

**VIA EMAIL**

January 27, 2023

**Julia Barnes, Attorney for Public Education Commission**

[jhbnm1@gmail.com](mailto:jhbnm1@gmail.com)

Re: January 30, 2023 PEC Meeting

Julia,

Cesar Chavez Community School received a copy of the January 30, 2023, PEC Agenda. Cesar Chavez Community School is listed on the agenda for: “DISCUSSION AND POSSIBLE ACTION RELATING TO CESAR CHAVEZ COMMUNITY SCHOOL PURSUANT TO THE INTERVENTION LADDER WHICH MAY INCLUDE NOTICE OF INTENT TO SUSPEND OR REVOKE THE CHARTER DUE TO CONTRACT VIOLATIONS FOR FAILURE TO RETURN TO IN-PERSON INSTRUCTION.”

I have copied Section 6, Paragraph 4, Subparagraph ii of the charter contract between CCCS and the PEC below, which sets forth the revocation procedure developed by the PEC. I note that the PEC has not followed the procedures set forth in the charter contract. CCCS has not been provided with the notice set forth in the contract. CCCS received notice of the January 30, 2023, via public notice of the meeting made on January 24, 2023, at 5:00 pm.

Pursuant to NMRA 1-006, “When the period is stated in days but the number of days is ten (10) days or less, exclude the day of the event that triggers the period; exclude intermediate Saturdays, Sundays, and legal holidays; and include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.” Even including intermediate Saturdays and Sundays the notice is still deficient, and does not provide the CCCS the notice provided for in the contract.

Pursuant to NMSA 1978, Section 22-8B-12(L), “The chartering authority shall develop processes for suspension, revocation or nonrenewal of a charter that: (1) provide the charter school with timely notification of the prospect of suspension, revocation or nonrenewal of the charter and the reasons for such action; (2) allow the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action; and (3) require the final determination made by the chartering authority to be submitted to the department.” I note that the PEC has not developed a process for the suspension of charter schools. Rather, the PEC has only set forth a procedure for the revocation and nonrenewal of charter schools. That process as set forth in the contract is copied below. CCCS takes the position that without a process developed pursuant to Section 22-8B-12(L) suspension is inappropriate.

- ii. **Procedures and Timeline:** The Commission shall utilize the following revocation process:
- a. Notify the school at least 7 days prior to a regularly scheduled meeting that it will be on the agenda for consideration of whether to issue a Notice of Intent to Revoke the Charter.
  - b. Issue a written Notice of Intent to Revoke the Charter within 15 days of voting to issue such a notice. The Notice shall:
    1. State the legal basis for the potential revocation, and reasonably identify the evidence that the Commission has to support the existence of the legal basis;
    2. Identify the date, location, and time at which a revocation hearing will be held;
    3. Establish deadlines for the School and the Commission to present written materials and all evidence that will be used during the hearing; and
    4. Identify if the hearing will be conducted by the Commission or by an impartial hearing officer. If a hearing officer is to be used, the Notice shall establish the date on which the Commission will consider whether to accept, reject, or modify the hearing officer's findings of facts, conclusions of law, and recommendations.
  - c. After a hearing, upon making a final revocation decision, the Commission shall issue a written decision, through the Chair, within 15 days of voting to revoke the charter stating the findings of fact and conclusions of law that support the revocation.

In addition, the agenda indicates possible action placing the school on the intervention ladder. Per the terms of Cesar Chavez Community School's charter contract, "PEC's authorized representative(s) shall provide schools notice that they will be appearing on the PEC's agenda for the purposes of issuing a Notice of Concern at least 10 days prior to the meeting." Similarly, the contract states with regard to a potential notice of breach, "PEC's authorized representative(s) shall provide schools notice that they will be appearing on the PEC's agenda for the purposes of issuing a Notice of Breach at least 10 days prior to the meeting."

The timelines imposed by the contract have not been met here. Nor has the school been provided with meaningful notice of the potential action the PEC may take against it. Respectfully Cesar Chavez Community School requests that this be removed from the agenda, and the procedure in the contract be followed.

Section 12 of Cesar Chavez Community School's charter contract outlines a dispute resolution process which CCCS previously invoked. While the parties went to mediation in an attempt to resolve the dispute, mediation ultimately did not result in a resolution,

and it appears the PEC contemplates action against CCCS over the disputed interpretation of the Contract. CCCS gave the PEC notice that a dispute exists between the parties with regard to the interpretation of Section Four, Paragraph 11 of the contract. This paragraph reads:

11. **Sites:** The School shall provide educational services, including the delivery of instruction, at the following location(s):

Cesar Chavez Community School  
1325 Palomas Dr SE  
Albuquerque, NM 87108

The School shall ensure the Facilities meet the charter school facilities standards in Section 22-8B-4.2(A, C, D) NMSA 1978, and shall ensure that the facilities comply with all applicable federal, state and local health and safety standards and other applicable laws, regulations and rules. The School shall provide the Lease(s) or Lease Purchase Agreement(s) for all facilities, which is attached to this contract as Attachment J incorporated herein by reference,

It has become apparent that the Commission's interpretation of this paragraph is that it prohibits the provision of any educational services or instruction off campus and prohibits any provision of educational services or instruction in a remote or virtual setting.

Cesar Chavez Community School does not interpret this paragraph to preclude the provision of educational services or instruction remotely. Moreover, Cesar Chavez Community School does not interpret this paragraph as prohibiting the provision of educational services or instruction outside of the school site. Cesar Chavez Community School notes that Section 4, Paragraph 6 of the Contract contemplates the provision of educational services and instruction off campus. Specifically, the Contract contemplates that Cesar Chavez Community School is to offer "[c]ommunity service, service learning, work experience and/experiential learning" to its students, and that all of these educational services and modes of instruction have occurred off campus or in a remote setting. In fact, when Cesar Chavez Community School was initially approved as a state authorized charter school virtually all its instruction was completed asynchronously through a "packet" program.

Cesar Chavez Community School also notes that the Commission has included substantially similar language in most of the contracts it has entered with charter schools. However, in some instances the language has been modified to state that educational services and instruction may *only* be provided at the school site. See for example, Charter Contract between the Public Education Commission and Roots and Wings Community School:

The School shall provide educational services, including the delivery of instruction, only at the following authorized location(s):

It is also worth noting that the Charter Contract between the Public Education Commission and Roots and Wings Community School also contemplates that

educational services and instruction will take place outside of the school site. As you may know that school utilizes an expeditionary learning model and their pedagogical approach includes actual expeditions as part of the curriculum. These expeditions are in fact included in the charter contract.

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The school offers front country adventures (grades K-2), three-day backpack trips (grades 3-5), and five-day backpack trips (grades 6-8) through which they experience the wonders of the wilderness and the transformation that comes from pushing themselves beyond their perceived limits. The experiences are provided at least two times a year. Students come to the school for these types of outdoor opportunities that are not offered in most public schools.

Moreover, other schools with identical language to Section 4, Paragraph 11 of Cesar Chavez Community School's Contract provide a substantial portion of their educational services and instruction remotely in a virtual setting. For example, Southwest Secondary Learning Center provides a substantial portion of their educational services and instruction via virtual instruction. Additionally, many schools the Commission authorizes have begun providing "remote only" options for students.

I note that Section 4, Paragraph 6 of the Contract outlines the Comprehensive Educational Program for the school:

6. **Comprehensive Educational Program of the School:** The School's educational program shall be as described below:
  - I. CCCS offers individualized, flexible scheduling and a high level of individual support to help students connect or reconnect with school and earn a diploma. With nine years' experience serving this population, we are convinced that having the students prepared and poised for their next steps beyond graduation is one of the most crucial long-term services we can provide. Thus all that is included in the renewal priorities will contribute to this final, overarching goal for preparing CCCS students for their next step.
  - II. CCCS Key Commitments:
    - Small classes will be maintained (average 17:1);
    - Students will have an assigned mentor who will implement the CCCS mentoring program;
    - Student progress will be tracked, as appropriate to each student's needs, challenges and goals, by assessing credit completion, rate/timeliness of credit completion, attendance, behavior, scheduling, etc.
    - Higher-level thinking, problem-solving and life applications will be incorporated into curriculum planning and instruction using strategies such as Paideia Seminar;
    - Community service, service learning, work experience and/or experiential learning will be offered to students at CCCS;
    - Teen parenting support will be provided through social work, parenting curriculum and community resources.
  - III. Key Commitments for Staff:
    - CCCS will schedule training and in-service days for staff;
    - Staff development will include training in strategies focused on areas such as higher-level thinking, problem-solving, life applications, and trauma-informed strategies

Cesar Chavez Community School continues to deliver the educational program outlined in the contract, and continues to execute its mission. It should be noted that the PEC has included language in contracts with other schools that specify whether the school can engage in online or virtual instruction. See, for example, the PEC's contract with Vista Grande High School which states:

VGHS has in-person instruction 90% of the time. VGHS does offer a night school for students who need alternative hours for schooling. The night school program uses an online format with direct instruction and tutoring for students.

Additionally, the PEC's contract with THRIVE Community School states in the same section:

The school intends to offer in-person instruction 100% of the time; however, will offer virtual instruction if required by the state, local, or federal government. If virtual instruction is provided, the school will provide students with one-to-one devices, if needed, and require students to be on-screen during instruction unless modified in a student educational plan.

No similar provision is found in Cesar Chavez Community School's contract.

It appears that Cesar Chavez Community School is the only school in which the Commission is interpreting the language of Section 4, Paragraph 11 of the Contract to prohibit the provision of any educational services or instruction off campus and to prohibit any provision of remote instruction. Not only does Cesar Chavez Community School dispute this interpretation of the Contract, but its application also exclusively to Cesar Chavez Community School is arbitrary and capricious.

While CCCS disagrees with the PEC's interpretation of the contract to prohibit any remote instruction, and notes that the PEC has not followed the procedures set forth in the contract, CCCS has continued to work with individual Commissioners in an attempt to resolve this matter and plans to attend the January 30, 2023, meeting. Please note that CCCS's attendance at the meeting does not waive any legal arguments CCCS may have regarding the Commission's failure to follow the procedures outlined in the contract.

Sincerely,



Dan Hill

Cc: Tani Arness, Executive Director CCCS  
Alan Brauer, Chair PEC