

**IMPLEMENTATION OF PERFORMANCE CONTRACTS:
HOLDING CHARTER SCHOOLS ACCOUNTABLE FOR GOVERNANCE,
FINANCIAL, AND STUDENT ACHIEVEMENT OUTCOMES**

AGENCY: Public Education Commission; Albuquerque Public Schools

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PURPOSE OF HEARING: Review of charter school performance contracts as way of holding charter schools accountable for their academic, organizational, and fiscal operations.

WITNESS: Patricia Gipson, PEC Chair; Katarina Sandoval, Assistant Superintendent of Equity and Access, APS; Anne Salzmann, Head of School, The Masters Program

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EXPECTED OUTCOME: Better understanding of the role of performance frameworks in oversight and closure of charter schools. Consideration of potential amendments to SB446, clarifying the intended implementation and purpose of performance frameworks.

Charter school performance and oversight has been of concern to the Legislature for some time, particularly with the rapid growth of charter schools in recent years. More charter schools translates to more public dollars being allocated to those charter schools, consequently drawing state equalization guarantee funds from traditional public schools. While school choice allows New Mexico families to find the best possible educational fit for their children, maintaining a balance between an appropriate and effective accountability structure and school choice is critical to ensure the equitable treatment of all students. Performance at charter schools, however, is not better than performance and outcomes at traditional public schools. Despite receiving more per-pupil funding than traditional public schools, charter school performance not only remains on par with local school districts academically, they encounter financial and governance issues not usually seen with school districts. For example, despite state-chartered charter schools being required by law to qualify as independent boards of finance for their respective charter schools, governing board members sometimes lack clear understanding of their fiduciary responsibilities to their schools, authorizers, and the state. Negotiated performance frameworks can act not only as a term of charter contracts and tools for better school accountability, they can also serve as a guiding document for charter school authorizers, governing bodies, and administrators.

The inclusion of charter school performance frameworks in state law had an immediate, measurable, and sustained impact on New Mexico's rankings in comparison with states. In 2011, according to the National Alliance for Public Charter Schools (NAPCS), New Mexico's law was ranked in 20th place; as a direct result of policy changes enacted in 2011, the state's ranking jumped to 4th place. Further, NAPCS named New Mexico one of the top 10 states with laws best positioned to support the growth of high-quality charter schools. (While the state's 2016 ranking, at 16th, is not as high, its change in rank has more to do with other states shifting positions; New Mexico's awarded points have remained fairly static over the course of the last six years, at around 150 out of a possible 228.)

This improvement can be directly related to the enactment of SB446 (Laws 2011, Chapter 14), which required the negotiation of a performance framework to establish annual performance targets for charter schools. The intent behind SB446 was to codify issues surrounding charter school performance and sustainability by requiring charter schools and their authorizers to negotiate and execute performance frameworks, including specific metrics, to hold charter schools accountable for their operations and outcomes. However, in practice, implementation of SB446 has not resulted in the level of accountability desired – though it has significantly improved accountability – and there were still charter schools operating in 2016 that had not yet negotiated a performance framework.

In 2011, the Secretary of Public Education overruled the PEC's decision to deny renewal to three charter schools in Albuquerque, stating that she would not deny renewal to any charter school based solely on New Mexico Standards-Based Assessment scores, as it was an "obsolete metric."

This brief outlines the history and implementation of SB446 and performance contracts, and performance framework best practices.

History. A 2010 Legislative Finance Committee (LFC) program evaluation of New Mexico charter schools found charter schools would benefit from greater oversight and increased rigor in the application process, particularly in areas of budget proposals, cost assumptions, and facilities planning, as well as the inclusion of more objective performance measures to eliminate subjectivity from both initial chartering and renewal decisions. Noting the current application process did not provide for review of business plans, the evaluation further indicated a need for greater authorizer monitoring to ensure the financial, rather than just the academic, performance of charter schools and to ensure better use of limited state resources.

Contemporaneously, the New Mexico Coalition of Charter Schools (NMCCS) presented a draft framework for charter school quality to LESC that was developed as part of an ongoing national effort called "Building Charter School Quality." The framework sought to fill a void in the evaluation of charter schools because, until that time, there were no universal measures of school quality for charter schools outside of those already required for all schools under the federal No Child Left Behind Act. It was suggested that these frameworks might serve as a means to develop performance contracts for charter schools, to include not just measures of academic success, but also considerations of governmental and programmatic stability and successful fiscal management.

As a result, during the 2011 regular legislative session, SB446 was enacted (Laws 2011, Chapter 14). The bill attempted to codify issues surrounding charter school performance and sustainability by requiring charter schools and their authorizers to negotiate and execute performance frameworks, including specific metrics, to hold charter schools accountable for their operations and outcomes.

Implementation of Senate Bill 446. SB446 detailed requirements for charter school contracts and performance frameworks, including not just scholastic factors such as academic performance and growth, but also financial performance and sustainability factors and governing body considerations, such as compliance with applicable laws, rules, and the terms of the charter contract. The performance framework was supposed to guide the chartering authority's review and oversight of each charter school, helping authorizers target appropriate assistance to struggling charter schools and provide parameters for closure of charter schools that consistently fail to meet their performance obligations. The requirements of SB446 included a delayed effective date of July 1, 2012; the Public Education Department (PED) interpreted the bill not to require all charter schools to be operating under a performance framework by 2012, but rather beginning in 2012, with newly authorized charter schools and those being renewed being placed on performance contracts; remaining schools executed

The Public Education Commission's interpretation of SB446 as requiring annual negotiation of performance frameworks, or at least of a portion of the framework, may arise from the wording of Section 22-8B-9.1 (B) NMSA 1978, which refers to "annual performance *targets*" being set by chartering authorities in consultation with charter schools. A performance framework, negotiated and executed upon a charter school's successful inception or renewal, may contain performance targets that are met or missed on an annual basis. A charter school's annual achievement in meeting these targets within the framework presumably should guide an authorizer's oversight of a charter school during its charter period, and also inform any renewal or revocation decisions. The committee may wish to consider sponsoring legislation for the upcoming session to clarify the language and intent of the statute.

performance contracts as they came up for renewal, meaning it would not be until 2017 that all charter schools were operating under a performance framework. This interpretation was inconsistent with the intent of the delayed effective date, which was negotiated as a means to allow all charter schools and their authorizers and extra year to negotiate and execute a performance contract.

The performance framework required by SB446 was to have answered the concerns raised by the LFC program evaluation and the NMCCS presentation to LESC by providing specific performance measures to inform authorizer oversight. Over time, however, that performance framework, now a material term of the charter contract, became a frequently renegotiated document, arguably allowing charter schools to continue in operation when they may have been more appropriately closed, or at least subjected to greater and more rigorous authorizer oversight. A review of minutes from a 2015 hearing of the PEC indicates the PEC chair at that time interpreted the provisions of SB446 to require annual negotiation of performance frameworks, or more specifically, according to PED staff, the academic portion of the performance framework. This interpretation may diminish the intended purpose of SB446, which was to create standards by which charter schools might be evaluated to guide high-performing charter schools in best practices and establishing parameters for the closure and nonrenewal of low-performing ones. This purpose is undercut when performance targets are changed so frequently that a charter school's performance cannot be judged against the original framework when the charter school comes up for renewal. While PEC authorizes the bulk of charter schools, it is unclear whether authorizing school districts have the same interpretation.

Best Practices. According to the NAPCS, laws regarding performance frameworks in charter contracts vary widely from state to state. While charter contracts nearly always require inclusion of some performance measures, not all states require the negotiation of a separate performance document. Where there are required metrics, they usually include some considerations of academic performance, but not necessarily any indicators of organizational stability or fiscal responsibility.

LESC staff review of available information, and consultation with staff at the Charter Schools Division (CSD) at PED, indicates that best practices for the creation and implementation of performance frameworks require clear, regular communication between authorizer and charter school. For instance, a performance framework should clearly and specifically communicate the process, methods and timeline involved in gathering and reporting charter school compliance data. It should articulate and consistently enforce any potential consequences of failure, with particular emphasis on any actions that might trigger revocation or nonrenewal of the charter contract. Similarly, intervention policies should clearly state triggering conditions, and the types of enforcement actions or guidance that may ensue. Charter schools should be given clear, timely, evidence-based

As a component of its overall rankings of state charter school laws, the NACPS reviews and scores each state's policies regarding performance framework based on five factors:

- Being created as a separate document from the application and executed by the authorizer and charter school governing body;
- Defining the roles, powers, and responsibilities for the charter school and its authorizer;
- Defining academic and operational performance expectations, that includes measures and metrics for, at a minimum, student academic proficiency and growth, achievement gaps, attendance, recurrent enrollment, postsecondary readiness, financial performance, and board stewardship (including compliance);
- Providing an initial term of five operating years, or a longer term with periodic, high-stakes reviews; and
- Including requirements addressing the unique environment of charter schools, if applicable.

New Mexico received a score of 12 out of a possible 16 points. (New Mexico's current ranking is 16th in the nation.)

notice of violations or performance deficiencies, and when intervention is required, care must be taken to preserve charter school autonomy. For example, an authorizer might notify a charter school of a condition that requires correction, but not prescribe an actual remedy. Finally, criteria for renewal decisions should be clearly and consistently communicated to charter school governing bodies.

Performance frameworks generally include indicators related to academic performance and student outcomes, financial responsibility, and organizational performance and stability. Academic factors can include achievement and proficiency growth, postsecondary readiness, such as graduation rates, and performance on state or federal accountability systems, including state rating systems. Financial performance factors, such as regular fiscal and compliance audits, or more proactively, regular submission to authorizers of financial disclosure statements, should include both short-term financial viability and long-term sustainability. Finally, organizational considerations encompass financial management and oversight, management of a program's essential elements, adherence to reporting and other requirements of law, compliance with student and employee rights, and management of a charter school's environment and facilities.

According to CSD staff, New Mexico's organizational and financial performance indicators tend to be reactive, based on audits or other, already-required reporting elements, such as 40th, 80th, and 120th day attendance reports. Performance contracts in New Mexico largely lack other factors that might trigger more frequent, intermittent performance review. The inclusion of more proactive and specific reporting requirements may lead to more frequent review of particular elements of performance contracts, which can only help propel charter schools to better serve their students.

QUESTIONS

In reviewing New Mexico's statutes on charter contracts and performance frameworks (Sections 22-8B-9 and 22-8B-9.1 NMSA 1978), should the committee consider adding specific indicators and metrics for the demonstration of fiscal and organizational stability, and if so, what specific metrics would best be included?

Is this level of detail more appropriately a regulatory matter?

Should more frequent monitoring or triggering events be included to prompt the review of charter schools operations?

While statute currently includes provision for charter schools that are specifically mission-driven, and allows for inclusion of mission-specific factors, should performance frameworks require inclusion of such indicators, metrics, and triggering events targeted to a charter school's particular mission?