

Julia Hosford Barnes, P.C.

Legal Memorandum

To: PEC
From: Julia Barnes
Re: **Outline of PEC Rule 6.2.9.14 and 22-8B-12.2 - PEC Tribal Consultation**
Date: November 16, 2023

This memo outlines the PEC process for complying with tribal consultation when non-renewal or revocation are “contemplated.” The rule requires that the public meeting outlined below be complied with *prior to* a PEC decision. Because it is unknown if the PEC will make a non-renewal decision at a renewal hearing, the following steps should be taken:

- 1) Prior to the meeting, the Chair should
 - a. reach out to the appropriate tribal liaison for any Nation, tribe or pueblo associated with a school that meets the requirements for school/tribal consultation and
 - b. identify the renewal or revocation process that is upcoming and identify in writing where information is found regarding the process and the date and time of the PEC meeting which will contain a tribal consultation item.
- 2) At the public meeting for renewal, there should be an agenda item where CSD and the school should be asked to prepare answers to the questions in D in the event that/as if non-renewal will be the outcome prior to a PEC decision.
- 3) At the public meeting where a notice of intent to revoke may be issued, there should be an agenda item where CSD and the school should be asked to prepare answers to the questions in D in the event that/as if non-renewal will be the outcome prior to a PEC decision.

22-8B-12.2. Charter schools; proposals to open or close a public school on tribal land; consultation with tribal leaders and members and families of students.

C. Whenever a charter school authorizer is contemplating closing a charter school on tribal land, for any reason, it shall consult with tribal leaders and members and families of students attending the charter school.

D. Consultation shall include, among other actions, open meetings in which the charter school authorizer and the head administrator of the charter school explain:

- (1) the reasons for closing the charter school;
- (2) the reasons why the charter school has not or cannot provide additional resources to keep the charter school open;
- (3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;
- (4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:

- (a) culturally and linguistically responsive school policies;
- (b) rigorous and culturally meaningful curricula and instructional materials;
- (c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and
- (d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;

(5) how the educational outcomes for the Indian students will be improved by attending another public school;

(6) plans for the public school buildings that will be left empty by the closure; and

(7) any other matters the charter school governing body and head administrator believe provide an adequate explanation of the reasons for closing the charter school.

Where this issue is found in the context of the entire rule

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 |
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| 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 |
| <p>Record of Performance</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. | 6.2.9.11 | <p>State Charters are assessed according to their Record of Performance.</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.</p> |
| Annual site visit and annual reports | 6.2.9.12 | Annual site visits and report are generated generally as follows: |

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| | | <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/or 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>There is a timeline provided that allows transparency of CSD review and applicant response. PEC provides a letter of issues and questions to the applicants prior to the hearing.</p> |
| PEC renewal | 6.2.9.16 and 6.80.4.13 | <p>Details for renewing school are set forth in two rules.</p> <p>There is a timeline provided that allows transparency of CSD review and applicant response. PEC provides a letter of issues and questions to the applicants prior to the hearing</p> <p>The PEC rule allows for two types of hearings – one less formal where non-renewal has not been identified or in a more formal hearing where non-renewal is an option.</p> <ul style="list-style-type: none"> • A school must request a non-renewal hearing and then a more formal process of providing evidence to the PEC is followed. • The more formal process considers the record of performance, witness testimony and any new information to be provided. The PEC decision is subject to appeal to the Secretary as set forth in rule. • As the Record of Performance will be the primary record for the school’s performance, the documents included should meet minimum evidentiary standards. |
| Revocation | 6.2.9.17 | <p>Revocation procedures are similar to a non-renewal hearing process and allow for presentation of the case, witnesses and additional information.</p> |

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| | | <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. The PEC decision is subject to appeal to the Secretary as set forth in rule.</p> |
| <p>Revocation and non-renewal:</p> <p>Tribal consultation</p> | <p>6.2.9.14</p> | <p><i>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.</i></p> <p>This provision interprets the New Mexico Charter School law to mean that the input on a possible closure has to be provided prior to the decision on closure. For both non-renewal and revocation, it is unknown prior to the hearing on non-renewal or revocation whether or not that motion will be made or what the vote of the commission will be on such a motion.</p> <p>The statute assumes that closure is being looked at as a true possibility. Because that is not always the case, but could be the result, in order to comply with the tribal consultation, both CSD and the school should be asked to address the listed items in NMSA 22-8B-12.2 D as if the school closure could happen at the open meeting where the renewal or intent to revoke motions could be made.</p> |