

## Legal Memorandum:

To: PEC  
From: Julia Barnes  
Re: History of previous discussions on letter to new applicants  
Date: August 24, 2023

The Executive Committee asked for a history of PEC discussions on the 30-day notice letter from the PEC to new applicants. The following is a history.

- 1) In February 2022 the Court issued a ruling in The Great Academy appeal overturning the PEC revocation decision. The Court found that the PEC had not provided reasonable notice to the school of the possibility of non-renewal as required by the law on non-renewal. (See 10.b Legal outline of TGA ruling)

22-8B-12 L. The chartering authority shall develop processes for suspension, revocation or nonrenewal of a charter that:

(1) provide the charter school with timely notification of the prospect of suspension, revocation or nonrenewal of the charter and the reasons for such action;

(2) allow the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action; and

(3) require the final determination made by the chartering authority to be submitted to the department.

- 2) As a consequence of this ruling, the PEC added notification letters of PEC concerns to both new school applicants and renewing schools approximately 30 days prior to the PEC hearing on the decision.
- 3) On June 16, 2022, the PEC reviewed the new applicant timelines including a date for the PEC to provide a letter to new applicants approximately 30 days prior to the PEC hearing on the decision. (See 10.c June 16, 2022 agenda)
- 4) At the October 21, 2022 working session, for new applicants CSD provided alternative dates and fewer written responses to the new applicants regarding concerns. The PEC discussed the timeline for 30 minutes at this meeting. The changes proposed by CSD were adopted the next day. These included eliminating one preliminary review provided at an early stage to the school and a change in the community input hearings to push them earlier in the process.
- 5) At the October 21, 2022 working session, the following points related to providing a letter to new applicants were discussed during with working session:
  - a) Director Chavez provided information on the statutory requirements for new applicants and provided the following (See 10.d proposed timeline and notes):

NOTE: *Nothing in statute or rule requires PEC or CSD to provide multiple preliminary analyses, nor to give the applicants a 30 day notice about PEC's concerns. 22-8B-6 NMSA 1978 states "If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or conditions in writing within fourteen days of the meeting."*

- b) The discussion at the October 21, 2022 working session included the following discussion points:

Arguments discussed at that time for providing a letter.

- It is unclear how a court would apply the TGA ruling to a new school. Having a different process for a new application and a renewal could be seen as arbitrary and capricious.
- Providing the letter would ensure that no argument could be raised that one was needed. It also supports the argument that a denial was raised on substantial evidence.
- The grounds for denying a new school are quite vague<sup>1</sup>. The letter provides clarity on the concerns of the PEC. It also provides concerns of the PEC (not just CSD) prior to the hearing.
- If a decision is made to deny the application, the letter would be helpful if there was an appeal.
- A letter is not difficult to prepare and send out and ensures that Commissioners raise concerns as early as possible in the process.

Arguments discussed at that time for providing a letter

- A new applicant does not have contractual rights like a renewing school does.
- A new applicant should show that it knows how to start a new school and providing the applicant with too much feedback could mask whether or not the applicant is prepared (this was one of reasons for not providing feedback prior to the capacity interview).
- There are many feedback points to new applicants (there were 4 at the time that were then reduced to 3).

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<sup>1</sup> 22-8B.-6 M. A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application if:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act;
- (3) the proposed head administrator or other administrative or fiscal staff was involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal staff was discharged from a public school for fiscal mismanagement;
- (4) for a proposed state-chartered charter school, it does not request to have the governing body of the charter school designated as a board of finance or the governing body does not qualify as a board of finance;
- (5) for a proposed charter school on tribal land, it fails to receive approval from the tribal government; or
- (6) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the charter school applies to operate.

Commissioner comments at the October 21, 2022

Commissioner Robbins voiced a preference to keep the letter to avoid later arguments defending why a new applicant process differed from an renewal process

Commissioner Gipson voices support for eliminating the first CSD feedback report. She was concerned that the timeline allowed for enough time for written comments.

Commissioner Voight supported moving the community input dates to provide more time for CSD to prepare the full record for the PEC to consider.

Commissioner Carrillo asked that the PEC consider a replication process as suggested by Think New Mexico.

Result of the October 2022 meeting. The PEC did not reconsider its decision to provide a letter to applicants. The PEC did support fewer written reviews by CSD and a change in the calendaring of events in the timeline. (See 10.e. timeline approved)