

Report: Charter Schools – Pathway for charter schools to revert back to State sector

To:	Hon David Seymour, Associate Minister of Education		
Cc:	Hon Erica Stanford, Minister of Education		
Date:	21/02/2025	Deadline:	10/03/2025
Security Level:	In-Confidence	Priority:	Medium
From:	Alanna Sullivan-Vaughan	Phone:	9(2)(a)
Drafter:	Ella Fraser	METIS No:	1342784

Why are we sending this to you?

- This report provides you with high-level advice on legislative change to enable a pathway for charter schools to revert back to the State sector, on voluntarily termination of their contract. This will create greater certainty for converting schools.

What action do we need, by when?

- We seek your direction on the level of certainty to be provided and therefore the scope of legislative changes needed. We also seek decisions on the types of charter schools that would be able to 'revert' and under what circumstances.
- Decisions in this paper relate to the powers of the Minister of Education to establish new State schools. We recommend you discuss and agree an approach with the Minister of Education before finalising decisions in this paper. Further detailed work will require agreement from joint Ministers.

Key facts, issues and questions

- Under the current legislative arrangements, a charter school cannot voluntarily revert to a State school. If a charter school closes, any decision to open a new State school is at the absolute discretion of the Minister of Education who must consider the network requirements. This may be a barrier to conversion, particularly for schools with a special character who would prefer to have certainty that a State school of the same type and character would open in the closed charter school's place.
- The Education and Training Act 2020 (the Act) could be amended to provide certainty that a charter school would be replaced with a State school that has similar characteristics following voluntarily terminating their contracts (also called reversion). This could be done with or without transition provisions for staff, funding, assets, liabilities and other matters. However, such a change limits the powers of the Minister of Education.
- Any legislative changes can be progressed via the Education and Training (System Reform 9(2)(f) Amendment Bill. Cabinet policy decisions for this will be made late July 2025 and the Bill is expected to be enacted at the beginning of August 2026.

Alignment with Government priorities

1. This report provides advice on possible changes to the charter school model.

Background

2. The reintroduction of charter schools in New Zealand includes the ability for all State schools (except specialist schools) to convert into charter schools. This includes State-integrated schools, designated character schools, and Kura Kaupapa Māori, provided they retain their character after conversion.
3. Reversion of converted charter schools back into State schools was previously considered as an intervention for poor performance. Following advice from the Establishment Board and analysis within the Ministry, this work did not progress due to the complexities of setting transitional arrangements and because the intervention was not considered necessary. This is because closing a failing charter school would still provide the Ministry with the opportunity to open a new State school in its place (METIS 1327397 refers).
4. When the previous partnership school model was disestablished, the Ministry developed transitional provisions for partnership schools that were replaced by a specified State school. Some of this work informs the advice in this paper.
5. We understand that some State-integrated schools have expressed concern about the termination of their integration agreements upon conversion. We have also heard concerns regarding the lack of assurance that schools could revert back to being a State-integrated school, if they were to terminate their contract. This may be a barrier to converting.
6. This paper provides advice regarding the legislative changes required for converting charter schools regarding reversion provisions. It then discusses under which circumstances reversion should occur, and which of types of school this should apply to. Reversion in this paper can be defined as the replacement of a charter school with a State school that has similar characteristics.

Existing arrangements

7. Existing arrangements do not provide a pathway for charter schools to revert to the State system following voluntarily terminating their contracts.
8. The decision to terminate a charter school contract may be made by the sponsor or Authorisation Board. The Minister of Education has absolute discretion over establishing a new State school in place of the closed charter school, as per Section 190(2) of the Act. As part of the establishment of a State school, the Minister must consider the network requirements. This means the Minister may decide not to establish a new State school or may decide to establish a State school of different type than existed prior to conversion, if the needs or demographics of the surrounding community have changed. Under these arrangements, there is no certainty for converting charter schools that they could revert to the State system in the future.
9. Some specific clauses also apply to State-integrated schools. According to clause 116 of Schedule 1 to the Act, on the conversion date, the integration agreement between the proprietor and the Crown relating to the State integrated school must be treated as if it were cancelled. This means a new integration agreement would need to be negotiated between the Minister and the proprietor if a new State-integrated school is to be established after the termination of a converted State-integrated school's contract.

Creating a pathway for reversion will require legislative change

10. If you want to provide assurance to schools about the possibility to revert back as a State school, legislative change to reduce the Minister's absolute discretion over the establishment of State schools would be required. Without legislative changes, the Minister's absolute

discretion would overrule any other reversion provisions, for example, anything provided in a contract.

11. In the case of a previous State-integrated school, requiring any return of integration agreements with the same terms as the previous integration agreement would further restrict the Minister's powers. This is because there would be limits placed on their full authority over integration decisions and reduce the Minister's ability to negotiate integration agreements.
12. We recommend you discuss and agree any potential legislative change with the Minister of Education before progressing detailed work, which will require agreement from joint Ministers.

Reversion provisions appear to be uncommon internationally

13. The State of Georgia in the USA is one of very few places where reversion is possible, indicating that it is not a common process internationally. We found reversion processes in a further four States in the USA, but did not find any outside of the USA. According to 2013 research, 41% of Georgia's converted charter schools chose to revert to a State school. The decision to revert most commonly occurred at the point of the contract renewal.¹
14. There were a number of circumstances informing these high rates that may not apply to the New Zealand charter school model, such as:
 - additional funding was provided in early years to assist with conversion. Once this funding was used, schools may have had less incentive to retain their charter status
 - an unanticipated lack of flexibility due to continuing oversight from Local Boards of Education; and
 - other avenues for increased flexibility, similar to what is offered by charter status, were available for State schools.

Options on the level of provision in place to enable reversion

15. Legislative change is required to allow for reversion. We have examined three high-level options, each with varying levels of provision for reversion:
 - option 1: Status quo – no legislative change meaning no certainty will be provided to charter schools regarding reverting back as State school
 - option 2: Minimum legislative amendments to provide certainty for converted charter schools to revert back to a State school, with limited provisions for reducing disruption
 - option 3: Legislative changes to enable reversion with transitional arrangements to reduce disruption.
16. The following criteria were used to assess these above options:
 - the level of **certainty** for schools seeking reversion provisions
 - the ability of the Minister has to **manage the network**
 - the level of **disruption** it creates for students and staff when a sponsor terminates the contract
 - how **costly** the process may be.

¹ [Georgia conversion charter schools: an analysis of the conversions and reversions of charter schools - University of Georgia](#)

17. Table 1 below provides an overview of the various criteria to assess which policy option is most suitable.

Table 1: Options analysis

	Certainty	Network management	Disruption	Cost
Option 1	-	+	-	+
Option 2	+	-	+/-	+
Option 3	+	-	+	-

Option 1: Status Quo

18. This option would provide no certainty that a similar State school of the same type and/or special character will be established following the closure of a charter school. The Minister of Education has absolute discretion in the decision to establish a new State school. If the Minister decides to establish a State school, it is at first instance governed by a five member Establishment Board of Trustees (EBOT) appointed by the Minister ahead of a substantive Board being elected.
19. Following termination of the charter school contract, all staff would be made redundant at the cost of the sponsor. All positions at the new State school would be publicly advertised in the Gazette and allocated impartially not allowing for any transfer of staff.
20. You will receive specific advice soon on the treatment of assets and liabilities upon the closure of converted charter schools, which would also apply to this option. This paper recommends that sponsors be liable for a termination payment to the Charter School Agency based on, for converted schools, the value of any fixed assets transferred to the sponsor. Any other assets and liabilities sit with the sponsor.

Option 2: Minimum legislative amendments to provide certainty for converted charter schools that a similar type of State school will be established

21. This option would require the Minister to reestablish a similar type of State school if a converted charter school would close. In the case of a State-integrated school, the legislative change could also include that the Minister must enter negotiations with the same proprietor and offer similar terms as in the previous integration agreement.
22. This option provides certainty that a State school of the same type and character (including the same proprietor, if the school was integrated) will be established following closure of a converted charter school. While this provides certainty, it would bind the Minister of Education to establish a State school which may not be needed within the schooling network. This could create unnecessary additional costs to the Crown, particularly regarding establishment funding for the EBOT. As noted in paragraph 12, if you wish to progress this amendment, we recommend you seek agreement from the Minister of Education, as it would limit her absolute discretion of establishing new State schools.
23. The extent to which the Minister's powers will be restricted and the level of this certainty would depend on the wording of the amendment. It could range from requiring the Minister to only "have regard" for or consider the type of State school that existed previously, to binding them to reestablish one of the same type and character regardless of any wider network considerations. Further advice will be provided on the specific wording if you wish to progress this option.
24. Although legislatively there could be certainty of a similar State school opening, there would be no transitional arrangements under this option. Therefore, like under Option 1, staffing, assets and liabilities will not transfer over which could create disruption for students and staff. The process will be similar to Option 1 as outlined in paragraph 15 and 16.

Option 3: Legislative changes to enable reversion with transitional arrangements

25. This option would combine the legislative change in Option 2 with additional legislative transitional arrangements that provide higher continuity between the charter school and the new State school. The transitional arrangement could include transition of staffing, transfer of assets, liabilities, and contracts, and any specific funding arrangements (see Table 2 for further details). Transitional arrangements could reduce disruption of the school, as opposed to only providing certainty regarding the reopening of a school of the same type and character.
26. However, in addition to restricting the Minister's powers in opening a new State school, this would make it easier for schools to convert back to a State school. This option may require additional funding to be sought through Budget due to transitional funding or other costs.

Table 2: Transitional arrangements to work through

Topic	Transitional arrangements to work through	How the problem was addressed under the termination of the Partnership School model	Legislative change?
Staff transfer	All staff members at a closing charter school will be made redundant and not transferred. Legislative change could allow for transferring staff through preferential applications at a replacement State school. As charter schools have full flexibility to set the terms of employment, a "lift and shift" approach for transferring charter school employees on terms no less favourable (similar to what occurs at conversion) could see significant costs to the Crown.	Legislation provided for any Partnership school employee who applied for an equivalent position in a replacement State school to be offered the position on terms no less favourable than they had enjoyed in the charter school.	Yes
Assets, liabilities, and contracts	Current policy means that all assets, liabilities and contracts stay with the responsibilities of the sponsor. Legislative changes could be made to provide assurances that all transferred assets and contracts of the charter schools are provided to the reverted State school.	The Crown assumed the responsibility and costs of property, including continuing existing lease arrangements. sponsors were required to terminate contracts that were not needed for the replacement State school.	Yes
Funding	As charter schools receive bulk funding, they have the flexibility to allocate funding how they best see fit. While State schools do receive some discretionary funding, the majority of resources (i.e., teacher staffing entitlement and property funding) can only be spent in a specific way. This means upon reversion, schools may no longer be able afford activities where they directed more funding than available under the State system.	Partnership schools were provided transition funding to help them adjust to the State funding system.	No

Analysis of options for scoping the reversion process

27. Options 2 or 3 provide more certainty that a charter school that voluntarily terminates its contract will be replaced with a State school of similar character. However, overall we see limited benefit in providing certainty for converted charter schools to revert back to a State

school as there are sufficient levers for the Government to open a new State school of similar type, if it is needed as part of the network.

28. If you are primarily concerned with providing certainty to schools and sponsors that a State school of the same type and character as existed prior to conversion would be established upon closure of a charter school, we would recommend Option 2. Within this option, different degrees of certainty could be provided, depending on the specific wording of the legislative amendment, but regardless would provide more assurance than the status quo. However, Option 2 would not include any transitional arrangements increasing the risk of disruption to students and staff due to changes in staffing, unclear limited transfer of assets, and budget rebalancing.
29. Choosing Option 3, which includes these transitional arrangements, would require more extensive legislative changes, and potentially additional funding (although these could also be considered under Option 2). While transitional arrangements would be designed to minimise disruption for students and staff, this has the effect of shifting some of the responsibilities associated with terminating a contract off the sponsor. This may incentivise some charter schools to revert if, for example, they consider the accountability measures to be too high. In addition, while there is risk of disruption to staff under Options 1 and 2, the Employment Relations Act 2000 provides protection of employment rights. We therefore do not consider the benefits of Option 3 outweigh the potential additional costs.

Further decisions to consider

30. If you select Options 2 or 3, we seek two further decisions relating to scope of the reversion process.

Which type of school can revert

31. The options to who reversion provision applies include:
 - option a: All charter schools both new and converted (not recommended)
 - option b: Converted charter schools
 - option c: Converted State-integrated schools, distance schools, Kura Kaupapa Māori, and designated character schools that have converted to a charter school; or
 - option d: Converted State-integrated schools (not recommended).
32. We do not recommend that new charter schools (not converted from the State sector) should be able to convert to State school status as it could provide a back door for setting up a new State school that the Minister would not otherwise have approved, reducing oversight and control of the network.
33. We do not recommend limiting the provision for State-integrated schools only, as it may raise equality concerns for other types of schools, particularly for designated character and Kura Kaupapa Māori, who may also seek the certainty of reversion to ensure continuing the type of education provided within the area.
34. If you wish to develop the provision outlined in option 2 or 3, we recommend all converted schools, particularly all State-integrated schools, distance schools, Kura Kaupapa Māori, and designated character schools that convert can revert. This means that education of a special character or specific type can continue being provided to the school's community.

Under which circumstances reversion can occur

35. The circumstances under which reversion can occur will also have an impact on the legislative changes needed. It can either be an intervention for poor performance, self-directed by the sponsor with mutual agreement of the CSA, when a contract is not renewed, or a combination of the three options.

36. If you decide to implement reversion provisions, we recommend it is only applicable when directed by the sponsor after voluntarily terminating the contract, as opposed to as an intervention or when a contract is not renewed. In cases of poor performance or deciding not to renew the contract, we believe that the Minister of Education should maintain full discretion to establish or not establish a new State school as replacement.
37. Including reversion as an intervention would not add further benefits to the current performance intervention framework. It would not create any additional incentives for high performance that termination does not already provide, while increasing the risk of a poor-performing school continuing to operate, although in a different form.

Next Steps

38. Based on your decisions, we will provide you with relevant further advice on the issues we have identified and provide options to address them.
39. Any legislative changes required for this work will be progressed via the Education and Training (System Reform 9(2)(f)) Amendment Bill. Cabinet policy decisions for this will be made late July 2025. It is recommended to do targeted consultation with the sector prior to including it in the Bill which could take place in May – June 2025. Estimated timeframe are:

Milestone	Estimate date
Cabinet agreement to consult	May 2025
Public consultation	May – June 2025
Cabinet approval for policy decisions	August 2025
Cabinet approval to introduce the Bill	December 2025
Bill introduced	December 2025
Report back from Select Committee	June 2026
Bill enacted	August 2026

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that that the absence of certainty that a charter school could revert to a State school of the same type and character has been identified as a barrier to conversion.
- b. **indicate** your preferred option (choose one):
- i. **option 1:** No legislative change meaning the status quo is retained
 - ii. **option 2:** Minimal legislative amendments to provide certainty for charter schools to revert back to a State school, with limited provisions for reducing disruption
 - iii. **option 3:** Legislative changes to enable reversion with transitional arrangements to reduce disruption.
- Option 1 / Option 2 / Option 3
- c. **note** that Option 3 will likely have financial implications if deciding to put transitional arrangements for staffing and funding in place due to the higher level of flexibility charter schools have in these areas.
- d. if you choose Option 3 in recommendation b, **note** that we will provide further advice on transitional arrangements regarding Staffing, Assets, liabilities and contracts, and funding.

Noted

- e. if you chose Option 2 or 3 in recommendation b, **indicate** which types of school you would like reversion to apply to (choose one):
- i. **option a:** All charter schools both new and converted (**Not recommended**)
 - ii. **option b:** Converted charter schools (**Recommended**)
 - iii. **option c:** State-integrated schools, distance schools, Kura Kaupapa Māori, and designated character schools that have converted to a charter school; or
 - iv. **option d:** State-integrated schools only (**Not recommended**).

Option a / Option b / Option c / Option d

- f. if you selected Option 2 or Option 3 in recommendation b above, **agree** that reversion is not used as an intervention for poor performance or when a sponsor's contract is not renewed.

Agree / Disagree

- g. if you chose Option 2 or 3 in recommendation b above, **discuss** with the Minister of Education the impact of legislative change on her authority over the network.

Discussed

- h. if you chose Option 2 or 3 in recommendation b above, **agree** to undertake targeted consultation on this proposal prior to including it in the Education and Training (System Reform 9(2)(f)) Amendment Bill.

(i)

Agree / Disagree

- i. **agree** that the Ministry of Education release this paper once final Cabinet decisions have been made, with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982.

Agree / Disagree


Alanna Sullivan-Vaughan,
Senior Policy Manager
Te Pou Kaupapahere
21/02/2025


Hon David Seymour
Associate Minister of Education

23/2/25