

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 for state-~~chartered~~ charter schools.
[6.2.9.2 NMAC - N, _____]

6.2.9.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to ~~Section~~Sections 9-24-8 ~~NMSA 1978, Section, 22-2-2 NMSA 1978, and Section~~ 22-8B-5.3 NMSA 1978.
[6.2.9.3 NMAC - N, _____]

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

6.2.9.5 EFFECTIVE DATE: July 1, 2023
[6.2.9.5 NMAC - N, _____]

6.2.9.6 OBJECTIVE: The public education department promulgates this rule ~~adopted~~acted upon by the public education commission for its procedures, forms, and protocols in relations~~relation~~ to state-~~chartered~~ charter schools.
[6.2.9.6 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.~~

~~**BA. "Act"** means the Charter Schools Act, Sections-NMSA, 1978 §§22-8B-1 through 22-8B-17.1 NMSA 1978as may be amended.~~

~~**CB. "Annual report notice"** means any of the following notices, or combination thereof, issued 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.~~

~~**DC. "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.~~

~~**ED. "Commission"** means the public education commission-acting as a state authorizer.~~

~~**FE. "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.~~

~~**G. "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.~~

~~**HF. "Corrective action plan"** as the term is used inconsistent with Subsection F of Section 22-8B-12 NMSA 1978 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 request an amendment to 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 the commission at a public meeting of the commission.~~

~~**I. “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.~~

~~**JG. “Days”** means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is ~~ten~~10 days or less, and calendar days when the period referenced is ~~eleven~~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.~~

~~**KH. “Department”** means the New Mexico ~~Public Education Department~~public education department.~~

~~**LI. “Division”** means the charter schools division of the department statutorily required pursuant to NMSA Section 22-8B-17-~~NMSA-1978~~ 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, review and approve state charter ~~school~~ budget matters, and provide technical support to all ~~charters~~charter schools.~~

~~**MJ. “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 regarding 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.~~

~~**K. “Final annual report completed in part”** means a final annual report completed as to certain sections only when data necessary to complete other sections are delayed, and which indicates which sections of the annual report are being completed and which are being reserved.~~

~~**OL. “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.~~

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

~~**QN. “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.~~

~~**RO. “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.~~

~~**SP. “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.~~

~~**TO. “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.~~

~~**UR. “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.~~

~~**VS. “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.

WT. “**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.

XU. “**Notice of uncorrected unsatisfactory performance**” means a notice by the commission, 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.

YV. “**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 ~~Section~~ section 6.2.9.8 NMAC through Section section 6.2.9.10 NMAC of this rule;

(2) clearly sets forth the academic, organizational ~~and~~ or financial performance indicators and performance targets that will guide the commission’s evaluation of each charter school; and

(3) contains all elements required by ~~Section~~ NMSA 22-8B-9.1 NMSA 1978 as amended.

ZW. “**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 (3) outstanding corrective action plans 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.

AA. “**Phase 2 annual report**” means the annual report document ~~created subsequent to the phase 1 annual report that is finalized by the division~~ from the phase 1 annual report that contains completed 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 determination, 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.~~

BB. “**Procedure**” or “**Procedures**” means directives, instructions, templates and forms, and timelines adopted by commission that are consistent with the act, ~~regulation, rule~~ 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) ~~implementat~~ implementation year checklist;

(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;~~

Commented [j1]: Because we are differentiating between forms and high stakes decisions and the list has not been moved verbatim, I would like to leave this in.

(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.~~

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

~~DDAA.~~ **"State charter school"** means a ~~state-chartered~~ charter school authorized by the commission ~~to operate as a public school.~~

~~EEBB.~~ **"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.~~

~~FFCC.~~ **"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 two or more consecutive final annual reports accepted during the charter contract term.

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

[6.2.9.7 NMAC - 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 Section 6.2.9.11 NMAC through Section 6.2.9.16 NMAC and shall not be affected by the commission's procedure-making process described in Section 6.2.9.8 NMAC through Section 6.2.9.10 NMAC.~~

~~BA.~~ 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 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.

~~CB.~~ 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 and procedures on the commission website where all procedures are located.

[6.2.9.8 NMAC - N, _____]

6.2.9.9 PROCEDURE REVIEW:

~~A.~~ ~~The procedures of the commission Procedures are applicable prospectively, not retroactively, and are effective until amended or repealed, are reviewed and revised only as needed according to the schedule set forth here, and are applicable prospectively, not retroactively.~~

~~B.~~ ~~New or revised cCommission procedures will be adopted in the then-a current fiscal year shall be effective as of July 1 of the following fiscal year schedule unless the commission identifies an exceptional circumstance requiring an immediate change or implementation.~~

1. ~~Forms and Procedures to be proposed in July and adopted by September of the current fiscal year for use in the current fiscal year:~~
 - a. ~~annual report form;~~
 - b. ~~acceptance of annual report form and notification;~~
 - c. ~~contract;~~
 - d. ~~performance framework;~~
 - e. ~~amendment and notification forms; and~~
 - f. ~~closure protocol.~~

2. ~~The renewal application, including the criteria for evaluation, shall be proposed in December and adopted by February of the current fiscal year for use in the following fiscal year.~~

3. ~~The new application kit, including the criteria for evaluation, shall be proposed in September and adopted by November of the current fiscal year, to be used in the following fiscal year.~~

4. ~~The implementation year checklist shall be proposed in May/July to be adopted in the commission's consent agenda in July to be used in the current fiscal year.~~

B. ~~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 or January public meetings of the commission or, at another meeting if there is good cause as to why the suggested change is being presented at a meeting other than these meetings. All procedure revisions contemplated by this section shall comply with the notice and comment procedures and time schedules as set forth in Section 6.2.9.8 NMAC.~~

~~C. 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 Section 6.2.9.8 NMAC. [6.2.9.9 NMAC - N, _____]

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

Exceptional circumstances for implementing a procedure immediately, or with an effective date other than ~~July 1 of the next fiscal year~~ those described in Section 6.2.9.9 shall be found ~~to be when~~ needed ~~to:~~

- 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~~ address new case law ~~or an attorney general's opinion~~ affecting the commission or state charter schools;
- C. ~~because of~~ address statutory changes;
- D. ~~because of~~ address changes to public education department rules; or
- E. ~~because of~~ address other exceptional ~~or emergency~~ circumstances as determined by the commission.

[6.2.9.10 NMAC - 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 will 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 or uncorrected unsatisfactory performance identified in a previous final annual report or commission notice;
- (5) 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;
- (6) the state charter school's complete initial or renewal application to the commission and
- (7) 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 division's analysis and recommendation(s).

Commented [j2]: This does not follow the timing process.

Commented [j3]: This sentence is not needed if the timing if forms can be proposed any time.

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 ~~Section 22-8B-7~~ NMSA 1978, ~~§22-8B-7~~.
[6.2.9.11 NMAC - N, _____]

6.2.9.12 ANNUAL SITE VISIT AND ANNUAL REPORT

A. Pursuant to ~~Subsection E of Section 22-8B-12~~ 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~~ will 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. ~~B.~~ The ~~commission's~~ division's site visit ~~procedure to be followed by the division shall be limited in scope to~~ will include review of whether the state charter school is:

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

(5) ~~(5)~~ — completing or has completed actions that cure intervention imposed by the commission pursuant to ~~Section~~ section 6.2.9.14 NMAC of this rule.

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

(1) ~~[reject this change]~~ The ~~division and state charter school may extend or revise deadlines affecting them as contemplated under referenced in this subsection, including deadlines affecting a state charter school upon written request by documenting the agreement in writing~~ state charter school.

(2) ~~In order to~~ ~~To~~ create a phase 1 annual report, the division will include demographic and ~~other~~ 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 thirty 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 thirty days advance notice, the annual site visit will 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 thirty-day period, and an additional thirty-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 determines that the state charter school did not provide information necessary for the division to complete its annual site visit evaluation, the ~~parties~~ division will memorialize a list of missing information and ~~identify~~ the time frame for providing the information to the division during the exit meeting.

(c) Within thirty 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~~ will provide missing information or correct the information to the division within the time frame ~~agreed to~~ provided by the division ~~and~~ after hearing input from the school regarding the time frame.

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

(a) No later than thirty days prior to a commission meeting to consider the final annual reports, the division will provide the state charter school for review and comment on a phase 2 annual report reflecting performance 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 to the commission

(i) regarding the commission's annual report notice,

(ii) if the division recommends that a notice of unsatisfactory performance or uncorrected unsatisfactory performance be issued by the commission, the time frame for completion of the corrective action; and

(iii) whether action under the intervention ladder pursuant to Section 6.2.9.14 NMAC.

The phase 2 annual report shall contain:

(i) ~~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.~~

Commented [j4]: This sentence now allows CSD to modify every date in this sections unilaterally. Due to the extensive conversation at the subcommittee meetings, I think this change needs to be revisited.

Commented [j5R4]: I have made a change to the time frames during phase 1, but not phase 2, and not to the timing of the site visits so that schools can be prepared.

(ii) if applicable, the division's recommendation to the commission to issue an annual report notice, including the specific type of notice that the division is recommending be issued and its factual basis; the status of any outstanding corrective action plans as defined herein or as issued by an agency with jurisdiction; 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; notification of any determination by the division that unsatisfactory performance constitutes any statutory bases for revocation; and

(iii) if the state charter school received an annual report notice from the commission for the previous school year, the division's indication as to whether the state-authorized school has corrected the unsatisfactory performance, as shown by the assessment of the performance framework indicators showing a different assessment.

(b) The state charter school may provide a written response to the division's phase 2 annual report within ten 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 ~~will~~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, ~~and provide the final annual report to the phase 2 annual report which must be provided to the division by no later than 15 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~~will 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~~The commission will:

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

(b) issue an annual report notice; or

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

(2) The commission shall provide a written notice to the school within ten 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 a level of 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 ten 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, or not renew~~ a state charter school's charter contract will be in accordance with the state charter school's charter contract, ~~the~~and applicable laws and rules.

E. Acceptance of an annual report shall be by 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.
[6.2.9.12 NMAC - N, _____]

6.2.9.13 CORRECTIVE ACTION.

A. The following actions are to be taken regarding the 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 [Subsection D of Section 6.2.9.12 NMAC\(D\) of this rule](#). The division will 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 will provide updates to the commission at intervals as set forth in the annual report notice, and report to the commission if the unsatisfactory performance has been corrected, ~~or the~~. 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 governing body with renewal concerns based on unsatisfactory performance in the record of performance may request an informal pre-renewal review meeting. If the request is made, a group of the governing body for the state charter school making up less than a quorum of the governing body, staff from the state charter school, the division and a group of commissioners making up less than a quorum of the commission identified by the executive committee of the commission will meet to provide input to the state charter school on suggested areas of improvement before submitting the renewal application. ~~The suggestions provided will be for informational purposes only to assist the school in preparation for renewal. The meetings and discussions will be considered technical assistance and not made part of the record of performance.~~

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 will 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 will 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, the commission 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 for the next regular meeting, no sooner than ten days from the date of the chair's notice to the state charter school, except in exigent circumstances implicating health, safety, or 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~~information supporting the ~~contention~~position that commission intervention pursuant to this section is warranted. The state charter school may present written and oral rebuttal ~~evidence~~information to the commission prior to a commission decision to impose interventions.

(4) The commission may decide whether to impose an appropriate intervention(s); interventions, 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~~terms 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 ten days from the state charter school's receipt of the notice of concern. An approved corrective action plan shall contain the following elements:

(i) name of responsible state charter school representative for ensuring completion of the corrective action plan and reporting to the division and commission;

(ii) 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

(iii) 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.

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

(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.

(e) The state charter school may request amendment of the corrective action plan by providing notice to the division of the proposed changes. Non-substantive, minor changes to the commission-approved plan may be approved by the division in writing. Substantive changes must be approved by the commission at a public meeting.

C. Nothing herein shall preclude the commission from commencing revocation ~~or suspension~~ proceedings as set forth in ~~Section~~section 6.2.9.16 ~~NMAC of this rule~~ 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 the state charter 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 will not be grounds for nonrenewal, renewal with conditions, or revocation unless:

~~(a) the school is found to have received another Notice of Concern 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~~

~~(b) 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 Subsection K of Section 22-8B-12 NMSA 1978.~~

~~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 new school application process.~~

~~BA. The division will analyze each new state-chartered charter 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.~~

~~CB. The applicant may provide a written response to the preliminary renewal analysis within ten days of receipt issuance. 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.~~

~~DC. No later than thirty 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.~~

~~ED. The division shall submit its final analysis as described in this section to the commission, by no later than seven days prior to the commission hearing.~~

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

~~GF. An applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 in accordance with NMSA 1978, §22-8B-7 and provisions of Section 6.80.4.13 NMAC.~~

~~[6.2.9.14 NMAC - N, _____]~~

6.2.9.15 _____ RENEWAL APPLICATION REVIEW

~~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.~~

~~BA. The division will analyze each renewal application for renewal with the commission 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.~~

~~CB. The school seeking to renew its charter as a state-chartered charter school may provide a written response to the preliminary renewal analysis within ten days of receipt issuance. 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.~~

~~DC. No later than thirty days prior to the renewal hearing, for each renewing school seeking to renew its charter as a state-chartered charter school, the commission shall identify in writing preliminary issues of concern, an indication of possible non-renewal identified by the commission, or requests for further information to allow the school to prepare for the renewal hearing.~~

~~ED.~~ The division ~~shall~~will submit its final renewal analysis as described in this section to the commission ~~by no later than ten days prior to the commission hearings on the renewal applications.~~

~~FE.~~ Unless a non-renewal ~~hearing~~procedure is requested as set forth below, ~~for each renewing charter the commission shall hold a renewal hearing according to an approved renewal process procedure, for each renewing school and allow public input, and oral presentations by the division and the school. The commissioner may make oral presentations related to the renewal application. Commission members will then be allowed to ask questions of the division and the school related to the renewal application and oral presentations prior to making a decision regarding renewal.~~

~~GF.~~ If the division provides a recommendation of non-renewal or if the commission has indicated to the school that it may consider non-renewal, the school may request to invoke the non-renewal ~~hearing~~procedure described in ~~Subsection J of Section 6.2.9.15 NMAC, subsection 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 ten days ~~after of~~ receipt of the division's preliminary renewal analysis.

~~HG.~~ If the school seeking to renew its charter as a state ~~chartered~~ 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. 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 proceeding~~ no later than ~~10~~ten 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 preliminary~~ 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 of this rule. The division may supplement any grounds for non-renewal set forth in the notice only if exceptional circumstances exist. section 6.2.9.13 NMAC.~~

~~(a) The commission may allow the division may supplement any grounds for non-renewal set forth in the notice if unforeseen circumstances exist warranting supplementation and the schedule for disclosure of the documents in support of the additional grounds.~~

~~(b) The commission may allow 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 unforeseen circumstances exist warranting supplementation and the schedule for disclosure of the documents in support of the additional grounds.~~

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

(a) The party proposing non-renewal, which may be through counsel, will have one hour to present its recommendation and supporting evidence for nonrenewal to the commission. The party proposing non-renewal may present witness testimony, documentary evidence, and ~~shall have the opportunity to may~~ question the state charter school representatives, ~~including witnesses,~~ present excluding legal counsel. ~~If the party proposing non-renewal 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 party proposing non-renewal intends to present written evidence from another department bureau or division documentary evidence not previously provided as part of the non-renewal recommendation, it must provide a copy of that evidence documentation to the state charter school by no less than five days before the scheduling the hearing scheduled proceeding.~~

(b) After the presentation ~~of is completed~~ by the party proposing non-renewal, 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 may~~ have the opportunity to question division representatives ~~or other department representatives about information used to support a recommendation of nonrenewal, including witnesses, excluding legal counsel. If the school is relying on intends to present documentary evidence or opinions from another entity or other divisions or bureaus of the department, not previously provided to the division, it must provide a copy of that documentation to the division shall request that a representative from that entity, department division or bureau be at five days before the hearing to answer questions by the state charter school, the division and the commission. scheduled proceeding.~~

(c) Commission members may ask questions of the division, its attorney or witnesses, and the ~~school's~~ school's representatives ~~and, attorneys, or witnesses, during the presentations which shall not be subtracted~~

Commented [j6]: The statute uses the word hearing, so I'm not sure that "procedure" is correct.

from the division's or school's time, and then, may take up to one hour after the school and division finish their both presentations have concluded to ask additional questions that are related to the renewal applications and the previously identified reasons given for possible nonrenewal.

H. The rules of civil procedure and the rules of evidence shall not apply to the hearing, unless as specifically provided in this rule. Any evidence may be admitted that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The commission may in their discretion exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence. Rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Parties or their attorneys may make timely objections to the introduction of any evidence they view as inadmissible under this paragraph.

I. Attorneys may provide representation at the hearing proceeding, at each parties' sole cost and expense.

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

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

L. The commission shall vote on the state charter school's renewal in a public meeting and articulate the legal grounds and supporting evideneereasons for its decision on the record. The commission shall serve a written decision on the state charter school's representatives within ten days of the hearing. ~~If the commission decides to non-renew the charter contract, the decision shall include the legal basis for non-renewal with the supporting factual reasons given to support the legal violations required pursuant to Subsection K and Subsection M of Section 22-8B-12 NMSA 1978 during the public hearing proceeding, and shall include the written reasons for the decision.~~

M. A school may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978, §22-8B-7 and provisions of Section 6.80.4.13 NMAC of this rule.
[6.2.9.15 NMAC - N, _____]

Commented [j7]: This first sentence seems unclear as there are not any rules of procedure or evidence cited.

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 or contract terms. If immediate revocation is warranted or, if the state charter school does not provide a corrective action plan accepted by the commission, or the state charter school fails to timely cure the violation as contemplatedrefernced 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 accordance with the act and, along with a date, time, and place for athe revocation hearing proceeding. The hearing proceeding shall be locatedtake place 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, determined by the hearing commission to be necessary, the proceeding shall be held not more than sixty nor less than thirty- days from the date of service of said notice.

C. The revocation hearing proceeding shall be conducted as follows:

(1) Counsel presenting the case for The party proposing revocation shall, which may be through counsel, will have one hour to present its recommendation and supporting evidence for revocation to the commission. The counsel presenting the case for The party proposing revocation may present witness testimony, documentary evidence, and shall have the opportunity to may question the state charter school representatives, including witnesses, present excluding legal counsel. If the ease for division intends to present documentary evidence not previously provided as part of the 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. recommendation, it must provide a copy of that documentation to the school five days before the scheduled proceeding.

(2) After the commission's counsel's division's presentation, the school, through counsel if it elects to have counsel, shall have one hour to present evidence to defend against the reecommended revocation. The school may present witness testimony, documentary evidence, and shall may have the opportunity to question division representatives, including witnesses with knowledge about, excluding legal counsel. If the school intends to present documentary evidence presented to support the recommendation, not previously provided to 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, it must provide a copy of

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~~that documentation to the division shall request that a representative from that entity, division or bureau be at the hearing to answer questions five days before the scheduled proceeding.~~

(3) Commission members may ask questions of the division ~~representatives,~~ the commission's counsel or witnesses, ~~and the school,~~ school's representatives, 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 both~~ presentations have concluded to ask additional questions that are related to grounds for revocation.

~~DD.~~ DD. The rules of civil procedure and the rules of evidence shall not apply to the hearing, unless as specifically provided in this rule. Any evidence may be admitted that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The commission may in their discretion exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence. Rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Parties or their attorneys may make timely objections to the introduction of any evidence they view as inadmissible under this paragraph.

E. Attorneys may provide representation at the hearing proceeding, at each parties' sole cost and expense.

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

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

GH. The commission shall vote on the state ~~charter~~ charter school's revocation in a public meeting and articulate the legal grounds and supporting ~~evidence~~ reasons for its decision on the record. The commission shall serve a written decision on the state charter school's representatives within ten 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 Subsection K and Subsection M of Section 22-8B-12 NMSA 1978 during the public hearing proceeding, to include the written reasons for the decision.~~

HI. **Appeal.** A school may appeal the decision to the secretary pursuant to Section 22-8B-7 in accordance with NMSA 1978, §22-8B-7 as amended and provisions of ~~Section~~ section 6.80.4.14 NMAC. ~~as amended.~~
[6.2.9.16 NMAC - N, _____]

6.2.9.17 [RESERVED]

[6.2.9.17 NMAC - N, _____]