

22-8B-2 Definitions

As used in the Charter Schools Act:

- A. "charter school" means a conversion school or start-up school authorized by the chartering authority to operate as a public school;

22-8B-6. Charter school requirements; application process; authorization; state board of finance designation required; public hearings; subcommittees.

- I. A state-chartered charter school shall not be approved for operation unless its governing body has qualified to be a board of finance.

22-8B-7. Appeal of denial, nonrenewal, suspension or revocation; procedures.

A. The secretary, upon receipt of a notice of appeal or upon the secretary's own motion shall review decisions of a chartering authority concerning charter schools in accordance with the provisions of this section.

B. A charter applicant or governing body that wishes to appeal a decision of the chartering authority concerning the denial, nonrenewal, suspension or revocation of a charter school or the imposition of conditions that are unacceptable to the charter school or charter school applicant shall provide the secretary with a notice of appeal within thirty days after the chartering authority's decision. The charter school applicant or governing body bringing the appeal shall limit the grounds of the appeal to the grounds for denial, nonrenewal, suspension or revocation or the imposition of conditions that were specified by the chartering authority. The notice shall include a brief statement of the reasons the charter school applicant or governing body contends the chartering authority's decision was in error. Except as provided in Subsection E of this section, the appeal and review process shall be as follows within sixty days after receipt of the notice of appeal, the secretary, at a public hearing that may be held in the school district in which the charter school is located or in which the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make findings. If the secretary finds that the chartering authority acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence or did not act in accordance with law, the secretary may reverse the decision of the chartering authority and order the approval of the charter with or without conditions. The decision of the secretary shall be final.

C. The secretary, on the secretary's own motion, may review a chartering authority's decision to grant a charter. Within sixty days after the making of a motion to review by the secretary, the secretary, at a public hearing that may be held in the school district in which the proposed charter school that has applied for a charter will be located, shall review the decision of the chartering authority and determine whether the decision was arbitrary or capricious or whether the establishment or operation of the proposed charter school would:

- (1) violate any federal or state laws concerning civil rights;
- (2) violate any court order; or
- (3) threaten the health and safety of students within the school district.

D. If the secretary determines that the charter would violate the provisions set forth in Subsection C of this section, the secretary shall deny the charter application. The secretary may extend the timelines established in this section for good cause. The decision of the secretary shall be final.

E. If a chartering authority denies an application or refuses to renew a charter because the public school capital outlay council has determined that the facilities do not meet the standards required by Section 22-8B-4.2 NMSA 1978, the charter school applicant or charter school may appeal the decision to the secretary as otherwise provided in this section; provided that the secretary shall reverse the decision of the chartering authority only if the secretary determines that the decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

F. A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1999, ch. 281, § 7; 2005, ch. 221, § 5; 2006, ch. 94, § 34.

Rule

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 80 ALTERNATIVE EDUCATION - CHARTER SCHOOLS PART 4 CHARTER SCHOOL APPLICATION AND APPEAL REQUIREMENTS

6.80.4.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.80.4.1 NMAC - Rp, 6.80.4.1 NMAC, 6/29/2007; A, 9/29/2020]

6.80.4.2 SCOPE: This rule shall apply to applicants and operators of start-up charter schools and previously authorized conversion schools.

[6.80.4.2 NMAC - Rp, 6.80.4.2 NMAC, 6/29/2007]

6.80.4.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, 22-8-1 et seq., and 22-8B-1 et seq. NMSA 1978.

[6.80.4.3 NMAC - Rp, 6.80.4.3 NMAC, 6/29/2007; A, 9/29/2020]

6.80.4.4 DURATION: Permanent

[6.80.4.4 NMAC - Rp, 6.80.4.4 NMAC, 6/29/2007]

6.80.4.5 EFFECTIVE DATE: June 29, 2007, unless a later date is cited at the end of a section.

[6.80.4.5 NMAC - Rp, 6.80.4.5 NMAC, 6/29/2007]

6.80.4.6 OBJECTIVE: To establish the initial application and renewal process for charter schools, whether locally or state chartered, the appeal process of charter schools to the secretary of education and the secretary of education's review process.

[6.80.4.6 NMAC - Rp, 6.80.4.6 NMAC, 6/29/2007]

6.80.4.7 DEFINITIONS:

A. "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.

B. "Application for start-up charter school" means an application requesting the establishment of either a locally chartered or state-chartered charter school.

C. "Authorizer" means either a local school board or the commission that permits the operation of a charter school.

D. "Charter school" means a conversion school or start-up charter school authorized by a chartering authority to operate as a public school.

E. "Chartering authority" means either a local school board or the commission that permits the operation of a charter school.

F. "Commission" means the public education commission.

G. "Conversion school" means an existing public school within a school district that was authorized by a local school board or the commission to become a charter school prior to July 1, 2007.

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

I. "Division" means the charter schools division of the department.

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

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

L. “Locally chartered charter school” means a charter school authorized by a local school board.

M. “MEM” means membership, which is the total enrollment of qualified students on the current rolloff of a class or school on a specified day.

N. “Organizer” means one or more persons or entities who seek to arrange, form, or otherwise establish a charter school.

O. “Prospective applicants” means one or more teachers, parents, or community members or a public post-secondary educational institution or nonprofit organization who submits a notice of intent to a chartering authority.

P. “Secretary” means the New Mexico secretary of public education.

Q. “Start-up charter school” means a public school developed by one or more parents, teachers, or community members who applied to and were authorized by a chartering authority to become a charter school.

R. “Special education plan” means a comprehensive written design or method that includes specific details on how the charter school shall:

- (1) utilize state and federal funds to provide children with disabilities a free and appropriate public education, in accordance with applicable law;
- (2) provide educational services, related services, and supplementary aids and services to children with disabilities in accordance with each child’s individualized education program; and
- (3) address a continuum of alternative educational placements to meet the needs of students with disabilities, in accordance with applicable law.

S. “State-chartered charter school” means a charter school authorized by the commission. [6.80.4.7 NMAC - Rp, 6.80.4.7 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018; A, 9/29/2020]

6.80.4.14 APPEALS TO THE SECRETARY:

A. Right of appeal. A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC.

B. Notice of appeal and appellant’s argument in support of appeal.

- (1) Filing and service of notice and argument in support of appeal. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal, or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal and its argument in support of appeal

within 30 days after service of the chartering authority's decision. One original plus four copies of the notice of appeal and argument in support of appeal together with the required attachments shall be filed with the secretary at the department's main office in Santa Fe. No notice of appeal or argument in support of appeal, including exhibits or required attachments, shall be filed using compact disks, floppy disks, or email; instead, paper documents shall be filed with the department.

(2) Appellant's argument in support of appeal. The appellant's argument in support of appeal shall include a statement of the reasons and argument in support of why the appellant contends the chartering authority's decision was in error with reference to the standards set forth in Subsection B of Section 22-8B-7 NMSA 1978 that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer's written reasons for denial, nonrenewal, revocation, or imposition of conditions.

(3) Required attachments. The appellant shall attach to each copy of the notice of appeal:

- (a) a copy of the chartering authority's written decision, together with a copy of the authorizer's minutes or draft minutes of the meeting if available; and
- (b) a copy of the charter or proposed charter in question.

C. Filing and service of other documents. An original document shall be filed with the secretary at the department's main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party's address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC, by email to the secretary provided that the email includes any attachments, as well as the sender's name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

D. Pre-hearing procedures.

(1) Within 10 days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time, and location for the appeal hearing.

(2) Except for brief inquiries about scheduling, logistics, procedure, or similar questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary shall disqualify himself or herself from hearing an appeal if the secretary determines, after learning of a prohibited communication, that the secretary is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Paragraph (1) of Subsection D of 6.80.4.14 NMAC.

(3) All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority's decision in light of the grounds upon which the

chartering authority denied the application, as set forth in Subsection M of Section 22-8B-6 NMSA 1978 or the grounds for non-renewal or revocation as set forth in Subsection K of Section 22-8B-12 NMSA 1978, and the standards for affirmance or reversal that the chartering authority's decision was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with the law.

(4) Within 15 days of the mailing date of the appellant's notice of appeal and reasons to the chartering authority, the chartering authority shall file one original copy and four copies with the secretary and serve upon the appellant one copy of the chartering authority's response to the appellant's arguments.

(5) While an appeal is pending, the parties are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.

E. Secretary hearing and decision.

(1) Within 60 days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority, and the division and other department staff as appropriate.

(3) The time allotment for a hearing shall be three hours. Both parties shall be allowed up to 30 minutes for their presentations. Department staff shall be allowed 20 minutes for their presentation. The appellant may reserve part of its 30 minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority, and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their 30 minutes but shall include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions, or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties, or the secretary's counsel at any time and may take up to one hour after the staff's and the parties' presentations for further questions, discussion, and a decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which shall be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection M of Section 22-8B-6; Subsections B, C, or E of Section 22-8B-7; and Subsection K of Section 22-8B-12 NMSA 1978.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

- (a) acted arbitrarily or capriciously;
- (b) rendered a decision not supported by substantial evidence; or
- (c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application, or revoking a charter if the secretary finds that the decision was based upon a determination by the public school capital outlay council that the facilities of the proposed or existing charter school did not meet the standards required by Section 22-8B-4.2 NMSA 1978 and that the decision was:

- (a) arbitrary or capricious;
- (b) not supported by substantial evidence; or
- (c) otherwise not in accordance with the law.

(7) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. The provisions of this section shall apply to conversion schools.

[6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/2007; A, 6/30/2008; A, 10/15/2013; A, 12/31/2018; A, 9/29/2020]

6.80.4.16 QUALIFICATION FOR BOARD OF FINANCE DESIGNATION:

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

B. The application shall include:

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

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

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

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

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

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

6.80.4.16 QUALIFICATION FOR BOARD OF FINANCE DESIGNATION:

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

B. The application shall include:

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

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

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

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

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

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

22-8-38. Boards of finance; designation.

A. Upon written application to and approval of the department, a local school board may be designated a board of finance for public school funds of the school district. A local school board designated as a board of finance may require all funds distributed to, allocated to or collected for the school district or the public schools under its jurisdiction to be deposited with it. The department shall designate a local school board as a board of finance if:

(1) the local school board shows to the satisfaction of the department that it has personnel properly trained to keep accurate and complete fiscal records;

(2) the local school board agrees to consult with the department on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

(3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

(4) the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

B. A charter school applicant requesting a charter from the commission shall submit a plan detailing how its governing body will qualify for designation as a board of finance for public school funds of the charter school. The governing body of a proposed state-chartered charter school shall qualify as a board of finance before the first year of operation of the charter school. The governing body of a state-chartered charter school designated as a board of finance may require all funds distributed to, allocated to or collected for the state-chartered charter school to be deposited with the governing body. The commission shall designate the governing body of a state-chartered charter school as a board of finance if:

(1) the governing body shows to the satisfaction of the commission that it has personnel properly trained to keep accurate and complete fiscal records;

(2) the governing body agrees to consult with the division on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

(3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

(4) the governing body was not a governing body of a charter school or does not have a member who was a member of a governing body of a charter school that was suspended and not reinstated as a board of finance.

C. Failure of the governing body of a proposed state-chartered charter school to qualify for designation as a board of finance constitutes good and just grounds for denial, nonrenewal or revocation of its charter.

History: 1953 Comp., § 77-6-42, enacted by Laws 1967, ch. 16, § 96; 1988, ch. 64, § 35; 2006, ch. 94, § 23.

ANNOTATIONS

The 2006 amendment, effective July 1, 2007, changed "state superintendent" to "department" in Subsection A and in Paragraphs (1) and (2) of Subsection A; added Subsection B to provide for the designation of boards of finance for charter schools and state-chartered charter schools and the criteria for designation of the governing body of a state-chartered charter school as a board of finance; and added Subsection C to provide that failure of a governing body of a state-

chartered charter school to qualify as a board of finance is grounds for denial, nonrenewal or revocation of its charter.

The 1988 amendment, effective May 18, 1988, substituted "state superintendent" for "chief" throughout the section; deleted "of the division" following "manual of accounting and budgeting" in Subsection B; and made a minor stylistic change in Subsection C.

22-8-39. Boards of finance; suspension.

The department may at any time suspend a local school board or governing body of a state-chartered charter school from acting as a board of finance if the department reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's or governing body of a state-chartered charter school's control. When a local school board or governing body of a state-chartered charter school is suspended from acting as a board of finance, the department shall:

A. immediately take control of all public school funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance;

B. immediately have an audit made of all funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance and charge the cost of the audit to the school district or state-chartered charter school;

C. act as a fiscal agent for the school district or state-chartered charter school and take any action necessary to conform the fiscal management of funds of the school district or state-chartered charter school to the requirements of law and good accounting practices;

D. report any violations of the law to the proper law enforcement officers;

E. act as fiscal agent for the school district or state-chartered charter school until the department determines that the local school board or governing body of a state-chartered charter school is capable of acting as a board of finance or until the department determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school;

F. inform the local school board or governing body of a state-chartered charter school in writing of the department's determination as to who is to act as board of finance or fiscal agent for the school district or state-chartered charter school and also inform the county treasurer in writing if it determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school; and

G. consider commencing proceedings before the commission to suspend, revoke or refuse to renew the charter of the state-chartered charter school in the case of a state-chartered charter school that has engaged in serious or repeated mismanagement, improper recording or improper reporting of public school funds under its control.

History: 1953 Comp., § 77-6-43, enacted by Laws 1967, ch. 16, § 97; 1988, ch. 64, § 36; 2006, ch. 94, § 24.

ANNOTATIONS

Cross references. — For transfer of powers and duties of the former state superintendent to the secretary of public education, *see* 9-24-15 NMSA 1978.

The 2006 amendment, effective July 1, 2007, changed "state superintendent" to "department" and added the governing body of a state-chartered charter school; and added Subsection G to provide for proceedings to suspend, revoke or refuse to renew a charter of a state-chartered charter school in cases of mismanagement or improper recording or reporting of school funds.

The 1988 amendment, effective May 18, 1988, substituted "state superintendent" for "chief" twice in the introductory paragraph and made a minor stylistic change.