

## **AGENDA ITEM EXECUTIVE SUMMARY**

- I. Public Education Commission Meeting Date: November 15, 2016
- II. Item Title: DISCUSSION AND POSSIBLE ACTION ON GOVERNING BODY VACANCY REQUIREMENTS – CONTRACT PROVISION 8.10 (b) AND PEC POLICY
- III. Executive Summary and Proposed Motions:

### **Request and Rationale**

The PEC's Charter School Contract, Section 8.10, requires the following when there is a change in governance membership:

The School will notify the Authorizer within 30 (thirty) days of a member's resignation or designation of a new member and shall sign the appropriate forms to ensure that the governing body continues to qualify as a board of finance . The School shall fill any vacancy on its governing body no later than 45 days from the vacancy or shall seek an extension for such appointment from the Authorizer in writing. The new member must execute the required statements for Board of Finance designation to the NMPED.

In addition, the PEC's Performance Framework requires that schools "comply[] with governance requirements." The standard evaluates the schools on demonstrated compliance with "applicable laws, rules, and regulations relating to charter school governance through the adoption of and adherence to...

- Governing body members are replaced within 45 days of the vacancy occurring."

In order to implement these requirements, the PEC approved a policy statement on "Charter School Governing Body Changes" in February 2016.

All of the above referenced items are provided in the attached materials.

Some charter schools have recently requested clarity about the requirements the contract terms, performance framework requirements and policy requirements. Specifically, schools are seeking guidance on whether the school must:

- 1) Notify the CSD of membership changes for members positions that exceed the minimum statutory requirement of 5 members (i.e., addition of a 6<sup>th</sup> or 7<sup>th</sup> member and/or resignation of a 6<sup>th</sup> or 7<sup>th</sup> member).

- 2) Fill vacancies created when there is a resignation or removal of a membership position that exceed the minimum statutory requirement of 5 members (i.e., if there were previously 8 members and 2 resigned, are those two positions vacancies that must be filled within 45 days).

Up to this point, CSD has been reading the contract, framework, and policy to require both notice and timely filling of the vacancy regardless of whether the school still has 5 members or not. There are several reasons for this:

- First, CSD is concerned that in times when governing bodies and their schools are experiencing dysfunction, CSD has witnessed the bodies strategically choosing to fill or not fill new positions in order to maintain coalitions.
- Second, if CSD does not receive notice of changes in membership, CSD is unable to identify current members in order to distribute important information and/or provide member information to relevant authorities including PED budget division.
- Third, without clear expectations for filling vacancies-unless the governing body has taken public action to eliminate a position that was previously occupied, the public will be unable to know whether there is or is not a vacant position on a school's governing body.

Schools have indicated there are a number of challenges with filling vacancies on governing bodies, including the challenge of finding qualified and willing candidates.

CSD and the schools are now seeking the Commission's guidance on this question.

**Proposed motion language:**

I move to request the CSD present a revised policy statement at the December PEC meeting that clarify the following:

**[PEC select any one or multiple of the following]**

- Schools must notify the CSD of any and all changes to governing body membership
- Schools must annually identify the number of positions on the governing body in a public vote at a properly noticed meeting of the governing body
- Any and all changes to the number of positions on the governing body must be approved according to the school's bylaws during a public vote

at a properly noticed meeting of the governing body

- Schools must fill any and all vacancies, based on the number of members identified in the annual notice and/or changed in a public vote, within 45 days or otherwise according to the policy statement
- Schools must only fill vacancies that result in board membership being below the minimum statutorily required number of 5 members within 45 days – all other vacancies do not have to be filled within a certain amount of time
- Schools must only notify the CSD of changes to governing body membership that result in the governing body either meeting or not meeting the minimum statutorily required number of 5 members

**Section 8.10 Organizational Framework, Governance and Reporting**  
**3.a. *Is the School complying with governance requirements?***

Organizational Framework Question 3.a. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to charter school governance through the adoption of and adherence to school policies; the Open Meetings Act; the Inspection of Public Records Act; a conflict of interest policy; an anti-nepotism policy and sound Governing Body operations.

The School shall also comply with the following additional terms and conditions:

**(a) Governing Structure.**

The School's governing body shall have at least 5 (five) members<sup>i</sup>. No member shall serve on the School's governing body if he or she was a member of another charter school's governing body that was suspended or failed to receive or maintain their board of finance designation.<sup>ii</sup>

**(b) Change in Governance Membership.**

The School will notify the Authorizer within 30 (thirty) days of a member's resignation or designation of a new member and shall sign the appropriate forms to ensure that the governing body continues to qualify as a board of finance<sup>iii</sup>. The School shall fill any vacancy on its governing body no later than 45 days from the vacancy or shall seek an extension for such appointment from the Authorizer in writing. The new member must execute the required statements for Board of Finance designation<sup>iiii</sup> to the NMPED.

**Section 8.11 Operational Framework, Governance and Reporting 3.b.**  
***Is the School holding management accountable?***

### 3. GOVERNANCE AND REPORTING

#### 3.a. Is the school complying with governance requirements?

**Meets Standard:**

The school demonstrates compliance with applicable laws, rules, and regulations relating to charter school governance through the adoption of and adherence to

- All required school policies;
- The Open Meetings Act and Inspection of Public Records Act;
- A conflicts of interest policy;
- An anti-nepotism policy;
- Governing body organization and membership rules (e.g. bylaws);
- Creation of required committees of the Governing body;
- Governing body mandated training requirements;
- The Governing body has a plan in place for body succession;
- Governing body members are replaced within 45 days of the vacancy occurring.

**Working to Meet Standard:**

The school has not implemented the program in the manner described above; the program area(s) not implemented were material; and the school has instituted remedies that have resulted in compliance or prompt and sufficient movement toward compliance with law.

**Falls Far Below Standard:**

Evidence shows that the school has not implemented the program in the manner described above; the program area(s) not implemented were material; and the school has not instituted remedies that have resulted in prompt and sufficient movement toward compliance with law.

#### 3.b. Is the school holding management accountable?

**Meets Standard:**

The school demonstrates timely compliance with applicable laws, rules, and regulations relating to oversight of school management:

- (Head of School) The governing body provides a written annual evaluation of the head of school that holds the head of school accountable for performance expectations.
- (Partner Organizations) The governing body periodically reviews the relationship and contracts with a partner organization identified in the approved charter application, as may be amended.

**Working to Meet Standard:**

The school has not implemented the program in the manner described above; the program area(s) not implemented were material; and the school has instituted remedies that have resulted in compliance or prompt and sufficient movement toward compliance with law.

**Falls Far Below Standard:**

Evidence shows that the school has not implemented the program in the manner described above; the program area(s) not implemented were material; and the school has not instituted remedies that have resulted in prompt and sufficient movement toward compliance with law.

Policy Statement  
Charter School Governing Body Changes

Background:

Section 8.10(b) of the charter contract requires schools to notify their authorizer within 30 (thirty) days of a member's resignation or designation of a new member and sign the appropriate forms to ensure that the governing body continues to qualify as a board of finance. The contract further requires the school to fill any vacancy on its governing body no later than 45 days from the vacancy or seek an extension for such appointment from the Authorizer in writing.

Policy:

A. Resignation or removal of a governing body member

1. Within 30 days of receiving notice of a governing body member's resignation or removing a governing body member, the governing body or its authorized representative shall provide notice to CSD on the "Change of Governing Body Membership Form" available in the PEC's document library.
2. The "Change of Governing Body Membership Form" shall be accompanied by:
  - i. The governing body minutes showing the vote to remove the member, or
  - ii. The resigning member's signed and dated written resignation.
3. At the next PEC meeting after receipt of a "Change of Governing Body Membership Form", CSD will notify the PEC of the resignation or removal of a governing body member on the "Ongoing Actions and Monitoring" document provided each month. Notice will remain on the document until the vacancy has been filled.
4. If a vacancy is not filled within 45 days of receiving notice of a governing body member's resignation or removing a governing body member, and the school has not been granted an extension to fill the vacancy, or if the vacancy is not filled within the time granted as an extension the school will be added to the schools of concern agenda item for consideration of the PEC and potential corrective action.

B. Designation of a new governing body member

1. Within 30 days of the appointment of a new governing body member, the governing body or its authorized representative shall provide notice to CSD on the "Change of Governing Body Membership Form" available in the PEC's document library.
2. The "Change of Governing Body Membership Form" shall be accompanied by:
  - i. An updated "STATEMENT OF GOVERNING BODY TO CONSULT WITH PED" signed by all current governing body members, and
  - ii. An "AFFIDAVIT OF GOVERNING BODY MEMBER" signed by the new governing body member and verified by a notary public.
3. At the next PEC meeting after receipt of a "Change of Governing Body Membership Form", CSD will notify the PEC of the change in governing body membership on the "Ongoing Actions and Monitoring" document provided each month.

C. Requests for extensions to fill a vacancy on the governing body

1. If a vacancy cannot be filled within 45 days of receiving notice of a governing body member's resignation or removing a governing body member, the school shall request in writing to [charter.schools@state.nm.us](mailto:charter.schools@state.nm.us) an extension of exactly 30 days from the end of the original 45 day period to fill the vacancy. The request must be received from CSD prior to the expiration of the original 45 day period to fill the vacancy.
2. CSD shall grant the extension in writing, identifying the date on which the extension ends, and notify the school that if the vacancy is not filled within the time granted as an extension the school will be added to the schools of concern agenda item for consideration of the PEC and potential corrective action.