

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 80       ALTERNATIVE EDUCATION - CHARTER SCHOOLS**  
**PART 4            CHARTER SCHOOL APPLICATION AND APPEAL REQUIREMENTS**

**6.80.4.1            ISSUING AGENCY:** Public Education Department, hereinafter the department.  
[6.80.4.1 NMAC - Rp, 6.80.4.1 NMAC, 6/29/2007; A, 9/29/2020]

**6.80.4.2            SCOPE:** This rule shall apply to applicants and operators of start-up charter schools and previously authorized conversion schools.  
[6.80.4.2 NMAC - Rp, 6.80.4.2 NMAC, 6/29/2007]

**6.80.4.3            STATUTORY AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, 22-8-1 et seq., and 22-8B-1 et seq. NMSA 1978.  
[6.80.4.3 NMAC - Rp, 6.80.4.3 NMAC, 6/29/2007; A, 9/29/2020]

**6.80.4.4            DURATION:** Permanent  
[6.80.4.4 NMAC - Rp, 6.80.4.4 NMAC, 6/29/2007]

**6.80.4.5            EFFECTIVE DATE:** June 29, 2007, unless a later date is cited at the end of a section.  
[6.80.4.5 NMAC - Rp, 6.80.4.5 NMAC, 6/29/2007]

**6.80.4.6            OBJECTIVE:** To establish the initial application and renewal process for charter schools, whether locally or state chartered, the appeal process of charter schools to the secretary of education and the secretary of education's review process.  
[6.80.4.6 NMAC - Rp, 6.80.4.6 NMAC, 6/29/2007]

**6.80.4.7            DEFINITIONS:**

**A.            "Applicant"** means one or more teachers, parents, or community members or a public postsecondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

**B.            "Application for start-up charter school"** means an application requesting the establishment of either a locally chartered or state-chartered charter school.

**C.            "Authorizer"** means either a local school board or the commission that permits the operation of a charter school.

**D.            "Charter school"** means a conversion school or start-up charter school authorized by a chartering authority to operate as a public school.

**E.            "Chartering authority"** means either a local school board or the commission that permits the operation of a charter school.

**F.            "Commission"** means the public education commission.

**G.            "Conversion school"** means an existing public school within a school district that was authorized by a local school board or the commission to become a charter school prior to July 1, 2007.

**H.            "Days"** means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more. In computing the amount of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the department is closed, the period continues to run until the end of the next business day that the department is not closed. Whenever a person or entity shall act under this rule within a prescribed period after service of a notice or paper upon the person or entity, and the notice or paper is served by mail or courier service, three calendar days are added to the prescribed period.

**I.            "Division"** means the charter schools division of the department.

**J.            "Governing body"** means the governing structure of a charter school as set forth in the charter school's charter.

**K.            "Head administrator"** means the duly licensed school administrator who is the director of the charter school, which is the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.

**L.            "Locally chartered charter school"** means a charter school authorized by a local school board.

**M.** “**MEM**” means membership, which is the total enrollment of qualified students on the current roll of a class or school on a specified day.

**N.** “**Organizer**” means one or more persons or entities who seek to arrange, form, or otherwise establish a charter school.

**O.** “**Prospective applicants**” means one or more teachers, parents, or community members or a public post-secondary educational institution or nonprofit organization who submits a notice of intent to a chartering authority.

**P.** “**Secretary**” means the New Mexico secretary of public education.

**Q.** “**Start-up charter school**” means a public school developed by one or more parents, teachers, or community members who applied to and were authorized by a chartering authority to become a charter school.

**R.** “**Special education plan**” means a comprehensive written design or method that includes specific details on how the charter school shall:

(1) utilize state and federal funds to provide children with disabilities a free and appropriate public education, in accordance with applicable law;

(2) provide educational services, related services, and supplementary aids and services to children with disabilities in accordance with each child’s individualized education program; and

(3) address a continuum of alternative educational placements to meet the needs of students with disabilities, in accordance with applicable law.

**S.** “**State-chartered charter school**” means a charter school authorized by the commission. [6.80.4.7 NMAC - Rp, 6.80.4.7 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018; A, 9/29/2020]

#### **6.80.4.8 NOTICE OF INTENT TO ESTABLISH A CHARTER SCHOOL:**

**A.** The organizers of a proposed charter school shall provide a signed written notification to the commission and the school district in which the charter school is to be located of the organizers’ intent to establish a charter school. The date for submitting a notice shall be no later than the second Tuesday of January of the year in which the prospective applicant plans to submit an application.

**B.** Written notification to the commission shall be made to the division written notification to a local school board shall be made to the superintendent of that school district who shall provide copies of the written notification to the local school board during a duly noticed board meeting.

**C.** If the second Tuesday of January falls on a legal holiday, the written notification shall be timely if personally delivered on the first day following the legal holiday that the division or office of the pertinent superintendent is open for business. Notice will also be considered timely if it is postmarked four calendar days prior to the second Tuesday of January, regardless of the date on which it is received. Failure to provide timely written notification may result in an application being rejected unless the organizers can demonstrate good cause why timely written notification was not given.

[6.80.4.8 NMAC - N, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 9/29/2020]

**6.80.4.9 CONTENTS OF APPLICATION FOR START-UP CHARTER SCHOOL:** A charter school application shall be a proposed agreement between the chartering authority and the charter school and shall include the following:

**A.** The mission statement of the charter school;

**B.** The goals, objectives, and student performance outcomes to be achieved by the charter school;

**C.** A description of the charter school’s educational program, student performance standards, and curriculum that meets or exceeds the department’s educational standards and shall be designed to enable each student to achieve those standards.

**D.** A description of the way a charter school’s educational program will meet the individual needs of students, particularly those students determined to be at risk, including Native American students, economically disadvantaged students, students with disabilities, and English learners, and which will include the following:

(1) suggested modifications to the proposed educational program to meet individual student needs, such as bilingual, limited English proficient, and special education;

(2) an outline of a special education plan, the final plan of which shall be completed and submitted to the charter authorizer by the end of the planning year;

(3) how the charter school will provide access to other services including but not limited to counseling and health;

(4) assurances that the charter school will establish an executive director’s equity council with members selected from the charter school community in an open and transparent process; and

(5) assures the charter school head administrator and governing body, in consultation with the school equity council, will develop a culturally and linguistically relevant framework to help prepare students for college, career, and civic life through support of students' identities, and holistic development, including social, emotional, and physical wellness.

**E.** A description of the charter school's plan for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards, and the school's student performance standards, the timeline for achievement of the standards, and the procedures for taking corrective action in the event that student performance falls below the standards.

**F.** Assurances that the charter school will be economically sound, including the submission of a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted;

**G.** An assurance that the fiscal management of the charter school will comply with all applicable federal and state laws and rules related to fiscal procedures;

**H.** The names of the members of the governing body and a description of the operation of the charter school, including:

- (1) the method of selecting the governing body;
- (2) the qualifications and terms of members, the filling of vacancies, and the procedures for changing governing body membership; and
- (3) the nature and extent of parental, professional educator, and community involvement in the governance and the operation of the school.

**I.** An explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any;

**J.** The employment and student discipline policy of the proposed charter school;

**K.** A proposed agreement between the charter school and the authorizer regarding their respective legal liability and applicable insurance coverage;

**L.** A description of how the charter school plans to meet the transportation and food service needs of its students;

**M.** A description of both the discretionary waivers and the waivers provided for in Section 22-8B-5 NMSA 1978 that the charter school is requesting or that will be provided from the local school board or the department and the charter school's plan for addressing and using these waiver requests; and

**N.** A description of the facilities the charter school plans to use; including an assurance that the facilities will meet the standards required in Section 22-8B-4.2 NMSA 1978.

[6.80.4.9 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008; A, 9/29/2020]

#### **6.80.4.10 TERM OF A CHARTER:**

**A.** A charter may be approved for an initial term of six years, provided that the first year shall be used exclusively for planning and not for completing the application. The planning year shall be the fiscal year in which the charter is authorized, beginning on the July 1 date on which applications were due and ending on June 30, regardless of the number of months that may be available to a charter school for planning activities.

**B.** A charter may be renewed for successive periods of five years each unless a lesser period is agreed to in writing by the charter school and its authorizer. The five years of the charter will commence on July 1 of the fiscal year after the charter was approved by its authorizer and shall align with the dates of the fiscal year.  
[6.80.4.10 NMAC - N, 6/29/2007]

#### **6.80.4.11 REQUIREMENTS DURING THE PLANNING YEAR:**

**A.** For charter schools approved prior to July 1, 2010, prior to the end of its planning year, a newly authorized charter school shall demonstrate to the authorizer that its facilities meet the educational occupancy standards required by applicable New Mexico construction codes. For charters approved on or after July 1, 2015, prior to the end of its planning year, the charter school shall demonstrate to its authorizer that its facilities meet the relevant requirements for schools as set forth in Subsection C of Section 22-8B-4.2 NMSA 1978.

**B.** A charter school shall simultaneously notify the public school capital outlay council and its authorizer in writing of its readiness to demonstrate that its facilities meet the referenced educational occupancy standards.

**C.** The public school capital outlay council shall determine whether a charter school's facilities meet established educational occupancy standards, and if not, whether specific requirements are inappropriate or

unreasonable for a charter school. If the public school capital outlay council determines that specific requirements of the referenced educational occupancy standards are inappropriate or unreasonable for a charter school, it may grant a variance. The public school capital outlay council shall provide written notification of its decision and the reasons thereto simultaneously to the charter school and its authorizer.

**D.** Prior to the end of its planning year, a state chartered charter school shall demonstrate that it has qualified as a board of finance and that it has satisfied any conditions imposed by the commission before commencing full operation for the remainder of its charter term.

**E.** Prior to the end of its planning year, the state-chartered charter schools shall apply to the commission for authorization to commence full operations. If the commission refuses to issue the authorization to commence full operation, it shall provide its reasons in writing which shall be limited to the reasons set forth in Subsection D of 6.80.4.11 NMAC.

[6.80.4.11 NMAC - N, 6/29/2007; A, 6/30/2008; A, 6/30/2009]

#### **6.80.4.12 INITIAL REQUIREMENTS AND REVIEW PROCESS FOR START-UP CHARTER SCHOOLS:**

**A.** Local school boards may approve the establishment of charter schools to be located in their respective school districts. The commission may approve the establishment of a charter school to be located anywhere in the state.

**B.** An applicant shall apply to only one chartering authority at a time. An applicant whose application has been denied by a chartering authority or approved with amendments unacceptable to the applicant may file the same application the following fiscal year with a different chartering authority.

**C.** Applications for start-up charter schools shall be submitted between June 1 and July 1 to be eligible for consideration for the following fiscal year. If July 1 falls on a Saturday or a Sunday, the deadline for filing applications shall be extended to the close of business of the ~~very~~ next Monday, even in the case of a school district closed for summer break. Applications will also be considered timely if they are postmarked four calendar days prior to July 1, regardless of the date on which they are received. Failure to submit a timely application shall result in an application being rejected by the authorizer, unless the parties agree to waive the filing deadline in accordance with Section 22-8B-6 NMSA 1978. Any such waiver shall be in writing and signed by persons authorized to take such action by the applicant and the chartering authority.

**D.** Enrollment in a start-up charter school shall be guided by the following.

(1) A charter applicant shall enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available.

(2) A charter applicant shall advertise its enrollment process using newspapers, bulletin boards, and other methods designed to disseminate its availability to seek student enrollment and to ensure that there is equal opportunity for all parents and students to learn about the school and apply.

(3) A charter school shall not charge tuition or have admission requirements, except as otherwise provided in the Public School Code, Sections 22-1-1 et seq., NMSA 1978.

(4) In subsequent years of its operation, a charter school will give enrollment preference to previously properly admitted students who remain in attendance and siblings of students already admitted to or attending the school.

**E.** Any revision or amendment to the terms of the charter contract may be made only with the written approval of the authorizer.

**F.** A charter school shall be a nonsectarian, nonreligious, and non-home-based public school that operates within the geographic boundaries of a school district.

**G.** A charter school shall comply with the following federal laws: Age Discrimination Act of 1975; Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and Part B of the Individuals with Disabilities Education Act.

**H.** A charter school shall comply with the same federal and state audit requirements as do other public schools in the state.

**I.** A charter school shall meet all applicable federal, state, and local health and safety requirements.

**J.** A charter school shall operate in accordance with and under authority of state law.

**K.** A charter school shall provide equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

**L.** A charter school shall have an admissions process that does not discriminate against anyone on the basis of race, gender, national origin, color, disability, or age.

**M.** A charter school's head administrator or governing body shall not employ or approve the employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, or sister-in-law of a member of the governing body or the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.

**N.** Applications to the commission for establishment of a state-chartered charter school shall be made to the division. Applications to a local school board for establishment of a locally chartered charter school shall be made to the superintendent of that school district.

**O.** An application for a start-up school may be made by one or more teachers, parents, community members, by a public postsecondary educational institution, or a nonprofit organization.

**P.** The chartering authority shall be responsible for reviewing all applications for charter schools. Prior to the submission of the applications, the division shall provide at least three technical assistance workshops for prospective applicants on preparing a start-up application. The chartering authority shall not charge application fees.

**Q.** A review coordinator shall be used by the chartering authority to assist prospective applicants in the preparation of proposed charters. The director of the division shall designate a review coordinator in the division for the commission. The superintendent shall appoint a review coordinator for the local school board, unless the superintendent of a school district performs this duty. Prior to the deadline for submission of applications established by the chartering authority, the review coordinator or superintendent and any prospective applicants shall confer in an attempt to identify:

(1) any concerns regarding noncompliance with requirements of the Charter Schools Act (Sections 22-8B-1 et seq., NMSA 1978), this rule, or other applicable state or federal laws or rules which would arise from the establishment or operation of the proposed charter school;

(2) any licensure, curriculum, or other educational concerns which would arise from the establishment or operation of the proposed charter school; and

(3) any interests of the students, the school district, or the community which would be adversely affected by the establishment or operation of the proposed charter school and describe the apparent adverse effects.

**R.** Prospective applicants are to direct any request for technical assistance and information through the authorizer's designated review coordinator. The review coordinator or superintendent shall ensure that the appropriate staff members respond to requests from prospective applicants for information on school operations, policies, or practices which prospective applicants regard as necessary to enable them to present an approvable application. Prospective applicants may request information using the Inspection of Public Records Act Sections 14-2-1 et seq. NMSA 1978. A review coordinator may require that requests for information not made pursuant to the Inspection of Public Records Act be in a format or directed to a specific person or office in the school district or department. Prospective applicants should not contact school district or department employees directly to obtain information.

**S.** Prior to the public meeting at which the decision is made, the chartering authority shall hold at least one public hearing to obtain information and community input to assist it in its decision whether to grant a charter school application. At any such hearing, which shall be duly noticed and held pursuant to the Open Meetings Act Sections 10-15-1 et seq. NMSA 1978 and the requirements contained in the Section 22-8B-6 NMSA 1978, members of the chartering authority may ask questions of the charter applicant and that applicant shall have an opportunity, subject to reasonable time limitations, to respond to any questions or concerns raised by any members of the chartering authority, and present to the chartering authority information that clarifies and verifies the information in the application that the applicant believes will assist the chartering authority in making its decision. Community input may include written or oral comments in favor of or in opposition to the application by the applicant, members of the local community, and other interested individuals. Community input shall be provided within a time limit established by the chartering authority.

**T.** A charter applicant shall respond to requests for information that the chartering authority regards as necessary to verify and clarify issues identified in the charter application. The charter applicant and the chartering authority shall communicate in good faith in an attempt to verify and clarify issues identified in the charter application.

**U.** No earlier than three days after the public hearing to obtain information and community input, the chartering authority shall rule on the application in a public meeting. The public meeting at which the decision is made shall be held by September 1. The charter applicant and the chartering authority may, however, jointly waive the September 1 deadline provided they do so in a signed written statement. If not ruled upon by September 1, or

the stipulated deadline, the charter application will be automatically reviewed by the secretary pursuant to the applicable provisions of Section 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

**V.** A chartering authority may approve, approve with conditions, or deny an application. A chartering authority may deny an application where:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act Sections 22-8B-1 et seq. NMSA 1978;
- (3) the proposed head administrator or other administrative or fiscal persons were involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal member was discharged from a public school for fiscal mismanagement;
- (4) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978;
- (5) for a proposed state-chartered charter school, it does not request the governing body to be designated as a board of finance, or the governing body does not qualify as a board of finance;
- (6) for a proposed charter school on tribal land, it fails to receive approval from the tribal government prior to the authorizer's decision on the proposed charter school; or
- (7) the application is otherwise contrary to the best interests of the charter school's projected students, the local community, or the school district in whose geographic boundaries the applicant seeks to operate.

**W.** If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or imposition of conditions in writing within 14 days of the meeting. The written decision shall be based upon the vote that was taken at the public meeting and reflect the stated reasons for the vote of the chartering authority to deny a charter school application or approve the application with conditions. The written decision shall include specific reference to those reasons enumerated in Subsection V of 6.80.4.12 NMAC as well as a detailed explanation of the reason(s) that formed a basis for denial of the application, or approval with conditions, on a form developed by the department. If the chartering authority grants a charter, it shall deliver the approved charter to the applicant. The time within which to file notice of appeal shall commence upon receipt of the written denial. The chartering authority shall maintain a copy of the charter for its files.

**X.** If the approved charter contains a waiver request for release from department rules or the Public School Code, the applicant ~~must~~ shall follow the procedures on requesting waivers from the department. The department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

**Y.** If the authorizer denies a charter school application or imposes conditions for approval that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978 and Section 6.80.4.14 NMAC.

[6.80.4.12 NMAC - Rp, 6.80.4.9 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 9/29/2020]

#### **6.80.4.13 CHARTER SCHOOL RENEWAL PROCESS AND RENEWAL APPLICATIONS:**

**A.** The governing body of a charter school seeking to renew its charter shall file its renewal application with a chartering authority no earlier than 270 days prior to the date the charter expires. Commencing with any charters that are due to expire at any time after January 1, 2008, all applications for renewal shall be submitted no later than October 1 of the fiscal year prior to the expiration of the school's charter. The chartering authority shall rule in a public meeting on the renewal application no later than January 1 of the fiscal year in which the charter expires.

**B.** The governing body may submit its charter renewal application to either the commission or to the local school board of the school district in which the charter school is located, but may not submit the renewal application to both authorizers simultaneously.

**C.** The application shall contain:

- (1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards, and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act (Sections 22-2C-1 et seq., NMSA, 1978);
- (2) a financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public, that will allow comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) any changes to the original charter the governing board is requesting and any amendment to the initial charter, which were previously approved;

(4) a certified petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a certified petition in support of the charter school renewing its charter status signed by at least seventy-five percent of the households whose children are enrolled in the charter school as identified in the school's 120-day report of the fiscal year prior to the expiration of the charter;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978;

(7) a statement of the term of the renewal requested, if less than five years; if a charter school renewal application does not include a statement of the term of the renewal, it will be assumed that renewal is sought for a term of five years; and

(8) for charter schools located on tribal land, documentation of ongoing tribal consultation pursuant to Section 22-8B-12.2 NMSA 1978 and applicable federal laws and rules.

**D.** A chartering authority may refuse to renew a charter if it determines that:

(1) the charter school committed a material violation of any of the conditions, standards, or procedures set forth in the charter contract;

(2) the charter school failed to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards.

(3) the charter school failed to meet generally accepted standards of fiscal management;

(4) the charter school violated any provision of law from which the charter school was not specifically exempted;

(5) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978; or

(6) for a charter school located on tribal land, the charter school failed to comply with ongoing tribal consultation pursuant to Section 22-8B-12.2 NMSA 1978, Paragraph (8) of Subsection C of 6.80.4.13 NMAC, or applicable federal laws and rules.

**E.** If the chartering authority refuses to approve a charter school renewal application or approves the renewal application with conditions, it shall state its reasons for the non-renewal or imposition of conditions in writing within 14 days of the public meeting at which the vote was taken. The written decision shall restate the motion that was voted on in the public meeting and shall restate the reasons that were voted on in the public meeting during which the vote was taken. The written decision shall include specific reference to those reasons enumerated in Subsection D of 6.80.4.13 NMAC as well as a detailed explanation of the reason(s) that formed a basis for denial of the application, or approval with conditions, on a form developed by the department.

**F.** If the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the chartering authority.

**G.** If the approved charter contains a waiver request for release from department rules or the Public School Code, the department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

**H.** If the authorizer refuses to approve a charter school renewal application or imposes conditions for renewal that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Sections 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

**I.** The chartering authority and charter school shall consult with the tribe(s), pursuant to Subsections C and D of Section 22-8B-12.2 NMSA 1978, prior to the suspension, revocation, or non-renewal of a charter school located on tribal land.

**J.** The provisions of this section shall apply to conversion schools.  
[6.80.4.13 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018; A, 9/29/2020]

#### **6.80.4.14 APPEALS TO THE SECRETARY:**

**A.** Right of appeal. A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC.

**B.** Notice of appeal and appellant's argument in support of appeal.

(1) Filing and service of notice and argument in support of appeal. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal, or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal and its argument in support of appeal within 30 days after service of the chartering authority's decision. One original plus four copies of the notice of appeal and argument in support of appeal together with the required attachments shall be filed with the secretary at the department's main office in Santa Fe. No notice of appeal or argument in support of appeal, including exhibits or required attachments, shall be filed using compact disks, floppy disks, or email; instead, paper documents shall be filed with the department.

(2) Appellant's argument in support of appeal. The appellant's argument in support of appeal shall include a statement of the reasons and argument in support of why the appellant contends the chartering authority's decision was in error with reference to the standards set forth in Subsection B of Section 22-8B-7 NMSA 1978 that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer's written reasons for denial, nonrenewal, revocation, or imposition of conditions.

(3) Required attachments. The appellant shall attach to each copy of the notice of appeal:

(a) a copy of the chartering authority's written decision, together with a copy of the authorizer's minutes or draft minutes of the meeting if available; and

(b) a copy of the charter or proposed charter in question.

C. Filing and service of other documents. An original document shall be filed with the secretary at the department's main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party's address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC, by email to the secretary provided that the email includes any attachments, as well as the sender's name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

D. Pre-hearing procedures.

(1) Within 10 days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time, and location for the appeal hearing.

(2) Except for brief inquiries about scheduling, logistics, procedure, or similar questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary shall disqualify himself or herself from hearing an appeal if the secretary determines, after learning of a prohibited communication, that the secretary is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Paragraph (1) of Subsection D of 6.80.4.14 NMAC.

(3) All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority's decision in light of the grounds upon which the chartering authority denied the application, as set forth in Subsection M of Section 22-8B-6 NMSA 1978 or the grounds for non-renewal or revocation as set forth in Subsection K of Section 22-8B-12 NMSA 1978, and the standards for affirmance or reversal that the chartering authority's decision was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with the law.

(4) Within 15 days of the mailing date of the appellant's notice of appeal and reasons to the chartering authority, the chartering authority shall file one original copy and four copies with the secretary and serve upon the appellant one copy of the chartering authority's response to the appellant's arguments.

(5) While an appeal is pending, the parties are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.

E. Secretary hearing and decision.



(1) Within 60 days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority, and the division and other department staff as appropriate.

(3) The time allotment for a hearing shall be three hours. Both parties shall be allowed up to 30 minutes for their presentations. Department staff shall be allowed 20 minutes for their presentation. The appellant may reserve part of its 30 minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority, and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their 30 minutes but shall include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions, or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties, or the secretary's counsel at any time and may take up to one hour after the staff's and the parties' presentations for further questions, discussion, and a decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which shall be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection M of Section 22-8B-6; Subsections B, C, or E of Section 22-8B-7; and Subsection K of Section 22-8B-12 NMSA 1978.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

- (a) acted arbitrarily or capriciously;
- (b) rendered a decision not supported by substantial evidence; or
- (c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application, or revoking a charter if the secretary finds that the decision was based upon a determination by the public school capital outlay council that the facilities of the proposed or existing charter school did not meet the standards required by Section 22-8B-4.2 NMSA 1978 and that the decision was:

- (a) arbitrary or capricious;
- (b) not supported by substantial evidence; or
- (c) otherwise not in accordance with the law.

(7) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**F.** The provisions of this section shall apply to conversion schools.  
[6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/2007; A, 6/30/2008; A, 10/15/2013; A, 12/31/2018; A, 9/29/2020]

#### **6.80.4.15 REVIEW ON THE SECRETARY'S OWN MOTION:**

**A.** The secretary, on the secretary's own motion, may review a chartering authority's decision to grant a charter.

**B.** Within 10 days after the secretary moves to review, the secretary shall issue an appropriate order establishing procedures for the chartering authority and the charter applicant to submit information and arguments for review by the secretary and division staff.

**C.** Within 60 days after the secretary moves to review, the secretary, at a public hearing that may be held in Santa Fe or in the district in which the proposed charter school applied for a charter, shall review the decision of the chartering authority and determine whether the decision was arbitrary and capricious or whether the establishment or operation of the proposed charter school would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978.

**D.** If the secretary determines that the charter would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978, the secretary shall reverse the chartering authority's decision and remand the decision to the chartering authority with instructions to deny the charter application, suspend or revoke the charter.

**E.** The timelines in 6.80.4.15 NMAC may be extended by the secretary for good cause. Good cause may include but shall not be limited to an agreement between the parties, a reasonable request from either party or reasonable consideration of the secretary's previously established meeting schedule.

**F.** A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**G.** The secretary shall promptly serve a copy of the decision on the parties to the proceeding.  
[6.80.4.15 NMAC - Rp, 6.80.4.11 NMAC, 6/29/2007; A, 6/30/2008; A, 10/15/2013]

**6.80.4.16 QUALIFICATION FOR BOARD OF FINANCE DESIGNATION:**

**A.** Within 90 days of approval of its charter application, the governing body of a state-chartered charter school shall file a separate application with the commission seeking approval as a board of finance. This deadline may be extended by the commission for good cause shown.

**B.** The application shall include:

(1) an affidavit or affidavits, signed by the personnel who will be given the responsibility of keeping the financial records of the charter school, describing the training completed, professional licensure held and degrees earned by them;

(2) a statement signed by every member of the governing body that the governing body agrees to consult with the department on any matter not covered by the manual of accounting and budgeting before taking any action relating to funds held as a board of finance;

(3) a copy of a certificate of insurance that indicates that the person who will be entrusted with handling the funds of the charter school is adequately bonded;

(4) a signed affidavit from each governing body member declaring that the member is not a governing body member of any other charter school and that the member was not a governing body member of another charter school that was suspended or failed to receive or maintain their board of finance designation.

**C.** Within 30 days of filing of the application to qualify as a board of finance, the commission shall issue a decision approving or denying the application. A copy of the decision will be provided to the governing body and the commission.

[6.80.4.16 NMAC - N, 6/29/2007; A, 6/30/2008]

**6.80.4.17 NEW MEXICO SCHOOL FOR THE ARTS:**

**A.** Upon approval by the commission, a state-chartered charter school may operate as the New Mexico school for the arts (“the school”), which shall be a statewide residential charter school for grades nine through 12 offering intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.

**B.** An application to the commission for approval of a charter shall contain assurances of compliance together with a plan for how the school will accomplish the following requirements contained in the New Mexico School for the Arts Act, Sections 22-15F-1 et seq. NMSA 1978:

(1) paying for all expenses associated with outreach activities and for room and board costs for students unable to pay all or part of the cost of room and board from a foundation or other private funding sources;

(2) working with a foundation or soliciting other private funding sources to obtain gifts, grants, and donations to ensure that the school has adequate revenue to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(3) not using money received from the state other than charter school stimulus funds to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(4) admitting an equal number of students from each of the state’s congressional districts, to the greatest extent possible and without jeopardizing admissions standards;

(5) conducting its admissions process in a way that provides equal opportunity regardless of a student’s prior exposure to artistic training and to the student’s ability to pay for room and board; and

(6) conducting admissions criteria-free outreach activities throughout the state each year that acquaint potential students with the programs at the school, to include programs specifically for middle school students and workshops for teachers.

**C.** By July 1 after the first year the school has provided preprofessional instruction in the performing and visual arts and by July 1 every year thereafter, the school shall submit a report simultaneously to the division and the commission containing:

(1) non-personally identifiable demographic information about both applicants and students admitted to the school delineated by counties, congressional districts, socioeconomic status, gender, and ethnicity; and

(2) the number of students who requested financial assistance for room and board, the total amount of financial assistance provided, and the amounts distributed delineated by the source of gifts, grants, and donations received by the school.

**D.** During the planning year, the school shall develop a sliding-fee scale subject to the following considerations:

(1) the purpose of the sliding-fee scale is to defray all or part of the costs of room and board for students whose parents or guardians are financially unable to pay these fees;

(2) in determining ability to pay, the school may use a variety of methods including but not limited to:

(a) self-disclosures in a financial aid application developed by the school;

(b) poverty thresholds as maintained by the United States census bureau;

(c) poverty guidelines as maintained by the United States department of health and human services;

(d) whether the public school that the student applicant most recently came from was a recipient of funds under Title I, Part A of the federal Elementary and Secondary Education Act of 1965, as amended;

(e) whether the student applicant for enrollment was eligible to receive free or reduced-price school meals at the public school previously attended; and

(f) the amount or percentage of assistance an enrolled student received for room and board the prior school year from the school; and

(3) the school shall submit its sliding-fee scale to the commission for initial approval during the planning year and may request changes at subsequent commission meetings for good cause shown.

**E.** It shall be the responsibility of the school to obtain adequate funding from private sources to pay annual outreach costs and to defray all or part of room and board fees for students financially unable to pay. No state funds except for charter school stimulus funds received and used during the planning year may be used for these purposes. Private funding sources available to the school shall include the use of a foundation or the soliciting and receipt of gifts, grants, and donations. Failure to secure adequate funding for these purposes shall constitute grounds for denial or revocation of a charter.

**F.** Except for provisions of this rule related to admission of students by lottery, admission on a first-come, first-serve basis, the ability to charge for residential fees, admissions criteria, and location of the school anywhere in the state, all other provisions of this rule related to state-chartered charter schools shall apply to the school.

[6.80.4.17 NMAC - N, 6/30/2008; A, 12/31/2018; A, 9/29/2020]

#### **6.80.4.18 DISTANCE LEARNING:**

**A.** A charter school offering or seeking to offer distance learning courses to students shall comply with 6.30.8 NMAC.

**B.** Any charter school offering or seeking to offer distance learning courses in New Mexico pursuant to the Charter Schools Act, Sections 22-8B-1 et seq. NMSA 1978, shall be physically located in the state of New Mexico.

[6.80.4.18 NMAC - N, 6/30/2008; A, 9/29/2020]

#### **6.80.4.19 LOTTERY WHEN CHARTER SCHOOL CAP IS EXCEEDED:**

**A.** For purposes of compliance with Section 22-8B-11 NMSA 1978, the first five-year period shall be deemed to have ended in 2003 and the successive five-year periods begin in 2003.

**B.** If by October 1, the chartering authorities have authorized more charter schools than permitted by Section 22-8B-11 NMSA 1978, the department shall notify all chartering authorities with newly authorized charter schools that those charter schools may not be established for operations until a lottery is held.

**C.** Within 45 days after determining that the cap for charter schools has been exceeded, the department shall conduct a lottery at a publicly noticed meeting to determine the available slots for charter schools. The department shall randomly draw the names of charter schools from the available pool of all charter schools that were authorized by October 1. The charter schools whose names were drawn shall be given the available charter school slots until the maximum numbers of slots have been selected. The charter schools that are selected shall be approved for operation in the first fiscal year after the lottery. The charter schools whose names were not drawn shall be approved for operation in the second fiscal year after the lottery.

**D.** A charter school that was approved for operation in the second fiscal year after participation in a lottery shall not be subject to a second lottery in the event that in the second fiscal year more charter schools are authorized than permitted by Section 22-8B-11 NMSA 1978.

**E.** Any charter school authorized after October 1 in a year in which the department conducts a lottery pursuant to this rule, shall be approved for operation no earlier than the second fiscal year after the school was authorized.

[6.80.4.19 NMAC - Rn, 6.80.4.17 NMAC, 6/30/2008; 6.80.4.19 NMAC - N, 6/30/2009; A, 9/29/2020]

**6.80.4.20 [RESERVED]**

[6.80.4.20 NMAC - Rp, 6.80.4.20 NMAC, 07/25/2017]

**6.80.4.21 SEVERABILITY:** Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without affect to the remainder.

[6.80.4.21 NMAC - Rn, 6.80.4.19 NMAC, 6/30/2009]

**HISTORY OF 6.30.4 NMAC: [RESERVED]**