

Julia Hosford Barnes, P.C.

Legal Memorandum: Excerpt

To: PEC
From: Julia Barnes
Re: The Great Academy Court Ruling

Issue 1 raised by the School: The Secretary erred by delegating the appeal hearing to the Hearing Officer, and the Secretary's unexplained departure from the Hearing Officer's recommendation demonstrates that the Secretary's decision is unsupported by substantial evidence, arbitrary and capricious, and contrary to law;

The Court found the duty to provide timely notice of the prospect of nonrenewal was not satisfied by the receipt of CSD recommendation of non-renewal. The Court found that the PEC is statutorily required to "develop processes for... nonrenewal of a charter that: (1) provide[s] the charter school with timely notification of the prospect of ... action; [and] (2) allow[s] the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action...." NMSA 22-88-12(L) (emphasis added).

The Court focused on the charter contract language and found that the charter contract additionally requires that the "Authorizer shall i. provide the school with timely notification of the prospect of ... nonrenewal of the Charter and the reasons for such action; [and] ii. allow the School a reasonable amount of time to prepare and submit a response to the Authorizer's action no less than 30 days, absent exigent circumstances...."

The Court did not find any provisions of the charter contract that designates CSD as an entity authorized to provide notice on behalf of the PEC regarding the prospect of nonrenewal by the PEC. If that were in the contract, the Court found that the 30-day notice provision would have to apply.

Therefore, the Court reversed the March 19,2021 Decision and Order of the Secretary on the basis of: (a) the PEC's failure to implement processes for nonrenewal set forth in Section 22-88-12(L); and, (b) the Secretary's failure to reverse the PEC's decision for its noncompliance with Section 22-88-12(L).

Action Item Needed

- 1) Change the process of the PEC at renewal to ensure that a school has 30-days notice of proposed PEC action to non-renew.
 - a. Authorize the Chair to send a notice of possible non-renewal with a CSD recommendation of non-renewal giving 30-days notice and an opportunity to

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respond at the renewal hearing. This would not address the situation if the PEC voted to non-renew at the December hearing after a recommendation to renew.

- b. Delay any action of the PEC on non-renewal for 30-days after the hearing. However, this would require changing the dates typically set for renewal. The law requires that applications for renewal are due “no later than two hundred and seventy days prior to the charter school expiration.” The decision has to be before 180 days of the charter renewal (or December 31). These dates could be pushed back into August and renewal hearings could be held in November with a final hearing on non-renewal in December. This could be difficult with Thanksgiving and Christmas holidays.

