

MEMORANDUM OF UNDERSTANDING

by and between

THE NEW MEXICO PUBLIC EDUCATION COMMISSION

and

THE NEW MEXICO PUBLIC EDUCATION DEPARTMENT

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WHEREAS, the New Mexico Public Education Commission, (“Commission”) and the New Mexico Public Education Department, (“Department”), are created pursuant to Article XII, Section 6 of the New Mexico Constitution, each with such powers and duties as provided by law; and,

WHEREAS, pursuant to Section 9-24-9, New Mexico Statutes Annotated, 1978 Compilation, (“NMSA”), the Commission is administratively attached to the Department, with administrative staff and administrative services provided to the Commission by the Department; and,

WHEREAS, pursuant to Section 9-1-7, NMSA, the Commission shall exercise its functions independently of the Department, and without approval or control of the Department; and,

WHEREAS, the Commission shall advise the Department on policy matters and shall perform other functions as provided by law; and,

WHEREAS, pursuant to the Charter Schools Act, Sections 22-8B-1, *et seq.*, NMSA, (the “Act”), and more particularly pursuant to Section 22-8B-16 of the Act, the Commission is the chartering authority, as that term is defined in the Act, for schools that want to be chartered by the State; and,

WHEREAS, as the chartering authority for state-chartered charter schools, (“State Charter Schools”), the Commission is responsible for oversight over State Charter Schools, including, but not limited to, reviewing, and approving or denying, initial applications for school charters, reviewing, and approving or denying, renewal applications for school charters, monitoring State Charter School performance, and providing assistance and discipline, if warranted, for State Charter Schools; and,

WHEREAS, the Charter School Division, (the “Division”), is created pursuant to Section 22-8B-17 of the Act, with the responsibility of providing staff support to the Commission; and

WHEREAS, pursuant to Section 22-14-2, NMSA, the Commission is the governing authority for the conduct of all programs of the state and state plans established relating to

vocational education, including college and career readiness and career technical training, and shall establish policies for the conduct of vocational education; and,

WHEREAS, the Commission and the Department wish to enter into this Memorandum of Understanding, (“MOU”), for the purpose of setting out the responsibilities of the Department and the Division with respect to their administrative support of the Commission in the performance of its legally designated functions.

NOW, THEREFORE, the Commission and the Department agree as follows:

1. Staffing and the Division

The Department shall use its best efforts to maintain sufficient staffing in the Division so that the Commission can adequately perform the oversight and related duties with respect to State Charter Schools that are required of it as a chartering authority pursuant to the Act. The Department shall consult with the Commission in making its staffing and hiring decisions with respect to the positions of Director and Deputy Director of the Division. If PEC determines that a contractor’s services are required, PED shall timely and expeditiously process the contract according to the direction of the PEC. If the Division determines that a contract or RFP is needed, it shall consult with, and obtain permission from the PEC before publishing and RFP or issuing a contract for services.

2. Budgeting

Pursuant to the Act, two percent (2.00%) of the school’s generated program costs may be withheld from a State Charter School and used by the Commission for the costs of administrative support of State Charter Schools, and the charter for each State Charter School must give a detailed description of how those withheld funds will be used. Pursuant to Section 9-1-7, the Commission shall submit its budget with respect to those funds to the Department, and the Department shall include the Commission’s budget, without changes, in its own budget.

The Commission undertakes to submit that budget to the Department in a timely fashion, and to include within that budget the administrative costs of the Division, including salaries, benefits, and other related costs of the employees of the Division. The Department undertakes to include the Commission’s budget, without changes, in its own budget, and to honor payment requests included within that budget, as finally approved. The Department shall include the Commission in all discussions with the Legislature, and any committee of the Legislature, relating to the budget submitted by the Commission.

3. Consultation and Advice

As required by law, the Commission shall provide advice to the Department on policy matters relating to State Charter Schools, vocational education, and other education matters, at such times and in such manner as may be requested by the Department from time to time.

4. State Charter Schools

Pursuant to the Act, the Department, through the Division, shall provide such staff and administrative support to the Commission as required in order for the Commission to perform its functions of oversight of State Charter Schools as provided in the Act, including, but not limited to: (i) reviewing and approving initial applications for school charters; (ii) monitoring and reviewing the performance of State Charter Schools including annual and renewal site visits; (iii) creating and maintaining corrective action plans, and other disciplinary plans as provided by law, for State Charter Schools, and monitoring compliance with such plans; (iv) creating performance frameworks for State Charter Schools; (v) reviewing and approving renewal applications for school charters; (vi) overseeing and monitoring school closures and, (vii) such other functions as are assigned to the Commission by the Act. The Division's responsibilities shall include monitoring academic, fiscal, and governance performance of State Charter Schools, reviewing written submissions by State Charter Schools, conducting on-site visits of State Charter Schools, providing technical support to State Charter Schools, and making recommendations to the Commission regarding the approval, denial, suspension, or revocation of the charter of a State Charter School.

5. Legal Matters

The Commission shall be entitled to its own legal representations in all proceedings to which it is a party, including, but not limited to, administrative and judicial proceedings, whether or not the Commission and the Department are adverse. The Commission and Department recognize that, pursuant to the Act, they may become adverse to one another in a proceeding, including an administrative or judicial proceeding and, in such cases the Commission, in addition to hiring its own lawyers, may retain administrative staff as required to ensure the privacy of its communications, including any legal privilege against disclosure or discovery that may apply to any of its communications.

6. Communications

The Department and the Division shall copy the Commission on all written communications, in whatever form, between the Department and/or the Division and any State Charter School. The Commission shall be entitled to review, and comment upon, any communication from the Department to the public, including any newsletter, public notice, public advice, or any communication of general circulation, of whatever form, relating to the performance of the Commission or any State Charter School prior to the distribution of that communication by the Department.

7. Commission Meetings and Information

The Department shall make arrangements for the meetings of the Commission, including arranging for a public meeting location, creating an agenda, distributing meeting materials, providing timely notice of the meeting, and otherwise complying with the requirements of the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA. The Department shall be responsible for

assisting the Commission in complying with requests made to the Commission or its members pursuant to the Inspection of Public Records Act, Section 14-2-1, *et seq.*, NMSA.

8. Effective Date and Termination

This MOU shall be effective upon the signature of the Chair of the Commission and the Secretary of the Department, or their authorized designees. So long as the Commission remains administratively attached to the Department pursuant to statute, the MOU may only be terminated upon the agreement of the parties, and only when replaced by a successor Memorandum of Understanding setting out the administrative relationship between, and duties of, the parties.

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