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BEFORE THE PUBLIC EDUCATION COMMISSION

STATE OF NEW MEXICO

TRANSCRIPT OF AUDIO-RECORDED PROCEEDINGS  
PUBLIC MEETING  
WORKING SESSION  
December 11, 2013

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300 Don Gaspar  
Santa Fe, New Mexico

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A P P E A R A N C E S

COMMISSIONERS:

- MS. CAROLYN SHEARMAN, Chair
- MR. EUGENE GANT, Vice Chair
- MR. VINCE BERGMAN, Secretary
- MS. MILLIE POGNA, Member
- MR. JAMES CONYERS, Member
- MR. TYSON PARKER, Member

STAFF:

- MR. TONY GERLICZ, Director, Options for Parents
- MS. KELLY CALLAHAN, Director,  
Charter Schools Division
- MS. JULIA BARNES, Contract Staff Attorney to the CSD
- MS. ABBY LEWIS, Attorney for the PEC
- MS. BEVERLY FRIEDMAN, PED Liaison to the PEC
- MR. ROBERT SANCHEZ, Office of PED General Counsel

1 (Transcribed portion begins.)

2 MS. BARNES: It's not talking about other  
3 times (inaudible). All we're talking about in this  
4 document is when she can appeal, when she can --

5 COMMISSIONER BERGMAN: Oh. You're not  
6 saying she's going to review every document that  
7 this Commission negotiates. Are you saying that if  
8 someone -- if the negotiation process does not  
9 work --

10 MS. BARNES: Correct.

11 COMMISSIONER BERGMAN: -- and someone  
12 appeals, that --

13 MS. BARNES: Correct.

14 COMMISSIONER BERGMAN: -- then, the  
15 Secretary becomes involved? Is that what you're  
16 saying?

17 MS. BARNES: Yes, yeah. But on this  
18 document. We're just saying -- we're not talking  
19 about every time she can appeal.

20 Patti had a comment that -- so, the third  
21 item, she suggested moving the description of the  
22 Secretary down to the Appeals section, which might  
23 make sense to you. It makes sense up here to me,  
24 because she's not a party to the contract. But she  
25 is a person that could be involved in the contract.

1           So, we put it up here at the top, but it  
2           could move down to the Appeals section, which is  
3           kind of what you were just saying,  
4           Commissioner Bergman.

5           COMMISSIONER BERGMAN: So, you're  
6           referring to something I don't see. You said you  
7           put it at the top. I don't see the Secretary  
8           mentioned anywhere here, what we're talking about on  
9           Page 12.

10          THE CHAIR: (Inaudible) Page 7.

11          MS. BARNES: Seven.

12          COMMISSIONER BERGMAN: Oh, okay. So,  
13          you've got the Secretary's --

14          MS. BARNES: Because we talk about the  
15          authorizer -- we talk about who the -- the school  
16          and the authorizer. And then we talk about the  
17          Secretary. She's not a party, but she hears appeals  
18          from this contract. It could go here. It could be  
19          moved to the Appeals section. I don't care.

20          THE CHAIR: Well, Abby, what was your  
21          thinking when you suggested moving it?

22          MS. LEWIS: I didn't.

23          MS. BARNES: Patti Matthews suggested it.

24          THE CHAIR: Oh, I'm sorry.

25          MS. LEWIS: I think it has the same legal

1 effect either way. It's just a stylistic choice.

2 MS. BARNES: It's almost -- it's just  
3 where you prefer it.

4 COMMISSIONER BERGMAN: Fine. I could care  
5 less. It's fine (inaudible). Or, if you guys want  
6 to move it, move it.

7 THE CHAIR: As somebody said to me, Susan,  
8 "Is this a hill you want to die on?"

9 MS. FOX: No, we're just commenting. Some  
10 of them are minor, and I'll (inaudible).

11 THE CHAIR: I just love the phrase. I've  
12 wanted --

13 MS. BARNES: I said the other day, "Is  
14 this a sword you're going to die on?"

15 And Tony said, "It's either a hill you die  
16 on or a sword you fall on."

17 THE CHAIR: Yeah.

18 MS. BARNES: But I said, "When you fall on  
19 a sword, you die."

20 COMMISSIONER BERGMAN: Sometimes you fall  
21 on the sword, you die on the hill.

22 MS. BARNES: Exactly. Commissioner  
23 Bergman understands me, Tony. Somebody understands  
24 me.

25 MR. GERLICZ: I'm glad that lawyers don't

1 understand it all.

2 MS. BARNES: That was just the English  
3 major; correct? And the American Studies major.

4 THE CHAIR: So, let's leave it there,  
5 okay? All right. Hope that's satisfactory.

6 MS. BARNES: Section 1.01, Page -- go  
7 ahead.

8 COMMISSIONER BERGMAN: We were talking  
9 about 12, which is in front of me, where I have my  
10 notes here. But we might as well talk about  
11 essential documents, because you remember, I've  
12 raised that issue. There's no mention of the  
13 application in your draft here --

14 MS. BARNES: It's -- it's com- --

15 COMMISSIONER BERGMAN: -- which says the  
16 application is an essential document. It is an  
17 essential document.

18 MS. BARNES: It's coming up. I'm going to  
19 wait, because it's coming up in green. It's here.

20 COMMISSIONER BERGMAN: All right.

21 THE CHAIR: It is.

22 COMMISSIONER BERGMAN: Let's see if you  
23 follow though. If this is in the contract, if the  
24 word "application" isn't going to be there, a lawyer  
25 is going to say, "Well, it doesn't apply to the

1 application."

2 THE CHAIR: Right.

3 COMMISSIONER BERGMAN: That's why I'm  
4 raising this issue, okay?

5 MS. BARNES: Okay. We're going to get  
6 here, so...

7 COMMISSIONER BERGMAN: Okay.

8 MS. BARNES: I'm just walking through it.  
9 The next section, the "Purpose" section. I'll tell  
10 you why this section got put in here is because one  
11 of the purposes of this contract is to get  
12 everybody's -- on the same page about what a charter  
13 school does.

14 So, this is from the law. And we put it  
15 in there because it is the "Purpose" section of the  
16 Charter School Act. It's just a restatement of the  
17 law.

18 Of course, you don't have to have it in  
19 there. Patti Matthews' comment is that you don't  
20 actually need it in here. She's right. But I like  
21 it in there. I just think that it is from our law.

22 So, I'm talking about Section 1.01 on  
23 Page 7 and 8. I leave it in, because I think that,  
24 from our goal of getting everyone's feet on the  
25 ground in one document, it helps. But it sure

1 doesn't matter.

2 COMMISSIONER GANT: I prefer to leave it.

3 THE CHAIR: Leave it?

4 COMMISSIONER BERGMAN: Yeah, I had no  
5 notes there. I had no notes there. I must have  
6 been happy.

7 MS. BARNES: 1.03. Patti Matthews has a  
8 comment. Her comment is that there is a section  
9 on -- in the law that talks about oversight. We  
10 have just put our own words in here. And it's just  
11 to set the tone of the contract.

12 And she just says, "Either put the law in,  
13 or reference the law."

14 As you might know, we reference the law  
15 all through here. So, I think that's a very good  
16 comment, to put a reference. But if I had my way --  
17 and I may not; I'll say that, and you can say, "You  
18 aren't a Commissioner," and you'd be right -- I  
19 would leave it in this and put a cite.

20 COMMISSIONER GANT: Yes.

21 THE CHAIR: Commissioner Bergman?

22 COMMISSIONER BERGMAN: Actually, we jumped  
23 over one of my comments just now.

24 MS. BARNES: Okay.

25 COMMISSIONER BERGMAN: 1.02.

1 MS. BARNES: Okay.

2 THE CHAIR: Let's do 1.03, and then we'll  
3 come back.

4 MS. BARNES: Sorry.

5 COMMISSIONER BERGMAN: (Inaudible) don't  
6 forget. (Inaudible.)

7 THE CHAIR: Is there (inaudible) with  
8 putting a citation in 1.03?

9 COMMISSIONER BERGMAN: Yeah, I'm fine with  
10 that.

11 THE CHAIR: Okay.

12 MS. BARNES: Okay. Back to Commissioner  
13 Bergman.

14 COMMISSIONER BERGMAN: Okay. I'm going to  
15 read this here. "The authorizer's role would be to  
16 evaluate the school's outcomes rather than establish  
17 the process by which the school achieves the outcome  
18 sought."

19 That is fine. I have no problem with  
20 that. My note was --

21 MS. BARNES: Okay.

22 COMMISSIONER BERGMAN: And I'm setting the  
23 foundation for all the time I talk about goals -- is  
24 it says, "To evaluate a school, we must have goals  
25 that will make the school be accountable."

1 Thank you very much. That's not  
2 (inaudible) where you're going to put a contract.  
3 But that's my thought, that I'm setting the  
4 foundation from when we're going to talk about the  
5 goals.

6 THE CHAIR: So, you want to add a  
7 sentence?

8 COMMISSIONER BERGMAN: Oh, no, I don't  
9 want to add that.

10 MS. BARNES: Are you sure?

11 COMMISSIONER BERGMAN: That's just my  
12 thought, that --

13 THE CHAIR: Oh, okay.

14 COMMISSIONER BERGMAN: -- explain -- we  
15 can't evaluate a school if there's no goals in the  
16 application. And we're not talking about the  
17 application right there. But that's my comment.

18 MS. BARNES: So, we could -- but we could  
19 add a sentence, and that would be --

20 MS. LEWIS: I've added it later, down.

21 MS. BARNES: Okay.

22 MS. LEWIS: Okay.

23 MS. BARNES: Abby, will you just let me  
24 know which one of these things it is?

25 MS. FOX: Madame Chair, Commissioners, and

1 Julia, Patti actually also had a comment on  
2 Section 1.02. And again, it's not a hill we want to  
3 die on, but it just suggests that when you're  
4 talking about the authorizer's role, drop a footnote  
5 in, the statutory citation.

6 MS. BARNES: That's -- let me pull it.

7 THE CHAIR: I'm having a hard time hearing  
8 you.

9 MS. FOX: Oh, I'm sorry. I'm not in front  
10 of the microphone.

11 But Patti's comment on 1.01 was to add a  
12 statutory citation, also, to the provisions of the  
13 statute that reference the authorizer's role.

14 MS. BARNES: That -- we can do that.

15 COMMISSIONER BERGMAN: (Inaudible.)

16 THE CHAIR: Anybody opposed to that?

17 MS. BARNES: Sorry, Susan. Let me know if  
18 I've missed any of --

19 MS. FOX: That's fine.

20 MS. BARNES: I tried to put every single  
21 one in. So, add a statutory cite to authorizer. I  
22 will tell you, as well, that the roles of the  
23 authorizer from the statute are put in detail in  
24 this contract. Again, it's another place where we  
25 talk about -- we put the law in. So -- but we can

1 add it here, too.

2 MS. FOX: We can just reference that  
3 section later on. You know, "See Section" --

4 MS. BARNES: I think I'm going to cite the  
5 law. Because the law is what all the footnotes are.  
6 And I think -- I can tell you that when I am looking  
7 for a citation, I have been pulling up this contract  
8 and finding the footnote. It's quicker to me.

9 Abby's really fast at finding the law, but  
10 I have to start at the stupid beginning of that  
11 Charter School Act and read the whole thing until I  
12 trip over it.

13 Good. We're good with part of 1.03.

14 1.03, there is language that -- that -- I  
15 can't remember -- and Sue and Abby, you may need to  
16 tell me -- that we added, this -- it's in the last  
17 sentence. It says, "...if warranted, for  
18 statutorily denoted acts arising out of the  
19 operations of the school."

20 Patti has a comment about that phrase.  
21 Her comment is -- she says, "Are you referring to  
22 the grounds for revocation in 22-8B-6? If not, what  
23 other acts are referenced here?"

24 So, Abby, it's a legal question to me as  
25 to whether all the lawyers in the room -- I think

1 she felt that that phrase was a little bit  
2 ambiguous, and that she wants to cite 8, 22-8B-6,  
3 which is the section on revocation.

4 MS. FOX: I think she's just asking --

5 MS. BARNES: Are there others?

6 MS. FOX: -- what is meant, necessarily --  
7 I mean it could be 8B-6. I guess it could be 12.

8 MS. BARNES: And it could be more.

9 COMMISSIONER BERGMAN: Are you talking  
10 about that last sentence there under 1.03?

11 MS. BARNES: Yes. She's talking about the  
12 words "statutorily denoted acts." She wants  
13 clarification as to what is -- what specifically is  
14 intended. She found it to be a general phrase.

15 COMMISSIONER BERGMAN: Okay. Make that  
16 clarification. It does not -- we're not signing  
17 away some of our rights.

18 MS. BARNES: Well, I want Abby to address  
19 that.

20 MS. LEWIS: Well, I wanted to ask Sue. Do  
21 you know if Patti had a chance to look at my changes  
22 before she did her comments? Because I messed with  
23 this paragraph a lot, and I'm not sure if that would  
24 solve her question -- my comments are going to pop  
25 up at the top of the next page on this paragraph --

1 MS. FOX: Okay. Patti -- no. Patti's  
2 comments came in yesterday. Yours came in today.

3 MS. BARNES: Off of my draft. And that is  
4 one point I'd like to make sure everybody is aware  
5 is that several of the parties in the room haven't  
6 had time to respond to other people's comments.  
7 So -- and I will tell you that Patti, in her e-mail,  
8 suggested that we do another working draft. That  
9 would go to your point about, "Why do we have to  
10 rush?"

11 COMMISSIONER BERGMAN: And that -- and  
12 that -- that sounds extremely logical. Could you  
13 not just, say, put a comma there after the word  
14 "procedures, "per 22-8B-6," and solve that?

15 MS. BARNES: And 12, Maggie?

16 MS. LEWIS: Well, my -- and it's --

17 THE CHAIR: Yeah, let's go to Abby's  
18 comment.

19 MS. LEWIS: Changed the meaning of the  
20 paragraph.

21 THE CHAIR: (Inaudible.)

22 MS. BARNES: Okay. So, let's -- there's a  
23 lot on 1.03. So, let's walk through them, and then  
24 we can make sure.

25 COMMISSIONER BERGMAN: Okay.

1 MS. BARNES: Okay. There is a concept in  
2 this contract that there can be less -- there can  
3 be -- I don't know my right words here. I'm just  
4 going to use my words, and then somebody can correct  
5 me. But I'll say "less formal action," like an  
6 improvement plan, all of the way to revocation,  
7 where we revoke a char- -- not "we", but you --  
8 revoke a charter, because it's very serious and you  
9 want to revoke it right now.

10 So, you have -- there is that range of  
11 powers from -- you know, "There's a small problem,  
12 and we want an improvement plan," to -- all the way  
13 to, "Your school needs to shut down right now."

14 So, the words in this section -- is right  
15 here, it says -- and I think it's still in Abby's --  
16 yes. So, we talk about improvement plans in this  
17 section. We talk about corrective action, all the  
18 way to suspension or revocation. So, these three  
19 sentences basically, say, can go from not really  
20 serious to super-serious, and it gives those range  
21 of possibilities.

22 THE CHAIR: Okay. But I like -- I'm  
23 reading the first sentence, and I'm looking on  
24 Page 3 of the long document at the top, under "PEC  
25 Attorney Proposed Changes."

1           And it says, "Remove sentence,  
2 starting" -- actually, it's the middle of the  
3 sentence -- "Remove the words, 'in order to  
4 improve.'"

5           So, it's the phrase that's set off in  
6 parenthe- -- with commas.

7           MS. LEWIS: Yes.

8           THE CHAIR: And if you read the  
9 sentence --

10          MS. LEWIS: I removed the -- sorry. I  
11 removed the whole sentence.

12          MS. BARNES: The whole first sentence.

13          MS. LEWIS: So, I didn't bother to type  
14 out the whole sentence. But I recommended removing  
15 the whole sentence, not just the --

16          THE CHAIR: All right. So, actually,  
17 beginning with, "At the request...?"

18          MS. BARNES: No.

19          MS. LEWIS: No. What you're looking at is  
20 if all of my changes were accepted.

21          MS. BARNES: But I'll show you where that  
22 is, in the binder.

23          MS. LEWIS: The binder. Here we go.

24          MS. BARNES: On Page 123.

25          MS. LEWIS: So, this was the sentence, and

1 I recommended taking it out.

2 THE CHAIR: Oh, I see.

3 MS. LEWIS: So, that's why mine starts  
4 here.

5 THE CHAIR: Okay. Then I --

6 COMMISSIONER BERGMAN: (Inaudible) that  
7 whole sentence, then?

8 MS. BARNES: Yeah.

9 THE CHAIR: I suggest that we look at the  
10 binder.

11 MS. BARNES: Yes. So, Commissioner --  
12 Bergman --

13 THE CHAIR: On Page 13.

14 MS. BARNES: -- your draft that you made  
15 notes on, she took out --

16 COMMISSIONER BERGMAN: Yeah. I have it  
17 right here, and it still has that same sentence.

18 MS. BARNES: Yeah, it does. She took that  
19 sentence out. And because I accepted all of her  
20 changes, the draft that's in front of you -- you can  
21 see why this was hard to present to you.

22 COMMISSIONER BERGMAN: (Inaudible) that  
23 sentence.

24 MS. LEWIS: (Inaudible.)

25 THE CHAIR: Okay. I'm happy with that.

1 MS. BARNES: Okay. So, Abby has suggested  
2 taking out the first sentence. The -- the -- so  
3 back to a more minor point. Just telling you that  
4 what got changed from 2012 to 2013 is the word -- is  
5 that the authorizer would need to request an  
6 improvement plan. A school doesn't have any  
7 obligation to just wake up one morning and decide to  
8 do one. But if you ask the school to do an  
9 improvement plan, they would have to do it.

10 I will tell you -- and Sue can speak for  
11 herself -- but a lot of the comments that we heard  
12 from Sue and Patti are making sure that a charter  
13 school knows when it's supposed to act, okay?

14 So, the sentence is out, and the word  
15 "improvement plan is requested by the authorizer."  
16 Are we good?

17 MS. FOX: Julia, my only comment on this  
18 section is that it's kind of surplusage, because all  
19 of these things are described in much more detail as  
20 we go on.

21 MS. BARNES: Well, I agree with you.

22 MS. FOX: And it's introductory, and  
23 it's --

24 MS. BARNES: It's introductory. And this  
25 goes back to Patti's comment, which is, "It doesn't

1 have to be there." But charter school leaders --  
2 not charter school leaders -- but charter governing  
3 bodies are often volunteers that -- they're like  
4 Commissioner Parker, that are like, "Oh, my gosh.  
5 What did I get myself into?"

6 So, we tried -- and maybe Robert  
7 [verbatim] may not agree with this -- we tried to  
8 make it kind of user-friendly for people. So, I  
9 agree. Sometimes it's repetitive. But that's why  
10 we did it.

11 MS. FOX: As long as they're consistent.  
12 That's why I'm -- (inaudible.)

13 MS. BARNES: Correct. I think they're  
14 consistent, and you can let us know.

15 Okay. So, yes, we're all in agreement to  
16 remove the sentence that Abby removed?

17 THE CHAIR: Yes.

18 COMMISSIONER BERGMAN: (Inaudible.)

19 MS. BARNES: Okay. And there's one I'm  
20 going to come back to at the top of the last page.  
21 But -- okay. The next one in green, I have  
22 designated in green, because, in my opinion, it  
23 raises a somewhat larger issue.

24 Let's see. But, Abby, did you put  
25 designee in the attorney -- yeah. So, Abby,

1 throughout the contract, has put in the phrase,  
2 "authorizer or its designees."

3 COMMISSIONER BERGMAN: Where did that  
4 exactly get put?

5 MS. LEWIS: I put it throughout, where it  
6 was -- where it was applicable. What we had before  
7 was a very broad definition of "authorizer" that  
8 ended up potentially with a lot of other staff  
9 there. So I narrowed that definition to be it's the  
10 chartering authority, you all, or your designee,  
11 meaning you could reach out to CSD staff and  
12 designate. You could reach out to me and designate.

13 COMMISSIONER BERGMAN: (Inaudible.)

14 MS. BARNES: Go ahead.

15 COMMISSIONER BERGMAN: I hear you. It  
16 sounds like I'm jumping forward; I'm not. But what  
17 I have in 2.01 is talking about this very thing.

18 MS. BARNES: And I have it in 2.01 again.

19 COMMISSIONER BERGMAN: And I'll read this.  
20 It says, in 2.01 -- there's red letters here that  
21 says, "This Commission, CSD staff, or any person  
22 designated by the Commission is generally an  
23 authorizer." That makes the CSD an authorizer. I  
24 don't like that language.

25 MS. LEWIS: (Inaudible.)

1 MS. BARNES: So, Abby has corrected that.

2 COMMISSIONER BERGMAN: (Inaudible.)

3 MS. LEWIS: (Inaudible.)

4 MS. BARNES: Let me tell you that one of  
5 Patti's comments is -- so, Abby says it can be the  
6 authorizer or someone the authorizer designates.  
7 But it doesn't tell you, for example, who exactly is  
8 designated.

9 One of Patti's comments in your Section 2  
10 is that the contract ought to be clear who's  
11 designated. So, I think that Patti and Abby's  
12 philosophies about coming to this are slightly  
13 different. Patti is -- Patti's point, from Patti's  
14 perspective, is, "Be clear."

15 And Abby's point is, "You, as an  
16 authorizer, you could choose to designate Abby; you  
17 could choose to designate CSD."

18 If I might be allowed to say one thing  
19 about that, it could be possible that one day, Abby  
20 made a phone call to a school, and Tony made a phone  
21 call to a school. So, it could be a little bit --  
22 and they might not know that. They might both be  
23 saying, "Oh, yeah, we have to take care of that  
24 issue."

25 But because it's not clear, it could be

1 confusing. So, Patti's point is to be specific so  
2 it's not confusing.

3 Abby's point, although she's perfectly  
4 capable of speaking for herself, is to say,  
5 "authorizer or its designee," so that there is some  
6 flexibility.

7 That's the issue. It's first raised here.  
8 But, Vince, I agree with you exactly, that it's  
9 raised more specifically in just a minute.

10 COMMISSIONER BERGMAN: Would you agree  
11 with that, as long as it's "PEC and its  
12 designated" -- if we don't designate, there's not an  
13 authorizer?

14 MS. BARNES: Well -- and they're never an  
15 authorizer, but they're designated to --

16 COMMISSIONER BERGMAN: There's only one  
17 authorizer, yeah.

18 MS. BARNES: Yes, it's just you.  
19 There's -- it's who -- and, then, there needs to be  
20 clarity as to designation.

21 MR. GERLICZ: And I'm not sure that this  
22 is the appropriate place to talk about this. But  
23 does this imply that if the authorizer designates  
24 CSD to take some sort of action, what if that  
25 action -- again, this highlights the difficult role

1 that CSD finds itself in. What if that action may  
2 or may not be in conflict with the PED requirement?

3 MS. LEWIS: (Inaudible.) Having trouble  
4 thinking of (inaudible) situations.

5 MR. GERLICZ: Well, if the PEC designates  
6 the CSD to take some sort of action, because I'm an  
7 employee of the PED, my wont is to check it out with  
8 the higher-ups in the PED and to say that the PEC  
9 has requested that CSD take such action. But that  
10 may or may not be congruent with or consonant with  
11 what the PED wants to do. And that, I can easily  
12 see happening.

13 MS. LEWIS: And this is a topic that has  
14 come up, because, unfortunately for us, the statute  
15 designates you "staff support" without defining what  
16 the heck that means. So, I imagine that there will  
17 absolutely, in a scenario moving forward, be that  
18 issue that -- be an issue that comes up, in which  
19 case it may be more appropriate for the Commission  
20 to then designate me, for whatever it is that you  
21 end up in conflict about. That's why I wanted that  
22 broad -- their broad ability to designate.

23 MS. BARNES: So, if I also might add --

24 MR. GERLICZ: But --

25 MS. BARNES: Well, let me just say another

1 place that this might come up. And it's one of the  
2 documents that we have set out to talk about. You  
3 provided an MOU with some changes and asked, last  
4 meeting, for CSD to respond. It's on the agenda,  
5 and it's one of the documents to talk about. It  
6 talks about this same thing. What are you -- what  
7 are you asking -- when are you designating CSD to  
8 act?

9 MS. FOX: If I could just step on that,  
10 Madame Chair and Commissioners, if there is -- my  
11 question was going to be, if there's going to be a  
12 designation for somebody to act at a particular  
13 time, if it's the PEC, they would -- you would have  
14 to meet and make that designation in a public  
15 meeting and all that, which might impair your  
16 flexibility. If there's an MOU out there that's  
17 going to address that, then maybe that's -- maybe  
18 that'll solve an issue.

19 But from the school's standpoint, it gets  
20 a phone call that says, "Do this," it puts the  
21 school in a position of saying, "Well, do you have  
22 the authority to tell me to do that?"

23 And, so, the more that -- from our  
24 perspective, the more we can get this pinned down, I  
25 think the -- the more nimble we'll all be able to be

1 to react to certain situations.

2 THE CHAIR: So, are you -- is the  
3 discussion here about defining who the designees  
4 would be? Is that where we're trying to go here?

5 MS. FOX: It's our position that that  
6 would be preferable in the contract, up front, so  
7 that we know, all of us know, who's authorized to do  
8 what; if that's not possible, then maybe an MOU.

9 MS. BARNES: That you have a copy of or  
10 something?

11 THE CHAIR: That can clarify, yeah.

12 MS. BARNES: And then, Commissioners -- I  
13 think Mr. Sanchez wants --

14 MS. LEWIS: I -- my goal, because in  
15 January, we're going to look at all the procedures,  
16 as well as that little green book we always talk  
17 about -- I would like to see about setting up a  
18 system where the -- where the Executive Committee  
19 has been delegated the ability to delegate to avoid  
20 exactly what you're talking about, where every time  
21 we needed delegation, we needed to have everybody  
22 here. So, there are other procedures that will help  
23 this along that I had in mind.

24 MS. FOX: Okay. That was just a point I  
25 wanted to make.

1 THE CHAIR: I rather shy away from  
2 defining who designees might be. I mean, in my own  
3 mind, I'm pretty sure I think I know who they are.  
4 But what if we leave out somebody that, sometime, we  
5 need them? So -- yes.

6 SPEAKER: Madame Chair, if I may, because  
7 it's a working session, offer what perhaps is a  
8 middle place or a common ground? What about  
9 language saying "authorizer or the duly nominated  
10 designee"? And that gives you enough language. I  
11 think, to ensure that whatever procedure, however  
12 formal or informal, has been followed. That's the  
13 "duly" part. And then the nomination gives a little  
14 more formality.

15 THE CHAIR: Are you talking about  
16 nominated during a meeting?

17 SPEAKER: No, no, "nominated" as in  
18 "naming."

19 THE CHAIR: As in naming.

20 SPEAKER: Or you could say, "identified,"  
21 "selected," any of those words or adjectives would  
22 work.

23 MS. FOX: Or "named."

24 THE CHAIR: Not we shall (inaudible), if  
25 we don't name them.

1 COMMISSIONER BERGMAN: Yeah, it sounds  
2 pretty restrictive to me. And I've been sitting  
3 here trying to think of what we might ask CSD to do  
4 that would give them a problem. We've already given  
5 them an MOU on the closing. We've given them an MOU  
6 on the corrective action plan. I can't imagine what  
7 else we'd be asking them to do anyway.

8 THE CHAIR: Well, as far as one of us  
9 calling up a school and saying, "Do this," that has  
10 never happened, and it's not going to happen.

11 MS. LEWIS: Well, never say "never."

12 THE CHAIR: Well, I shouldn't say --

13 MS. BARNES: But you're going to do it --

14 THE CHAIR: But it has never happened.  
15 I'll put it that way.

16 MS. BARNES: But you're going to do it  
17 through a designa- -- you do it only through a  
18 designee, you're saying? Tony calls schools all the  
19 time.

20 THE CHAIR: Yeah. Tony does, but we  
21 don't.

22 MS. LEWIS: You have, of course, the  
23 statutory authority to pick up the phone and talk to  
24 any school that you'd like to, at any time.

25 THE CHAIR: Right.

1 MS. LEWIS: So, I don't want to. I would  
2 advise against restricting that.

3 THE CHAIR: Right. Right.

4 MS. BARNES: Okay. So, a potential middle  
5 ground to me is to keep -- and anybody in this room  
6 can disagree with me, because the green sections are  
7 sections that we've stumbled over a lot; so, I'm not  
8 trying to say I've got any answers; I just had the  
9 green color -- is to take Abby's language, but to  
10 ensure that we really do clear up these bigger  
11 issues about delegation to the CSD, because it's an  
12 ongoing question.

13 COMMISSIONER BERGMAN: See, my original  
14 thing was just that the CSD is designated here as an  
15 authorizer, and they're not. And I just saw some  
16 other language in that same sentence that makes it  
17 worse, as far as I'm concerned. It says, "Any  
18 person designated by the Commission or CSD."

19 MS. LEWIS: I took that out.

20 COMMISSIONER BERGMAN: So, that's gone,  
21 too?

22 MS. LEWIS: It's gone.

23 COMMISSIONER BERGMAN: That's my only  
24 concern with this section is that we are the  
25 authorizer. Nobody else is the authorizer, and

1 nobody else designates an authorizer.

2 MS. BARNES: Then that language needs to  
3 be clear, because that, I think no one is objecting  
4 to. No one want- --

5 THE CHAIR: That's gone.

6 COMMISSIONER BERGMAN: So, that's gone.  
7 I'm done.

8 THE CHAIR: How about this? Let's leave  
9 it the way that it is suggested here in the green  
10 and the way that it has been changed here in our  
11 copy in the book. If we need more clarification,  
12 then let's do an MOU.

13 MS. BARNES: Well -- and we have an MOU  
14 that talks about it. It'll make what I was saying  
15 this morning, is -- when we were on the phone,  
16 when -- when you start to look at all of these  
17 documents as a group, you start to see how it fills  
18 in all the little gaps. So, the MOU starts to make  
19 more sense, once this language is set that way.

20 THE CHAIR: And I think it certainly would  
21 clarify and help Commissioner Bergman's concern and  
22 mine, and -- I'd like to leave the language as it is  
23 proposed in the green here, as it has been added  
24 (inaudible).

25 MS. BARNES: Added to the document. Got

1 it.

2 THE CHAIR: Okay.

3 MS. BARNES: Okay? Good. A couple more  
4 on 1.03. You can see why this is the hardest  
5 document, because we're only in the 1's.

6 Abby, the words that you took out,  
7 "serious" and "formal," they were just almost like  
8 adjectives or something? So, you just went to what  
9 the words in the statute were?

10 MS. LEWIS: Right. I just felt that those  
11 were limiting on the PEC's ability to do what they  
12 can under the statute. So -- and I didn't want to  
13 get into defining "serious" and defining "formal"  
14 and --

15 MS. BARNES: What those words mean. So --  
16 okay. So, in the document in front of you, which is  
17 Abby's changes accepted, those words are taken out.  
18 So, Commissioner Bergman, in the document that you  
19 reviewed, the words are still there, but she struck  
20 them.

21 Okay -- okay. I'd like to go back to this  
22 "statutorily denoted acts arising out of the  
23 operations of the school," back on the page before,  
24 just to finish up 1.03.

25 So, the conversation, again, is a similar

1 tension between Sue and Patti presenting the view of  
2 the school to have clarity about what we mean, and  
3 the PEC's desire to not forget about anything and  
4 not waive any rights.

5 So, Patti was requesting, I think, clarity  
6 as to what that means. We could define it as  
7 22-8B-6 and 12. Sue, I'm going to ask you a  
8 question in a second, so --

9 MS. FOX: Okay. Sorry.

10 MS. BARNES: 12 is another section talking  
11 about revocation. So, it's another section talking  
12 about revocation. So, it's another section that --

13 THE CHAIR: Are you saying clarify here  
14 and in 12?

15 MS. BARNES: No. I'm saying we would put  
16 two citations, one to 22-8B-6 and one to 22-8B-12.

17 MS. FOX: In Section 1.03?

18 MS. BARNES: In Section 1.

19 THE CHAIR: But Patti only refers to 8B-6.

20 MS. BARNES: I know. But Abby raised 12.  
21 So, that's an example of where you might forget some  
22 things, so --

23 MS. FOX: And I agree that's --

24 THE CHAIR: (Inaudible) we're being so  
25 specific, and Patti overlooked one. Abby has found

1 another one. Are there others that we're  
2 overlooking?

3 MS. FOX: No, I don't think it's an  
4 overlooking. I think Patti is making sort of  
5 overall comments in a relatively quick fashion, as  
6 opposed to --

7 THE CHAIR: I'm just saying, should we  
8 hold off on that specific inclusion until we're  
9 absolutely sure that we have all -- all the --

10 MS. FOX: In my opinion, it's 6 and 12  
11 that come into play here, but --

12 MS. LEWIS: And other applicable law --  
13 (inaudible) we've done a lot throughout to  
14 (inaudible) catchalls.

15 MS. BARNES: Somehow with all my stacks --  
16 Beverly passed out the laws, if you wanted to take a  
17 look at it. I've lost the --

18 COMMISSIONER BERGMAN: I've got it right  
19 here. 22-6 [verbatim] is -- I had it a second  
20 ago -- 12 most definitely talks about revocation,  
21 non-renewal. And I'm sure 6 has the word revocation  
22 in the title, too. Let's see.

23 THE CHAIR: So, if we cite those two and  
24 then add, "and our applicable law," would that take  
25 care of our concern?

1 MS. BARNES: Or, we could say, "i.e." in  
2 the footnote, for example, 6 and 12? That means --  
3 says, "Here's two examples." Either way.

4 COMMISSIONER BERGMAN: In the header on 6,  
5 I don't see the word "revocation" mentioned. I'm  
6 not sure why she picked up on 6.

7 MS. BARNES: We're still in Section --

8 THE CHAIR: 1.03.

9 MS. BARNES: -- Section 12-8B-6. Did you  
10 want to see where that -- what she's talking about?  
11 She's talking about -- for example, (L) gives you  
12 the ability to deny an application. That's probably  
13 what she's referring to.

14 MS. FOX: She's asking for clarity here.  
15 And that's basically all. And I think that's --  
16 didn't we talk about this earlier? Are we just  
17 going to drop a footnote?

18 MS. BARNES: To 6 and 12.

19 COMMISSIONER BERGMAN: Yeah, along with --  
20 yeah, as long as that doesn't -- (inaudible) we're  
21 not talking about, since you mentioned (L)  
22 specifically -- limiting what -- changing what -- we  
23 can't change what's in the statute, yeah.

24 MS. LEWIS: Well -- and we may. Who  
25 knows? The legislature may add things. So, I think

1 a phrase like "and all applicable laws" will save us  
2 from having to come back and change this when the  
3 legislature (inaudible).

4 MS. FOX: As amended or whatever.

5 MS. LEWIS: Yeah.

6 COMMISSIONER BERGMAN: Yeah, I'll leave  
7 that to you guys, the lawyers.

8 MS. FOX: And, then, Julia, there is a  
9 little typo in Section 1.03 in the second line. It  
10 says, "or to address issues that of concern." I  
11 think we need an "are" in there: "...that are of  
12 concern."

13 MS. BARNES: Okay.

14 MS. FOX: Sorry.

15 MS. BARNES: How there can be a typo after  
16 this many reviews? I don't know. We were kidding  
17 Sue, because she found "princi-ples" and  
18 "princi-pals." And how we missed that, I don't  
19 know.

20 Okay. 1.04. Again, this is -- it's right  
21 below 1.04, actually. 1.04, the school will drop in  
22 the history of the school, how many times it's been  
23 renewed, whatever. And it's the sentence on the top  
24 of Page 9 of Abby's draft that I handed out, the  
25 clean document. And I'll tell you, Patti just had a

1 stylistic change.

2 In a contract, you set out these recitals,  
3 and then you say, "Now, therefore....," and then you  
4 start the contract. That's what this sentence at  
5 the top of Page 9 is intended to do. Abby thought  
6 it should go higher. I say we leave it. I just --

7 MS. FOX: It's just a stylistic comment.

8 MS. BARNES: Stylistic. Okay.

9 THE CHAIR: Let's leave it. The fewer  
10 changes, the better.

11 MS. BARNES: The next -- okay. So, now,  
12 we're moving on to Commissioner Bergman's and my  
13 favorite section, 2.01.

14 COMMISSIONER BERGMAN: That's correct,  
15 yeah.

16 MS. BARNES: Again, it's so interesting to  
17 me how different people bring different comments,  
18 which I really appreciate.

19 Patti's comment is that the statute --  
20 and, Abby, I know that you've looked at this  
21 before -- talks about governing body, governing  
22 board, or council. This is a statement only a  
23 lawyer could love. But I think we should choose  
24 one. Her vote is "governing body." I'm sure that I  
25 put in this language, because I don't think they

1 call themselves a governing body. I think that  
2 people think they're a governing board. I don't  
3 really care.

4 THE CHAIR: Standardization would be nice,  
5 though, because there is -- seems like every  
6 application comes through with different wording.

7 MS. BARNES: So, which is your preference?

8 THE CHAIR: I love boards --

9 MS. BARNES: Governing board.

10 THE CHAIR: -- myself.

11 MS. FOX: I don't actually like "board,"  
12 because, then, it kind of gets into the school  
13 board, the district school board thing --

14 MS. LEWIS: What does the statute say?

15 MS. FOX: -- which is a separate statutory  
16 section.

17 MS. BARNES: The statute says "governing  
18 body."

19 MS. FOX: Governing body.

20 MS. BARNES: According to Patti, who's  
21 usually right.

22 COMMISSIONER GANT: It says, at 22-8B-7B.

23 MS. LEWIS: So, that's what I would --  
24 just to mirror the statute.

25 THE CHAIR: A "body" instead of a "board,"

1     huh? We've got some high-level stuff (inaudible)  
2     here.

3             MS. BARNES: We could say "governing  
4     body," defined as "governing board," and we can give  
5     Commissioner Shearman her preference.

6             THE CHAIR: I -- whatever.

7             MS. BARNES: Somebody tell me.

8             MS. CALLAHAN: 5.1 and 5.2 refer to  
9     "governing body" in the title.

10            MS. BARNES: Governing body?

11            MS. LEWIS: I'm just keeping in mind that  
12     there will be schools that might not have legal  
13     representation, and I want them to be able to match  
14     it up really easily with the statute.

15            MS. BARNES: "Governing body," it is.

16            MS. LEWIS: So that they don't somehow  
17     think that 5.2 doesn't apply to them or something.

18            MS. BARNES: Okay. And here is where  
19     Patti made the comment that -- her comment actually  
20     had to do with ensuring that the school  
21     designated -- told you who they designated; so that  
22     there was clarity for someone like Tony when he  
23     called the school, he would say, "I want to talk to  
24     Principal blah-blah, who's been designated by your  
25     board to take action," so that he was -- he knew who

1 to call and who to speak to.

2 So, her comment was the opposite of what  
3 we just decided, to leave it a little bit undefined,  
4 authorizer, its designees; her comment was, "Are you  
5 sure, as a board -- as a Commission, you don't want  
6 to know who that person is?"

7 And, again, I think -- but my thought was,  
8 Sue, that what if there's different people  
9 designated for different things? And, goodness  
10 knows, people turn over all the time. So, what  
11 would you like to do on that?

12 COMMISSIONER GANT: I think it needs to be  
13 one person in the charter, one person. Because I  
14 brought into it -- you know, I worked with a school  
15 district down in Cruces. "Call somebody." Well,  
16 you call this person. You call this person. No, I  
17 want to talk to one person.

18 MS. BARNES: Tony, what's your experience  
19 with that? Do you have a problem knowing who you  
20 want to talk to? Or do you only talk to the  
21 principal?

22 MR. GERLICZ: No. We know our schools  
23 well enough, and they're small enough and nimble  
24 enough that it's not been a problem. But it's  
25 certainly the head of the school, the principal.

1 MS. BARNES: So, we could say the "head of  
2 school or their designee," in case they say, "Please  
3 talk to Joe Smith?"

4 COMMISSIONER GANT: (Inaudible.)

5 MS. BARNES: Okay. So, let's put -- let's  
6 use -- let's replicate the language, the "governing  
7 board."

8 THE CHAIR: No, it's the "governing body."

9 MS. BARNES: The body, the principal, or  
10 designee.

11 MS. CALLAHAN: And that brings up  
12 "principal, slash, head administrator."

13 COMMISSIONER GANT: Yes.

14 MS. CALLAHAN: So, that also needs to  
15 be --

16 MS. BARNES: Let's say --

17 MS. CALLAHAN: That's -- I think, again,  
18 it's the head administrator, lead administrator;  
19 because not all schools have principals, but all  
20 schools have a head administrator.

21 COMMISSIONER GANT: Correct.

22 MS. CALLAHAN: And, so, if you're going to  
23 do it the "governing body," then you probably want  
24 to do the administrator.

25 MS. BARNES: Because it's in the statute,

1 "or designee."

2 COMMISSIONER GANT: Correct.

3 MS. CALLAHAN: Yeah.

4 MS. BARNES: Okey-doke. I think we've  
5 taken care of the next one.

6 COMMISSIONER BERGMAN: Can I ask a  
7 question here on 2.01? Are we still on 2.01?

8 MS. BARNES: We're still on point-01. But  
9 on the top of Page 4, we took care of the second --  
10 the green books.

11 COMMISSIONER BERGMAN: Okay.

12 MS. BARNES: Abby took out the word  
13 "oversight" to track the statute.

14 COMMISSIONER BERGMAN: That's why -- I see  
15 a sentence in the document you sent me that's not in  
16 this one over here that said, "The CSD should be  
17 responsible for overseeing implementation."

18 MS. BARNES: She took that sentence out.

19 COMMISSIONER BERGMAN: You took it out.  
20 We all know they're in response, so why did we take  
21 it out?

22 MS. BARNES: Well, and that's going to be  
23 taken --

24 COMMISSIONER BERGMAN: We don't know that?

25 MS. LEWIS: My objection was to the word

1 "implement." So, I didn't feel like the sentence  
2 was (inaudible).

3 COMMISSIONER BERGMAN: So, it's gone now.  
4 That sentence is gone? Okay.

5 MS. BARNES: With that sentence gone, it  
6 puts more pressure on having an MOU. You could  
7 choose a different verb if you wanted to. I think  
8 the CSD wants very much to know exactly what it's  
9 supposed to do and exactly what it's not supposed to  
10 do. So -- but, again, that moves the conversation  
11 to the MOU.

12 Are we okay? We've lost one person  
13 already. One down.

14 COMMISSIONER GANT: I -- I was just  
15 thinking, she's sitting here. She's got a lot of  
16 work to do. And I think she needs to be free to go  
17 do whatever she needs to do.

18 MS. BARNES: Which we can say to anyone  
19 sitting in the room, so --

20 MR. GERLICZ: Thank you.

21 COMMISSIONER GANT: Sit down.

22 MS. BARNES: Tony's leaving?

23 Thanks, Beverly. You already know she  
24 does a wonderful job. And she does a wonderful job.

25 And here we are with these beautiful notebooks, and

1 we've got to replace all these documents.

2 THE CHAIR: Maybe she's used to it.

3 MS. FRIEDMAN: Yes.

4 MS. BARNES: We tried so hard, though.

5 MS. FRIEDMAN: We did.

6 MS. BARNES: We didn't want to replace  
7 any --

8 MS. FRIEDMAN: In the snow. In the snow.

9 MS. BARNES: In the snow, on a snow day.  
10 As my mom said, she used to go to school dragging a  
11 cello behind her in the snow, and didn't we feel  
12 sorry for her. So, we felt sorry for Beverly.

13 All right. No problem taking out the  
14 words "oversight," but, so, that that tracks the  
15 statute.

16 Okay. Then, taking out the CSD -- we've  
17 talked about that -- that puts more urgency on an  
18 MOU. But that line, which is out -- we will, then,  
19 though, Abby, put back in the charter that "The  
20 governing body shall" -- "or its designee" -- so,  
21 we'll put some kind of a sentence back there so that  
22 it's not -- actually, I'm more concerned about that,  
23 because you have a voluntary board of parents or  
24 whatever. And, you know, sometimes they meet;  
25 sometimes they may forget to meet. And we need a

1 designee, so that Tony knows who he's talking to.

2 All right. No problem on the next one.

3 All right. On 2.02, I think there's no --  
4 Patti says -- Patti says that we are being arcane  
5 [verbatim] in requiring mail, and that we should  
6 require electronic service.

7 I will say it's a good point. We --  
8 there's an issue I'm looking at right this very  
9 moment about that, whether -- what is notice.

10 So, do you want it to be electronic?  
11 Patti's practical problem, as well, is that people  
12 forget to do the notice this way, and that you don't  
13 end up giving the formal notice.

14 Sue, do you have an opinion on that?

15 MS. FOX: It depends on what -- I mean, it  
16 depends on what it's for. If it's -- if we're  
17 talking about the back-and-forth communications, I  
18 mean, I suppose it depends on what kind of notice  
19 you guys want.

20 MS. BARNES: Well, often, even with very  
21 formal action, those letters are being e-mailed now.  
22 So, I think it's almost all actions, but --

23 MS. FOX: Well, here's an example that we  
24 just had, Julia. And, that is, in one of our  
25 contracts that's already been executed, there's an

1 approval of contracts --

2 MS. BARNES: Right.

3 MS. FOX: -- that you all oversee. And I  
4 have e-mailed those to -- to you all, and saying,  
5 you know, "Please approve," or, "Please review," and  
6 that has been fine up to now. But if -- if there's  
7 going -- if someone's going to take issue that it  
8 wasn't mailed, we want to know that, so we know, in  
9 a particular situation, or in all situations,  
10 there's got to be mail.

11 MS. BARNES: Well, there's the reverse.  
12 Patti mailed the original documents. And she's  
13 going to have to send them again.

14 MS. FOX: (Inaudible.)

15 MS. BARNES: I know where I dropped them  
16 off, but that's the last I saw them.

17 MS. LEWIS: I hear Patti's point. I think  
18 the Uniform Electronic Transaction Act supports what  
19 she's saying. I'm concerned what you're concerned  
20 about. So, if we can add language that says, "And  
21 the sending party must receive notification from the  
22 recipient that they actually got it," or something  
23 of that --

24 MS. BARNES: Yeah, e-mail receipt or  
25 something.

1 MS. LEWIS: It's stuck in a -- right, it's  
2 stuck in a spam filter, or not distributed through  
3 the mailroom properly, or --

4 MS. BARNES: Are you comfortable with  
5 electronic, and, if so, we'll put the language  
6 from --

7 THE CHAIR: I'm comfortable with  
8 electronic, as long as it is the sender's  
9 responsibility to verify that they got a "Received"  
10 receipt from the recipient.

11 MS. BARNES: Okay.

12 THE CHAIR: Because if I don't get it, I  
13 can't ever say -- if I don't get it, I can't say, "I  
14 didn't get that."

15 MS. BARNES: You don't know that you got  
16 it. Got it. All right.

17 COMMISSIONER BERGMAN: And we all know  
18 where I stand on this issue. I like written  
19 documents. When the Internet goes down and your  
20 computer is crashed someday, and we have no  
21 computers and Internets anymore, and everything was  
22 done electronically, there would be no files for  
23 anybody to look at anything that's ever been done in  
24 this country. Just, that's my point.

25 THE CHAIR: Oh, yeah, they will. They'll

1 be up there in the cloud. We'll be able to get  
2 them.

3 MS. BARNES: Wherever the cloud is. So,  
4 I'm going to put in, I think, well, my notes say  
5 "electronic, with the sender sending a receipt."  
6 Why don't we say "and may be mailed"? Either way, I  
7 don't know if it makes any difference.

8 COMMISSIONER BERGMAN: I would have no  
9 problem with giving old-fashioned people like me an  
10 option. If they want to mail it, mail it. If you  
11 want to send it electronically, send it  
12 electronically.

13 MS. BARNES: So, give an option. No  
14 problem.

15 On the top of Page 5, Abby's already fixed  
16 the AG. So, I think we're good with that. She  
17 added the amended notice block.

18 MS. LEWIS: I put my -- (inaudible)  
19 Albuquerque or Santa Fe office. I put my Santa Fe  
20 office.

21 MS. BARNES: She fixed it.

22 THE CHAIR: Oh, okay.

23 MS. BARNES: We're on Page 5 of the chart.  
24 And we are on Page 10 of the -- the clean copy.

25 THE CHAIR: And 16 of the marked-up copy.

1 COMMISSIONER BERGMAN: Yes.

2 MS. BARNES: You guys are keeping up with  
3 me. I'm impressed.

4 Okay. Are we good? Do we need to take a  
5 break? I'm looking at Commissioner Parker. Like,  
6 how glazed over are your eyes?

7 COMMISSIONER PARKER: I'm with you guys.  
8 I'm good.

9 MS. BARNES: Okay. Next one is a big one.  
10 And, Commissioner Bergman, this really goes to the  
11 heart of some of your concerns. I think it's a  
12 great opportunity to have a conversation around it.

13 So, in Section 1.03, the Creation of  
14 Essential Documents, let me outline what I think the  
15 various conversations are, and everyone can add if  
16 they think that, as well.

17 I think we have a problem with the  
18 statute, which is primarily where I think some of  
19 this confusion comes up. The statute says -- I  
20 wish -- I'm probably going to use my own -- it says  
21 what has to be in the contract in Section 9, I  
22 think, Section 22-8B-9B(2). It says.

23 "The charter contract shall include any  
24 material term of the charter application, as  
25 determined by the parties to the contract."

1           So, that -- that is the citation for the  
2 thing that makes sense in my head.

3           Now, Commissioner Bergman, if I -- and  
4 he's really good at speaking for himself. But I  
5 hear him say often that he wants what people say in  
6 the application to matter. And one way to make that  
7 matter is to bring the whole thing into the  
8 contract. There -- and there is another statutory  
9 provision that Patti cited that is consistent with  
10 that, as well, under C.

11           MS. FOX: It's A.

12           MS. BARNES: A. So, under 22-8B-9A, it  
13 talks about, "The charter contract shall be the  
14 final authorization for the charter school and shall  
15 be part of the charter."

16           So, in my mind, there's a -- a conflict  
17 between A, that sentence I just read, and B -- B(2).  
18 What the contract -- as it is written right now, the  
19 way it works, is the parties are -- are supposed to,  
20 in the negotiations, bring in everything that  
21 matters into the material terms of the contract.  
22 So, under the section of the contract that matches  
23 up with B(2), you can bring in -- we can bring in --  
24 we can look at and bring in everything that matters.  
25 And during the negotiations, that's our job.

1           So, in my view, when Commissioner Bergman  
2 says, "I want you to deal with stuff that you put in  
3 your application," the process, to me, is let's talk  
4 about that during the contract negotiations. Let's  
5 get the -- what you said you were going to do into  
6 the contract.

7           Just -- if I can just make my pitch -- if  
8 we incorporate the old documents, I can't tell you  
9 how bad those documents are. And we just went  
10 through this with the charter school renewals, with  
11 the Charter School Division struggling with really  
12 bad, old documents. What -- what I like about this  
13 process is it cleans up and makes clear and makes  
14 improvements, so that if I am on the board of  
15 directors of -- on the governing body -- I can look  
16 at this, and I can know, "This is what I'm supposed  
17 to do."

18           So, I agree with Commissioner Bergman that  
19 it's important to talk about everything you want to  
20 talk about. The only -- and I'm not even sure if we  
21 disagree. But if we do, it's how we do that.

22           All I want to say is I want to fight hard  
23 for clarity. And I hear Sue and Patti saying it's  
24 really hard for their charter schools to know what  
25 to do and what's expected of them. And when we do

1 something like incorporate old, really bad  
2 documents, I just feel like we've brought back in  
3 the problems.

4 THE CHAIR: But let me clarify, at least  
5 in my own mind. You're talking about bad documents.  
6 And I understand some charter contracts, some  
7 charters from previous years are awful, really  
8 awful. But the documents that we're looking at  
9 right now, the applications that we're looking at  
10 right now, which are what Commissioner Bergman wants  
11 incorporated into the contract, they're not bad.

12 MS. BARNES: So, here's what -- again, I  
13 think it's a question of how.

14 One way to do it is, in the worksheet,  
15 take that -- and he referenced it as Section D of  
16 the application, of the renewal application. So we  
17 have -- one opportunity is within the worksheet,  
18 which we're going to negotiate the contract, cut  
19 everything from Section D and paste it into the  
20 worksheet, so that we talk about it.

21 That, to me -- and maybe there's a better  
22 way to do it. But what that does for me is it  
23 allows us to end up, at the end of the day, at the  
24 end of the negotiation, with a really good document.  
25 And the worksheet itself brings everything in.

1           So, that, Commissioner Bergman, when he's  
2 negotiating can say, "Oh, I remember this from your  
3 application. It's right here in the worksheet. You  
4 said this, this, this, this, and this. How are you  
5 going to address that?"

6           So, I want my cake and eat it, too. I  
7 want the clarity, and I want you to discuss  
8 everything that you should be discussing. That's my  
9 point.

10           THE CHAIR: May I say something before we  
11 go any further? I am going to ask Tony to please be  
12 sure that our review teams and our CSD personnel,  
13 whoever is working with proposed applicants, is  
14 very, very clear, on the application, that Section D  
15 does require goals, because, if you'll remember, we  
16 had -- I believe it was two applicants tell us they  
17 were told, "You don't have to" -- at least two --  
18 "You don't really have to put goals there. They  
19 will be negotiated in the contract."

20           And, so, wherever that disinformation is  
21 coming from, I'm asking that you make sure that  
22 doesn't happen again, because, that lack of goals is  
23 just tearing up their application. We deny on the  
24 basis of no goals, and then the whole mess opens.

25           And is may not be the applicants' fault.

1 They may have gotten -- either misinterpreted what  
2 they heard or whatever. But if you will take care  
3 of that one, please?

4 MR. GERLICZ: Certainly.

5 THE CHAIR: Commissioner?

6 COMMISSIONER PARKER: Measurable goals?

7 Is that --

8 THE CHAIR: Oh, yes, S.M.A.R.T. goals.

9 MS. BARNES: So, Commissioner -- and,  
10 then, I want to -- I want to talk about this in --  
11 because I really want to be clear about how these  
12 things fit. And I have some questions about that.

13 COMMISSIONER BERGMAN: Actually, I think  
14 everybody can hear me. If you can't, I'll use this.

15 Let me just read to you right out of  
16 12-8B-8B, "The charter school application shall  
17 include the goals, objectives, and student  
18 performance outcomes to be achieved by the charter  
19 school," period.

20 That cannot be misinterpreted to say that  
21 you're not supposed to have goals. And I repeat  
22 what the Chairman said. I heard those same people  
23 say they had been told that they didn't need -- and  
24 that's why we're in the mess we're in now, because  
25 some of these applications had no goals in them.

1           Goals are an essential part of the  
2 application process. And, as Commissioner Parker  
3 just stated, they have to be specific; they have to  
4 be measurable; they have to be ambitious; they have  
5 to be rigorous; and they have to say -- can I say  
6 "measurable"?

7           MS. LEWIS: (Inaudible) achievable, and  
8 time-bound.

9           COMMISSIONER BERGMAN: And reasonable;  
10 yeah, reasonable.

11          MS. BARNES: And time-bound.

12          THE CHAIR: And time-bound.

13          COMMISSIONER BERGMAN: And time-bound.

14          MS. BARNES: So --

15          COMMISSIONER BERGMAN: And we did not get  
16 that in a bunch of these applications, renewal  
17 applications. We didn't.

18          MS. BARNES: Okay. So, let's -- it's a  
19 big topic, so let me bring up a couple of more  
20 things. I mean, obviously, this says what you just  
21 said. And it's right here on the application.

22                 Renewals -- I don't know if that's a  
23 requirement for renewals. Maybe Sue is better with  
24 the statute right now. And here's where -- I'm not  
25 sure the statute is internally consistent.

1           Because, a school now needs to list -- the  
2 schools, right now, get renewed, or they are a new  
3 school. And we sit down and negotiate. Your -- and  
4 I'll just say how this appears in my head, so that  
5 we can see if -- if it's different from you.

6           The performance indicators, in my mind,  
7 result in goals that are S.M.A.R.T. goals, but  
8 they're not in addition to other goals. So, if  
9 there are goals somewhere in the application or  
10 goals somewhere in the renewal application that you  
11 want to require a school to comply with, in my mind,  
12 the way that that ends up in the contract is as a  
13 performance framework indicator.

14           And lots of the times that we've  
15 negotiated with the schools, we've said, "We'll show  
16 one year of growth, and that's going to be measured  
17 this way," and we make it -- and we say, "You're  
18 going to exceed the standard if it's 85 percent, and  
19 you're going to meet the standard if it's 50." And  
20 it's very tightly described.

21           It is also within a performance framework  
22 that is 17 pages long. You are the tenth strictest  
23 authoriz- -- the State of New Mexico is the tenth  
24 strictest law. We are doing a great job.

25           THE CHAIR: When we get to be No. 1,

1 please let us know.

2 MS. BARNES: You were 4. You dropped  
3 seven; I don't know how.

4 So, when I put this together in my mind,  
5 anything that you believe a school is promised to do  
6 needs to end up in the contract, one of two places:  
7 As a material term of the contract or in the  
8 performance framework.

9 The performance framework -- I don't know  
10 what that (inaudible).

11 MS. LEWIS: I made the false assumption  
12 that Beverly would understand we need a court  
13 reporter, because this is an open meeting. That  
14 turned out to be a false assumption.

15 So, we're recording so that we have the  
16 minutes, and we're complying with the Open Meetings  
17 Act. That's what all the flurry was about.

18 MS. BARNES: Oh, okay. So, Kelly's  
19 just -- and I will tell you, one thing that Patti  
20 thinks is that the law is not consistent between  
21 applications and renewal applications. So -- okay.

22 So, I think that the way it makes sense in  
23 my brain is everything a school promises to do ends  
24 up in the worksheet. Everything that you feel is  
25 important either becomes a material term or a

1 performance indicator, one of the two. And if a  
2 school says, "I promise this following goal," and  
3 you want it in the performance framework, then it  
4 should go there.

5 Right now, the performance framework says,  
6 on the academic side of it, "You're required to do A  
7 through F; we're going to look at your A-through-F  
8 grade. You're required to do one mission-specific  
9 indicator. And, School, you can do more."

10 It does not say, right now, "And if you  
11 set out a bunch of goals in your charter school  
12 application, you also have to put those in here."

13 So, I think we need to understand the full  
14 picture of the process and be really clear.

15 Can you just let me say one more kind of  
16 editorial thing, is -- these are my words -- I get  
17 worried that if a school sets out 30 -- and I can  
18 tell you one school, recent school, had 30. Thirty  
19 is too many. Somebody drafted too many goals, and  
20 they aren't S.M.A.R.T., and they weren't that.

21 Part of the negotiation process is saying  
22 to the school, "We're going to negotiate with you  
23 what's important."

24 So, I worry, to trap a school into a lot  
25 of bad goals. But at the same time, I understand

1 what the Commissioner is saying. I want it to be  
2 clear, though, because, right now, I think we're  
3 saying two different things. You're saying, right  
4 now, "Your goals matter, and they should be brought  
5 into the contract." And the performance framework  
6 says, "We're going to look at A through F and a  
7 mission-specific" --

8 THE CHAIR: Very insufficient; very  
9 insufficient, in my view. In my view.

10 COMMISSIONER BERGMAN: Amen. I raised the  
11 issue. If we have no goals in the application,  
12 which is how we evaluate whether that school knows  
13 what in the heck they're going to do, how do we deal  
14 with it if they haven't -- how do we know they have  
15 a plan to educate their kids, and how do we know  
16 they stand by what they want to do, if they don't --  
17 cannot formulate goals, themselves, that challenge  
18 them to educate those kids?

19 And I'm sitting here looking in 12, which  
20 was just referenced. And under J, under paragraph  
21 (1) -- this is under, "The charter school renewal  
22 application submitted to the chartering authority  
23 shall contain a report on the progress of meeting  
24 academic performance, financial compliance, and  
25 governance responsibilities of the charter school,

1 including achieving the goals, objectives, student  
2 performance outcomes" -- and the word "goals" and  
3 "outcomes" are (inaudible) goals and outcomes. If  
4 there's no goals, how do you do 12J(1)?

5 MR. GERLICZ: Commissioner?

6 MS. BARNES: Go ahead, Tony.

7 MR. GERLICZ: Commissioner Bergman, I hear  
8 you loud and clear. The difficulty comes in -- and  
9 I'm not sure how this message got convoluted for the  
10 new applicants. But they could set any goal they  
11 wanted to in their first year. For new -- and this  
12 conversation, I think, is germane to another  
13 conversation that we should have about new  
14 applications, because that's far different than  
15 renewal applications.

16 You can set all kinds of goals in a new  
17 application without any basis of what kind of  
18 students you're going to receive, what the State  
19 standard is at that particular time. But in this  
20 language, 12(J), when you're up for renewal, you  
21 have four years of data. And each of those years  
22 has gone through a negotiation performance framework  
23 process, so the goals and the indicators and the  
24 benchmarks are real and very S.M.A.R.T.

25 But in your first-year application, we

1 have this school that had 35 goals set. Is that  
2 what we want? Absolutely not.

3 There is so much else to look at in an  
4 initial application besides just the goals. Those  
5 goals do get hammered out in the performance  
6 frameworks in the negotiation process.

7 So, there will be goals. But we don't  
8 want to send the message to applicants, "Make sure  
9 you've got a lot of goals, and make sure that  
10 they're tied to your mission, and don't worry about  
11 achieving them, and don't worry about what students  
12 you're going to have, because you don't really know  
13 yet" -- and that gets -- that's what we don't want  
14 to do.

15 So -- so, that's, I think we -- my  
16 suggestion would be to park this conversation to  
17 another conversation about the initial application  
18 and that whole process.

19 But when it comes time for renewal, we've  
20 got tons of data.

21 MS. BARNES: Well, it's going to get  
22 better. I will tell you that renewing applications  
23 right now, their previous goals are zany.

24 THE CHAIR: Well -- but, again, I think  
25 you're looking at older -- older goals that weren't

1 S.M.A.R.T. Nobody said, "Pardon me. That's not a  
2 goal; that's a lesson plan. That's a pie-in-the-sky  
3 thought. You don't have any goals."

4 Believe me, you've got people saying right  
5 now, "You don't have any goals."

6 And if that application -- and if those  
7 people wanted to turn in 30 goals, I think they  
8 should have turned in 30 goals. That's my personal  
9 opinion. And when it got to us, we could have said,  
10 "You have too many goals here. Go back and redo  
11 it."

12 That's how I think people learn how --  
13 "Oh, that wasn't the right way. What is the right  
14 way?" Why people who come back the second time,  
15 even the third time, sometimes, have tremendous  
16 applications that cover all the bases, and they  
17 prove to us they do know what they're talking about.

18 MS. BARNES: And the reality in this  
19 process, though, is goals have to go somewhere. And  
20 they're probably going to turn into indicators,  
21 because the new law may be not that consistent all  
22 the way through. The way it works is through  
23 material terms of the contract and indicators.  
24 Those are your two places to put them.

25 And the indicators are set out -- I'm

1 not -- it probably is a S.M.A.R.T. goal fashion.  
2 But it certainly is the similar intent. So, if  
3 you're going to require them to take their goals  
4 that they set out and use them in this new document,  
5 they have to turn into indicators.

6 So, it's -- and the staff works very hard  
7 on the worksheet process to have them create  
8 indicators that make sense, that can be looked at  
9 and judged in the future.

10 So, they're not material terms of the  
11 contract, S.M.A.R.T. goals and indicators.  
12 S.M.A.R.T. goals are going to have to go one of  
13 those two places, which it can. It can hold it  
14 either place. But I think it's actually in the  
15 indicator section, because it's going to say, "We're  
16 going to give a Discovery short-cycle assessment  
17 test to all of our students. And it's going to be  
18 given in September and May. And they're going to  
19 show this achievement. And it's going to be based  
20 against the Discovery short cycle assessment, not  
21 numeric standards set by the company."

22 And if you score this -- so, that, you  
23 know, we can tell if they need it or not.

24 COMMISSIONER BERGMAN: You're talking  
25 about the indicator section in the contract, not in

1 the performance framework?

2 MS. BARNES: Well, the indicator section  
3 from the contract goes into the performance  
4 framework, so --

5 COMMISSIONER BERGMAN: As long as the  
6 goals are listed somewhere, and there are goals to  
7 list, your point is valid, as mine are. I -- we  
8 cannot evaluate a school if we don't have something  
9 to evaluate that school on, whether it's a new  
10 application --

11 MR. GERLICZ: That's a point.

12 COMMISSIONER BERGMAN: -- or a renewal.  
13 It's easier, as you noted with the renewal  
14 applications, because, yeah, you've got three years'  
15 data there or four years' data. I could look at  
16 every one of those 13 applicants this time, and I  
17 could immediately see points where, if I was writing  
18 a goal for that school, I could write a goal. "You  
19 need to -- you need to improve this part of the  
20 report card." "You need to get that F up to a C,"  
21 or something. That's an easy goal to write, yeah.

22 MS. BARNES: And that's -- well, that's --  
23 and that's going to be in the indicators.

24 MS. CALLAHAN: That's the conversation  
25 that needs to happen. And, you know, it's -- and I

1 think, just to make the point when we were putting  
2 together -- the renewal application is -- in  
3 statute, only requires looking back at the -- at the  
4 previous performance of the school. It doesn't  
5 contemplate the future. Whether it should or  
6 shouldn't, it isn't in the law.

7 And, so, I think what we need to do is, in  
8 this development, as we're going through this, is  
9 look at, you know, the performance worksheet for the  
10 contract, maybe putting that into the application  
11 itself, which then requires them to look at goals  
12 and to look at -- and, so, you take -- what we were  
13 hesitating to do in this renewal process is the --  
14 is assuming that by putting the worksheet in, that  
15 these schools would be approved. So, we didn't want  
16 to put the cart before the horse.

17 And I think that's where Julia's point is  
18 coming in, is that the worksheet is that negotiation  
19 tool. But perhaps, maybe, it would be -- you know,  
20 because it's not in the law one way or the other --  
21 that the worksheet, or some version of it, become  
22 that planning for the next steps.

23 Because we did it last year. We had them  
24 put the plans for the next steps, and it was -- it  
25 was messy. We still were running into problems.

1 So, forming what it is that you want to see, you  
2 want the school to know and be able to do, which is  
3 what a goal does, and put that worksheet -- so, then  
4 you actually have something when you are done with  
5 the approval process that then can be negotiated. I  
6 think that probably would align a little closer --

7 MS. BARNES: Yeah.

8 MS. CALLAHAN: -- with what is in the law.

9 MS. BARNES: One thing I think that Kelly  
10 and I both really like from the negotiation is what  
11 comes out of it is so much better than what was  
12 initially proposed. And that's cool.

13 So, to me, that's why it makes sense to  
14 say, "Here's what our goals are. Now we're going to  
15 negotiate it. Now we're going to make it be a  
16 strong and better process. Here's the final  
17 document."

18 And I'm not sure we're on the same page  
19 with that yet, Commissioner, but --

20 MS. LEWIS: Madame Chair?

21 THE CHAIR: Yes.

22 MS. LEWIS: This is a fall-back legal  
23 argument that I'm sure all the lawyers will  
24 recognize. But when we read (J) it doesn't say that  
25 the renewal application shall only contain. And it

1 doesn't say the renewal application may not contain  
2 goals. And there's a legal argument to be made  
3 either way.

4           However, there is no prohibition to  
5 requiring goals.

6           MS. BARNES: Well, that's -- that's --  
7 because there's no -- there's no problem with making  
8 sure that the applications include goals. And  
9 you're saying it's required, and you're saying it's  
10 required both in renewal and in a new application.  
11 My question is, then, what? What happens when we  
12 negotiate?

13           So, if they've given you 30 goals, do they  
14 now have a performance framework that has 30 -- it's  
15 already a 17-page document. You are already looking  
16 at a lot, lot, lot. I just want to emphasize that.

17           MR. GERLICZ: More than any traditional  
18 public school.

19           MS. BARNES: There's nothing we're not  
20 looking at.

21           COMMISSIONER BERGMAN: None of us ever  
22 said, "We want 30 goals." But (inaudible).

23           MS. BARNES: But if they put them in, are  
24 they stuck with them? That's the problem.

25           COMMISSIONER BERGMAN: Let me expand on

1 something that Kelly said there, and your remark  
2 there.

3 How about some kind of language, as a part  
4 of the performance framework, what you were talking  
5 about, that has the applicants, both the renewal  
6 applicants -- because you did it a little bit in  
7 your evaluation thing, anyway. You said, "Identify  
8 three things -- "

9 MS. BARNES: Right --

10 MS. CALLAHAN: Right.

11 COMMISSIONER BERGMAN: "-- that you feel  
12 need to be improved."

13 MS. BARNES: Right.

14 COMMISSIONER BERGMAN: Now, unfortunately,  
15 you made that optional; it should have been  
16 mandatory, in my opinion. But -- and then you put  
17 it here again, an optional. "Explain how you would  
18 then achieve those three."

19 Why not put some language in there that  
20 says, "Formulate goals that are the minimum, where  
21 you would like to start negotiating with the PEC,"  
22 something along those lines.

23 MS. BARNES: Well, that's exact- --

24 COMMISSIONER BERGMAN: And then we can go  
25 into the -- and then we at least have those goals in

1 the document that we're -- before we vote to approve  
2 a school. And then that becomes the basis for us to  
3 negotiate in the contract. And that doesn't mean we  
4 have to accept them. It doesn't mean they have to  
5 go up any higher.

6 MS. BARNES: Well, that's right.

7 COMMISSIONER BERGMAN: But we know, for  
8 the seven we've done so far, there have been lots of  
9 back and forth. We've gotten some of the applicants  
10 to go up. We've even -- on a couple of them, it was  
11 determined maybe they should go down a little bit.

12 MS. BARNES: And, so, Commissioner,  
13 that's --

14 COMMISSIONER BERGMAN: And, so -- and I  
15 have no problem with that process.

16 MS. BARNES: That is exactly what we've  
17 done.

18 So, for tomorrow, for any school that you  
19 approve, we have a packet. And we've done the most  
20 minimum amount of filling in the worksheet for them,  
21 so that they see how it works.

22 One of the sections is CSD staff went into  
23 their renewal application, cut out Section D and  
24 pasted it into the worksheet, so that it's there for  
25 that conversation to be had, exactly like you said.

1 THE CHAIR: Ladies and gentlemen, let  
2 me -- we've been at this for almost two hours. I am  
3 freezing. Could we take about a ten-minute break  
4 and see if we can get some heat turned on in here?

5 MS. BARNES: I know. Poor Commissioner  
6 Pogna looks like she's going skiing now.

7 THE CHAIR: Burn one of the chairs.  
8 Something. Commissioner Gant had a comment before  
9 we --

10 COMMISSIONER GANT: Right. I do take, for  
11 renewals -- you said, Tony, you don't know what  
12 students you're going to get. Well, you do. A  
13 student is a student. But they write the charter  
14 application and you read them.

15 I specifically want to -- the applicants  
16 are not going to look at these kids. "These are the  
17 type of kids we're going to be faced with. We're  
18 going to deal with these kids."

19 Those are the students, so, they can have  
20 goals.

21 MR. GERLICZ: Yeah. No, I'm not saying  
22 they can't have goals. I'm not saying that at all.

23 COMMISSIONER GANT: You said they don't  
24 know what students they're going to have. They do  
25 know.

1 MR. GERLICZ: They can have goals. They  
2 definitely can have goals. What I'm saying is that  
3 it's not a similar environment for an initial  
4 application as it is for a renewal application. You  
5 can expect goals for renewal applications that are  
6 based on history and results. For initial  
7 applications, they can attempt to write some goals.  
8 They can predict what they're going to do --

9 COMMISSIONER GANT: No. They need to  
10 write them. They need to write them.

11 MS. BARNES: And Tony agrees.

12 THE CHAIR: Yeah, I hear you. I'm  
13 freezing. We'll come back at 4:00, please.

14 MS. CALLAHAN: On that clock.

15 (Recess taken.)

16 THE CHAIR: Let's get back in the groove  
17 here and get started, if you would, please. Again,  
18 I apologize for interrupting, but we had to get some  
19 heat.

20 MS. BARNES: Can you call her, because  
21 this is going to come out of the blue?

22 MR. GERLICZ: We can generate our own.

23 THE CHAIR: Not enough. My feet are  
24 talking to me.

25 MS. BARNES: Can we take a second to check

1 in?

2 THE CHAIR: As long as you're not checking  
3 out.

4 MS. BARNES: So, I was just -- we were  
5 just talking at the break about a way to actually  
6 maybe not do a preliminary year contract with our  
7 new schools, but to do an extension, just like we're  
8 doing with the renewing schools, for them to  
9 negotiate a contract.

10 They have a requirement under law to  
11 commence -- that you have to give them permission to  
12 commence operations. So, it may be possible to do  
13 an alternative process with a new school for their  
14 planning year, rather than doing a contract. Two of  
15 the documents that we were going to look at today  
16 are for beginning, brand new schools.

17 Do you want to say something about that,  
18 Abby, or --

19 MS. LEWIS: Well, I had just suggested --  
20 because there were a lot of changes that I had made  
21 to the preliminary, or that Patti did. And I don't  
22 see any way of getting to that today. Tomorrow, the  
23 goal -- we need to address with the schools that are  
24 going to be renewed, if -- if we can extend that  
25 contract negotiation deadline, or if they're going

1 to insist on doing it within the statutory 30 days.

2 MS. BARNES: And as you know, we have not  
3 heard of any school that's going to require the  
4 30-day (inaudible.)

5 MS. LEWIS: My understanding is the  
6 purpose of the preliminary contract before was kind  
7 of a place-holder to meet that statutory  
8 requirement. Well, if we have the extension, we  
9 don't need the preliminary contract, and we can get  
10 the extension from the schools tomorrow instead of  
11 having nothing from them.

12 MS. BARNES: Right. And everything else  
13 that is required of a new school is in law  
14 elsewhere. So, the contract didn't -- it just -- it  
15 just said, "Let's" -- so, you're not losing  
16 anything.

17 COMMISSIONER BERGMAN: So, yeah, that's  
18 what I'm -- so, without a preliminary contract,  
19 there's enough statute --

20 MS. BARNES: Yes, you still --

21 COMMISSIONER BERGMAN: -- behind it that  
22 they still have to complete the planning year?

23 MS. BARNES: Yeah. And you --

24 COMMISSIONER BERGMAN: Go through all the  
25 stuff? And, then, why do it? Why waste time with a

1 preliminary contract?

2 MS. BARNES: Why waste time?

3 MS. CALLAHAN: Again, last year, we didn't  
4 know. When we know what we didn't know, we didn't  
5 know. And, so --

6 MS. BARNES: I like this. This is  
7 cleaner, clearer, better.

8 MS. CALLAHAN: And, so, it's -- I think  
9 it's redundant.

10 MS. BARNES: Because you already must  
11 allow them to commence operations, you know. Right  
12 before they start, you all meet. There's a public  
13 meeting, and you say "yes" or "no." Well, that's  
14 all of the requirements in the Planning Year  
15 Checklist, so --

16 COMMISSIONER BERGMAN: Okay.

17 THE CHAIR: Well, it certainly looks like  
18 a lot of work.

19 MS. BARNES: And it would make us feel  
20 like we got something done today.

21 MR. GERLICZ: And it's unnecessary work.  
22 It's unnecessary.

23 THE CHAIR: It's unnecessary. Absolutely.

24 MS. BARNES: Duplicative.

25 COMMISSIONER BERGMAN: So, figure out how

1 we can do that, then.

2 MS. BARNES: Well, I think we just did.

3 THE CHAIR: Okay.

4 MS. CALLAHAN: So, let me just clarify,  
5 since it's on the agenda for me tomorrow. For  
6 Explore and HSA tomorrow, are we saying, then, we're  
7 not going to do the preliminary contract?

8 MS. BARNES: Do you represent them, Sue?

9 MS. FOX: No.

10 MS. BARNES: Explore and HSA?

11 MS. FOX: Neither.

12 MS. LEWIS: So long as they'll sign the  
13 extension -- if they don't --

14 MR. GERLICZ: They're fine.

15 MS. CALLAHAN: They've already signed one  
16 extension, because the approv- -- the clock is  
17 supposed to start after you approve. So --

18 MS. BARNES: And I just forwarded to Patti  
19 and Sue the language of the extension, and they're  
20 hoping to get it back to us, so we'll get everybody  
21 to sign.

22 What we need to know, as a group, is if  
23 anybody wants to meet the statutory time frame.  
24 Because everybody's got to start jumping, including  
25 them, including -- and the new schools, too. So, I

1 think we're good. All right.

2 COMMISSIONER BERGMAN: As long as it's  
3 made clear to all these people, applicants, that  
4 "You're not going to have a preliminary contract,  
5 but you are statutorily bound to do all the planning  
6 year stuff."

7 MR. GERLICZ: It's on the checklist.

8 MS. BARNES: And we just -- and we just  
9 had a training --

10 COMMISSIONER BERGMAN: I understand that,  
11 yeah.

12 MS. BARNES: And we just had a training  
13 with them, and CSD has hired --

14 MR. GERLICZ: We have scheduled trainings.

15 MS. BARNES: We have scheduled trainings,  
16 and we just --

17 MR. GERLICZ: It's all in the works.

18 MS. BARNES: It's all in the works.

19 COMMISSIONER BERGMAN: Great.

20 MS. CALLAHAN: And so, again, tomorrow,  
21 Julia, then -- because the schools are coming  
22 expecting to sign a contract. So, we need to ensure  
23 that they --

24 MS. BARNES: Instead, they'll sign an  
25 extension.

1 MS. CALLAHAN: So, you're going to be kind  
2 of facilitating that, then?

3 MS. BARNES: Sure. I'll talk to you after  
4 this, what I'm facilitating.

5 MS. LEWIS: Kelly, do we -- I'm sorry. I  
6 can't remember. Do we already have dates set for  
7 negotiations with HSA and Explore?

8 MS. BARNES: Yeah, in June. They're on  
9 that chart.

10 MS. LEWIS: Okay.

11 MS. BARNES: And we put them in June,  
12 because we want to give new schools the longest  
13 period of time to have the most knowledge about what  
14 to negotiate.

15 MS. LEWIS: Okay.

16 MS. BARNES: So, that -- we -- those dates  
17 have worked for our side. And we don't know how  
18 they're going to work for everybody else's side.  
19 But we're also -- we've got plans on December 18th  
20 to finalize those. So, I think we're good.

21 Okay.

22 COMMISSIONER BERGMAN: I got us off the  
23 track. I know.

24 MS. BARNES: And I want to get back on  
25 your track here, because here's what I think is

1 Page 5 -- okay. So, here's what I'm understanding,  
2 Commissioner Bergman. And you tell me if I am  
3 understanding it correctly.

4 You want the applications for new schools  
5 and renewing schools to articulate goals.

6 COMMISSIONER BERGMAN: Yes.

7 MS. BARNES: Those goals are then part of  
8 what you will look at, under the statute, to assess  
9 those schools for approval of applications and  
10 approval of renewals. So, you will use that  
11 information for that part.

12 Then, for schools that you approve, either  
13 a new school or a renewing school, you want to also  
14 have that be the basis for the starting of the  
15 negotiation process. So, we will -- after you've  
16 approved a new school or a renewing school, we will  
17 cut out those sections and paste them into the  
18 worksheet, so we'll talk about them during the  
19 back-and-forth? Okay.

20 THE CHAIR: No, I don't think so. I  
21 think, on the renewal, what you said was have  
22 them -- instead of answer those questions, "What  
23 three things, blah, blah, blah," do some --

24 MS. BARNES: Indicators.

25 THE CHAIR: -- indicators that would be

1 the basis for negotiation.

2 COMMISSIONER BERGMAN: To start the  
3 negotiation, yeah.

4 MS. BARNES: Okay. So, this year, since  
5 we didn't ask that question, we have goals --

6 THE CHAIR: But for new applications.

7 MS. BARNES: Okay.

8 THE CHAIR: We want solid, S.M.A.R.T.  
9 goals -- and those solid, S.M.A.R.T. goals -- and I  
10 believe, does it not, Tony and Kelly, say that those  
11 are first-year goals?

12 MR. GERLICZ: It doesn't say -- it doesn't  
13 say, no. It's a good thing to have goals. There's  
14 no question about that; nobody's disputing that.

15 THE CHAIR: I'm not asking wording in the  
16 application. Does it say "first-year goals"?

17 MS. BARNES: And I was going to look at  
18 the law.

19 MR. GERLICZ: I don't recall.

20 MS. BARNES: The law says -- and,  
21 Commissioner, let me just remind you, the next group  
22 of documents we're going to look at is the  
23 application. They're next up to bat. So, maybe  
24 January.

25 "The goals, objectives, and student

1 performance outcomes to be achieved by the charter  
2 school."

3 THE CHAIR: So, really, we're kind of  
4 doing this backwards, if we're going to work on the  
5 application, but we're already going to say, you  
6 know, "We want the goals part of the contract."

7 COMMISSIONER BERGMAN: We've got to talk  
8 about both, because I want some -- and I agree with  
9 you. I don't necessarily -- you've sold me on let's  
10 don't incorporate the entire application into the  
11 contract. Thank you very much. I know I can't get  
12 everything. I can't win every battle. So I'll lose  
13 that battle (inaudible).

14 MR. GERLICZ: In reality, Commissioner,  
15 you don't want some of these old goals incorporated  
16 in the new ones. Believe me.

17 COMMISSIONER BERGMAN: But, I also  
18 agree --

19 THE CHAIR: No, we're talking about new,  
20 brand new, applications for brand new schools, their  
21 goals.

22 MS. BARNES: And I love that conversation.  
23 And we've talked about that, about first-year goals.  
24 So I think that's a really interesting idea,  
25 because --

1 THE CHAIR: I thought that -- for some  
2 reason, I was thinking that's what it said.

3 MS. BARNES: I think that's a really  
4 interesting slant.

5 COMMISSIONER BERGMAN: And you said, for  
6 instance, dropping the goals into the material  
7 terms. Now, I would be satisfied with that if we  
8 then took that page you talked about cutting out of  
9 the application, whatever goals we could get into  
10 the application, whatever we all agree on at some  
11 point, then you could drop them into the  
12 materials -- I think I heard you say that.

13 MS. BARNES: Yes, either material terms  
14 or --

15 COMMISSIONER BERGMAN: As long as they're  
16 in the contract. And then somehow, we have to do  
17 something about this "essential" language, because  
18 it says those goals are not essential to the  
19 renewal.

20 MS. BARNES: Well, Abby -- Abby, I think  
21 fixed that. Did you?

22 COMMISSIONER BERGMAN: Do you think you  
23 fixed that?

24 MS. BARNES: Yeah, I think she did. All  
25 right. So --

1 COMMISSIONER BERGMAN: Because I thought I  
2 saw it in your -- see, but you left in here. But is  
3 not one of the essential --

4 MS. LEWIS: That's what we're saying, that  
5 the charter application is not one of the essential  
6 documents. We're going to take everything out of  
7 the application that is essential and put it into --

8 COMMISSIONER BERGMAN: That's probably  
9 what I just agreed to, then. Okay, yeah. I can  
10 live with that, yeah.

11 MS. BARNES: I'm pointing at Abby because  
12 there's a second sentence here. On Page 11 of  
13 Abby's draft, the clean draft, she has, under 2.03,  
14 "The charter is attached as a reference document,  
15 but is not one of the essential documents governing  
16 the party."

17 Next sentence, "The material provisions of  
18 the charter and the renewal application have been  
19 incorporated as part of the contract and are listed  
20 in Article VI below."

21 That's the material term. So, that's  
22 where that sentence says, "We are going to take  
23 everything that matters."

24 THE CHAIR: And where is a list of those  
25 things that matter?

1 MS. BARNES: The list of -- well, I want  
2 to say that Patti is pushing that language a little  
3 bit. Article VI of this contract is the material  
4 terms of the contract.

5 COMMISSIONER BERGMAN: The place where I  
6 know we have to list the material terms. That's  
7 where we'll drop --

8 MS. BARNES: It's Article VI.

9 COMMISSIONER BERGMAN: At least, if that's  
10 what everybody can agree to, drop --

11 MS. BARNES: Either.

12 THE CHAIR: Is it there now?

13 MS. BARNES: Yes, it's there now.

14 THE CHAIR: The goals from the initial  
15 application?

16 MS. BARNES: Well, you don't say --

17 THE CHAIR: Article VI is renewal.

18 MS. BARNES: No, Article VI is the  
19 material terms.

20 THE CHAIR: No, "X" is 10, isn't it?

21 MS. LEWIS: Uh-huh.

22 THE CHAIR: Okay.

23 MS. BARNES: So, this sentence assumes  
24 that we finished this document.

25 COMMISSIONER BERGMAN: Okay.

1 MS. BARNES: While we're drafting this  
2 document, we're going to take care of what you're  
3 wanting.

4 COMMISSIONER BERGMAN: Okay, great.

5 MS. BARNES: I'm just going to say one  
6 more thing, because we're so deep in the weeds right  
7 here.

8 It's either in the material terms, or an  
9 indicator in the framework, either one.

10 COMMISSIONER BERGMAN: Add a paragraph.  
11 Yeah, add a paragraph.

12 MS. BARNES: To either place.

13 COMMISSIONER BERGMAN: Yeah, add a  
14 paragraph or something in some section.

15 MS. BARNES: In some section. Okay.

16 Patti's comment, quite frequently  
17 throughout here, is she doesn't think we should  
18 always reference Article VI. And, Abby, I think she  
19 has a very good point, because we're saying every  
20 important thing is in Article VI, and she's saying  
21 it might also be in another section of that  
22 contract. So, I think that's a very -- I think we  
23 should take out the reference to Article VI.

24 MS. LEWIS: In 2.03?

25 MS. BARNES: Everywhere we say it. We

1 should say, "As listed in Article VI or elsewhere in  
2 the contract," or something, so that -- because she  
3 keeps saying, "Is article VI the only thing you're  
4 going to look at?" And that's not true; it's  
5 broader. So, she's raising a good --

6 COMMISSIONER BERGMAN: One of you lawyers  
7 would not sit there and say, "Oh, you didn't mention  
8 Article VIII, so you can't (inaudible) Article  
9 VIII." You wouldn't do that, would you?

10 MS. LEWIS: Never.

11 MS. BARNES: Sue wouldn't do that, but,  
12 apparently, Patti would.

13 COMMISSIONER BERGMAN: Susan wouldn't do  
14 that? And Patti wouldn't do that.

15 THE CHAIR: Patti is not here to defend  
16 herself.

17 MS. BARNES: We like to pick on Patti when  
18 she's not here. She's so much quieter when she's  
19 not here.

20 COMMISSIONER BERGMAN: Yeah, I agree.  
21 Take it -- or whatever.

22 MS. BARNES: All right. So, the language,  
23 as we drafted it, we're going to keep that. In the  
24 conversation, when we get to the new applications,  
25 we're going to make sure that we look at this issue

1 again and we make sure that we ask the -- I'm on  
2 Page 5. So, all of the green is all the  
3 conversation we've just had.

4 I feel so happy -- I often lose battles at  
5 my house, so to win battles here is a -- it's where  
6 I get my pats on the back.

7 Okay. So, no incorporating. Negotiation  
8 will include everything. And Abby's language is  
9 good. Good.

10 Honestly, that's a huge consistent -- how  
11 we're going to address this document, that clears up  
12 a lot.

13 Abby, on Page 6 --

14 MS. LEWIS: Uh-huh.

15 MS. BARNES: -- the next one was yours.  
16 And if you'll just outline what you did.

17 MS. LEWIS: Removed sentence? That one?

18 MS. BARNES: Yeah, remove the sentence.  
19 I'm going to go back to finding it here, though.

20 MS. LEWIS: The sentence read starts, "The  
21 decision to renew shall be based on..." blah, blah,  
22 blah. I took it out, because I felt that it limited  
23 what you could look at in renewals. I had page  
24 numbers, but --

25 MS. BARNES: You know what? It's -- I was

1 so worried that we'd lost all page numbers that I  
2 went back and took out page numbers.

3 MR. GERLICZ: It's Page 17.

4 COMMISSIONER BERGMAN: Yeah. Actually,  
5 it's at the top of my Page 17, the document you sent  
6 me, Julia. So, that's gone.

7 MS. BARNES: The decision to renew, I  
8 don't see that language.

9 COMMISSIONER BERGMAN: Second sentence.

10 MR. GERLICZ: It's in the binder, Page 17,  
11 first paragraph.

12 MS. BARNES: Yeah?

13 MR. GERLICZ: Top right.

14 MS. BARNES: Oh, I see. "The decision to  
15 renew the charter at the end of the term shall be  
16 based on this document and on data collected from  
17 the school performance."

18 Okay. Coming up, I'll give you a little  
19 highlight. One of Patti's comments is to really ask  
20 that we do say what the renewal decisions are going  
21 to be on. And it's, again, that push-me-pull-you,  
22 where you want the flexibility, and they want to  
23 know what they're going to be assessed. So, that  
24 tension is going to come up soon.

25 Did you want to talk about that now, or

1 did you want to wait until that comment comes up,  
2 Sue, or --

3 MS. FOX: Well, I just think that to the  
4 extent there is a push-me-pull-you, I think, really,  
5 I would urge the Commission to satisfy the schools'  
6 need for finality and clarity; because, otherwise,  
7 it becomes a due process issue that I would prefer  
8 to frankly avoid, if we can.

9 MS. BARNES: So -- so, Sue, I'm not going  
10 to -- you're so good at this. But I'm not trying to  
11 put you on the spot. But I guess I'm -- I guess I'm  
12 a little unclear what that would look like, because  
13 the Commission looks at the renewal application and  
14 the data presented and makes an assessment on that.  
15 And it's not like, if you get three "meets the  
16 standards," you're going to be -- it's not a  
17 check-the-box.

18 So -- and it's -- and the Commission has  
19 been doing it for years, which is they get the  
20 renewal applications, and they articulate why they  
21 take the action that they did.

22 So, I can see -- and many schools say to  
23 us, "Well, how -- how is this going to work? What's  
24 the formula for success?"

25 And you're raising the same point. But I

1 don't frankly know how the Commission answers that.

2 MS. FOX: Well, are we talking about this  
3 material elements of charter and renewal  
4 applications incorporated provision? Maybe I'm on  
5 the wrong section.

6 MS. BARNES: Yeah. On Section 2.03.  
7 Because Abby -- Abby was taking out this sentence,  
8 which starts to say --

9 MS. FOX: Right.

10 MS. BARNES: And she's taking it out,  
11 saying that she doesn't want the Commission limited.  
12 And I -- and later on, Patti raises, several times,  
13 "Well, please tell us how you're going to assess a  
14 renewing school."

15 MS. LEWIS: And that's also a procedure  
16 that I have in mind -- you know, I assume everyone  
17 can just read what I'm thinking, but that's  
18 obviously not a good idea. I have in mind to -- and  
19 I've advised the council -- the Commission -- that  
20 it would be good to think about maybe a weighting  
21 system, or -- so, this was written with that in  
22 mind, to develop a procedure for that to comport  
23 with the statute.

24 MS. FOX: Whereby the charter contract  
25 would be sort of the overweening document; right?

1 MS. LEWIS: To deciding renewal, you mean?

2 MS. FOX: Well, yeah. If there's a  
3 violation of something that's in that charter  
4 contract, right, that's a pretty clear -- that would  
5 be a pretty clear basis for renewal. I guess what  
6 I'm -- in my mind -- and maybe I'm not gluing into  
7 Patti's thoughts on this -- that's my problem.

8 MS. BARNES: I have heard you raise them  
9 in the past, and I've heard Cottonwood raise them.  
10 I've heard plenty of different organizations say,  
11 "How -- how are -- how is the contract, and in  
12 particular, the performance frameworks, going to  
13 tell us whether we're able to be renewed or not?"

14 So, every year, they're going to go, and  
15 they're going to check the box, Meets the standard,  
16 Falls far below the standard, Exceeds the standard,  
17 whatever, and there's -- and, so, there are these  
18 boxes that are checked.

19 Their question -- and I think Patti's  
20 question -- is, "Then what? What does that mean for  
21 renewal?"

22 COMMISSIONER BERGMAN: It's a body of work  
23 is what it is. I don't know how you can define the  
24 body of work. And you mention Cottonwood, for  
25 instance. Mr. Obenshain -- and we didn't even

1 discuss this -- raised issues in his session. And  
2 as part of what we have already talked about in  
3 the -- original application itself, a lot of the  
4 goals in there are five-year goals. It's the  
5 performance framework where the annual.

6 And Mr. Obenshain questioned that. "Well,  
7 we've got five-year goals over here; we've got a  
8 one-year goal over here. Which, and where, is the  
9 weight going to be put on that?"

10 And it's a body of work, which is what I  
11 said.

12 "You've got five-year goals here. We  
13 expect you to adhere to your five-year goals." Or,  
14 at least, I would. I said, "I can't speak for the  
15 Commission; I speak for myself."

16 "And over here, you have your one-year  
17 goals, and I expect you to adhere to your one-year  
18 goals."

19 MS. BARNES: So, to me -- and anyone can  
20 object to this -- I don't know that that's an issue  
21 to address in the contract, as -- as kind of outside  
22 of it in the renewing process. But that's at  
23 least --

24 MR. GERLICZ: It seems that we need to  
25 provide a structure, going forward with this new

1 amended Charter School Act, that will allow us, five  
2 years hence, to arrive at a decision, or to arrive  
3 at a recommendation to PEC to make a decision on  
4 renewal.

5 I worry about coming up with a formulaic  
6 approach to that process, because education doesn't  
7 work that way, necessarily. We have --

8 THE CHAIR: Well, you teach to the test.  
9 And everybody says that's wrong. And, so, we don't  
10 want them to teach to the evaluation instrument.

11 MR. GERLICZ: Unless the evaluation  
12 instrument is broad enough to incorporate multiple  
13 variables.

14 THE CHAIR: And that's what the  
15 application should be, as far as I'm concerned.

16 COMMISSIONER BERGMAN: I agree with you,  
17 yeah. If we put too much of this in concrete, then  
18 we have no flexibility. The schools have no  
19 flexibility.

20 MR. GERLICZ: Exactly.

21 COMMISSIONER BERGMAN: And as we saw -- as  
22 we all recognize, one class is a great class, and  
23 the next year's class is not a great class.

24 MR. GERLICZ: Exactly.

25 COMMISSIONER BERGMAN: There's no way you

1 can structure that. You just have to -- so, there  
2 has to be flexibility in what we do.

3 MR. GERLICZ: So, I -- this is a wonderful  
4 challenge for us educators to devise some sort of  
5 mechanism that combines accountability with that  
6 flexibility, enough to make a robust recommendation.

7 And I think, in the charter world, we have  
8 even more, because we have a mission. And we have  
9 governance, and we have the financial frameworks  
10 that traditional public schools are not analyzed on.

11 So, we have a lot of additional data that  
12 we can -- and I just think that's going to be one of  
13 our tasks in the Charter School Division  
14 (inaudible).

15 COMMISSIONER BERGMAN: Fortunately, the  
16 Legislature said you've got to put it in the  
17 contract. So, now, that's what we're talking about,  
18 how do we do that, yeah.

19 MS. BARNES: I don't think it has to be in  
20 the contract. I mean, I think -- it says that you  
21 have --

22 MS. FOX: The grounds for renewal are  
23 statutory.

24 MS. BARNES: The grounds for renewal are  
25 statutory. And the protocols and procedures, you

1 have -- it says that you have to do that. But  
2 that's all of these other documents that we're going  
3 to be reviewing into the spring, the site visit form  
4 and -- so, I guess I'm -- I guess bottom line is I  
5 think Abby's sentence can be taken out. It doesn't  
6 necessarily have to be -- and -- I don't know. Sue,  
7 if you have a strong objection to that?

8 MS. FOX: I don't have a strong objection.

9 MS. BARNES: Okay. Going on, the next  
10 one.

11 THE CHAIR: Wait a minute. You're  
12 agreeing that that sentence needs to come out?

13 MS. BARNES: Yes.

14 THE CHAIR: Remove the entire sentence?  
15 Okay.

16 MS. BARNES: Are you okay with that?

17 THE CHAIR: Yes. Yes, I just want to make  
18 sure ours are corrected.

19 MS. BARNES: Yes, we accept -- yes, Abby's  
20 change is accepted.

21 The next one, just in the list, was just  
22 showing you some of the consistency language  
23 changes. 2.03 sets it out there in -- it's already  
24 been accepted in Abby's document. I can show them  
25 to you, but they're wordsmithing, clarifying things.

1 THE CHAIR: Where are we?

2 MS. BARNES: On Page 6, this blue.

3 THE CHAIR: 2.04, or --

4 MS. LEWIS: 2.03.

5 THE CHAIR: .03? Okay.

6 MS. BARNES: On Page 6. It's -- there's a  
7 couple of places where I just was showing you,  
8 between last year and this year, we just cleaned up  
9 the language.

10 Patti suggests using the diagram in the  
11 document only once. I don't know why it's twice.  
12 It's all over here. Yes, I think, we accept.

13 COMMISSIONER BERGMAN: I certainly agree  
14 with that. I think that's gotten -- yeah, it's in  
15 here several times. I don't know why it was.

16 MS. BARNES: I don't know, cut and paste,  
17 went crazy.

18 Okay. Next big one. You guys ready?

19 THE CHAIR: Yeah.

20 MS. BARNES: Amendments. Again, I believe  
21 the tension on amendments comes from the statute not  
22 being very clear. Abby has --

23 COMMISSIONER BERGMAN: Where are we  
24 talking about right now?

25 MS. BARNES: 2.04.

1 COMMISSIONER BERGMAN: What --

2 THE CHAIR: The heading is right  
3 underneath that chart on Page 18.

4 MS. BARNES: So --

5 MR. GERLICZ: It's at the bottom of  
6 Page 12 in Abby's version.

7 MS. BARNES: And it's on Page 18 and 19 of  
8 the red-lined version.

9 So, let me outline it again, and everyone  
10 can add to it. Patti has made a point that, under  
11 22-8B-9C, that's the only time in the statute now  
12 that amendments are referenced. And it says, "The  
13 provision for revision or amendment of the terms of  
14 the charter contract shall be made only with the  
15 approval of the chartering authority."

16 So, Patti's point is the only thing you  
17 can amend now is the contract. The contract is now  
18 going to include every material term and all  
19 important things. We just had that conversation.

20 So, my thought, Abby, is that maybe we  
21 don't even need it, because we don't need it  
22 anymore, because the only thing that you amend is  
23 the contract now.

24 So, the contract will be very complete.  
25 We will put in everything based on the conversation

1 we had just a few minutes ago. And if it's in the  
2 contract, it has to be amended.

3 MS. FOX: And that's already in  
4 Section 14.02.

5 MS. BARNES: And that is consistent --

6 MS. LEWIS: My objection was any language  
7 that says that an amendment does not need to come  
8 before the PEC. So, that was my goal in taking  
9 (inaudible).

10 MS. BARNES: Well, an amendment of the  
11 contract absolutely has to come before the PEC.

12 MS. LEWIS: Right. That's the only  
13 amendment we're talking about; right?

14 COMMISSIONER BERGMAN: I'm looking for  
15 something -- I know we're talking about amendments  
16 here. You all keep talking, and I'll find it here  
17 in just a second.

18 MS. BARNES: I know. No, but I think  
19 that --

20 COMMISSIONER BERGMAN: There's something  
21 later on in here, but (inaudible).

22 MS. BARNES: Not to say to Commissioner  
23 Bergman what he's going to say. But it is  
24 throughout this contract that an amendment of the  
25 contract amends the charter. I think we can take

1 all of that out.

2 MS. LEWIS: I'd rather leave that sentence  
3 in, because I don't want to get into a conversation  
4 of, "Do we now need to have another PEC vote to  
5 amend the charter?" I don't think it hurts us to  
6 leave it in.

7 MS. BARNES: Okay. Well, except --

8 MS. FOX: The contract is the charter.

9 MS. BARNES: Yeah, because Patti's  
10 point --

11 MS. LEWIS: Right.

12 MS. BARNES: -- is that the law now says  
13 you can only amend the charter contract. The  
14 charter contract includes every important thing.

15 MS. LEWIS: So, what happen- -- so, then,  
16 we're saying that -- okay. Yeah, I hear you. Okay.

17 COMMISSIONER BERGMAN: 6.01 -- I'm there  
18 now -- also talks about amendments more  
19 specifically, so -- and I'm still looking for  
20 (inaudible).

21 MS. BARNES: We need to clear -- we need  
22 to, so why don't, every time it says that, we cite  
23 this section.

24 MS. LEWIS: Every time it says which?

25 MS. BARNES: Instead of saying, "An

1 amendment to this contract also amends the charter,"  
2 I think that we could cite this -- we could put that  
3 in a footnote, Abby, and we could cite this section.

4 THE CHAIR: Frankly, I would like  
5 something that, very clearly and very plainly, says,  
6 "Any change to the contract must first be approved  
7 by PEC," just that clear.

8 MS. BARNES: Well, that is correct. And  
9 that's -- I think that's the --

10 MS. LEWIS: I put that in.

11 MS. BARNES: That's a good clarification.

12 MS. LEWIS: I don't know where, but I --

13 THE CHAIR: Without being too wordy and  
14 confusing.

15 MS. BARNES: No, I agree with that.  
16 There's a second point, which is -- that says, "This  
17 is the only document that you have to amend now."

18 So I think, Abby, we can work on that,  
19 based on Patti's pointing out of the statutory  
20 provision.

21 Okay. So Part A. Abby, show me the  
22 sentence where you added it that says that they have  
23 to come amend --

24 MS. LEWIS: That's what I'm looking for.

25 Let me just --

1 MS. BARNES: So, 2.04, I think we need to  
2 get rid of it and do something different.

3 MS. FOX: Section 14, it talks about  
4 amendments to (inaudible).

5 MS. BARNES: Yeah, I think we should  
6 delete Section 2.04.

7 THE CHAIR: Okay. Then where are we going  
8 to put the sentence that says, "Any change to the  
9 contract must be approved"?

10 MS. BARNES: Then we should change it --  
11 amendments to the contract, it should be.

12 MS. FOX: It's Section 14.02-A. "No  
13 amendment to the contract is valid unless ratified  
14 in writing by the authorizing..." --

15 COMMISSIONER BERGMAN: There we go, yeah.

16 MS. LEWIS: Thanks, Sue.

17 MR. GERLICZ: What page is that, Sue?

18 MS. FOX: Page 60.

19 MS. LEWIS: Julia --

20 MS. FOX: Sub your version, Abby.

21 MS. BARNES: So, Commissioner Shearman, at  
22 the top of Page 60, "No amendment to the contract  
23 shall be valid unless ratified in writing by  
24 authorizer and the school and executed by the  
25 authorized representatives."

1 THE CHAIR: Let me get there. Top of  
2 Page 60.

3 MS. LEWIS: Yeah, "A, Authority to Amend."

4 THE CHAIR: Now, 2.04 can come out, can it  
5 not?

6 MS. BARNES: Yeah.

7 MS. LEWIS: I pulled all of it out except  
8 for that final sentence. And if we're going to put  
9 that in a footnote, then the whole thing goes away.

10 MS. BARNES: Got it.

11 COMMISSIONER BERGMAN: Well, if that's  
12 disappearing, I now found what I wanted to ask,  
13 because, actually, amendments covered several  
14 different places in the contract.

15 MS. BARNES: And Patti's point is, why are  
16 you doing that, Julia?

17 COMMISSIONER BERGMAN: Anyway, under  
18 14.02, it states -- and I would like one of the  
19 lawyers in the room to tell me exactly where in  
20 Senate Bill 446, or in the Charter School Act, this  
21 is -- it states that if the authorizer denies the  
22 amendment, the school may appeal the decision to the  
23 Secretary of the New Mexico PED. That has never  
24 been in force before, and why is that in force now?

25 MS. LEWIS: It has. That's what happened

1 with La Promesa.

2 MS. BARNES: And that's this (inaudible).

3 COMMISSIONER BERGMAN: That's why I'm  
4 raising the issue, yeah.

5 MS. LEWIS: It's right here.

6 MS. BARNES: It's right there.

7 MS. LEWIS: It's in 22 -- I'm sorry --  
8 22-8B-9C.

9 COMMISSIONER BERGMAN: 22-8B-9?

10 MS. LEWIS: Which references you back to  
11 Section A, which says there can be an appeal to the  
12 Secretary.

13 COMMISSIONER BERGMAN: But on amendment?

14 MS. BARNES: Yeah.

15 COMMISSIONER BERGMAN: I know they can  
16 appeal on our denial. But on amendments? There is  
17 specific language?

18 MS. BARNES: Right here.

19 COMMISSIONER BERGMAN: A mouse couldn't  
20 read that.

21 MR. GERLICZ: A mouse couldn't read it,  
22 but a lawyer could.

23 MS. LEWIS: So, we go back to A.

24 MS. BARNES: Tell me no more lawyer jokes.  
25 Some of the people in this room --

1 MS. CALLAHAN: I started it, Julia.

2 COMMISSIONER BERGMAN: And it specifically  
3 mentions amendments in there somewhere.

4 MS. LEWIS: Down here in C.

5 THE CHAIR: 22 what?

6 MS. LEWIS: 22-8B-9C.

7 THE CHAIR: 9C.

8 COMMISSIONER BERGMAN: Well, there's  
9 another one I lose. I'm on a losing streak here.

10 THE CHAIR: I knew we had gotten hooked on  
11 that one once before. I wish it wasn't there.

12 COMMISSIONER BERGMAN: Okay. Thank you  
13 very much.

14 MS. LEWIS: And, again, this is an issue  
15 that is more complicated by this Commission  
16 unfortunately not having rule-making authority.  
17 Because Julia and I presented last year to PED a  
18 regulation so that we would have a procedure for  
19 these textbook deals. And it has yet to be  
20 promulgated, so --

21 MS. BARNES: And I will say that we've  
22 raised that again, and, as -- of some urgency. It's  
23 being raised by many people in this process. And  
24 it -- we raised it again, and it -- and maybe our  
25 new attorney will help us. But I don't tell him

1 what to do.

2 3.01. Yay. I want to tell you, we've  
3 gone through a lot of major issues.

4 MS. LEWIS: A lot of major issues.

5 MS. BARNES: Patti says -- and, Sue, I  
6 wanted to ask you about this. On Page 13, somebody  
7 else -- and I want to say it was Patti -- put this  
8 last sentence in 3.01, in that the school is a  
9 governmental entity within the Tort Claims Act. She  
10 tells me that that's not settled law, and we  
11 shouldn't put that in there. So, we should take the  
12 sentence out.

13 MS. LEWIS: Whether -- you know, whether  
14 or not it's in there, if it's applicable, it's  
15 applicable. So, without the opportunity to do  
16 further research, I'm fine taking it out, because if  
17 it applies, it applies, whether or not we put it in  
18 the contract.

19 MS. BARNES: And I don't even know why  
20 it's in here.

21 MS. LEWIS: I don't know. I don't know.

22 MS. CALLAHAN: That was an original  
23 (inaudible).

24 MS. BARNES: I think Patti commented on  
25 herself.

1 MS. FOX: (Inaudible) in here for some  
2 reason that I can't remember now.

3 MS. BARNES: And now she says, "What's  
4 your citation for that?" My citation is, "See Patti  
5 Matthews."

6 We clarified technical language. Again,  
7 Commissioner Bergman, you had wanted to know exactly  
8 the changes between 2012 and '13, and I've just  
9 raised, generally, where we've cleaned up the  
10 language.

11 COMMISSIONER BERGMAN: And we are now  
12 working on --

13 MS. BARNES: 3.01 and 3.02. We're on  
14 Page 7 of the chart.

15 COMMISSIONER BERGMAN: Okay, yeah.

16 MS. BARNES: "The authorizer has no  
17 funding to commit..." -- I agree with that, Abby.  
18 What I'd like to say is, "if applicable," because at  
19 time- -- you know, at times, if you all wanted a  
20 technical training, Tony can request that. And it  
21 just says that -- I mean, that's in almost every  
22 State contract, that if you don't have -- that it's  
23 subject to the annual appropriations of the  
24 New Mexico Legislature.

25 So, I don't have a big problem taking out

1 "the authorizer," but I'd rather just leave it in  
2 there, just in case and say, "if applicable,"  
3 somehow.

4 MS. LEWIS: In case they get an  
5 appropriation.

6 MS. BARNES: Yeah. Because you can't --  
7 every State contract I've ever signed or seen  
8 says -- it always says that.

9 MS. LEWIS: Yeah. I mean, the reason --

10 MS. BARNES: I don't care, Abby. But I'm  
11 just saying --

12 MS. LEWIS: No. I can see your point,  
13 because it is foreseeable.

14 MS. BARNES: So, let's put back in, just  
15 in case --

16 MS. LEWIS: "If applicable"?

17 MS. BARNES: "If applicable."

18 MS. LEWIS: Okay.

19 MS. BARNES: Put back in with "if  
20 applicable."

21 Okay. 4.01 is the next section. I  
22 think -- I think we cleared up -- okay.

23 "Technical language reiterates the key  
24 educational terms are put into the material terms of  
25 the contract."

1 I think it's a technical language change  
2 in the next two sections. And, Abby, I know that  
3 under Section 4.01, you cleaned up that PED does the  
4 waivers, not the authorizer. I think that's just  
5 technical cleanup language.

6 I have one issue, though. Let's see.

7 MS. LEWIS: What page were you on? Of the  
8 chart?

9 MS. BARNES: Page 8. I'm turning the  
10 page. Patti said, "If charter terms are brought  
11 into the contract, there's no need to talk about  
12 material terms."

13 However, I just had a -- "Material terms  
14 should be restated in this document."

15 This goes back to the fact that the law  
16 requires that we put into the contract any material  
17 terms of the charter. That's why we talk about  
18 material terms. That's why we're bringing them in.

19 So, I think -- I just -- I say no to  
20 Patti's --

21 MS. FOX: I would just drop the word --  
22 add the word "contract" after "charter" in Abby's  
23 version.

24 MS. BARNES: Show me what page you're on.

25 MS. FOX: On Page 14 of Abby's version.

1 MS. BARNES: And you want to say what?

2 MS. FOX: I just want to add the word  
3 "contract" after "charter." "Charter contract."

4 MS. BARNES: Oh, yeah.

5 MS. LEWIS: We should probably do that  
6 throughout.

7 MS. FOX: Yeah.

8 MS. BARNES: We should probably just say  
9 "contract" instead of "charter."

10 MS. FOX: Well, I would either say  
11 "charter contract" or "contract"; but not "charter,"  
12 because --

13 MS. BARNES: We say "contract" everywhere.  
14 This should say "contract."

15 COMMISSIONER BERGMAN: But this kind of  
16 goes along with what you said a while ago,  
17 Madame Chair. We were now in a position where, with  
18 these contracts, we are going to have to try and  
19 anticipate what all the material terms are, and  
20 we're going to have to list them, because I'm  
21 guessing if they're not listed in this contract,  
22 we're not going to be able to hold to them later on  
23 down the road.

24 MS. BARNES: And the Charter School  
25 Division is going through the website and the

1 application and the renewal application and with an  
2 eye towards making sure those get in there.

3 COMMISSIONER BERGMAN: Well, you have to  
4 be absolutely careful in that area.

5 MS. BARNES: And, then, you'll see that we  
6 set out all the different categories, so we don't  
7 miss any.

8 Okay. Next one is yours, Abby: all  
9 applicable laws for the Personnel Act. I think  
10 that's just a technical legal change.

11 MS. LEWIS: Yeah, just to give us a  
12 catchall, so we don't put any --

13 MS. BARNES: Patti then raised that  
14 there's a sentence in 4E that was left over that we  
15 can eliminate the second sentence at the top of  
16 Page 15, because this contract was -- originally  
17 could be used by a local authorizer. So, that's  
18 "yes," I think. You don't have any staff, so you  
19 can't employ anybody.

20 4.01-F is technical. 4-point -- the next  
21 one -- F-3 --

22 MS. LEWIS: Oh, this is the waiver? Yeah,  
23 I think it was left over from the definition of  
24 "authorizer." So, I just changed it to the -- to  
25 the actual process that waivers go through, which is

1 not through the authorizer.

2 MS. BARNES: Okay, yes. The next -- on  
3 the top of Page 9, on the -- Commissioner, sorry.  
4 Go ahead.

5 COMMISSIONER GANT: Just -- this is  
6 minutiae. But it says -- now, I've lost track of  
7 where it was. Someplace it said -- we're using  
8 "governing body"?

9 MS. BARNES: Uh-huh.

10 COMMISSIONER GANT: In one place I just  
11 read, it says "governing council."

12 MS. BARNES: We're going to need to do a  
13 global replace.

14 COMMISSIONER GANT: Yeah.

15 MS. BARNES: You're correct.

16 The next section, Abby, I had a real  
17 question about what you were intending. Right now,  
18 on waivers, the Cabinet Secretary, under law, is the  
19 one who can give a discretionary waiver.

20 MS. LEWIS: Right.

21 MS. BARNES: So, the way I was thinking  
22 the contract would work is -- we're just collecting  
23 them here. But they've already been granted by the  
24 Secretary.

25 So, I didn't -- that's why I made an

1 Exhibit 3, which was just the waivers. It's just a  
2 list of what was -- has been approved.

3 MS. LEWIS: And my intention was not that  
4 the PEC would then have to approve it, as well,  
5 because (inaudible) Cabinet Secretary.

6 MS. BARNES: Right.

7 MS. LEWIS: So, maybe -- I just wanted to  
8 make sure that they got notice of it. So, maybe the  
9 sentence should read, you know, that they get -- a  
10 an open meeting or something.

11 MS. BARNES: Yeah, that that -- the  
12 Exhibit 3 is updated in an open meeting or  
13 something. Let's do that. All right. Yet another  
14 issue avoided.

15 COMMISSIONER BERGMAN: Yeah, I just  
16 tickled myself here, because what we're talking  
17 about -- we can all remember, who have been around a  
18 while, Dr. Duran sitting out there and saying, "You  
19 guys on the PEC have nothing to do with waivers."  
20 If he said that once, he said it 100 times.

21 THE CHAIR: A million times.

22 COMMISSIONER BERGMAN: You can do whatever  
23 you want with waivers, because, according to  
24 Dr. Duran, we've got nothing to do with them.

25 THE CHAIR: Well, the truth is, according

1 to Dr. Duran, we didn't have much to do with  
2 anything.

3 MS. BARNES: You know, I have a friend who  
4 says that you can say anything; it's just how you  
5 say it. And, you know, Dr. Duran may be -- maybe I  
6 should tell him that.

7 MR. GERLICZ: We've come a long way.  
8 We've come a long way.

9 THE CHAIR: Absolutely.

10 MS. BARNES: So, Abby, let's put in  
11 revisions of Exhibit 3, you know, something in an  
12 open meeting -- "presented." I'm, like, what's the  
13 word I'm looking for? Okay, good.

14 Patti's right on the next one. In 4.02,  
15 she found another one. Local authorizers can give  
16 services for pay to their charters, like I can  
17 provide transportation. It's not in this contract,  
18 so we can take it out.

19 THE CHAIR: We can take out the heading?

20 MS. BARNES: The heading.

21 THE CHAIR: "Services for Pay," just  
22 leaving "Funding"?

23 MS. BARNES: Yes.

24 THE CHAIR: Okay.

25 COMMISSIONER BERGMAN: We're all the way

1 over to 4.02, now?

2 MS. BARNES: Yeah, we're rocking, huh?

3 Now, that's an important section in the  
4 local authorizer contract, and it's a big issue, but  
5 it's not for you.

6 THE CHAIR: Okay.

7 MS. BARNES: Again, the next one on  
8 Page 9, again, Commissioner Bergman, I'm just  
9 letting you know everything we changed. The old  
10 contract didn't have, in the section, about the uses  
11 of the 2 percent. The new one does. So, it's kind  
12 of a full disclosure, telling you that that's what  
13 that change did.

14 COMMISSIONER BERGMAN: Let me ask you  
15 this, because I did write myself -- it's not a --  
16 since it's defined here under 4.02, down here in  
17 this second paragraph, it says, "A second category  
18 relates to the expenditures supporting the Public  
19 Education Commission's work. This includes travel,  
20 expenses, such as meals, hotel, and per diem,"  
21 period.

22 Does that restrict us to mean we could  
23 never be compensated for any other expenses?  
24 Because trips aren't mentioned there, for instance,  
25 to the NACSA convention.

1 MS. BARNES: Travel. Travel is.

2 COMMISSIONER BERGMAN: Is that going to be  
3 covered under travel?

4 MS. CALLAHAN: Yeah.

5 COMMISSIONER BERGMAN: So, you think  
6 that's going to be inclusive enough so that those  
7 penny-pinchers over at DFA, or whatever they're  
8 called, aren't going to say, "You aren't going to  
9 get that"?

10 MS. LEWIS: Even if it's not, the  
11 statute -- the Per Diem Mileage Act will trump this  
12 contract. So, if it gets amended, or we left  
13 something out, you'll still be able to get  
14 (inaudible).

15 MS. BARNES: And what the law says is that  
16 we have to disclose. So, all we're doing with the  
17 contract is disclosing it here.

18 COMMISSIONER BERGMAN: And I'm glad we're  
19 doing this, because this was another issue  
20 Mr. Obenshain raised.

21 MS. LEWIS: Well, he wasn't happy with  
22 this language, either, because I know you and I  
23 drafted this last year.

24 MS. BARNES: I'll say that --

25 THE CHAIR: But the language in the

1 contract is going to change, that section in the  
2 contract that asks how they suggest the money be  
3 spent, or words to that effect?

4 MS. BARNES: Now, we took that out --

5 THE CHAIR: Okay.

6 MS. BARNES: -- because it was causing --  
7 it was making it seem like we could negotiate it.  
8 It's a separate document. They still are welcome  
9 and are encouraged to present their -- their needs  
10 to Tony, because Tony has an ability to go and say,  
11 "I need money to do this training."

12 He just did it. You know. We needed to  
13 do trainings for the new schools, and he just did a  
14 contract. So, we're encouraging them to do it. But  
15 where it was in the contract was in the wrong place.

16 THE CHAIR: Okay.

17 MS. BARNES: That got fixed a long time  
18 ago. And it was a good point.

19 COMMISSIONER BERGMAN: Yeah. I actually  
20 sympathize with that. If I was in their position,  
21 I'd want -- "Why aren't you training me better? Why  
22 aren't you giving us all these classes? We  
23 shouldn't be paying for that; you should be."

24 MS. BARNES: And they may later push to  
25 have their audit covered, or whatever. But right

1 now, the 2 percent is not.

2 THE CHAIR: Nobody else's audit is paid  
3 for.

4 MS. BARNES: I don't know. Whatever. We  
5 don't even need to go down that road. But the  
6 charter schools, it's a sore point for them.

7 COMMISSIONER GANT: There's always their  
8 professional development.

9 THE CHAIR: Well, here -- here,  
10 Commissioner. Patti Matthews makes a point. And  
11 it's not --

12 MR. GERLICZ: Actually, I think the local  
13 district charters are included in the district. So  
14 states are at a disadvantage in that regard.

15 THE CHAIR: But all the districts pay for  
16 their own charters?

17 MR. GERLICZ: Correct.

18 THE CHAIR: Audits? I'm sorry.

19 MS. BARNES: Then Patti just made a  
20 comment, just because she wanted to make it, that we  
21 don't change anything. But she says that, at some  
22 point, charter schools should have input in the  
23 selection of the auditors, the amounts not  
24 proportional. They should see the contract, the  
25 costs of the auditor. So, that's just -- that's

1 just Patti raising --

2 MS. FOX: Editorial.

3 MS. BARNES: Editorial.

4 COMMISSIONER BERGMAN: That's covered by  
5 statute, isn't it? Right now --

6 MS. BARNES: But she can make that  
7 argument, and she's --

8 COMMISSIONER BERGMAN: Get the legislature  
9 to put a bill in.

10 MS. BARNES: So, there's nothing to do  
11 there.

12 Again, Commissioner Bergman, in telling  
13 you exactly why it got changed from last year to  
14 this year, the new contract was clearer about when  
15 an audit delay occurred.

16 The food services then moved -- I'm just  
17 letting you know everything that happened.

18 COMMISSIONER BERGMAN: Yeah. I wrote at  
19 the food service, "Where did it go?" Then I found  
20 it later. You put it back somewhere else, and  
21 now --

22 MS. BARNES: Well, Patti says I have it in  
23 there twice, which is possible.

24 Third-party contracts. It's in gray,  
25 because there was a lot of change from last year to

1 this year. So, I just highlighted it for you all.  
2 And there's some comments later on, but not to this  
3 third-party section.

4 THE CHAIR: What is 4.02-C, where you said  
5 "Change authorizer to PED"?

6 MS. LEWIS: Oh, no. It was saying that  
7 the authorizer will -- something about the audit and  
8 the authorizer, and I changed it to PED, because PEC  
9 doesn't do the audit. PED does. So, it's on  
10 4.02-C.

11 THE CHAIR: Okay, I see.

12 MS. LEWIS: Yeah.

13 MS. BARNES: It was a correct cleanup.  
14 Okay? So just to flag for you, the lawyers really  
15 went to town on the third-party contract section.

16 Sue, are you still feeling comfortable  
17 with it and --

18 MS. FOX: Yeah, we worked on this in the  
19 context of the Connections contract, and that's  
20 where most of the changes --

21 MS. BARNES: All this language.

22 MS. FOX: -- (inaudible). The only  
23 comment that Patti and I have relates to the real  
24 property contracts. That's --

25 MS. BARNES: Which is coming up; right?

1 MS. FOX: Yeah. That's on Page 20.

2 MS. BARNES: So, several people have  
3 questions on Page 20.

4 MS. FOX: Am I moving too far ahead?

5 MS. BARNES: No, no. It's a good time to  
6 move forward. Patti has an editorial that every  
7 contract relating to real property is over \$60,000.  
8 She has a substantive one, though. And, Abby, I  
9 don't know -- the financial compliance --

10 MS. LEWIS: That's true that PSFA  
11 (inaudible) financial assurance of no conflict, then  
12 that fulfills what my goal was last year -- or  
13 earlier this year.

14 MS. BARNES: Okay. So, where is that,  
15 'cause we could take that out.

16 MS. FOX: It's on the top of Page 20.

17 MS. BARNES: "Shall submit notice  
18 providing written assurance from the provider."

19 MS. LEWIS: So, that's what the PSFA -- I  
20 haven't seen the PSFA --

21 MS. BARNES: 1 through 4? We can take the  
22 whole thing out?

23 MS. FOX: No, I think we're just talking  
24 about --

25 MS. LEWIS: No. We're just talking about

1 the financial assurance form.

2 MS. FOX: That contract relating to real  
3 property. That sentence after that; right? That's  
4 what you're thinking about, Patti? [Verbatim.]

5 MS. BARNES: Show me. I'm sure it's --

6 MS. FOX: Top of Page 20.

7 MS. BARNES: "The school shall provide  
8 notice by" --

9 MS. FOX: "For any contract under \$60,000  
10 involving real property." That sentence.

11 MS. BARNES: Okay.

12 MS. FOX: Right?

13 MS. LEWIS: Uh-huh.

14 MS. FOX: What happens is -- and, again, I  
15 have to qualify this. It's if the school is  
16 applying for lease reimbursement. I don't know of a  
17 school that doesn't apply for that, if they had a  
18 lease. But -- but if they do, every June, they have  
19 to submit to the PSFA a conflict-of-interest  
20 disclosure.

21 MS. BARNES: Is there any contract for  
22 real property that isn't a lease, that you know of?

23 MS. FOX: I suppose if a school is buying  
24 something outright; I'm aware of that scenario.

25 COMMISSIONER BERGMAN: A few schools own

1 their own buildings.

2 MS. FOX: A few schools, I suppose, do.  
3 Most of them are on a lease-purchase or a lease.

4 MS. BARNES: Then let's say, "unless  
5 otherwise provided to PSFA."

6 MS. FOX: Yeah, something like that,  
7 where -- I think the point is either -- if we're  
8 going to have a financial assurance document  
9 provided, it should either reference -- or be  
10 consistent with -- what is already being provided to  
11 PSFA, if possible.

12 COMMISSIONER BERGMAN: While you're doing  
13 that, I might ask, this \$60,000 figure -- I think  
14 I've asked this before -- that's currently set by  
15 statute?

16 MS. BARNES: Under the procurement --

17 COMMISSIONER BERGMAN: Part of the  
18 procurement code would want to set that limit, if we  
19 didn't set it.

20 MS. FOX: And, in fact,  
21 Commissioner Bergman, that's a good point. That  
22 \$60,000 from the procurement code -- the procurement  
23 code doesn't apply to real property at all.

24 MS. BARNES: Yeah. So we've put that in  
25 here randomly.

1 MS. LEWIS: Not randomly. It was just  
2 to -- yes, the procurement code doesn't apply to  
3 real property. But it was a number that was used in  
4 the other paragraph. So, it just seemed to make  
5 sense to use it in both.

6 MS. BARNES: Well, except -- do you have a  
7 different number?

8 MS. FOX: I mean, you could just -- you  
9 could put "any contract involving real property," as  
10 far as I'm concerned.

11 COMMISSIONER BERGMAN: I was just curious.  
12 I wasn't suggesting you change it.

13 MS. LEWIS: No, I mean (inaudible) either  
14 way.

15 MS. BARNES: Okay. So, we're going to  
16 say, "Unless otherwise provided to PSFA, a school  
17 shall provide a written assurance."

18 And are we going to put it on a form  
19 similar to the PSFA form?

20 MS. LEWIS: Well, I already did one.

21 MS. BARNES: So, let's not put it on a  
22 form, then.

23 COMMISSIONER BERGMAN: Gene, you're kind  
24 of our expert on all this. This all sounds good to  
25 you?

1 COMMISSIONER GANT: They have to do the --  
2 I can't even think of it.

3 MR. GERLICZ: Facilities Master Plan?

4 COMMISSIONER GANT: Well, Master Plan;  
5 that's separate from the assurance that they don't  
6 have a conflict.

7 MR. GERLICZ: Oh, yeah.

8 COMMISSIONER GANT: Because if you take  
9 down some of the foundations, they've got conflicts.

10 MS. BARNES: So, the next one is Patti's  
11 continuing along what she was saying in the same  
12 section. She wants to change this review from ten  
13 days to five days. I'm sorry; I just don't see how  
14 you do it. I mean --

15 MS. LEWIS: I wanted 15, originally, or  
16 something. I compromised on ten.

17 MS. FOX: We went through this earlier.

18 MS. BARNES: So, no.

19 COMMISSIONER BERGMAN: Are you talking  
20 about No. 3 here on Page 20? Yeah, five sounds  
21 awful short to me.

22 COMMISSIONER GANT: What was the  
23 rationale?

24 MS. BARNES: Because it's another tension  
25 between the school needing to know and having a

1 short turn-around and the reality.

2 COMMISSIONER GANT: No. Why would they  
3 want to shorten it? Ten days is fine.

4 MS. BARNES: Oh, Patti is from the school  
5 side, and she wants it back sooner. That's why.

6 MS. FOX: Correct. Because, they have  
7 a -- in the planning year, it's usually a pretty  
8 short time frame to get a whole lot done. And  
9 there's a whole lot of contracts that happen -- need  
10 to happen, preferably, as quick as possible. And  
11 every day is crucial during the planning year, so --  
12 (inaudible).

13 MS. BARNES: And, in particular, sometimes  
14 the flow-through funding, the funding that they are  
15 able to spend gets jammed up, and they don't -- and  
16 they end up having spent a ton of money in a short  
17 period of time, and we don't even know how they do  
18 it.

19 Both -- Abby has already taken out the  
20 next one, which is the Secretary isn't designated to  
21 hear issues of compliance on the contract. Patti  
22 and Abby said there's no authority for that.

23 So, Sue, we must have negotiated -- I  
24 don't even remember that, but it's -- everybody took  
25 it out of this draft.

1 MS. FOX: I'm sorry?

2 MS. LEWIS: 5-A and -B under D, the  
3 financial compliance appeal to the Secretary.

4 MS. BARNES: Under --

5 COMMISSIONER BERGMAN: I'm not seeing  
6 that. I'm off again.

7 MS. BARNES: You have to look back in the  
8 other document.

9 COMMISSIONER BERGMAN: Is it further down  
10 the road?

11 THE CHAIR: We're in 5?

12 MS. LEWIS: 5-A --

13 COMMISSIONER BERGMAN: We're all the  
14 way -- the old contract, Page 31, in the middle,  
15 yeah.

16 MS. BARNES: Yeah.

17 THE CHAIR: Oh. No wonder I can't find  
18 it, then. Why did we skip all of this?

19 MS. LEWIS: There weren't any changes.

20 THE CHAIR: That haven't already been  
21 talked about?

22 MS. LEWIS: Right.

23 THE CHAIR: Okay. Thank you.

24 COMMISSIONER BERGMAN: I have no notes, so  
25 I didn't see any.

1 MS. BARNES: And both Patti and Abby did.

2 COMMISSIONER BERGMAN: So, we're not  
3 appealing to the Secretary, or you're leaving that  
4 in?

5 MS. BARNES: There's no authority to  
6 appeal to the Secretary.

7 COMMISSIONER BERGMAN: So, it doesn't go  
8 to -- that one is one that doesn't go to the  
9 Secretary.

10 MS. BARNES: Yeah. Somehow, it got in  
11 there that everybody said what? How did that  
12 happen?

13 So, Madame Commissioner, I just thought  
14 maybe -- Chairman -- we would talk for a second.

15 It's five to 5:00. And, Abby, you'll need  
16 to tell me. It's at least in my mind that there is  
17 a section of the upcoming board meeting that I'm  
18 wondering if we could actually just con- -- and it's  
19 at the end of the agenda when there aren't going to  
20 be lots and lots of people waiting for us. That's  
21 why we put it there.

22 I would sure love it if we could continue  
23 the working session then.

24 MS. LEWIS: I was going to ask if anyone  
25 would be -- I can stay now, just because we're all

1 here.

2 MS. BARNES: Well, I can stay, but I just  
3 wonder how worn out everybody is. And I know  
4 Commissioner Shearman is not feeling well.

5 COMMISSIONER BERGMAN: Well, staff may  
6 need to go do other things. I don't know. I'm  
7 amenable to whatever -- I can stay, or I can go,  
8 whatever.

9 THE CHAIR: Well, have we worked through  
10 the true meat of this, or do we have some real  
11 sticky issues?

12 MR. GERLICZ: The most difficult parts.

13 THE CHAIR: I realize there's some green  
14 stuff, and the whole page is green. But have we --  
15 I'm just wondering if we could not take some time  
16 during the actual meeting, go through what we've  
17 already talked about, you know, the few that are  
18 here, what we have sort of arrived at a consensus  
19 for, and maybe work our way through the rest of it  
20 during the meeting. Is that possible?

21 MS. BARNES: Well, there's two ways to do  
22 it. That's one, and I think that's a really good  
23 way. So, we could stop, and we could pick up and  
24 keep going.

25 Back to what someone just said --

1 Commissioner Bergman -- I think if we -- if people  
2 aren't too tired, I think we can get pretty far  
3 today. It's up to you. I'm available to stay, and  
4 I'm happy to --

5 MR. GERLICZ: The CSD has a critical  
6 office party on Friday at 5:00 that we will do  
7 everything we can to exit.

8 COMMISSIONER BERGMAN: I would hope we  
9 would be done. I don't want to be driving home  
10 entirely in the dark on Friday.

11 MS. BARNES: Then we're safer working now,  
12 frankly.

13 THE CHAIR: Let's establish our boundaries  
14 right now. How late do we want to stay today?

15 MS. LEWIS: I can stay until 7:00.

16 THE CHAIR: I'm not staying till 7:00. I  
17 can guarantee you, I'm not staying till 7:00.

18 COMMISSIONER BERGMAN: The staff is paid.

19 THE CHAIR: I know, and I have --

20 COMMISSIONER BERGMAN: If you guys need to  
21 go, you can go. We don't want to keep you here on  
22 overtime.

23 MR. GERLICZ: I can stay. I'm not going  
24 to stay much past 6:00, for personal reasons, not  
25 professional reasons.

1 THE CHAIR: Let's set 6:00 as our absolute  
2 maximum. Commissioner?

3 COMMISSIONER PARKER: I just have to get  
4 kids ready for school in the morning. So --

5 THE CHAIR: You have to just be home in  
6 time to get them ready for school?

7 COMMISSIONER PARKER: Yeah.

8 THE CHAIR: We'll try not to keep you that  
9 long.

10 Okay. Let's set our deadline. And,  
11 Commissioner Conyers?

12 COMMISSIONER CONYERS: Yeah, I'm here for  
13 the duration.

14 MS. BARNES: You're looking tired, though.

15 THE CHAIR: We should have brought  
16 sleeping bags, as cold as it is in here.

17 MR. GERLICZ: It's balmy; it's downright  
18 balmy.

19 THE CHAIR: It's cold.

20 MS. LEWIS: I'm always cold, and I'm  
21 finally warming up.

22 THE CHAIR: My feet are cold, and once  
23 they get cold, that's it.

24 COMMISSIONER BERGMAN: We can always  
25 finish up, as you said, Madame Chair, and as Julia

1 said. I expect we want to do the essential stuff  
2 before we delve into this. We certainly want to get  
3 the 13 schools out of the auditorium and get them on  
4 the road back to where they're going and all that.

5 But maybe at the end, if we can't get  
6 through all this tonight -- and most of my stuff is  
7 done, so, I think we can fly ahead pretty good here.

8 MS. BARNES: You know what?

9 COMMISSIONER BERGMAN: I think we can fly  
10 ahead pretty good.

11 MS. BARNES: And it's -- lots of this is  
12 not a lot of changes to what's already in Abby's  
13 document. So, in terms of getting a good next  
14 draft, it's not going to be too hard. I think,  
15 actually, if we had a technical session, and Abby  
16 and Sue and I check something over, we could be  
17 pretty good. This is clear in my mind. And when  
18 it's clear it's easy to draft. And there's not  
19 much. Much of it is already accepting what Abby's  
20 done.

21 THE CHAIR: Let's get moving and see what  
22 we can accomplish.

23 COMMISSIONER BERGMAN: Let's charge ahead.

24 MS. BARNES: Okay. So, everyone took out  
25 the Secretary section, so we're going to accept that

1 edit.

2 MS. FOX: Can I just interject something  
3 here? I mean, I don't disagree that -- I can't find  
4 anything in the statutes right now about the  
5 Secretary's authority to review this.

6 But it does leave a gap here and a  
7 potential, "What do we do now? If I submit  
8 something to the Commission, and we need to -- who's  
9 going to ultimately decide whether we can enter into  
10 the contract or not?"

11 MS. LEWIS: Well, we've got that provision  
12 if you don't get (inaudible) you can get an answer.  
13 And it's no, versus not getting an answer.

14 MS. FOX: Right. And then we say we  
15 object, and here's why. It seems to me we kind of  
16 leave things at a stalemate. And, so, I'm saying --

17 MS. BARNES: That's probably right.

18 MS. FOX: We probably need to work through  
19 that, maybe in our -- figure something out, or  
20 say --

21 COMMISSIONER BERGMAN: Maybe in a  
22 technical session, you can talk about it.

23 MS. FOX: Or maybe that's where the  
24 dispute resolution process comes in. I'm not  
25 sure --

1 MS. BARNES: No. I drafted the dispute  
2 resolution section. And it is clunky. I don't even  
3 know how it would work. And I wrote it.

4 MS. FOX: But, anyway, that might be  
5 something that the lawyers have to move through, and  
6 then -- if we sit around a table.

7 MS. LEWIS: Yeah. I think if we tighten  
8 up the dispute resolution and maybe provide an  
9 expedited one for something like this, then we can  
10 use that process.

11 MS. BARNES: Okay. So, the next one on  
12 Page 11 of the chart, Abby's just reiterating that  
13 this authorizer designee, we've handled that.

14 Remove financial compliance to the  
15 Secretary. We just talked about that.

16 Food service is in twice. If it's in  
17 twice, we're going to take it out.

18 It might be in twice because it's also a  
19 material term. So, I'll look at that, because it  
20 should be a material term, because, frankly, some  
21 parents make a decision as to -- so, it's not a big  
22 material term, but --

23 COMMISSIONER BERGMAN: Yeah. On these  
24 documents, you said you took the first one out and  
25 left the later one in. So, that's probably where

1 the later one (inaudible).

2 MS. BARNES: Well, I thought so. But,  
3 anyway --

4 COMMISSIONER BERGMAN: I got you. I know  
5 I saw food service somewhere else in here. So --

6 MS. BARNES: Well, it doesn't need to be  
7 in here twice.

8 4.03. Abby, add "at the request of the  
9 school" for the trigger. Do you see that?

10 MS. LEWIS: Yeah, in that first sentence  
11 under 4.03. It previously just said that "the  
12 authorizer or its designee shall provide the  
13 school." But I didn't know what that meant. So, I  
14 put "at the request of the school," because how are  
15 you going to know what to give the school?

16 MS. BARNES: Good. Okay. The next  
17 section, 4.04, which Abby has taken out -- so, you  
18 need to look at Page 33 of the old contract in the  
19 binder -- this is kind of an interesting one. And  
20 I'll just tell you kind of how it plays out.

21 The Cabinet Secretary has said the charter  
22 schools that -- for all schools -- the Division is  
23 going to -- the Department is going to provide  
24 populated forms, and that schools should not be  
25 asked again and again and again to provide the same

1 information that exists in the database of PED.

2 So, we put that in here.

3 I also know, from Lisa Grover, long ago,  
4 that that was one of the problems, that some  
5 charters were -- you know, they were just being  
6 drowned in paper.

7 It is a practice that CSD does all the  
8 time. And Susan Coates, who's presented to you, is  
9 brilliant at it. And she's working -- and we just  
10 did it on the worksheets. We just pre-populated  
11 information that we have from our database.

12 So, it is a commitment, probably required  
13 by our Cabinet Secretary, and clearly implemented by  
14 CSD.

15 MS. LEWIS: My objection is not to the  
16 pre-populated. And I'm open to different language  
17 going in here. But my objection, again, was  
18 limiting the PEC in the information that they're  
19 able to obtain.

20 And to be perfectly blunt, from a legal  
21 perspective, at this point, I do not have faith in  
22 parts of PED providing the PEC with information that  
23 they request. I've received many roadblocks from  
24 the General Counsel's Office on trying to get  
25 information.

1 MS. BARNES: So, let's look at -- so, I  
2 guess I would -- I guess I know that CSD talks all  
3 the time about the burden put on charter schools and  
4 to lessen the burden. So, I want to keep that  
5 concept in here. I don't want to limit what the PEC  
6 can get.

7 So, Abby, can we just flag this and work  
8 on that?

9 MS. LEWIS: If that's okay with the  
10 Commission. My goal was not to take out the ability  
11 to pre-populate. That, I get. Save -- sure, it  
12 saves them time. Susan did a great job with that.

13 My problem was that it seems to limit the  
14 PEC from -- like I said, under statute, you call the  
15 school up and ask them whatever you want. And it's  
16 also --

17 MS. BARNES: Well, okay. So, Abby, let's  
18 look at it, 'cause --

19 MR. GERLICZ: In what way does that  
20 limit --

21 MS. LEWIS: It says that, "The authorizer  
22 shall not request reports from the school that are  
23 available through PED." And I can't get information  
24 out of PED sometimes. So, I don't want the --

25 MR. GERLICZ: But we are your staff, and

1 we are --

2 MS. LEWIS: Right. I've been told that  
3 I -- that I should not speak with you.

4 MS. BARNES: You could go through Seth.

5 MS. LEWIS: So, this is a political issue.  
6 But I don't want the Commission to get in a position  
7 where they cannot get the information that they  
8 need, because I have already hit that 17 times in  
9 the last week.

10 MS. BARNES: So --

11 MS. FOX: Can we say something like, "To  
12 the extent possible, the authorizer shall endeavor  
13 not to request reports," blah-blah-blah, "unless" --  
14 "unless they are not otherwise available to the  
15 PED"?

16 MS. LEWIS: So long as we understand that  
17 "otherwise available" includes me being told I'm not  
18 to talk to any division of PED, and that I am not  
19 entitled to information.

20 MS. BARNES: Okay. So, this is a side  
21 issue, but let me just say that. What I understand  
22 is that Tony is completely available to you and is  
23 then asked by the Cabinet Secretary to get PEC and  
24 you what you need. But it should go through Tony.

25 MS. LEWIS: I've been told the opposite.

1 MR. GERLICZ: I don't see any issue there.

2 MS. LEWIS: I've been told that I --

3 MS. BARNES: Not to talk to Tony?

4 MS. LEWIS: -- have to send all requests  
5 through the General Counsel's Office. Clearly, I'm  
6 not abiding by -- he's not my boss, so I'm not doing  
7 what he says. But that's --

8 MS. BARNES: Side conversation. Let's  
9 clear that up, because that's not what I understood.

10 MR. GERLICZ: That's not my understanding,  
11 either.

12 MS. BARNES: I understood Tony was  
13 supposed to get --

14 MS. LEWIS: I have an e-mail to them.

15 MS. BARNES: Let's fix that.

16 THE CHAIR: I tell you what. This is  
17 really too important an issue for less than the full  
18 Commission to even hear or consider. This one's  
19 going to come up tomorrow, okay?

20 Let's move past this one today, knowing  
21 that we're going to discuss this fully when  
22 everybody is here, okay?

23 MS. BARNES: And that there is a desire to  
24 make sure you get the information, and keep in a  
25 desire to pre-populate stuff for schools.

1 MS. LEWIS: Absolutely, yeah, yeah.

2 MS. FOX: Which section is that?

3 MS. BARNES: It's on the bottom of  
4 Page 11. So, make sure PEC gets what it -- PEC gets  
5 information.

6 Also, Commissioner Shearman, just because  
7 it's a different issue outside of the contract,  
8 Tony, in your Director's Report, let's clarify the  
9 chain of communication. It's not a contract issue  
10 that's being raised right here. But we need to talk  
11 and make sure how PEC is supposed to be getting  
12 information, because she's been told something  
13 different than you.

14 So, let's deal with that, separate from  
15 the contract. But -- okay. So, PEC is going to get  
16 what it needs, and ease for schools is a good goal.

17 THE CHAIR: Okay. But know, Julia, this  
18 is full discussion.

19 MS. BARNES: Got it. I'm just saying, as  
20 well, during the Director's Report, we will address  
21 the issue directly outside of the contract. Because  
22 Abby is raising an internal question, not a contract  
23 question.

24 THE CHAIR: Right.

25 MS. BARNES: I don't have any problem with

1 what you just said, either.

2 4.04. You had another note, Abby.

3 "Remove the entire section, as it limits PED's  
4 ability to monitor and evaluate." [Verbatim.] Is  
5 that the same conversation?

6 MS. LEWIS: That's the same comment, yeah.

7 MS. BARNES: So, we'll figure out how to  
8 fix that, and we'll also figure out how you get the  
9 information you need from PED.

10 Okay. Patti says -- oh, 4.05 --

11 MS. FOX: Which, in Abby's, is 4-point  
12 (inaudible).

13 MS. LEWIS: Right. Now, we get even  
14 more --

15 MS. BARNES: So, Patti wanted to add  
16 language to the section that you wanted to remove.  
17 So, we needed -- that's why it all became green.

18 She wanted -- what's the 180-day -- Sue,  
19 do you know, off her draft?

20 MS. LEWIS: She wanted the -- what CSD  
21 sends to the school 30 days in advance, she wanted  
22 it 180 days in advance, for the paperwork that --  
23 (inaudible) the papers they need to have and the --

24 MS. BARNES: Okay. So, this raises a  
25 bigger question. And I've cited the statute on the

1 left. So, on Page 12, I've put this -- "The  
2 authorizer," under 5.3, "is required to develop and  
3 maintain chartering policies and practices  
4 consistent with nationally recognized principles in  
5 all major areas of authorizing, including oversight  
6 and evaluation."

7 MS. LEWIS: And that's on my list for  
8 January, as well.

9 MS. BARNES: Well -- and that's exactly  
10 what I see all of these documents are. But the site  
11 visit form and the application, everything is coming  
12 in front of the Commission in the next group. So, I  
13 don't know if we want to say 60 or 90 days or  
14 something, but --

15 COMMISSIONER BERGMAN: I'm still not  
16 seeing the days anywhere in the section.

17 MS. BARNES: I'm not seeing the days,  
18 either.

19 MS. LEWIS: Oh. Well, it's only in  
20 Patti's, and you won't have it.

21 MS. FOX: Yeah, it's in the prior draft.  
22 It's in the red line.

23 MS. BARNES: So, she wants an amount of --

24 COMMISSIONER BERGMAN: That's six months.  
25 We probably don't know what we're doing tomorrow,

1 much less six months from now.

2 MS. BARNES: I don't -- I'm just saying  
3 the law says that you have to develop and maintain  
4 policies. That's what we're doing. That's what  
5 we're rolling out. That's what the chart is.  
6 That's what the conversation is going to be.

7 COMMISSIONER BERGMAN: Well --

8 MS. BARNES: So, we can say "no" to that.  
9 I don't -- Sue, I don't know what to say, because  
10 this is --

11 MS. FOX: Well, you're going to be doing  
12 all this in January or something --

13 MS. LEWIS: Our goal is to have everything  
14 standardized, so --

15 MS. BARNES: Exactly. Her comment, too,  
16 is that PED and PEC and CSD needs to use the same  
17 criteria. That's what we're doing in this  
18 conversation.

19 MS. LEWIS: Well, I wouldn't necessarily  
20 agree with that, from a legal perspective, because  
21 the Commission does not have to follow CSD's  
22 recommendation. There may be things that --  
23 criteria that PE- -- CSD uses in their evaluation,  
24 and then they've made that recommendation to PEC,  
25 and PEC can do with that what --

1 MS. FOX: Right. But her point here is in  
2 terms of the process. If you guys -- if the  
3 (inaudible) division says, in the application and  
4 instructions, "Do this." And then the PEC disagrees  
5 with that, and, you know, at some point dings the  
6 school for not doing something that the PEC wanted,  
7 all our point is, is tell us what process you want  
8 us to follow, and then you guys need to also respect  
9 that when you're making your decisions. We're --

10 COMMISSIONER BERGMAN: I've got to ask a  
11 question here, because I'm back to going between two  
12 different documents here. In the document you sent  
13 me, Julia, I have a Section 4.05. It says, "Process  
14 for Oversight." That's at the bottom of Page 33.  
15 But over here, that 4.05 has totally disappeared.

16 MS. LEWIS: I took out 4.04, so that  
17 shifted everything else. So, it's now 4.04,  
18 "Process for Oversight," because I took out the  
19 previous Section 4.04. It should do everything --

20 COMMISSIONER BERGMAN: I have a 4.05 here  
21 that has a different heading.

22 MS. LEWIS: That used to be 4.06.

23 COMMISSIONER BERGMAN: And has a much  
24 shorter paragraph as well.

25 MS. LEWIS: Yeah. Everything shifted up

1 one.

2 COMMISSIONER BERGMAN: Okay. All right.

3 MS. LEWIS: Once we get back to 5, we'll  
4 be on track. But when you take something out,  
5 everything --

6 COMMISSIONER BERGMAN: While you're going  
7 there, there's a sentence here in the paragraph you  
8 were just talking about that I want to talk about  
9 for a second. On mine, it's at the top of Page 34,  
10 under 4.05. And it's where it's setting out the  
11 process for oversight.

12 There's a sentence there that says, "The  
13 criteria, processes, and procedures developed will  
14 utilize and align with national best practices,"  
15 period.

16 I have nothing -- that's not in there now  
17 anymore?

18 MS. LEWIS: It's not in there, because I  
19 felt it limited you.

20 MS. BARNES: Hold on. But it should  
21 reflect 5.3. That language says that, "The  
22 authorizer must develop and maintain chartering  
23 policies and practices consistent with nationally  
24 recognized principles and standards for quality  
25 chartering."

1 So, in 5.03, this Commission has an  
2 obligation to do that. I don't mind tracking that  
3 language exactly, but it is in the law.

4 COMMISSIONER BERGMAN: It is in there?  
5 Because I read "NACSA" in there. Nobody's -- NACSA  
6 does not tell the Public Education Commission in  
7 New Mexico how we're going to do this business.  
8 I've made that point before, too. I don't like  
9 that. Yeah.

10 MS. BARNES: Well, I understand that. I  
11 think -- well, it's whatever -- 5.03 -- 5.3 is 5.3.  
12 H is the provision.

13 COMMISSIONER BERGMAN: That's in the  
14 statute?

15 MS. BARNES: Uh-huh, H.

16 COMMISSIONER BERGMAN: Under 5- --

17 MS. BARNES: What it -- how I read that,  
18 Commissioner, is that you -- you look to what's  
19 happening nationally and consider it. You don't  
20 have to do what NACSA says. You don't have to --  
21 they're not the boss of you.

22 MR. GERLICZ: It says "consistent with."

23 COMMISSIONER BERGMAN: To me, that's what  
24 the word "consistent with" means. We have to be  
25 consistent with NACSA, because that's who's really

1 being talked about here. That's -- the national  
2 group is NACSA, yeah.

3 MS. BARNES: There's several -- I'm not  
4 trying to argue, and I don't want to sound  
5 argumentative. There are several national groups.  
6 I mean -- but this is -- 5.3H is in the law. So  
7 that's all I'm saying.

8 COMMISSIONER BERGMAN: Oh, I see it here.  
9 "With nationally recognized principles." Okay.

10 MS. BARNES: Yeah. So, I think what we  
11 should do is make this language the language in the  
12 charter contract, because that's what the law says.

13 COMMISSIONER BERGMAN: Okay, yeah.

14 MS. BARNES: But I just want to tell you,  
15 I don't think it's telling you you have to follow  
16 them. But I think it means that they want you to  
17 bring in the national conversation and talk about  
18 it. That's how I view that.

19 COMMISSIONER BERGMAN: As you can tell,  
20 I'm not mad at NACSA. I agree with a lot of what  
21 NACSA says. But I also disagree with some -- NACSA  
22 is a private group. They are a private group.  
23 They're not --

24 MS. BARNES: So, you're considering it.  
25 So, you're consistent.

1 COMMISSIONER BERGMAN: I don't want them  
2 telling me what I've got to do.

3 MS. BARNES: You know what, though, is  
4 that -- I think this Charter School Act and these  
5 documents are kind of a model. So, I think at the  
6 moment, you guys are doing really well.

7 So, I just want to put in this section,  
8 Abby, then -- I just want to reference. Then we can  
9 do it exactly under whatever Section 5 -- is it  
10 going to retain its 4.05 numbering? So, "Process  
11 for Oversight." I just want 5.3H language in here,  
12 and we put it in exactly.

13 MS. LEWIS: That's fine. Or, we could not  
14 put it in. Either way, the statute is the statute.

15 MS. BARNES: Well, we reference the  
16 statute all over and put it in the contract, so --

17 MS. LEWIS: But I'm saying even if we left  
18 it out, that wouldn't change the law. So six-of-one  
19 to me. I just want --

20 MS. BARNES: Well, I'd rather put it in,  
21 'cause we're putting in here what everybody is  
22 supposed to try to do, and that's from here. So,  
23 let's just reference 5.03 somehow in here. I mean,  
24 if we decide not to reference the law, there's not  
25 much in the contract. I mean, that's the whole

1 point of it is to stick with that concept.

2 4.05, remove the sentence, "The  
3 criteria...," because it may limit the autonomy.  
4 We're going to fix that. That's the sentence we're  
5 going to fix.

6 You took out the sentence that talks about  
7 best practices, and we'll just align with the law.  
8 So that'll take care of that.

9 Comments? Questions? And I -- I don't  
10 want to go too fast. 4.0 -- on Page 13 on the  
11 chart, 4.05, remove the sentence starting, "In order  
12 to improve... ." I think I didn't have any problem  
13 with this.

14 Yeah. You just took out the introductory  
15 sentence. We've had this conversation before.  
16 We're still going to keep that concept that's set  
17 out in the law of improvement plan to corrective  
18 action. But --

19 MS. LEWIS: Well, that's a legal  
20 discussion as to whether or not -- I mean, it's a  
21 legal argument that we've been having as to whether  
22 or not that allows (inaudible) to revocation or not.  
23 So, I don't want to get into that.

24 MS. BARNES: Well, I think that's clear in  
25 the statute. We've already won that one. We won

1 that in TLC.

2 MS. LEWIS: Well, I agree. But Patti  
3 doesn't. I don't know how Sue feels about it.

4 MS. BARNES: The revocation -- the  
5 revocation.

6 MS. LEWIS: The graduated system, whether  
7 you have to get cap first, or they can jump straight  
8 to revocation? Patti said -- Patti disagrees with  
9 that.

10 MS. FOX: For right now, I'm agreeing with  
11 Patti. But, I mean, it's -- (inaudible) in TLC, or  
12 whether the rules --

13 MS. LEWIS: Well, the statute is --

14 MS. BARNES: The statute is what the  
15 statute is. So, I -- this first sentence, I think  
16 is fine to take out.

17 MS. LEWIS: Okay.

18 MS. BARNES: You took out "serious" and  
19 "formal." That's the same kind of thing we did  
20 before.

21 MS. LEWIS: Same thing as the last time,  
22 yeah.

23 MS. BARNES: Okay. This starts to come  
24 back to the conversation.

25 SPEAKER: Where are you, Julia?

1 MS. BARNES: On 4.05 and 4.06 and 4.07,  
2 sets out how the performance frameworks get created  
3 for each school. And, then, at the end of the  
4 school year, the site visit -- or, at some point,  
5 the liaison goes back in and checks the boxes on the  
6 performance indicators.

7 "How did you do?"

8 "We had set out these indicators. How did  
9 you do on them?"

10 And, then, that report's going to come  
11 back to you all. And it's going to be a "meets,"  
12 "does not meet," or "exceeds." They're going to  
13 check a box, and they're going to present that to  
14 the Commission.

15 So these sections set that out. That's  
16 what this is talking about.

17 Patti has -- she starts to ask about that  
18 in more detail, as her comments come up here. We've  
19 fixed "statutorily delineated acts," so we'll do the  
20 same footnote. It's the same language that was  
21 previously up there.

22 Abby, are you following me?

23 MS. LEWIS: No. Sorry. Where are you?

24 MS. BARNES: On Page 13, Patti's comment  
25 on 4.05, that same language, "statutorily denoted

1 acts." [Verbatim.]

2 MS. LEWIS: Okay.

3 MS. BARNES: We talked about that earlier.  
4 We'll fix it the same way.

5 MS. LEWIS: Okay.

6 MS. BARNES: Okay, 4.06, Authorizer  
7 Monitoring.

8 MS. FOX: It's actually 4.05 in Abby's  
9 version.

10 MS. BARNES: 4.05 in Abby's version.  
11 4.06. But it's Authorizer Monitoring.

12 She is saying -- she is saying PEC --  
13 could PEC go to visit a school and could that be a  
14 site visit?

15 I don't think so, because the law has a  
16 section on that.

17 MS. LEWIS: Well, the law says --

18 MS. BARNES: 12(E).

19 MS. LEWIS: The law says that -- are you  
20 talking about 12? Yeah.

21 MS. BARNES: Yeah, look at 12(E), Abby.

22 MS. LEWIS: Right. But my point was that  
23 I don't want to restrict it to only being the annual  
24 visit. The law says a performance review. But the  
25 way it's written in the contract restricts it to

1 being the annual site visit. So, that was my goal  
2 was to say it could be any performance review that  
3 is done, not just at the annual site visit.

4 Are we allowed to notice these things and  
5 act on them?

6 MS. BARNES: Yeah. And she's saying -- I  
7 think the answer to Patti, is she says, "Could PEC  
8 go visit a school and this is a site visit?" I  
9 think not a performance review.

10 MS. LEWIS: I agree that a performance  
11 review would have to have some kind of structure and  
12 due process. But my point is that I do not want to  
13 have it so that the only performance review that can  
14 be acted on is the annual one.

15 MS. BARNES: Well, I agree with that. And  
16 I saw your changes there.

17 MS. FOX: Maybe you just insert a sentence  
18 somewhere in here that says, "The PEC can visit the  
19 school at any time."

20 THE CHAIR: Because sometimes we meet at a  
21 school. Is that their site visit?

22 COMMISSIONER BERGMAN: I was just going to  
23 say, PEC doesn't visit schools. But we do do that  
24 occasionally.

25 MS. LEWIS: I want to distinguish, though,

1 between a site visit and a performance review.

2 MS. FOX: The way that it's set out here,  
3 though, if we can go down to the next section, 4.06,  
4 there's going to be a report generated by virtue of  
5 that site visit that you're talking about in 4.05.  
6 And I don't think the PEC wants to be the one to  
7 have to generate that, that report.

8 MS. BARNES: So, back to -- I think it was  
9 Sue -- whoever just said, "Let's put a sentence in  
10 here," I think that might help, Abby, on 4.05,  
11 something like, "In addition, the PEC" -- you know,  
12 "the authorizer may visit the school at other" --  
13 "for the purposes" -- or something.

14 MS. LEWIS: Well, I don't want it to be  
15 negotiable -- a negotiable part of the contract,  
16 though. They have the right under statute. So, I  
17 don't -- I want the school to understand that that's  
18 not a negotiable item.

19 MS. BARNES: She raises another thing that  
20 I don't see here yet.

21 COMMISSIONER BERGMAN: While you're  
22 looking, I have been invited to go to a number of  
23 schools. I've never done it. But that certainly  
24 shouldn't constitute a site visit, if the school has  
25 asked me to come and look at their school, and I

1 should actually choose to ever go and do that. I  
2 shouldn't be precluded from doing that, either. I  
3 shouldn't --

4 THE CHAIR: If you'll notice, on Page 13,  
5 under --

6 MS. LEWIS: (Inaudible) walk in and see  
7 something so awful --

8 THE CHAIR: The last of Patti's comments,  
9 "The PEC reserves the right to make unannounced  
10 visits, can go anytime," that seems to --

11 COMMISSIONER BERGMAN: Well, the law says  
12 I have to report that.

13 MS. BARNES: I was just trying to find  
14 that. What's Patti talking about?

15 MS. FOX: The authorizer, its designees,  
16 or legal counsel reserves the right to make  
17 unannounced visits.

18 COMMISSIONER BERGMAN: I know. I saw  
19 language to that effect somewhere in here. I can't  
20 tell you where it is right now, but --

21 MS. FOX: The last sentence of  
22 Section 4.05 (inaudible).

23 MS. BARNES: Okay. So -- okay. So --

24 MS. FOX: No, that refers to open  
25 meetings, or to the school. Okay. All right.

1 MS. BARNES: Okay. Patti -- I went to try  
2 to find it in the statute. I know, historically,  
3 there were some problems with the local authorizer  
4 who would just show up unannounced, and that part of  
5 the reason this law got passed was to fix that.

6 I couldn't find anywhere anything that  
7 limited when the authorizer could go to a school.  
8 So Patti's comment was, "This allows you to show up  
9 anytime, anywhere you want to," like it was a bad  
10 thing. But I can't find anything in the law that  
11 restricted them from doing it.

12 So, I guess -- I guess Patti's comment  
13 was, like --

14 MS. FOX: Patti's comment wasn't meant to  
15 imply that the PEC showing up would be a bad thing.  
16 She's just pointing out -- the last sentence  
17 authorizes you -- says that you still have the right  
18 to do something other than the annual site visit,  
19 which is a different animal involved in that --

20 MS. BARNES: So, I think there is nothing  
21 to do with Patti's comment on 4.06. Are you seeing  
22 something we need to change?

23 MS. FOX: I'll look. I think the school  
24 needs to understand, either -- as clearly as we can,  
25 is that Commissioner Shearman showing up at the

1 school does not substitute for the annual site visit  
2 that is going to generate a big report.

3 MS. BARNES: Okay. So, Abby, I think we  
4 could add to that, "The authorizer, the designee, or  
5 legal counsel reserves the right to make unannounced  
6 visits to open meetings or to the school, which  
7 shall not constitute the annual site visit."

8 MS. LEWIS: I'm fine with that. But,  
9 again, I'm distinguishing between a performance  
10 review and a site visit, because a site visit is  
11 something that happens annually, a performance  
12 review.

13 MS. BARNES: I agree with you. That was  
14 the issue on one of the appeals. And we need to  
15 make sure you can show up when you need to. So,  
16 you're correct on that.

17 COMMISSIONER BERGMAN: But that's also  
18 kind of covered already in your document here. At  
19 the top of Page 35, it -- there is a sentence that  
20 says, "Except in extraordinary circumstances,  
21 authorizer visits should be prearranged and with  
22 reasonable notice to avoid needless disruption of  
23 the educational process."

24 I think we all -- we're not -- I have no  
25 desire to just drop in unannounced at some school

1 and disrupt their process. I have no desire to do  
2 that.

3 MS. BARNES: So, we're just going to add  
4 language to Page 23, the sentence right after the  
5 Commissioner just read, "or to the school, which  
6 does not constitute a site visit."

7 COMMISSIONER BERGMAN: You didn't take  
8 that sentence out.

9 MS. BARNES: We did not.

10 MS. FOX: "Which shall not constitute,"  
11 the capital A, "Annual," and capital S, "Site,"  
12 capital V, "Visit." It's a defined term.

13 MS. BARNES: Got it.

14 COMMISSIONER BERGMAN: Oh, here it is.  
15 Except you said extraordinary circumstances. I  
16 think that's reasonable.

17 MS. LEWIS: Well, I wasn't -- didn't want  
18 to get into an argument about what extraordinary  
19 circumstances --

20 COMMISSIONER BERGMAN: Yeah. Everybody's  
21 definition of that might be different.

22 MS. LEWIS: Yeah, exactly.

23 MS. BARNES: But we're good with the way  
24 it is?

25 COMMISSIONER BERGMAN: Yeah, I'm good with

1 it.

2 MS. BARNES: Abby?

3 MS. LEWIS: Uh-huh.

4 MS. BARNES: 4 -- Commissioner?

5 COMMISSIONER GANT: Minutiae. The second  
6 line down in 4.05, it says, "The authorizer."  
7 Should add a comma after that.

8 MS. LEWIS: No comma? Yeah. Sorry --

9 MS. BARNES: And then take out a space  
10 there, after "legal counsel."

11 COMMISSIONER GANT: I was thinking, when  
12 you talk about visits, legal counsel, can't we say  
13 "and/or legal counsel"? Because, to me, if I read  
14 that, it would be one of the -- "the authorizer or  
15 the designee or the -- or the attorney."

16 MS. BARNES: That's a good -- not a small  
17 point, actually. 4.06, you added "and applicable  
18 law," which I can't imagine objecting to. Where is  
19 that?

20 MS. LEWIS: At the end of the first  
21 paragraph -- or, no, wait. The current -- 4.06, or  
22 what would have been 4.06.

23 MS. BARNES: Oh, I think it's probably  
24 here at the bottom of the first section of the  
25 annual visit -- site visit. Let me see.

1 MS. LEWIS: Maybe I mislabeled the section  
2 I dropped that into.

3 MS. BARNES: Okay. Let's not worry about  
4 it.

5 4.07, Patti made a comment that there's  
6 "framework"; it should be "frameworks." Okay. In  
7 the performance frameworks, right there in the  
8 middle of Page 23. That's fine with me. So, okay.

9 "Site reference" -- 5.01. "Site reference  
10 to sections below when talking about the annual  
11 frameworks."

12 That's fine. We just need to do an  
13 internal reference to 5.01. Abby, just saying as  
14 referred to in Sections blah-blah-blah.

15 COMMISSIONER GANT: Down at the bottom of  
16 Page 23, the -- "Either the authorizer or the  
17 designee has to complete a draft annual site visit  
18 report to the school in 60 days." Why does it take  
19 so long?

20 MS. BARNES: You know, Tony's staff is  
21 really working on that, where the document will be  
22 pre-populated and on a SharePoint site. Tony,  
23 correct me if I'm wrong. But it will already be  
24 there. The school can already see what it's going  
25 to be before the liaison shows up. Then the liaison

1 can make changes and it'll be there soon.

2 So, Tony, do you still need 60 days to  
3 complete that?

4 MR. GERLICZ: I think that 60 days was put  
5 in there as an outside limit. It's our every  
6 attempt to do it as soon as we can. And I don't  
7 think we've ever gotten beyond that.

8 COMMISSIONER GANT: Well, the only reason  
9 I bring it up, because on the other side of my house  
10 is somebody that works with the Department of Health  
11 and the Department of Human Services. And they --  
12 the provider where my wife works, they have ten days  
13 to do something. But they, over there, take their  
14 sweet time.

15 I'm seeing what I'm seeing, where we have  
16 here -- or (inaudible) we get the report out to the  
17 (inaudible) --

18 MS. BARNES: (Inaudible.) Yeah. Tony,  
19 can we change that to 45 or something?

20 MR. GERLICZ: I have no problem changing  
21 it.

22 COMMISSIONER GANT: I'm just asking. I  
23 don't know what's going on.

24 MS. BARNES: Let's change it.

25 MR. GERLICZ: We totally agree with quick

1 response.

2 MS. BARNES: Let's change it to 45.

3 Kelly, are you cool with that?

4 COMMISSIONER GANT: You know, I just try  
5 and take care of the --

6 MR. GERLICZ: Yeah, I mean, whatever we  
7 put in there, we get them -- we get it turned around  
8 a lot quicker than that, anyway.

9 MS. BARNES: Okay.

10 COMMISSIONER GANT: (Inaudible.)

11 MS. BARNES: Okay, 5.01. Abby, have you  
12 said you took out a sentence, "If the school  
13 receives" -- okay. It's on Page 52 of the contract  
14 in the booklet, and it's been taken out.

15 It said, "If a school receives a 'working  
16 to meet the standard' or falls below the standard,  
17 this will result the following year in closer  
18 authorizer review of the school's movements towards  
19 meeting the standard on that indicator."

20 So, this is where -- as an example of  
21 where we put in a couple of things that said, "This  
22 is, in part, how this will be used."

23 So if you don't meet the standard and you  
24 fall far below the standard, at least in my mind,  
25 the next year, there's going to be an organizational

1 framework indicator that says, "You know, like, if  
2 you got a 'fall far below' on your special ed files.  
3 CSD is going to look at that pretty carefully."

4 COMMISSIONER BERGMAN: That's a question I  
5 would ask of Tony. Is that not going to trigger  
6 something --

7 MR. GERLICZ: I'm sorry,  
8 Commissioner Bergman. I wasn't paying attention at  
9 this precise moment. Can you repeat the question?

10 MS. BARNES: On Page 37, Tony, of the one  
11 in the book, that sentence, "If the school receives  
12 a 'working to meet' or 'falls far below,' this will  
13 result in, the following year, in closer authorizer  
14 review of the school's movement."

15 So, if a school has really done an  
16 inadequate job of special ed files or something, it  
17 was my understanding that that was going to trigger  
18 closer review by your team.

19 MR. GERLICZ: Yeah. I'm not sure that  
20 this language here accurately reflects -- again, we  
21 don't want to be boxed in.

22 MS. LEWIS: Yeah. That's why I took that  
23 out.

24 MS. BARNES: Okay.

25 MR. GERLICZ: So, that, should we find

1 that there's a facilities issue, à la La Jicarita,  
2 we intervene. Or, if there's a special ed issue in  
3 another school, we intervene, without having to  
4 analyze whether it's "working to meet standards" or  
5 "falls far below standards."

6 COMMISSIONER BERGMAN: But if you've  
7 already removed that, that answers the problem.

8 MS. BARNES: Well --

9 MS. LEWIS: Yeah, I don't know.

10 COMMISSIONER BERGMAN: Unless somebody  
11 wants to put it back in.

12 MS. LEWIS: Patti's problem is what does  
13 it mean? So, I think we all agree it doesn't need  
14 to be in there.

15 MS. BARNES: Well, I just was -- not  
16 trying to make anything harder. I want to make  
17 sure -- the charter contract, under 9 -- 8B-9B-7 and  
18 -11, requires that -- this is what's in the  
19 contract -- "That the criteria process and  
20 procedures that the chartering authority will use  
21 for oversight of operational, financial, and  
22 academic performance."

23 And then -11, "The process and criteria  
24 that the charter authority intends to annually  
25 monitor and evaluate the fiscal overall governance

1 and student performance, including the method the  
2 chartering authority intends to use to conduct the  
3 evaluation."

4 So, as long as we're complying with those  
5 two requirements, we can take that sentence out.

6 That's --

7 COMMISSIONER BERGMAN: Those two terms in  
8 that sentence aren't in what you just read. They're  
9 not in there.

10 MS. BARNES: Okay. And if everybody  
11 agrees with that, we can take that --

12 COMMISSIONER BERGMAN: (Inaudible)  
13 standard or "falls far below standards," yeah. I  
14 have no problem with everybody else.

15 MS. BARNES: Take out? So out is okay?

16 MR. GERLICZ: Yes.

17 MS. BARNES: Sue, you okay?

18 MS. FOX: You know, I guess all my  
19 remarks, and Patti's remarks, are in the context of  
20 sort of a broad, general -- we're not here  
21 representing any particular school. There may be --  
22 in the course of negotiations, we may come back and  
23 say a particular school wants us to get more  
24 specific. But for now, in terms of coming up with a  
25 basic template, that's fine.

1 MS. BARNES: So, also, Patti's comments  
2 throughout here, she is talking -- the language --  
3 here's the way this is working, and it's working  
4 this way right now.

5 Right now, at this meeting, and at the  
6 last meeting, there was a performance indicator  
7 template. That's -- and it doesn't have -- it's not  
8 filled in for any school. It has blanks. That is  
9 what I mean by the general template.

10 Then we sit down with Media Arts, and we  
11 fill in the template. Once the template is complete  
12 for that school, it might modify some sections of  
13 the template, and it might -- they might make a  
14 really good argument for something that everybody  
15 agrees to, and, so far, results in a school-specific  
16 performance framework. That school-specific  
17 framework is what the liaison takes in their hand  
18 when they go on the site visit, and they say, "How  
19 did you do on this and this and this?"

20 And, so, it's hard to articulate that in  
21 the contract. But that is really the reality, that  
22 in the fall of every year, this Commission is going  
23 to say, "Here's what the template looks like of the  
24 framework."

25 And then every year, some school will say,

1 "Yeah, we're still happy with our specific one. "  
2 Or, "No, we want to negotiate this a little  
3 differently."

4 So, some of Patti's comments throughout  
5 here, I feel like are quite clear in reality. The  
6 Media Arts knows how it's going to be assessed. It  
7 has its document. It knows what's in there. It set  
8 its goals. It's following the goals.

9 So, I think that, you know, kind of some  
10 of my comments -- how -- the questions about how  
11 were they rolled out? And she references 5.02 and  
12 5.03.

13 MS. FOX: Where are you?

14 MS. BARNES: On Page 14 of the chart, and  
15 5.02.

16 So, she starts talking about  
17 school-specific indicators; that's, like, the  
18 completed Media Arts document. But the general --  
19 where we've talked about it, maybe we can use better  
20 terms. Where we've used the general indicators,  
21 that's the template that's, right now, been posted  
22 for a month.

23 MS. FOX: Okay. I guess she's just asking  
24 to make this clearer, the section clearer to her.

25 MS. BARNES: So, we can make language

1 so -- we can work on language.

2 MS. FOX: I'm sure we can work that out.

3 MS. BARNES: Okay. Are we still good to  
4 keep going?

5 THE CHAIR: Please go on.

6 MS. BARNES: 5.03.

7 COMMISSIONER BERGMAN: Don't jump over  
8 5.02.

9 MS. BARNES: Okay.

10 COMMISSIONER BERGMAN: Unless your 5.03  
11 and my 5.02 are different.

12 MS. BARNES: I don't think so.

13 COMMISSIONER BERGMAN: My 5.02 is  
14 headlined, "Annual Performance Indicators."

15 MS. BARNES: Right.

16 COMMISSIONER BERGMAN: The word "Targets"  
17 have been changed to "Indicators." And then down  
18 there is a sentence on my Page 38 -- I don't know  
19 where it is on this other document here. Maybe it's  
20 on Page 25 on this other one. But it said, "The" --  
21 I'm kind of in the middle. After the words,  
22 Exhibit 6, it says, "The annual school decision  
23 [verbatim] indicator negotiated by the parties may  
24 include additional rigorous, valid, and reliable" --  
25 and I put in parentheses, "goals" -- "to augment

1 other evaluations of the school's performance."

2 I think that word "may," in that -- we've  
3 all talked about the difference in the past of the  
4 word "may" and "shall."

5 MS. BARNES: Yeah.

6 COMMISSIONER BERGMAN: "May" means, as  
7 some people have -- may have interpreted it, you may  
8 do some goals; you may not do some goals. The word  
9 "shall" says you will do -- and nowhere in that word  
10 "shall" does it say you've got to do 30 more  
11 additional goals. There's no number there.

12 MS. BARNES: Yeah. So, what this section  
13 right there that you referenced is in 9.1C. And the  
14 way that it shows up in the -- so what 9.1C allows  
15 is it's -- and I'm not sure that it's needed  
16 anymore. But it's the way that it's written.

17 You will present a template which you've  
18 already presented this year. You may change it when  
19 you vote it. But, anyway, it's presented in draft.  
20 And the school, when it sits down to negotiate, can  
21 say, "There's some more things we want."

22 In the performance framework, it's called  
23 "additional supplemental indicators." And that's  
24 just this language right here in C.

25 So --

1 COMMISSIONER BERGMAN: Yeah. But see  
2 there, in C, the word "shall" appears. It doesn't  
3 say "may."

4 MS. BARNES: Well, it says, "shall allow  
5 for."

6 COMMISSIONER BERGMAN: "The performance  
7 framework shall allow for."

8 MS. BARNES: But "allow for." But it's  
9 presented by the charter school to augment external  
10 evaluations.

11 COMMISSIONER BERGMAN: Okay. I would be  
12 more comfortable if the word "shall" was there, but  
13 others may disagree.

14 MS. BARNES: Well, we could say "shall  
15 allow." We can make that exactly --

16 COMMISSIONER BERGMAN: Instead of "shall  
17 include," yeah, how about "shall allow"? That, at  
18 least, mirrors the language that I just read over  
19 here.

20 THE CHAIR: "Shall allow" is still saying  
21 "may."

22 COMMISSIONER BERGMAN: Yeah, it is. I  
23 know.

24 MS. LEWIS: It is. And that's what the  
25 statute says, so --

1 COMMISSIONER BERGMAN: That's now becoming  
2 semantics.

3 MS. BARNES: And, so, "to augment external  
4 evaluations of its performance" is exactly from the  
5 language -- actually, Abby, look at that --

6 MS. LEWIS: I took that out.

7 MS. BARNES: You took that out. But it's  
8 in the statute, so, it should stay in.

9 MS. LEWIS: Where in the statute?

10 MS. BARNES: C. 9.1C, "to augment  
11 external evaluation of its performance." So, I put,  
12 later, it should stay in.

13 THE CHAIR: So, we cannot change "may" to  
14 "shall"?

15 MS. BARNES: We're going to leave it, I  
16 think. "May allow" means --

17 MS. LEWIS: "Shall allow" means "may."

18 MS. BARNES: "Shall allow" means "may."

19 COMMISSIONER BERGMAN: "Shall allow" means  
20 the same thing as "may," unfortunately, yeah.

21 MS. LEWIS: Okay.

22 MS. BARNES: So Section 5.02 just looks to  
23 mirror the statute.

24 Okay. 5.03. Patti has a comment here  
25 about this -- this issue that's been raised a couple

1 of times about whether you need to give an  
2 opportunity to cure. I wasn't quite sure, Sue, if  
3 you know where she raised it right here.

4 COMMISSIONER BERGMAN: To cure what?

5 COMMISSIONER GANT: 'Cause it says in the  
6 statute.

7 MS. FOX: Can you tell me which sentence  
8 she's --

9 MS. BARNES: 5.03. Patti references  
10 22-8B-12F. The issue is can -- could this  
11 Commission revoke a charter, or do you have to allow  
12 them a notice of opportunity to cure?

13 MS. FOX: Yeah. This basically goes to my  
14 overall comment under Section 12.

15 MS. BARNES: So, I'm not sure why Patti is  
16 raising it here.

17 MS. FOX: Just because that's the first  
18 time that it occurred to her in her review, I'm  
19 sure.

20 MS. BARNES: But we should talk about it  
21 in 12?

22 MS. FOX: We can talk about it in the  
23 context of 12.

24 MS. BARNES: Okay, so this comment is  
25 going to come up later. We're going to put it off.

1 COMMISSIONER BERGMAN: Okay. Because I  
2 read here, "The authorizer may take" -- we're back  
3 to "may" again. We may take action; we may not take  
4 action. That's at the bottom of Page 38.

5 MS. BARNES: Well, I see. Processes or  
6 charter ratification is set forth within this -- and  
7 it takes us to 12. Let's talk about it in 12.

8 COMMISSIONER BERGMAN: Yeah. Go ahead.  
9 Yeah.

10 THE CHAIR: We're talking about it --  
11 what? -- in the meeting, or --

12 MS. BARNES: It's in Section -- we're  
13 going to discuss it in Section 12, when we get to  
14 Section 12.

15 And, Commissioner, you're welcome to talk  
16 about anything you want in the meeting, so --

17 COMMISSIONER GANT: (Inaudible.)

18 THE CHAIR: All right.

19 COMMISSIONER GANT: "The chartering  
20 authority may take appropriate corrective action or  
21 exercise sanctions, as long as the sanctions do not  
22 (inaudible) revocation (inaudible)."

23 MS. BARNES: My point on that is we should  
24 just be referencing the statute each time. The  
25 statute says what the statute says. And people

1 could argue about it later.

2 Commissioner Shearman, I was just going to  
3 check in. Do we want to keep going a little bit  
4 further?

5 THE CHAIR: Oh, yeah.

6 MS. BARNES: 5.03. Patti has raised  
7 again -- and, Sue, I'm still not sure I know the  
8 answer to this -- she -- her question is whether --  
9 how is this going to -- how are -- what's the basis  
10 for a renewal decision or not? How is -- and I  
11 think fundamentally, the question is, how do the  
12 frameworks answer the renewal question? And your  
13 answer was, "It's a body of work."

14 And, so, I still am not sure it needs to  
15 go in the contract. But it's the same conversation.

16 COMMISSIONER BERGMAN: We can't be too  
17 tied down. Like I say, we can't set all this stuff  
18 in concrete. One thing, we're talking about a  
19 Commission with ten -- nine members on it. They're  
20 not a herd; they're nine individual members, and  
21 they're all -- they're going to -- other  
22 Commissioners may not evaluate the stuff the same  
23 way I evaluate it. So, you can't get it in writing.

24 THE CHAIR: (Inaudible) half the schools  
25 are different. One may have very much emphasis on

1 media arts, and the other one may have great  
2 emphasis on outdoor expeditions. I don't know how  
3 you can evaluate them both exactly the same.

4 COMMISSIONER BERGMAN: And they all have  
5 different targeted student bodies, too. Some of  
6 them are going for the kids that nobody else on the  
7 planet wants in their schools. So, you have to  
8 evaluate that school a little bit differently than  
9 you do -- at least I do -- than a school that's  
10 getting all the smartest kids on the A list. Those  
11 kids -- that school ought to have an A, because all  
12 their kids are A kids.

13 But, anyway, that's just an aside.

14 THE CHAIR: That's a discussion for  
15 another day.

16 MS. BARNES: So, we're not going to deal  
17 with it here. We've already had the conversation.

18 COMMISSIONER BERGMAN: No.

19 MS. BARNES: Abby, on 5.03, it looks like  
20 they're both small. But is there anything you want  
21 to say about that?

22 MS. LEWIS: What page are you --

23 MS. BARNES: You added -- on Page 15 of  
24 the chart, in the middle, you said, "Added the words  
25 or charter revocation."

1 MS. LEWIS: Oh, yeah. Those are -- we can  
2 talk about them, if you want to, but --

3 MS. BARNES: But they're technical?

4 MS. LEWIS: (Inaudible.)

5 MS. BARNES: Okay. So, they're very  
6 technical?

7 MS. LEWIS: Yeah, technical.

8 MS. BARNES: Yeah. The next one, I just  
9 was -- again, Commissioner Bergman, you had asked  
10 what was from last year, this year; we cleaned up  
11 language; we reordered stuff.

12 Let's see. In the introduction to  
13 Section 6 -- again, now, Section 6 is where the  
14 material terms of the contract come in.

15 MS. LEWIS: That may be a good place to  
16 start with in the full meeting.

17 COMMISSIONER BERGMAN: Yeah. Maybe we can  
18 stop. Yeah. If we're going to a new section, it  
19 might be a good place for --

20 MS. LEWIS: Especially the material terms.

21 COMMISSIONER BERGMAN: Yeah.

22 THE CHAIR: Okay.

23 MS. FOX: Can we just -- if you don't  
24 mind, if we have a couple of minutes, jump --

25 MS. BARNES: Jump to 12?

1 MS. FOX: Not necessarily to 12, but to --  
2 my overall comment about this is that one thing  
3 that's missing, to me -- and it's required by  
4 8B-12F -- is the revocation process.

5 MS. BARNES: So --

6 MS. FOX: That's set out in there, that  
7 says basically, that there has to be some -- if you  
8 choose to proceed to revocation, there's a minimum  
9 level of due process that's set out in the statute  
10 that I think we ought to reference in Section 12.

11 MS. BARNES: Okay. So --

12 MS. LEWIS: Sorry. Sue and I spoke about  
13 this earlier. And I absolutely agree, as did Mike  
14 Williams, which is why, when you did TLC, he applied  
15 the Uniform Licensing Act. I wish the Legislature  
16 had put that in.

17 So, to me, it makes sense. Why reinvent  
18 the wheel? If we can just incorporate the Uniform  
19 Licensing Act into this -- and Sue and I also talked  
20 about we need another mechanism, if it's so  
21 atrocious that we're not going to take the 60,  
22 90 days that ULA -- if revocation needs to happen or  
23 children are in real peril, we need a process for  
24 that, as well.

25 But rather than reinvent the wheel, I

1 would suggest that we just use the ULA, which is  
2 what you did for TLC.

3 MS. BARNES: So, that's not -- you all  
4 just need to show that to me.

5 MS. LEWIS: The ULA? Or how that will  
6 look?

7 MS. BARNES: Just -- I just need to know,  
8 I guess, the ULA. Just show me the site for it, so  
9 I can take a look at it, because it's not the  
10 provision for reporting. It's a different  
11 revocation procedure?

12 MS. LEWIS: Yeah. It's what they use to  
13 revoke teacher licenses.

14 MS. BARNES: Okay. So, there was a  
15 teacher licensing thing in TLC that was substantive.  
16 But you're talking about a process.

17 MS. LEWIS: Right. It's in Chapter 61,  
18 Article I.

19 MS. BARNES: Okay, great. So, you want to  
20 reference that somewhere here?

21 MS. LEWIS: That would be my (inaudible).

22 MS. BARNES: Where -- do you have a point  
23 where you would do that?

24 MS. LEWIS: No, because Sue just brought  
25 it to my attention earlier, and I said (inaudible).

1 MS. FOX: Probably in Section 12.

2 MS. BARNES: Okay. Let me go to  
3 Section 12 and just make a note. I'll make a note  
4 on Page 21.

5 MS. FOX: We can work together to work  
6 something out.

7 MS. BARNES: Uniform Licensing Act. What  
8 did you say it was?

9 MS. LEWIS: 61-1.

10 MS. BARNES: So, tomorrow, just so that  
11 I'm -- or the next day, just so that I'm clear, are  
12 you going to -- do you have it in your mind how it  
13 will go?

14 THE CHAIR: I -- I'm thinking (inaudible)  
15 several Commissioners who aren't here, some sort of  
16 overview or synopsis of what we've done. Or, maybe  
17 we start at this point and move to the end and then  
18 sort of go back and review quickly what we did  
19 today.

20 MS. BARNES: So -- now, the other thing  
21 I'm not -- let me just present this; it might be a  
22 bad idea. I'm not, as much as I -- I'm sure it's  
23 going to be really interesting -- I'm not going to  
24 be here tomorrow, because you're going to do most of  
25 the issues that I'm not going to be here for. So,

1 Tony and everybody is going to be handling it.

2 So, I could draft a synopsis and get it to  
3 you all and see if that helps.

4 THE CHAIR: I think that would be a good  
5 idea. And then that would allow us to finish this.

6 MS. BARNES: And then just review the  
7 synopsis.

8 THE CHAIR: With everybody -- then  
9 everybody would be caught up on what we did today.

10 MS. BARNES: Okay.

11 COMMISSIONER BERGMAN: Don't write a book,  
12 Julia. Just something (inaudible).

13 MS. BARNES: I know. I gave you a book --

14 COMMISSIONER BERGMAN: I don't want you  
15 working till 4:00 in the morning writing the  
16 synopsis.

17 THE CHAIR: Are you saying Julia is an  
18 overachiever? How could you say that?

19 COMMISSIONER BERGMAN: She's very  
20 dedicated to her work.

21 MS. FOX: I can't believe you synthesized  
22 all this.

23 MS. BARNES: I can't stand it not being  
24 synthesized. I can't stand it.

25 THE CHAIR: We need a motion to adjourn.

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COMMISSIONER GANT: So move.

COMMISSIONER BERGMAN: Second.

THE CHAIR: Motion and second to adjourn.

All those in favor, please say "Aye."

(Commissioners so indicate.)

THE CHAIR: Any opposed? I will hit you  
with this thing here. We're adjourned.

(Proceedings in recess.)

## 1                   BEFORE THE PUBLIC EDUCATION COMMISSION

2                                   STATE OF NEW MEXICO

3  
4                                   REPORTER'S CERTIFICATE

5           I, Cynthia C. Chapman, RMR, CCR #219, Certified  
6 Court Reporter in the State of New Mexico, do hereby  
7 certify that the foregoing pages constitute a true  
8 transcript of proceedings had before the said NEW  
9 MEXICO PUBLIC EDUCATION COMMISSION, held in the State  
10 of New Mexico, County of Santa Fe, in the matter  
11 therein stated.

12           In testimony whereof, I have hereunto set my  
13 hand on January 3, 2014.

14  
15  
16                                   *Cynthia Chapman*

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