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TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 2 PUBLIC EDUCATION DEPARTMENT - COMMISSIONS AND ADVISORY BOARDS
PART 9 PUBLIC EDUCATION COMMISSION STATE CHARTER SCHOOL PROCEDURES

6.2.9.1 ISSUING AGENCY: New Mexico Public Education Department, hereinafter the department.

[6.2.9.1 NMAC - N, 7/31/2023]

6.2.9.2 SCOPE: The rule shall apply to all procedures, forms, and protocols of the public education commission in relation to state-chartered charter schools.

[6.2.9.2 NMAC - N, 7/31/2023]

6.2.9.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 9-24-8, 22-2-1, 22-2-2, and 22-8B-5.3 NMSA 1978.

[6.2.9.3 NMAC - N, 7/31/2023]

6.2.9.4 DURATION: Permanent.

[6.2.9.4 NMAC - N, 7/31/2023]

6.2.9.5 EFFECTIVE DATE: July 31, 2023, unless a later date is cited in the history note at the end of a section.

[6.2.9.5 NMAC - N, 7/31/2023]

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

[6.2.9.6 NMAC - N, 7/31/2023]

6.2.9.7 DEFINITIONS:

A. “Act” means the Charter Schools Act Sections 22-8B-1 through 22-8B-17.1 NMSA 1978, as may be amended.

B. “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.

C. “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.

D. “Commission” means the public education commission.

E. “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.

F. “Corrective action plan” consistent 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.

G. “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 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.

H. “Department” means the New Mexico Public Education Department.

I. “Division” means the charter schools division of the department statutorily required pursuant to Section 22-8B-17 NMSA 1978 to provide staff support to the commission, make recommendations to the commission regarding the approval, denial, or revocation of the charter of a state charter school, review and approve state charter school budget matters, and provide technical support to all charter schools.

J. “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, 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.

L. “Good standing” means a designation for a state charter school indicating that the state charter school does not have action pending under the intervention ladder or a current annual report notice that identifies uncorrected unsatisfactory performance.

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

N. “Head administrator” means the duly licensed school administrator who is the director of the charter school and the person with duties similar to those of a superintendent.

O. “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.

P. “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.

Q. “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.

R. “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.

S. “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.

T. “Notice of uncorrected unsatisfactory performance” means a notice by the commission, issued after acceptance of a final annual report, 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.

U. “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.

V. “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 6.2.9.8 NMAC through 6.2.9.10 NMAC;

(2) clearly sets forth the academic, organizational, 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 22-8B-9.1 NMSA 1978 as amended.

W. "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, including any conditions, (2) the performance framework, and (3) outstanding corrective action plans or as issued by an agency with jurisdiction, if any, and reports or information on previously identified unsatisfactory performance all of which 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.

X. "Phase 2 annual report" means the annual report document subsequent to the phase 1 annual report that is finalized by the division from the phase 1 annual report 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.

Y. "Procedure" or "Procedures" means directives, instructions, templates and forms, and timelines adopted by commission that are consistent with the act 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) implementation year checklist;

(4) form of annual report;

(5) form for commission acceptance of annual reports and notification to a state charter school of an annual report notice;

(6) renewing charter school applications;

(7) 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;

(8) charter school contract and performance framework templates consistent with the requirements of the act;

(9) amendment and notification forms and procedures as referenced in the charter contract;

(10) closure protocols for state charter schools;

(11) consultation process to obtain input from state charter schools on procedures; 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.

Z. "Secretary" means the New Mexico secretary of public education.

AA. "State charter school" means a charter school authorized by the commission to operate as a public school.

AB. "Technical support" means guidance which may be provided by the division relating to its authority under the act.

AC. "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.

AD. "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 - N, 7/31/2023]

6.2.9.8 SCHEDULE FOR STATE CHARTER SCHOOL PROCEDURE-MAKING:

A. 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 website or in an authorizing manual available to the public on the commission's website.

B. 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, 7/31/2023]

6.2.9.9 PROCEDURE REVIEW:

A. The procedures of the commission are effective until amended or repealed; will only be revised as determined by the commission to be necessary, in a manner consistent with national best practices and conforming to legislative changes; will follow the schedule set forth here and are applicable prospectively.

B. Any new or revised commission procedures shall be effective as of July 1 of the following fiscal year unless the commission identifies an exceptional circumstance requiring an immediate change or implementation. If a new or revised renewal application form is approved effective as of July 1, it will be used by schools that are scheduled to submit a renewal application fourteen months or later from the effective date. Schools that will be submitting a renewal application the next September, or two months from the effective date of the new or revised renewal application form, will use the form that was in effect prior to July 1 unless otherwise agreed to between the renewing schools and the commission.

C. 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. All procedure revisions contemplated by this section shall comply with the notice and comment procedures as set forth in 6.2.9.8 NMAC.

D. This section does not apply to changes in scheduling dates, inclusion of legislative changes or the inclusion of minor changes that do not change the required provisions of the existing procedure such as corrective typographical errors or providing clarification. Such changes may be adopted by the commission at its discretion, with reasonable notice to those affected by the change(s) and posted to the website as set forth in 6.2.9.8 NMAC.

[6.2.9.9 NMAC - N, 7/31/2023]

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 those described in 6.2.9.9 NMAC shall be found when needed to:

- A.** protect the immediate health, welfare, or education of state charter school employees, students and others doing business at state charter schools;
- B.** address new case law affecting the commission or state charter schools;
- C.** address statutory changes;
- D.** address changes to public education department rules; or
- E.** address other exceptional or emergency circumstances as determined by the commission.

[6.2.9.10 NMAC - N, 7/31/2023]

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, 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;
- (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); and
- (8) other documents, notices, or recommendations that are created pursuant to the processes set forth in this rule and provided by the commission or division to the state charter school regarding school performance.

B. The record as established under this section shall not be deemed the complete record for purposes of appeal by a renewing charter school pursuant to Section 22-8B-7 NMSA 1978.
[6.2.9.11 NMAC - N, 7/31/2023]

6.2.9.12 ANNUAL SITE VISIT AND ANNUAL REPORT:

A. The division will 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 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. The division's site visit will include review of whether the state charter school is:

- (1) complying with the terms of the charter contract, including any conditions;
- (2) meeting the indicators and targets as set forth in the performance framework;
- (3) correcting or has corrected unsatisfactory performance;
- (4) correcting or has corrected uncorrected unsatisfactory performance identified in an annual report notice; and
- (5) completing or has completed actions that cure intervention imposed by the commission pursuant to 6.2.9.13 NMAC.

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

(1) The division and state charter school may extend or revise deadlines in the process for phase 1 by documenting an agreement as to a new deadline in writing. If the school does not offer an appropriate deadline for purposes of providing the division with the missing information, the division director will impose a deadline with which the school shall comply.

(2) 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 30 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 30 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 for any reason, it may be rescheduled at any time after the initial 30-day period, and an additional 30-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 will memorialize a list of missing information and the time frame for providing the information to the division during the exit meeting.

(c) Within 30 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 will provide missing information or correct the information to the division within the time frame agreed to by the division and the school.

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

(a) No later than 45 days prior to a commission meeting to consider the final annual reports, the division will provide to the state charter school for review and comment a phase 2 annual report reflecting performance, including all information that has been made available. The division will identify in the phase 2 annual report unsatisfactory performance, uncorrected unsatisfactory performance, the facts in support of unsatisfactory performance, and the division's recommendation to the commission. The phase 2 annual report shall contain the division's initial assessment as to school's performance according to the rating set forth in each completed section of the performance framework, and may contain the division's recommendation to the commission regarding the commission's annual report notice, including the specific type of notice that the division is recommending be issued, its factual basis for that recommendation, and the recommended time frame for completion of the corrective action.

(b) The state charter school may provide a written response to the division's phase 2 annual report within 20 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 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, to the phase 2 annual report. The division will provide the final annual report to the school and the commission seven 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. The division may move presentation of an annual report to the next meeting of the commission if it needs more time to consider changes proposed by a state charter school.

(d) The division 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 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 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) If the commission votes to issue an annual report notice other than notice of exemplary or satisfactory performance, or to commence action under the intervention ladder when the division recommended the issuance of a notice of exemplary or satisfactory performance, the commission's notice shall include a notice to the state charter school that it may, within 10 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. The state charter school 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.

(3) Within 10 days after the commission meeting the commission shall provide a written notice to the school if the commission has accepted the final annual report or final annual report completed in part, identify the annual report notice issued by the commission, and reference the annual report

which identifies the unsatisfactory performance requiring corrective action with sufficient specificity such that the state charter school can take appropriate measures to correct its performance.

(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 revoke or not renew a state charter school's charter contract will be in accordance with the state charter school's charter contract, 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.

[6.2.9.12 NMAC - N, 7/31/2023]

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 for in Subsection D of 6.2.9.12 NMAC. 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. The division may recommend 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 meetings and discussions will be considered technical assistance and will not be 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 10 days from the date of the commission's notice to the state charter school, except in exigent circumstances implicating health, safety, or financial impropriety, that could 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 information supporting the position that commission intervention pursuant to this section is warranted. The state charter school may present written and oral rebuttal information to the commission prior to a commission decision to impose interventions.

(4) The commission may decide whether to impose appropriate 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 shall 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 for a state charter school's failure to correct a notice of concern according to its terms if said failure constitutes a breach of contract, or for violating any material 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 shall 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, and shall include in its notice of possible non-renewal or renewal with conditions, a summary of the evidence supporting that conclusion; 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 10 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 state charter school representative responsible 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 to monitor and provide written progress reports periodically to the commission and state charter school and to be provided to the commission as part of the commission-approved corrective action plan.

(c) The commission, or a subcommittee of the commission if designated by 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 require 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 shall be approved by the commission at a public meeting.

C. Nothing herein shall preclude the commission from commencing revocation proceedings as set forth in 6.2.9.17 NMAC if ongoing monitoring activities reveal circumstances that warrant revocation.

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. 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.

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, 7/31/2023]

6.2.9.14 TRIBAL CONSULTATION:

A. If a state charter school applicant wants to open a charter school on tribal land, it shall negotiate with and receive the tribal government's approval for the public school before the commission acts on the application. The applicant shall adhere to requirements for tribal consultation in Section 22-8B-12.2 NMSA 1978.

B. When the commission is contemplating closing a state charter school located on tribal land, for any reason, suspension, revocation, or non-renewal, it shall consult with tribal leaders and members and families of students attending the charter school, and shall adhere to the requirements of Section 22-8B-12.2 NMSA 1978.

[6.2.9.14 NMAC - N, 7/31/2023]

6.2.9.15 NEW SCHOOL APPLICATION REVIEW:

A. The division will analyze each new state charter school application, consider information and analysis provided in accordance with the act, and prepare a preliminary renewal analysis. The preliminary renewal analysis may include the division's preliminary recommendation to the commission whether to approve, approve with conditions, or to not approve the school's charter contract in addition to other information as directed by the commission.

B. The applicant may provide a written response to the preliminary renewal analysis within 10 days of receipt of the analysis. If the division agrees with the applicant's response, the division will 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 will 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.

C. No later than 30 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 hearing.

D. The division will submit its final analysis as described in this section to the commission, seven days prior to the new application hearing.

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

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

[6.2.9.15 NMAC - N, 7/31/2023]

6.2.9.16 RENEWAL:

A. The division will analyze each renewal application according to the criteria established by the commission and the act and will 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.

B. The school seeking to renew its charter as a state charter school may provide a written response to the preliminary renewal analysis within 10 days of receipt. If the division agrees with the school's response, the division will 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 will 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.

C. No later than 30 days prior to the renewal hearing, for each renewing school seeking to renew its charter as a state charter school, the commission shall identify in writing preliminary issues of concern, an indication of possible non-renewal if identified by the commission, and request for further information to allow the school to prepare for the renewal hearing.

D. The division will submit its final renewal analysis as described in this section to the commission by no later than 10 days prior to the commission hearings on the renewal applications.

E. Unless a non-renewal hearing is requested as set forth below, for each renewing charter, the commission shall hold a renewal hearing according to an approved renewal process, allow public input, and allow oral presentations by the division and the school. The commission 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.

F. If the division provides a recommendation of non-renewal, if the commission has indicated to the school that it may consider non-renewal, or if the record of performance contains sufficient grounds for non-renewal, the school may request to invoke the non-renewal hearing procedure described in Subsection G of this section. A state charter school's request for the commission to follow the non-renewal hearing procedure shall be provided to the commission chair and division director by no later than 10 days after issuance of the division's preliminary renewal analysis.

G. If the school seeking to renew its charter as a state charter school timely requests that the commission follow the non-renewal hearing procedure, the commission shall provide the school with the following minimum process before voting on the division's recommendation for nonrenewal.

(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 no later than 10 days prior to the hearing, or indicate that the commission will utilize the same date and time set previously identified for a renewal hearing for the school. The full record of performance, renewal application, and analysis by the division will be considered as part of the record without further evidentiary foundation needed. Within five days, the chairperson of the commission, with counsel, shall meet with the parties and their counsel to confirm anticipated witnesses and documents to be presented, including how to address any new Public Education Department (PED) information that the parties may wish to present, and to memorialize the anticipated witnesses, documents, process and timelines as established in the meeting.

(2) If the commission has indicated to the school that it may consider non-renewal, the division or commission counsel may rely on the grounds provided to the school in the record of performance, the reasons provided in the division's final 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 during the charter contract term.

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

(a) If the commission has indicated to the school that it may consider non-renewal, the division will have one hour in total to present its recommendation and supporting evidence to the commission, which may be through its counsel or commission counsel. The presenting party may present witness testimony or documentary evidence, and shall have the opportunity to question the state charter school representatives in appearance, excluding legal counsel.

(b) The school, through counsel if it elects to have counsel, shall then have one hour in total to present evidence to defend its application for renewal. The school may present witness testimony or documentary evidence and shall have the opportunity to question division representatives or other representatives in appearance about information used to support a recommendation of nonrenewal.

(c) Commission members may ask questions of the division, its attorney or witnesses, and the school representatives and witnesses, during the presentations, which shall not be subtracted from the division's or school's time, and may take up to one hour after the school and division finish their presentations to ask additional questions that are related to the renewal applications and the previously identified reasons given for possible nonrenewal.

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

I. The hearing shall be recorded by a licensed stenographer and a copy of the transcript shall be presented to the parties within 10 days of the hearing unless additional time can be extended without prejudice to the school's right to appeal.

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

K. The commission shall vote on the state charter school's renewal in a public meeting and articulate the legal grounds and supporting evidence for its decision on the record. The commission shall serve a written decision on the state charter school's representatives within 14 days of the hearing. If the commission decides not to renew the charter contract, the decision shall include the legal basis for non-renewal and the factual reasons supporting findings of legal violations, required pursuant to Subsection K and Subsection M of Section 22-8B-12 NMSA 1978 during the public hearing.

L. A school may appeal to the secretary pursuant to Section 22-8B-7 NMSA 1978 and provisions of 6.80.4.13 NMAC.

[6.2.9.16 NMAC - N, 7/31/2023]

6.2.9.17 REVOCATION:

A. The commission may revoke the school's charter contract if legal grounds exist pursuant to the act. If immediate revocation is warranted, or if the state charter school does not provide a corrective action plan accepted by commission, or if the state charter school fails to timely cure the violation as contemplated 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 the act and a date, time, and place for a revocation hearing. The hearing shall be in Santa Fe or the county in which the school is located, as agreed upon between the parties. Unless a need for emergency revocation or suspension is identified, the hearing shall be held not more than 60 nor less than 30 days from the date of service of said notice. The full record of performance, including any transcripts or commission meetings relating to discussion of unsatisfactory performance, will be considered as part of the record without further evidentiary foundation needed. Within five days, the chairperson of the commission, with counsel, will meet with the parties and counsel to confirm anticipated witnesses and documents to be presented, including how to address any new information that the parties may wish to present, and memorialize the anticipated witnesses, documents, process, and timelines as established in the meeting.

C. The revocation hearing shall be conducted as follows:

(1) Counsel presenting the case for revocation shall have one hour to present evidence for revocation to the commission. The counsel presenting the case for revocation may present witness testimony or documentary evidence, and may question the school representatives in appearance, excluding legal counsel.

(2) After the commission's counsel's presentation, the school shall have one hour to present evidence to defend against the recommended revocation. The school may present witness testimony or documentary evidence, and may present witness testimony or documentary evidence, and may question the division representative in appearance or other representatives in appearance to defend against the revocation.

(3) Commission members may ask questions of the division, the commission's counsel or witnesses, the school, its attorney, and the school's witnesses during the presentations and may take up to one hour after the commission's counsel and the state charter school's presentations to ask additional questions related to grounds for revocation.

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

E. The hearing shall be recorded by a licensed stenographer and a copy of the transcript shall be presented to the parties within 10 days of the hearing unless additional time can be extended without prejudice to the school's right to appeal.

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

G. The commission shall vote on the state charter school's revocation in a public meeting and articulate the legal grounds and supporting evidence for its decision on the record. The commission shall serve a written decision on the state charter school's representatives within 14 days of the hearing. If the commission decides to revoke the charter contract, the decision shall include the legal basis for revocation, and the factual reasons supporting findings of legal violations, required pursuant to Subsection K and Subsection M of Section 22-8B-12 NMSA 1978 during the public hearing.

H. Appeal. A school may appeal to the secretary pursuant to Section 22-8B-7 NMSA 1978 and provisions of 6.80.4.14 NMAC.

[6.2.9.17 NMAC - N, 7/31/2023]

History of 6.2.9 NMAC: [RESERVED]