

Project	Purpose of the Project	Detailed information
MOU review	Review MOU (Section 11 of the MOU)	<p>April 7, 2022 working session, item 8:</p> <p>Chair Burt directed counsel to prepare a red-line of the PEC/PED MOU to include the items discussed by PEC Commissioners at the working sessions of March 17 (item 6) and April 7, 2022 (item 8)</p> <p>This redline contains changes suggested by PEC Commissioners on May 19, 2022.</p>

MEMORANDUM OF UNDERSTANDING  
between  
NEW MEXICO PUBLIC EDUCATION COMMISSION  
and  
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 1978, 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 1978, the Department shall provide, if 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 NMSA 1978, 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, pursuant to 22-8B-13(A) NMSA 1978, the amount of funding allocated to a charter school shall be not less than ninety-eight percent of the school-generated program cost. The school district or Charter School Division of the Department may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.

WHEREAS, as the chartering authority for state-chartered charter schools, (“State Charter Schools”), the Commission is responsible for oversight functions 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 NMSA 1978, provides staff support to the Commission, provides technical support to charter schools, reviews and approves state-charter school budget matters, and makes recommendations to the Commission regarding approval, denial suspension or revocation of the charter of a state-chartered charter school; and

WHEREAS, pursuant to Section 22-14-2 NMSA 1978, 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 Director of the Division. At least two members of the Commission shall review resumes, participate in candidate interviews and serve on the hiring committee. The final hiring decision shall be made at the discretion of the Secretary after consultation with the hiring committee.

If the Commission determines that a contractor’s services are required, the Department shall reasonably consider such request.

If the Division determines that a contract or RFP is needed to provide support or technical assistance, pursuant to the New Mexico Procurement Code, Sections 13-1-21 *et seq.*, NMSA 1978, or other applicable law, it shall consult with the Commission before publishing any RFP or issuing a contract for services. (Moved)

#### 4. State Charter Schools

Pursuant to the Act, the Department, through the Division, will provide staff and administrative support to the Commission as required in order for the Commission to perform its functions of oversight of State Charter Schools. Under this MOU, this will include 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 frame- works 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.

4. (vii) below5. 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. The Department and Division shall inform the Commission and its legal counsel of any appeal of a Commission or Department decision relating to the Commission or State Charter School. Funding for the contract for legal representation shall come from the share of the charter two percent not maintained by the Department for administrative support.

The selection committee for the legal counsel shall include three PEC members, the Division Director, a PED finance office designee, and an additional PED designee made at the discretion of the Division Director, unless both parties mutually agree to a different configuration of the selection committee.

2. Budgeting

Pursuant to the Act, two percent (2.00%) of the school’s generated program costs may be used for administrative support of State Charter Schools and the Public Education Commission. Upon annual appropriation by the legislature, the Department will maintain an amount of funds for administrative support in a non- reverting fund equal to: the number of state authorized charters divided by the sum of the number of all charter schools and school districts, then multiplied by the Charter two percent of the annual SEG calculation dedicated to charter schools. This calculation is further reflected below:

State Authorized Charters

X Charter two percent

All Charter Schools + School Districts

- (i) The remainder of the appropriation after that amount above is calculated will be provided to the Department, to prioritize

funding the Charter Schools Division, and to coordinate with the Commission for the purpose of development of the (Keep the 15% figure only as it will be higher?)Commission’s annual budget prioritizing the Charter School Division’s needs for that fiscal year.

The Department reserves the right to access any unencumbered, unexpended available funds remaining on March 1 of each fiscal year to utilize further for charter school administrative support purposes.

The Commission will work with the Division director to develop a budget subject to the dollar amount as described above. The budget will include funding for the Division, support for Charter Schools, the costs of Commission travel, technology for Commissioners, meeting expenses, and memberships in professional organizations, as reasonably determined by the Secretary of Education. The Department will annually provide a summative report to the Commission on the Department's spending of the 2%.

### 3. Consultation and Advice

The PEC delegates its duties of vocational education, Section 22-14-1 *et seq* NMSA 1978, 107 to the PED, that may be prescribed in statute or other applicable authorities.

Pursuant to Sections 9-24-9, 22-2-2.2, 22-2-14 and 22-14-1 *et. seq.*, NMSA 1978, 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 in such sections that it expressly notes are attributable to the Commission.

### 6. Communications

The Division will copy the Commission on all written communications, in whatever form, between the Division and any State Charter School when the Division is expressly acting on the Commission's behalf. 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 when the Division is acting on the Commission's behalf.

### 7. Commission Meetings and Public Information

The Department, through the Charter Schools Division, will 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. No Commission meetings will be convened except upon the call of the Chair of the Commission. The Department will assist 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 will be notified when an Inspection of Public Records Request is submitted 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 may be terminated or renegotiated upon the agreement of both 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

Parties will make a good faith effort to resolve 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. If parties can't resolve a dispute, then a mediation will occur.

#### 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 of the Secretary of Education. Nevertheless, this MOU may be reviewed at least annually at a public meeting convened by the Commission pursuant to the Open Meetings Act. Any changes to this MOU must be in writing and mutually agreed upon.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed, said MOU to become effective when signed as provided in paragraph 8 of this MOU.

New Mexico Public Education Department

New Mexico Public Education Commission 1