

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, June 16, 2022 and July 21, 2022..</p> <p><u>Next steps.</u> Director Chavez will take to PED. This will remain on the agenda each month until finalized.</p> <p>Initial meeting: July 18, 2022 (Chair Burt, Deputy Director Gonzales and Director Chavez)</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:

The parties agree to the following terms which shall be described in more detail in the attached **Exhibit 1** as may be amended. The Exhibit 1 may be reviewed annually to ensure that the implementation of this MOU is updated to reflect the current intentions of the parties.

### **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, including a Director of the Division and a Commission Liaison.

### **2. Department Support**

Pursuant to the Act, the Department, through the Division, will provide staff and administrative support to the Commission as required for the Commission to perform its functions of oversight of State Charter Schools. Other divisions and bureaus in the Department will provide additional information and support as set forth in Exhibit 1.

### **3. Legal Matters and Technical Consultation**

Legal Counsel. 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.

Technical Consultation. The Commission shall be entitled to hire technical consultants to provide research and gather information in support of the authority, powers and duties provided in NMSA 22-8B-5.3.

Funding for the contract for legal representation and technical consultation shall come from the share of the charter two percent not maintained by the Department for administrative support.

#### **4. Budgeting**

Pursuant to the Act, up to 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.

If the budget reasonably anticipated is less than 2% of the State Charter Schools available to be withheld from the State Charter Schools, the Department shall withhold less than 2% from State Charter Schools and notify the State Charter Schools of the percentage less than 2% which will be withheld for that school year. Nothing in this agreement limits the Department and Commission from agreeing to a budget up to 2% for any fiscal year, even if less was budgeted for another fiscal year.

Upon annual appropriation by the legislature, the Department will maintain an amount of funds for administrative support in a non-reverting fund equal to a budget created for that fiscal year. At least quarterly, the Department will annually provide an accounting of the actual monies spent pursuant to the budget on the Department's spending of the budgeted amounts, including estimates of costs allocated to employees in the Department to support the Commission and Division.

Pursuant to NMSA 9-1-7, the budget shall be submitted to the Department for approval, as submitted and without changes, along with the Department budget.

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.

#### **5. Consultation and Advice**

The PEC delegates its duties of vocational education, Section 22-14-1 *et seq* NMSA 1978, to the PED, that may be prescribed in statute or other applicable authorities. The PEC and PED shall work collaboratively to change the legislation to remove the PEC duties regarding vocational education.

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.

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 Division will provide the Chair of the PEC in the event that any state charter school or charter school personnel are subject to a current criminal investigation.

## **6. Communications**

The Division will copy the Commission on all written communications, when the Division is expressly acting on the Commission's behalf and provide the Chair of the PEC in the event that any state charter school or charter school personnel are subject to a current criminal investigation.

## **7. Commission Meetings and Public Information**

The Department, through the Charter Schools Division, will assist the Commission to comply with laws, including the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA 1978 and the Inspection of Public Records Act, Section 14-2-1, *et seq.*, NMSA 1978.

## **8. Effective Date, Termination and Modification**

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.

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. Exhibit 1 to 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.

## **9. 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.

## **10. 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.

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

## Commission/Department MOU Exhibit 1

The parties provide the following details regarding the terms set forth in the MOU. This Exhibit may be modified and updated by the parties as needed without revising the terms of the MOU upon the signatures of the authorized signatories. This new Exhibit 1 (designated as *First Amended Exhibit 1*, *Second Amended Exhibit 1*, etc.) shall then replace the existing Exhibit 1 attached to the MOU.

### 1. Staffing and the Division

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.

The Director shall hire or contract a Commission Liaison to provide support to the Commission as requested by the Chair or Commission, in support of the authority, powers and duties provided in NMSA 22-8B-5.3. The hiring committee for this position shall include two Commission members. The final hiring decision shall be made at the discretion of the Director after consultation with the hiring committee.

### 2. Department Support

Division support. 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, 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.

Department Support. As part of the services supported by the funding provided to the Department in section 4. (vii) below, the Department will:

- (i) Provide the PEC with state assessment and accountability data at a school-level for each state charter within 30 days of public release of the data, in the following categories:
  - (1) student academic performance;
  - (2) student academic growth;
  - (3) achievement gaps in both proficiency and growth between student subgroups;
  - (4) attendance;
  - (5) recurrent enrollment from year to year;
  - (6) if the charter school is a high school, post-secondary readiness;

- (7) if the charter school is a high school, graduation rate, and
- (ii) Ensure that staff outside of the Division provide timely reporting to the Division and Commission on issues related to State Charter Schools as may be requested by the Division or by the Commission to support the authorizing decisions of the Commission.

### 3. Legal Matters and Technical Consultation

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.

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.

The Commission shall consult with the Department prior to making its staffing and hiring decisions with respect to the legal counsel or technical consultation. The selection committee for the legal counsel shall include three PEC members, and two PED members appointed by the Secretary unless both parties mutually agree to a different configuration of the selection committee. The Commission shall consult with the hiring committee and discuss the responses to the request for proposals in a closed session (NMSA 10-15-1 H.2, if an employee or H.6., if a contractor). The final hiring decision shall be made by the Commission by a vote at an open meeting. (PED to modify if necessary to comply with Procurement Code process.)

### 4. Budget

Pursuant to NMSA 9-1-7 and according to a timeline identified by the Department to allow the budget to be submitted for approval, the Commission will work with the Division director to develop a budget including the administrative costs of Division and Department which will include:

- (i) funding for the Division, including salaries and expenses of staff supporting the Commission, and State Charter Schools, including the Commission researcher, but not including salaries and expenses of staff that support other efforts of the Division not related to the Commission or State Charter Schools;
- (ii) funding for contractors supporting the Commission and State Charter Schools, including legal counsel and technical consultants for the Commission;
- (iii) the costs of Commission travel, including Commissioner travel and attendance at trainings and conferences;
- (iv) technology for Commissioners, including upgrades to Mabry Hall;
- (v) meeting expenses;
- (vi) membership in professional organizations, as reasonably determined by the Secretary of Education;
- (vii) funding for the Department for administrative support for the Commission and Division equal to 15% of the total 2% of SEG funds for state charters for the current fiscal year.

### 5. Consultation and Advice

No additional terms.

## **6. Communications**

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.

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Exhibit 1 was adopted by the parties on \_\_\_\_\_