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## PUBLIC EDUCATION COMMISSION RULES OF PROCEDURE

### I. COMMISSION: ESTABLISHMENT AND AUTHORITY

- A. Constitutional Framework: The Public Education Commission (the “Commission” or “PEC”) is an elected body established pursuant to Article XII, Section 6 of the New Mexico Constitution. It is an independent agency of the State of New Mexico.
- B. Rule-making authority: The Commission intends to promulgate rules consistent with the December 6, 2022 letter to Senator O’Neill from the Attorney General, which is attached to these Rules of Procedure.
- C. Creation Authority, Committees: The Commission may establish committees, standing or ad-hoc, as it shall from time to time deem necessary to carry on its work. Standing committees may only be created by the Commission as a whole upon a majority vote during a regularly scheduled meeting of the body. Ad-hoc committees may be formed at discretion of the Chairperson or by a majority vote of the Commission. Committee members shall be appointed by the Chairperson. The Chairperson shall be an ex-officio member of all committees. If a committee consists of 6 or more members, then, that committee meeting shall comply with the Open Meetings Act.
- D. Effective Dates: These Rules shall become effective upon their adoption by the Commission. Rules of Procedure adopted by the Commission shall remain in effect unless amended or suspended by a two-thirds vote of the Commission during a scheduled meeting for good cause shown. The Chair may allow a vote on an amendment to be done in an alternative manner in an exceptional circumstance.

### II. MEMBERS: DUTIES AND CONDUCT

- A. Duties of Commission Members (“Commissioners”):
  - 1. It is the policy of the Commission to encourage the active participation of all Commissioners in all aspects of the Commission’s activities, including active service in the leadership. Commissioners are expected to attend all regular, special, and emergency Commission meetings.
  - 2. Commissioners are expected to educate themselves regarding issues and requirements concerning education in New Mexico. Commissioners are further expected to avail themselves of educational opportunities to keep abreast of such issues, including training conducted by the Public Education Department (the “Department” or “PED”) and trainings for local school board members.

3. It is expected that Commissioners will express themselves both as individuals and as representatives of the Commission. When a Commissioner expresses an opinion or articulates a position on an issue related to Commission business, the Commissioner shall clearly state whether he, she or they is/are speaking as an individual or as a representative of the Commission. Unless otherwise delegated by the Commission, the Chairperson shall act as the default representative of the Commission. However, in legislative affairs or meetings with the PED Secretary, the Chairperson must be clear in all communications when the Chairperson is speaking for the Commission, as representative of at least a majority of the Commissioners. Otherwise, the Chairperson shall indicate that any opinions stated are personal opinions.

**B. Code of Conduct:**

1. The Commission, and each Commissioner, is expected to conduct business in a professional manner with respect between and among individual Commissioners. The expectation of respectful behavior extends to comments made during committee meetings, in interactions related to the oversight of schools, and interactions with members of the public and staff. The Chair may direct any Commissioner to consider the Code of Conduct when making comments or conform to the Code of Conduct, if necessary.
2. Each Commissioner should answer questions from his, her or their constituents or assist in resolving problems arising within his, her or their district in conformity with Commission guidance. Commissioners who receive inquiries related to a school from constituents other than their own may discuss the matter with the Commissioner from which the constituent resides. Responses to inquiries addressed to or affecting the Commission, as a whole, may be coordinated by the Chairperson, as needed. Any Commissioner may respond to any general inquiry directed to them by a member of the public.

**C. Conflict of Interest:** No Commissioner shall engage in any activity which gives rise to a conflict of interest or the appearance of a conflict of interest with the performance of his, her or their duties as a Commissioner. In addition to other statutory requirements, Commissioners are subject to the provisions of the Governmental Conduct Act (Section 10-16-1 et seq. NMSA 1978). It is unlawful for a public officer or employee to take an official act for the primary purpose of enhancing his, her or their own financial interest or financial position, nor shall a Commissioner vote on a question in which the member has a financial interest not common to other members of the Commission.

**D. Ethical Conduct:** Each Commissioner shall respect the ethical duties of holding a publicly elected office. The New Mexico State Ethics Commission oversees and enforces ethical conduct of elected officials, including PEC Commissioners.

### III. OFFICERS: SELECTION AND DUTIES

#### A. Officers:

##### 1. Chairperson.

- a. The Chairperson shall call to order and preside at Commission meetings pursuant to the Commission's adopted parliamentary rules and all applicable regulations. To address the Commission, a Commissioner or member of the public must be recognized by the Chairperson. The Chairperson shall rule on motions, moderate the floor during debate, and conduct meetings in a manner to maintain decorum and discussion.
- b. When the Chairperson wishes to speak, except in cases of providing order, the Chairperson joins the queue and then takes his, her or their turn as appropriate.
- c. The Chairperson shall direct and request the work of counsel for the Public Education Commission consistent with the vote or requests of the Commission and the Executive Committee, except as set forth in section 2.c., duties of the Vice Chairperson, below.

d. The Chairperson shall review and finalize the agenda for each Commission meeting containing items put on the agenda and approved by the Executive Committee. No changes to the final agenda shall be made except with the approval of the Chairperson.

##### 2. Vice-Chairperson.

- a. The Vice-Chairperson, in the absence of the Chairperson or at the request of the Chairperson in his, her or their place, shall serve in the interim as Chairperson and -assume such powers and duties thereof.
- b. The Vice-Chairperson shall oversee and lead the contract negotiations with new and renewing schools, and direct staff and counsel to prepare and assist in the negotiations as needed.

##### 3. Secretary of the Commission ("Secretary").

- a. The Secretary will call the roll, including roll call votes, at each Commission meeting and perform other duties as otherwise established or agreed upon with the Chairperson.
- b. The Secretary, in the absence of the Chairperson and Vice-Chairperson or at the request of the Chairperson, shall serve in the interim as Chairperson and assume such powers and duties thereof.

#### B. Selection of Officers:

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1. Officers shall be elected at the annual meeting of the calendar year. Officers shall be elected for a term of one (1) year and will serve until the annual election the subsequent calendar year, except in the case of resignation or removal from office. The acting Chairperson shall preside over the election unless the duty is delegated to another officer. In the event the acting Chairperson accepts a nomination, he, she or they shall delegate the duty to preside over the election of the position in which the acting Chairperson is being considered for.
2. The Chairperson shall be elected first, followed by the Vice- chairperson and Secretary. Nothing shall prohibit a member from running for more than one officer position so long as no member accepts or serves in more than one position at a given time.
3. Each position requires a nomination. Nominations may either be offered by another member of the commission or by self- nomination. The nominated Commissioner shall either accept or decline the nomination. No second is required for a nomination. After nominations are closed, Commissioners shall record their votes in a manner consistent with the Open Meetings Act. Officers shall be elected by a majority vote. In the event that no candidate receives a majority, a runoff vote shall be conducted between the two (2) candidates receiving the greatest number of votes. In the event that a tie persists after three (3) ballot attempts to elect any officer, the winner shall be decided by an equal game of chance, such as a roll of dice, coin toss, or card draw. The results from this game of chance shall be verified by a roll call attestation by the Commission.
4. Officers elected at an annual meeting shall take office upon the conclusion of the meeting. Officers elected at any other meeting shall take office immediately upon election.
5. Any vacancies shall be filled pursuant to the rules above at the next regular commission meeting so long as such notice is provided pursuant to the Open Meetings Act.

#### **IV. EXECUTIVE COMMITTEE:**

- A. Membership and Organization. The Executive Committee shall be composed of the officers of the Commission.
- B. Responsibilities. \_\_\_\_\_ The Executive Committee will perform the following, as directed by the Commission:
  1. Perform governmental relation functions on behalf of the Commission without prior discussion and direction of the Commission.
  2. Assist the Commission in making policy recommendations to the Secretary of Public Education regarding legislative initiatives in support of public

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education. Recommendations to the Secretary must be discussed at a public meeting as an agenda item and approved by a majority of the Commission.

3. Meet with the Commission's legal counsel to discuss legal advice provided on behalf of the Commission. Any formal legal actions must be discussed at a public meeting as an agenda item and approved by a majority of the Commission.
4. Establish and approve the ~~proposed~~ agenda for each Commission meeting, including work sessions, or study sessions which shall then be finalized by the Chairperson.
5. Approve or deny requests for services and reimbursements from legal counsel.
6. Any other function delegated to it by a majority vote of the Commission.

## V. MEETINGS:

- A. Annual Meeting: The annual meeting shall be the first regular meeting of each calendar year to elect officers. If the Commission is unable to conduct an election, the prior year's officers shall serve until an election can be conducted at the Commission's earliest opportunity.
- B. Regular Meetings: The regular meetings and working sessions of the Commission shall be held each month, on the third Thursday and following Friday, unless otherwise ordered by the Commission or dictated by other events or religious holidays or observances. The Commission should establish the dates of the regular meetings, work sessions and study sessions for the year no later than the annual meeting. The Commission may change the calendar during the year as needed. Said changes must be posted. The Commission shall comply with minimum meeting requirements pursuant to NMSA 1978, Section 9-24-9 (2004).
- C. Special Meetings: Special meetings may be called by the Chairperson or upon the written request or vote of a majority of the Commission.
- D. Executive Session: The Commission may hold executive (closed) sessions as provided by the Open Meetings Act. The Commission will not enter Executive Session for discussion prior to vote on renewal/nonrenewal or initial application approval/denial or revocation of charter schools unless the privacy rights of an individual may be compromised.
- E. Telephonic or Video Participation:
  1. Unless exceptional circumstances exist, regular meetings will be held in a hybrid format allowing both in-person and virtual attendance for Commissioners and those

participating in a meeting. The Chair will determine whether working sessions and special meetings will be hybrid or virtual only.

2. Telephonic or video attendance must comply with the Open Meetings Act. In person attendance of Commissioners is encouraged.
  3. Video attendance means a Commissioner is participating by simultaneous remote electronic means and is visually present as confirmed by the Chair. Video attendance counts as attendance for the purposes of establishing a quorum, doing business, voting on a motion or the receipt of per diem.
  4. Even if permitted by the Chairperson, telephonic or video attendance shall not be permitted, if each member participating by conference telephone cannot be identified when speaking, all other attending Commissioners are not able to hear each other at the same time, and members of the public attending the meeting are not able to hear the Commissioner(s) attending by telephone or video. If technological malfunctions prevent all members from hearing each other or from the public hearing the telephonically or video attending member(s), then that attending member(s) must be withdrawn from further participation until the malfunction is corrected. The record of the Commission will reflect these circumstances if they occur.
- F. Quorum: Per statute, a majority of the total membership of the Commission shall constitute a quorum.
- G. Public Notice:
1. Open Meetings Act. The Commission shall comply with all requirements pursuant to the New Mexico Open Meetings Act.
  2. Minutes. Minutes shall be kept of all Commission meetings in accordance with the Open Meetings Act. The Commission must formally approve all minutes before they become an official record of the body.
  3. The Commission shall ensure that a certified transcript of a Regular monthly meeting or Special meeting is prepared. This certified transcript shall be the document provided at the next meeting to be approved as the minutes of the meeting and, once approved, shall be the official record of the meeting.
  4. The Commission shall provide summary minutes of working sessions and provide a link to a recorded version of the working session in the summary minutes. The Commission shall also provide a link to a recorded version of the Regular monthly meeting or Special meeting as a convenience to the public and not for any other purpose.
- H. Agenda:

1. The Executive Committee ~~will be~~ responsible for establishing the ~~proposed~~ agenda for each meeting of the Commission, and the Chairperson is responsible for approval the final version to be posted consistent with the agenda established by the Executive Committee.
  2. Individual Commissioners may make a written request to the Executive Committee to include items on the next month's agenda that were not previously discussed at a Commission meeting. If at least two (2) Commissioners make a written request to the Executive Committee to include the same item on the next month's agenda, the item shall be included on the agenda. Agenda requests must be received at least ten (10) business days prior to the date of the meeting in which the agenda item is requested to be heard. Alternatively, any two Commissioners may propose an agenda item during the "New Business" section of any regularly scheduled meeting of the PEC and identify the PEC meeting date during which they would like the agenda item heard.
  3. An individual or representative of an organization seeking to have the Commission consider an item as a noticed agenda item may make a written request to the Executive Committee at least ten (10) business days prior to the start of the meeting. The decision to include the request on the next meeting's agenda shall be determined at the discretion of the Executive Committee.
  4. If the Executive Committee does not include on the next meeting's agenda, an item requested by an individual or representative of an organization, that item may be considered for inclusion on the subsequent meeting's agenda by a vote of a majority of the Commission.
  5. At the beginning of each meeting, the proposed agenda will be voted on, and may be amended consistent with the Open Meetings Act, by a majority of the Commission.
- I. Public Comment:
1. The Commission shall include an opportunity for public comment during each regular meeting at the beginning of each meeting or during the discussion on each noticed agenda item. Public comment shall be limited to three (3) minutes per person or decreased to no less than two (2) minutes at the discretion of the Chairperson dependent on the number of signed in participants. At the discretion of the Chairperson time may be extended.
  2. The Commission shall include an opportunity for public comment at hearings for new applicants, renewal hearings and revocation hearings.
  3. The Chairperson may allow for public comments under the following parameters:

- a. maintain consistent time limitations for presentation;
  - b. at the discretion of the Chair, discourage, and, if necessary, rule multiple or repetitious presentations out of order; and
  - c. rule out of order presentations that are a matter of pending litigation, disruptive to the conduct of the meeting, outside the Commission's scope of business or authority, or contain information that is confidential under applicable law.
  - d. The Chairperson shall identify the ground rules for participation in public comments.
- J. Action by the Commission; Voting:**
1. **Recusal and Abstention.** A Commissioner shall, before the consideration of any agenda item, disclose whether he or she has any financial interest in that agenda item, and whether there are any facts which would give rise to undue influence, or an appearance of undue influence, as considered under the Governmental Conduct Act, Gift Act, or Procurement Code with respect to that agenda item.
    - a. A Commissioner shall recuse himself, herself or themselves from the discussion, consideration and voting on any issue in which he, she or they has/have a financial interest, a conflict of interest, the appearance of a conflict of interest, undue influence, or the appearance of undue influence.
    - b. In the event that a Commissioner, who has disclosed a financial interest, or a conflict of interest or undue influence, or the appearance of one, does not recuse himself, herself or themselves, the Commission may, by a vote of a majority of members present, require the Commissioner making the disclosure to recuse himself, herself or themselves.
    - c. A Commissioner should consider whether to recuse himself, herself or themselves from a vote if the Commissioner has entered into a discussion and rendered an opinion outside of a PEC meeting with a school about the topic that involves a pending authorization, contract decision, or another vote that may become before the Commission in the current school year.
    - d. A recused Commissioner shall not participate in the discussion or consideration with respect to that agenda item, shall not attend any portion of a closed session involving the agenda item, and shall not vote on such agenda item. A Commissioner must state his, her or their intent to recuse and his, her or their reason for the recusal prior



to the agenda item discussion. A Commissioner may abstain from a vote but may participate in the discussion.

- e. If a Commissioner refuses to recuse himself, herself or themselves a simple majority of the members attending the meeting at which the vote is conducted may require that Commissioner to recuse himself, herself or themselves.
2. Action. The Commission shall proceed by motion. Any Commissioner, including the Chairperson, may make a motion. Motions require a second by another Commissioner before debate or a vote, except as otherwise adopted by the Commission.
3. Debate.
  - a. After a motion is seconded, if requested the Chairperson or court reporter shall restate the motion and then open the floor for debate.
  - b. The Chairperson shall recognize all Commissioners who wish to engage in the debate in the order in which they indicate a desire to address the body.
  - c. The Chairperson is granted the discretion to continue debate and to disallow points off topic. After all Commissioners who wanted to speak have spoken at least once, any Commissioner may “call the question”, triggering a vote to end the debate.
4. Voting.
  - a. The Chairperson shall call for the negative vote, no matter how unanimous the affirmative vote may appear.
  - b. It is the duty of each Commissioner who has an opinion to express it by vote. Each Commissioner is entitled to one (1) vote and may not delegate voting rights to any other person.
  - c. A Commissioner who does not have adequate information on which to judge the merits of a matter or who is simply unable to make a decision in the matter may abstain from voting.
    - i. Although a member cannot be compelled to vote, abstentions generally should be the exception.
    - ii. Any abstention shall be noted to the body. An abstention must be noted before any Commissioners begin voting. An explanation for the abstention shall be given at the time the Commissioner indicates the abstention.

- iii. Abstentions shall not be counted in the tally of the vote unless the vote requires approval based on the number of the entire body.
- d. Roll Call Votes. When required, roll shall be called by the Secretary or, in the absence of the Secretary, a Commissioner as designated by the Chairperson, and the vote of each Commissioner shall be announced and noted in the record.
- e. Division. Any member may verify a voice vote or vote by a show of hands by calling “division” during or immediately thereafter a vote.

**K. Inclement Weather Policy:**

- 1. In the event of inclement weather, the Chair may decide to hold the meeting in a virtual format only at the same date and time as scheduled.
- 2. In the event of inclement weather delays and closures affecting those who may be on the agenda of the Commission, the Chair may direct that the Commission to delay the start time of the meeting.
- 3. In the event that the Chair cancels a meeting due to inclement weather, the meeting shall be rescheduled to meet within ten (10) business days and noticed in compliance with the Open Meetings Act.
- 4. In the event of a scheduling change taken pursuant to this section, the Chair shall ensure that any change is published on the PEC website where the agenda is posted.

**VI. PARLIAMENTARY AUTHORITY:**

These Rules of Procedure are the rules by which the Commission conducts its business. These rules may be revised twice annually, pursuant to the rules below. For circumstances not covered by these rules, the Chair may at his, her or their discretion employ any commonly known rules of parliamentary order, such as Robert’s Rules of Order to manage the business of the Commission.

~~I. PER DIEM AND MILEAGE:~~

VII. REIMBURSEMENT:

- A. Commissioners shall be reimbursed as provided in the Per Diem and Mileage Act for related expenses incurred in the discharge of official duties, including attending noticed regular or special meetings, and working group meetings of the Commission. Subcommittee members shall be reimbursed for subcommittee meetings if the member attends a subcommittee meeting in person or attends a virtual meeting for four hours or longer in duration.
- B. For purposes of the Per Diem and Mileage Act reimbursement, attendance

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as a Liaison on behalf of the Commission will be reimbursed as long as:

1. The business is conducted for the purpose of fulfilling the obligations of Commission.
  2. A Liaison will only be reimbursed for travel if he, she or they is/are the Liaison or one of the Liaisons or he, she or they was/were asked to attend a meeting on behalf of a Liaison.
  3. A Liaison should only attend a meeting if information will be transmitted or if business will be conducted that is reasonably related to the business of the Commission.
  4. A Liaison shall not be reimbursed for attending a subcommittee meeting that unless the prior authorization of the Commission through the Executive Committee is received in writing to support such reimbursement.
- C. Any other reimbursable activity of a Commissioner requires prior authorization by the Executive Committee. Reimbursement will only be approved if attendance constitutes business of the Commission as a whole.
- D. Public funds shall be paid out under the Per Diem and Mileage Act only in compliance with the Act's requirements. Commissioners must provide a certification and receipts if required by the NM Department of Finance and Administration (DFA).
- If a Commissioner attends a meeting that qualifies for reimbursement, that Commissioner shall provide an agenda for the meeting from the person or entity convening the meeting or a link to the meeting agenda with the reimbursement request unless the meeting is set up through the Charter Schools Division.
- E. Out-of-State Travel: Out-of-state travel will be subject to budgetary availability and discussion by the Commission and consensus by the members.
- F. The Charter Schools 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.

#### **VII.VIII. EFFECTIVE DATE, AMENDMENTS, AND REVISIONS:**

- A. Rules of Procedure shall remain in effect until amended or modified.
- B. The Executive Committee may initiate amendments or revisions to the Rules of Procedure by placing the item on the agenda. The text of such proposed amendments or revisions shall be provided in writing to the Commissioners at least ten (10) days prior to the meeting at which the amendment or revision will be considered. Unless exceptional circumstances exist, any amendments or revisions will be on the agenda for two consecutive

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meetings either on the working session or regular meeting agenda or both. A vote may be taken at the second meeting after the second reading.

- C.** Amendments to the Rules of Procedure may be proposed by any Commissioner pursuant to the process set forth in Section H. above.
- D.** These rules may be amended by a simple majority of the members attending the meeting at which the vote is conducted.
- E.** These Rules or any amendments thereto shall become effective upon adoption by the Commission.