

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Specific statutory or other authority authorizing rulemaking:
Sections 9-24-8, 22-2-1, 22-2-2, and 22-8B-5.3 NMSA 1978.

Rule adoption date:
July 20, 2023

Rule effective date:
July 31, 2023

Reasons for adopting rule:

The purpose of the rule is to establish the procedures, forms, and protocols in relation to state-chartered charter schools.

Rule information:

The proposed new rule establishes the Public Education Commission state charter school procedures, including for the review and evaluation of state charter school applications and renewals.

Reasons for any change between the published proposed rule and the final rule:

The Department reviewed and considered all written and oral feedback received during the public comment period. For more detail on the changes between the proposed rule and the rule as adopted, reasons for changes, or information as to why the Department may not have accepted comments or suggested changes, please see "6.2.9 NMAC_Response to Public Comment," attached.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Gregory Frostad

Check if authority has been delegated



Title:

Assistant Secretary of Policy, Research and Technology

Signature: (BLACK ink only OR Digital Signature)

Date signed:

07/20/2023

DocuSigned by:



96DA8683D92942F...

Response to Public Comment
6.2.9 NMAC, Public Education Commission State Charter School Procedures

RULE CHANGES	
Section	Change
6.2.9.7 Definitions	<ul style="list-style-type: none"> • Insert the words “including any condition(s)” in Subsection W after “(1) the charter contract terms.”
6.2.9.8 Schedule for state charter school procedure- making	<ul style="list-style-type: none"> • Replace the words “web page” with “website” in Subsection A.
6.2.9.12 Annual site visit and annual report	<ul style="list-style-type: none"> • Insert the words “including any condition(s)” in Subsection B after “(1) the charter contract terms.”
6.2.9.14 Tribal consultation	<ul style="list-style-type: none"> • Inserted a new section to require tribal consultation prior to approving a new state charter school on tribal land and at contemplation of opening or closing a charter school on tribal land. Renumbered following sections accordingly.
6.2.9.16 Renewal	<ul style="list-style-type: none"> • Change 10 days to 14 days in Subsection L of 6.2.9.15 to remain consistent with 6.80.4 NMAC, Charter School Application and Appeal Requirements • Change 10 days to 14 days in Subsection G of 6.2.9.16 to ensure revocation section is consistent with renewal section
6.2.9.17 Revocation	

Response to Public Comment
6.2.9 NMAC, Public Education Commission State Charter School Procedures

Public Comment Period: May 16, 2023, to June 21, 2023.

The New Mexico Public Education Department received 7 public comments for this rule from 1 entity. All substantive comments have been summarized below. Comments that are not substantive in nature or fall outside the scope of the rule have not been included.

Certification	
Summary of Comments	PED Response
1. Insert the words “including any condition(s)” in 6.2.9.7 Subsection W after “(1) the contract charter terms.”	This change provides additional clarity and the department will adopt the suggested change.
2. Revise 6.2.9.7 Subsection Y to include in the procedures to be adopted by the Commission “annual site visit and renewal site visit protocols to be employed by the division, including a list of documents to be provided by the school at the annual or renewal site visit.”	The Department believes that the proposed rule language allows the Charter School Division to conduct site visits with other Department divisions or bureaus, giving the Department a more holistic view and ultimately reducing the amount of time schools would need to set aside for multiple site visits.
3. Replace “web page” with “website” in 6.2.9.8 Subsection A	This change is consistent with language throughout New Mexico Administrative Code and the Department will adopt the suggested change.
4. Concerns that 6.2.9.11 Subsection A Paragraph 8 is too open-ended with regard to which documents may be considered when developing a record of state charter school performance.	The Department has considered this concern and determined that this paragraph is necessary to allow other documents that may pertain to a state charter school’s performance but that are not explicitly listed in the rule. One recent example of such a document that would not otherwise be covered by this subsection of the rule is a letter from the Secretary of Public Education informing a state charter school that the Department is assuming the role of the board of finance for the school, when the charter school’s governing body has been suspended from acting as such.

Response to Public Comment
6.2.9 NMAC, Public Education Commission State Charter School Procedures

Certification, continued	
Summary of Comments	PED Response
5. Insert the words “including any condition(s)” in 6.2.9.12 Subsection B after “(1) the contract charter terms” for parallel change to that suggested in comment 1.	This change provides additional clarity and the Department will adopt the suggested change.
6. Change the word “may” to “shall” or “will” in 6.2.9.12 Subsection C in order to require the Charter Schools Division to annually make a recommendation on the approval, denial, suspension, or revocation of a state charter school’s charter.	Statute requires the Charter Schools Division to make a recommendation in the annual report on approval, denial, suspension, or revocation of a charter of a state charter school, but not in regard to the Division’s annual report on a charter school’s performance and progress. Leaving the word “may” in this section allows the Division to make a recommendation in an annual report, but consistent with the law, the Division is not required to make an annual recommendation.
7. Concerns that requirements for tribal consultation addressed in the Charter Schools Act are not included in the rule.	The Department has considered this feedback and will add a section to the rule to provide for tribal consultation when considering opening or closing a state charter school on tribal land.