

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 2 STATE BOARD OF EDUCATION COMMISSIONS AND ADVISORY BOARDS
PART 9 PUBLIC EDUCATION COMMISSION STATE CHARTER SCHOOL PROCEDURES

6.2.9.1 ISSUING AGENCY: New Mexico Public Education Commission.
[6.2.9.1 NMAC - N, _____]

6.2.9.2 SCOPE: The rule shall apply to all procedures, forms and protocols adopted by the public education commission.
[6.2.9.2 NMAC - N, _____]

6.2.9.3 STATUTORY AUTHORITY: NMSA 22-8B-5.3 1978, NMSA 9-1-7 1978, NMSA 14-4-2A. 1978.
[6.2.8.3 NMAC - N, _____]

6.2.9.4 DURATION: Permanent.
[6.2.9.4 NMAC - N, _____]

6.2.9.5 EFFECTIVE DATE:
[6.2.8.5 NMAC - N, _____]

6.2.9.6 OBJECTIVE: The public education commission establishes this rule of procedure of its procedures, forms, and protocols.
[6.2.8.6 NMAC - N, _____]

6.2.9.7 DEFINITIONS:

A. “Act” means the Charter Schools Act, NMSA, 1978 §§22-8B-1 through 17.1 as may be amended.

B. “Applicant” means one or more teachers, parents, or community members or a public postsecondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

C. “Charter school” means a conversion school or start-up charter school authorized by the commission to operate as a public school.

D. “Commission” means the public education commission acting as a state authorizer.

E. “Corrective action plan” as the term is used in NMSA 1978, §22-8B-12(F) means a plan proposed by a state charter school and agreed to by the commission to correct identified uncorrected unsatisfactory performance as contemplated by the intervention ladder. An approved corrective action plan shall contain the following elements:

- (1) name of responsible state charter school representative for ensuring completion of the corrective action plan and reporting to the division and commission concerning the corrective action plan;
- (2) specific actions to be taken by the state charter school and the personnel or groups that are anticipated to complete the actions to address the unsatisfactory performance; and
- (3) date by which actions identified in the corrective action plan will be completed.

The state charter school may amend the details of the corrective action plan by providing notice to the division of the changes. Ministerial and minor changes may be approved by the division in writing. Substantive changes must be approved by commission at a public meeting of the commission.

F. “Corrective action monitoring tool” means the checklist that the division will use to monitor and provide written progress reports periodically to the commission and state charter school and approved by the commission as part of the corrective action plan.

G. “Days” means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more. In computing the amount of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the department is closed, the period continues to run until the end of the next business day that the department is not closed. Whenever a person or entity shall act under this rule within a prescribed period after service of a notice or paper upon the person or entity, and the notice or paper is served by mail or courier service, three calendar days are added to the prescribed period.

H. “Division” means the charter schools division of the department.

I. “Final annual report” means the annual report from the division to the commission which contains the findings and recommendations of the division with regard to the performance of the state charter school and any

response received by the state charter school unless the division incorporates the state charter school's response into the final annual report submitted to the commission.

J. "Governing body" means the governing structure of a charter school as set forth in the charter school's charter.

K. "Head administrator" means the duly licensed school administrator who is the director of the charter school, which is the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.

L. "High stakes decision" means action of the commission that results in a state charter school's renewal, renewal with conditions, non-renewal, suspension, or revocation. High stakes decisions are governed by law, rule and the charter school contract.

M. "Intervention ladder" means procedures adopted by the commission to impose progressive interventions intended as one of methods that may be used by the commission to address a state charter school's unsatisfactory performance.

N. "Notice of Possible Non-renewal" means a notice provided by the commission to a state charter school that there is sufficient unsatisfactory performance by the state charter school to put the state charter school on notice that it may not be renewed for another charter term.

O. "Preliminary annual report" means a report provided by the division to a state charter school which includes the division's assessment as to whether the state charter school has met, is working to meet or has failed to meet the standards overall in each section of the performance framework, and the division's recommendation and factual basis therefore, as to whether the state charter school should be deemed on a path to renewal, renewal with conditions or that the commission should issue a Notice of Possible Non-renewal. The division shall specifically identify the contract terms, violation(s) of law, or Performance Framework indicator(s) and target(s) not met that give rise to unsatisfactory performance. If the unsatisfactory performance, in the division's opinion, constitutes violation of any statutory bases for nonrenewal or revocation, that information shall be included in the preliminary annual report.

P. "Procedure" or "Procedures" means written forms, instructions, and time-lines of the commission consistent with the act and not in conflict with state charter school contracts, and which are implemented by the division or commission as defined by the procedure, and pursuant to which the commission provides oversight of state charter schools including:

- (1) evaluations of new charter school applications;
- (2) developing and adopting new charter school planning year protocols consistent with NMSA 1978, §22-8B-12(B) and (C);
- (3) conducting state charter school annual site visits to include, protocols and documents required for school to provide at annual site visit;
- (4) preparing preliminary and final annual reports;
- (5) accepting, developing and evaluating renewing charter school applications;
- (6) establishing charter school performance contract forms;
- (7) amendment and notification procedures;
- (8) developing closure protocols for state charter schools; and
- (9) such other procedures adopted by the commission that are administrative in nature and that facilitate the commission's and division's implementation of the commission's legal duties as defined by the act.

The commission may not adopt procedures affecting the process and requirements for making high stakes decisions in conflict with the act or this rule.

Q. "Procedure adoption" means the process used by the commission to establish procedures.

R. "Secretary" means the New Mexico secretary of public education.

S. "State charter school" means a charter school authorized by the commission.

T. "Suspension" means action taken by the commission in which the commission issues a letter to direct the secretary to suspend the state charter school's board of finance until an action required by the charter school contract has been completed by the governing body of a state charter school.

U. "Uncorrected unsatisfactory performance" means failure to correct unsatisfactory performance initially identified by the division and for which a state charter school has been given notice and opportunity to resolve before issuance of the division's next final annual report.

V. "Unsatisfactory performance" means a designation by the division of "working to meet" or "fails to meet" the indicators and targets set forth in the performance framework of the charter contract.

[6.2.8.7 NMAC - N, _____]

6.2.9.8 TYPICAL SCHEDULE FOR STATE CHARTER SCHOOL PROCEDURE-MAKING:

A. The timing and procedures for decision-making for high-stakes decisions are set forth in the act and this rule in sections 6.2.9.11- 6.2.9.16 below and shall not be affected by the commission’s procedure-making process described in this subsection.

B. In support of high-stakes decisions made by the commission, the commission shall create procedures related to its ministerial responsibilities of oversight and monitoring state charter schools that will be used by the commission and division consistent with their authority under the act. The commission’s procedures as contemplated in this section, may be modified following the procedures adopted in this rule. The commission shall post all procedures in a central location on the commission’s web page or in an authorizing manual available to the public on the commission’s website. Procedure adoption shall proceed under the annual cycle set forth in sections 6.2.9.8.C. through E. below unless the commission declares emergency circumstances to exist under 6.2.9.10.

C. Commission procedures adopted in the existing fiscal year shall be effective as of July 1 of the following fiscal year unless the commission identifies an exceptional circumstance requiring an immediate change. Procedures are effective until amended or repealed. This rule does not apply to minor, non-substantive changes to a procedure or a document that sets scheduling dates. These non-substantive changes or scheduling documents may be adopted by the commission at any time as needed.

D. If the commission deems it necessary to revise its procedures related to new state charter school applications or renewing state charter school applications the existing procedures, including the applications, shall be a revised by no later than December 31 to be implemented beginning January 1 of the next calendar year unless the commission identifies an exceptional circumstance.

E. In adopting changes to procedures, the commission shall:

- (1) provide public notice to those who request notice of commission action that procedure changes are being considered by the commission pursuant to this rule;
- (2) provide written notice on commission meeting agendas of the two working sessions at which the commission will review each draft procedure and accept written, in-person or virtual comments;
- (3) accept public written comments up to the start of the second working session and in-person or virtual comments during the two working sessions;
- (4) provide written notice on a commission meeting agenda indicating when the commission will consider adoption of each procedure; and
- (5) post the adopted forms on the commission website where all procedures are located.

[6.2.9.8 NMAC - N, _____]

6.2.9.9 PROCEDURE REVIEW:

A. A new procedure or revisions to an existing procedure may be proposed at the September public meeting of the commission or, with good cause shown as to why the suggested change is being presented at a meeting other than the September meeting and is proposed by a member of the commission, or the division director on behalf of the charter school division or another division of the public education department.

B. All procedure revisions contemplated by this section shall comply with the notice, comment procedures and time schedules set forth in section 6.2.9.8.

[6.2.9.9 NMAC - N, _____]

6.2.9.10 OUT-OF-CYCLE PROCEDURE-MAKING; EMERGENCY CIRCUMSTANCES:

Emergency circumstances for implementing a procedure with an effective date other than July 1 of the next fiscal year may include the following:

- A.** procedure changes to protect the immediate health, welfare or education of state charter school employees, students and others doing business at state charter schools;
- B.** procedure changes needed because of new case law or an attorney general’s opinion affecting the commission or state charter schools;
- C.** procedure changes needed because of statutory changes;
- D.** procedure changes needed because of changes to public education department rules, or other emergency circumstances as determined by the commission.

[6.2.9.10 NMAC - N, _____]

6.2.9.11 STATE CHARTER SCHOOL EVALUATION

A. In accordance with the procedures described in this rule, the commission shall annually evaluate and provide ongoing oversight of, and feedback to, each state charter schools regarding the state charter school's operational, financial and academic performance. This evaluation and oversight shall be done through annual site visits by the division aligned with the state charter school's terms of the charter contract, including its performance framework. The preliminary annual report shall be provided to the state charter schools. The division's final annual site visit reports shall be submitted to the commission, and a copy shall be provided to the state charter school.

B. The commission may, according to the procedures described in this rule:

- (1) accept the final annual report;
- (2) identify if the state charter school is on track for renewal, or if it has uncorrected unsatisfactory performance that justifies a Notice of Possible Non-Renewal, or renewal with conditions;
- (3) start action under the intervention ladder; or
- (4) start action related to suspension or revocation, according to the processes set forth in 6.2.9.16 below.

[6.2.9.11 NMAC - N, _____]

6.2.9.12 ANNUAL SITE VISIT AND ANNUAL REPORT

A. Pursuant to NMSA 1978, §22-8B-12(E), the division shall conduct an annual site visit each year at the state charter school's location to provide technical assistance and to evaluate the school's progress toward the performance framework goals and compliance with the charter contract.

B. The scope of the division's annual site visit review shall be limited to whether the state charter school is complying with the terms of the charter contract, meeting the indicators and targets as set forth in the performance framework, progress to cure unsatisfactory performance previously identified by the division, uncorrected unsatisfactory performance that is the subject of a Notice of Possible Non-Renewal, intervention imposed by the commission pursuant to section 6.2.9.14, or on any corrective action plans previously accepted by the commission.

C.

(1) The division shall prioritize completing the annual site visits and the final annual reports for those state charter schools that have submitted a renewal application or those renewing state charter schools that have a pending, unresolved Notice of Non-Renewal, or that are on a corrective action plan.

(2) Preliminary and final annual reports shall be completed pursuant to the following procedures and deadlines:

(a) The division and state charter school may extend or revise deadlines affecting them as contemplated under this subsection by documenting the agreement in writing.

(b) The division shall provide at least 10 days prior written notice of each state charter school's annual site visit and include a copy of or a hyperlink to the commission's procedure for annual site visits in the notice. Site visits shall not be scheduled if a state charter school notifies the division that critical testing is scheduled for the date of the proposed site visit. If the division does not provide 10 days advance notice, the annual site visit shall be rescheduled upon written request of the state charter school, which must be received no later than five days before the scheduled visit.

(c) The division and the state charter school shall conduct an exit meeting at the end of the annual site visit outlining the initial results of the division's findings. If the division contends that the state charter school did not provide information necessary for the division to complete its annual site visit evaluation, the parties shall memorialize a list of missing information and the time frame for providing the information to the division during the exit meeting.

(d) Within 30 days following the exit meeting, the division will upload a preliminary annual report based on the annual site visit findings to a secure data platform that is available for the state charter school to review at any time. The state charter school shall provide missing information or correct the information in the preliminary annual report within the time frame agreed to by the division and the school.

(e) For purposes of determining any performance concerns, the division may deem sections (academic, operational or financial) of the preliminary annual report completed after receipt of information necessary for that section which shall include the school's response.

(f) No later than 30 days prior to a commission meeting to consider the final annual reports, the division shall provide the state charter school with a preliminary annual report reflecting performance on all sections (academic, operational and financial). The preliminary annual report shall include a report by the division on the state charter school's overall performance. The division shall state in the report whether there are:

- (i) no findings of unsatisfactory performance,

(ii) findings of unsatisfactory performance requiring attention by the state charter school without intervention of the commission, or

(iii) a finding of unsatisfactory performance or uncorrected unsatisfactory performance from a prior final annual report with recommendations to the commission for issuance of a Notice of Possible Non-Renewal, notice of possible renewal with conditions, interventions pursuant to section 6.2.9.14 of this rule, or other sanctions that may be imposed by the commission as contemplated by law and this rule.

(g) The state charter school may provide a written response to the division's preliminary annual report within 10 days of receipt from the division. The response shall include documents or other evidence to support the state charter school's response.

(h) The division shall finalize the preliminary annual report and send the final annual report to the commission and the state charter school with all unresolved state charter school responses attached by no later than 7 days prior to the commission meeting at which the annual report will be considered by the commission.

D.

The division shall present its final annual report to the commission at a public meeting. The final annual report shall include a report by the division on the state charter school's overall performance including whether there are:

(1) no findings of unsatisfactory performance,

(2) findings of unsatisfactory performance requiring attention by the state charter school without intervention of the commission, or

(3) a finding of unsatisfactory performance, or uncorrected unsatisfactory performance from a prior final annual report, with recommendations to the commission for issuance of a Notice of Possible Non-Renewal, notice of possible renewal with conditions, interventions pursuant to section 6.2.9.14 of this rule, or other sanctions that may be imposed by the commission in accordance with and as contemplated by law and this rule.

(4) If the division recommends that the commission issue any of the corrective actions or sanctions identified in paragraph 1 of this subsection, the division shall provide the state charter school's representatives no less than 15 days advance notice that the representative(s) may attend the commission meeting at which the final annual report will be discussed. The state charter school representatives, if they elect to appear, shall be provided an opportunity to rebut the division's recommendation(s). The commission may accept or reject the division's recommendations as set forth in the division's final annual report.

(5) If the commission accepts the division's recommendation(s) to impose any or all of the corrective actions or sanctions identified in paragraph 1 of this subsection, the commission shall rule at the public meeting and, thereafter, issue a written notice to the school within 10 days of the commission meeting including sufficient factual specificity of the issues for the state charter school to correct the performance prior to the commission taking further action.

(6) If the commission decides to take any one or all of the identified corrective actions identified in paragraph 1 of this subsection, on its own initiative based on its interpretation of the final annual report, before the commission votes to impose said corrective action, the commission shall provide the state charter school with notice and an opportunity to appear and present rebuttal at the next meeting. The state charter school shall be provided no less than 10 days' notice of the meeting at which the commission will consider issuing corrective action.

(7) Any action to not renew, suspend or revoke a state charter school's charter contract shall be in accordance with the state charter school's charter contract, the applicable laws and rules.

[6.2.9.12 NMAC - N, _____]

6.2.9.13 CORRECTING UNSATISFACTORY PERFORMANCE AND RESCISSION OF NOTICE OF POSSIBLE NON-RENEWAL.

A. The state charter school shall correct any unsatisfactory performance or any uncorrected unsatisfactory performance giving rise to an existing Notice of Possible Non-Renewal before the next year's final annual report is submitted to the commission or before a renewal hearing. The state charter school may:

(1) correct the unsatisfactory performance before the next fiscal year's final annual report is submitted to the commission, request that the division recognize in the next final annual report that the unsatisfactory performance has been remedied and request that the state charter school be identified by the commission as on track for renewal;

(2) request that it be placed on a commission's agenda to present a corrective action plan to remedy the unsatisfactory performance and request that the parties adopt the corrective action plan that includes specific criteria for the state charter school to demonstrate it has corrected the unsatisfactory performance;

(3) at any time before issuance of the next fiscal year's final annual report, request to be placed on the commission's agenda to present information showing that the state charter school has remedied the unsatisfactory

performance giving rise to a Notice of Possible Non-Renewal designation or has completed the corrective action plan agreed to by the parties; or

(4) at any time before 45 days prior to the commission's vote on a state charter school's renewal application, the school may present evidence to the division that it has addressed the unsatisfactory performance identified in a Notice of Possible Non-Renewal or possible renewal condition. The division shall analyze the evidence presented by the state charter school and incorporate the school's corrective actions in its final renewal analysis and recommendations to the commission prior to its vote on the state charter school's renewal application.

B.

(1) If the commission finds that a state charter school has remedied unsatisfactory performance through a process set forth in paragraph A of this subsection, the chairperson of the commission shall provide written notice indicating that the state charter school is on track for renewal and that the Notice of Possible Non-Renewal has been rescinded. If the commission finds that the school has not fully remedied the unsatisfactory performance, it may identify that the state charter school is on track for renewal with conditions, and the commission shall articulate the possible renewal conditions in writing within 10 days of its meeting. The state charter school may present a corrective action plan to address the proposed renewal conditions prior to the commission's vote on the state charter school's renewal application.

(2) The division shall verify whether the state authorized charter school has met the requirements of any corrective action plan presented by the state charter school and report to the commission at the next meeting following the school's submission of evidence that it has completed the corrective action plan. If the commission rejects the division's finding that the corrective action is complete, it shall articulate what aspects of the plan are incomplete with a reasonable timeframe by which the state charter school shall cure the deficiencies, or notify the charter school that it is on track for renewal with conditions and articulate the specific conditions to be considered at renewal. If the corrective action plan is accepted by the commission as successfully completed, the commission shall vote to rescind the Notice of Possible Non-Renewal and notify the state charter school that it is on track for renewal.

(3) If the commission does not vote to approve the request to rescind the Notice of Possible Non-renewal, it shall state its basis for not rescinding the notice in its public meeting and provide a written statement of its decision to the state charter school within 30 days of its vote to deny the request to rescind.

(4) At any time before 45 days prior to the commission's vote on a state charter school's renewal application, the school may present evidence to the division that it has addressed the unsatisfactory performance identified in a Notice of Possible Non-Renewal or possible renewal condition. The division shall analyze the evidence presented by the state charter school and incorporate the school's corrective actions in its final renewal analysis and recommendations to the commission prior to its vote on the state charter school's renewal application.

C. 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 as set forth in section 6.2.9.14, if successfully completed, will result in a designation of "corrected unsatisfactory performance."

D.

(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 school's 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 state charter school had received one or more Notices of Possible Non-renewal on substantially similar grounds and the repeated unsatisfactory performance supports a finding that the state charter school has violated any of the grounds for nonrenewal as set forth in NMSA 1978, §22-8B-12(K) or renewal with conditions.

[6.2.9.13 NMAC - N, _____]

6.2.9.14 INTERVENTION LADDER

A. Throughout the term of a charter contract and in addition to the annual site visits, the division shall notify the school if the division identifies, through appropriate inquiries or investigation, that the school is not meeting the terms of the charter contract, or the performance indicators and targets as set forth in the performance framework incorporated into the charter contract. Information establishing unsatisfactory performance may be obtained from sources such as other divisions and bureaus of the department or other state or federal agencies.

(1) If the division identifies unsatisfactory performance of one or more performance indicators or a term of the charter contract, the division shall provide notice to the school of the unsatisfactory performance and a reasonable opportunity to cure the unsatisfactory performance.

(2) If the school does not remedy the unsatisfactory performance or does not propose a plan to remedy the unsatisfactory performance within a reasonable time after a request by the division, the division may notify the commission in a public meeting of the school's uncorrected unsatisfactory performance and the commission may indicate its intent to take possible action under the intervention ladder and notify the school of the date at which it will consider taking action at a public meeting.

B.

(1) After indicating its intent to take possible action under the intervention ladder, the commission may consider taking action under the intervention ladder as contemplated by this section. The chair shall place the matter on an agenda of the commission and notify the state charter school's representatives of the date and time of the meeting at which the commission will consider whether to impose interventions pursuant to this section for uncorrected unsatisfactory performance. The meeting shall be scheduled no sooner than 10 days from the date of the chair's notice to the state charter school, except in exigent circumstances implicating health and safety and financial impropriety that may jeopardize the school. At the meeting, the division will present the evidence supporting its contention that the school has failed to correct unsatisfactory performance previously identified by the division during its monitoring responsibilities. Prior to a commission vote, the state charter school may present rebuttal evidence.

(2) If after hearing from the division and the state charter school, the commission determines that there is sufficient information for it to consider imposing action pursuant to the intervention ladder described in this section, the commission shall vote on the appropriate intervention(s) contemplated.

(3) The commission may impose the following interventions for a state charter school's uncorrected unsatisfactory performance:

(a) issue a Notice of Concern identifying the uncorrected unsatisfactory performance with specificity that should be remedied by the state charter school. The division shall present expected outcomes and deadlines that must be met by the state charter school, and its plan to monitor the school's compliance. The commission shall vote on the Notice of Concern and include in the notice the divisions' plan as adopted or modified by the commission; or

(b) issue a Notice of Breach of the state charter school's charter contract if a state charter school fails to correct a Notice of Concern according to its terms if said failure constitutes a breach of contract, or for violating any material term of the contract that are serious enough to justify a heightened response by the commission. If the commission issues a Notice of Breach, the written Notice of Breach shall include the specific contract sections the commission alleges have been violated, the evidence upon which the commission contends a breach of the charter contract has occurred, and a deadline by which the school must present a corrective action plan to the commission to address the identified contract violations. The deadline for submitting a corrective action plan to the commissions shall be no sooner than 10 days from the written Notice of Breach.

(c) issue a Notice of Potential Non-renewal if the division identifies unsatisfactory performance or contract compliance concerns raised by the division while conducting its monitoring responsibilities. The commission shall identify the legal basis for the possible nonrenewal and a summary of the evidence supporting that conclusion in its Notice of Possible Non-Renewal issued to the state charter school. The school may then take any steps set forth in section 6.9.2.13 to cure the designation.

C. Nothing herein shall preclude the commission from commencing revocation or suspension proceedings as set forth in section 6.2.9.16 if ongoing monitoring activities reveal circumstances that warrant revocation or suspension.

D.

(1) The commission shall vote to reinstate a state charter school's good standing upon the school providing evidence that it has corrected concerns that gave rise to a Notice of Concern or Notice of Breach. Reinstatement of the school's good standing shall be evidenced in writing and the state charter school's corrective actions may be used to support renewal or renewal with conditions.

(2) A corrected Notice of Concern or Notice of Breach will not be grounds for nonrenewal, renewal with conditions, or revocation unless the school is found to have received a another Notice of Concern or Notice of Breach on substantially similar grounds in a subsequent school-year during the same charter term that has not been corrected before the commission is required to vote on the state charter school's renewal application, and the uncorrected unsatisfactory performance or contract violations support a conclusion that state charter school has violated any of the grounds for nonrenewal as set forth in NMSA 1978, §22-8B-12(K).

[6.2.9.14 NMAC - N, _____]

6.2.9.15 RENEWAL

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

B.

(1) The division shall prioritize annual reports for state charter schools that are in the last year of their charter contract following the process set forth in section 6.2.9.12 above;

(2) The division shall analyze each renewal application and conduct a renewal site visit at the state charter school's physical location no later than 60 days prior to a vote on the renewal application.

(3) The division shall provide a renewal site visit report based on available data to the state charter school within 10 days of the visit. The school shall have 10 days to respond to the renewal site visit report and provide needed information unless another time period has been set.

(4) The division, after receiving a response from the state charter school to the renewal site visit report, if any, shall prepare a preliminary renewal analysis. The preliminary renewal analysis shall include the division's preliminary recommendation to the commission whether to renew, renew with conditions or to not renew the state charter school's charter contract in addition to other information as directed by the commission.

C. The state charter school may provide a written response to the preliminary renewal analysis within 10 days of receipt and such response shall be included with the final renewal analysis to the commission. If the division agrees with the school's response, the division shall modify the final renewal analysis before submitting it to the commission and provide an updated analysis to the state charter school. If the division disagrees with the state charter school's response in whole or in part, it shall provide reasons why it disagrees with the state charter school's response in its final renewal analysis and include the state charter school's response in the division's final renewal analysis submitted to the commission.

D. 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.

E. The division shall submit its final renewal analysis as described in this section to the commission, by no later than 10 days prior to the commission hearings on the renewal applications.

F. If a state charter 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 in its final renewal analysis, the school may request to invoke the non-renewal hearing procedure described in section G. below. A state charter school's request for the commission to follow the non-renewal hearing procedure, must be provided to the commission chair and division director by no later than 10 days of receipt of division's final renewal analysis.

G. If the state charter 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 division's recommendation for nonrenewal:

H.

(1) Upon receipt of the state charter school to follow the non-renewal hearing procedure, the commission shall provide notice of the date and time of the possible non-renewal hearing no later than 10 days prior to the hearing.

(2) The commission may rely on the grounds for non-renewal provided to the state charter school in a previously issued Notice of Possible Non-Renewal that has not been rescinded, a Notice of Concern or Notice of Breach that has not been corrected, the reasons provided in the division's final renewal analysis that were previously disclosed to the state charter school through the process contemplated under this rule, or in the written letter of concern from the commission provided to the school in section 6.2.9.14. The commission may supplement any grounds for non-renewal set forth in the notice only if exceptional circumstances exist.

(3) The non-renewal hearing shall be conducted as follows:

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

(b) After the division's presentation, the state charter school shall have one hour to present evidence to defend its application for renewal. The school may present witness testimony, documentary evidence, and shall have the opportunity to question division representatives or other department representatives about information used to support a recommendation of nonrenewal. If the school is relying on evidence or opinions from another entity or other divisions or bureaus of the department, a representative from that entity, division or bureau shall be at the hearing to answer questions by the state charter school, the division and the commission.

(c) Commission members may ask questions of the division, its attorney or witnesses, the school, and the school's witnesses during the presentations which shall not be subtracted from the division's or school's time, and then, may take up to one hour after the school and division finish their presentations to ask additional questions that are related to the renewal applications and the previously identified reasons given for possible nonrenewal.

(4) The commission shall determine if a school is renewed, renewed with conditions or not renewed in accordance with law and this rule.

(5) A school may appeal to the secretary pursuant to NMSA 1978, §22-8B-7 and provisions of section 6.80.4.14.

[6.2.9.15 NMAC - N, _____]

6.2.9.16 REVOCATION OR SUSPENSION.

A. The commission may revoke or suspend the school's charter contract if legal grounds exist pursuant to provisions of the act. If immediate revocation is warranted or, if the state charter school does not provide a corrective action plan accepted by commission, or the state charter school fails to timely cure the violation as contemplated in the corrective action plan, the commission may vote to proceed with revocation.

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

C. The revocation or suspension hearing shall be conducted as follows:

(1) The commission may utilize a hearing officer to conduct the hearing in front of the commission who shall provide any pre-hearing scheduling notices, deadlines for the parties, address pre-hearing matters and to otherwise facilitate the revocation or suspension hearing process. The hearing officer shall not provide any recommendation on revocation however, the hearing officer shall present findings of fact and conclusions of law within 30 days of the hearing.

(2) Counsel for the commission shall have one hour to present its evidence for revocation or suspension to the hearing officer and commission. The commission's counsel may present witness testimony, documentary evidence, and shall have the opportunity to question the school representatives present (excluding legal counsel). If the commission is relying on evidence or opinions from the division or other divisions or bureaus of the department, a representative from that division or bureau shall be at the hearing to answer questions by the school and/or its legal representative, the commission's counsel, and the commission.

(3) After the commission's counsel's presentation, the school shall have one hour to present evidence to defend against the commission's recommended revocation or suspension. The school may present witness testimony, documentary evidence, and shall have the opportunity to question the commission's counsel about evidence presented to support the recommendation, the division representative or other department representatives to defend against the revocation or suspension. If the school is relying on evidence or opinions from another entity or other divisions or bureaus of the department, the division shall request that a representative from that entity, division or bureau shall be at the hearing to answer questions.

(4) Commission members may ask questions of the division, the commission's counsel or witnesses, the school, its attorney and the school's witnesses during the presentations and then, may take up to one hour after the commission's counsel and the state charter school finish their presentations to ask additional questions that are related to grounds for revocation.

D. The commission's counsel and school's attorney may provide representation at the hearing, at each parties' sole cost and expense.

E. The hearing shall be recorded by a licensed stenographer and a copy of the transcript shall be presented to the parties within 10 days of the hearing unless additional time can be extended without prejudice to the school's right to appeal.

F. The hearing and deliberations of the commission shall be conducted pursuant to the Open Meetings Act.

G. The commission shall vote on the state charter school’s revocation or suspension in a public meeting and articulate the legal grounds and supporting evidence for its decision on the record. The commission shall serve a written decision on the state charter school’s representatives within 10 days of the hearing. If the commission decides to revoke or suspend the charter contract, the decision shall include the legal basis for revocation or suspension with the supporting factual reasons given to support the legal violations required pursuant to NMSA 1978, §22-8B-12(K) and (M) during the public hearing.

H. Appeal. A school may appeal to the secretary pursuant to NMSA 1978, §22-8B-7 and provisions of section 6.80.4.14.
[6.2.9.16 NMAC - N, _____]

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