

1	6.80.4.1	ISSUING AGENCY
2	6.80.4.2	SCOPE
3	6.80.4.3	STATUTORY AUTHORITY
4		Sections 9-24-8, 22-2-1, 22-2-2, 22-8-1 et seq., and 22-8B-1 et seq. NMSA 1978.
5	6.80.4.4	DURATION
6	6.80.4.5	EFFECTIVE DATE
7	6.80.4.6	OBJECTIVE
8		To establish the initial application and renewal process for charter schools, whether locally or state
9		chartered, the appeal process of charter schools to the secretary of education and the secretary of
10		education’s review process and policies and protocols for the Public Education Commission as a
11		state authorizer.
12	6.80.4.7	DEFINITIONS
13	6.80.4.8	NOTICE OF INTENT TO ESTABLISH A CHARTER SCHOOL
14	6.80.4.9	CONTENTS OF APPLICATION FOR START-UP CHARTER SCHOOL
15	6.80.4.10	TERM OF A CHARTER
16	6.80.4.11	REQUIREMENTS DURING THE PLANNING YEAR
17	6.80.4.12	INITIAL REQUIREMENTS AND REVIEW PROCESS FOR START-UP CHARTER
18		SCHOOLS
19	6.80.4.13	CHARTER SCHOOL RENEWAL PROCESS AND RENEWAL APPLICATIONS
20	6.80.4.14	APPEALS TO THE SECRETARY
21	6.80.4.15	REVIEW ON THE SECRETARY’S OWN MOTION

22
23 **[NEW SECTIONS OR RENUMBERED SECTIONS]**

- 24 **6.80.4.16** **DEFINITIONS:** As used in section 6.80.4.17 – 6.80.4.25
- 25 **A.** “act” means the Charter Schools Act, NMSA 22-8B-1 *et seq.*
- 26 **B.** “corrective action plan” means a plan proposed by the school and agreed to by the commission
- 27 and a school to correct an identified unsatisfactory performance which contains information that identifies the
- 28 personnel at the school who will take specified actions by a date certain, and which plan the division will monitor
- 29 and provide progress reports to the commission periodically.
- 30 **C.** “high stakes decision” means action of the commission that could result in non-renewal, renewal
- 31 with conditions or revocation.
- 32 **D.** “intervention ladder” means a process of progressive intervention by the commission to address
- 33 concerns at the lowest level possible.
- 34 **E.** “policy” or “policies” means those commission policies, forms, or protocols that enable the
- 35 commission to provide oversight of state charter schools for new school applications, the planning year for new
- 36 schools, annual reports, the charter renewal process, contracting, sample forms, amendments and closure protocols
- 37 that are administrative in nature and are not addressed in other sections of this rule.
- 38 **F.** “policymaking” means the process used by the commission to make policies.
- 39 **G.** “unsatisfactory performance” means a designation on the performance framework of “working to
- 40 meet” or “fails to meet” the standards, violated a provision of contract or has violated one of the grounds for
- 41 nonrenewal or revocation set forth in NMSA 22-8B-12. K.

42
43 **6.80.4.17** **SCHEDULE FOR STATE CHARTERED CHARTER SCHOOL POLICY-MAKING:**

- 44
45 **A. High-stakes decision processes and policy creation.** The timing and process for decision-
- 46 making for high-stakes decisions are set forth in this rule in sections 6.80.4.21 – 6.80.4.26 below. In support of
- 47 these high-stakes decisions, the commission shall create policies related to authorizing pursuant to the act that will
- 48 be used by the parties and may be modified from time to time as set forth herein. The commission shall collect these
- 49 policies in a central location or in an authorizing manual available to the public. Policymaking shall proceed under
- 50 the annual cycle set forth in sections 6.80.4.17.B. through D. below unless the commission declares emergency
- 51 circumstances to exist under 6.80.4.19.
- 52 **B. Policies Affecting the Operation of State-Chartered Charter Schools.** Policies shall be
- 53 adopted in the existing fiscal year to be effective for the following fiscal year (July 1- June 30) for all state-chartered
- 54 charter schools generally affecting the operations of state-chartered charter schools. However, this rule does not
- 55 apply to minor, non-substantive changes to a policy or a document that sets scheduling dates. These non-substantive
- 56 changes or scheduling documents may be adopted by the commission at any time as needed.

57 **C. New School and Renewing School Application Kits.** If additional time is requested by the
58 division, policies related to new school application kits or renewing school application kits may be adopted no later
59 than December 31 in a fiscal year so that those documents may be used for new school or renewing school
60 applications beginning in January of the following year in the same fiscal year.

61 **D. Policy Reviews.** In adopting changes to policies, the commission shall provide:

62 **1.** Each policy in draft in an electronic format published on its website for review and comment

63 **2.** The commission shall

64 i. ensure that the draft documents are posted for at least 30 days prior to adoption,

65 ii. include an indication in the document of the date of the last change to the document
66 which may include changes made during the comment period due to work by the commission during a public
67 working session, as a result of comments made or otherwise;

68 iii. identify a public comment period of at least 30 days during which the commission will
69 accept written comment;

70 iv. provide written notice on a commission meeting agenda of the working session(s) at
71 which the commission will review each draft policy and accept in-person or virtual comment in addition to the
72 written comments provided;

73 v. provide written notice on a commission meeting agenda indicating when the commission
74 will consider adoption of each policy after the 30-day comment period and after discussion at a working session(s);
75 and

76 vi. provide a web-location on the commission website where each adopted policy will be
77 posted in final form, including in an authorizing manual, to remain in effect until modified pursuant to this rule.

78 [6.80.4.16 NMAC - N, _____]

79
80 **6.80.4.18 FUTURE YEAR REVIEW:** For each following fiscal year, a new policy or revisions to an
81 existing policy may be proposed at the September public meeting of the commission or, with good cause shown as
82 to why the suggested change is being presented at meeting other than the September meeting, proposed at another
83 public meeting of the commission by

84 **A.** a member of the commission or

85 **B.** the division director on behalf of the charter school division or another division of the public
86 education department.

87
88 Any policy proposed to be revised pursuant to this section shall be revised to meet the time schedules set forth in
89 6.80.4.17.

90 [6.80.4.18 NMAC - N, _____]

91
92 **6.80.4.19 OUT-OF-CYCLE POLICY-MAKING; EMERGENCY CIRCUMSTANCES:** Emergency
93 circumstances for implementing a policy with an effective date other than July 1 of the next fiscal year may include
94 the following:

95 **A.** policy changes to protect the immediate health, welfare or education of state-chartered charter
96 students;

97 **B.** policy changes needed because of new case law or an attorney general's opinion affecting the
98 commission or state-chartered charter schools;

99 **C.** policy changes needed because of statutory changes;

100 **D.** policy changes needed because of changes to public education department rules, or

101 **E.** other emergency circumstances as determined by the commission.

102 [6.80.4.19 NMAC - N, _____]

103
104 **6.80.4.20 QUALIFICATION FOR BOARD OF FINANCE DESIGNATION (Existing rule)**

105 **A.** Within 90 days of approval of its charter application, the governing body of a state-chartered
106 charter school shall file a separate application with the commission seeking approval as a board of finance. This
107 deadline may be extended by the commission for good cause shown.

108 **B.** The application shall include:

109 **1.** an affidavit or affidavits, signed by the personnel who will be given the responsibility of keeping
110 the financial records of the charter school, describing the training completed, professional licensure held and degrees
111 earned by them;

112 2. a statement signed by every member of the governing body that the governing body agrees to
113 consult with the department on any matter not covered by the manual of accounting and budgeting before taking any
114 action relating to funds held as a board of finance;

115 3. a copy of a certificate of insurance that indicates that the person who will be entrusted with
116 handling the funds of the charter school is adequately bonded;

117 4. a signed affidavit from each governing body member declaring that the member is not a governing
118 body member of any other charter school and that the member was not a governing body member of another charter
119 school that was suspended or failed to receive or maintain their board of finance designation.

120 C. Within 30 days of filing of the application to qualify as a board of finance, the commission shall
121 issue a decision approving or denying the application. A copy of the decision will be provided to the governing body
122 and the commission.

123 [6.80.4.20 NMAC - N, 6/29/2007; A, 6/30/2008]

124 **6.80.4.21 STATE CHARTER SCHOOL EVALUATION AND NOTICE**

125
126 The commission, as a statewide chartering authority, shall evaluate and provide ongoing oversight of, and
127 feedback to, the schools it authorizes regarding each school's operational, financial and academic performance.
128 This evaluation and oversight shall be done through annual site visits, annual reports, action under the intervention
129 ladder, the renewal process and revocation, if necessary, according to the processes set forth in 6.80.4.22 – 6.80.4.26
130 below.

131 [6.80.4.21 NMAC - N, _____]

132 **6.80.4.22 ANNUAL SITE VISIT AND ANNUAL REPORT**

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134
135 A. **Annual Site Visit.** Pursuant to NMSA 1978 §22-8B-12(E), the division shall conduct an annual
136 site visit each year at the school's location to provide technical assistance and to evaluate the school's progress
137 toward the performance framework goals and compliance with the contract between the commission and the school.
138 The division shall post an annual site visit policy, including a protocol used to perform site visits and documentation
139 that it will request for review by all schools it will visit. Posting of the annual site visit policy on the commission's
140 website will serve as notice to the school of the protocol to be used and documents requested. The division may
141 request additional relevant information from the school that it requires and provide a reasonable time period for the
142 school to provide the additional information.

143 B. **Annual Reports.** The division shall prepare and deliver a final annual report for years one, two,
144 three and four of the school's charter contract to the commission. Because data necessary to complete each section
145 of the Performance Framework (academic, organizational or financial frameworks) is available at varying times
146 during the school year, the division may complete parts of the annual report evaluation at different times. The
147 division shall use its best efforts to provide the final annual report in the fall of each school year unless the division
148 has not received all required information, in which case the division shall provide the final annual report at the next
149 regular meeting after receipt and analysis of all required data.

150 C. **Time Periods Related to Annual Site Visits and Annual Reports.**

151 1. The division shall provide at least 10-days notice prior to the annual site visit or, if not, the school
152 may request a later date for the annual site visit;

153 2. The division and the school shall conduct an exit meeting at the end of the annual site visit
154 outlining the initial results of the division's findings;

155 3. Within 30 days following the annual site visit, the division will upload its initial annual report
156 draft based on the annual site visit to a shared drive that is available for the school to review at any time;

157 4. No later than 60-days after receipt of all necessary data to complete a section(s) of the
158 Performance Framework (academic, organizational or financial), the division shall complete the section(s) including
159 a preliminary indication as to whether the school has met, is working to meet or has failed to meet the standards
160 under that section and notify the school of the completed section.

161 5. The school may provide a written response to the completed section within 14 days and such
162 response shall be included with the report unless the division agrees with the response, and the issues raised in the
163 response are changed in the annual report by the division.

164 6. No later than 30 days prior to a commission meeting when the annual report will be considered,
165 the division shall provide the school with a full preliminary annual report including a preliminary indication as to

166 whether the school has met, is working to meet or has failed to meet the standards overall and in each section of the
167 report. The division shall include a recommendation that the school be deemed on a path to renewal, renewal with
168 conditions or that the commission issue a Notice of Possible Non-renewal.

169 7. The school may provide a written response to the preliminary annual report within 10 days and
170 such response shall be included with the report unless the division agrees with the response and the issues raised in
171 the response are changed in the final annual report by the division. The response may request that the commission
172 not accept the recommendation of the division.

173 8. The division shall provide a final annual report with any school response to the commission no
174 later than 7 days prior to the commission meeting.

175 **D. Unsatisfactory Performance Identified in the Annual Report.**

176 1. In the process to prepare each final annual report, the division shall notify the school of any basis
177 for concluding the school's performance under the charter contract or a section(s) of the performance framework
178 that constitutes unsatisfactory performance in the preliminary annual report. The preliminary annual report shall
179 specifically identify the contract terms, violation of law or indicator(s) and target(s) not met that give rise to
180 unsatisfactory performance.

181 2. In the process to prepare each final annual report, in the preliminary annual report the division
182 shall recommend if it finds the school to be on track to renewal, renewal with conditions or possible non-renewal
183 Additionally, if warranted, the division shall provide the legal basis and supporting evidence for a recommendation
184 to the commission that the school is on a path for non-renewal.

185 3. The division shall issue a final annual report after consideration of the school's response, if any.

186 4. If the division finds that the school's overall performance evaluation establishes a legal basis for
187 possible non-renewal, the division shall include in the preliminary annual report a recommendation to the
188 commission to issue a Notice of Possible Non-renewal and require the school to attend the meeting at which the
189 commission will review the school's final annual report. If the division's final annual report did not include a
190 recommendation to issue a Notice of Possible Non-renewal and, therefore the school was not required to appear
191 before the commission, but the commission after reviewing the final annual report deems such notice appropriate;
192 the school shall have an opportunity to address the commission before the commission votes to issue a Notice of
193 Possible Non-renewal.

194 5. At a meeting of the commission, the commission may accept an annual report without change or
195 may change a designation recommended by the division related to a school being on track for renewal, renewal with
196 conditions or possible non-renewal. If the commission accepts an annual report without change from the division
197 which contains a recommendation to issue a Notice of Possible Non-renewal, the commission shall provide written
198 Notice of Possible Non-renewal to the school within 10 days of the commission meeting and provide the rationale
199 for the possible non-renewal.

200 [6.80.4.22 NMAC - N, _____]

201
202 **6.80.4.23 CORRECTING UNSATISFACTORY PERFORMANCE AND RESCISSION OF NOTICE OF**
203 **POSSIBLE NON-RENEWAL.**

204 **A. School Options for Corrective Unsatisfactory Performance.** The school shall correct
205 any unsatisfactory performance before the next year's annual report is accepted by the commission or before a
206 renewal hearing. The school, at its option, may

207 1. correct the unsatisfactory performance before the next final annual report is presented to the
208 commission by the division and request that the next final annual report show that the school has remedied the
209 unsatisfactory performance and is on track for renewal or renewal with conditions; or

210 2. at any time in between the annual report cycles, request that the school be placed on the agenda of
211 the commission, present information showing that the school has remedied the unsatisfactory performance
212 designation, and ask that the school be shown to have corrected the unsatisfactory performance and is on track for
213 renewal or renewal with conditions; or

214 3. request that the school be placed on the agenda of the commission and present a corrective action
215 plan to remedy the unsatisfactory performance and request that the parties adopt the corrective action plan.
216 Completion of a corrective action plan will result in the commission accepting a designation of "corrected
217 unsatisfactory performance" for the school regarding issue of concern. If the corrective action plan addresses all
218 issues of concern raised, the commission shall identify that the school is on track for renewal or renewal with
219 conditions.

220 **B. School Option for Requesting Rescission of Possible Non-renewal Designation.** If the Notice of
221 Possible Non-renewal was issued in years, one, two, three and/or four of the charter contract, the school is tasked

with correcting any unsatisfactory performance giving rise to possible non-renewal before the next annual report is accepted by the commission. The school, at its option, may

1. correct each item identified as unsatisfactory performance as set forth in section 1 above;

2. at any time in between the annual report cycles, twenty-eight days prior to a commission meeting, provide evidence that it remedied the unsatisfactory performance that gave rise to the notice and request a rescission of the Notice of Possible Non-renewal. The division shall provide an analysis of the request within seven days of the meeting, and the commission shall vote on the school's request at its next commission meeting if such request was timely received;

3. if the commission does not accept the request to rescind the Notice of Possible Non-renewal, the school may request additional clarification of the legal grounds or evidence supporting the commission's decision not to rescind the Notice of Possible Non-renewal, and the commission shall provide this information within 30 days.

C. Commission Option to Pursue Intervention Ladder. If the commission finds that the school can improve its unsatisfactory performance by taking action under the intervention ladder, the commission may provide the school with the appropriate notice and proceed pursuant to the intervention process contemplated herein which, if successfully completed, will result in a designation of "corrected unsatisfactory performance."

D. Use of Corrected Performance Outcomes and Rescinded Notice of Possible Non-renewal.

1. Corrected unsatisfactory performance or a rescission of a Notice of Possible Non-renewal may be used to support renewal or renewal with conditions showing the schools improvement during the existing charter contract term.

2. Corrected unsatisfactory performance or a rescission of a Notice of Possible Non-renewal will not be grounds for nonrenewal or revocation unless the school is found to have received a designation of unsatisfactory performance on the same indicator in another school year during the charter term or at the time of renewal or received another Notice of Possible Non-renewal on substantially similar grounds and the corrected unsatisfactory performance or Notice of Possible Non-renewal is reinstated.

[6.80.4.23 NMAC - N, _____]

6.80.4.24 RENEWAL

A. Renewal application. The school seeking to renew its charter as a state charter school shall submit a renewal application to the commission in accordance with section 6.80.4.13 and in accordance with a timeline established by the commission for the renewal application process.

B. Time Periods Related to Renewal Site Visits and Renewal Recommendation.

1. The division shall prioritize annual reports for schools that are in the last year of their charter contract following the process set forth in section 6.80.4.22 above;

2. The division shall analyze each application and conduct a renewal site visit at the school prior to providing a preliminary renewal analysis which shall include a preliminary indication of its recommendation related to renewal, renewal with conditions or non-renewal;

3. The school may provide a written response to the preliminary renewal analysis within 14 days and such response shall be included with the report unless the division agrees with the response, and the issues raised in the response are changed in the annual report by the division.

4. No later than 30 days prior to the renewal hearing, the commission shall issue a written letter to each renewing school of preliminary issues of concerns or requests for further information to allow the school to prepare for the renewal hearing.

5. The division shall provide a final renewal analysis, including any response by the school and analysis of the school response, to the commission no later than 14 days prior to the commission meeting.

C. Request for Non-renewal Hearing Procedure. If a school has been issued a Notice of Possible Nonrenewal before it submitted its renewal application and which has not been subsequently rescinded by the commission or the division provides a recommendation of non-renewal to the commission, the school may request to invoke the non-renewal hearing procedure described in 6.80.4.24.D below. A request for the commission to follow the non-renewal hearing procedure, must be provided to the commission chair by no later than 10 days of receipt of the commission written letter of concern in section 6.80.4.24.B.4. above.

D. Non-renewal Hearing Procedure. If the school timely requests that the commission follow the non-renewal hearing procedure, the commission shall afford the school the following minimum process before voting on the recommendation for nonrenewal:

277 **1. Notice of Hearing and Grounds for Non-Renewal.** The commission shall provide notice of the
278 date and time of the possible non-renewal hearing no later than 14 days prior to the hearing. The commission may
279 rely on the grounds for non-renewal provided to the school in a Notice of Possible Non-Renewal that has not been
280 rescinded or that has been reinstated, a Notice of Concern or Notice of Breach that has not been corrected or that has
281 been reinstated, the grounds provided in the division’s preliminary renewal analysis or in the written letter of
282 concern from the commission provided to the school in section 6.80.4.24.B.4. above. The commission may
283 supplement any grounds for non-renewal up to 14 days prior to the renewal hearing, and, if exceptional
284 circumstances exist, at the hearing itself.

285 **2. Non-renewal Hearing Process.** The non-renewal hearing shall be conducted as follows:
286 i. The division shall have one hour to present its recommendation and supporting evidence
287 for renewal or nonrenewal to the commission. The division may present witness testimony, documentary evidence,
288 and shall have the opportunity to question the school representatives present (excluding legal counsel). If the
289 division is relying of evidence or opinions from other divisions or bureaus of the department, a representative from
290 that division or bureau shall be at the hearing to answer questions by the school and the commission.

291 ii. After the division’s presentation, the school shall have one hour to present evidence to
292 defend its application for renewal. The school may present witness testimony, documentary evidence, and shall have
293 the opportunity to question the division representative or other department representatives about information used to
294 support a recommendation of nonrenewal. If the school is relying of evidence or opinions from another entity or
295 other divisions or bureaus of the department, a representative from that entity, division or bureau shall be at the
296 hearing to answer questions by the division and the commission.

297 iii. Commission members may ask questions of the division, its attorney or witnesses, the
298 school, its attorney and the school’s witnesses during the presentations and then, may take up to one hour after the
299 school and division finish their presentations to ask additional questions that are related to the notices of identified
300 grounds for possible non-renewal provided to the school and legal grounds for non-renewal.

301 **C. Renewal Decision by the Commission and Appeal.** The commission shall determine if a school
302 is renewed, renewed with conditions or not renewed in accordance with law and section 6.80.4.13 above. A school
303 may appeal to the secretary as allowed by law and under the provisions of section 6.80.4.14 above.
304 [6.80.4.24 NMAC - N, _____]

305 **6.80.4.25 INTERVENTION LADDER**

307 **A. Ongoing Monitoring by the Division.** Throughout the term of a charter contract, the division shall
308 notify the school if the division identifies, through appropriate inquiries or investigation, that the school is not
309 meeting the terms of the charter contract or the performance indicators and targets as set forth in the performance
310 framework incorporated into the charter contract. Information establishing unsatisfactory performance may be
311 obtained from sources such as other divisions and bureaus of the department or other state or federal agencies. If the
312 division identifies unsatisfactory performance of one or more performance indicators or a term of the charter
313 contract, the division shall provide notice to the school of the unsatisfactory performance and a reasonable
314 opportunity to cure the problem. If the school does not remedy the unsatisfactory performance or does not propose a
315 plan to remedy the unsatisfactory performance within a reasonable time, the division may notify the commission and
316 the school of the unsatisfactory performance.

317 **B. Time Periods Related to, and Action Taken, Under the Intervention Ladder.**

318 **1.** If, after notification from the division of unsatisfactory performance the commission will consider
319 taking action under the intervention ladder, the concern will be placed on an agenda of the commission and the
320 school notified of the agenda item. At the meeting, the division will present its concern and the information it has
321 developed in investigating the issue. The school may present information to the commission on the issue of
322 concern.

323 **2.** If the commission determines that it will continue to contemplate action under the intervention
324 ladder, the commission will provide written notice to the school no less than 10 days before the commission meeting
325 where the commission may take notice under the intervention ladder. The notice shall describe the unsatisfactory
326 performance in sufficient detail such that the school has a fair opportunity to respond to commission during its
327 meeting.

328 **3.** The commission may take the following action under the intervention ladder at a commission
329 meeting:

330 i. issue a Notice of Concern identifying a concern that should be remedied by the school. The
331 division shall present expected outcomes and deadlines that must be met by the school; or

332 ii. issue a Notice of Breach if a school fails to correct a Notice of Concern or for certain violations
333 under the contract that are serious enough to justify a heightened response and provide the school with an
334 opportunity to submit a corrective action plan to the division within 10 days.

335 4. If performance or compliance concerns raised by the division constitute grounds for possible non-
336 renewal, the commission may issue a Notice of Potential Non-renewal identifying the legal basis for nonrenewal and
337 a summary of the evidence supporting that conclusion. The school may then take any steps set forth in section
338 6.80.4.23 to cure the designation.

339 C. **Revocation.** Nothing herein shall preclude the commission from commencing revocation
340 proceedings as set forth in section 6.80.4.26 if ongoing monitoring activities reveal circumstances that warrant
341 revocation.

342 D. **Result of intervention ladder outcomes.**

343 1. A school that corrects the concerns raised in a Notice of Concern or Notice of Breach shall be put
344 back into good standing with the commission. A letter from the commission returning a school to good standing
345 may be used to support renewal or renewal with conditions showing the schools improvement during the existing
346 charter contract term.

347 2. A corrected Notice of Concern or Notice of Breach will not be grounds for nonrenewal or
348 revocation unless the school is found to have received a designation of unsatisfactory performance or another Notice
349 of Concern or Notice of Breach on the same indicator or on substantially similar grounds in another school year
350 during the charter term or at the time of renewal, and the Notice of Concern or Notice of Breach is reinstated.
351 [6.80.4.25 NMAC - N, _____]
352

353
354 **6.80.4.26 REVOCATION.**

355 A. **Grounds for Revocation.** The commission may revoke the school's charter contract, if legal
356 grounds exist pursuant to provisions of the act. If immediate revocation is warranted or, if the school does not
357 provide an adequate corrective action plan or fails to timely cure the violation as contemplated therein, the
358 commission may vote to proceed with revocation.

359 B. **Notice of Intent to Revoke.** The commission shall provide the school with a Notice of Intent to
360 Revoke that includes the legal basis for revocation as contemplated in the Act and a date, time and place for a
361 revocation hearing. The hearing which shall be located in Santa Fe or the county in which the school is located as
362 agreed upon between the parties. Unless an emergency revocation is identified, the hearing shall be held not more
363 than 60 nor less than 30 days from the date of service of said notice.

364 C. **Revocation Hearing Process.** The revocation hearing shall be conducted as follows:

365 i. The commission may utilize a hearing officer to conduct the hearing in front of the commission
366 and provide any pre-hearing scheduling notices and deadlines for the parties. The hearing officer shall not provide
367 any recommendation on revocation.

368 ii. The division shall have one hour to present its recommendation and supporting evidence for
369 revocation to the commission. The division may present witness testimony, documentary evidence, and shall have
370 the opportunity to question the school representatives present (excluding legal counsel). If the division is relying of
371 evidence or opinions from other divisions or bureaus of the department, a representative from that division or bureau
372 shall be at the hearing to answer questions by the school and the commission.

373 iii. After the division's presentation, the school shall have one hour to present evidence to defend
374 against the revocation. The school may present witness testimony, documentary evidence, and shall have the
375 opportunity to question the division representative or other department representatives to defend against the
376 revocation. If the school is relying of evidence or opinions from another entity or other divisions or bureaus of the
377 department, a representative from that entity, division or bureau shall be at the hearing to answer questions by the
378 division and the commission.

379 iv. Commission members may ask questions of the division, its attorney or witnesses, the school, its
380 attorney and the school's witnesses during the presentations and then, may take up to one hour after the school and
381 division finish their presentations to ask additional questions that are related to grounds for revocation.

382 D. **Representation.** The commission, division and school may have representation at the hearing, at
383 each parties' sole cost and expense.

384 E. **Record.** The hearing shall be recorded by a licensed stenographer and a copy of the
385 transcript shall be presented to the parties within 10 days of the hearing, unless additional time can be extended and
386 will not prejudice the school's right to appeal.

387 **F. Open Meetings Act.** The hearing and deliberations of the commission shall be conducted
388 pursuant to the Open Meetings Act.
389 **G. Written Decision.** The commission shall serve a written decision on the school within 14 days of
390 the hearing. The decision is to revoke the charter contract, the decision shall include the legal basis for revocation
391 with the supporting factual reasons given to support the legal violations during the public hearing.
392 **H. Appeal.** A school may appeal to the secretary as allowed by law and under the provisions of
393 section 6.80.4.14 above.
394 [6.80.4.26 NMAC - N, _____]
395

396 **Renumber sections**

397
398 **6.80.4.27 New Mexico School for the Arts**
399 **6.80.4.28 Distance Learning**
400 **6.80.4.29 Lottery when Charter School Cap is Exceeded**
401 **6.80.4.30 [Reserved]**
402 **6.80.4.31 Severability**

DRAFT 121522

403 **Law citations in the rule**

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9-24-8. Secretary; duties and general powers.

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the department or any division of the department, except when any division is explicitly exempted from the secretary's power by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Public Education Department Act or the Public School Code [Chapter 22, Article 1 NMSA 1978], exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;

(2) delegate power to subordinates as he deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;

(3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operation of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objectives of improving the operations and efficiency of administration and of promoting comprehensive, coordinated and culturally sensitive services that address the education of the whole child;

(8) prepare an annual budget for the department; and

(9) provide cooperation, at the request of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record keeping and related clerical assistance to administratively attached agencies.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

452 D. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry
453 out the duties of the department and its divisions. No rule promulgated by the director of any division in
454 carrying out the functions and duties of the division shall be effective until approved by the secretary.
455 Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall
456 be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a
457 hearing officer designated by the secretary. The final public hearing on adoption, amendment or repeal of
458 a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the
459 rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested
460 persons may present their views and the method by which copies of the proposed rule or proposed
461 amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior
462 to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the
463 hearing date to all persons who have made a written request for advance notice of hearing. All rules shall
464 be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

465

466 **22-2-1. Secretary and department; general powers.**

467 A. The secretary is the governing authority and shall have control, management and direction of all
468 public schools, except as otherwise provided by law.

469 B. The department may:

470 (1) adopt, promulgate and enforce rules to exercise its authority and the authority of the
471 secretary;

472 (2) enter into contracts to carry out its duties;

473 (3) apply to the district court for an injunction, writ of mandamus or other appropriate relief to
474 enforce the provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] or rules
475 promulgated pursuant to the Public School Code; and

476 (4) waive provisions of the Public School Code as authorized by law.

477

478 **22-2-2. Department; general duties.**

479 The department shall:

480 A. properly and uniformly enforce the provisions of the Public School Code [Chapter 22 [except
481 Article 5A] NMSA 1978];

482 B. determine policy for the operation of all public schools and vocational education programs in the
483 state, including vocational programs that are part of a juvenile construction industries initiative for
484 juveniles who are committed to the custody of the children, youth and families department;

485 C. supervise all schools and school officials coming under its jurisdiction, including taking over the
486 control and management of a public school or school district that has failed to meet requirements of law

487 or department rules or standards, and, until such time as requirements of law, standards or rules have been
488 met and compliance is ensured, the powers and duties of the local school board and local superintendent
489 shall be suspended;

490 D. prescribe courses of instruction to be taught in all public schools in the state, requirements for
491 graduation and standards for all public schools, for private schools seeking state accreditation and for the
492 educational programs conducted in state institutions other than the New Mexico military institute;

493 E. provide technical assistance to local school boards and school districts;

494 F. assess and evaluate public schools for accreditation purposes to determine the adequacy of student
495 gain in standards-required subject matter, adequacy of student activities, functional feasibility of public
496 school and school district organization, adequacy of staff preparation and other matters bearing upon the
497 education of the students;

498 G. assess and evaluate all state institutions and those private schools that desire state accreditation;

499 H. enforce requirements for home schools. Upon finding that a home school is not in compliance
500 with law, the department may order that a student attend a public school or a private school;

501 I. require periodic reports on forms prescribed by it from all public schools and attendance reports
502 from private schools;

503 J. determine the qualifications for and issue licenses to teachers, instructional support providers and
504 school administrators according to law and according to a system of classification adopted and
505 promulgated by rules of the department;

506 K. deny, suspend or revoke a license according to law for incompetency, moral turpitude or any other
507 good and just cause;

508 L. approve or disapprove all rules promulgated by an association or organization attempting to
509 regulate a public school activity and invalidate any rule in conflict with any rule promulgated by the
510 department. The department shall require an association or organization attempting to regulate a public
511 school activity to comply with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA
512 1978] and be subject to the inspection provisions of the Public Records Act [Chapter 14, Article 3 NMSA
513 1978]. The department may require performance and financial audits of an association or organization
514 attempting to regulate a public school activity. The department shall have no power or control over the
515 rules or the bylaws governing the administration of the internal organization of the association or
516 organization;

517 M. review decisions made by the governing board or officials of an organization or association
518 regulating a public school activity, and any decision of the department shall be final in respect thereto;

519 N. require a public school under its jurisdiction that sponsors athletic programs involving sports to
520 mandate that the participating student obtain catastrophic health and accident insurance coverage, such
521 coverage to be offered through the school and issued by an insurance company duly licensed pursuant to
522 the laws of New Mexico;

523 O. establish and maintain regional centers, at its discretion, for conducting cooperative services
524 between public schools and school districts within and among those regions and for facilitating regulation
525 and evaluation of school programs;

526 P. approve education curricula and programs offered in all two-year public post-secondary
527 educational institutions, except those in Chapter [21](#), Article [12](#) NMSA 1978, that lead to alternative
528 licenses for degreed persons pursuant to Section [22-10A-8](#) NMSA 1978 or licensure for educational
529 assistants;

530 Q. withhold program approval from a college of education or teacher preparation program that fails
531 to offer a course on teaching reading that:

532 (1) is based upon current scientifically based reading research;

533 (2) aligns with department-adopted reading standards;

534 (3) includes strategies and assessment measures to ensure that beginning teachers are
535 proficient in teaching reading; and

536 (4) was designed after seeking input from experts in the education field;

537 R. annually, prior to December 1, prepare and publish a report on public and private education in the
538 state and distribute the report to the governor and the legislature;

539 S. solicit input from local school boards and school districts in the formulation and implementation
540 of department rules; and

541 T. report to the legislature or any of its committees as requested and report findings of any
542 educational research study made with public money to the legislature through its appropriate interim or
543 standing committees.

544 **22-8-1. Short title.**

545 Chapter [22](#), Article [8](#) NMSA 1978 may be cited as the "Public School Finance Act".

546 **22-8B-1. Short title.**

547 Chapter [22](#), Article [8B](#) NMSA 1978 may be cited as the "Charter Schools Act".

548



549 *Charter authority in 22-8B-1 et. seq.*

550 **22-8B-5.3. Chartering authority; powers; duties; liability.**

551 *A chartering authority shall:*

552 *A. evaluate charter applications;*

553 *B. actively pursue the utilization of charter schools to satisfy identified education needs and*
554 *promote a diversity of educational choices;*

555 *C. approve charter applications that meet the requirements of the Charter Schools Act;*

556 *D. decline to approve charter applications that fail to meet the requirements of the Charter*
557 *Schools Act or are otherwise inadequate;*

558 *E. negotiate and execute, in good faith, charter contracts that meet the requirements of the*
559 *Charter Schools Act with each approved charter school;*

560 *F. monitor, in accordance with the requirements of the Charter Schools Act and the terms of*
561 *the charter contract, the performance and legal compliance of charter schools under their*
562 *authority;*

563 *G. determine whether a charter school merits suspension, revocation or nonrenewal; and*

564 *H. develop and maintain chartering policies and practices consistent with nationally*
565 *recognized principles and standards for quality charter authorizing in all major areas of*
566 *authorizing, including:*

567 *(1) organizational capacity and infrastructure;*

568 *(2) evaluating charter applications;*

569 *(3) performance contracting;*

570 *(4) charter school oversight and evaluation; and*

571 *(5) charter school suspension, revocation and renewal processes.*

572 **22-8B-12. Charter schools; term; oversight and corrective actions; site visits; renewal of**
573 **charter; grounds for nonrenewal or revocation.**

574 *A. A charter school may be approved for an initial term of six years; provided that the first*
575 *year shall be used exclusively for planning and not for completing the application. A charter may*
576 *be renewed for successive periods of five years each. Approvals of less than five years may be*
577 *agreed to between the charter school and the chartering authority.*

578 *B. During the planning year, the charter school shall file a minimum of three status reports*
579 *with the chartering authority and the department for the purpose of demonstrating that the*
580 *charter school's implementation progress is consistent with the conditions, standards and*
581 *procedures of its approved charter. The report content, format and schedule for submission shall*
582 *be agreed to by the chartering authority and the charter school and become part of the charter*
583 *contract.*

584 *C. Prior to the end of the planning year, the charter school shall demonstrate that its*
585 *facilities meet the requirements of Section [22-8B-4.2](#) NMSA 1978.*

586 *D. A chartering authority shall monitor the fiscal, overall governance and student*
587 *performance and legal compliance of the charter schools that it oversees, including reviewing the*
588 *data provided by the charter school to support ongoing evaluation according to the charter*
589 *contract. Every chartering authority may conduct or require oversight activities that allow the*
590 *chartering authority to fulfill its responsibilities under the Charter Schools Act, including*
591 *conducting appropriate inquiries and investigations; provided that the chartering authority*
592 *complies with the provisions of the Charter Schools Act and the terms of the charter contract and*
593 *does not unduly inhibit the autonomy granted to the charter schools that it governs.*

594 *E. As part of its performance review of a charter school, a chartering authority shall visit a*
595 *charter school under its authority at least once annually to provide technical assistance to the*
596 *charter school and to determine the status of the charter school and the progress of the charter*
597 *school toward the performance framework goals in its charter contract.*

598 *F. If, based on the performance review conducted by the chartering authority pursuant to*
599 *Subsection D of this section, a charter school's fiscal, overall governance or student performance*
600 *or legal compliance appears unsatisfactory, the chartering authority shall promptly notify the*
601 *governing body of the charter school of the unsatisfactory review and provide reasonable*
602 *opportunity for the governing body to remedy the problem; provided that if the unsatisfactory*
603 *review warrants revocation, the revocation procedures set forth in this section shall apply. A*
604 *chartering authority may take appropriate corrective actions or exercise sanctions, as long as*
605 *such sanctions do not constitute revocation, in response to the unsatisfactory review. Such*
606 *actions or sanctions by the chartering authority may include requiring a governing body to*
607 *develop and execute a corrective action plan with the chartering authority that sets forth time*
608 *frames for compliance.*

609 *G. Every chartering authority shall submit an annual report to the division, including a*
610 *performance report for each charter school that it oversees, in accordance with the performance*
611 *framework set forth in the charter contract.*

612 *H. The department shall review the annual report received from the chartering authority to*
613 *determine if the department or local school board rules and policies from which the charter*
614 *school was released pursuant to the provisions of Section [22-8B-5](#) NMSA 1978 assisted or*
615 *impeded the charter school in meeting its stated goals and objectives. The department shall use*
616 *the annual reports received from the chartering authorities as part of its report to the governor,*
617 *the legislative finance committee and the legislative education study committee as required by the*
618 *Charter Schools Act.*

619 *I. No later than two hundred seventy days prior to the date in which the charter expires, the*
620 *governing body may submit a renewal application to the chartering authority. A charter school*
621 *may apply to a different chartering authority for renewal. The chartering authority shall rule in*
622 *a public hearing on the renewal application no later than one hundred eighty days prior to the*
623 *expiration of the charter.*

624 *J. A charter school renewal application submitted to the chartering authority shall contain:*

625 *(1) a report on the progress of meeting the academic performance, financial*
626 *compliance and governance responsibilities of the charter school, including achieving the goals,*
627 *objectives, student performance outcomes, state standards of excellence and other terms of the*

628 *charter contract, including the accountability requirements set forth in the Assessment and*
629 *Accountability Act [Chapter 22, Article 2C NMSA 1978];*

630 (2) *a financial statement that discloses the costs of administration, instruction and*
631 *other spending categories for the charter school that is understandable to the general public, that*
632 *allows comparison of costs to other schools or comparable organizations and that is in a format*
633 *required by the department;*

634 (3) *a copy of the charter contract executed in compliance with the provisions of*
635 *Section 22-8B-9 NMSA 1978;*

636 (4) *a petition in support of the charter school renewing its charter status signed by*
637 *not less than sixty-five percent of the employees in the charter school;*

638 (5) *a petition in support of the charter school renewing its charter status signed by at*
639 *least seventy-five percent of the households whose children are enrolled in the charter school;*

640 (6) *a description of the charter school facilities and assurances that the facilities are*
641 *in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; and*

642 (7) *for charter schools located on tribal land, documentation of ongoing consultation*
643 *pursuant to the Indian Education Act [Chapter 22, Article 23A NMSA 1978].*

644 *K. A charter may be suspended, revoked or not renewed by the chartering authority if the*
645 *chartering authority determines that the charter school did any of the following:*

646 (1) *committed a material violation of any of the conditions, standards or procedures*
647 *set forth in the charter contract;*

648 (2) *failed to meet or make substantial progress toward achievement of the*
649 *department's standards of excellence or student performance standards identified in the charter*
650 *contract;*

651 (3) *failed to meet generally accepted standards of fiscal management;*

652 (4) *for a charter school located on tribal land, failed to comply with ongoing*
653 *consultations pursuant to the Indian Education Act; or*

654 (5) *violated any provision of law from which the charter school was not specifically*
655 *exempted.*

656 *L. The chartering authority shall develop processes for suspension, revocation or*
657 *nonrenewal of a charter that:*

658 (1) *provide the charter school with timely notification of the prospect of suspension,*
659 *revocation or nonrenewal of the charter and the reasons for such action;*

660 (2) *allow the charter school a reasonable amount of time to prepare and submit a*
661 *response to the chartering authority's action; and*

662 (3) require the final determination made by the chartering authority to be submitted
663 to the department.

664 M. If a chartering authority suspends, revokes or does not renew a charter, the chartering
665 authority shall state in writing its reasons for the suspension, revocation or nonrenewal.

666 N. If a chartering authority suspends, revokes or does not renew the charter of a charter
667 school located on tribal land, the chartering authority and charter school shall consult with the
668 tribe pursuant to Subsections C and D of Section 3 [[22-8B-12.2](#) NMSA 1978] of this 2019 act.

669 O. A decision to suspend, revoke or not to renew a charter may be appealed by the
670 governing body pursuant to Section [22-8B-7](#) NMSA 1978.

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