

MEMORANDUM OF UNDERSTANDING

by and between

THE NEW MEXICO PUBLIC EDUCATION COMMISSION

and

THE NEW MEXICO PUBLIC EDUCATION DEPARTMENT

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 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, submit its budgetary requests through the Department; and,

WHEREAS, pursuant to Section 9-1-7, NMSA, the Department shall provide, as mutually agreed, the budgeting, record-keeping and related administrative and clerical assistance to the Commission, and shall include the Commission’s budgetary requests, as submitted and without changes, in the Department’s budget; and,

WHEREAS, the Commission shall advise the Department on policy matters and shall carry-out other duties as provided by law; and,

WHEREAS, pursuant to the Charter Schools Act, Sections 22-8B-1, *et seq.*, NMSA 1978, (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, setting conditions, or denying, initial applications for school charters, reviewing, and approving, setting conditions or denying, renewal applications for school charters, monitoring State Charter School performance including academic, operational and financial, and providing assistance, overseeing implementation year training and support, discipline, corrective action plans and revocation of a charter if warranted, for State Charter Schools; and,

WHEREAS, the Charter Schools Division, (the “Division”), is created pursuant to Section 22-8B-17 of the Act, with the responsibility of providing staff support to the Commission, providing technical support to charter schools, reviewing and approving state-charter school budget matters, and making recommendations to the Commission regarding approval, denial suspension or revocation of a state-chartered charter school; 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 what is now referred to as 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 statutory duties and 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 fully staff the Division so that the Commission can 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 prior to making its staffing and hiring decisions with respect to the positions of Director and Deputy Director of the Division. At least two members of the Commission shall review resumes, participate in candidate interviews and serve on the hiring committee. If the Commission determines that a contractor's services are required, the Department shall timely and expeditiously process the contract according to the direction of the Commission. If the Division determines that a contract or RFP is needed, pursuant to the New Mexico Procurement Code, Sections 13-1-21 *et seq.*, NMSA, or other applicable law, it shall consult with, and obtain permission from the Commission before publishing any RFP or issuing a contract for services. The Commission shall enter into small professional service contracts, under the statutory threshold amount, without review or delay from the Department or Division.

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 for the Commission's administrative support of State Charter Schools, and the charter contract for each State Charter School must give a detailed description of how those withheld funds will be used by the Commission as the chartering authority. Pursuant to NMSA 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 budget, with Commission budget kept separate and not merged with the Department's budget. The Commission budget shall only be used to support Division work related to State Charter Schools and the Commission, and shall not be used for district charter school or home school purposes.

The Commission undertakes to submit its annual budget to the Department in a timely fashion, and to include within that budget **support for Charter Schools, the costs of Commission travel, technology for Commissioners, meeting expenses and memberships in professional organizations. the administrative costs of the Division, including salaries, benefits, and other related costs of the employees of the Division.** The Department shall 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, including any committee of the Legislature, relating to the budget submitted by the Commission.

The Department will annually provide a report to the Commission on the Department's spending of the 2%

3. Consultation and Advice

The PEC delegates the statutory duties of vocational education NMSA 22-14-2 to the PED in recognition of the fact that the PEC does not currently have the resources to carry them out

Pursuant to 1978 NMSA §9-24-9, §22-2-2.2, §22-2-14 and §§22-14-1 *et. seq.*, the Commission shall provide advice to the Department on policy matters relating to State Charter Schools. The Department and Division shall assist the Commission to timely complete and submit reports required of it by law or by the Governor through the Department. The Commission shall have final and independent authority for the content of any report.

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, including approval, renewal, denial and revocation of State Charter Schools' charter contracts and charter applications as provided in the Act and the applicable rules promulgated by the Department, 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 requests by the Commission including functions 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 representation by contract in all proceedings to which it is a party, including, but not limited to, administrative and judicial actions or appeals, 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

proceeding, including an administrative or judicial proceeding and, in such cases the Commission, in addition to hiring its own lawyers, may contract with 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.

The Department and Division shall immediately inform the Commission of any appeal of a Commission or Department decision relating to the Commission or State Charter School.

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 Division shall not communicate with legal counsel for a State Charter School for any reason but shall immediately refer any such communication to Commission's legal counsel. If a legal question arises, the Division shall always contact the Commission's counsel and not consult with Department Office of General Counsel or Department legal counsel. The Commission shall be entitled to review, and comment upon, any non-emergency 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 Public Information

The Department, through the Charter Schools Division, shall make arrangements for the meetings of the Commission, including arranging for a public meeting location, printing 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 1978. The Department shall not approve, edit or review any Commission agenda. No Commission meetings shall be convened except upon the call of the Chair of the Commission. 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 1978. The Commission shall be immediately notified of any Inspection of Public Records Request involving a State Chartered School or the Commission

8. Effective Date and Termination

This MOU shall be effective upon the most recent signature of the Chair of the Commission and the Secretary of the Department, or their authorized designees. The MOU shall be effective for four years, at which time the MOU shall be reauthorized or renegotiated. The MOU may be terminated upon the agreement of the parties.

9. Modification

This MOU may be modified from time to time upon agreement of the parties by a separate, formal, signed document that is incorporated by reference into this MOU.

10. Disputes

Any disputes between the parties to this agreement involving the interpretation of this MOU arising directly or indirectly out of this agreement, or involving the authority or duties of the Commission or the Division pursuant to this MOU or any laws or rules governing charter schools, shall, after good faith attempts have been made to resolve any disputes informally, be referred to formal dispute resolution pursuant to the Governmental Dispute Prevention and Resolution Act as set forth in NMSA 1978, Sections 12-8A-1 to 12-8A-8.

11. Survival of this MOU

This MOU, including any amendments, shall survive, as is, regardless of any changes in membership of the Commission or the appointment/confirmation of the Secretary of Education, Deputy Secretary of Education, or Division Director. Nevertheless, this MOU may be reviewed at least annually at a public meeting convened by the Commission pursuant to the Open Meetings Act.