

AGENDA ITEM EXECUTIVE SUMMARY

- I. **Public Education Commission Meeting Date:** January 15, 2016
- II. **Item Title:** Discussion And Possible Action On Policy Recommendation For Investigations And Complaint Policies
- III. **Executive Summary and Proposed Motions:**

Proposed Motions:

Attached to this report, CSD has provided a proposed Written Complaint Policy and Protocol. This report includes the proposed policy, a track changes version from the prior version presented at the PEC's November meeting, and a proposed submission form. CSD has also included all written feedback that was received.

The changes, identified in the track changes version, were made based on public comment and feedback. The changes identify that this policy is intended to address complaints coming from public members outside of the PED. The bulk of the policy addresses complaints that are not complaints, but rather are allegations of statutory or contractual violations.

The changes also address a concern that CSD would investigate allegations outside of its authority or jurisdiction. Instead it specifies that complaints that are appropriately investigated by an outside agency or another division would be referred to that appropriate entity. An appendix of agencies/divisions is provided.

The changes also provide that a school may opt to seek review from the PEC directly if it does not agree with CSD's findings that there is a contractual or statutory violation and does not agree with CSD's required evidence of compliance.

The revisions also address concerns about the information that will be kept and made available in the school's public file. Rather than keeping all evidence and documents collected and reviewed, the public file will contain only the initial complaint, a notice of complaint and correspondence with the school, and the final findings.

Some public comment has indicated this is not a proper policy as complaints are addressed by 8.11 of the contract. CSD believes this position ignores the reality that a complaint is not the same as an allegation of non-compliance with the law or the contract. A complaint is defined as: "a statement that a situation is unsatisfactory or unacceptable." An allegation, however, is defined as: "a claim or assertion that someone has done something illegal or wrong." This policy proposal is intended to address this difference and enable the PEC, through the support of the CSD, to protect the public interest and ensure it is able to enforce the contract and the charter school act which provides:

22-8B-5.3. Chartering authority; powers; duties; liability.

A chartering authority shall:

...

- F. **monitor**, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, **the performance and legal compliance of charter schools under their authority**; [and]

G. **determine whether a charter school merits suspension, revocation or nonrenewal.**”

Proposed Motion Language

-Move to adopt the policy presented in today’s materials.

-Move to adopt the policy presented in today’s materials, with the changes discussed on the record today.

-Make no motion.

Background:

Statutory Provisions:

22-8B-12 (D) - A chartering authority shall monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, *including conducting appropriate inquiries and investigations*; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

22-8B-17 - The "charter schools division" is created in the department. The division shall:

- A. provide staff support to the commission;

Contractual Provisions:

Section 4.03 (f)(iii) - The Authorizer shall conduct and/or require oversight activities according to its policies and procedures to allow the Authorizer to fulfill its responsibilities under the Act, *including conducting appropriate inquiries and investigations, when warranted.*

Section 4.03 (f)(vi) - The Authorizer shall notify the School in a timely manner of *unsatisfactory performance* on the organizational, academic or financial frameworks, or *any other factor that may result in an improvement plan, corrective action, nonrenewal or revocation as determined* during the annual site visit or *at any other time.*

Proposed PEC/CSD Written Complaint Policy and Protocol

Section 8.11 (a) - The School must establish a process for resolving community, parental, and other public complaints. The process shall afford the opportunity for the complainants to be heard by the head administrator and/or the School's governing body. The governing body shall be the final determiner of the complaint unless the complainant has additional legal remedies or requirements provided by law.

Section 8.11 (b) - The Authorizer agrees to notify the School of all written complaints about the School that the Authorizer receives. The notification shall be made immediately or as soon as is practicable under the circumstances, but not later than 10 business days after its receipt by the Authorizer. The notice shall include the substance of the complaint, taking into consideration any complainant's request for anonymity. *The School shall respond to the complaint according to its prescribed complaint procedures and shall notify the Authorizer through its legal counsel of the School's response to the complaint within the timeframe prescribed in the notice of the complaint.*

Policy:

- A. Upon receipt of any written complaint from a public member outside of the PED, the Charter School Division (CSD) will evaluate the complaint within 10 business days to determine if the complaint ~~contains any allegations~~ is an allegation of statutory, regulatory, or contractual non-compliance.
- B. If a complaint ~~does is not contain any allegations~~ an allegation of statutory, regulatory, or contractual non-compliance, CSD will provide the school that is the subject of the complaint with notice of the complaint, and copy the complainant, within 10 business days of CSD's receipt of the complaint.

1) The notice of the complaint shall:

- a) describe the substance of the complaint,

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- b) include a copy of the complaint, redacted as necessary to protect a complainant's request for anonymity, and
- c) require the school to notify CSD of the school's response to the complaint, which must comply with the school's established process for resolving community, parental, and other public complaints, no later than ~~30~~45 calendar days after the notice of complaint is sent to the school.

2) If the school does not timely provide CSD notification of the school's response to the complaint, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.

3) The school's response and ~~all correspondence including the initial complaint and~~ CSD's notice of complaint shall be kept in the school's public file, with redactions necessary to protect the identity of students and other confidential information.

C. If a complaint ~~contains one or more allegations~~ is an allegation of statutory, regulatory, or contractual

~~non-compliance~~ violations, CSD will either engage in fact finding regarding the allegations through an investigation or, where jurisdiction over the matter the properly lies with another agency or division, refer the allegation(s) to the appropriate agency or division.

1) When it is appropriate for CSD to engage in fact finding regarding the allegations through an investigation, CSD will provide the school that is the subject of the ~~complaint~~ allegations with notice of investigation of non-compliance, and copy the complainant, within 10 business days of CSD's receipt of the

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complaintallegations.

1a) The notice of investigation of non-compliance shall:

a)i. specifically identify the statutory, regulatory, or contractual provisions that the school is alleged to be violating,

b)ii. specifically identify the documents, evidence, and information the school must provide,

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~~e)~~iii. include a copy of the ~~complaint~~allegations, redacted as necessary to protect a complainant's request for anonymity, and

~~d)~~iv. require the school to provide the requested documents, evidence, and information no later than 10 business days after the notice of investigation is sent to the school.

~~2)~~b) A school may request an extension of the time to respond in writing. CSD shall grant an extension of no more than 5 business days.

~~3)~~c) If the school does not timely provide CSD the requested documents, evidence, and information, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.

~~4)~~d) ~~Within 30 calendar days of the receipt of the documents, evidence, and information, CSD shall notify the school of its determination if the alleged violations are confirmed or disproved, or if more information is needed. If more information is needed, CSD may request additional information using the same protocol as used to initially request information or may conduct either an announced or unannounced site auditing visit to the school.~~

~~e) The school's response, all~~ Within 45 calendar days of the receipt of the documents, evidence, and information gathered as part of the,
CSD shall notify the school of its preliminary fact finding and findings regarding compliance.

f) The school shall have 15 business days to provide additional

Proposed PEC/CSD Written Complaint Policy and Protocol
information, evidence, and a response to the CSD's preliminary fact
finding and findings regarding compliance.

2) When it is appropriate for CSD to refer the allegation(s) to another agency or
division of investigation, and all correspondence including the initial complaint and
CSD's CSD will forward the allegations, and copy the school and complainant,
within 10 business days of CSD's receipt of the allegation.

a) The notice of communication with the other agency or division shall:

i. specifically identify the statutory, regulatory, or contractual
provisions that the school is alleged to be violating,

ii. include a copy of the allegations, which when copied to
the school will be redacted as necessary to protect a
complainant's request for anonymity, and

iii. request the agency provide CSD an update on their
investigation of non-compliance or process in handling the
allegations as soon as possible.

5)3) The initial allegations, all correspondence concerning the allegations, as well
as the final factual findings or the outcome of an investigation by CSD or any
other division or agency shall be kept in the school's public file, with redactions
necessary to protect the identify of students and other confidential information.

Proposed PEC/CSD Written Complaint Policy and Protocol

~~6) If the CSD finds the allegations are confirmed and the charter school's fiscal, overall governance or legal compliance therefore appears *unsatisfactory*:~~

4) The If CSD conducts a fact finding investigation which reveals non-compliance that can be corrected by the school:

a) CSD ~~will~~shall present the findings and required evidence of compliance, with a timeframe for submission of no less than 10 and no more than 30 business days, in a written report, no later than ~~60-~~calendar30 business days after the findings are identified, to:

- i. the charter school's head administrator, and
- ii. the president of the governing body.

b) The charter school, through its head administrator or governing body, ~~shall respond to CSD with evidence to address the CSD's findings within 15 calendar days of receiving the written report~~may either accept the CSD report and requirements or may request to be added to the next PEC agenda for the PEC to consider facts, findings, and required evidence of compliance presented in the CSD report along with any response, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

c) If the charter school's ~~response~~ does not request to be placed on the PEC's agenda and does not timely provide ~~sufficient~~the evidence to—change CSD's findings that the charter school's fiscal, overall—governance or legal—of compliance ~~appears *unsatisfactory*~~, required by CSD within the timeframes presented in the written report, CSD shall
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notify the school that CSD will be ~~presenting~~considered by the PEC at

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the next scheduled meeting. CSD will provide the PEC with its

findings in the written report and all responses, evidence or documents

submitted by the school to CSD at least 10 calendar days prior to the

scheduled PEC meeting date.

5) If CSD conducts a fact finding investigation which reveals non-compliance that

cannot reasonably be corrected by the school. CSD shall notify the school that

CSD will be considered by the PEC at the next scheduled meeting. CSD will

provide the PEC with its findings in the written report, and all responses,

evidence or documents submitted by the school to CSD at least 10 calendar days

prior to the scheduled PEC meeting date.

6) If another agency or division conducts an investigation and identifies non-

compliance:

a) If the agency or division establishes specific requirements and reporting

to demonstrate compliance, the school shall provide CSD with

evidence of compliance with those required actions.

b) If the agency or division does not establish requirements to

demonstrate compliance, the CSD shall provide a written report

acknowledging the other agency's findings and establishing required

evidence of compliance, with a timeframe for submission of no less

than 10 and no more than 30 business days, no later than 30

business days after the other agency's findings are provided to the

CSD, to:

i. the charter school's head administrator, and

ii. the president of the governing body.

c) The charter school, through its head administrator or governing body,

may either accept the CSD requirements or may request to be added

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to the next PEC agenda for the PEC to consider facts, findings, and

required evidence of compliance presented in the CSD report along

with ~~the school's~~any response, evidence or documents submitted by

the school to CSD at least 10 calendar days prior to the PEC as part

of the "Schools of Concern" agenda item at a~~scheduled~~ PEC meeting

~~no later than 60 calendar days after CSD receives the~~date.

e)d) If the charter school's response does not request to be placed on

the PEC's agenda and does not timely provide the evidence of

compliance required by CSD within the timeframes presented in the

written report, CSD shall notify the school that CSD will be considered

by the PEC at the next scheduled meeting. CSD will provide the PEC

with its findings in the written report and all responses, evidence or

documents submitted by the school to CSD at least 10 calendar days

prior to the scheduled PEC meeting date.

d)7) At~~If the school is added to the PEC's agenda for the PEC meeting at~~

~~which the CSD presents its findings, the PEC~~to determine whether the charter

school's fiscal, overall governance or legal compliance is unsatisfactory and what

action should be taken to correct the charter school's fiscal, overall governance or

legal compliance. ~~In, in~~ making this determination, the PEC shall consider:

i)a) all correspondence regarding the ~~complaint and~~ allegations to or from

CSD,

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~~ii.b)~~ the CSD report,

~~iii.c)~~ the initial ~~complaint with the~~ allegations of non-compliance,

~~iv.d)~~ reports from other regulatory divisions or agencies, or law enforcement agencies,

~~v.e)~~ the charter school's response to CSD,

~~vi.f)~~ all written evidence provided by the charter school to the CSD at least ~~7~~10 calendar days prior to the PEC meeting, and

~~vii.g)~~ the charter school's presentation during the PEC meeting.

~~e)8)~~ If the PEC determines that the charter school's fiscal, overall governance or legal compliance is unsatisfactory, the PEC may, depending on the severity of the identified non-compliance:

~~i.a)~~ notify the governing body of the charter school that it must provide the CSD with evidence that it has remedied the problem ~~no later than 7~~as early as 10 business days prior to the next PEC meeting;

~~ii.b)~~ require the governing body of the charter school to work with CSD to develop and execute a corrective action plan that sets forth time frames for compliance, submit that plan ~~no later than~~7as early as 10 business days prior to the next PEC meeting, and present the plan to the PEC for approval at the next PEC meeting; ~~or~~

~~c)~~ issue a notice of intent to revoke the charter and schedule a revocation hearing; ~~or~~

d) take or recommend other action as legally permissible.

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**Appendix of External Divisions/Agencies with Jurisdiction over Alleged
Violations**

Special Education Bureau –Special education law violations

EEOC – Employment law violations

Office of Civil Rights – Civil rights violations

_____ - ADA compliance

Licensure Complain Division – licensure complaints

PSFA - Facilities violations

Local Police Department - Criminal activity

School Budget Division – budget violations/misfeasance

iii.



New Mexico Public Education Department Charter School Division - Complaint Form

****Submissions will not be processed without evidence that you have sought resolution with the school and its governing body first.****

Date

Email Address

First Name

Last Name

Street Address

Street Address Line 2

City

State

Zip Code

.....

Date of incident or situation

School Name

Please describe process you have utilized to seek resolution with the school and its governing body. Include date of correspondence with school and school's governing body and school's response.

Please describe what happened and identify any violations of law or the charter contract. Be as detailed as possible.

Desired outcome

*Please attach the following:

- 1) Evidence and documentation to support the facts described.
- 2) All correspondence, with attached documents, between you and the governing body and or leadership of the school regarding the matter of the complaint.
- 3) Evidence that you have sought resolution of this matter with the school's governing body.

Background:

Statutory Provisions:

22-8B-12 (D) - A chartering authority shall monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, *including conducting appropriate inquiries and investigations*; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

22-8B-17 - The "charter schools division" is created in the department. The division shall:

- A. provide staff support to the commission;

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Section 4.03 (f)(iii) - The Authorizer shall conduct and/or require oversight activities according to its policies and procedures to allow the Authorizer to fulfill its responsibilities under the Act, *including conducting appropriate inquiries and investigations, when warranted.*

Section 4.03 (f)(vi) - The Authorizer shall notify the School in a timely manner of *unsatisfactory performance* on the organizational, academic or financial frameworks, or *any other factor that may result in an improvement plan, corrective action, nonrenewal or revocation as determined* during the annual site visit or *at any other time.*

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Section 8.11 (a) - The School must establish a process for resolving community, parental, and other public complaints. The process shall afford the opportunity for the complainants to be heard by the head administrator and/or the School's governing body. The governing body shall be the final determiner of the complaint unless the complainant has additional legal remedies or requirements provided by law.

Section 8.11 (b) - The Authorizer agrees to notify the School of all written complaints about the School that the Authorizer receives. The notification shall be made immediately or as soon as is practicable under the circumstances, but not later than 10 business days after its receipt by the Authorizer. The notice shall include the substance of the complaint, taking into consideration any complainant's request for anonymity. *The School shall respond to the complaint according to its prescribed complaint procedures and shall notify the Authorizer through its legal counsel of the School's response to the complaint within the timeframe prescribed in the notice of the complaint.*

Policy:

- A. Upon receipt of any written complaint from a public member outside of the PED, the Charter School Division (CSD) will evaluate the complaint within 10 business days to determine if the complaint is an allegation of statutory, regulatory, or contractual non-compliance.
- B. If a complaint is not an allegation of statutory, regulatory, or contractual non-compliance, CSD will provide the school that is the subject of the complaint with notice of the complaint, and copy the complainant, within 10 business days of CSD's receipt of the complaint.
 - 1) The notice of the complaint shall:
 - a) describe the substance of the complaint,

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- b) include a copy of the complaint, redacted as necessary to protect a complainant's request for anonymity, and
 - c) require the school to notify CSD of the school's response to the complaint, which must comply with the school's established process for resolving community, parental, and other public complaints, no later than 45 calendar days after the notice of complaint is sent to the school.
 - 2) If the school does not timely provide CSD notification of the school's response to the complaint, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.
 - 3) The school's response and CSD's notice of complaint shall be kept in the school's public file, with redactions necessary to protect the identity of students and other confidential information.
- C. If a complaint is an allegation of statutory, regulatory, or contractual violations, CSD will either engage in fact finding regarding the allegations through an investigation or, where jurisdiction over the matter properly lies with another agency or division, refer the allegation(s) to the appropriate agency or division.
- 1) When it is appropriate for CSD to engage in fact finding regarding the allegations through an investigation, CSD will provide the school that is the subject of the allegations with notice of investigation of non-compliance, and copy the complainant, within 10 business days of CSD's receipt of the allegations.

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- a) The notice of investigation of non-compliance shall:
 - i. specifically identify the statutory, regulatory, or contractual provisions that the school is alleged to be violating,
 - ii. specifically identify the documents, evidence, and information the school must provide,
 - iii. include a copy of the allegations, redacted as necessary to protect a complainant's request for anonymity, and
 - iv. require the school to provide the requested documents, evidence, and information no later than 10 business days after the notice of investigation is sent to the school.
- b) A school may request an extension of the time to respond in writing. CSD shall grant an extension of no more than 5 business days.
- c) If the school does not timely provide CSD the requested documents, evidence, and information, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.
- d) If more information is needed, CSD may request additional information using the same protocol as used to initially request information or may conduct either an announced or unannounced auditing visit to the school.
- e) Within 45 calendar days of the receipt of the documents, evidence, and information, CSD shall notify the school of its preliminary fact finding

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and findings regarding compliance.

- f) The school shall have 15 business days to provide additional information, evidence, and a response to the CSD's preliminary fact finding and findings regarding compliance.

- 2) When it is appropriate for CSD to refer the allegation(s) to another agency or division of investigation, CSD will forward the allegations, and copy the school and complainant, within 10 business days of CSD's receipt of the allegation.

- a) The notice of communication with the other agency or division shall:
 - i. specifically identify the statutory, regulatory, or contractual provisions that the school is alleged to be violating,
 - ii. include a copy of the allegations, which when copied to the school will be redacted as necessary to protect a complainant's request for anonymity, and
 - iii. request the agency provide CSD an update on their investigation or process in handling the allegations as soon as possible.

- 3) The initial allegations, all correspondence concerning the allegations, as well as the final factual findings or the outcome of an investigation by CSD or any other division or agency shall be kept in the school's public file, with redactions necessary to protect the identify of students and other confidential information.

- 4) If CSD conducts a fact finding investigation which reveals non-compliance that can be corrected by the school:

- a) CSD shall present the findings and required evidence of compliance, with a timeframe for submission of no less than 10 and no more than

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30 business days, in a written report no later than 30 business days after the findings are identified, to:

- i. the charter school's head administrator, and
 - ii. the president of the governing body.
 - b) The charter school, through its head administrator or governing body, may either accept the CSD report and requirements or may request to be added to the next PEC agenda for the PEC to consider facts, findings, and required evidence of compliance presented in the CSD report along with any response, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.
 - c) If the charter school's does not request to be placed on the PEC's agenda and does not timely provide the evidence of compliance required by CSD within the timeframes presented in the written report, CSD shall notify the school that CSD will be considered by the PEC at the next scheduled meeting. CSD will provide the PEC with its findings in the written report and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.
- 5) If CSD conducts a fact finding investigation which reveals non-compliance that cannot reasonably be corrected by the school. CSD shall notify the school that CSD will be considered by the PEC at the next scheduled meeting. CSD will provide the PEC with its findings in the written report and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled

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PEC meeting date.

- 6) If another agency or division conducts an investigation and identifies non-compliance:
 - a) If the agency or division establishes specific requirements and reporting to demonstrate compliance, the school shall provide CSD with evidence of compliance with those required actions.
 - b) If the agency or division does not establish requirements to demonstrate compliance, the CSD shall provide a written report acknowledging the other agency's findings and establishing required evidence of compliance, with a timeframe for submission of no less than 10 and no more than 30 business days, no later than 30 business days after the other agency's findings are provided to the CSD, to:
 - i. the charter school's head administrator, and
 - ii. the president of the governing body.
 - c) The charter school, through its head administrator or governing body, may either accept the CSD requirements or may request to be added to the next PEC agenda for the PEC to consider facts, findings, and required evidence of compliance presented in the CSD report along with any response, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.
 - d) If the charter school's does not request to be placed on the PEC's agenda and does not timely provide the evidence of compliance required by CSD

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within the timeframes presented in the written report, CSD shall notify the school that CSD will be considered by the PEC at the next scheduled meeting. CSD will provide the PEC with its findings in the written report and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

- 7) If the school is added to the PEC's agenda for the PEC to determine whether the charter school's fiscal, overall governance or legal compliance is unsatisfactory and what action should be taken to correct the charter school's fiscal, overall governance or legal compliance, in making this determination, the PEC shall consider:

- a) all correspondence regarding the allegations to or from CSD,
- b) the CSD report,
- c) the initial allegations of non-compliance,
- d) reports from other regulatory divisions or agencies, or law enforcement agencies,
- e) the charter school's response to CSD,
- f) all written evidence provided by the charter school to the CSD at least 10 calendar days prior to the PEC meeting, and
- g) the charter school's presentation during the PEC meeting.

- 8) If the PEC determines that the charter school's fiscal, overall governance or legal compliance is unsatisfactory, the PEC may, depending on the severity of the identified non-compliance:

- a) notify the governing body of the charter school that it must

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provide the CSD with evidence that it has remedied the problem as early as 10 business days prior to the next PEC meeting;

- b) require the governing body of the charter school to work with CSD to develop and execute a corrective action plan that sets forth time frames for compliance, submit that plan as early as 10 business days prior to the next PEC meeting, and present the plan to the PEC for approval at the next PEC meeting;
- c) issue a notice of intent to revoke the charter and schedule a revocation hearing; or
- d) take or recommend other action as legally permissible.

**Appendix of External Divisions/Agencies with Jurisdiction over Alleged
Violations**

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_____ - ADA compliance

Licensure Complain Division – licensure complaints

PSFA - Facilities violations

Local Police Department - Criminal activity

School Budget Division – budget violations/misfeasance



Attorneys and Counselors at Law

Patricia Matthews
pmatthews@matthewsfox.com

office: (505) 473-3020
fax: (505) 474-3727

Susan Barger Fox
sfox@matthewsfox.com

December 4, 2015

Ms. Carolyn Shearman, Chair
New Mexico Public Education Commission
300 Don Gaspar
Santa Fe, NM 87501
cshearman61@centurylink.net

via Electronic Mail and First-Class Mail

Re: Proposed Complaint Protocol/Input

Dear Chair Shearman:

At the November 13, 2015 meeting of the Public Education Commission ("PEC"), the Director of the Options for Parents Division ("CSD") of the NMPED presented a draft Written Complaint Policy and Protocol ("Proposed Policy") for the PEC's consideration. The PEC decided to solicit the input of charter schools with regard to the Proposed Policy, prior to taking action on it. This Firm has been asked to provide such input on the Proposed Policy on behalf of 18 state-chartered clients ("Schools"). Other charter schools may respond to you separately, raising similar or other concerns. We understand that this item will be on the PEC's December 10-11 meeting agenda.

The Proposed Policy raises both legal and other practical issues and concerns. After providing some additional background, I will address the legal concerns first, because in our opinion, they are threshold issues that require careful consideration. The practical concerns and other issues raised by the schools are listed at the end of this letter.

I. BACKGROUND MATTERS

A. THE EXISTING CHARTER CONTRACT

The Charter Contract requires that the School establish a process for resolving "community, parental, and other public complaints." (Id., §8.11(a)). The School's process must afford the opportunity for the complainants to be heard by the head administrator, and/or the School's governing body, with the governing body the final determiner "unless the complainant has additional legal remedies or requirements provided by law." (Id.) Section 8.11(b) of the Charter

Contract contains the procedure to be used with regard to written complaints about the School received by the Authorizer:

The Authorizer agrees to notify the School of all written complaints about the School that the Authorizer receives. The notification shall be made immediately or as soon as is practicable under the circumstances, but not later than 10 business days after its receipt by the Authorizer. The notice shall include the substance of the complaint, taking into consideration any complainant's request for anonymity. **The School shall respond to the complaint according to its prescribed complaint procedures and shall notify the Authorizer through its legal counsel of the School's response to the complaint within the timeframe prescribed in the notice of the complaint.**

(Charter Contract, §8.11.b (emphasis added)).

B. THE PROPOSED POLICY

The Proposed Policy seeks to impose additional processes outside that provided in Section 8.11 of the Charter Contract, to address "any written complaint" (Proposed Policy, §A). It proposes a new, dual-track process for such complaints received: one for allegations of statutory, regulatory or contractual non-compliance, and one for other allegations. For allegations of statutory, etc. noncompliance, the Proposed Policy would require the Schools to respond to CSD with documents, evidence and information requested by CSD within ten days and no more than fifteen days, and to potentially be placed on the PEC's agenda as a "School of Concern" (Proposed Policy, §C.1-3). The Proposed Policy gives **the CSD** the right to determine if the alleged violations are confirmed or disproved, or if more information is needed (Proposed Policy, §C.4). The Schools are given a short opportunity to rebut **the CSD's** findings (Proposed Policy, §C.6.a-b), and again **the CSD** determines whether the school's response "provides sufficient evidence to change CSD's findings". If **the CSD** decides it does not, the CSD presents its findings and the school's response to the PEC (Proposed Policy, §C.6.c), with the PEC to "determine whether the charter school's fiscal, overall governance or legal compliance is unsatisfactory and what action should be taken to correct" the issues (Proposed Policy, §C.6.d), the PEC may require the School to remedy the issue, develop a corrective action plan, or proceed to charter revocation hearing (Proposed Policy, §C.6.e).

Complaints not involving statutory, etc. violations require the school to notify **the CSD** of the school's response to the complaint pursuant to the school's internal processes, within 30 calendar days after the notice of the complaint has been sent to the School (Proposed Policy, §B.1.c). Failure to meet this timeframe would result in the school being placed on the PEC's agenda as a "School of Concern" (Proposed Policy, §B.2). The School's response would be kept in "the school's public file" (Proposed Policy, §B.3).

II. LEGAL ISSUES

A. The Proposed Policy attempts to unilaterally change the terms of Section 8.11 of the charter contracts entered into between the PEC and charter schools.

The PEC and charter schools who have entered into charter contracts with the PEC pursuant to Section 22-8B-9 NMSA 1978 (“Charter Contract”) have entered into a legally binding contract. Section 4.03 provides that the “contract and the Performance Framework demonstrate, in part, implementation of [the Authorizer’s] chartering policies and practices.” This provision is included in the contract because the PEC had not previously articulated policies on such issues as handling complaints, and as such it is now binding on the PEC unless otherwise agreed to by the School. Section 13.02 of Charter Contract requires that any changes to the Charter Contract be agreed to by both parties, in writing. *See* Charter Contract, §13.01(a) (“Any modification of the contract requires an amendment that must be agreed to and executed by both parties.”); §13.02(b) (“No amendment to the Contract shall be valid unless ratified in writing by the Authorizer and the School and executed by its authorized representatives.”). Unilateral changes to a contract by a single party are not permissible under the Charter Schools Act. NMSA 1978 §22-8B-9(C)(“The process for revision or amendment to the terms of the charter contract shall be made only with the approval of the chartering authority and the governing body of the charter school.”).

Section 13.07 of the Charter Contract allows for possible changes in law, regulation, rule, procedure or forms affecting the School during the Charter Contract term, “provided, however, that the change does not impair the existing Contract and the Parties’ respective rights hereunder.” Here, the Proposed Policy does appear to impair the Schools’ existing rights with respect to the existing School Complaint Process in Section 8.11 – a process which essentially requires schools to establish processes for resolving “community, parental and public complaints” internally, with the governing body the final determiner of the complaint unless additional legal remedies are provided by law. *See* Charter Contract, §8.11(a). Subsection b of Section 8.11 provides that the Authorizer shall notify the School of “all written complaints received by the Authorizer”, no later than 10 days after receipt. From that point, “[t]he School shall respond to the complaint according to its prescribed complaint procedures and shall notify the Authorizer through its legal counsel of the School’s response to the complaint within the timeframe prescribed in the notice of the complaint.” This is the contracted procedure for addressing, in the words of the Charter Contract, “**all** written complaints received by the Authorizer” (emphasis added). No other process or procedure for the investigation of complaints received by the PEC (or CSD) is contained in the Charter Contract.

The Charter Schools Act is clear that the PEC may monitor its charter schools’ performance and legal compliance, but such monitoring activities must be in accordance with the Act and the terms of the Charter Contract. NMSA 1978 §22-8B-5.3(F)(PEC shall “**monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract**, the performance and legal compliance of charter schools under their authority.” (Emphasis added)). The Act further is clear that the Charter Contract is the document that is to set out how the PEC

and its schools shall deal with each other: the charter contracts “must” include the chartering authority’s duties to the school and the school’s liabilities to the authority; the “criteria, processes, and procedures that the authority will use for ongoing oversight of operational, financial and academic performance”; and the “process and criteria for annual monitoring and evaluation.” NMSA 1978 §22-8B-9(B)(4),(7),(11). The Charter Contract itself confirms that the “criteria, processes and procedures that the Authorizer will use for ongoing oversight ... are set forth in [this Contract].” Charter Contract, §4.03(a).

Section 22-8B-12(D) of the Act further makes clear that the PEC’s monitoring and oversight of charter school governance and legal compliance may include appropriate investigations and inquiries, but only “**provided that the authorizer complies with the Charter Schools Act and the charter contract and does not unduly inhibit the autonomy granted to the charter schools it governs.**” (emphasis added). These sections of the Act clearly require that all monitoring and oversight activities and processes by the authorizer be contained within the Charter Contract; this is one reason why the contracts are so lengthy and detailed. Nowhere in the law is there a “catchall” provision that would allow for monitoring and oversight activities that are not contained within the Charter Contract; if a particular process is desired, it needs to be part of the contract negotiated and agreed between the parties. No such “catchall” investigation or monitoring provision exists within the Charter Contract. The CSD’s reliance on Section 4.03(f)(iii)’s statement that “[t]he Authorizer shall conduct and/or require oversight activities according to its policies and procedures to allow the Authorizer to fulfill its responsibilities under the Act, including conducting appropriate inquiries and investigations, when warranted” ignores the fact that such activities must be “according to its policies and procedures”, which in turn must be set forth in the Charter Contract. Section 4.03 does not provide a *carte blanche* opportunity for the CSD to do whatever it wants under the guise of an “investigation” or “inquiry”, particularly when a specific process exists in Section 8.11 for investigation of complaints made by third parties.

What the parties negotiated and agreed upon was a process for dealing with complaints that respects school autonomy, and places the responsibility for investigating and dealing with the complaints on the entity in the best position to do so in the first instance. *See* Charter Contract, §4.01 (“The Authorizer shall comply with the provisions of the Act and the terms of the Contract in a manner that **does not unduly inhibit the autonomy granted to the School.** In order to meet the purposes of the Act, **the School will determine the process it uses to achieve the successful outcomes for its students.** The Authorizer’s role will be to evaluate the School’s outcomes according to this Contract and the Performance Frameworks, rather than to establish the process by which the School achieves the outcomes sought.”(Emphasis added)). What has been proposed would represent an end-around the Charter Contract, and a resulting breach of that same contract, not to mention an inhibition of the schools’ autonomy – all in violation of the Charter Schools Act and the Contract itself.

In addition, the Proposed Policy is not necessary. The Charter Contract already contains performance review processes by which the PEC may address legal, regulatory, policy or contractual violations by the Schools, should the Schools’ internal treatment of the subject matter of the complaints be deemed unsatisfactory or should the issues persist and the PEC or its staff

feel that further inquiry or action is necessary. *See, e.g.*, Charter Contract, Sections 1.03 (improvement plan/corrective action plan); 4.03(a)(performance review can result in improvement plan; corrective action plan); 4.03(f)(Authorizer obligations relating to contract and monitoring, site visits to determine performance); 11.01 (Suspension, Nonrenewal and Revocation); 11.02 (Corrective Action not warranting immediate revocation). The Proposed Policy attempts to supplement the complaint-related processes which already exist in the Charter Contract with new processes that would appear to circumvent and in some cases directly conflict with the existing processes in the Charter Contract.

B. The Proposed Policy exceeds the authority of the CSD.

The Proposed Policy attempts to give the CSD a role in the complaint process that is not contemplated by the Charter Contract; to the extent that the Proposed Policy makes the CSD a *de facto* determiner of whether or not there has been a violation of law, etc., the Proposed Policy circumvents the Charter Contract provisions and is outside the scope of the CSD's authority.

The Parent Options Division of the NMPED has no overarching or plenary-type power to circumvent, modify or supplement the Charter Contracts between the PEC and the Schools with new policies and procedures. The NMPED Secretary has been granted the control, management, direction of all public schools "**except as otherwise provided by law.**" NMSA 1978 §22-2-1; see also NMSA 1978 §9-24-8(B)(secretary has every power expressly enumerated in the law, except when explicitly exempted or otherwise provided). The law, namely the Charter Schools Act, does subsequently limit the NMPED's jurisdiction over charter schools and a charter's accountability to the NMPED for purposes of compliance with laws, rules and charter provisions, making clear that charter school accountability determinations lie with its *authorizer*, rather than with the NMPED:

A charter school shall be a public school accredited by the [NMPED] and shall be accountable to the *chartering authority* for purposes of ensuring compliance with applicable laws, rules and charter provisions.

NMSA 1978 §22-8B-5.3(D) (emphasis added). In accordance with this recognized limitation of the Department's authority over charter school accountability, the Charter Schools Act's other provisions make clear that it is the Authorizer that determines whether, for example, a charter may be granted, revoked, or not renewed in the first instance. Similarly, the Act makes clear that it is the Authorizer who shall "monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority." NMSA 1978 §22-8B-5.3(F).

The CSD has only the powers granted to it by the Legislature with regard to charter schools, namely: to provide staff support to the PEC; to provide technical support to charter schools; to review and approve state-chartered charter school budget matters; and to make recommendations to the PEC regarding the approval, denial, suspension and revocation of a state-chartered charter school. NMSA 1978 §22-8B-17. The CSD, a division of the NMPED under the control of the Secretary, thus has its duties with regard to the PEC and charter schools limited by the Charter Schools Act: staff support, technical support, budget matters, and making recommendations with

regard to charter approvals, denials, suspensions and revocations. There is no “general charter oversight” or “general monitoring” ability outside of what the PEC requests as staff support for the PEC, and the PEC’s ability to request support in this area is limited by the terms of the Charter Contracts which set forth the processes that the parties will adhere to. There certainly is no authority granted by law or by the Charter Contracts for the CSD to be a determiner in the first instance of whether a charter school has properly or adequately addressed a complaint, or which gives the CSD any ability to circumvent or supplement the processes agreed to in the Charter Contracts.

Finally, the determination of whether a school has actually committed a violation of a particular law is a question for administrative agencies (including other bureaus of the NMPED, e.g. Special Education complaints) or the courts, and not the CSD. For example, the Equal Employment Opportunity Commission/New Mexico Human Rights Division makes determinations regarding employment discrimination matters, the USDOE Office of Civil Rights determines education related discrimination matters, the New Mexico Attorney General determines Open Meetings Act violations -- all of which have their own statutory enforcement mechanisms and prerequisites to prove a violation. CSD does not have the authority to make determinations as to violations of law.

III. OTHER CONCERNS

In addition to the foregoing, we have the following additional concerns regarding the Proposed Policy:

1. There is no support in the law for the Proposed Policy, and NMPED does not do the same with regard to complaints received on District Schools. There is no justification for treating Charter Schools differently here.
2. All charters are required to put into place an internal grievance process for handling complaints. These are already a part of the charter applications approved. Charter schools, like other public schools, have a right to address complaints against their schools internally in the first instance, in all instances. See NMSA 1978 §22-8B-5(B)(“A state-chartered charter school is responsible for developing its own written policies and procedures ...”). The Proposed Policy would render those internal policies largely superfluous.
3. The process by which the CSD makes an initial “finding” or “determination” on complaints against charter schools is outside the authority of the CSD and the NMPED.
4. The process by which the school must prove that there has NOT been a violation of law, regulation, etc. stands due process on its head; the proper presumption is that there has NOT been a violation unless one is shown by a preponderance of evidence.
5. CSD cannot be both accuser, factfinder, and decisionmaker in this process; this is a due process violation.
6. Allegations alone cannot and should not elevate complaints to the authorizer level.
7. It is unclear whether the Proposed Policy is limited to complaints from the public, or complaints/criticisms that various NMPED departments might have about a charter’s

performance. If the latter is also encompassed by the policy, the process will be unwieldy not just for the charter school, but for the CSD which would be acting as “middleman”.

8. The Proposed Policy impermissibly impinges upon charter school autonomy. Complaints should be addressed at the school level and internal policies for resolution exhausted prior to CSD/PEC involvement.
9. The process should not start with CSD; it would make a mockery/make superfluous the school’s own internal grievance/complaint procedures.
10. Some matters involved in the complaints could be confidential (i.e. personnel matters, student matters), and should not be in a “public file” nor discussed in open session.
11. The CSD does not have the ability to staff and deal with these complaints effectively in the first instance; this represents a lot of work for the CSD, and their time should be spent on providing positive assistance rather than negative.
12. CSD’s time and efforts would be better spent providing the “technical assistance” that the statute requires it to provide to charters, rather than looking for ways to overregulate, hamstring or shut down charter schools. Currently, the CSD is providing no technical assistance to charters, and the Proposed Policy does nothing to assist charter growth or evolution.

Thank you for providing us with the opportunity to comment. We look forward to attending the December meetings on this topic. If there is additional information that you would like from us prior to the meetings, please advise.

Very truly yours,
MATTHEWS FOX, P.C.

By: _____

Susan B. Fox

Cc via electronic mail:

Katie Poulos, Options for Parents Division
Kelly Callahan/Greta Roskom, NMCCS
Susanne Robidoux, Esq.
Clients



Attorneys and Counselors at Law

Patricia Matthews
pmatthews@matthewsfox.com

office: (505) 473-3020
fax: (505) 474-3727

Susan Barger Fox
sfox@matthewsfox.com

January 7, 2016

VIA ELECTRONIC MAIL AND FIRST-CLASS MAIL

Ms. Carolyn Shearman, Chair
New Mexico Public Education Commission
300 Don Gaspar
Santa Fe, NM 87501
cshearman61@centurylink.net

Re: PEC Proposed Complaint Investigation Policy/Follow-Up comments

Dear Ms. Shearman:

This letter follows up on our letter to the PEC of December 4, 2015, in which certain concerns were expressed and comments were made by this Firm on behalf of 18 of our charter school clients who asked us to do so, regarding the proposed Complaint Investigation Policy ("Proposed Policy") that the PEC was being asked to consider by the Charter Schools Division Director. At the December 11, 2015 PEC meeting, the CSD Director referenced a revised version of the Proposed Policy that the CSD apparently had provided to the PEC a few days before the meeting. Neither we nor the charter schools had been provided with this revised version prior to the meeting, and the PEC postponed decision on the matter to the January PEC meeting. The PEC has asked us to provide any comments on the revised Proposed Policy by January 7, 2016. We do so herein.

It does not appear that the revised Proposed Policy addresses the first two concerns stated in our December 4 letter: namely, that the policy would breach the complaint investigation process set out in Section 8.11 of existing Charter Contracts, and that the policy allows the CSD to exercise power(s) that it does not have. We therefore incorporate by reference and reiterate those points with regard to the revised Proposed Policy, and would oppose any plan to apply the revised Proposed Policy to charters currently under a Charter Contract. In addition, overall public policy concerns remain as stated in the December 4 letter regarding fairness, charter autonomy, and the need for more technical assistance and support versus additional regulatory processes where PEC staff resources appear to be stretched thin.

If the PEC decides it wants to adopt additional mechanisms for oversight of public complaints regarding a charter other than what currently exist, the comments that follow in this letter are made under the assumption that the revised Proposed Policy would be applied only to those schools **not** currently under an existing Charter Contract. If complaint investigation procedures different from what currently appear in Section 8.11 of the Charter Contract template are contemplated and adopted, the contract template changes should be revised accordingly and negotiated with the charters as part of the contract negotiation process after renewal or initial approval of a charter school, or otherwise referenced in the contracts, to avoid conflicts and ambiguity on these matters.

The revised Proposed Policy does make certain clarifications relating to a few of the other points raised in the December 4 letter, of which we are appreciative. However, the following concerns/comments remain for your consideration. We have attempted to make constructive suggestions where possible, and are willing to work through these further with CSD/PEC, if desired.

1. Section A: If a complainant has an allegation that is not an allegation of a statutory, regulatory, or contractual violation, in order to avoid an end-around School internal grievance, harassment, bullying, and other policies that schools have in place, and to respect charter school autonomy to an appropriate extent, the complainant should FIRST be required to exhaust the School's internal policies and complaint procedures, before getting the CSD/PEC involved. We believe that it is appropriate for these matters to be brought to the CSD/PEC's attention only if/when the School has ignored the complaint and/or has not followed its policies/procedures with regard to the complaint after being given. This could be addressed by amending Section A to provide that the CSD will inquire of the complainant as to whether or not internal school processes have been followed to their conclusion, and referring the complainant back to the School for exhaustion of existing school policies/procedures, before accepting a complaint under this policy (the Complaint Form attached to the revised Proposed Policy contains a note that submissions will not be processed without evidence that the complainant has sought resolution with the school and its governing body first, but the policy does not similarly provide). We believe that in many cases, through no fault of the school, complainants may not be aware that internal policies/procedures exist (though schools certainly should make all reasonable efforts to make its constituents and the public aware of such policies/procedures).
2. Section B.1.b: this Subsection currently provides that the complainant's name or other identifying information can be redacted by CSD "to protect a complainant's request for anonymity". Inasmuch as this section relates to complaints made by people that the CSD determines are NOT allegations of statutory, regulatory, or contractual non-compliance, these complaints are likely to have to do with a particular employee or student situation personal to the complainant, and removal by CSD of identifying information will make it difficult for the schools to properly and effectively address the matter if the complainant is not made known. We recommend that subsection B.1.b be revised to state: "include a copy of the complaint, which may be redacted to protect a complainant's anonymity only where such redaction will not impede the School's ability to investigate and address the allegation(s) made."
3. Section B.1.c: we appreciate that a change has been made to the calendar days in which a school must notify CSD of the school's response to the complaint via the school's established process for resolution of complaints, but depending on the nature of the matter alleged, even 45 days may not be sufficient time for full resolution of the matter internally, given various levels of conflict resolution typically found in internal policies, up to in many cases hearing by the Governing Council. This concern is lessened if the changes made in numbers 1 and 2, above, are made, because then the complaint will already have gone through the School's internal processes, and it would be unlikely that a school could not provide its response as to how the school resolved or attempted to resolve the matter, within the 45 day timeframe.
4. Section C generally: This section continues to give CSD the role of both factfinder and decisionmaker, which is problematic from a due process standpoint where, as in this case, the

determination of whether there has been a regulatory, statutory, or contractual violation is a quasi-judicial determination involving substantial rights and potentially leading to charter revocation. Also, the provisions in the Charter Contract relating to corrective action, improvement plans, and revocation will need to be reviewed by PEC legal counsel vis a vis this policy, to ensure that the provisions and processes are consistent and the policy/procedure does not create ambiguities within other sections of the charter contract. We suggest adding a provision to the Proposed Policy that makes clear that, if and to the extent that the Proposed Policy conflicts with any provision of the Charter Contract entered into between the parties, the terms, provisions and processes in the Charter Contract shall take precedence over the policy.

5. Section C.1: The word “non-compliance” (which implies a conclusion) should be replaced by “the allegations”, throughout.
- 6. Section C.1.a.iv and Section C.1.b: In some cases (for example, those in which voluminous documents are requested), ten business days (or even fifteen) may be insufficient time to provide the requested documents, evidence, and information. We suggest that you amend the Section C.1.b to read “A school may make a written request for an extension of the time to respond. CSD shall grant an extension of no more than 10 additional business days, unless extenuating circumstances exist that would reasonably require additional time.”
7. Section C.1.c: We recommend that a sentence be added to the end of this subsection that makes clear that if the school is indeed included on the agenda under the “Schools of Concern” agenda item, the School will be notified in writing by the CSD at least ten days prior to the PEC’s meeting. This is so that the School can make timely arrangements with relevant personnel to schedule attendance at the PEC meeting.
8. Section C.1.e and f: These provisions should give CSD and the School the same amount of time to make or respond to findings, or the School should at least be given the opportunity to request additional time where circumstances warrant.
9. Section C.2: We suggest adding the following sentence to the end of the paragraph: “The processes of the other agency or division relating to the complaint shall then apply.”
10. Section C.2.a.iii: In most cases, CSD will not be entitled by law to receive updates on the other agency’s “investigation or process in handling the allegations”, and at the very least this attempts to inject CSD into areas in which it has no jurisdiction. We suggest that this sentence be amended to read, as follows, which allows CSD to request notification by the agency of the **outcome** of the investigation, once concluded: “request the agency notify the CSD of the agency’s findings and conclusions regarding the allegation(s) as soon as possible after notice to the parties.”
11. Section C.4: This subsection currently reads: “If CSD conducts a fact finding investigation which reveals non-compliance that can be corrected by the school” Who makes the determination that the non-compliance can be corrected? This is unclear as currently written.
12. Section C.4.a: This subsection could be written more clearly. We suggest: “No later than 30 business days after CSD identifies a finding of noncompliance, CSD shall present its findings in a written report to the charter school’s head administrator and the president of the school’s governing body. The School shall be given 30 business days after receipt of the CSD’s written

report to demonstrate or show evidence of compliance, or to bring the matter to the PEC pursuant to subsection b below.”

13. Section C.4.b: Similarly, we suggest that subsection C.4.b be rewritten to read: “If the charter school contests the CSD’s written report, the charter school, through its head administrator, governing body, or authorized designee, may request to be added to the next PEC agenda for PEC consideration of the matter. Such consideration by PEC shall not be considered to be a revocation hearing (which processes are set forth in the Charter Contract), but shall be limited to the accuracy of the CSD’s written report, the validity of the CSD’s requirements, and/or the School’s ability to correct the alleged violations.”
14. Section C.4 notably does not address what happens if the School contests the CSD’s written report and the PEC agrees with the School, or if the PEC disagrees with the School. This would need to be addressed.
15. Section C.4.c: contains a typo in the last line on page 9. We think the phrase that says “CSD shall notify the school that CSD will be considered by the PEC” is meant to read “CSD shall notify the school that **the school** will be considered by the PEC...”. See note numbers 13 and 14 above; similar comments apply to this subsection. The School should be given the opportunity to provide to PEC its written position that the CSD’s conclusions are erroneous, in advance of the hearing, which should again not be in the context of a revocation proceeding (which under the Charter Contract has different processes).
16. Section C.5: Again, who makes the determination that the non-compliance cannot reasonably be corrected by the School? In this instance, CSD should still have to provide a written report to both the School and to the PEC demonstrating the noncompliance AND that it cannot reasonably be corrected, which then the School should be entitled to respond to within a reasonable amount of time prior to the PEC meeting.
17. Section C.6.b: As written, this section is unclear. If it is intended to involve CSD in requiring the charter school to provide “required evidence of compliance” where none is required by the investigating agency or division, this should be stricken as outside the jurisdiction of the CSD or PEC. Where jurisdiction over compliance with a rule, law or provision is placed elsewhere other than PEC, that agency’s determination should be (and is) dispositive. The only time that the PEC should get involved with another agency’s findings/conclusion is when the agency has found a violation of law/rule that could justify charter revocation. In that instance, proceedings are as stated in the Charter Contract for revocation.
18. Section C.6.c and d: Should be stricken for the reasons stated in number 17 above.
19. Section C.7 will need to comport with the provisions for corrective action, improvement plans, and revocation that are stated in the Charter Contract. As currently written, we believe ambiguities and/or conflicts are present. At minimum, if the matter comes before PEC, the School must be given an opportunity to present a written response to any report of findings generated by CSD or other entity.
20. Section C.8: see number 19 above. In addition, there is no legal precedent for a decision by PEC that the “fiscal, overall governance, or legal compliance” of a charter school “is **unsatisfactory**” (the meaning of which is subjective and ambiguous). The Charter Schools Act

sets forth certain situations in which the PEC may act with respect to a charter; these provisions and procedures need to comport with the Act.

21. Appendix: note should be made that the list is not exhaustive.

We hope and intend that these comments are helpful to the PEC in its consideration of the revised Proposed Policy. We look forward to working with the PEC, its legal counsel, and its staff and appreciate the opportunity to provide this input. Finally, if additional changes to the existing revised Proposed Policy are proposed by the CSD prior to the date of the January PEC meeting, we respectfully request that we and the charter schools be given a copy as soon as possible in advance of the meeting, so that the meeting may be a productive one.

Sincerely,

MATTHEWS FOX, P.C.

By: 

Susan B. Fox

Cc via electronic mail: Katie Poulos, NMPED Options for Parents Division
Kelly Callahan/Greta Roskom, NMCCS
Susanne Roubidoux, Esq.
Beverly Friedman, NMPED
Clients

Poulos, Katie, PED

From: Daniel Barbour <dbarbour@theaskacademy.org>
Sent: Sunday, November 15, 2015 10:26 AM
To: Poulos, Katie, PED
Cc: Busse, Daniel
Subject: Re: Draft Written Complaint Policy and Protocol

I have reviewed the draft.

It states the CSD works for the PEC. While CSD can request documents and schools should provide, what are the limits schools are required to provide above and beyond what exists?

403(f)(vi) timely manner should be defined.

Unless, it could be a matter of fraud or criminal activity requiring immediate action, it appears the timelines are set for the CSD and PEC convenience. 30 day responses that must go to the governing board may not be sufficient for the schools governing board to consider without a special meeting.

On Fri, Nov 13, 2015 at 12:23 PM, Daniel Busse <dbusse@theaskacademy.org> wrote:

Take a look

----- Forwarded message -----

From: **Poulos, Katie, PED** <Katie.Poulos@state.nm.us>

Date: Fri, Nov 13, 2015 at 12:04 PM

Subject: Draft Written Complaint Policy and Protocol

To: PED-NM Charter State Schools <PED-NMCharterStateSchools@state.nm.us>, PED-NM Charter Local Schools <PED-NMCharterLocalSchools@state.nm.us>

Charter school leaders,

Attached is a proposed Draft Written Complaint Policy and Protocol that was presented to the PEC today. If adopted this policy and protocol would govern the processing of written complaints received by CSD regarding PEC authorized schools.

We are providing this for the input of both PEC authorized and district authorized schools in order to elicit the feedback of the entire New Mexico charter school community.

We will appreciate your feedback no later than December 4th. This policy matter will be considered by the PEC at their December meeting.

Thank you,

Katie

Katie Poulos

Director of Options for Parents

NM Public Education Department

300 Don Gaspar

Santa Fe, NM 87501

c: [\(505\) 469-0373](tel:(505)469-0373)

o: [\(505\) 827-6532](tel:(505)827-6532)

www.ped.state.nm.us

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Daniel P. Busse
General Manager
The ASK Academy
dbusse@theaskacademy.org
[505-891-0757](tel:505-891-0757)

--

Daniel P. Barbour
Assistant General Manager
The ASK Academy
505-401-7704
www.theASKAcademy.org

1380 Rio Rancho Blvd #361
Rio Rancho NM 87124

THOSE WHO SAY IT CANNOT BE DONE SHOULD NOT BE DOING IT

Poulos, Katie, PED

From: Traci Filiss <tfiliss@taosacademy.org>
Sent: Wednesday, November 18, 2015 1:03 PM
To: Poulos, Katie, PED
Subject: RE: Draft Written Complaint Policy and Protocol

Hi Katie,

Here are my thoughts. Disclaimer☺: I may not be correctly interpreting what is written in the proposal, so if that is the case please just let me know. Thanks

I have a few questions: What is the procedure PED uses for complaints against District schools? Does it align to the oversight from CSD? Is the procedure the same for all departments at PED (ie SPED, Bilingual, licensure, etc) having oversight of charter school operations? Do complaints funnel through CSD from these departments presently? How would this change?

It would be my expectation that complaints are address at the school level and exhaust present internal policy for resolution prior to PED/CSD involvement. If no resolution can be made at the school level, the next step in the process is with PED/CSD. I do not see this process written in the proposal for changes.

I may be mistaken in reading the proposal from CSD, but it seems the process starts with CSD. I am not comfortable with CSD or PEC providing a "middle man" approach to complaints made without exhausting the school's complaint procedure from the onset.

Please let me know if I am not reading the proposal correctly.

*Traci Filiss
Taos Academy Charter School
Director/Superintendent
110 Paseo Del Canon West
Taos, NM 87571
575-751-3109*

Increase joy and effectiveness everyday.

From: Poulos, Katie, PED [mailto:Katie.Poulos@state.nm.us]
Sent: Friday, November 13, 2015 12:05 PM
To: PED-NM Charter State Schools <PED-NMCharterStateSchools@state.nm.us>; PED-NM Charter Local Schools <PED-NMCharterLocalSchools@state.nm.us>
Subject: Draft Written Complaint Policy and Protocol

Charter school leaders,

Attached is a proposed Draft Written Complaint Policy and Protocol that was presented to the PEC today. If adopted this policy and protocol would govern the processing of written complaints received by CSD regarding PEC authorized schools.

We are providing this for the input of both PEC authorized and district authorized schools in order to elicit the feedback of the entire New Mexico charter school community.

We will appreciate your feedback no later than December 4th. This policy matter will be considered by the PEC at their December meeting.

Thank you,

Katie

Katie Poulos
Director of Options for Parents
NM Public Education Department
300 Don Gaspar
Santa Fe, NM 87501
c: (505) 469-0373
o: (505) 827-6532
www.ped.state.nm.us

Driving student success in New Mexico by supporting excellent authorizing practices and charter schools that provide innovative, quality education.

Poulos, Katie, PED

From: Kirk Hartom <khartom@sslc-nm.com>
Sent: Saturday, November 14, 2015 5:48 AM
To: Poulos, Katie, PED
Subject: Re: Draft Written Complaint Policy and Protocol
Attachments: 777 FINAL SAMS LEARNING CONFLICT RESOLUTION 09092015.pdf; 777 FINAL SILC LEARNING CONFLICT RESOLUTION 09092015.pdf; 777 FINAL SPLC LEARNING CONFLICT RESOLUTION 09092015.pdf; 777 FINAL SSLC LEARNING CONFLICT RESOLUTION 09092015.pdf

Hi Katie,

Complaint Policy looks good. I have no complaints. (That's funny).

Attached are our SW Schools Conflict Resolution Policies approved by our Boards in September.

These grievance processes have served me, and schools I have been affiliated with, well for years.

In the event that you receive a complaint for one of our schools you can refer them back to the in-house SW Learning Center Conflict Resolution Process.

Also, as a side-bar, if you need any ideas or docs for anything you are doing at CSD let me know as I probably have something from the Hawaiian Charter Schools Commission from my work there.

Thanks,

Kirk

From: Poulos, Katie, PED <Katie.Poulos@state.nm.us>
Sent: Friday, November 13, 2015 12:04 PM
To: PED-NM Charter State Schools; PED-NM Charter Local Schools
Subject: Draft Written Complaint Policy and Protocol

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Attached is a proposed Draft Written Complaint Policy and Protocol that was presented to the PEC today. If adopted this policy and protocol would govern the processing of written complaints received by CSD regarding PEC authorized schools.

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Poulos, Katie, PED

From: Flip Rowen <flipsr@comcast.net>
Sent: Friday, November 20, 2015 10:57 AM
To: Poulos, Katie, PED
Cc: Cathy Bullock
Subject: Proposed Complaint Protocol Comments
Attachments: PEC Proposed Complaint Protocol comments.pdf

Katie

I have reviewed the proposed complaint protocol and added some comments in the form of sticky notes to the attached document. My comments come from the perspective of what is happening at the CEPi Charter School and my military background. Specifically, the draft did not address the issue we are experiencing at CEPi. In the military we are mandated to follow our chain of command – unless that chain is the problem. I did not sense that the draft covered this issue (just as we are experiencing at CEPi.)

Thank you for allowing me the opportunity to assist you in this matter.

Flip Rowen

_____ Information from ESET NOD32 Antivirus, version of virus signature database 12599 (20151120)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

Background:


Statutory Provisions:


22-8B-12 (D) - A chartering authority shall monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, *including conducting appropriate inquiries and investigations*; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

22-8B-17 - The "charter schools division" is created in the department. The division shall:

- A. provide staff support to the commission;

Contractual Provisions:

Section 4.03 (f)(iii) - The Authorizer  shall conduct and/or require oversight activities according to its policies and procedures to allow the Authorizer to fulfill its responsibilities under the Act, *including conducting appropriate inquiries and investigations, when warranted.*

Section 4.03 (f)(vi) - The Authorizer *shall notify the School in a timely manner* of *unsatisfactory performance* on the organizational, academic or financial frameworks, or *any other factor that may result in an improvement plan, corrective action, nonrenewal or revocation as determined* during the annual site visit or *at any other time* 

Proposed PEC/CSD Written Complaint Policy and Protocol

Section 8.11 (a) - The School must establish a process for resolving community, parental, and other public complaints. The process shall afford the opportunity for the complainants to be heard by the head administrator and/or the School's governing body. The governing body shall be the final determiner of the complaint unless the complainant has additional legal remedies or requirements provided by law.

Section 8.11 (b) - The Authorizer agrees to notify the School of all written complaints about the School that the Authorizer receives. The notification shall be made immediately or as soon as is practicable under the circumstances, but not later than 10 business days after its receipt by the Authorizer. The notice shall include the substance of the complaint, taking into consideration any complainant's request for anonymity. The School shall respond to the complaint according to its prescribed complaint procedures and shall notify the Authorizer through its legal counsel of the School's response to the complaint within the timeframe prescribed in the notice of the complaint.


Policy:

- A. Upon receipt of any written complaint, the Charter School Division (CSD) will evaluate the complaint within 10 days to determine if the complaint contains any allegations of statutory, regulatory, or contractual non-compliance.
- B. If a complaint does not contain any allegations of statutory, regulatory, or contractual non-compliance, CSD will provide the school that is the subject of the complaint with notice of the complaint within 10 days of CSD's receipt of the complaint.
 - 1) The notice of the complaint shall:
 - a) describe the substance of the complaint,

Proposed PEC/CSD Written Complaint Policy and Protocol



- b) include a copy of the complaint, redacted as necessary to protect a complainant's request for anonymity, and
 - c) require the school to notify CSD of the school's response to the complaint, which must comply with the school's established process for resolving community, parental, and other public complaints, no later than 30 calendar days after the notice of complaint is sent to the school.
 - 2) If the school does not timely provide CSD notification of the school's response to the complaint, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.
 - 3) The school's response and all correspondence including the initial complaint and CSD's notice of complaint shall be kept in the school's public file, with redactions necessary to protect the identity of students.
- C. If a complaint contains one or more allegations of statutory, regulatory, or contractual non-compliance, CSD will provide the school that is the subject of the complaint with notice of investigation of non-compliance within 10 days of CSD's receipt of the complaint.
- 1) The notice of investigation of non-compliance shall:
 - a) specifically identify the statutory, regulatory, or contractual provisions that the school is alleged to be violating,
 - b) specifically identify the documents, evidence, and information the school must provide,

Proposed PEC/CSD Written Complaint Policy and Protocol


- c) include a copy of the complaint, redacted as necessary to protect a complainant's request for anonymity, and
 - d) require the school to provide the requested documents, evidence, and information no later than 10 business days after the notice of investigation is sent to the school.
- 2) A school may request an extension of the time to respond in writing. CSD shall grant  extension of no more than 5 business days.
- 3) If the school does not timely provide CSD the requested documents, evidence, and information, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.
- 4) Within 30 calendar days of the receipt of the documents, evidence, and information, CSD shall notify the school of its determination if the alleged violations are confirmed or disproved, or if more information is needed. If more information is needed, CSD may request additional information using the same protocol as used to initially request information or may conduct either an announced or unannounced site visit.
- 5) The school's response, all documents, evidence and information gathered as part of the investigation, and all correspondence including the initial complaint and CSD's notice of investigation of non-compliance shall be kept in the school's public file, with redactions necessary to protect the identify of students.

Proposed PEC/CSD Written Complaint Policy and Protocol

6) If the CSD finds the allegations are confirmed and the charter school's fiscal, overall governance or legal compliance therefore appears *unsatisfactory*:

- a) The CSD will present the findings in a written report, no later than  calendar days after the findings are identified, to:
 - i. the charter school's head administrator, and
 - ii. the president of the governing body.
- b) The charter school, through its head administrator or governing body, shall respond to CSD with evidence to address the CSD's findings within 15 calendar days of receiving the written report.
- c) If the charter school's response does not provide sufficient evidence to change CSD's findings that the charter school's fiscal, overall governance or legal compliance appears *unsatisfactory*, CSD shall notify the school that CSD will be presenting its findings in the written report, along with the school's response, to the PEC as part of the "Schools of Concern" agenda item at a PEC meeting no later than  calendar days after CSD receives the school's response.
- d) At the PEC meeting at which the CSD presents its findings, the PEC determine whether the charter school's fiscal, overall governance or legal compliance is unsatisfactory and what action should be taken to correct the charter school's fiscal, overall governance or legal compliance. In making this determination, the PEC shall consider:
 - i. all correspondence regarding the complaint and allegations to or from CSD,

Proposed PEC/CSD Written Complaint Policy and Protocol

- ii. the CSD report,
 - iii. the initial complaint with the allegations of non-compliance,
 - iv. reports from other regulatory divisions or agencies, or law enforcement agencies,
 - v. the charter school's response to CSD,
 - vi. all written evidence provided by the charter school to the CSD at least 7 days prior to the PEC meeting, and
 - vii. the charter school's presentation during the PEC meeting.
- e) If the PEC determines that the charter school's fiscal, overall governance or legal compliance is unsatisfactory, the PEC may, depending on the severity of the identified non-compliance:
- i. notify the governing body of the charter school that it must provide the CSD with evidence that it has remedied the problem no later than 7 days prior to the next PEC meeting;
 - ii. require the governing body of the charter school to work with CSD to develop and execute a corrective action plan that sets forth time frames for compliance, submit that plan no later than 7 days prior to the next PEC meeting, and present the plan to the PEC for approval at the next PEC meeting; or
 - iii. issue a notice of intent to revoke the charter and schedule a revocation hearing. 

Response to draft Written Complaint policy and protocol Policy

- Statutory Provisions: I would eliminate the underlining and keep the italics for areas that you want highlighted. Doing both seems a bit redundant. The fact that
- Part A: This seems reasonable as per the statutory provisions.
- Part B: This does not seem to allow for autonomy of the schools.
 - If a complaint is filed with CSD, and it is the first complaint ever received, the complaint should be simply forwarded (using the notice of complaint described) for the school to follow its own internal procedures. CSD should simply keep the complaint on file along with the date and nature of complaint.
 - Upon receiving a second complaint about the school, the complaint should be forwarded as described above with the addition of a notice of action should a third complaint be received.
 - If a third complaint is received, the procedures as outlined in part B should be followed.

By jumping directly to the directives in part B as written, it seems as though CSD is acting more of a "big brother" rather than a monitoring and supporting agency. A step process as I described above allows the school to take care of their own business should a complaint be launched. It happens even to great schools once or twice. However, more than that is a pattern and should have some follow up with CSD. This allows for autonomy and gives CSD substantial opportunities for documentation should it be needed.

- Part C: This section seems as though it is thorough and addresses contract violations that need to be immediately addressed through CSD.

Other comments/concerns:

I see that clear timelines are given for school responses with consequences for failure of timely action, but what I do not see is what happens if CSD is not timely in their responses. I would like to see in the policy what recourse the school has if CSD does not comply with its own policy. This seems reasonable especially considering the possible revocation of a charter due to non-compliance of statutory, regulatory, or contractual items.