

## [EXT] Feedback for 6.80.4 NMAC

Stiles, Abigail <Abigail.Stiles@nmlegis.gov>

Mon 11/12/2018 5:20 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I wanted to share some feedback about the proposed rule amendment for 6.80.4 NMC

In section 6.80.4.9(I)(1) “policies” is misspelled and written as “polices”.

Subparagraph E of 6.80.4.13 NMAC states that a chartering authority must restate the motion that was voted on and the reasons that were voted on. The reasons would not have been voted on, only the motion. This could be revised to say that the chartering authority must state the reasons given for the motion and the vote.

Abigail Stiles | Fiscal Analyst | Legislative Education Study Committee | (505) 986-4593



## [EXT] RE: COMMENTS TO NMPED PROPOSED RULE CHANGES TO 6.80.4 NMAC

pmatthews@matthewsfox.com

Mon 12/3/2018 5:05 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Cc:Gonzales, Jamie, PED <Jamie.Gonzales@state.nm.us>; Mastalir, Dawn, PED <DawnE.Mastalir@state.nm.us>;

No, I just received a confirmation of the first comment sent for 6.19.8, but did not for the comments on 6.80.4. I apologize for sending the comments on 6.80.4 repeatedly, but though there was an error in that I did not receive the confirmation of the second.

Thank you, however, for acknowledging receipt of the copies and I apologize for the inconvenience.

Patricia Matthews

MATTHEWS Fox, P.C.

O: 505.473.3020 | F: 505.474.3727

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**From:** FeedBack, Rule, PED [mailto:Rule.FeedBack@state.nm.us]

**Sent:** Monday, December 03, 2018 4:32 PM

**To:** pmatthews@matthewsfox.com

**Cc:** Gonzales, Jamie, PED <Jamie.Gonzales@state.nm.us>; Mastalir, Dawn, PED <DawnE.Mastalir@state.nm.us>

**Subject:** Re: COMMENTS TO NMPED PROPOSED RULE CHANGES TO 6.80.4 NMAC

Good afternoon,

We are in receipt of your email dated December 2, 2018, at 1:08PM. We will be using your initial email and attached letter as public comment. Please inform our office, should you like to have your follow-up email dated December 2, 2018 at 2:00PM and email with attached letter dated December 2, 2018 at 2:02PM, included in the public comment.

Thank you.

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**From:** [pmatthews@matthewsfox.com](mailto:pmatthews@matthewsfox.com) <[pmatthews@matthewsfox.com](mailto:pmatthews@matthewsfox.com)>

**Sent:** Sunday, December 2, 2018 1:08 PM

**To:** FeedBack, Rule, PED

**Subject:** [EXT] COMMENTS TO NMPED PROPOSED RULE CHANGES TO 6.80.4 NMAC

Please find attached comments to 6.80.4. NMAC from the Matthews Fox, P.C. law firm on behalf of a number of our clients.

PATRICIA MATTHEWS

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*Attorneys and Counselors at Law*

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Susan Barger Fox  
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December 2, 2018

Via U.S. Mail and Email [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us)  
Policy Division, New Mexico Public Education Department  
300 Don Gaspar Avenue, Room 101  
Santa Fe, NM 87501

*Re: Comments on proposed Public Education Department Rule 6.80.4 NMAC "Charter School Application and Appeal Requirements"*

To whom it may concern:

This Firm provides the following comments in response to the proposed revisions to sections of 6.80.4 NMAC as indicated herein.

#### **6.80.4.7 DEFINITIONS**

- **(H) "Days"** – referring to days the "department is not closed" is confusing. Are the days the "department is not closed" and "legal holidays" as referred to in the Uniform Statute and Rule Construction Act at NMSA 1978, §12-2A-7 different? If so, does PED post in a readily available location an annual calendar indicating the days that it is closed as opposed to legal holidays? Seems this language could create confusion and difficulty for the parties to ascertain with certainty the days to be counted. Recommend that PED use the term "legal holidays" as does the Act, or just refer to the Act as the basis for calculating time.

#### **6.80.4.13**

- **(D)(1)** The existing "Charter School Application and Appeal Requirement" rule does not define "charter", "contract" or "charter contract" but uses all three terms. If the terms are to be used interchangeably, this should be defined, but "charter contract" or just "charter" is more accurate. Because the Charter Schools Act includes some provisions that use the term "charter", "contract" and then "charter contract," it would be helpful if the PED rule defined these terms. The term "charter" means, "an instrument that establishes a body politic or other organization, or that grants rights, liberties, or powers to its citizens or members." *Black's Law Dictionary (10<sup>th</sup> ed. 2014)*.

- **(D)(2)** The revised language does not use the standard as set forth in NMSA 1978, §22-8B-12(K)(2), i.e. it refers to language amended out of the law. The current section of statute provides, "failed to meet or make substantial progress toward achievement of the department's

**standards of excellence** or student performance standards identified in the charter contract; ...". The outdated language should be corrected.

- **(D)(2)** In addition to the incorrect statutory language, the standard is not defined by the proposed rule despite the proposed new language. The revisions appear to make an attempt to define "meets or make substantial progress," but the standard of excellence is not articulated as part of the new language.

- **(D)(2)(a)** Reference to "tier 4 rating" creates an ambiguous measure. Tier ranking is not defined in either PED rule or the Charter Schools Act and, thus, is of little or no use in describing substantial progress or any other standard, if that is the intent of the rule's amendment. If the PED is relying on the state charter authorizer's adopted policies for assessing academic performance for charter schools, which policies are routinely modified or amended, the PED is improperly delegating its rule making authority. See NMSA 1978, §9-24-8(D). If the PED were to permit a third party to effectively modify PED rules by taking action outside of PED's rule making processes, which would occur if and when the state authorizer decides to modify its policies, then this would result in a violation of the State Rules Act, by which the PED is bound.

- In addition, if the PED is relying on the state authorizer's newly adopted "Academic Performance Framework" system of evaluating charter schools, which includes a tier ranking system, the PED is effectively adopting a rule that is invalid on two levels. First, the Public Education Commission did not follow the mandates of the State Rules Act. NMSA 1978, §14-4-1, *et seq.* to which it is subject, when adopting the "tier ranking" system for the new academic framework recently adopted by it. Next, if the PED were to incorporate the Commission's policy, whether properly adopted or not, as part of a rule, it has violated the State Rules Act, by not giving notice and a hearing before adopting the "tier ranking system."

- The "tier ranking system" is not part of the performance frameworks for charter schools with charter contracts that were approved before the Commission adopted its new system.

- **(D)(2)(b)** By adopting a second criteria for "meet or make substantial progress towards the Department's standards of excellence," the PED has created a criteria that is in conflict with the criteria adopted by at least one authorizer. For example, the Commission uses a "tier ranking system," a system that awards points based on sub-components of the School grade rather than the overall grade as used in new language of D(2)(b). Applying the PED's proposed second criteria, could result in a school meeting the required standard of 22-8B-12(K)(2) while not meeting the Commission's ranking system. The PED's rule would then trump the Commission's decision if the Commission decided to not renew a charter school based on its tier ranking system.

- In addition, the revised language in (D)(2) does not define the "department standards of excellence" (or as incorrectly used "minimum education standards"). The new language appears to define what substantial progress towards the yet to be defined standard means. Simply put, what does the Public Education Department define as its "standard of excellence" when measuring performance of charter schools? In order for a charter school to "meet" a standard, that standard must be articulated. The proposed language does not define the "standard of excellence."

- Further, "meets" and "making substantial progress," according to the new language, is given the same interpretation. The Legislature, however, contemplated that a school might be non-renewed if it, "(2) failed to meet or make substantial progress toward achievement

of the department's standards of excellence or student performance standards identified in the charter contract." By using the disjunctive "or", the Legislature clearly intended that there are two different measures, i.e. 1) the charter school can meet the standard, or 2) the charter school can make (or fail to make) substantial progress towards the standard. It is recommended that the Department clearly articulate what the "standard of excellence" means, then "meeting" that standard is clear. Then the Department can define the measure by which a school is shown to be making "substantial progress" towards that specified standard.

#### **6.80.4.13**

(E) Consider revising the last sentence of the new language to read, "The written decision must restate the motion that was voted on in the public meeting and articulate each of the reasons that formed the basis for the authorizer's vote."

(F) This new provision raises a significant disparity between the actions of the state authorizer, and perhaps other authorizers, and the plain language of the Charter Schools Act.

NMSA 1978, §22-8B-9(A) provides that the "chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application." NMSA 1978, §22-8B-12(A) provides that a "charter may be renewed for successive periods of five years each." Nowhere in the Charter Schools Act does it contemplate that the charter authorizer may essentially revoke the original charter contract and replace it with an entirely new contract, with entirely unilaterally imposed terms and conditions. This is the practice of the Public Education Commission beginning in or about July 1, 2016. The original language of 6.80.4 NMAC when read as a whole, is consistent with plain language of the Charter Schools Act, i.e. it contemplates that once a charter contract is negotiated and executed it will be renewed according to the requirements of law, subject to amendments agreed to by the parties. PED's proposed new 6.80.4.14(F) is consistent with the plain language of the statute, i.e. because the language contemplates that the existing charter contract is merely renewed (F) logically provides that once a renewal vote is made, the authorizer simply forwards notice of the renewed contract to the PED and the School. The authorizer always has the contractual right to request an amendment to an existing contract, but wholesale revoking and replacing of the original charter contract is contrary to the plain language of the law. It is recommended that PED ensure that the statute is interpreted correctly to avoid the substantial disruption to a charter school's program by unilaterally cancelling an existing a contract originally negotiated and approved by both parties in lieu of a contract of adhesion imposed by the authorizer without negotiation. See NMSA 1978, §22-8B-5.3(E).

#### **6.80.4.14 Appeals to the Secretary:**

The revisions to this subsection of the rule appears to be to limit duplication found in the original version and to shorten the briefing time for the appellant. However, the revisions are not consistent throughout and should be clarified.

- Revisions to subparagraph 6.80.4.14(D)(5) are not reflected in 6.80.4.14(B). The changes to (D)(5) result in eliminating the ten-day period between the filing of the Notice of Appeal and submission of the appellant's arguments for reversal. To avoid any ambiguity in the appellant's right to submit an argument in support of its appeal, it is suggested that subparagraph B be revised to clearly describe that the appellant has the opportunity to submit argument in support



of appellant's appeal as part of the notice. *See recommended language below.*

Recommended language for 6.80.4.14(B).

"Notice of appeal and appellant's argument in support of appeal.

(1) Filing and service of notice and argument in support of appeal. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal and its argument in support of appeal within 30 days after service of the chartering authority's decision. One original plus four copies of the notice of appeal and argument in support of appeal together with ~~any supporting documents~~ the required attachments shall be filed with the secretary at the department's main office in Santa Fe. No notice of appeal or argument in support of appeal, including exhibits ~~and other related documents~~ or required attachments, shall be filed using compact disks, floppy disks or email; instead, paper documents must be filed with the department.

(2) ~~Grounds of Appellant's argument in support of appeal.~~ The ~~notice~~ Appellant's argument in support of appeal shall include a ~~[brief]~~ statement of the reasons and argument in support of why the appellant contends the chartering authority's decision was in error with reference to the standards set forth in Subsection B of Section 22-8B-7 NMSA 1978 that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer's written reasons for denial, nonrenewal, revocation or imposition of conditions.

- **6.80.4.14(B)(3)(b)** – Use of the words "charter" and "proposed charter" should be clarified. Until a new charter application is approved, there is no requirement to negotiate a charter contract, so none would exist to submit. NMSA 1978, §22-8B-9(A). Perhaps the PED intended for the new and renewing charter *applications* to be submitted. Also, currently the Commission has required hundreds of pages of documents to be attached as "exhibits" to the charter contracts and unless relevant to the appeal, submitting multiple copies of the charter contract as currently required by this provision, could be a waste of public funds. (For example, the PEC is currently requiring charter schools to attach their facility leases as "exhibits" that are "incorporated by reference" into the charter contract.) It is recommended that for renewing charter appeals that "pertinent portions of the charter contract be attached as an exhibit to the arguments" or that the required attachments listed in this provision be amended according to current practices.

- **6.80.4.14(D)(5)** The Division staff, in its role as staff to the Commission, has already reviewed the charter school's application for renewal or for a new charter and made recommendations to the Commission for approval or denial. Requiring only the Division to provide a recommendation for how to rule on its original recommendation to the Commission is inherently biased. The same bias may not be apparent for review of a district authorized charter appeal. In addition, it is unclear why other divisions of the Department have been eliminated from those which may be consulted on the appeal, particularly in light of the limited expertise of the Division on many matters affecting charter schools, e.g. special education, budget and finance.

- **6.80.4.14(E)(1)** and (7) read together create an ambiguity. If (7) is intended to provide the secretary additional time by which to serve the parties with the written decision beyond the 60 days, it is recommended that a specific number of days to serve the decision should be

prescribed, but limited to no more than three (3) days to preserve a charter school's meaningful appeal rights to district court before the end of the charter term.

Thank you.

Sincerely,  
MATTHEWS FOX, P.C.

A handwritten signature in black ink, appearing to read 'Patricia Matthews', written over a horizontal line.

By: \_\_\_\_\_  
Patricia Matthews

cc: Clients



## [EXT] 6.80.4 NMAC Rule Feedback

Educating New Mexico <bmurphy@educatingnm.com>

Mon 12/3/2018 11:23 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

6.80.4 NMAC\_10-29-18\_WEBSITE\_ALD Approval PC.pdf;

Hi Jamie,

Attached is my feedback for 6.80.4 NMAC Charter School Application and Appeal Requirements for the hearing tomorrow. Thank you!

*Choosing Love,*

*Bonnie Lee Murphy - Founder*

*Educating New Mexico*

*(505) 264-2401*

[bmurphy@educatingnm.com](mailto:bmurphy@educatingnm.com)

<http://educatingnm.com>

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[Choose Love Enrichment Program](#)

*Jesse Lewis Choose Love Foundation*

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 80       ALTERNATIVE EDUCATION - CHARTER SCHOOLS**  
**PART 4            CHARTER SCHOOL APPLICATION AND APPEAL REQUIREMENTS**

**6.80.4.1            ISSUING AGENCY:** Public Education Department  
[6.80.4.1 NMAC - Rp, 6.80.4.1 NMAC, 6/29/2007]

**6.80.4.2            SCOPE:** This rule shall apply to applicants and operators of start-up charter schools and previously authorized conversion schools.  
[6.80.4.2 NMAC - Rp, 6.80.4.2 NMAC, 6/29/2007]

**6.80.4.3            STATUTORY AUTHORITY:** Sections 22-2-1, 22-8-1 through 22-8-47 and 22-8B-1 through 22-8B-17 NMSA 1978.  
[6.80.4.3 NMAC - Rp, 6.80.4.3 NMAC, 6/29/2007]

**6.80.4.4            DURATION:** Permanent  
[6.80.4.4 NMAC - Rp, 6.80.4.4 NMAC, 6/29/2007]

**6.80.4.5            EFFECTIVE DATE:** June 29, 2007, unless a later date is cited at the end of a section.  
[6.80.4.5 NMAC - Rp, 6.80.4.5 NMAC, 6/29/2007]

**6.80.4.6            OBJECTIVE:** To establish the initial application and renewal process for charter schools, whether locally or state chartered, the appeal process of charter schools to the secretary of education and the secretary of education's review process.  
[6.80.4.6 NMAC - Rp, 6.80.4.6 NMAC, 6/29/2007]

**6.80.4.7            DEFINITIONS:**

**A.            "Applicant"** means one or more teachers, parents or community members or a public post-secondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

**B.            "Authorizer"** means either a local school board or the commission that permits the operation of a charter school.

**C.            "Charter school"** means a conversion school or start-up school authorized by a chartering authority to operate as a public school.

**D.            "Chartering authority"** means either a local school board or the commission that permits the operation of a charter school.

**E.            "Chief executive officer"** means the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.

**F.            "Commission"** means the public education commission.

**G.            "Conversion school"** means an existing public school within a school district that was authorized by a local school board or the commission to become a charter school.

**H.            "Days"** means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more. In computing the amount of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the department is closed, the period continues to run until the end of the next business day that the department is not closed. Whenever a person or entity must act under this rule within a prescribed period after service of a notice or paper upon the person or entity, and the notice or paper is served by mail or courier service, three calendar days are added to the prescribed period.

~~[H]~~ **I.            "Department"** means the public education department.

~~[I]~~ **J.            "Division"** means the charter schools division of the department which maintains offices in both Santa Fe and Albuquerque.

~~[J]~~ **K.            "Governing body"** means the governing body of a charter school as set forth in the school's charter.

~~[K]~~ **L.            "Head administrator"** means the duly licensed school administrator who is the chief executive officer of the charter school.

~~[L]~~ **M.            "Locally chartered charter school"** means a charter school authorized by a local school board.

~~[M]~~ **N.** “MEM” means membership, which is the total enrollment of qualified students on the current roll of a class or school on a specified day.

~~[N]~~ **Q.** ~~“New Mexico coalition for charter schools” means the non-profit membership organization representing charter schools in New Mexico.~~ There is no reason whatsoever for this to be in here. It is not a true statement, nor is it a reference made anywhere in the entirety of this proposed rule.

~~[O]~~ **P.** “New Mexico school boards association” means the organization consisting of the local public school boards and the governing bodies of charter schools in New Mexico.

~~[P]~~ **Q.** “Organizer” means one or more persons or entities who seek to arrange, form or otherwise put together a charter school.

~~[Q]~~ **R.** “Prospective applicant” means one or more teachers, parents or community members or a public post-secondary educational institution or nonprofit organization who submits a notice of intent to a chartering authority.

~~[R]~~ **S.** “Secretary” means the New Mexico secretary of public education.

~~[S]~~ **T.** “Start-up charter school” means a public school developed by one or more parents, teachers or community members who applied to and were authorized by a chartering authority to become a charter school.

~~[T]~~ **U.** “Application for start-up charter school” means an application requesting the establishment of either a locally-chartered or state-chartered school.

~~[U]~~ **V.** “Special education plan” means a comprehensive written design, scheme or method that includes specific details on how the charter school shall:

(1) utilize state and federal funds to provide children with disabilities a free and appropriate public education, in accordance with applicable law;

(2) provide educational services, related services and supplementary aids and services to children with disabilities in accordance with each child’s individualized education program; and

(3) address a continuum of alternative educational placements to meet the needs of students with disabilities, in accordance with applicable law.

~~[V]~~ **W.** “State-chartered charter school” means a charter school authorized by the commission. [6.80.4.7 NMAC - Rp, 6.80.4.7 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018]

#### **6.80.4.8 NOTICE OF INTENT TO ESTABLISH A CHARTER SCHOOL:**

**A.** The organizers of a proposed charter school shall provide a signed written notification to the commission and the school district in which the charter school is to be located of the organizers’ intent to establish a charter school. The date for submitting a notice shall be no later than the second Tuesday of January of the year in which the prospective applicant plans to submit an application.

**B.** Written notification to the commission shall be made to the division at its Albuquerque office; written notification to a local school board shall be made to the superintendent of that district who shall provide copies of the notification to the local school board during a duly noticed board meeting.

**C.** If the second Tuesday of January falls on a legal holiday, the notification shall be timely if personally delivered on the first day following the legal holiday that the division or office of the pertinent superintendent is open for business. Notice will also be considered timely if it is postmarked four calendar days prior to the second Tuesday of January, regardless of the date on which it is received. Failure to provide timely notification may result in an application being rejected unless the organizers can demonstrate good cause why timely notification was not given.

[6.80.4.8 NMAC - N, 6/29/2007; A, 6/30/2008; A, 6/30/2009]

**6.80.4.9 CONTENTS OF APPLICATION FOR START-UP CHARTER SCHOOL:** A charter school application shall be a proposed agreement between the chartering authority and the charter school and shall include the following assurances, descriptions, outlines and plans.

**A.** The mission statement of the charter school. The mission statement must answer the following questions: “Who do you serve?”, “What do you seek to accomplish?”, “What methods will you use?”, and “How will we know if you are achieving your mission?”

**B.** The goals, objectives and student performance standards to be achieved by the charter school which address how the charter school will comply with the department’s required content standards, benchmarks, and performance standards, state accreditation, standardized testing and school report card in accordance with Sections 22-2C-1 et seq. NMSA 1978. The goals and objectives must be measurable and student-centered.

**C.** A description of the charter school's educational program and curriculum that meets or exceeds the department's educational standards and must be designed to enable each student to achieve those standards and addresses the following:

- (1) documentation, research or rationale that supports a particular curricular approach;
- (2) a description of the curriculum including scope and sequence and student performance standards;
- (3) a timeline for alignment of the curriculum with the department's content standards, benchmarks and performance standards, if alignment has not been completed at the time the application is submitted;
- (4) strategies and methods to be used in delivering the curriculum and how the curriculum will address students' needs and assist each student in reaching those standards;
- (5) length of school day and school year;
- (6) total number of grades the charter school proposes to provide, either immediately or in phases, class size and total projected student enrollment and, if the charter school will be located in a school district that has a total enrollment of not more than 1,300 students, a statement that the proposed charter school's proposed enrollment for all grades, in combination with any other charter school's enrollment for all grades, will neither equal nor exceed ten percent of the total MEM of that school district;
- (7) proposed requirements for graduation, if applicable.

**D.** A description of the way a charter school's educational program will meet the individual needs of students, including those students determined to be at risk, and which will address the following:

- (1) suggested modifications to the proposed educational program to meet individual student needs, such as bilingual, limited English proficient, and special education;
- (2) an outline of a special education plan, the final plan of which must be completed and submitted to the charter authorizer by the end of the planning year;
- (3) how the charter school will provide access to other services including but not limited to counseling and health.

**E.** A description or outline of a plan the charter school considers adopting for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards and the school's student performance standards, the timeline for achievement of the standards, and the procedures for taking corrective action in the event that student performance falls below the standards, and which description or outline addresses the following:

- (1) remediation for students not achieving standards, including a timeline for implementation of the remediation plan;
- (2) assessments that might be considered in addition to the statewide mandated testing;
- (3) documentation and reporting of student data.

**F.** Assurances that the charter school will be economically sound, including the submission of a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted, and addresses the following:

- (1) a proposed budget for year one and the following four years based on the current unit value;
- (2) a description of the administrative operations of the charter school.

**G.** An assurance that the fiscal management of the charter school will comply with all applicable federal and state laws, regulations and rules relative to fiscal procedures. In addition to this basic assurance, the applicant shall clearly state in its assurance that the following information will be provided to the chartering authority by the end of the planning year or within 10 days of receipt of any federal or state stimulus funds:

- (1) a detailed plan indicating how the charter school will manage its fiscal responsibilities;
- (2) a description of its internal control procedures that the charter school will utilize to safeguard assets, segregate its payroll and other check disbursement duties, provide reliable financial information, promote operational efficiency, and ensure compliance with all applicable federal statutes and regulations and state statutes and rules relative to fiscal procedures.

**H.** The names of the members of the governing body and a description of the operation of the charter school, including:

- (1) the method of selecting the governing body;
- (2) the qualifications and terms of members, the filling of vacancies, and the procedures for changing governing body membership;

(3) an assurance that the governing body will meet and conduct its meetings in accordance with the Open Meetings Act, Sections 10-15-1 et seq., NMSA 1978;

(4) the nature and extent of parental, professional educator and community involvement in the governance and the operation of the school;

(5) an assurance that the charter school will adopt policies and procedures of the governing body, that address governance, relationship to staff, professional development, the role of the governing body in policy-making, personnel decisions, budgeting, and operation of the charter school, including how decisions will be made;

(6) for locally chartered charter schools, an assurance that it will amend its charter within one (1) year of approval to include procedures agreed upon with its chartering authority for the resolution of disputes between them;

(7) a description of how the charter school proposes to account to the chartering authority with respect to the charter school's compliance with applicable statutes, regulations, rules and charter provisions;

(8) an assurance by each governing body member that they have read the application and agree to its submission to the chartering authority.

**I.** An explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any, and which address the following:

(1) personnel policies and procedures that comply with all applicable federal statutes and regulations, the School Personnel Act, Sections 22-10-1 et seq., NMSA 1978, and the Charter Schools Act, Sections 22-8B-1 et seq. NMSA 1978 or, if personnel policies and procedures have not been developed at the time of the application, a statement that the policies and procedures developed will comply with applicable federal and state labor laws, regulations and rules implementing them;

(2) a description of the evaluation process for staff which shall include evaluation of teachers by a licensed school administrator;

(3) the discipline process for staff, that provides for due process and demonstrates an understanding of applicable state and federal laws, regulations and rules;

(4) an assurance that the governing body or head administrator will recognize and work with employee labor representatives, if any, on;

(5) a proposed salary schedule;

(6) proposed job descriptions of staff;

(7) a proposed pupil-teacher ratio.

**J.** The student discipline policy of the proposed charter school that complies with the department's rule on students' rights and responsibilities.

**K.** For charter schools, a proposed agreement between the charter school and the authorizer regarding their respective legal liability and applicable insurance coverage.

**L.** A description of how the charter school plans to meet the transportation and food service needs of its students. The description shall address whether the applicant intends to contract with a school district or other party for the provision of transportation and food services; the identity of the school district or that other party, if known, with whom the applicant proposes to contract; a description of the proposed terms of any contract; and for these services a description of the status of any preliminary negotiations with any school districts or other parties regarding the provision of transportation or food service.

**M.** A description of the waivers that the charter school is requesting from either the local school board or the department or both and the charter school's plan for addressing these waiver requests that:

(1) lists the specific policy by number and title for which waivers are requested from local school board policy;

(2) lists the specific waivers that are requested from the department's requirements, rules, and provisions of the Public School Code, Sections 22-1-1 et seq., NMSA 1978, pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties, driver education and graduation requirements.

**N.** A description of the facilities the charter school plans to use, taking phase-in and availability into account. The charter school shall provide a detailed description of its proposed capital outlay needs, including projected requests for capital outlay assistance for the charter school. Additionally, the charter school shall provide an assurance that:

(1) the facility it seeks to use is safe and suitable for use as a school;

(2) it will develop and maintain a plan for addressing code, accessibility requirements and any other health and safety requirements, if necessary;

(3) it will develop and maintain a plan for operation, maintenance and repair of a facility;

(4) it will produce a certificate of occupancy for use of the facility; and

(5) prior to opening that the facility to be used meets all applicable federal and state health, safety and code requirements.

**O.** A description of the enrollment procedures to be used by the charter school that complies with Section 22-8B-4.1 NMSA, 1978 and Subsection D of 6.80.4.12 NMAC.

**P.** An explanation of how approval of the charter school would be in the best interest of students, school district and community where it intends to locate, and how the charter school serves a purpose in that community.

[6.80.4.9 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008]

#### **6.80.4.10 TERM OF A CHARTER:**

**A.** A charter may be approved for an initial term of six years, provided that the first year shall be used exclusively for planning and not for completing the application. The planning year shall be the fiscal year in which the charter is authorized, beginning on the July 1 date on which applications were due and ending on June 30, regardless of the number of months that may be available to a charter school for planning activities.

**B.** A charter may be renewed for successive periods of five years each unless a lesser period is agreed to in writing by the charter school and its authorizer. The five years of the charter will commence on July 1 of the fiscal year after the charter was approved by its authorizer and shall align with the dates of the fiscal year.

[6.80.4.10 NMAC - N, 6/29/2007]

#### **6.80.4.11 REQUIREMENTS DURING THE PLANNING YEAR:**

**A.** For charter schools approved prior to July 1, 2010, prior to the end of its planning year, a newly authorized charter school shall demonstrate to the authorizer that its facilities meet the educational occupancy standards required by applicable New Mexico construction codes. For charters approved on or after July 1, 2015, prior to the end of its planning year, the charter school shall demonstrate to its authorizer that its facilities meet the relevant requirements for schools as set forth in Subsection C of Section 22-8B-4.2 NMSA 1978.

**B.** A charter school shall simultaneously notify the public school capital outlay council and its authorizer in writing of its readiness to demonstrate that its facilities meet the referenced educational occupancy standards.

**C.** The public school capital outlay council shall determine whether a charter school's facilities meet established educational occupancy standards, and if not, whether specific requirements are inappropriate or unreasonable for a charter school. If the public school capital outlay council determines that specific requirements of the referenced educational occupancy standards are inappropriate or unreasonable for a charter school, it may grant a variance. The public school capital outlay council shall provide written notification of its decision and the reasons thereto simultaneously to the charter school and its authorizer.

**D.** Prior to the end of its planning year, a state chartered charter school shall demonstrate that it has qualified as a board of finance and that it has satisfied any conditions imposed by the commission before commencing full operation for the remainder of its charter term.

**E.** Prior to the end of its planning year, the state-chartered charter schools shall apply to the commission for authorization to commence full operations. If the commission refuses to issue the authorization to commence full operation, it shall provide its reasons in writing which shall be limited to the reasons set forth in Subsection D of 6.80.4.11 NMAC.

[6.80.4.11 NMAC - N, 6/29/2007; A, 6/30/2008; A, 6/30/2009]

#### **6.80.4.12 INITIAL REQUIREMENTS AND REVIEW PROCESS FOR START-UP SCHOOLS:**

**A.** Local school boards may approve the establishment of charter schools to be located in their respective districts. The commission may approve the establishment of a charter school to be located anywhere in the state.

**B.** An applicant shall apply to only one chartering authority at a time. An applicant whose application has been denied by a chartering authority or approved with amendments unacceptable to the applicant may file the same application the following fiscal year with a different chartering authority.

**C.** Applications for start-up schools shall be submitted between June 1 and July 1 to be eligible for consideration for the following fiscal year. If July 1 falls on a Saturday or a Sunday, the deadline for filing



applications shall be extended to the close of business of the very next Monday, even in the case of a school district closed for summer break. Applications will also be considered timely if they are postmarked four calendar days prior to July 1, regardless of the date on which they are received. Failure to submit a timely application shall result in an application being rejected by the authorizer, unless the parties agree to waive the filing deadline in accordance with Section 22-8B-6 NMSA 1978. Any such waiver shall be in writing and signed by persons authorized to take such action by the applicant and the chartering authority.

**D.** Enrollment in a start-up charter school shall be guided by the following.

(1) A charter applicant must enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available.

(2) A charter applicant shall advertise its enrollment process using newspapers, bulletin boards and other methods designed to disseminate its availability to seek student enrollment and to ensure that there is equal opportunity for all parents and students to learn about the school and apply.

(3) A charter school shall not charge tuition or have admission requirements, except as otherwise provided in the Public School Code, Sections 22-1-1 et seq., NMSA 1978.

(4) In subsequent years of its operation, a charter school will give enrollment preference to previously properly admitted students who remain in attendance and siblings of students already admitted to or attending the school.

**E.** Any revision or amendment to the terms of the charter contract may be made only with the written approval of the authorizer.

**F.** A charter school shall be a nonsectarian, nonreligious, and non-home-based public school that operates within the geographic boundaries of a public school district.

**G.** A charter school shall comply with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act.

**H.** A charter school shall comply with the same federal and state audit requirements as do other public schools in the state.

**I.** A charter school shall meet all applicable federal, state, and local health and safety requirements.

**J.** A charter school shall operate in accordance with and under authority of state law.

**K.** A charter school shall provide equitable access to, and participation in, its ~~federally-assisted~~ (equitable access is the law, regardless of whether it is a federally assisted program or not) program for students, teachers, and other program beneficiaries with special needs.

**L.** A charter school shall have an admissions process that does not discriminate against anyone on the basis of race, gender, national origin, color, disability, or age.

**M.** A charter school's head administrator or governing body shall not employ or approve the employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the governing body or the head administrator. ~~The governing body may waive the nepotism rule for family members of a head administrator.~~ (Is nepotism against the federal or state law? Then, it can't be allowed in public school codes either.)

**N.** Applications to the commission for establishment of a state chartered charter school shall be made to the division at its Albuquerque office. Applications to a local school board for establishment of a locally chartered charter school shall be made to the superintendent of that district.

**O.** An application for a start-up school may be made by one or more teachers, parents, community members, by a public post-secondary educational institution or a nonprofit organization.

**P.** The chartering authority shall be responsible for reviewing all applications for charter schools. Prior to the submission of the applications, the division shall provide at least three technical assistance workshops for prospective applicants on preparing a start-up application. The chartering authority shall not charge application fees.

**Q.** A review coordinator shall be used by the chartering authority to assist prospective applicants in the preparation of proposed charters. The assistant secretary for the division shall designate a review coordinator in the division for the commission. The superintendent shall appoint a review coordinator for the local school board, unless the superintendent of a school district performs this duty. Prior to the deadline for submission of applications established by the chartering authority, the review coordinator or superintendent and any prospective applicants shall confer in an attempt to identify:

(1) any concerns regarding noncompliance with requirements of the Charter Schools Act (Sections 22-8B-1 et seq., NMSA 1978), this rule or other applicable state or federal laws or regulations which would arise from the establishment or operation of the proposed charter school;

(2) any licensure, curriculum, or other educational concerns which would arise from the establishment or operation of the proposed charter school;

(3) any interests of the students, the school district or the community which would be adversely affected by the establishment or operation of the proposed charter school and describe the apparent adverse effects.

**R.** Prospective applicants are to direct any request for technical assistance and information through the authorizer's designated review coordinator. The review coordinator or superintendent shall ensure that the appropriate staff members respond to requests from prospective applicants for information on school operations, policies or practices which prospective applicants regard as necessary to enable them to present an approvable application. Prospective applicants may request information using the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978). A review coordinator may require that requests for information not made pursuant to the Inspection of Public Records Act be in a format or directed to a specific person or office in the school district or department. Prospective applicants should not contact school district or department employees directly to obtain information.

**S.** Prior to the public meeting at which the decision is made, the chartering authority shall hold at least one public hearing to obtain information and community input to assist it in its decision whether to grant a charter school application. At any such hearing, which shall be duly noticed and held pursuant to the Open Meetings Act (Chapter 10, Article 15 NMSA 1978) and the requirements contained in the Laws 2009 Chapter 12, members of the chartering authority may ask questions of the charter applicant and that applicant shall have an opportunity, subject to reasonable time limitations, to respond to any questions or concerns raised by any members of the chartering authority, and present to the chartering authority information that clarifies and verifies the information in the application that the applicant believes will assist the chartering authority in making its decision. Community input may include written or oral comments in favor of or in opposition to the application by the applicant, members of the local community and other interested individuals. Community input shall be provided within a time limit established by the chartering authority.

**T.** A charter applicant shall respond to requests for information that the chartering authority regards as necessary to verify and clarify issues identified in the charter application; each shall communicate in good faith in an attempt to verify and clarify issues identified in the charter application.

**U.** No earlier than three days after the public hearing to obtain information and community input, the chartering authority shall rule on the application in a public meeting. The public meeting at which the decision is made shall be held by September 1. The charter applicant and the chartering authority may, however, jointly waive the September 1 deadline provided they do so in a signed written statement, **and provided public notice of a joint waiver or a stipulated deadline is posted on the authorizer's website within 24-48 hours of the decision.** If not ruled upon by September 1, or the stipulated deadline, the charter application will be automatically reviewed by the secretary pursuant to the applicable provisions of Section 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

**V.** A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application where:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act (Chapter 22, Article 8B NMSA 1978);
- (3) the proposed head administrator or other administrative or fiscal persons were involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal member was discharged from a public school for fiscal mismanagement;
- (4) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978;
- (5) for a proposed state-chartered charter school, it does not request the governing body to be designated as a board of finance, or the governing body does not qualify as a board of finance; or
- (6) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the applicant seeks to operate.

**W.** If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or imposition of conditions in writing within 14 days of the meeting. The written decision must be based upon the vote that was taken at the public meeting and reflect the stated reasons for the vote of the chartering authority to deny a charter school application or approve the application with conditions. If the chartering authority grants a charter, it shall deliver the approved charter to the applicant.

The time within which to file notice of appeal shall commence upon receipt of the written denial. The chartering authority shall maintain a copy of the charter for its files.

**X.** If the approved charter contains a waiver request for release from department rules or the Public School Code, the applicant must follow the procedures on requesting waivers from the department. The department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto. **Public notice will be provided of all granted waivers requested for release from department rules or the Public School Code on the authorizer's and charter school's website within 14 days of the public meeting of denial or approval of the charter school application.**

**Y.** If the authorizer denies a charter school application or imposes conditions for approval that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978 and Section 6.80.4.14 NMAC.

[6.80.4.12 NMAC - Rp, 6.80.4.9 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009]

#### **6.80.4.13 CHARTER SCHOOL RENEWAL PROCESS AND RENEWAL APPLICATIONS:**

**A.** The governing body of a charter school seeking to renew its charter shall file its renewal application with a chartering authority no earlier than 270 days prior to the date the charter expires. Commencing with any charters that are due to expire at any time after January 1, 2008, all applications for renewal shall be submitted no later than October 1 of the fiscal year prior to the expiration of the school's charter. The chartering authority shall rule in a public meeting on the renewal application no later than January 1 of the fiscal year in which the charter expires.

**B.** The governing body may submit its charter renewal application to either the commission or to the local school board of the district in which the charter school is located, but may not submit the renewal application to both authorizers simultaneously.

**C.** The application shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act (Section 22-2C-1 et seq., NMSA, 1978);

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that will allow comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) any changes to the original charter the governing board is requesting and any amendment to the initial charter, which were previously approved;

(4) a certified petition in support of the charter school renewing its charter status signed by not less than 65 percent of the employees in the charter school;

(5) a certified petition in support of the charter school renewing its charter status signed by at least 75 percent of the households whose children are enrolled in the charter school as identified in the school's 120-day report of the fiscal year prior to the expiration of the charter;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; and

(7) a statement of the term of the renewal requested, if less than five years; if a charter school renewal application does not include a statement of the term of the renewal, it will be assumed that renewal is sought for a term of five years.

**D.** A chartering authority may refuse to renew a charter if it determines that:

(1) the charter school committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;

(2) the charter school failed to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards. ~~[identified in the charter application;]~~ Failure to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards shall be defined by the following criteria:

(a) charter school earns a tier 4 rating as outlined in the charter school performance framework in the charter contract for the most recent two consecutive years or for three of the last four years; or

(b) charter school earns an F rating pursuant to Section 22-2E-1 NMSA 1978 for the most recent two consecutive years or any combination of D ratings or F ratings over the last three years;

(3) the charter school failed to meet generally accepted standards of fiscal management;

(4) the charter school violated any provision of law from which the charter school was not specifically exempted; or

(5) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978.

**E.** ~~[If the chartering authority refuses to approve a charter school renewal application or approves the renewal application with conditions, it shall state its reasons for the non-renewal or imposition of conditions in writing within 14 days of the meeting; provided that if the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the chartering authority. The chartering authority shall keep a copy of the charter for its files.]~~ If the chartering authority refuses to approve a charter school renewal application or approves the renewal application with conditions, it shall state its reasons for the non-renewal or imposition of conditions in writing within 14 days of the public meeting at which the vote was taken. The written decision must restate the motion that was voted on in the public meeting and must restate the reasons that were voted on in the public meeting during which the vote was taken.

**F.** If the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the chartering authority. Public notice will be provided of all approved charters on the authorizer's website within 14 days of the public meeting of denial, renewal or renewal with conditions of the renewal application.

**[F] G.** If the approved charter contains a waiver request for release from department rules or the Public School Code, the department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto. Public notice will be provided of all granted waivers requested for release from department rules or the Public School Code on the authorizer's and charter school's website within 14 days of the public meeting of denial or approval of the renewal application.

**[G] H.** If the authorizer refuses to approve a charter school renewal application or imposes conditions for renewal that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Sections 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

**[H] I.** The provisions of this section shall apply to conversion schools.  
[6.80.4.13 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018]

#### **6.80.4.14 APPEALS TO THE SECRETARY:**

**A.** Right of appeal. A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC ("Suspension of Authority of a Local School Board, Superintendent or Principal").

**B.** Notice of appeal.

(1) Filing and service of notice. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal within 30 days after service of the chartering authority's decision. One original plus four copies of the notice of appeal together with any supporting documents shall be filed with the secretary at the department's main office in Santa Fe. No notice of appeal, including exhibits and other related documents, shall be filed using compact disks, floppy disks or email; instead, paper documents must be filed with the department. Public notice will be provided of all appeals by the charter applicant or governing body of a charter school on the authorizer's and, if applicable, the charter school's website, within 14 days of the filing and service of notice of the appeal.

(2) Grounds of appeal. The notice shall include a [brief] statement of the reasons why the appellant contends the chartering authority's decision was in error with reference to the standards set forth in Subsection B of Section 22-8B-7 NMSA 1978 that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer's written reasons for denial, nonrenewal, revocation or imposition of conditions.

(3) Required attachments. The appellant shall attach to each copy of the notice of appeal:

(a) a copy of the chartering authority's written decision, together with a copy of the authorizer's minutes or draft minutes of the meeting if available; and

(b) a copy of the charter or proposed charter in question.

C. Filing and service of other documents. An original document shall be filed with the secretary at the department's main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party's address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC below, by email to the secretary provided that the email includes any attachments, as well as the sender's name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

D. Pre-hearing procedures.

(1) Within 10 days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time and location for the appeal hearing. **Public notice will be provided of all hearings, including the date, time and location of the hearing with the charter school authorizers on their website and, if a website is available, the charter school will provide public notice of all hearings on the charter school's website, within 14 days of the scheduling of the hearing.**

(2) Except for brief inquiries about scheduling, logistics, procedure or similar questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary must disqualify himself or herself from hearing an appeal if the secretary determines, after learning of a prohibited communication, that the secretary is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Paragraph (1) of Subsection D of 6.80.4.14 NMAC.

~~[(3) The deadlines in 6.80.4.14 NMAC may be extended by the secretary for good cause. Good cause may include, but shall not be limited to, an agreement between the parties or a well-reasoned request from either party based upon hardship, a scheduling conflict or an event beyond the control of the requester.]~~

~~[(4)]~~ (3) All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority's decision in light of the grounds upon which a chartering authority may deny an application set forth in Subsection K of Section 22-8B-6 NMSA 1978 or the grounds for non-renewal or revocation as set forth in Subsection F of Section 22-8-12 NMSA 1978, and the standards for affirmance or reversal that the chartering authority's decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

~~[(5) Within 10 days after filing the notice of appeal, the appellant shall file one original and four copies with the secretary and serve upon the chartering authority one copy of:~~

~~(a) the appellant's arguments for reversal of the chartering authority's decision, clearly labeled accordingly;~~

~~(b) the chartering authority's written decision that the appellant is appealing;~~

~~(c) the charter or proposed charter in question, of which only two (2) copies need to be filed; and~~

~~(d) any other materials related to the issues raised by the appellant which the appellant wishes to have considered in support of its appeal.~~

~~(6) Within 10 days after receiving the appellant's submissions, the chartering authority shall file one original and four copies with the secretary and serve upon the appellant one copy of:~~

~~(a) the chartering authority's response to the appellant's arguments; and~~

~~(b) any other materials the chartering authority wishes to have considered in support of its decision.]~~

(4) Within 15 days of the mailing date of the appellant's notice of appeal and reasons to the chartering authority, the chartering authority shall file one original and four copies with the secretary and serve upon the appellant one copy of the chartering authority's response to the appellant's arguments. **Public notice will be provided of all chartering authority's responses to the appellants' arguments on the authorizer's and, if available, the charter school's website, within 15 days of the filing and service of the chartering authority's responses to the appellants' arguments.**

~~[(7) If requested by the secretary, the division and other department staff as appropriate shall review each party's submissions and prepare a report for the secretary which]~~

(5) The division shall review each party's submissions and prepare a report for the secretary which:



(a) analyzes and outlines the parties' contentions on appeal with reference to the standards of Subsection K of Section 22-8B-6 and Subsections B and E of Section 22-8B-7 NMSA 1978;

(b) sets forth the staff's recommendations for the secretary to affirm or reverse the chartering authority's decision, with or without reasonable conditions or changes to the charter, and the reasons for those recommendations.

~~[(8)]~~ (6) At least five days before the hearing date, the division shall deliver its report and recommendations to the secretary and shall simultaneously serve a copy upon each party.

~~[(9)]~~ (7) While an appeal is pending, the parties are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled. Public notice will be provided of all appeals withdrawn and dismissals on the authorizer's and, if available, the charter school's website, within 14 days of the withdrawn appeal.

E. Secretary hearing and decision.

~~[(1)] Unless an extension for good cause has been granted pursuant to Paragraph (4) of Subsection D of 6.80.4.14 NMAC within 60 days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.]~~

(1) Within 60 days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) ~~Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority and the division and other department staff as appropriate.~~ What does this have to do with anything? Public comment should be requested during that time, but those at the hearing are who? The audience? This does not make any sense... This is nowhere else in the rules and is not applicable.

(3) The time allotment for a hearing shall be three hours. Both parties shall be allowed up to 30 minutes for their presentations. Department staff shall be allowed 20 minutes for their presentation. The appellant may reserve part of its 30 minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their 30 minutes but must include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties or the secretary's counsel at any time and may take up to one hour after the staff's and the parties' presentations for further questions, discussion and ~~its~~ a decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which shall be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection K of Section 22-8B-6, Subsections B, C or E of Section 22-8B-7 and Subsection F of Section 22-8B-12 NMSA 1978.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

- (a) acted arbitrarily or capriciously;
- (b) rendered a decision not supported by substantial evidence; or
- (c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application or revoking a charter if the secretary finds that the decision was based upon a determination by the public school capital outlay council that the facilities of the proposed or ~~existing~~ existing charter school did not meet the standards required by Section 22-8B-4.2 NMSA 1978 and that the decision was:

- (a) arbitrary or capricious;
- (b) not supported by substantial evidence; or
- (c) otherwise not in accordance with the law.



(7) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal. **Public notice will be provided of all the secretary's decisions on appeals on the authorizer's and, if available, the charter school's website, within 14 days of the secretary's decision on an appeal.**

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. The provisions of this section shall apply to conversion schools.  
[6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/2007; A, 6/30/2008; A, 10/15/2013; A, 12/31/208]

#### **6.80.4.15 REVIEW ON THE SECRETARY'S OWN MOTION:**

A. The secretary, on the secretary's own motion, may review a chartering authority's decision to grant a charter. **Public notice will be provided of all the secretary's motions to review a chartering authority's decision to grant a charter on the authorizer's and, if available, the charter school's website, within 14 days of the secretary's decision to review the chartering authority's decision.**

B. Within 10 days after the secretary moves to review, the secretary shall issue an appropriate order establishing procedures for the chartering authority and the charter applicant to submit information and arguments for review by the secretary and division staff.

C. Within 60 days after the secretary moves to review, the secretary, at a public hearing that may be held in Santa Fe or in the district in which the proposed charter school applied for a charter, shall review the decision of the chartering authority and determine whether the decision was arbitrary and capricious or whether the establishment or operation of the proposed charter school would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978.

D. If the secretary determines that the charter would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978, the secretary shall reverse the chartering authority's decision and remand the decision to the chartering authority with instructions to deny the charter application, suspend or revoke the charter. **Public notice will be provided of all the secretary's reversals and remanding of the chartering authority's decision on the authorizer's and, if available, the charter school's website, within 14 days of the secretary's decision to reverse and remand the chartering authority's decision, as well as the instructions.**

E. The timelines in 6.80.4.15 NMAC may be extended by the secretary for good cause. Good cause may include but shall not be limited to an agreement between the parties, a reasonable request from either party or reasonable consideration of the secretary's previously established meeting schedule. **Public notice will be provided of all the secretary's extended timelines in 6.80.4.15 NMAC and reasons why on the authorizer's and, if available, the charter school's website, within 14 days of the secretary's decision to extend the timeline.**

F. A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. **Public notice will be provided of all appealed decisions on the authorizer's and, if available, the charter school's website, within 14 days of the appeal being filed and served.**

G. The secretary shall promptly serve a copy of the decision on the parties to the proceeding. **Public notice will be provided of all the secretary's decisions on the authorizer's and, if available, the charter school's website, within 14 days of the secretary's decision.**

[6.80.4.15 NMAC - Rp, 6.80.4.11 NMAC, 6/29/2007; A, 6/30/2008; A, 10/15/2013]

#### **6.80.4.16 QUALIFICATION FOR BOARD OF FINANCE DESIGNATION:**

A. Within 90 days of approval of its charter application, the governing body of a state-chartered charter school shall file a separate application with the commission seeking approval as a board of finance. This deadline may be extended by the commission for good cause shown. **Public notice will be provided of all applications to the commission for a board of finance and deadlines on the authorizer's and, if available, the charter school's website, within 14 days of the received applications and the deadlines being set.**

B. The application shall include:

(1) an affidavit or affidavits, signed by the personnel who will be given the responsibility of keeping the financial records of the charter school, describing the training completed, professional licensure held and degrees earned by them;

(2) a statement signed by every member of the governing body that the governing body agrees to consult with the department on any matter not covered by the manual of accounting and budgeting before taking any action relating to funds held as a board of finance;

(3) a copy of a certificate of insurance that indicates that the person who will be entrusted with handling the funds of the charter school is adequately bonded;

(4) a signed affidavit from each governing body member declaring that the member is not a governing body member of any other charter school and that the member was not a governing body member of another charter school that was suspended or failed to receive or maintain their board of finance designation.

C. Within 30 days of filing of the application to qualify as a board of finance, the commission shall issue a decision approving or denying the application. A copy of the decision will be provided to the governing body and the commission. **Public notice will be provided of all the commission's decisions to approve or deny applications on the authorizer's and, if available, the charter school's website, within 14 days of the commission's decision to approve or deny the governing body application.**

[6.80.4.16 NMAC - N, 6/29/2007; A, 6/30/2008]

#### **6.80.4.17 NEW MEXICO SCHOOL FOR THE ARTS:**

A. Upon approval by the commission, a state chartered charter school may operate as the New Mexico school for the arts ("the school"), which shall be a statewide residential charter school for grades nine through 12 offering intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.

B. An application to the commission for approval of a charter shall contain assurances of compliance together with a plan for how the school will accomplish the following requirements contained in the New Mexico School for the Arts Act, being Laws 2008, Chapter 15, Sections 1 to 9:

(1) paying for all expenses associated with outreach activities and for room and board costs for students unable to pay all or part of the cost of room and board from a foundation or other private funding sources;

(2) working with a foundation or soliciting other private funding sources to obtain gifts, grants and donations to ensure that the school has adequate revenue to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(3) not using money received from the state other than charter school stimulus funds to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(4) admitting an equal number of students from each of the state's congressional districts, to the greatest extent possible and without jeopardizing admissions standards;

(5) conducting its admissions process in a way that provides equal opportunity regardless of a student's prior exposure to artistic training and to the student's ability to pay for room and board; and

(6) conducting admissions criteria-free outreach activities throughout the state each year that acquaint potential students with the programs at the school, to include programs specifically for middle school students and workshops for teachers.

C. By July 1 after the first year the school has provided preprofessional instruction in the performing and visual arts and by July 1 every year thereafter, the school shall submit a report simultaneously to the division and the commission containing:

(1) non-personally identifiable demographic information about both applicants and students admitted to the school delineated by counties, congressional districts, socioeconomic status, gender and ethnicity; and

(2) the number of students who requested financial assistance for room and board, the total amount of financial assistance provided, and the amounts distributed delineated by the source of gifts, grants and donations received by the school.

D. During the planning year the school shall develop a sliding-fee scale subject to the following considerations:

(1) the purpose of the sliding-fee scale is to defray all or part of the costs of room and board for students whose parents or guardians are financially unable to pay these fees;

(2) in determining ability to pay, the school may use a variety of methods including but not limited to:

(a) self disclosures in a financial aid application developed by the school;  
(b) poverty thresholds as maintained by the United States census bureau;  
(c) poverty guidelines as maintained by the United States department of health and human services;

(d) whether the public school that the student applicant most recently came from was a recipient of funds under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended;

(e) whether the student applicant for enrollment was eligible to receive free or reduced price school meals at the public school previously attended; and

(f) the amount or percentage of assistance an enrolled student received for room and board the prior school year from the school;

(3) the school shall submit its sliding-fee scale to the commission for initial approval during the planning year and may request changes at subsequent commission meetings for good cause shown.

E. It shall be the responsibility of the school to obtain adequate funding from private sources to pay annual outreach costs and to defray all or part of room and board fees for students financially unable to pay. No state funds except for charter school stimulus funds received and used during the planning year may be used for these purposes. Private funding sources available to the school shall include the use of a foundation or the soliciting and receipt of gifts, grants and donations. Failure to secure adequate funding for these purposes shall constitute grounds for denial or revocation of a charter.

F. Except for provisions of this rule related to admission of students by lottery, admission on a first-come first-serve basis, the ability to charge for residential fees, admissions criteria and location of the school anywhere in the state, all other provisions of this rule related to state-chartered charter schools shall apply to the school.

This is essentially a private school, using state and federal funds, so the funds received by private sources needs to be disclosed in public school financial records or it is not a public school, it is a private school and should not receive any state or federal funds.

[6.80.4.17 NMAC - N, 6/30/2008]

**6.80.4.18 DISTANCE LEARNING:**

A. A charter school offering or seeking to offer distance learning courses to students shall comply with 6.30.8 NMAC.

B. Any charter school offering or seeking to offer distance learning courses in New Mexico pursuant to the Charter Schools Act, Chapter 22, Article 8B NMSA 1978 must be physically located in the state of New Mexico.

[6.80.4.18 NMAC - N, 6/30/2008]

**6.80.4.19 LOTTERY WHEN CHARTER SCHOOL CAP IS EXCEEDED:**

A. For purposes of compliance with Section 22-8B-11 NMSA 1978, the first five year period shall be deemed to have ended in 2003 and the successive five-year periods begin in 2003.

B. If by October first the chartering authorities have authorized more charter schools than permitted by Section 22-8B-11 NMSA 1978, the department shall notify all chartering authorities with newly authorized charter schools that those charter schools may not be established for operations until a lottery is held.

C. Within 45 days after determining that the cap for charter schools has been exceeded, the department shall conduct a lottery at a publicly noticed meeting to determine the available slots for charter schools. The department shall randomly draw the names of charter schools from the available pool of all charter schools that were authorized by October first. The schools whose names were drawn shall be given the available charter school slots until the maximum numbers of slots have been selected. The charter schools that are selected shall be approved for operation in the first fiscal year after the lottery. The charter schools whose names were not drawn shall be approved for operation in the second fiscal year after the lottery.

D. A charter school that was approved for operation in the second fiscal year after participation in a lottery shall not be subject to a second lottery in the event that in the second fiscal year more charter schools are authorized than permitted by Section 22-8B-11 NMSA 1978.

E. Any charter school authorized after October first in a year in which the department conducts a lottery pursuant to this rule, shall be approved for operation no earlier than the second fiscal year after the school was authorized.

[6.80.4.19 NMAC - Rn, 6.80.4.17 NMAC, 6/30/2008; 6.80.4.19 NMAC - N, 6/30/2009]

**6.80.4.20 [RESERVED]**

[6.80.4.20 NMAC - Rp, 6.80.4.20 NMAC, 07/25/2017]

**6.80.4.21 SEVERABILITY:** Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without affect to the remainder.

[6.80.4.21 NMAC - Rn, 6.80.4.19 NMAC, 6/30/2009]

**HISTORY OF 6.80.4 NMAC:**

Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

6.80.4 NMAC, Charter School Application and Appeal Requirements, 12/3/2001

**History of Repealed Material:**

6.80.4 NMAC, Charter School Application and Appeal Requirements - Repealed, 6/29/2007

6.80.4.20 NMAC, Governing Body Training - Repealed, Repealed, 7/25/2017

## [EXT] 6.80.4 NMAC feedback

Dahl, Heather J <heather.dahl@aps.edu>

Tue 12/4/2018 10:46 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Cc:Reedy, Raquel <reedy@aps.edu>;

 1 attachment

NMAC 6.80.4 Response\_APS.pdf;

Dear Ms. Gonzales,

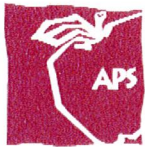
Please find attached response to PED proposed rule 6.80.4 NMAC, Charter School Application and Appeal Requirements, from Albuquerque Public Schools.

Thank you,

Heather Dahl, Ph.D.

Policy Analyst/Government Affairs Liaison | Albuquerque Public Schools

Cell: [505-350-1649](tel:505-350-1649) | [heather.dahl@aps.edu](mailto:heather.dahl@aps.edu) | PO Box 25704 Albuquerque, NM 87125-0704



## ALBUQUERQUE PUBLIC SCHOOLS

Board of Education

*Expect Great Things!*

December 3, 2018

Ms. Jamie Gonzales  
New Mexico Public Education Department  
300 Don Gaspar Ave.  
Santa Fe, NM 87501  
Submitted via Email: [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us)

Dear Ms. Gonzales:

Thank you for allowing feedback on proposed rule change, 6.80.4 NMAC, Charter School Application and Appeal Requirements from the New Mexico Public Education Department.

The Albuquerque Public Schools administration, strongly encourages the New Mexico Public Education Department to not issue any rule changes within six-months of a new gubernatorial administration. Proposed rule changes during this time along with the volume of proposed rule changes make it difficult for any school district, stakeholder, parent, student, teacher, or other community member to adequately evaluate the proposed rule change and provide comment. Additionally, approving such rule changes, provide bureaucratic burden and uncertainty during any gubernatorial administration transition.

Additionally, the authorization of charter schools should be left up to the local district and the New Mexico Public Education Commission. Putting this administrative rule into place may have negative consequences on each authorizer's independent procedures for charter school application review. It is important that as the second largest charter school authorizer in the state that the APS Board of Education keep local control of this process and its execution.

If you should have, any questions or concerns please contact Heather Dahl, APS Government Affairs and Policy at [heather.dahl@aps.edu](mailto:heather.dahl@aps.edu).

Sincerely,

Raquel Reedy  
Superintendent







STATE OF NEW MEXICO  
PUBLIC EDUCATION COMMISSION  
300 DON GASPAR  
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James Conyers, Member  
District 5, Gallup, Farmington

Vacant  
District 8

Trish Ruiz, Member  
District 9, Hobbs

Tim Crone, Member  
District 10, Espanola

December 3, 2018

Policy Division  
New Mexico Public Education Department  
300 Don Gaspar Ave, Room 101  
Santa Fe, NM 87501

PERSONALLY DELIVERED

Re: Written Comments about Charter School Application and Appeal  
Requirements, proposed changes to NMAC 6.80.4

Dear Sir or Madame;

The primary concern with the proposed changes to Sections 6.80.4, NMAC, governing charter school application and appeal requirements is that they **do not conform to statute, but go beyond the statutory authority granted to PED and its Secretary**. The second concern is that the proposed changes would **institutionalize the conflict between division staff and the PEC**, and force division staff to support the Secretary on any appeals. The Commission opposes those changes, to the extent they go beyond statutory authority and undermine the role of PEC's staff within the division. Moreover, parallel changes were not made to 6.80.4.15 *Review of the Secretary's Own Motion* which implies the Secretary only intended to curtail the autonomy of authorizers, and not merely adapt to a district court order (which is currently on appeal).

1. Proposed change to Sec. 6.80.4.7(H); definition of "Days". The PEC believes the changes to be merited. The Commission has previously asked questions regarding the proper definition of "days" for purposes of administrative procedures and law administered by the Commission and PED. PEC Counsel has turned to the Rules of Civil Procedure for that purpose.

This proposed definition conforms to those Rules, and the definition conforms to standard legal practice also. This change restates procedural rules.

2. Proposed change to Sec. 6.80.4.13(D); charter renewal. The PEC opposes this change. This proposed change assumes that the charter contract for all schools includes the performance framework with tier rating. Not all PEC authorized schools are under the tier rating performance framework, and most district chartered charter school are not either. The rule is too specific, without giving the authorizer the ability to enforce its contracts with schools. The concept behind this rule may be better placed within charter contracts with more support for authorizers to verify performance and work with schools to improve performance of low-performing schools.

3. Proposed change to Sec. 6.80.4.13(E); charter renewal. The proposed changes go beyond the statutory authority granted, therefore the PEC opposes the changes. Charter renewals are governed by Sec. 22-8B-12, NMSA 1978. Subsection (M) of that statute simply states that a chartering authority that does not renew a charter “shall state in writing its reasons” for refusing to renew the charter. The proposed change retains the current requirement that such writing must be delivered “within 14 days of the public meeting at which the vote was taken.” There is no basis for this time limit in the statute; even though it has existed in the Administrative Code without challenge for years. The proposed amendment would add an additional requirement that the Commission (or other authorizer) restate its motion in its writing, and also the reasons for the motion that were voted on in the public meeting. There is no statutory basis for this additional requirement. The Commission must already state its reasons in writing, pursuant to statute and PED should not merely repeat the statutory requirement in rules. The PEC opposes this proposed change for those reasons.

4. Proposed changes to Sec. 6.80.4.14; Appeals to the Secretary. Appeals to the Secretary are governed by Sec. 22-8B-7 of the statutes. The statute only provides that an aggrieved applicant or school must file the notice of appeal within 30 days of the decision being appealed, Sec. 22-8B-7(B). The notice of appeal should contain “a brief statement” of the reasons that the applicant or school believes the Commission’s decision was incorrect. The statute further requires that within 60 days of the filing of that appeal, the Secretary will review the decision at a public hearing.

The proposed rules attempt to change the statutory requirements by deleting “brief”, going beyond the Secretary’s authority. (NMAC 6.80.4.14(B)(2).)

Throughout the rule, “charter” is not defined, which creates confusion in various sections of the rule. This is exemplified in NMAC 6.80.4.14(B)(3)(b) which requires submission of a copy of the “charter or proposed charter”.

Absent a definition of “charter”, this section should be clarified by requiring submission of the “charter renewal application or current charter contract”.

The use of “party” is not clear. (NMAC 6.80.4.14(C)) If the appeal is on the Secretary’s own motion, PEC may not be a party to the process, or the division or PED Office of General Counsel may not include the PEC in filings and notices. In those cases, PEC would not receive notices or be allowed to intervene. The PEC recommends that in this section, “party” specifically state, “party includes the authorizer”.

The proposed rules go beyond statutory appeal requirements, allowing the filing of briefs by both sides. However, this requirement promotes procedural due process. (Note that the existing rule permits this too). Under the proposed changes, the division (“CSD”), is required to prepare a report for the Secretary analyzing each party’s submissions. (This reporting by CSD is optional under the current rules). This creates an unmanageable conflict of interest since CSD is statutorily required to serve as the staff of PEC and has made the recommendations to PEC that the PEC may have adopted as part of its motion and decision that might become the basis of an appeal. It also would require CSD to review the motion and rationale of the PEC. PEC is an independent and elected commission and this proposed change goes far beyond the Secretary’s authority.

Finally, the proposed amendments would remove the ability of the Secretary to extend deadlines for good cause, even though such authority is expressly granted by statute, Sec. 22-8B-7(D). The PEC believes that this final amendment should not be made, as it is permitted by statute – the proposed rule therefore restricts the Secretary’s authority to less than that granted by statute – and because it is sensible to allow for the extension of deadlines for good cause. However, this is complicated by the Secretary being able to bring its own motion for review. Thus, the section should be amended to only allow the Secretary to extend a deadline **if a party, not the Secretary, requests an extension**. Language should be added to the effect that the Secretary shall not on his own motion extend a deadline. The extension may only be granted for good cause if requested by either school or authorizer.

The other additions go beyond the statute, increasing the amount of briefing required, and giving a role to CSD that is not granted by statute. While these deadlines already exist in the administrative rules, the PEC opposes these changes, requiring the administrative rule to conform to the much simpler statutory process, and not creating a conflicting set of procedural rules which could trip up the parties, and in one case, resulted in loss at the district court level on very technical issues that had nothing to do with the quality of education provided and use of public monies at a school.


NMAC 6.80.4.14(E)(1) incorrectly uses the word “may” when it should be “shall”. The use of *may* seemingly applies to the hearing, and not the location of the hearing. The hearing is required by statute.

5. Failure to propose changes to Sec. 6.80.4.15(E); Review on the Secretary’s Own Motion

The ability of the Secretary to extend deadlines for good cause shown when he has brought the motion for review and is both the trier of fact and the adjudicator tramples due process. This provision of NMAC allows the Secretary to review a PEC decision on his own motion, which flows from statutory authority found in §22-8B-7 NMSA. Since section 6.80.4.14(D)(3) is amended to strike the Secretary’s ability to extend any deadlines, so too when the motion for review is brought by the Secretary, he should not be permitted to allow any extensions. (6.80.4.15(E).) Alternatively, the request for an extension should be limited to a motion brought only by the parties and not the Secretary. Because this issue is currently in litigation the PEC will refrain from commenting further.

If you have any questions, please feel free to contact me.

Sincerely,



Patricia Gipson, Chairperson