

Project	Purpose of the Project	Detailed information
MOU review Version 2.0 07/21/23 PEC Working team: EC	Review MOU (Section 11 of the MOU)	April 7, 2022 working session, item 8: Chair Burt directed counsel to prepare a red-line of the PEC/PED MOU to include the items discussed by PEC Commissioners at the working sessions of March 17 (item 6) and April 7, 2022 (item 8) This redline contains changes suggested by PEC Commissioners on May 19, 2022, June 16, 2022 and July 21, 2022. Initial meeting: July 18, 2022 (Chair Burt, Deputy Director Gonzales and Director Chavez) MOU reviews: Working session 06/16/23, 07/20/23

MEMORANDUM OF UNDERSTANDING
between
NEW MEXICO PUBLIC EDUCATION COMMISSION
and
NEW MEXICO PUBLIC EDUCATION DEPARTMENT

WHEREAS, the New Mexico Public Education Commission, (“Commission”) and the New Mexico Public Education Department, (“Department”), are created pursuant to Article XII, Section 6 of the New Mexico Constitution, each with such powers and duties as provided by law; and,

WHEREAS, pursuant to Section 9-24-9, New Mexico Statutes Annotated, 1978 Compilation, (“NMSA”), the Commission is administratively attached to the Department, with administrative staff and services provided to the Commission by the Department; and,

WHEREAS, pursuant to Section 9-1-7 NMSA 1978, the Commission shall exercise its functions independently of the Department, and without approval or control of the Department, submit its budgetary requests through the Department; and,

WHEREAS, pursuant to Section 9-1-7 NMSA 1978, the Department shall provide, if mutually agreed, the budgeting, record-keeping and related administrative and clerical assistance to the Commission, and shall include the Commission’s budgetary requests, as submitted and without changes, in the Department’s budget; and,

WHEREAS, the Commission shall advise the Department on policy matters and shall carry-out other duties as provided by law; and,

WHEREAS, pursuant to the Charter Schools Act, Sections 22-8B-1, *et seq.*, NMSA 1978, (the “Act”), and more particularly pursuant to Section 22-8B-16 NMSA 1978, the Commission is the chartering authority, as that term is defined in the Act, for schools that want to be chartered by the State; and, pursuant to 22-8B-13(A) NMSA 1978, the amount of funding allocated to a charter school shall be not less than ninety-eight percent of the school-generated program cost. The school district or Charter School Division of the Department may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.

WHEREAS, as the chartering authority for state-chartered charter schools, (“State Charter Schools”), the Commission is responsible for oversight functions over State Charter Schools, including, but not limited to, reviewing, and approving, setting conditions, or denying, initial applications for school charters, reviewing, and approving, setting conditions or denying, renewal applications for school charters, monitoring State Charter School performance including academic, operational and financial, and providing assistance, overseeing implementation year training and support, discipline, corrective action plans and revocation of a charter if warranted, for State Charter Schools; and

WHEREAS, the Charter Schools Division (the “Division”), is created pursuant to Section 22-8B-17 NMSA 1978, provides staff support to the Commission, provides technical support to charter schools, reviews and approves state-charter school budget matters, and makes recommendations to the Commission regarding approval, denial suspension or revocation of the charter of a state-chartered charter school; and

WHEREAS, pursuant to Section 22-14-2 NMSA 1978, the Commission is the governing authority for the conduct of all programs of the state and state plans established relating to vocational education, including what is now referred to as college and career readiness and career technical training, and shall establish policies for the conduct of vocational education; and,

WHEREAS, the Commission and the Department wish to enter into this Memorandum of Understanding, (“MOU”), for the purpose of setting out the responsibilities of the Department and the Division with respect to their administrative support of the Commission in the performance of its statutory duties and legally designated functions.

NOW, THEREFORE, the Commission and the Department agree as follows:

The parties agree to the following terms which shall be described in more detail in the attached Exhibit 1 as may be amended. Exhibit 1 may be reviewed annually to ensure that the implementation of this MOU is updated to reflect the current intentions of the parties.

1. Staffing and the Division

The Department shall fully staff the Division so that the Commission can perform the oversight and related duties with respect to State Charter Schools that are required of it as a chartering authority pursuant to the Act, including a Director of the Division and a Commission Liaison. Other divisions and bureaus in the Department will provide additional information and support as set forth in Exhibit 1.

2. Legal Matters and Technical Consultation

Legal Counsel. The Commission shall be entitled to its own legal representation to provide legal advice on matters required of the Commission by the Act and as required for the Commission to perform its functions of oversight of State Charter Schools. The amount of the contract shall be sufficient to provide access to legal counsel to the Commission throughout the year whenever needed. Consistent with the Rules of Professionalism, 16-107, 16-108 and 16-113, the Executive Committee of the Commission, through the Chair where appropriate, will

- direct the work of legal counsel and
- review and approve the billings of legal counsel subject to Department of Finance approval

Technical Consultation. The Commission shall be entitled to hire technical consultants to provide research and gather information in support of the authority, powers and duties provided in NMSA 22-8B- This Commission may hire technical consultant(s) to analyze the academic data provided by the Department and provide an analysis of the data to be used for the performance framework. The Commission may also hire technical consultants, either as needed or on contract for a fiscal year, to assist it with specific issues related to a State Charter School if a specific area of expertise is needed.

Funding for the contract for legal representation and technical consultation shall come from the share of the charter budget not maintained by the Department for administrative support.

3. Budgeting

Pursuant to the Act, up to two percent (2.00%) of the school's generated program costs may be used for administrative support of State Charter Schools and the Public Education Commission.

If the budget reasonably anticipated is less than 2% of the State Charter Schools available to be withheld from the State Charter Schools, the Department shall withhold only the amount needed for the budget and withhold from State Charter Schools only the percentage required. The Department shall notify the State Charter Schools of the percentage less than 2% which will be withheld for that school year. Nothing in this agreement limits the Department and Commission from agreeing to a budget up to 2% for any fiscal year, even if less was budgeted for another fiscal year.

The Department will maintain an amount of funds for administrative support in a non-reverting fund equal to a budget created for that fiscal year. At least quarterly, the Department will annually provide an accounting of the actual monies spent pursuant to the budget on the Department's spending of the budgeted amounts, including estimates of costs allocated to employees in the Department to support the Commission and Division. The Division shall process reimbursement requests submitted by Commissioners or legal counsel within _____ days of receipt of the reimbursement or shall identify for the Chairperson why additional time is needed.

The Department reserves the right to access any unencumbered, unexpended available funds within the budget established remaining on March 1 of each fiscal year to utilize further for charter school administrative support purposes. Funds remaining in the non-reverting fund at the end of the fiscal year may be used by the Commission for any purpose that support State Charter Schools.

4. Consultation and Advice

The PEC delegates its duties of vocational education, Section 22-14-1 *et seq* NMSA 1978, to the PED, that may be prescribed in statute or other applicable authorities. The PEC and PED shall work collaboratively to change the legislation to remove the PEC duties regarding vocational education.

Pursuant to Sections 9-24-9, 22-2-2.2, 22-2-14 and 22-14-1 *et. seq.*, NMSA 1978, the Commission shall provide advice to the Department on policy matters relating to State Charter Schools. The Department and Division shall assist the Commission to timely complete and submit reports required of it by law or by the Governor through the Department. The Commission shall have final and independent authority for the content of any report in such sections that it expressly notes are attributable to the Commission.

5. Commission Protocols and Communications

The Division will follow Commission processes and protocols established pursuant to NMAC 6.2.9 Public Education Commission State Charter School Procedures.

The Division will copy the Commission on all written communications when the Division is expressly acting on the Commission's behalf. The Division will further provide the Chair of the Commission notice and documentation in the event that any state charter school or charter school personnel are subject to a current criminal investigation.

The Department and Division shall inform the Commission and its legal counsel of any appeal of a Commission or Department decision relating to the Commission or State Charter School.

The Commission shall be entitled to review, and comment upon, any non-emergency communication from the Department to the public, including any newsletter, public notice, public advice, or any communication of general circulation, of whatever form, relating to the performance of the Commission or any State Charter School prior to the distribution of that communication when the Division is acting on the Commission's behalf.

6. Commission Meetings and Public Information

The Department, through the Charter Schools Division, will assist the Commission to comply with laws, including the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA 1978 and the Inspection of Public Records Act, Section 14-2-1, *et seq.*, NMSA 1978.

7. Effective Date, Termination and Modification

This MOU shall be effective upon the most recent signature of the Chair of the Commission and the Secretary of the Department, or their authorized designees. The MOU may be terminated or renegotiated upon the agreement of both parties.

This MOU may be modified from time to time upon agreement of the parties by a separate, formal, signed document that is incorporated by reference into this MOU. Exhibit 1 to this MOU may be reviewed at least annually at a public meeting convened by the Commission pursuant to the Open Meetings Act. Any changes to this MOU must be in writing and mutually agreed upon.

8. Disputes

Parties will make a good faith effort to resolve any disputes between the parties to this agreement involving the interpretation of this MOU arising directly or indirectly out of this agreement or involving the authority or duties of the Commission or the Division pursuant to this MOU or any laws or rules governing charter schools. If parties can't resolve a dispute, then a mediation will occur.

9. Survival of this MOU

This MOU, including any amendments, shall survive, as is, regardless of any changes in membership of the Commission or the appointment of the Secretary of Education.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed, said MOU to become effective when signed as provided in paragraph 8 of this MOU.

New Mexico Public Education Department

New Mexico Public Education Commission 1

Exhibit 1

To Commission/Department MOU

The parties provide the following details regarding the terms set forth in the MOU. This Exhibit may be modified and updated by the parties as needed without revising the terms of the MOU upon the signatures of the authorized signatories. This new Exhibit 1 (designated as *First Amended Exhibit 1*, *Second Amended Exhibit 1*, etc.) shall then replace the existing Exhibit 1 attached to the MOU.

1. Staffing and the Division

A. Division Director. The Department shall consult with the Commission prior to making its staffing and hiring decisions with respect to the Director of the Division. At least two members of the Commission shall review resumes, participate in candidate interviews and serve on the hiring committee. The final hiring decision shall be made at the discretion of the Secretary after consultation with the hiring committee.

B. Commission Liaison. The Director shall hire or contract a Commission Liaison to provide support to the Commission as requested by the Chair or Commission, in support of the authority, powers and duties provided in NMSA 22-8B-5.3. The hiring committee for this position shall include two Commission members. The final hiring decision shall be made at the discretion of the Director after consultation with the hiring committee.

C. Division support. Under this MOU, Division will support the Commission as a chartering authority pursuant to the Act, including, but not limited to Commission action to:

- (i) review and approve initial applications for school charters;
- (ii) monitor and review the performance of State Charter Schools including annual and renewal site visits;
- (iii) create and maintaining corrective action plans, and other interventions as provided by law, for State Charter Schools, and monitoring compliance with such plans;
- (iv) utilize performance frameworks for State Charter Schools;
- (v) review and approve renewal applications for school charters;
- (vi) oversee and monitor school closures, and
- (vii) such other duties of the Commission established by the Act.

The Division shall comply with its duties under NMSA 22-8B-17.

D. Department Support. The Department will provide the PEC with state assessment and accountability data at a school-level for each state charter within 30 days of public release of the data, in the following categories:

- (2) student academic growth;
- (3) achievement gaps in both proficiency and growth between student subgroups;
- (4) attendance;
- (5) recurrent enrollment from year to year;
- (6) if the charter school is a high school, post-secondary readiness;
- (7) if the charter school is a high school, graduation rate, and

- (i) Ensure that staff outside of the Division provide timely reporting to the Division and Commission on issues related to State Charter Schools as may be requested by the Division or by the Commission to support the authorizing decisions of the Commission.

2. Selection of Legal Counsel and Technical Consultants

In the hiring or contracting with legal or technical contractors, if the Division determines that a contract or Request for Proposals is needed pursuant to the New Mexico Procurement Code, Sections 13-1-21 *et seq.*, NMSA 1978, or other applicable law, it shall consult with the Commission before publishing any Request for Proposals. The Commission shall develop the scope of work for the Request for Proposals in consultation with the Division.

As part of any selection process for legal or technical contractors, the Commission and Division shall create a recommendation committee to identify appropriate candidates to the Commission from proposals received. The recommendation committee shall include three Commissioners and two Department members appointed by the Secretary unless both parties mutually agree to a different configuration of the selection committee. The Commission shall consult with the hiring committee in a closed session (NMSA 10-15-1 H.2, if an employee or H.6., if a contractor) and discuss the responses from appropriate candidates presented by the hiring committee. The final hiring decision shall be made by the Commission by a vote at an open meeting.

3. Budget

The Commission will work with the Division director to develop a budget including the administrative costs of Division and Department which will include:

- (i) funding for the Division, including salaries and expenses of staff supporting the Commission, and State Charter Schools, but not including salaries and expenses of staff that support other efforts of the Division not related to the Commission or State Charter Schools;
- (ii) funding for contractors supporting the Commission and State Charter Schools, including legal counsel and technical consultants for the Commission;
- (iii) the costs of Commission, Division and consultant travel, including travel and attendance at trainings and conferences;
- (iv) technology for Commissioners, including upgrades to Mabry Hall;
- (v) meeting expenses;
- (vi) membership in professional organizations, as reasonably determined by the Secretary of Education;
- (vii) funding for the Department for administrative support for the Commission and Division equal to 15% of total budget proposed for the current fiscal year.

4. Consultation and Advice

No additional terms.

5. Commission Protocols and Communications

No additional terms.

6. Commission Meetings and Public Information

The Department, through the Charter Schools Division, will make arrangements for the meetings of the Commission, including arranging for a public meeting location, printing an agenda, distributing meeting materials, providing timely notice of the meeting, and otherwise complying with the requirements of the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA 1978 and following the PEC Rules of Procedure. No Commission meetings will be convened except upon the call of the Chair of the Commission. The Department will assist the Commission in complying with requests made to the Commission or its members pursuant to the Inspection of Public Records Act, Section 14-2-1, *et seq.*, NMSA 1978. The Commission will be notified when an Inspection of Public Records Request is submitted involving a State Chartered School or the Commission.

Exhibit 1 was adopted by the parties on _____

PEC 072023 w/Exhibit