

Julia Hosford Barnes, P.C.

Legal Memorandum

To: PEC
From: Julia Barnes
Re: **Outline of PEC Rule 6.2.9.9 and 10 – Out-of-Cycle Procedures**
Date: November 16, 2023

This memo outlines the PEC process for considering an out-of cycle procedure (with a start date different than July 1)

The PEC rule (NMAC 6.2.9) contains procedures for changing protocols. In general, these take effect the next July regardless of when they are finalized by PEC. There are two exceptions to the July effective date. Where there are:

- 1) exceptional circumstances requiring immediate change or implementation. (NMAC 6.2.9.9) or
- 2) exceptional or emergency circumstances exist as determined by the commission (NMAC 6.2.9.10)

The PEC is looking at changes to the new school application now and adding questions related to applications that want to replicate a model and use the history of that model to support the application. Notices of Intent are due in January and the applicants will then begin to prepare a charter school application after that for submittal in June.

Because there was an application in the last cycle that sought to apply and replicate a model and more of those types of applications may be submitted again this year, this is an “exceptional” circumstance that would allow the document to have an effective date of January 2024. Given that the PEC has determined that it would like to add additional questions on this topic and the document will be completed before Notices of Intent are due, this is reasonable under either 6.2.9.9 or 6.2.9.10.

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
Procedure – making	6.2.9.8-6.2.9.10	These sections of the rule set up how the PEC will review and approve its procedures. Generally, <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	State Charters are assessed according to their Record of Performance.

<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.</p>
<p>Annual site visit and annual reports</p>	<p>6.2.9.12</p>	<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>
<p>PEC action on annual reports</p>	<p>6.2.9.12 – 6.2.9.13</p>	<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.
<p>PEC new school application review</p>	<p>NMSA 22-8B-8, 6.2.9.15 And 6.80.4.12</p>	<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>
<p>PEC renewal</p>	<p>6.2.9.16 and 6.80.4.13</p>	<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.

		<ul style="list-style-type: none"> • 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> <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>