

*Consuelo M. Cristobal*  
*05/05/2022*

NEW MEXICO PUBLIC EDUCATION DEPARTMENT BEFORE THE NEW  
MEXICO SECRETARY OF EDUCATION

IN THE MATTER OF

THE GREAT ACADEMY AND ITS GOVERNING BODY,

Appellants,

vs.

NEW MEXICO PUBLIC EDUCATION COMMISSION,

Appellee.

REQUEST FOR CLARIFICATION OF DECISION AND ORDER

The Public Education Commission, by and through its attorney, Julia Hosford Barnes, respectfully requests clarification of the Decision and Order of the Secretary dated 4/4/22 in this matter.

The Order reads as follows:

IT IS THEREFORE ORDERED that the Decision and Ordered issued on March 19, 2021 is reversed and that the decision of the New Mexico Public Education Commission denying the charter renewal application of the Great Academy is hereby reversed.

IT IS FURTHER ORDERED that the New Mexico Public Education Commission shall enter into a contract with the GREAT Academy within thirty days of this Order for a term to begin July 1, 2022.

IT IS FURTHER ORDERED that in entering into the contract, the New Mexico Public Education Commission and the GREAT Academy include, but not be limited to, conditions pertaining to the GREAT Academy Foundation operations, the GREAT Academy Foundation financial conditions, the GREAT Academy's instructional spending, the GREAT Academy Personnel and Payroll, and conditions involving the GREAT Academy Governing Board training and board operations consistent with the training.

The issue we ask the Secretary to clarify is

- a) if the Secretary has determined that the term of the contract is to be for a five-year term;
- b) whether NMSA 22-8B-12 continues to apply; or
- c) if the Public Education Commission may modify the term of the contract as part of the conditions identified by the Secretary.

Consistent with this Order, the Public Education Commission will vote on a form of contract, performance framework and condition document at its public meeting on May 20, 2022. The Governing Board of the GREAT Academy will then take a vote on the documents approved by the Public Education Commission immediately thereafter. The parties have been meeting as subcommittees to discuss draft documents to be presented to the full commission and governing board.

The Public Education Commission believes the following information to be relevant to this request:

- 1) The Order identifies the start date of the charter term (2022), but not an end date.
- 2) The Charter School law provides the following:

**22-8B-12. Charter schools; term; oversight and corrective actions; site visits; renewal of charter; grounds for nonrenewal or revocation.**

- A. A charter school 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. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the chartering authority.

3) It is our understanding that the GREAT Academy does not presently agree to a shorter term in the subcommittee negotiation; although there has not been a vote by the Public Education Commission on a term less than five years, so the issue has not been formally presented to the Governing Board of the school at this time.

4) The Order requires that the contract “**include, but not be limited to, conditions** pertaining to the GREAT Academy Foundation operations, the GREAT Academy Foundation financial conditions, the GREAT Academy’s instructional spending, the GREAT Academy Personnel and Payroll, and conditions involving the GREAT Academy Governing Board training and board operations consistent with the training.” (emphasis added). Many of the conditions identified specifically place conditions that limit autonomy granted in the Charter School Act, such as limitations on a foundation associated with the school, and conditions on how the school spends its state funds. (*See e.g.* NMSA 22-8B-4 C.) Therefore, it is unclear if the length of the term is something that the Secretary contemplated as a possible condition.

The Public Education Commission believes that clarification of the Order prior to May 20, 2022 would assist the parties as they comply with the Order.

Counsel for the GREAT Academy, Susan Fox, knows that this pleading is being filed. However, she is out on personal family business that precludes her from responding to this pleading immediately. Due to this extenuating circumstance, we are providing the Secretary with the position of the school that has been provided to date, without intending to limit any additional response that the school may want to file:

“[Ms. Fox does not] see that there is a procedure for [a request for clarification] in this circumstance; rather the process for a charter impasse appeal is set forth in [NMSA 22-8B-9] of the Charter Schools Act. Hopefully, there will be no need for an impasse appeal after the May 20 PEC meeting, but [the school] will follow that process if there is.”

“To the extent that PEC and other charter schools may have entered into charter contracts for fewer than 5 years in the past, to [Ms. Fox’s] knowledge such shorter terms have been with the agreement of both parties, as the statutory section of the Charter Schools Act provides for in that limited circumstance. Here, the School has not agreed to a shorter term.”

WHEREFORE, the Public Education Commission requests that the Secretary provide clarification of the Order. Specifically, the Public Education Commission requests clarification as follows:

1. Has the Secretary determined the term of the charter contract;
2. does the Secretary intend for NMSA 22-8B-12 to govern this contract; or
3. may the Public Education Commission impose a shortened terms of the contract as a condition?

Respectfully submitted,

/s/ Julia Hosford Barnes  
Attorney for the Public Education Commission  
200 West De Vargas, Suite 2  
Santa Fe, NM 87501  
505 982-3993  
Jhbnm1@gmail.com

This is certify that a copy of  
this pleading has been emailed to:

Susan Fox  
Attorney for the GREAT Academy

Aaron Rodriguez  
Attorney for the Public Education Department

/s/ Julia Hosford Barnes  
5/5/22