

LETTER OF CONCERN/OBJECTIONS

April 13, 2018

To the Honorable Members of the Public Education Commission:

The undersigned administrators and governing council members, on behalf of the designated Schools, request that the Public Education Commission (“Commission”) table consideration of the policies that are on the Commission’s April 13, 2018 Agenda as items #12 (“PEC Accountability Plan and Academic and Organizational Performance Frameworks”) and #14 (“Amendments Policies and Processes Including, at a Minimum, Policy and Process for Adding a School Site/Replication”). We ask that the PEC delay its vote until such time as it has considered the Schools’ concerns with the proposed policies. Our concerns and objections include, but are not limited to the following:

A. PEC Accountability Plan and Academic and Organizational Performance Frameworks:²

1. The PEC’s Accountability Plan and Academic and Organizational Performance Frameworks (“Accountability Plan”) does not reference or align and otherwise conflicts with the existing PEC-approved charter schools’ negotiated Charter Contract(s)³. Unless the Accountability Plan is aligned and consistent with the Charter Contract(s), the PEC’s new policy results in a unilateral amendment by the PEC that is unenforceable, confusing and creates additional administrative burdens. *See e.g.* Sections 5.04 (amendment of performance frameworks); Section 13.01(contract take precedence over policies); Section 13.02 (amendments); Section 13.07 (effect of changes in PEC policies).
2. Interventions described are not aligned with the processes and terms described in the Charter Contract and create confusion. For example, p. 7 refers to “Notice of Concern, Notice of Breach, and Revocation Review” however, the Contract uses the term “Notice of Unsatisfactory Performance”. The new policies describe progressive oversight and imposition of corrective action steps, but these do not align with the Charter Contract. The terms of the proposed Accountability Policy should be reconciled with existing language and the procedures contemplated in the Charter Contract.
3. The process and criteria (including the performance frameworks’ performance indicators and targets) upon which the PEC’s decision to renew a PEC-authorized charter contract is set forth in the Charter Contract. The renewal process described on page 10 of the proposed Accountability Plan differs substantially and is not enforceable against charter schools with existing contracts (including the performance framework, which by law is a material term of the Charter Contract).
4. The Charter Schools Act⁴ (“CSA”) does not require a renewed charter school to negotiate a new contract, nor new performance frameworks. Any such requirement by the authorizer is in excess of its statutory authority as set forth in the CSA. *See e.g.*, NMSA 1978, §22-8B-12.
5. The Academic Performance Framework gives 90% weight to the A-F School Rating System and thereby violates section NMSA 1978, §22-8B-12(K)(2), which contemplates that a charter may meet its academic performance goals by either meeting its student performance standards as identified in the charter contract *or* the “department’s standards of excellence”⁵. Evaluating the academic success of a school almost entirely on the school grade is not, therefore, in accordance with the CSA. In addition, the proposed new performance framework violates the clear Legislative purpose of the CSA as set forth in 22-8B-3, which provides, “[t]he Charter Schools Act is enacted

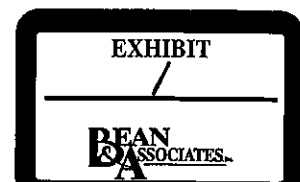
¹ We understand this policy to be one and the same as the “New Mexico Public Education Commission Charter Performance Review and Accountability System” – released by the Charter Schools Division.

² *Id.*

³ We understand that the most recent version of the PEC Charter School Contract was last revised in 2014.

⁴ NMSA 1978, §§22-8B-1, *et seq.*

⁵ This term is not defined in statute or rule of the New Mexico Public Education Department.



to enable individual schools to structure their educational curriculum ... **to allow the development of different and innovative forms of measuring student learning and achievement; to address the needs of all students, including those determined to be at risk**; and is contrary to NMSA 1978, §22-8B-9.1(C).

6. The financial and organization performance frameworks have undefined terms, are unclear, ambiguous and poorly articulated in many respects, resulting in due process concerns.

B. Amendments Policies and Processes Including, at a Minimum, Policy and Process for Adding a School Site/Replication

1. Pursuant to the Charter Contract provisions cited above in paragraph 1, the Charter Contract can only be **amended** by agreement of the parties. The proposed Amendment Policies and Processes (“Amendment Policies”), if approved, violate Charter Contract provisions and exceed the authority of the Commission as set forth in the CSA.
2. The Commission has no contractual or statutory authority to require the charter school to give notification of the type and in the manner as proposed. For example, the new policy provides that a charter school cannot take any action or implement any of the enumerated modifications (amendments or notifications), “until approved by the PEC.” The proposed Amendment Policies require “notification” of a change in a charter school’s head administrator, business manager or governing body member or contact information, which is contrary to law. *See* 6.29.1.9(B)(2) NMSA (provides that the charter school governing body employs the charter school administrator); NMSA 1978, §22-8B-4(charter school authority to contract for services), and NMSA 1978, §22-8B-10(charter employs own personnel). In addition, without any legal authority, the Amendment Policies require a new administrator, business manager and governing council member to sign an affidavit that reveals highly sensitive personal information with no assurances of confidentiality.
3. Approval of new amendments and notifications will be made contingent on existing charter schools (with executed Charter Contracts) agreeing to accept the new charter school contract terms and conditions, including new academic performance indicators, which violates NMSA 1978, §22-8B-5.3 (negotiate and execute contracts in good faith) and provisions of the Charter Contract.⁶

The undersigned also respectfully suggest that the PEC consider a uniform and systematic process for adopting new policies that includes sufficient notice, meaningful input, and receptiveness to feedback from the charter schools that it authorizes before adopting policies. We believe that such process is required by the State Rules Act⁷, in addition to fundamental principles of due process.

Thank you for your consideration of our request.

⁶ Based on information provided during Charter School Division webinar.

⁷ NMSA 1978, §14-4-1, *et seq.*

E-SIGNATURES OF SUPPORT

Letter of Concern/Objections to Public Education Commission
April 13, 2018

SCHOOL NAME	REPRESENTATIVE
Alma d' arte Charter High School	Karen Caroe, Governing Council member Gene Elliot, Governing Council President Mark Hartshorne, Director
The MASTERS Program	Anne Salzman, Director
Middle College High School	Robert D. Hunter, Ph.D., Director
Deming Cesar Chavez Charter High School	Stan Lyons, Director
La Promesa Early Learning Center	Chris Jones, Director
A State Chartered School	Traci Filiss, Superintendent
Turquoise Trail Charter School	Ray Griffin, Ph.D., Director Floyd Trujillo, TTCS Governing Council President
School of Dreams Charter School	Michael Ogas, Head Administrator
Monte del Sol Charter School	Robert Jessen, Ph.D., Head Learner
ASK Academy	Daniel Busse, General Manager Connie Dove Castilleja, Director of Advancement Dan Barbour, Assistant General Manager, Director of Finance, Founder
J. Paul Taylor Academy	Eric B. Ahner, Executive Director
Anansi Charter School	Michele Hunt, Director
Aldo Leopold Charter School	Wayne Sherwood, Director
Los Puentes Charter School	Mickey Smith, Principal
Gilbert L. Sena Charter High School	Nadine Torres, Director
Sandoval Academy of Bilingual Education	Jackie Rodriguez, Director
McCurdy Charter School	Deborah Bennett Anderson, Chairperson, Governance Board
South Valley Preparatory School	Charlotte Alderete-Trujillo, Director
Albuquerque Sign Language Academy	Rafe Martinez, Executive Director