

**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 Department.

[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:** July 1, 2023

[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. “Acceptance of an annual report”** means action taken by the commission at a public meeting that acknowledges receipt of an annual report from the division as part of the record of performance during the contract term. The commission will forward the annual report to the state charter school, along with any annual report notice issued by the commission,

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

**C. “Annual report notice”** means the issuance of any of the following notices by the commission that may result from a review of the annual report:

- (1) Notice of exemplary performance;
- (2) Notice of satisfactory performance;
- (3) Notice of unsatisfactory performance;
- (4) Notice of uncorrected unsatisfactory performance; or
- (5) Notice of action to be initiated under the intervention ladder.

**D. “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.

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

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

**G. “Condition”** – means a requirement imposed by the commission on a state charter school as part of the approval of a new school application or renewal application that is appealable to the secretary, and, if not appealed or not overturned on appeal, becomes a material term of the charter contract.

**H. “Condition compliance form”** means a document included in a charter contract that articulates the criteria for demonstrating compliance with a condition that is negotiated by a state charter school and the commission in the charter contract negotiations.

**I. “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 approved 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;

- (2) specific actions to be taken by the state charter school and the staff positions anticipated to complete the actions to address the unsatisfactory performance; and
- (3) date(s) by which the state charter school is to submit report(s) to the commission and division on progress of or completion of the actions identified in the corrective action plan.

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 to the commission-approved plan may be approved by the division in writing. Substantive changes must be approved by commission at a public meeting of the commission.

**J. “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 provided to the commission as part of the commission-approved corrective action plan.

**K. “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 number 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 acts 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.

**L. “Department”** means the New Mexico Public Education Department.

**M. “Division”** means the charter schools division of the department statutorily required pursuant to NMSA Section 22-8B-17 to provide staff support to the commission, make recommendations to the commission regarding the approval, denial and suspension or revocation of the charter of a state charter school and provide technical support to all charters.

**N. “Final annual report”** means the annual report presented by the division that is accepted by the commission at a public meeting which contains the final findings of the division with regard to the performance of the state charter school, recommendation for commission action, if any, and any unresolved response from the state charter school to the division’s Phase 2 annual report.

**O. “Final annual report completed in part”** mean a final annual report completed as to certain sections only when data necessary to complete other sections are delayed. A final annual report completed in part shall indicated which sections of annual report are being completed and which are being reserved.

**P. “Good standing”** means a designation for a state charter school indicating that the state charter school does not have an outstanding unresolved Annual Report Notice or action pending under the Intervention Ladder.

**Q. “Governing body”** means the governing structure of a charter school as set forth in the charter school’s charter.

**R. “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.

**S. “High stakes decision”** means action of the commission that results in approval of a new charter application, approval of a new charter application with conditions or denial of a new charter school’s application, a state charter school’s renewal, renewal with conditions, non-renewal, or revocation. High stakes decisions are governed by law, rule and the charter school contract.

**T. “Intervention concern”** means unsatisfactory performance or a contract violation that may cause the division to recommend or the commission to begin an action under the intervention ladder.

**U. “Intervention ladder”** means procedures adopted by the commission to impose interventions intended to address a state charter school’s unsatisfactory performance or non-compliance with the contract.

**V. “Notice of possible non-renewal”** means a written notice provided by the commission to a state charter school during the final two years of the charter contract term stating that there is sufficient uncorrected unsatisfactory performance, serious unsatisfactory performance or contract violations by the state charter school to put the state charter school on notice that it may not be renewed for another charter term.

**W. “Notice of possible renewal with conditions”** means a notice issued by the commission to a state charter school during the final two years of the charter term stating that there is sufficient uncorrected unsatisfactory performance, serious unsatisfactory performance, or contract violations by the state charter school to put the state charter school on notice that it may be renewed for another charter term with a condition placed on the state charter school to correct the unsatisfactory performance in the new charter term.

**X, “Notice of unsatisfactory performance”** means a notice issued by the commission to a state charter school that the division has identified unsatisfactory performance by the state charter school in the assessment of the performance framework.

**Y. “Notice of uncorrected unsatisfactory performance”** means a notice issued after acceptance of a final annual report by the commission to a state charter school that unsatisfactory performance by the state charter school has not been corrected by the date set forth in the notice to correct unsatisfactory performance, that unsatisfactory performance is identified as unsatisfactory performance in two consecutive annual reports or that any specific indicator in the performance framework has been rated as “does not meet” for two or more years during the charter term including the current year assessed.

**Z. “Performance Framework”** means the performance provisions incorporated as a material term to the charter contract between the school and the commission negotiated using a commission-approved framework that

- (1) is approved by the commission following the protocols in 6.2.9.8 – 6.2.9.10 below;
- (2) clearly sets forth the academic and operations performance indicators and performance targets that will guide the commission’s evaluation of each charter school; and
- (3) contains all elements required by NMSA 22-8B-9.1.

**AA. “Phase 1 annual report”** means a draft annual report prepared by the division for each state charter school following the annual site visit that begins the documentation process of the state charter school’s performance of or compliance with (1) the charter contract terms, (2) the performance framework, and (2) outstanding corrective action plans as defined herein or as issued by an agency with jurisdiction, if any, that is uploaded to a data platform accessible by the state charter school to be updated as more information is received by the division or provided by the state charter school accessible by the state charter school.

**BB. “Phase 2 annual report”** means the Phase 1 annual document that is finalized by the division and provided to the state charter school for comment prior to submission to the commission as final report or a final report completed in part. The Phase 2 annual report sent to the state charter school shall include:

- (1) the division’s initial assessment as to whether the state charter school has met, is working to meet or has failed to meet the standards in each completed section of the performance framework; and
- (2) if applicable, the division’s recommendation to the commission to issue an annual report notice, including:
  - (a) the specific type of notice that the division is recommending be issued and factual basis therefore;
  - (b) status of any outstanding corrective action plans as defined herein or as issued by an agency with jurisdiction;
  - (c) the contract terms, violation(s) of law, or performance framework indicator(s) and target(s) met or not met that give rise to a recommendation to issue the annual report notice; and
  - (d) if the unsatisfactory performance, in the division’s opinion, constitutes violation of any statutory bases for revocation, notification of that opinion;
- (3) if the state charter school received an annual report notice from the commission for the previous school year, the divisions shall indicate whether or not the state authorized school has corrected the unsatisfactory performance as shown by the assessment of the performance framework indicators showing a different assessment or, if needed, through an additional narrative in the report.

**CC. “Procedure” or “Procedures”** means directives, instructions, templates and forms, and timelines adopted by commission that are consistent with the act and the state charter schools’ contracts, and which are implemented by the division or commission, pursuant to which the commission provides state charter school oversight, including:

- (1) new charter school applications;
- (2) evaluation criteria for new charter applications adopted by the commission to be applied by the division prior to making a recommendation;
- (3) new charter school planning year protocols consistent with the act;
- (4) annual site visit and renewal site visit protocols to be employed by the division, including documents to be provided by the school at the annual or renewal site visit;
- (5) form of annual report;
- (6) form for commission acceptance of annual reports and notification to a state charter school of an annual report notice;
- (7) renewing charter school applications;
- (8) evaluation criteria for renewal charter applications adopted by the commission and applied by division prior to making a recommendation and description of the assessment of the application by the division;
- (9) charter school contract and performance framework templates consistent with the requirements of the act;
- (10) amendment and notification forms and procedures as referenced in the charter contract;
- (11) closure protocols for state charter schools; and

(12) such other forms and procedures adopted by the commission that are administrative in nature and that facilitate the commission's implementation of the commission's legal duties as defined by the act and applicable regulations.

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

**DD. "Secretary"** means the New Mexico secretary of public education.

**EE. "State charter school"** means a charter school authorized by the commission.

**FF. "Technical support"** means guidance which may be provided by the division relating to its authority under the act. In no event shall a state charter school be mandated to seek technical assistance from the division as a term or condition of the charter contract unless agreed to by the state charter school.

**GG. "Uncorrected unsatisfactory performance"** means failure to correct unsatisfactory performance for which a state charter school has been given notice and opportunity to correct as reflected in more than one final annual report accepted during the charter contract term.

**HH. "Unsatisfactory performance"** means a designation by the division in the final annual report or final annual report completed in part that given a designation that is neither "exceeds" nor "meets" the standard.

[6.2.8.7 NM-C - N, \_\_\_\_\_]

#### **6.2.9.8 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 et. seq. 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 subsection, 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 then-current 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 or implementation. Procedures are applicable prospectively, not retroactively, and 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 as needed, with reasonable notice to those affected by the change(s) and posted to the website as set forth in subparagraph E. (5).

**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, will 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 or emergency 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 and oral 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 NM-C - N, \_\_\_\_\_]

#### **6.2.9.9 PROCEDURE REVIEW:**

**A.** A new procedure or revisions to an existing procedure may be proposed by a member of the commission, or the division director on behalf of the division or another division of the department at the September public

meeting of the commission or, at another meeting with good cause shown as to why the suggested change is being presented at a meeting other than the September meeting.

**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 NM-C - N, \_\_\_\_\_]

#### **6.2.9.10 OUT-OF-CYCLE PROCEDURE-MAKING; EXCEPTIONAL/EMERGENCY CIRCUMSTANCES:**

Exceptional or emergency circumstances for implementing a procedure immediately, or with an effective date other than July 1 of the next fiscal year shall be found to be needed:

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

[6.2.9.10 NM-C - N, \_\_\_\_\_]

#### **6.2.9.11 RECORD OF STATE CHARTER SCHOOL PERFORMANCE AND STATE CHARTER SCHOOL EVALUATION**

**A.** During the term of the charter contract, the state charter school, commission and division will develop a record of the state charter school performance. This shall include:

- (1) the charter contract between the commission and the state charter school;
- (2) all final annual reports prepared by the division and accepted by the commission;
- (3) all annual report notices issued by the commission;
- (4) documentation provided by the state charter school to the division and commission or identified by the division of corrected unsatisfactory performance identified in the annual report notice;
- (5) documentation identifying uncorrected unsatisfactory performance after a Notice of Uncorrected Unsatisfactory has been issued by the commission;
- (6) documentation of actions taken by the commission under the intervention ladder and the results of the corrective action imposed and including a return to good standing by the commission, if provided; and
- (7) the state charter school's complete initial or renewal application to the commission and the division's written analysis of the initial or renewal application, the division's recommendation regarding approval or renewal of the application to the commission, and the response of the applicant for a new charter school or an existing renewing state charter school to the divisions analysis and recommendation(s).

**B.** The "record" as established under this subsection shall not be deemed the complete record for purposes of appeal by a renewing charter school pursuant to NMSA 1978, §22-8B-7.

[6.2.9.11 NM-C - 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 to provide technical assistance, to the state charter school, and to evaluate the school's annual progress toward the performance framework goals and compliance with the charter contract. The division shall prioritize completing the annual site visits and presentation of final annual reports for those state charter schools that have submitted a renewal application and those state charter schools that have an unresolved annual report notice showing unsatisfactory performance or a corrective action plan in place.

**B.** The commission's site visit procedure to be followed by the division shall be limited in scope to whether the state charter school is:

- (1) complying with the terms of the charter contract;
- (2) meeting the indicators and targets as set forth in the performance framework;
- (3) correcting or has corrected unsatisfactory performance;
- (4) correcting or has corrected uncorrected unsatisfactory performance identified in an annual report notice; and

(5) completing or has completed actions that cure intervention imposed by the commission pursuant to section 6.2.9.14.

**C.** Phase 1, Phase 2 and final annual reports will be completed by the division according to the following procedures and deadlines:

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

(2) In order to create a Phase 1 annual report, the division will include demographic and information on the state charter school available to the division from the department and conduct an annual site visit.

(a) The division will provide at least 30 days prior written notice of each state charter school's annual site visit and include a copy of or a hyperlink to the approved site visit protocol in the notice. Site visits will 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 30 days advance notice, the annual site visit shall be rescheduled upon written request of the state charter school. If the annual site visit needs to be rescheduled, it may be rescheduled at any time after the initial 30-day period, and an additional 30-day notice is not required.

(b) The division and the state charter school will 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 will memorialize a list of missing information and the time frame for providing the information to the division during the exit meeting.

(c) Within 30 days following the exit meeting, the division will upload a Phase 1 annual report based on the annual site visit findings to a data platform available for the state charter school to review at any time. The state charter school shall provide missing information or correct the information to the division within the time frame agreed to by the division and the school.

(3) In order to complete the final annual report, the following actions will take place:

(a) No later than 30 days prior to a commission meeting to consider the final annual reports, the division shall provide the state charter school for review and comment a Phase 2 annual report reflecting performance on all sections (academic, operational and financial) with information that has been made available. The division shall identify in the Phase 2 annual report unsatisfactory performance, uncorrected unsatisfactory performance and set out the facts in support of, and the division's recommendation

(i) to the commission for issuance of an annual report notice, if any, and

(ii) whether action under the intervention ladder pursuant to section 6.2.9.14 of this rule is warranted.

(b) The state charter school may provide a written response to the division's Phase 2 annual report within 10 days of receipt from the division, including, the state charter school's response to the division's assessment regarding correction of unsatisfactory performance if the state charter school received an annual report notice from the commission for the previous school year. The response shall include documents or other evidence to support the state charter school's response.

(c) The division will consider the state charter school response and create a final annual report or a final annual report completed in part and include all unresolved state charter school's responses, if any, to the Phase 2 annual report which must be provided to the division by no later than 7 days prior to the commission meeting at which the final annual report or the final annual report completed in part will be considered by the commission.

(d) The division shall present its final annual report or the final annual report completed in part to the commission at a public meeting, and the state charter school may attend the commission meeting at which the final annual report will be discussed.

(4) If a final report has been completed in part, when the reserved sections can be completed, the annual report may be reopened and those reserved sections may be completed using the Phase 2 process set forth above related to the reserved sections; however no other sections other than those reserved may be reopened.

**D.** The commission shall take the following steps after consideration of the final annual report or final annual report completed in part,

(1) the commission:

(a) may accept the final annual report or final annual report completed in part at a public meeting of the commission;

(b) may take further action based on the final annual report or final annual report completed in part by issuing an annual report notice: or

(c) if circumstances exist to support revocation, may take action to start a revocation process pursuant to this rule.

(2) The commission shall provide a written notice to the school within 10 days of the commission meeting notification regarding the acceptance of final annual report or final annual report completed in part has been accepted and notification of an annual report notice issued by the commission, if any, which shall state with specificity the unsatisfactory performance requiring corrective action such that the state charter school can take appropriate measures to correct its performance.

(3) If the commission votes to issue an annual report notice or to commence action under the intervention ladder when the division did not recommend issuance of an annual report notice or action under the intervention ladder, the commission's notice shall include a notice to the state charter school that it may, within 10 days of receipt of the notice, present a written response to the commission's action(s) to be included in the record of performance of the charter school and may also request an opportunity to be heard at the next meeting of the commission and request reconsideration of the commission's decision to impose corrective action.

(4) The final annual report or final annual report completed in part and the action of the commission shall be made part of the record of the state charter school performance. If a state charter school later corrects unsatisfactory performance, the final annual report or final annual report completed in part shall not be reopened and the rating changed; instead, the corrected unsatisfactory performance shall be noted in the final annual report for the next year or in the assessment of a renewal application, if the state charter school is submitting a renewal application that year.

(5) 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 CORRECTIVE ACTION.**

**A.** The state charter school, division and commission may take the following action regarding unsatisfactory performance by the state charter school or in response to an annual report notice.

(1) If the performance framework reflects unsatisfactory performance on one or more indicator, but the commission did not find that an annual report notice for unsatisfactory performance or uncorrected unsatisfactory performance was warranted, the state charter school shall take action to improve its performance on the specific indicators and shall provide information to the division of improvements made no later than the next annual site visit unless otherwise indicated by the commission in the notification provided in 6.2.9.12 D . The division shall provide an assessment of the improvement during the next annual report cycle, or earlier if the division deems it necessary to recommend action under the intervention ladder.

(2) If an annual report notice for unsatisfactory performance or uncorrected unsatisfactory performance has been issued by the commission, the state charter school shall take action to correct unsatisfactory performance by providing information to the division of the corrected performance within the timeframe set in the commission's notice. The division shall provide updates to the commission at intervals as set forth in the annual report notice, report to the commission if the unsatisfactory performance has been corrected, or the division may recommend action that a notice of uncorrected unsatisfactory performance be issued on the next final annual report or recommend at any time that action be taken under the intervention ladder if there is a lack of progress by the state charter school as contemplated by the annual report notice.

(3) During the third or fourth year of the charter term, a state charter school may request an informal pre-renewal review meeting. Staff from the state charter school, division and a group of commissioner making up less than a quorum of the commission identified by the executive committee of the commission will then meet to provide input to the state charter school related to its possible renewal status after a review of the record of performance up to that date and to provide direction to the state charter school on suggested areas of improvement to make before submitting the renewal application. The suggestions provided will be for informational purposes only in order to assist the school in preparation for renewal.

**B** Throughout the term of the charter contract, the commission may take action when appropriate under the intervention ladder.

(1) If the division is the entity that identifies an intervention concern:

(a) the division shall notify the school. Information establishing unsatisfactory performance giving rise to possible action under the intervention ladder may be obtained from sources such as other divisions and bureaus of the department or other state or federal agencies.

(b) Unless the division finds that the unsatisfactory performance requires immediate action by the commission, the division shall provide the state charter school with an opportunity to remedy the unsatisfactory performance without commission intervention under the intervention ladder.

(c) If the division determines that the intervention concern may require immediate intervention by the commission or that the state charter school has failed to remedy the intervention concern after notice from the division, the division will present information of the intervention concern to the commission at a public meeting.

(2) If the commission decides to issue a notice of intent to commence action under intervention ladder whether the intervention concern is presented by the division or the commission determines that it will commence action based on an intervention concern presented at a commission meeting, it will provide written notice to 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. 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 ongoing operations of the state charter school.

(3) At the commission meeting where it will consider commencing action under the intervention ladder, the division will present evidence supporting the contention that commission intervention pursuant to this section is warranted. The state charter school may present written and oral rebuttal evidence to the commission prior to a commission decision to impose interventions.

(4) The commission may decide whether to impose an appropriate intervention(s), after considering the information provided by the division and the state charter school.

(5) The commission may impose the following interventions related to an intervention concern:

(a) issue a Notice of Concern identifying the uncorrected unsatisfactory performance that includes expected outcomes and deadlines for addressing all issues and a deadline by which the school must present the division with a corrective action plan to address the identified issues;

(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 the division with a corrective action plan to address the identified contract violations; or

(c) issue a Notice of Potential Non-renewal or Potential Renewal with Conditions, if the state charter school is in the last two years of its charter term and the commission finds that the facts warrant the issuance of the notice. The commission shall identify the legal basis for the possible nonrenewal or renewal with conditions, a summary of the evidence supporting that conclusion in its Notice of Possible Non-Renewal or Renewal with Conditions, the required action by the state charter school to remedy the unsatisfactory performance giving rise to the notice of potential non-renewal or potential renewal with conditions, and the timeline for satisfying the requirements.

(6) Any corrective action plan required by this section shall be created and implemented as follows:

(a) The state charter school shall develop a corrective action plan by the date specified in the Notice that addresses the identified intervention concern and that aligns with the expected outcomes and deadlines set forth in the notice and provide the document to the division for comments and suggested clarifications. The plan shall be due no sooner than 10 days from state charter school's receipt of the Notice of Concern.

(b) The division, as part of its recommendation to the commission, will present its assessment of the adequacy of plan and provide the division's plan to monitor the school's compliance.

(c) The commission shall consider the state charter school's proposed corrective action plan by a date specified in the Notice of Concern, and, if the plan is found to be inadequate may ask the state charter school to improve the corrective action plan or take further action under the Intervention Ladder.

(d) The time for completing an accepted corrective action plan shall commence from the date the commission approves the plan.

**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.** The commission shall vote to reinstate a state charter school's good standing upon the division providing information that school has corrected the concerns that gave rise to a Notice of Concern or Notice of Breach.



(1) Reinstatement of the school's good standing shall be evidenced in writing, made a part of the record of performance for the state charter school 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 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, or 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).

E. Action taken by the commission pursuant to this section shall be made part of the record of the state charter school performance.

[6.2.9.13 NMAC - N, \_\_\_\_\_]

#### **6.2.9.14 NEW SCHOOL APPLICATION REVIEW**

A. An applicant shall submit a new school application to the commission in accordance with a timeline established by the commission and the act for the renewal application process.

B. The division will analyze each new school application according to the criteria established by the commission and the act and shall prepare a preliminary renewal analysis. The preliminary renewal analysis shall include the division's preliminary recommendation to the commission whether to approve, approve with conditions or to not approve the state charter school's charter contract in addition to other information as directed by the commission.

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

D. No later than 30 days prior to the new application hearing, the commission shall identify in writing for each applicant preliminary issues of concerns or requests for further information to allow the applicant to prepare for the renewal hearing.

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

F. The commission shall determine if an application is approved, approved with conditions or not approved in accordance with law and this rule.

G. An applicant may appeal to the secretary pursuant to NMSA 1978, §22-8B-7 and provisions of section 6.80.4.13.

#### **6.2.9.15 RENEWAL**

A. A 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 and the act for the renewal application process.

B. The division shall prioritize finalizing Phase 2 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.

C. The division will analyze each renewal application according to the criteria established by the commission and the act and 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 school's charter contract in addition to other information as directed by the commission.

D. The school seeking to renew its charter as a state charter school may provide a written response to the preliminary renewal analysis within 10 days of receipt. 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 school's response in whole or in part, it shall provide reasons why it disagrees with the school's response in its final renewal analysis and include the school's response in the division's final renewal analysis submitted to the commission.

**E.** No later than 30 days prior to the renewal hearing, for each renewing school seeking to renew its charter as a state charter school, the commission shall identify in writing preliminary issues of concerns or requests for further information to allow the school to prepare for the renewal hearing.

**F.** 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.

**G.** Unless a non-renewal hearing is requested as set forth below, the commission shall hold a renewal hearing for each renewing charter and allow public input, and the division and the school to each make an oral presentation related to the renewal application. The commissioner will then be allowed to ask questions of the division and school related to the renewal application and oral presentations prior to making a decision regarding renewal.

**H.** If 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 I. 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.

**I.** If the school seeking to renew its charter as a 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:

**J.** The procedure for a non-renewal hearing procedure will be as follows:

(1) Upon receipt of the school's request for the commission 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 division, in presenting its case for non-renewal, may rely on the grounds for non-renewal provided to the school in the record of performance, the reasons provided in the division's final renewal analysis that were previously disclosed to the school through the process contemplated under this rule, or in the written letter of concern from the commission provided to the school in section 6.2.9.13.

(a) The division may supplement any grounds for non-renewal set forth in the notice only if exceptional circumstances exist; and

(b) the school may rely on any information provided in their record of performance or in the renewal application and may supplement any information only with permission of the commission after showing that exceptional circumstances exist.

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

(a) The division, through counsel if it elects to have counsel, 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 on 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 division, the school and the commission. If the division intends to present written evidence from another department bureau or division, it must provide a copy of that evidence to the state charter school by no less than 5 days before the schedule hearing.

(b) After the division's presentation, the school, through counsel if it elects to have counsel, 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, the division shall request that a representative from that entity, department division or bureau 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, and the school representatives and 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, and shall provide written notification to the school regarding the determination.

(5) A school may appeal to the secretary pursuant to NMSA 1978, §22-8B-7 and provisions of section 6.80.4.13.

[6.2.9.15 NMAC - N, \_\_\_\_\_]

### 6.2.9.16 REVOCATION

**A.** The commission may revoke 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 that includes the legal basis for revocation as contemplated in the act and a date, time and place for a revocation 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 hearing shall be conducted as follows:

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

(2) After the commission’s counsel’s presentation, the school shall have one hour to present evidence to defend against the recommended revocation. The school may present witness testimony, documentary evidence, and shall have the opportunity to question witnesses with knowledge about evidence presented to support the recommendation, the division representative or other department representatives to defend against the revocation. 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 be at the hearing to answer questions.

(1) 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.** Attorneys 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 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 the charter contract, the decision shall include the legal basis for revocation 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, \_\_\_\_\_]

### 6.2.9.17 [RESERVED]

[6.2.9.17 NMAC - N, \_\_\_\_\_]