


## Education Report: Charter school reporting, performance assessment, and administration matters

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	26 June 2018	<b>Priority:</b>	Routine
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1129228
<b>Drafter:</b>	Simon Laube	<b>DDI:</b>	 s 9(2)(a) OIA
<b>Key Contact:</b>	Ellen MacGregor-Reid, Deputy Secretary, Early Learning and Student Achievement.	<b>DDI:</b>	
<b>Messaging seen by Communications team:</b>	No	<b>Round Robin:</b>	No

### Purpose of Report

This paper responds to your request for advice on whether the length of term of the new Advisory Group on Charter Schools is sufficient to assess the performance of charter schools currently in operation. The term is for one year until 30 April 2019.

We also present an alternative approach, for your consideration, for monitoring and assessing charter schools' 2018 performance, assuming contract terminations go ahead and take effect at the end of the 2018 school year.

### Summary

1. The key role of the Advisory Group on Charter Schools (Advisory Group) is to assess the educational performance of charter schools and provide you with their advice. The initial focus of the Advisory Group is to complete their advice to you on the 2017 performance of charter schools which they expect to provide to you before the end of September 2018. Assessment of 2018 charter school performance is not yet on the Advisory Group's work programme.
2. Once the Education Amendment Bill 2018 is passed, the legal imperative to have an advisory group on charter schools will be relinquished. We suggest, however, it is prudent to continue with the current Advisory Group while charter schools are still in operation and in order to complete their annual assessment of charter school performance.
3. You have commenced a process to end charter school contracts using the Termination for Minister's Convenience provision. Assuming termination goes ahead, for each of the schools termination will take effect on the last day of their 2018 school year, unless agreed

otherwise. The option of termination by mutual agreement is still available even after the Notice of Termination has been issued, as long as agreement is reached (and signed by both parties) in advance of the effective date of termination. Under termination by mutual agreement you may agree to a different termination date, as outlined in your Cabinet paper (METIS 1125574).

4. The termination of the contracts at the end of this year (2018) will have an impact on the standard process for assessing 2018 charter school performance. The usual process would require the Advisory Group to report to you on 2018 performance around August 2019.
5. Once the contracts end, however, sponsors will no longer be required to provide the Ministry with their fourth quarter/annual reports (due 31 January 2019) or their audited financial statements (due 31 May 2019), which are part of the standard suite of information necessary for the completion of the annual performance assessment.
6. In order not to prolong this process, but to address public expectations of accountability, we suggest the Advisory Group undertakes a fast-tracked assessment process, based on all available information. This would mean they could deliver their report to you in early 2019, prior to the end of their current term.
7. As the assessment of 2018 performance will not be based on the standard suite of information, and payments to sponsors months after the date of termination is not feasible, we propose that the 1% retention payments for 2018 performance are instead included as part of the final termination negotiation package [NEGOTIATION SENSITIVE].

## Recommended Actions

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The Ministry of Education recommends you:

- a. **note** the initial term of the Advisory Group on Charter Schools is for one year, expiring on 30 April 2019 (METIS 1117837);

**Noted**

- b. **note** that the Education Amendment Bill 2018 removes the imperative for you to have an Advisory Group on Charter Schools;

**Noted**

- c. **agree** to continuing with the Advisory Group on Charter Schools, as long as charter schools are in operation, and until you have received their advice on the 2018 annual assessment of charter school performance;

**Agree / Disagree**

- d. **note** that the timing of the termination of charter school contracts will have an impact on the standard process for assessing annual 2018 charter school performance;

**Noted**

- e. **note** that, if contracts are terminated at the end of the 2018 school year, sponsors will no longer be expected to provide the Ministry with their fourth quarter/annual reports or audited financial statements, which are usually required for the annual performance assessment process;

**Noted**

- f. **agree** to invite the Advisory Group, at their 17 July 2018 meeting, to undertake a fast-tracked assessment of charter schools 2018 performance, based on the sponsors' third-quarterly reports (due 31 October 2018), so you can receive their advice in early 2019, prior to the end of the Advisory Group's current term;

**Agree / Disagree**

- g. **note**, if you agree to recommendation f, the Ministry will inform the Advisory Group and support them to deliver against this additional piece of work as part of the Advisory Group's work programme, which will be completed within their current one year term;

**Noted**

- h. **agree** to the Ministry of Education providing you with a supplementary report in August 2019 on charter school 2018 NCEA performance, once these results are available;

**Agree / Disagree**

- i. **note**, if you do not agree to recommendation f, then the standard process for assessing 2018 charter school performance will be followed, and we will provide you with further advice in August 2018 on extending the term and work programme of the Advisory Group;

**Agree / Disagree**

- j. **note** that the standard processes for the decision and payment of the 1% performance retention payments to sponsors for the 2018 school year will not be feasible if all contracts are terminated by the end of 2018;

**Noted**

- k. **agree** that the 1% payments for the 2018 school year are separated out from the performance assessment process and are instead included as part of the Crown's negotiations for the final settlement of the contracts;

**Agree / Disagree**

- l. **agree** to proactively release this report as part of the regular schedule of information releases, subject to relevant information being withheld in accordance with provisions of the Official Information Act 1982.

**Agree / Disagree**

Ellen MacGregor-Reid  
**Deputy Secretary**  
**Early Learning and Student Achievement**

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Hon Chris Hipkins  
**Minister of Education**

4/7/18

## Background

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8. You have recently appointed an Advisory Group on Charter Schools (Advisory Group) to provide you with advice on the educational performance of charter schools still in operation (METIS 1117837). This group replaces the former Partnership Schools Kura Hourua Authorisation Board whose term expired on 1 March 2018. The first meeting of the Advisory Group was held on 22 May 2018.
9. The primary role of the Advisory Group is to advise the Minister of Education in relation to the educational performance of charter schools. This includes monitoring and reviewing the performance of charter schools.
10. You have asked the Ministry of Education (Ministry) for advice on whether the length of the Group's initial one year term to 30 April 2019 is appropriate for it to carry out its role.
11. The appropriateness of the term of the Advisory Group must be considered against the backdrop of the current processes to remove the charter school model from the education system. Key considerations include the timeframes to complete their advice to you on 2017 charter school performance, the approach to both report on and assess 2018 charter school performance, and whether any charter schools will be in operation beyond the end of 2018.

## Comment

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### **Legal requirements to have an advisory group**

12. The Education Amendment Bill 2018 proposes to repeal provisions in the Education Act 1989 that enable the charter school model (Part 12A). This includes repealing the requirement for you to appoint an Advisory Group (section 158C).
13. While there will be no legal imperative to have an Advisory Group once the Education Amendment Bill 2018 is passed, we suggest it prudent for the Advisory Group to continue as long as charter schools are still in operation and to complete their advice to you on the 2017 annual performance. In the event that all charter schools contracts are terminated at the end of the 2018 school year, we recommend the Advisory Group is requested to undertake a fast-tacked assessment of 2018 performance based on all available information. This could be completed before the end of the Advisory Group's current term.

### **Advisory Group work programme**

14. The first task for the new Advisory Group is to assess the 2017 annual performance of each charter school and provide you with their advice on whether sponsors have satisfactorily met their contracted performance standards. Following your consideration of this advice, a decision on whether to release the 1% performance retention payments to sponsors is required. The Advisory Group is expected to provide their report to you before the end of September 2018, once they have assessed the final 2017 NCEA leaver data, which becomes available in July 2018.
15. On 8 June 2018 the Chair of the Advisory Group, Bruce Adin, wrote to sponsors to introduce the members of the Advisory Group and to inform them of their role and their

initial priority to complete the 2017 annual assessment advice. He advised sponsors that the Advisory Group will not be involved in the day to day management of their contract which is undertaken by the Ministry of Education, nor will they be attending the quarterly meetings that sponsors have with the Ministry. He noted that the Advisory Group is not involved in the processes underway to end charter school contracts, or to establish schools in the state system.

16. We are currently preparing for the next Advisory Group meeting, scheduled for 17 July. Further meetings are scheduled for 17 July, 9 October, 10 December this year, and 12 March 2019.
17. The main agenda item for their next meeting will be the 2017 assessment report and confirmation of their advice to you regarding which charter schools met their contracted performance standards.
18. Assessment of 2018 charter school performance is not yet on the current Advisory Group work programme. The process for the 2018 assessment process will be impacted by the effective date of termination of the charter school contracts, and as such, we are recommending an alternative approach to both the assessment of performance and the 1% retention payments.

#### **Monitoring and assessment of 2018 performance**

19. The Ministry has recently received sponsors' first quarter reports for 2018. Reports for the second quarter are due in 31 July 2018, and the third quarter reports are due by 31 October 2019. As far as possible, the Ministry is seeking to maintain standard contract management practices in order to provide assurance that sponsors are meeting their contractual obligations, particularly around student achievement and student engagement.
20. So as to not overly burden schools while the contract termination and state school application processes are underway, we have delayed our regular first-quarter face-to-face contract management meeting with each sponsor. We are seeking to meet with each school over the next month, and will schedule meetings to discuss the sponsors' second and third quarter reports in August and November this year.
21. Unless otherwise agreed, from the date the contract termination comes into effect under Termination for Minister's Convenience the end of the 2018 school year, all contracted services will cease. This includes the sponsors' obligations to report to us, and this will mean we will not receive sponsors' fourth quarter/annual 2018 reports (due to us on 31 January 2019) or their 2018 audited financial accounts (due 31 May 2019). These reports are used as a basis for the current assessment process undertaken by the Advisory Group.
22. While it could be possible for us to negotiate agreement from each of the sponsors to provide us with these reports after their contract is terminated, in our view, they would be unlikely to agree to a post-termination contract solely for reporting purposes, particularly given the relatively low sum of the payments involved. Furthermore, the cost to the Crown of paying for these additional services (the reports) and administering the contract is likely to outweigh any benefit to either party.

23. Instead, we propose that the Advisory Group's assessment of 2018 performance of the schools is fast-tracked so they examine only that information which is readily available. That information would include the sponsor's first second and third quarterly reports but exclude their fourth quarter/annual reports and audited financial statements. We also propose to exclude decisions about the 2018 1% payments from this process (see paragraphs 28-31 below).
24. The Advisory Group's final advice could be provided to you by February-March 2019. This would add to their current work programme, but would mean that the Advisory Group is not required past their 30 April 2019 term. If you agree to this approach, the Ministry will inform the Advisory Group and support them to deliver against this piece of work.
25. The Ministry can provide you with a supplementary report in August 2019 on charter school 2018 NCEA performance, once these results are available.
26. This approach is likely to be the most efficient way to discharge the final obligations of the Advisory Group, bearing in mind public expectations of accountability. However, as the charter school contracts will already have been terminated, all remedial actions or interventions against sponsors who haven't satisfactorily met their contracted performance standards will not apply.
27. If, however, one or more charter school continues to operate in 2019, we recommend the Advisory Group continues, potentially with a smaller membership, in order to monitor and assess the school(s) educational performance throughout the year, and provide you with final advice in 2020. Should this situation eventuate, we can provide you with further advice in August 2018, once there is greater certainty around the outcomes of the sponsors' state school applications and the final date of termination.

#### **1% retention payments for the 2018 school year (NEGOTIATION SENSITIVE)**

28. If the standard process for the 2018 performance assessment were to be followed, this would lead to decisions about 1% retention payments being made in August 2019. This date is four months after the current term of the Advisory Group, and eight months after the date of effective termination of the charter schools.
29. If you agree to fast-tracking the 2018 assessment process, we suggest that the 1% retention payments are excluded from the performance assessment process, and instead included in the negotiations for the final financial settlement of the contracts. For 2018 the 1% payments range from approximately \$8,000 to \$30,000.
30. This would mean all sponsors would receive the 1% payment regardless of performance. It would also occur prior to you receiving Advisory Group advice on whether the sponsors had met their contracted performance expectations.
31. While this could be seen to unfairly benefit those sponsors who may later be assessed as having not satisfactorily met the performance standards (and whom under normal circumstances would have their 1% payment withheld), this is likely to be the most favourable option for both parties. It will provide positive leverage in negotiations with sponsors and it will contribute to the efficient and final settlement of the contracts by the end of the 2018 school year. The Ministry previously advised Government that the 1%

payments, as a performance incentive, had not been demonstrated to be most effective, and its removal was recommended. As such, the 1% retention funding provision was not included in Rounds Four and Five contracts (CAB-17-MIN-0147).

## Other matters

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### **Final 2018 payments and cancellation of 2019 payments**

32. According to the charter school contracts, the Ministry is obligated to make all payments that are due to the sponsor, up until the date of termination. All processes for quantifying the operational and variable payments that would ordinarily be made to the sponsor in November and December 2018 for the 2019 school year will be cancelled. We will notify sponsors of this.

### **Proactive Release**

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33. We recommend that this Education Report is proactively released as part of the regular schedule of information releases. All information that is negotiation sensitive will need to be withheld in accordance with provisions of the Official Information Act 1982.