

## PROPOSED DRAFT NM PEC INTERVENTION LADDER

### **I. Introduction**

The Public Education Commission (“PEC”), as the state-charter authorizer, is responsible for ensuring that state- chartered charter schools are meeting the performance and legal requirements of the charter contract. The PEC has adopted an Intervention Ladder with numerous levels of intervention to communicate concerns about academic performance, fiscal soundness or legal, contractual, or policy requirements, provide opportunities for school response to concerns and to allow schools to remedy deficiencies when appropriate. If the concern is sufficiently serious, the PEC may opt to move to a more serious form of intervention, up to, and including, revocation.

Absent evidence to the contrary, all schools are considered to be in **Good Standing**. Schools that adequately address concerns under the Intervention Ladder will be returned to **Good Standing**. The history of the times that a school has been placed on the intervention ladder and the outcomes will be part of the record at renewal.

It is the intent of the PEC to provide the school with as much notice as possible of its intent to place a school on the intervention ladder. In non-emergency situations, this will typically include a process that takes place over several months, including a discussion at an open meeting of the PEC of the PEC’s intent to place a school on the intervention ladder, then confirmed by a letter to the school outlining the concern, followed by a second open meeting of the PEC to take action on the Intervention Ladder. In an emergency situation, the school will be provided with no less than 72-hour notice of contemplated action.

#### **a. Emergency Action**

The Intervention Ladder contemplates non-emergency issues that do not constitute a fiscal emergency, or danger to the health and safety of students, faculty, or staff or other serious offense. In the event the PEC is alerted to an emergency situation at a school, the PEC reserves the right to issue a Notice of Breach on its own initiative, allowing the school a minimum of 72 hours to cure the breach and submit documentation to the PEC. The PEC may move forward to revoke a charter in the event of an emergency using the protocols set forth below. If warranted, the PEC may order the school be closed while a situation is remedied. An “emergency” refers to circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body or other serious offense.

#### **b. Intervention Ladder steps.**

The intervention ladder is intended to be started at the lowest level of intervention given the facts presented. The PEC reserves the right to place a charter school at any level of the Intervention Ladder without going through the preceding steps if more immediate action is warranted. Relatedly, a school’s cumulative record of interventions will be considered by the PEC when making intervention determinations, including times in which the school was placed on the intervention ladder and returned to good standing.

Situations that could trigger intervention include, but are not limited to:

- Issues identified by the Charter School Division (“CSD”) or the Public Education Department (“PED”) in an annual report;
- Failure to meet academic performance expectations, as defined by the Academic Performance Framework;
- Failure to meet indicators of financial or organizational viability or sustainability;
- Non-compliance with the terms of the school’s charter contract;
- Violations of federal or state statutes and applicable board policy;
- Issues pertaining to student safety, equity, or access;
- Adverse findings in routine oversight; or
- Substantiated complaints.

The PEC may place a school on the Intervention Ladder when the PEC receives information from CSD or another division in PED, through

- a) concerns or evidence of breach arise from routine monitoring, a routine visit or an annual site visit,
- b) when a school receives several findings of “does not meet” or any finding of “falls far below” on a performance metric,
- c) a complaint of a significant concern, and/or
- d) when the PEC receives evidence of a school’s meaningful failure to comply with the terms of its charter contract.

The PEC may consider information provided from a different source through a verified document provided to the Chair of the PEC. The PEC's authorized representative(s) will communicate with school leaders, parents, and any other necessary stakeholders to verify complaints.

## **II. Intent to Place a School on the Intervention Ladder – Initial Step**

Unless facts are presented that require the PEC to take immediate action, initially the PEC will place a school of concern on an agenda at an open meeting of the PEC to discuss and issue a Notice of Intent to Place a School on the Intervention Ladder. The school will be notified of the agenda item to discuss the facts and the concern as known to the PEC at this initial stage and be provided with an opportunity to present information the PEC at the open meeting. At this initial meeting, the PEC may decide that its concerns were adequately addressed without the school being placed on the Intervention Ladder, that the school will be placed on the next agenda at an open meeting of the PEC to possibly be placed on the intervention ladder or, if circumstances warrant taking immediate action, the PEC may place a school on the Intervention Ladder immediately or may move forward on revocation at this initial meeting.

## **III. Intervention Level 1. Request for CSD Technical Assistance or Other Expert Assistance**

This is the lowest rung on the Intervention Ladder and is used when the PEC determines that a school may benefit from technical assistance in an area of concern. The PEC may direct the CSD

to provide technical assistance to a school to remedy a concern or allow the school to contract with an identified expert to address a concern. Once the technical or expert assistance has been provided, the entity providing the assistance and the school may provide an assurance to the PEC that the issue has been resolved and the school may be returned to **Good Standing**. If the issue is not adequately addressed, the PEC may take further action on the Intervention Ladder at an open meeting of the PEC.

#### **IV. Intervention Level 2. Notice of Concern**

A Notice of Concern is the next lowest rung of the Intervention Ladder and is the customary entry into intervention for a more serious concern. Following the issuance of a Notice of Concern, the school must provide the PEC with a plan to correct the concern with sufficient details to allow the PEC to understand **who** will take **what** action by **when**. Once the school has met the requirements of the plan, the school will be returned to **Good Standing**. If the issue is not adequately addressed, the PEC may take further action on the Intervention Ladder at an open meeting of the PEC.

#### **V. Intervention Level 3. Notice of Breach**

The PEC may issue a Notice of Breach if the PEC has identified more serious concerns during an open meeting of the PEC. As part of issuing a Notice, the PEC will consider input from CSD in establishing expected outcomes and deadlines that must be met by the school. The deadline established for correction shall be no less than 10 days including holidays and weekends. Deadlines will vary depending on the urgency of the matter and the amount of time it takes to reasonably cure the concern.

Once a Notice of Breach is issued, the expected outcomes and deadlines will be placed in a Corrective Action Plan (concerning financial or organizational performance) or an Improvement Plan (concerning academic performance) which details the actions and timeline that the schools will implement to correct the breach. The plan must contain sufficient detail to correct the concern to allow the PEC to understand **who** will take **what** action by **when**. The CSD will monitor the school's implementation of Corrective Action and Improvement Plans, and regularly update the PEC on progress. Once the school has met the Notice of Breach requirements, the school will be returned to **Good Standing**. If the issue is not adequately addressed, the PEC may take further action on the Intervention Ladder at an open meeting of the PEC.

#### **V. Intervention Level 4. Notice of Probation**

If a school in Notice of Breach status does not meet or make sufficient progress toward meeting the requirements of its Corrective Action Plan or Improvement Plan, the school will be moved to Probation status at an open meeting of the Public Education Commission. The PEC's authorized representative(s) shall provide schools notice they will appear on the PEC's agenda to issue a Notice of Probation at least 10 days prior to the meeting. Schools can also be placed on probation if the school in the event of poor performance during an annual review or continued failure to comply with the charter contract or applicable law or if the school has been placed on the Intervention Ladder numerous times.

Once a Notice of Probation is issued, the expected outcomes and deadlines will be placed in a Corrective Action Plan (concerning financial or organizational performance) or an Improvement Plan (concerning academic performance) which details the actions and timeline that the schools will implement to correct the breach. The plan must contain sufficient detail to correct the concern to allow the PEC to understand **who** will take **what** action by **when**. The CSD will monitor the school's implementation of Corrective Action and Improvement Plans, and regularly update the PEC on progress. Once the school has met the Notice of Breach requirements, the school will be returned to **Good Standing**. If the issue is not adequately addressed, the PEC may take further action on the Intervention Ladder at an open meeting of the PEC.

A school placed on probation is considered at risk of non-renewal.

## **VI. Intervention Level 5. Revocation Review**

Failure to meet the objectives of the Corrective Action Plan or Improvement Plan developed, or certain violations of law that are serious enough to justify an initial heightened response, will result in a charter school Revocation Review. Schools may also be subject to the Revocation Review if they receive more than one Notice of Breach in the same school year.

The PEC will issue a Notice of Revocation Review at an open meeting of the PEC. Unless impractical, the PEC's authorized representative(s) shall provide schools notice they will appear on the PEC's agenda to issue a Notice of Revocation Review at least 10 days prior to the meeting. As part of issuing a Notice of Revocation Review, the PEC will establish the actions to be taken by its authorized representative(s) and a deadline for the school to respond to the prospect of revocation. The actions of the PEC's authorized representative may include additional visits to the school, an in-depth audit to assess the school's educational program, and/or financial and organizational health, or other actions appropriate to determine if a revocation hearing is appropriate.

Findings from the revocation review will be presented to the PEC at a properly noticed public meeting, at which will determine whether to issue a Notice of Intent to Revoke, which sends the school into revocation proceedings. In lieu of a Notice of Intent to Revoke, the PEC may grant a Notice of Probation, or a revised Notice of Probation. A revised Notice of Probation will allow a school more time to achieve expected outcomes established in an initial Notice of Breach or Probation or adjust the expected outcomes initially established by the PEC.

In extraordinary circumstances, the PEC may forego the process outlined below and may, with proper statutory notice, consider whether to hold a revocation hearing or hold a revocation hearing.

A school placed on probation is considered at risk of non-renewal.

## **VI. Revocation Or Suspension Procedure of a Charter Contract**

### **1. Prehearing Procedures:**

A. Notice of Intent to Revoke or Suspend. Pursuant to NMSA 22-8B-12 K, if the Public Education Commission (“PEC”) determines that revocation or suspension of a Charter Contract may be appropriate, the PEC shall notify the governing board of a charter school authorized under its authority (“School”) of an intent to revoke or suspend the Charter Contract. The Notice of Intent to Revoke or Suspend the Charter Contract shall notify the charter school of the time and place of the hearing on the revocation or suspension; the name, address and telephone number of the person who shall conduct the hearing for the PEC; and the statutes and regulations authorizing the PEC to take the contemplated action. Unless an emergency revocation or suspension is identified, which hearing shall be held not more than sixty (60) nor less than fifteen (15) days from the date of service of said notice. If an emergency revocation or suspension is contemplated, the notice shall indicate the emergency and then may provide, or direct the hearing officer to identify, shorter timelines throughout the process, as needed.

B. Parties. The Public Education Department, Charter School Division, (“CSD”) shall present the case for revocation or suspension through counsel selected by the Executive Committee of the PEC (“PED presenting counsel”). PED presenting counsel may be a contractor hired for the purpose of presenting the case. PED presenting counsel shall gather and present evidence and testimony in support of the intent to suspend or revoke. The Charter School Division staff and PEC counsel may assist counsel in the development of the case. The School may hire counsel for the purpose of presenting evidence and testimony to rebut the intent to suspend or revoke. Counsel shall send an entry of appearance to the PEC and provide notice to the other party.

C. Powers and Duties of PEC and Hearing Officer.

i. PEC. The board shall exercise all powers and duties as prescribed under the Charter School Act, NMSA 22-8B-1 *et seq.* and not otherwise delegated to the hearing officer. The board may specify procedures to expedite the efficient resolution of the action or to avoid obvious injustice. Board members may participate fully in a hearing, including questioning witnesses. If no hearing officer is appointed, the Chair of the PEC or designee shall act in the role of the hearing officer.

ii. Hearing Officer. The Executive Committee of the PEC may appoint a hearing officer to conduct the hearing. If appointed, the hearing officer shall be a duly licensed New Mexico attorney, excluding any attorney then employed as general counsel of the PEC or who has been involved in preparing the case for revocation or suspension. Any hearing officer appointed to serve on a case shall at all times be held to the same ethical standards of impartiality that are set forth in Section 21-300(B) of the New Mexico code of judicial conduct. The hearing officer may issue a pre-hearing order limited to: setting deadlines for the exchange of documents intended to be introduced; setting deadlines for the exchange of a list of the name, address and telephone number of each witness a party intends to call during the hearing; and cautioning the parties of their need to comply with Subsection 1.G below. If either party requests a pre-hearing conference with the hearing officer, such conference shall be scheduled by the hearing officer and be held telephonically unless both parties agree to meet in person.

iii. The hearing officer shall have the power:

(a) to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case; hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues but such settlement or simplification shall only be with the consent of the School and CSD, identified in the hearing officer report and subject to review by the PEC;

(b) to hear pre-hearing motions: the hearing officer shall issue a written order with a copy to both parties on any pre-hearing motion filed by a party;

(c) to subpoena, for purposes of discovery and of the hearing, witnesses and relevant books, papers, documents and other evidence in compliance with Rule 1-045A to D of the rules of civil procedure and New Mexico civil form 4-505; a party may also issue such subpoenas with the approval of the hearing officer;

(d) to impose any appropriate evidentiary sanction against a party who fails to provide discovery or to comply with a subpoena; such sanctions could include the striking of a witness or the striking of documentary evidence; and

(e) to take notice of judicially cognizable facts as well as of general, technical or scientific facts within his/her specialized knowledge so long as the parties are notified either before or during the hearing of the fact so noticed and its source, and is afforded an opportunity to contest said fact.

#### D. Discovery.

i. Rules of discovery provided in Rules 26 through 37 of the New Mexico rules of civil procedures shall apply, except that all deadlines for responding to requests for admissions, interrogatories, and requests for production of documents shall be within ten (10) days of the delivery of the request. No such request shall be made less than fifteen days.

ii. Upon written request to another party, any party is entitled to:

(a) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

iii. Any opposition to any pre-hearing motion filed by a party shall be filed within ten (10) days of the service of that motion on the other party.

iv. This rule does not authorize either party to seek discovery sanctions or relief from a district court.

v. Any party may take depositions after service of notice in accordance with the rules of civil procedure for the district courts. Depositions may be used as in proceedings governed by those rules.

F. Pleadings. Parties shall serve copies of all pleadings on each other and the hearing officer, shall sign and date each pleading and shall include a signed and dated certificate of service with their pleadings.

G. Ex parte communications. Neither party nor his/her attorney shall engage in ex parte communications with any PEC member or a hearing officer appointed to hear a case on any matter regarding a pending case. Likewise, a hearing officer shall not engage in ex parte communications with either party or his/her attorney on any case to which that hearing officer has been appointed. However, there may be occasions when brief ex parte communications are warranted, for example, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A summary of what was communicated shall be promptly disclosed to the individual who did not participate in the ex parte communication. No PEC member shall engage in any ex parte communication with any party, attorney or interested person on any matter or for any reason related to a pending suspension or revocation.

## **2. Rights of a School:**

A. During Process. A School shall have the right to be represented by counsel at no expense to the department; to present all relevant evidence by means of witnesses and books papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the hearing officer.

B. Excusal. A School shall have the right to excuse the hearing officer within 5 business days of the designation by the Executive Committee. The Executive Committee shall then appoint a replacement hearing officer who shall serve as the hearing officer without a right to excusal.

## **3. Hearing:**

A. Purpose. The purpose of the hearing shall be to determine whether sufficient grounds exist for the suspension, revocation or other action against the School authorized by the Charter School Act, NMSA 22-8B-1 *et seq.*. The burden of proof shall be upon CSD to establish by a preponderance of the evidence that sufficient grounds exist.

B. PEC participation. Any member of the PEC may attend the hearing and all members shall be provided with a transcript or tape of the proceeding.

C. Venue of hearing. The hearing shall be conducted in Santa Fe or in the county in which the School is located as designated by the PEC in the Notice of Intent to Revoke or Suspend the Charter Contract.

D. Conduct of hearings.

i. The order of presentation of evidence shall be as follows: CSD, through the presenting attorney, shall present evidence in an attempt to establish that sufficient grounds exist for the suspension, revocation or other disciplinary action against the licensee's license. Thereafter, the licensee may present evidence in defense. The hearing officer may allow rebuttal evidence and/or closing arguments.

ii. The rules of civil procedure and the rules of evidence shall not apply to the hearing, except as specifically provided in this document, but it shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall permit each party to call and examine witnesses, cross-examine witnesses and introduce exhibits. Documentary evidence may be received in the form of copies or excerpts. Evidence will be admitted without regard to technical rules of evidence, but the hearing officer may exclude any evidence, which is not relevant to the issues and may require reasonable substantiation of statements or records where accuracy or truth is in reasonable doubt. Any evidence may be admitted that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may in his or her discretion exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. Rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Parties or their attorneys may make timely objections to the introduction of any evidence they view as inadmissible under this paragraph.

iii. A complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic method in use in the district courts of this state, or in the discretion of the CSD, by tape recording. CSD shall observe any standards pertaining to tape recordings established for the district courts. In any event, CSD shall have one copy of the transcript or tape recording of the hearing for the secretary's review in rendering a final decision. Where judicial review is sought, the costs of required transcripts or tape recordings shall be paid by the party seeking review.

iv. All witnesses shall swear or affirm that their testimony will be truthful. A person authorized to administer oaths shall swear each witness. The hearing officer may determine the capacity of a witness to testify and may consider capacity in determining the weight of the evidence. The hearing officer may refuse to admit testimony from a proposed witness who is found lacking capacity. PEC members in attendance at the hearing may provide written questions to the hearing officer for the purpose of clarifying any testimony. The PEC members may not ask questions directly of any witness.

v. The hearing officer may require post-hearing briefs to be submitted by the parties. Such briefs shall not exceed twenty (20) pages in length, double-spaced, exclusive of attachments, and shall be on paper eight and one-half by eleven inches in length.



D. Non-appearance. If a School fails to appear at a hearing and no continuance has been granted, the hearing officer may hear the evidence of such witnesses as may have appeared and proceed to consider and dispose of the case on the basis of the evidence before him/her.

E. Continuing jurisdiction.

i. If a revocation or suspension proceeding is pending at the expiration of the School's charter contract term, the hearing officer shall continue to have jurisdiction to hear a case where the School was served a Notice of Intent to Revoke or Suspend the Charter Contract prior to the expiration of the charter contract term.

ii. If a renewal application is pending at the time of the Notice of Intent to Revoke or Suspend the Charter Contract, then the PEC action shall also serve as a decision on renewal. If the School's Charter Contract is revoked, the School's Charter Contract is deemed to have been non-renewed. If the School's Charter Contract is suspended, then the School's renewal application shall be placed on hold pending completion of any terms of the suspension. If the School's Charter Contract is allowed to continue with conditions, the School's Charter Contract is deemed to have been approved with conditions.

#### **4. The Hearing Officer's Report To The PEC:**

A. The parties' proposals. The hearing officer shall afford the School and CSD an opportunity to file proposed findings of fact and conclusions of law by a deadline specified by the hearing officer not to exceed fifteen days from the closing of the hearing. The hearing officer may include in, or exclude from, his or her report to the PEC any portions of the parties' proposed findings, conclusions or order as the hearing officer deems are supported or not supported by the evidence presented at the hearing. Moreover, the hearing officer may revise the submitted proposed findings and conclusions and/or make other findings and conclusions as he or she deems are supported by the evidence at the hearing. No party shall submit post-hearing briefs or proposed findings of fact and conclusions of law after the deadline imposed unless leave to file late is granted by the hearing officer for good cause shown.

B. Contents. Within 30 days, the hearing officer shall submit a formal written report to the PEC consisting of the following labeled paragraphs: statement of the case, legal issues, proposed findings of fact, proposed conclusions of law, and order proposed by the hearing officer. The hearing officer shall limit his/her proposed order to: revocation, suspension or continuation the School's charter contract with or without conditions.

C. Time limits. The hearing officer's report along with the parties' briefs and proposed findings of fact and conclusions of law and order, if any, shall be delivered to the PEC, within thirty (30) days and placed on an agenda of an open meeting of the PEC. The Executive Committee of the PEC may extend this time upon request of the hearing officer so long as the decision of the hearing officer is rendered and signed within sixty (60) days after the conclusion of the hearing. The hearing officer shall serve a copy of the report directly on the parties to the hearing, or upon their attorneys, if any, on the same day the hearing officer serves the PEC.

## 5 Decision of the PEC:

A. PEC Decision. The PEC shall review the report of the hearing officer together with any briefs or proposed findings/conclusions/orders timely submitted by the parties. The PEC shall render a final decision and order by motion and vote of PEC members based on a preponderance of the evidence during an open meeting of the PEC to revoke, suspend, or continue the Charter Contract with or without conditions. The PEC may discuss the report of the hearing in closed session but shall vote on a final decision in an open meeting. The PEC's decision must include a statement informing the School of the right of appeal to the secretary of the Public Education Department. The PEC shall either:

- i. adopt the hearing officer's proposed findings of fact, conclusions of law and order;  
or
- ii. modify said findings of fact and conclusions of law and order and render a decision; or
- iii. reopen the case to receive additional evidence or for other cause on request from the licensee or on the PEC's own motion; or
- iv. reject any action against the School's Charter Contract on the grounds alleged and order the said charter contract to remain in full force and effect. If the PEC decides to hear additional evidence a transcript of the proceedings shall be made by a qualified court reporter or a tape recording.

B. PEC as decision-maker. The PEC is not an appellate reviewer of the hearing officer's proposed findings/conclusions/order. Rather, the PEC is ultimately responsible for issuing a final decision and order relative to possible revocation or suspension provided that any deviation from the hearing officer's proposed findings/conclusions is supported by a preponderance of the evidence after conducting an independent review of the transcript of the hearing. The same transcript review process would apply to any other proposed findings/conclusions of the hearing officer from which the PEC seeks to deviate.

C. Settlement. At the request of the parties, the PEC may adopt and incorporate into the decision and order all or any part of a written settlement proposed by the parties, whether or not a case has gone to a hearing. Any such settlement proposal shall be duly signed and notarized and contain the detailed agreements of the respective parties. Upon adoption and incorporation by the PEC of all or any part of a written settlement, that settlement or the incorporated portions shall become merged into the secretary's decision and order as a final agency decision.

D. Time. The written decision of the PEC must be rendered and signed by the Chair of the PEC within sixty (60) days after the completion of the preparation of the record or submission of the hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety (90) days after the hearing.

E. Service. A written copy of the decision of the PEC shall be served on the School at the address set forth in the charter contract notice section within fifteen (15) days after the decision is rendered and signed.

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