

# Julia Hosford Barnes, P.C.

## Legal Memorandum:

To: PEC  
From: Julia Barnes  
Re: Status of Charter Replication and Charter Management Organizations  
Date: September 5, 2023

The memo outlines the current status of charter school replication and charter management organizations in New Mexico. The PEC may take a broader look at current national practices on replication and charter management organizations at a later time. That review is outside the scope of this memo.

**Charter Replication in New Mexico.** The National Association for Charter Schools Authorizers (NACSA) defines replication as follows:

“Replication” is the practice of a single charter school board or management organization opening several more schools that are each based on the same school model.

[http://qualitycharters.org/wp-content/uploads/2015/11/PolicyGuide\\_CharterSchoolReplication\\_2009.07.pdf](http://qualitycharters.org/wp-content/uploads/2015/11/PolicyGuide_CharterSchoolReplication_2009.07.pdf)

Historically, across the country and in New Mexico, the initial charter school laws assumed that there would be separate, stand-alone charter schools approved by an authorizer. The idea of replication or “charter networks” was not really contemplated at that time. Several states, like New York, have modified their charter school law and charter authorizing policies to allow for a successful program to replicate. This has generally been done through a statutory change and then the adoption of authorizer policies and procedures to address the issues that are raised in authorizing a replication process.

New Mexico has *not* changed its charter laws and allows only very limited replication. For example, the following provisions in the Charter School Act require that a school file an independent charter school application even if it is based on a similar school model as another:

22-8B-4B.	References “a charter school” and outlines the requirements for a governing board to govern the school
22-8B-4C.	Requires a charter school to be responsible for its own operation, contracting for services and personnel matters.
22-8B-6	Requires each charter organizer to file an intent to open a charter school and file an application about that independent school

Replication is allowed in a limited way within a school district:

22-8B-4L	Allows a chartering authority to allow a single charter school to maintain separate facilities at two or more locations, but only within the same school district.
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Replication in other states is often provided through a Charter Management Organization (either with a profit or non-profit status.) New Mexico prohibits a for-profit entity to provide for the management of the charter school. *See* 22-8B-4R, NMSA 19878. New Mexico also has a charter school cap for smaller school districts that could limit replication in those smaller school districts. 22-8B-6H., NMSA 1978

Other states that have moved towards replication have looked at, and addressed, issues in their laws and charter authorizing practices, such as:

- Making statutory changes to allow replication or encourage high-performance results;
- Defining how the school/network that can be allowed to replicate (often based on existing charter performance)
- Establishing a merger or consolidation process of existing charter schools;
- Looking at whether to charter a network, not just a single school;
- Determining renewal issues related to schools within a replication network if the results differ between school sites;
- Looking at how to determine local support and need;
- Looking at how to ensure the success of each replicated school in a network; and
- Identifying whether a network is allowed to take-over a poor performing charter in an attempt to turn-around the low performance.

**Options for Replications Now in New Mexico**

<b><u>Option</u></b>	<b><u>School/charter team action</u></b>	<b><u>PEC action</u></b>	<b><u>Possible change</u></b>
<p><b>Replicate within a district with a second school.</b></p> <p>This is the only “pure” replication process allowed in law. The school must use the same contract terms: i.e. educational plan and goals</p> <p>MAS has done this with their second campus in Albuquerque.</p>	<p>Ensure two locations are allowed in that district and enrollment cap is sufficient</p> <p>Can be done in a new contract or amendment</p>	<p>Approve contract change for a new building and enrollment cap</p>	<p>No legislative or statutory change</p>

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<p><b>Replicate within the school</b></p> <p>A school can “replicate” by increasing the grade levels or enrollment size offered at the school. This is a type of “de-facto replication.”</p> <p>Numerous schools have requested new grade or enrollment increases.</p>	<p>Request a grade expansion and/or ensure that enrollment cap is sufficient.</p> <p>Can be done in a new contract or amendment</p>	<p>Approve contract change for grade expansion and enrollment cap</p>	<p>No legislative or statutory change</p>
<p><b>Replicate outside of the district</b></p> <p>Presentation of an additional new application. At the applicant’s option, it can be the same or different. So, it depends on the applicant as to whether or not the replication is exact or modified.</p> <p>An applicant could submit an entirely different application even with the same founding members.</p> <p>Explore RR and Explore LC are examples of this type of new school application replicating another</p>	<p>A new charter application must be submitted. It can be done through any group since the statute allows anyone to present a new charter application.</p> <p>Details are left to the school.</p>	<p>The PEC reviews the application as they do any other.</p> <p>One key is presenting that this new charter is in the best interest of that community.</p>	<p>Nationally, there are lots of models to standardize this.</p> <p><u>Examples of things looked at</u></p> <ul style="list-style-type: none"> <li>• Approve the CMO who replicates</li> <li>• Criteria for an applicant being able to use a replication application</li> <li>• Expedited application. (If the model works, allows it in other places)</li> </ul> <p>The PEC could approve a replication application without additional authority</p> <p>The PEC could provide a “pre-approval” process for a CMO without additional authority. Then a pre-approved CMO would likely be able to use a replication application.</p>

<u>Option</u>	<u>School/charter team action</u>	<u>PEC action</u>	<u>Possible change</u>
school in another district.			Legislation could encourage/expand replication.

**Charter Management Organizations in New Mexico.**

Management organizations provide an education program and centralized administrative services to a network of schools. They come in two corporate forms: nonprofit charter management organizations and for-profit education management organizations. They can play a role in replication efforts in other states. The Federal Office of Elementary and Secondary Education recently provided grants to several CMOs to provide replication services. (<https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/charter-schools-program-grants-for-replications-and-expansion-of-high-quality-charter-schools/awards/>)

New Mexico only allows for a charter school to hire a charter management organization that is a non-profit entity. *See* 22-8B-4R, NMSA 1978. In 2014, the New Mexico attorney general (Opinion 14-03, <https://nmonesource.com/nmos/ag/en/item/5957/index.do> ) found that a management contract between a virtual school and a for-profit company, for services and program support related to its virtual education curriculum, violated this provision:

Control explicitly granted to K12 over NMVA’s administration and educational program, and the possibility of K12’s assumption of greater responsibility through NMVA’s consent pursuant to the Agreement, conflict with legislative intent under the Charter Schools Act to limit for-profit involvement in the daily functioning of charter schools. Accordingly, we conclude that the services provided by K12 and the relationship created under the Agreement constitute “management of the charter school” under Section 22-8B-4, a violation of the Charter Schools Act.