



Date: May 30, 2019

Prepared By: Force

Notice of Proposed Rulemaking (NPRM): 6.80.4 NMAC, Charter School Application and Appeal Requirements

## Proposed Rule Abstract

1. Agency: Public Education Department
2. Rule Citation: 6.80.4 NMAC, Charter School Application and Appeal Requirements
3. Rulemaking Action: Amend
4. Register Issue and Date of Notice of Proposed Rulemaking: Volume 29, Issue 20, October 30, 2018
5. Effective Date: December 31, 2018
6. Citation to Specific Legal Authority: Sections 22-2-1, 22-8-47, and 22-8B-1 through 22-8B-17 NMSA 1978
7. Short Explanation of the Rule's Purpose: establish procedures for charter school applications and appeals of charter authority's decisions.
8. Link to Full Text of the Rule: <https://webnew.ped.state.nm.us/wp-content/uploads/2018/10/6.80.4-NMAC-10-29-18-WEBSITE-ALD-Approval.docx>
9. How Information on the Rule Can Be Obtained: <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/> or from the Policy Division, at 505-827-6452
10. Comment Period and Deadlines: October 30, 2018 to December 4, 2018 at 5:00 p.m. Written comments may be submitted to the Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, rule.feedback@state.nm.us, or by fax to (505)827-6520
11. Rule Hearing: December 4, 2018 from 9:00 a.m. to 11:00 a.m. at 300 Don Gaspar Avenue, Santa Fe, NM
12. Link to Permanent Agency Rulemaking Record: [http://statenm.force.com/public/SSP\\_RuleHearingSearchPublic](http://statenm.force.com/public/SSP_RuleHearingSearchPublic)

## Adopted Rule Update

1. **Register Issue and Date of Adopted Rule:** Volume 29, Issue 24, December 27, 2018
2. **Date Notice of Proposed Rulemaking Was Reported to the Committee:** November 15, 2018
3. **Link to Proposed Rule Report:** <https://www.nmlegis.gov/handouts/ALESC%20111418%20Item%2011%20A.1%20-%20PROPOSED%20RULE%20Charter%20School%20Application%20&%20Appeal%2006.80.4%20NMAC.pdf>
4. **Minor, Non-Substantive Changes from the Rule as Proposed:** The adopted rule adds a requirement that a charter applicant intending to appeal a chartering authority's negative chartering decision to the secretary of the Public Education Department must include in their notice of appeal their argument in support of the appeal. A technical issue present in the proposed rule was not corrected in the adopted version: in Subparagraph (D)(3) of Section 6.80.4.14 NMAC, a reference is made to Subsection F of Section 22-8-12 NMSA 1978; however, the reference should be to Subsection F of Section 22-8B-12 NMSA 1978.

## Summary of Proposed Rule

The December 27, 2018 issue of the *New Mexico Register* contained amendments to Part 4 of 6.80 NMAC, limited to sections 6.80.4.7, the definitions section, 6.80.4.13, the

charter school renewal process and renewal applications section, and 6.80.4.14, which relates to appeals to the secretary of public education. The rule defines how a charter school fails “to meet or make substantial progress toward academic achievement” according to the criteria laid out by PED. The rule also addresses procedural matters related to appeals of chartering decisions to the secretary of public education. See **Attachment, Adopted Rule, 6.80.4 NMAC, Charter School Application and Appeal Requirements.**

## Technical Issues

Subparagraph (D)(2)(b) of Section 680.4.13 NMAC uses school grades as a criteria for a chartering authority to refuse to renew a charter, however PED no longer uses school grades to evaluate schools.

In subparagraph (D)(3) of Section 6.80.4.14 NMAC, a reference is made to Subsection F of Section 22-8-12 NMSA 1978; however, there is no Subsection F of Section 22-8-12 NMSA 1978. It appears the reference should be made to Subsection F of Section 22-8B-12 NMSA 1978. This technical issue was present in the proposed rule but was not corrected by the adopted rule.

## Analysis

**Definitions.** The amendment to 6.80.4 NMAC adds a definition of “days” to the rule. Unless otherwise specified in a provision in the rule or applicable statute, “days” will mean business days when the period referenced is 10 or less days, and calendar days when the period reference is 11 or more days, which complies with Section 12-2A-7 NMAC, the uniform computation of time. The new definition specifies certain days to be excluded from the calculation of days, including days the department is closed, but allows an additional three calendar days to any prescribed period of time if the time period requires a notice or paper to be served and it is done so by courier service or mail.

**Charter School Renewal Process and Renewal Applications.** The rule currently allows a chartering authority to refuse to renew a charter if a charter school has failed to meet or make substantial progress toward achievement of PED’s minimum educational standards or the student performance standards identified in the charter application. The proposed rule change would instead allow chartering authorities to refuse to renew a charter when a charter school failed to meet or make substantial progress toward achievement of the department’s minimum educational standards or student achievement standards. The proposed rule defines “failure to meet or make substantial progress toward achievement of PED’s educational standards” as follows: a charter school that earns a tier four rating as outlined in the charter school performance framework in the charter contract for the most recent two consecutive years or for three of the last four years; and a charter school that earns an F rating pursuant to Section 22-2E-1 NMSA 1978 for the most recent two consecutive years or any combination of D ratings or F ratings over the last three years.

If a chartering authority denies renewal of a charter or renews a charter with conditions, proposed changes to Subsection E of 6.80.4.13 NMAC will require the

chartering authority to include the motion that was voted on and a restatement of the reasons that were voted on in the written notice the chartering authority is required to give to the charter school. It is unclear that chartering authorities actually vote on the reasons that they denied renewal or approved renewal with conditions, and there is no requirement that chartering authorities have to vote on reasons to deny or renew with conditions.

***Appeals to the Secretary.*** The proposed rule strikes the provision that currently allows the secretary to extend the deadlines for filing appeals for “good cause”. “Good cause” may currently include an agreement between the parties or a well-reasoned request from either party based upon hardship, a scheduling conflict, or an event beyond the control of the requesters, though this is not exhaustive. The proposed rule eliminates language that requires both the appellant and the chartering authority to file materials with the secretary, and instead would require the chartering authority to file all materials, including copies of the appellant’s notice of appeal, with the secretary, shifting the responsibility to the chartering authority rather than the appellant. The proposed rule would allow the chartering authority 15 days, rather than the current 10 days, from the mailing date of the appellant’s notice of appeal to file materials with the secretary. The chartering authority would also be required to serve upon the appellant one copy of the chartering authority’s response to the appellant’s arguments. While this would simplify the appeal process for the appellant, it complicates the process for the chartering authority. Additionally, removal of the responsibility of the appellant to serve certain papers to the chartering authority may lead to notice issues. The new rule simply requires the appellant to mail its notice of appeal to the charting authority to trigger certain time requirements for the charting authority. The proposed rule would also require the Charter School Division (CSD) to review each party’s submission and prepare a report for the secretary automatically rather than requiring the secretary to request for CSD to prepare the report.

## Technical Issues

In section 6.80.4.9(I)(1) “policies” is misspelled and written as “polices”.

In section 6.80.4.14(D)(3), a reference is made to Subsection F of Section 22-8-12 NMSA 1978; however, there is no Subsection F of Section 22-8-12 NMSA. It appears the reference should be made to Subsection F of Section 22-8B-12NMSA.

New Mexico Register / Volume XXIX, Issue 24 / December 27, 2018

This is an amendment to 6.80.4 NMAC, Sections 7, 13, 14, and 17, effective 12/31/2018.

#### 6.80.4.7 DEFINITIONS:

- A.** “**Applicant**” means one or more teachers, parents or community members or a public post-secondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.
- B.** “**Authorizer**” means either a local school board or the commission that permits the operation of a charter school.
- C.** “**Charter school**” means a conversion school or start-up school authorized by a chartering authority to operate as a public school.
- D.** “**Chartering authority**” means either a local school board or the commission that permits the operation of a charter school.
- E.** “**Chief executive officer**” means the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.
- 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.
- 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 must 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.
- [H] I.** “**Department**” means the public education department.
- [I] J.** “**Division**” means the charter schools division of the department which maintains offices in both Santa Fe and Albuquerque.
- [J] K.** “**Governing body**” means the governing body of a charter school as set forth in the school’s charter.
- [K] L.** “**Head administrator**” means the duly licensed school administrator who is the chief executive officer of the charter school.
- [L] M.** “**Locally chartered charter school**” means a charter school authorized by a local school board.
- [M] N.** “**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] O.** “**New Mexico coalition for charter schools**” means the non-profit membership organization representing charter schools in New Mexico.
- [O] P.** “**New Mexico school boards association**” means the organization consisting of the local public school boards and the governing bodies of charter schools in New Mexico.
- [P] Q.** “**Organizer**” means one or more persons or entities who seek to arrange, form or otherwise put together a charter school.
- [Q] R.** “**Prospective applicant**” 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.
- [R] S.** “**Secretary**” means the New Mexico secretary of public education.
- [S] T.** “**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.
- [T] U.** “**Application for start-up charter school**” means an application requesting the establishment of either a locally-chartered or state-chartered school.
- [U] V.** “**Special education plan**” means a comprehensive written design, scheme 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.
- [V] W.** “**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]

#### 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 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 (Section 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 65 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; and
- (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.

**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 ~~[identified in the charter application;]~~ Failure to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract and defined by the following criteria:
  - (a) charter school earns a tier four rating as defined in the charter school academic performance framework, developed and approved by the public education commission, in the charter contract for the most recent two consecutive years or for three of the last four years; or
  - (b) charter school earns an F rating pursuant to Section 22-2E-1 NMSA 1978 for the most recent two consecutive years or any combination of D ratings or F ratings over the last three years;
- (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; or
- (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.

~~**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 meeting; provided that 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. The chartering authority shall keep a copy of the charter for its files.]~~ 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 must restate the motion that was voted on in the public meeting and must restate the reasons that were voted on in the public meeting during which the vote was taken.

~~**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.~~

~~**[F] 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.~~

~~**[G] 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.~~

~~**[H] I.** 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]~~

**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 ("Suspension of Authority of a Local School Board, Superintendent or Principal").

**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 ~~[any supporting documents]~~ 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 ~~[and other related documents]~~ or required attachments, shall be filed using compact disks, floppy disks or email; instead, paper documents must be filed with the department.

(2) ~~[Grounds]~~ Appellant's argument in support of appeal. ~~[The notice]~~ The appellant's argument in support of appeal shall include a ~~[brief]~~ 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 below, 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 must 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) — The deadlines in 6.80.4.14 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 or a well-reasoned request from either party based upon hardship, a scheduling conflict or an event beyond the control of the requester.]~~

~~[(4)]~~ (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 a chartering authority may deny an application set forth in Subsection K of Section 22-8B-6 NMSA 1978 or the grounds for non-renewal or revocation as set forth in Subsection F of Section 22-8-12 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.

~~[(5) — Within 10 days after filing the notice of appeal, the appellant shall file one original and four copies with the secretary and serve upon the chartering authority one copy of:~~

~~\_\_\_\_\_ (a) the appellant's arguments for reversal of the chartering authority's decision, clearly labeled accordingly;~~

~~\_\_\_\_\_ (b) the chartering authority's written decision that the appellant is appealing;~~

~~\_\_\_\_\_ (c) the charter or proposed charter in question, of which only two (2) copies need to be filed; and~~

~~\_\_\_\_\_ (d) any other materials related to the issues raised by the appellant which the appellant wishes to have considered in support of its appeal.~~

~~\_\_\_\_\_ (6) Within 10 days after receiving the appellant's submissions, the chartering authority shall file one original and four copies with the secretary and serve upon the appellant one copy of:~~

~~\_\_\_\_\_ (a) the chartering authority's response to the appellant's arguments; and~~

~~\_\_\_\_\_ (b) any other materials the chartering authority wishes to have considered in support of its decision.~~

~~\_\_\_\_\_ (7) If requested by the secretary, the division and other department staff as appropriate shall review each party's submissions and prepare a report for the secretary which]~~

~~\_\_\_\_\_ (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 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) The division shall review each party's submissions and prepare a report for the secretary which:~~

~~\_\_\_\_\_ (a) analyzes and outlines the parties' contentions on appeal with reference to the standards of Subsection K of Section 22-8B-6 and Subsections B and E of Section 22-8B-7 NMSA 1978;~~

~~\_\_\_\_\_ (b) sets forth the staff's recommendations for the secretary to affirm or reverse the chartering authority's decision, with or without reasonable conditions or changes to the charter, and the reasons for those recommendations.~~

~~\_\_\_\_\_ [(8)] (6) At least five days before the hearing date, the division shall deliver its report and recommendations to the secretary and~~

shall simultaneously serve a copy upon each party.

~~[(9)] (7)~~ 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)]~~ Unless an extension for good cause has been granted pursuant to Paragraph (4) of Subsection D of 6.80.4.14 NMAC 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.]

(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 must 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 [its] 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 K of Section 22-8B-6, Subsections B, C or E of Section 22-8B-7 and Subsection F 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~~ 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]

**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, being Laws 2008, Chapter 15, Sections 1 to 9:

- (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~~ 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 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;

(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]