

Julia Hosford Barnes, P.C.

Legal Memorandum

To: PEC
From: Julia Barnes
Re: **Outline of PEC Rule 6.2.9.12.D - PEC Action of Annual report**
Date: November 16, 2023

This memo outlines the PEC process for accepting the annual report and sending out an annual report notice.

Overall, CSD finalizes the annual report, PEC approves it and issues a notice related to performance. The rule provides a “preference” for the school to improve performance and report to CSD on progress through the annual reporting cycle. Uncorrected unsatisfactory performance is given greater scrutiny in later years. More serious options, like action under the intervention including revocation, are available, but are intended to be reserved for more serious circumstances.

The **step-by-step process** is outlined in 6.2.9.12.D. and is generally as follows:

- 1) The PEC first accepts the finalized annual report from CSD.
 - a. Included in the report is a recommendation from CSD on the type of notice for the PEC to issue.
 - b. That report must also contain the school’s response if provided. This becomes part of the record of performance.
 - c. Because the report is from CSD, the PEC does not change the report or modify it.
- 2) The PEC next votes on its annual notice in a public meeting
 - a. The Chair then provides written notice to the school.
 - b. The letter to the school must “reference the annual report which identifies the unsatisfactory performance requiring corrective action with sufficient specificity such that the state charter school can take appropriate measures to correct its performance.”
 - c. The letter becomes part of the record of performance.
 - d. If CSD has recommended a notice of exemplary or satisfactory performance (which implies that the school would not have had notice of a concern), and PEC does not follow that recommendation and either issues an overall notice of unsatisfactory performance or notice of intervention action, the school can provide a written response or ask for reconsideration at the next PEC meeting.
- 3) There are five types of notices:
 - (1) Notice of exemplary performance;
 - (2) Notice of satisfactory performance;
 - (3) Notice of unsatisfactory performance;
 - (4) Notice of uncorrected unsatisfactory performance; or
 - (5) Notice of action to be initiated under the intervention ladder.

While not expressly in the rule, I believe that the PEC can issue a notice of exemplary

performance or satisfactory performance that still identifies a subcategory that is unsatisfactory and should be remedied. “Notice of unsatisfactory performance” as an overall designation would be used for school with numerous issues of concern and could result in action under the intervention ladder.

- 4) CSD then monitors the school and any unsatisfactory performance and includes an update in the next annual report. The previous annual report is not changed if the performance is correct. However, the next annual report will clearly outline the improvement.

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 <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	State Charters are assessed according to their Record of Performance. As the Record of Performance will be the primary record for the school’s performance, the documents included should meet minimum evidentiary standards.
Annual site visit and annual reports	6.2.9.12	Annual site visits and report are generated generally as follows: <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.

		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.
PEC action on annual reports	6.2.9.12 – 6.2.9.13	PEC then <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	Details for all new applicants to any type of authorizer are in law (22-8B-8) and 6.80.4.12 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.
PEC renewal	6.2.9.16 and 6.80.4.13	Details for renewing school are set forth in two rules. 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 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. <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	Revocation procedures are similar to a non-renewal hearing process and allow for presentation of the case, witnesses and additional information. 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.