

Julia Hosford Barnes, P.C.

Legal Memorandum

To: PEC
From: Julia Barnes
Re: Outline of PEC Rule 6.2.9

The Public Education Commission and Public Education Department promulgated a rule related to the PEC procedures that included the following sections:

Topic	Place in rule	Purpose
Procedure – making	6.2.9.8- 6.2.9.10	<p>These sections of the rule set up how the PEC will review and approve its procedures. Generally,</p> <ul style="list-style-type: none">• Procedures are posted effective as of July 1 unless an exceptional or emergency circumstance exists;• Procedures are posted on the PEC website; and• Substantive changes require two working sessions reviews prior to a vote
Record of Performance	6.2.9.11	<p>State Charters are assessed according to their Record of Performance including:</p> <ul style="list-style-type: none">• Charter contract;• Final annual reports;• Annual report notices;• Responses by school to notice;• Intervention ladder;• Renewal application; and• Division’s analysis and school response. <p>As the Record of Performance will be the primary record for the school’s performance, the documents included should meet minimum evidentiary standards such as:</p> <ul style="list-style-type: none">• Identification of those involved in site visits, and on CSD review teams who might later be witnesses consistent with evidentiary rules related to business records and expert testimony;• Clear identification of CSD renewal review staff who may be primary witnesses if a non-renewal hearing is identified consistent with rules related to witnesses with first-hand

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		<p>knowledge or who have fully reviewed the previous business records;</p> <ul style="list-style-type: none"> • Consistent with due process concerns, there should be clear documentation of scoring and rationale for scoring assessments by CSD; and • Consistent with due process concerns, there should be documentation of the school’s opportunity to respond and any responses provided that were not resolved in the process of review.
Annual site visit and annual reports	6.2.9.12	<p>Annual site visits and report are generated generally as follows:</p> <ul style="list-style-type: none"> • Site visit is completed and exit interview provided; • Draft annual report is generated; • CSD determines when it can complete the annual report in part or in final and start the completion process; and • Schools can respond to the CSD assessment. <p>Because the process to finalize an annual report already allows for school input, the reports can be put onto one agenda and accepted by the PEC in the same meeting.</p>
PEC action on annual reports	6.2.9.12 – 6.2.9.13	<p>PEC then</p> <ul style="list-style-type: none"> • accepts the CSD report, • considers the school responses and • then issues an annual report notice and action under the intervention ladder.
PEC new school application review	NMSA 22-8B-8, 6.2.9.15 And 6.80.4.12	<p>Details for all new applicants to any type of authorizer are in law (22-8B-8) and 6.80.4.12</p> <p>For a new application, the following steps take place:</p> <ul style="list-style-type: none"> • CSD provides a preliminary analysis on a time-line provided by the PEC; • The applicant can respond within 10 days; • PEC provides a issues of concern or request for more information 30 days out; • CSD provides a final recommendation within 7 days; and • PEC approves at a public meeting and notifies in writing
PEC renewal	6.2.9.16 and 6.80.4.13	<p>Details for renewing school are set forth in two rules.</p> <p>The PEC rule allows for two types of hearings – one less formal where non-renewal has not been identified or in a less formal hearing where non-renewal is an option. A school must request a non-renewal hearing and then a more formal process of providing evidence to the PEC is followed.</p>

		<p>The more formal process considers the record of performance, witness testimony and any new information to be provided.</p> <p>The PEC decision is subject to appeal to the Secretary as set forth in rule.</p> <p>As the Record of Performance will be the primary record for the school’s performance, the documents included should meet minimum evidentiary standards such as:</p> <ul style="list-style-type: none"> • Identification of those involved in site visits, and on CSD review teams who might later be witnesses consistent with the information provided in annual audits by the state auditor, evidentiary rules related to business records and expert testimony; • Clear identification of CSD renewal review staff who may be primary witnesses if a non-renewal hearing is identified consistent with rules related to witnesses with first-hand knowledge or who have fully reviewed the previous business records; • Consistent with due process concerns, there should be clear documentation of scoring and rationale for scoring assessments by CSD; and • Consistent with due process concerns, there should be documentation of the school’s opportunity to respond and any responses provided that were not resolved in the process of review.
<p>Revocation</p>	<p>6.2.9.17</p>	<p>Revocation procedures are similar to a non-renewal hearing process and allow for presentation of the case, witnesses and additional information.</p> <p>The PEC decision is subject to appeal to the Secretary as set forth in rule.</p> <p>As the intervention ladder and other intervention efforts and Record of Performance will be the primary record for possible revocation, the documents included should meet minimum evidentiary standards such as:</p> <ul style="list-style-type: none"> • Identification of those involved in site visits, and on CSD intervention teams who might later be witnesses consistent with information provided in annual audits by the state auditor, evidentiary rules related to business records and expert testimony; • Clear identification of CSD renewal review staff who may be primary witnesses if a revocation hearing is identified

		<p>consistent with rules related to witnesses with first-hand knowledge or who have fully reviewed the previous business records;</p> <ul style="list-style-type: none">• Consistent with due process concerns, there should be clear documentation of scoring and rational for scoring assessments by CSD in the record of performance; and• Consistent with due process concerns, there should be documentation of the school's opportunity to respond and any responses provided that were not resolved in the process of review.
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