year or more.			
Provide proof that the school has passed all inspections necessary for building occupancy.			
Document that the School is of sufficient size and with a sufficient number of classrooms to serve the projected enrollment.			
Provide evidence that students representing 50% of the projected fall membership have enrolled, including name, address, grade and prior school attended.			
Provide evidence that students representing 75% of the projected fall membership have enrolled, including name, address, grade and prior school attended.			
<b>School Governance:</b>			
Evidence that membership on the Board of Directors is complete; provide board roster with contact information for all board members , identification of officers, and conflict of interest disclosure and assurance.			
Resume of each board member.			
Schedule of Board Meetings (including date, time, and location for the 2015-2016 school year).			
Board-approved bylaws including satisfactory conflict-of-			

interest policy.			
Submit emergency contact information for the Chief Executive Officer (CEO) and other members of the management team.			
Provide an updated school calendar approved by the Board of Directors for the first year of the School's operation.			
Provide a copy of the School's emergency closure procedures.			
Written documentation that the School has completed criminal background checks on all school staff and volunteers that come into direct contact with the School's students.			
Copy of Employee Handbook, including at a minimum expectations for employee performance and behavior, compensation and benefit information, emergency response information, pay rates and/or salary scale(s), annual calendar, hours and length of employment, supervisory obligations, and a description of both informal and formal complaint procedures that employees may pursue in the event of disagreements.			
<b>Budget:</b>			
Submit the names of 1) individual(s) authorized to expend School funds and issue checks; and 2) individual(s) responsible for review and monitoring of monthly budget reports.			
Provide a copy of an updated budget for the school year with evidence that it has been approved by the Board of Directors.			
Provide proof of insurance as set forth in the Contract.			
<b>Safety:</b>			
Provide evidence that all employees have completed training on child abuse and neglect reporting or has comparable experience.			

## **Appendix 2: Articles of Incorporation and Bylaws**

## Appendix 3: Board Roster and Disclosures

### Public Charter School Board Member Certification Form

Note: The purpose of this document is to provide disclosure. The Public Charter School ('the School') Board operates according to its own bylaws and applicable law in regard to conflicts of interest. This form is a public document and will be available at the School for inspection by other board members, the staff, or the community. In addition, a copy of the form will be sent to the Commission.

#### Background

1. Full legal name:
2. I affirm that I am at least 18 years of age by the date of appointment to the Public Charter School Board.  
 Yes, I affirm.
3. Indicate whether you have ever been convicted or pled "no contest" of one or more of the following:
  - a. a misdemeanor related to honesty or trustworthiness, or
  - b. a felony.  
 Does not apply to me.  
 Yes

If the answer to this question is yes, please provide details of the offense, the date, disposition, etc., in the space below.

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4. Indicate if you have ever entered into a settlement agreement, consent decree, adjournment in contemplation of dismissal, assurance of discontinuance or other, similar agreement with the Securities Exchange Commission, Internal Revenue Service, the U.S. attorney general or the attorney general of any state, a U.S. or Commission attorney or any other law enforcement or regulatory body concerning the discharge of your duties as a board member of a for-profit or non-for profit entity or as an executive of such entity. If the answer to this question is yes, please provide details of the agreement.  
 Does not apply to me.  
 Yes

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Board Member Certification Form (continued)

**Conflicts**

1. Indicate whether you, your spouse, or anyone in your immediate family meets either of the following conditions:

- a. is doing or plans to do business with the School (whether as an individual or as a director, officer, employee or agent of any entity).
- b. any entity in which one of the above-identified individuals has an interest is doing business or plans to do business with the School.

If so, indicate and describe the precise nature of your relationship and the nature of the business that such person or entity is transacting or will be transacting with the School.

- I/we do not know of any such persons.
  - Yes
- 
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2. Indicate if you, your spouse or other immediate family members anticipate conducting, or are conducting, any business with the School or a contractor who is conducting business with the School. If so, please indicate the precise nature of the business that is being or will be conducted.

- I/we do not anticipate conducting any such business.
- Yes

Indicate any potential ethical or legal conflicts of interest that would (or are likely to) exist for you as a member of the School Board or another School or non-profit board. [Note that being a parent of a School student, serving on another Contract School's board or being employed by the School are conflicts for certain issues that should be disclosed.]

- None
  - Yes. If yes, please provide additional information.
- 
-

**Board Member Certification Form (continued)**

**Disclosures for Schools Contracting with an Educational Service Provider**

1. Indicate whether you, your spouse, or any immediate family member knows (i.e., beyond a casual or professional acquaintance) any employees, officers, owners, directors or agents of that provider. If the answer is in the affirmative, describe any such relationship.

- I/we do not know of any such persons.
- Yes

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**Conflicts for Schools Contracting with an Educational Service Provider**

1. Indicate whether you, your spouse or other immediate family members have, anticipate in the future, or have been offered a direct or indirect ownership, employment, contractual or management interest in the provider. For any interested indicated, please provide a detailed description.

- I/we have no such interest.
- Yes

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2. Indicate if you, your spouse or other immediate family member anticipate conducting, or are conducting, any business with the provider. If so, indicate the precise nature of the business that is being or will be conducted.

- I/we do not anticipate conducting any such business.
- Yes

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**Other**

1. I affirm that I have read the Contract school's bylaws and conflict of interest policies.

I, \_\_\_\_\_, certify to the best of my knowledge and ability that the information I am providing to the Washington Charter School Commission in regard to my application to serve as a member of the board of directors of the XX Public Charter School is true and correct in every respect.

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Signature Date

## **Appendix 4: Conflict of Interest Policy**

## Appendix 5: Education Service Provider (ESP) Contract Guidelines

1. The maximum term of an ESP agreement must not exceed the term of the Contract. After the second year that the ESP agreement has been in effect, the school must have the option of terminating the contract without cause or a financial penalty.
2. ESP agreements must be negotiated at 'arms-length.' The Contract school's board and ESP must have independent legal counsel to represent their interests in reaching a mutually acceptable management agreement.
3. No provision of the ESP agreement shall interfere with the Contract school board's duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the Contract school. No provision of the ESP agreement shall prohibit the Contract school board from acting as an independent, self-governing public body, or allow decisions to be made other than in compliance with the Washington Sunshine Law.
4. An ESP agreement shall not restrict the Contract school board from waiving its governmental immunity or require a Contract school board to assert, waive or not waive its governmental immunity.
5. No provision of an ESP agreement shall alter the Contract school board's treasurer's legal obligation to direct that the deposit of all funds received by the Contract school be placed in the Contract school's account.
6. ESP agreements must contain at least one of the following methods for paying fees or expenses: 1) the Contract school board may pay or reimburse the ESP for approved fees or expenses upon properly presented documentation and approval by the Contract board; or 2) the Contract board may advance funds to the ESP for the fees or expenses associated with the Contract school's 1.operation provided that documentation for the fees and expenses are provided for Contract school board ratification.
7. ESP agreements shall provide that the financial, educational and student records pertaining to the Contract school are Contract school property and that such records are subject to the provisions of the Washington Open Records Act. All Contract school records shall be physically or electronically available, upon request, at the Contract school's physical facilities. Except as permitted under the Contract and applicable law, no ESP agreement shall restrict the Commission's access to the Contract school's records.
8. ESP agreements must contain a provision that all finance and other records of the ESP related to the Contract school will be made available to the Contract school's independent auditor.
9. The ESP agreement must not permit the ESP to select and retain the independent auditor for the Contract school.
10. If an ESP purchases equipment, materials and supplies on behalf of or as the agent of the Contract school, the ESP agreement shall provide that such equipment, materials and supplies shall be and remain the property of the Contract school.

11. ESP agreements shall contain a provision that if the ESP procures equipment, materials and supplies at the request of or on behalf of the Contract school, the ESP shall not include any added fees or charges with the cost of equipment, materials and supplies purchased from third parties.

12. ESP agreements must contain a provision that clearly allocates the respective proprietary rights of the Contract school board and the ESP to curriculum or educational materials. At a minimum, ESP agreements shall provide that the Contract school owns all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the Contract school; or (ii) were developed by the ESP at the direction of the Contract school governing board with Contract school funds dedicated for the specific purpose of developing such curriculum or materials. ESP agreements may also include a provision that restricts the Contract school's proprietary rights over curriculum or educational materials that are developed by the ESP from funds from the Contract school or that are not otherwise dedicated for the specific purpose of developing Contract school curriculum or educational materials. All ESP agreements shall recognize that the ESP's educational materials and teaching techniques used by the Contract school are subject to state disclosure laws and the Open Records Act.

13. ESP agreements involving employees must be clear about which persons or positions are employees of the ESP, and which persons or positions are employees of the Contract school. If the ESP leases employees to the Contract school, the ESP agreement must provide that the leasing company accepts full liability for benefits, salaries, worker's compensation, unemployment compensation and liability insurance for its employees leased to the Contract school or working on Contract school operations. If the Contract school is staffed through an employee leasing agreement, legal confirmation must be provided to the Contract school board that the employment structure qualifies as employee leasing.

14. ESP agreements must contain insurance and indemnification provisions outlining the coverage the ESP will obtain. The ESP's insurance is separate from and in addition to the insurance for the Contract school board that is required according to the Contract. Insurance coverage must take into account whether or not staff at the school are employees of the ESP or the school.

15. Marketing and development costs paid by or charged to the Contract school shall be limited to those costs specific to the Contract school program, and shall not include any costs for the marketing and development of the ESP.

16. If the Contract school intends to enter into a lease, execute promissory notes or other negotiable instruments, or enter into a lease-purchase agreement or other financing relationships with the ESP, then such agreements must be separately documented and not be a part of or incorporated into the ESP agreement. Such agreements must be consistent with the school's authority to terminate the ESP agreement and continue operation of the school.

## **Appendix 6: Identification of Documentation Required for Annual Performance Report**

The Commission will require submission of, or access to materials or data from the school for oversight and accountability of the school.

Pursuant to RCW 28A.710.040(2)(f), the school shall publish annually for delivery to the Commission and each parent with children enrolled in the school a school performance report in model form under RCW 28A.655.110. The school performance report shall include, but is not limited to:

- A brief statement of the mission of the school and the school district;
- Enrollment statistics including student demographics;
- Expenditures per pupil for the school year;
- A summary of student scores on all mandated tests and interim assessment measures;
- A concise annual budget report;
- Student attendance, graduation, and dropout rates;
- Information regarding the use and condition of the school building or buildings;
- A brief description of the learning improvement plans for the school;
- A summary of the feedback from parents and community members obtained under RCW 28A.655.115; and an invitation to all parents and citizens to participate in school activities.

### **Performance Review and Ongoing Oversight**

The school must also provide any documents, data or information that the Commission deems necessary for ongoing oversight, accountability, and compliance monitoring.

## **Appendix 8: Enrollment Policy**

[CHARTER SCHOOL'S ENROLLMENT POLICY FROM APPLICATION]

**Appendix 9: Request for Proposals**

[2014 RFP]

**Appendix 10: Public Charter School Application**

[2014 CHARTER SCHOOL APPLICATION]