

Charter School Governing Board Training

Proposed Rulemaking Abstract

1. **Agency:** Public Education Department
2. **Rule Citation and Action:** Sections 6.29.1.9 and 6.80.4.20 NMAC, Amend; 6.80.5 NMAC, New Rule
3. **Register issue and Date of NPRM:** Volume 28, Issue 8, April 25, 2017
4. **Effective Date:** July 1, 2017
5. **Specific Legal Authority:** Section 22-5-13 NMSA 1978, Section 22-8B-5.1 NMSA 1978
6. **Purpose of Rule:** Move the authority for approving governing body trainers from the New Mexico Coalition of Charter Schools and the New Mexico School Boards Association to the Public Education Department, open the field of eligible training providers, establish training content and provider qualifications, and mandate training for all charter school governing body members.
7. **Rulemaking Information:** Jamie Gonzalez, 505-827-7889
8. **Comment Period:** April 25, 2017 through 5:00 p.m., May 30, 2017
9. **Rule Hearing:** May 30, 2017, 8:30 a.m. through 12:00 p.m., Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, NM 87501

Summary of Rules

These rules propose to establish requirements and processes for the approval of providers of required training for charter school governing body members in the operational, fiscal, and academic management of charter schools. They mandate training for governing body members, with differing requirements for new and continuing members, and impose progressive sanctions on charter schools for governing body members' failure to fulfill requirements. Finally, the rules strike the equivalent required training for members of local school boards (See **Attachment, Proposed Rules, Sections 6.29.1.9 and 6.80.4.20 NMAC, and Part 6.80.5 NMAC**).

PED expects this rule to be finalized with the publication of the July 1, 2017 issue of the *Register*, making it one of the first PED rules to be promulgated under the State Rules Act as amended by Laws 2017, Chapter 137, which becomes effective on that date.

Analysis

The rule hearings held on May 30, 2017 for these proposed rules were well attended by charter school governing board members and other representatives of charter schools. Nearly all comments were in opposition to the proposed rules; only a few commenters were in favor of the proposals, two of whom are sitting members of the Public Education Commission who spoke as private citizens. A review of any pertinent public comments follows the analysis of each relevant section of the rule.

Section 6.29.1.9 NMAC, Standards or Excellence, General Provisions, Procedural Requirements.

Proposed amendments to 6.29.1.9 NMAC remove all requirements for training programs for both local school board members and charter school governing body members, except for the basic requirement that each local school board or governing body of a charter school develop a planned training program annually in which each board member is to participate, to assist in the performance of specified duties. The eliminated provisions, which detailed how many hours of training were required for new or continuing members, were moved to proposed new Part 6.80.5 NMAC, Charter School Governing Body Training Requirements, and substantially amended as a part of this rulemaking.

Specific provisions proposed for repeal in this section include a requirement that all local school board and governing body members receive five hours of annual training, with school board and governing body members who have served less than a year receiving three of the five hours from a course developed by PED and sponsored by the New Mexico School Boards Association (NMSBA), and the remaining two hours consisting of training sponsored by NMSBA and approved by PED. Also to be repealed is a requirement that continuing school board and governing body members attend five hours of annual training sponsored by NMSBA and approved by PED, with NMSBA supplying each local superintendent with a list of training hours earned annually by each local school board or governing body member by September 1, annually. Finally, a requirement that the names of local school board and charter school governing body members who did not attend the mandatory training be included in the school district's or charter school's accountability report is also proposed for repeal.

This amendment is proposed both to correct current conflicts in rule, and prevent further conflicts should the other two proposed rules be promulgated. Currently, this section refers only to the NMSBA as sponsors of the required training, while Section 6.80.4.20 refers to NMSBA and the New Mexico Coalition of Charter Schools (NMCCS).

Rule Hearing Public Comments on Section 6.29.1.9 NMAC. Comments regarding this proposed amendment focused on the apparent inequity created for charter school governing body members compared with training requirements for local school board members.

The rulemaking strikes the language requiring five hours of training for local school board members, but does not recreate that requirement in any other section of the NMAC. Requirements in the proposed new Part 6.80.5 NMAC are specifically for charter school governing body members, who are required to attend 10 hours of training in their first year of service, and additional training in subsequent years based on school performance. With the elimination of parallel requirements for local school board members in this section, there now appears to be no training requirements for local school boards contained in PED rule, despite Section 22-5-13 NMSA 1978, "Local school board training," which requires PED to develop mandatory training for local school board members, with language that mirrors the requirements for training found in Section 22-8B-5.1 NMSA 1978 for governing body members.

Other individuals noted they were satisfied with the current training system, and one individual requested locally chartered charter schools be permitted to obtain the training from their local authorizers.

One concern shared by many at the hearing was the apparent lack of effort to include charter schools and their representatives in the development of these rules.

Section 6.80.4.20 NMAC, Alternative Education – Charter Schools, Charter School Application and Appeal Requirements, Governing Body Training, and Section 6.80.5 NMAC, Alternative Education – Charter Schools, Charter School Governing Body Training Requirements.

In the remaining two sections of the rulemaking, governing body training requirements in 6.8.4.20 NMAC are repealed and moved to new Part 6.80.5 NMAC, where the requirements are expanded. Current regulations only allow for two nongovernmental entities, NMSBA and NMCCS, to sponsor the training, effectively giving those two organizations a monopoly to provide required training. The new rules will allow for many potential training providers. Staff of the Charter Schools Division (CSD) also indicated the subject matter of Section 6.80.4.20, training requirements for governing body members, is not appropriately included in Part 6.80.4 NMAC, which addresses charter school application and appeal processes. Thus, the material on training is better removed from Part 6.80.4 NMAC in order to be included in new Part 6.80.5 NMAC, which exclusively addresses training requirements for charter school governing body members.

6.80.4.20, Governing Body Training. Current training requirements to be repealed by this in this section include new governing body members of less than one year attending three of five hours of training from a course developed by PED and sponsored by NMCCS or NMSBA. The remaining two hours would come from other sessions approved by PED and sponsored by NMSBA or NMCCS. For continuing governing body members, the requirement of five hours of training approved by PED and sponsored either by NMSBA or NMCCS is also to be repealed.

Rule Hearing Public Comments on the Proposed Repeal of Section 6.80.4.20 NMAC. Several commenters were opposed to striking the current requirements, as they find that training sufficient. A few questioned which charter schools were approached in the formulation of the rule, as they did not know of any that participated. The inequitable treatment of governing body and local school board members mentioned in regard to Section 6.29.1.9 was reemphasized. Others indicated the new requirements will come at the end of the fiscal year, after budgets have been set, making it difficult to find money for necessary training.

6.80.5 NMAC, Primary and Secondary Education, Alternative Education – Charter Schools, Charter School Governing Body Training Requirements. PED proposes this Part of the NMAC to mandate certain training for charter school governing board members. The rule will apply to all charter schools, with the purpose of establishing mandatory training course requirements for all governing body members.

The department cites Section 22-8B-5.1 NMSA 1978, “Governing body training,” as statutory authority for the new rule. PED indicates the rules are needed to provide clear standards and expectations for governing body members. PED also maintains that the mandatory nature of the training required by Section 22-8B-5.1 NMSA 1978 requires an enforcement mechanism, which the new rule would provide.

Definitions. The rule proposes a number of new definitions, including:

- “Approved provider,” which means a source, individual or entity approved by PED to provide governing body training that consists of a designated curriculum provided by a designated facilitator;
- “Designated curriculum,” which means the curriculum that was provided in the application submitted to CSD for the purpose of receiving approval to provide training to governing bodies;

- “Designated facilitator,” which means the individual identified in the application submitted to CSD for the purpose of receiving approval to provide training to governing bodies; and
- “Eligible facilitator,” which means: a proposed facilitator who is not disqualified for having been a governing body member, administrator, senior leader, or business manager of a charter school whose board of finance was suspended, or its charter revoked or not renewed; being convicted of a crime of moral turpitude; having a professional license revoked; or being the subject of disciplinary action for ethical or fiscal misconduct.

The rule also includes a number of definitions of terms defined elsewhere in relevant statute, although the State Rules Act, as amended by Laws 2017, Chapter 137, indicates that definitions found in applicable statutes should not be used in rule, beginning July 1, 2017. Definitions for “department,” “division,” “governing body,” and “governing body training” are all defined in statute, and should not be included in the rule, though these rule definitions comport with corresponding statutory definitions. The definition of “day,” however, which simply states “days” are business days, runs contrary the Uniform Statute and Rule Construction Act, Section 12-2A-7 NMSA 1978, “Computation of time,” which notes in Subsection E that “if the period is less than 11 days, a Saturday, Sunday, or legal holiday is excluded from the computation.” Thus, if the relevant period of time is less than 11 days, “days” are business days; if the period is greater than 11 days, then “days” are calendar days. Under both the Uniform Statute and Rule Construction Act and the State Rules Act, the definition of “days” included in the proposed rule would have to be read as expressed in Section 12-2A-7 NMSA 1978. The different definition would apply to any portion of the rule referencing a period of time longer than 11 days, such as deadlines for submission or processing of documents. For example, timeframes for CSD to review provider applications is 25 days for administrative completeness and 75 days for full substantive review. If that period were measured in business days, as the rule currently indicates, it would be longer by at least 2 additional days per week.

Mandatory Training for New Governing Body Members. All new governing body members must complete at least 10 hours of training, the first seven of which must include two hours of ethics training, two hours of training on charter school fiscal requirements, one hour of training on the evaluation of academic data, one hour on open government requirements, and one hour on legal and organizational performance requirements. The final hours of the required training can be completed at any time during a member’s first fiscal year of service, and may be taken from any approved provider. No new member of a governing body may attend a meeting or vote until the initial seven hours of training has been completed.

Rule Hearing Public Comment on Mandatory Training for New Governing Body Members. A number of individuals suggested the new training requirements may negatively impact charter school governing body recruitment efforts. An eight to 10 hour training requirement, which they noted is more than current national data suggests is necessary, would be burdensome both in terms of time and potential costs to members, especially if the training requires travel. Commenters voiced fear that the new requirements will deter potential governing body members and may even prompt some current members to resign their positions.

One individual noted the prohibition on members attending meetings or voting if they have not completed seven hours of training may violate provisions of the Open Meetings Act, which contemplates no such prohibition. Regarding that point, another commenter noted that of all New Mexico elected and appointed officials, only municipal judges must go through some sort of mandated training before being permitted to undertake their duties.

Finally, a few individuals encouraged PED to move forward with the rulemaking. They suggested the new rules, which PED developed over the course of the last year, may help ameliorate the skepticism with which many view charter schools.

Mandatory Training for Continuing Governing Body Members. Governing body members serving beyond their first fiscal year must complete eight hours of training annually from any PED-approved provider to include one hour on ethics, three hours on charter school fiscal requirements pursuant to the Public School Finance Act, two hours on understanding and evaluating academic data, one hour on open government and public school access, and one hour on understanding and overseeing the organizational performance of a charter school.

PED may exempt continuing governing body members from some of these training requirements, based on the academic and fiscal performance of their respective charter schools. Governing body members are exempt from the training required for evaluating and understanding academic data if their charter school has maintained a letter-grade of B for the most recent three years, and received no rating of C in any area of the school report card during that time. Governing body members are exempt from two of the three hours on charter school fiscal requirements if their charter school has received an unmodified audit for the prior three years with no repeat findings, no material weaknesses, no significant deficiencies, and no more than two compliance matters in any given year. To claim these exemptions, governing body members must provide PED with an assurance they have met the requirements for the exemption.

Governing Body Training Reporting and Compliance. By July 31, annually, each charter school must provide PED with attendance and training completion records for all governing body members who served in the prior fiscal year. These records may be provided either by the charter school or the approved provider of the training and must include the names of the governing body members, the charter school, and the PED-assigned course code for the completed training. Failure to provide the department necessary information will be reported to the charter school's authorizer and may result in progressive disciplinary action by PED or the authorizer, which may include the creation of a corrective action plan and completion of all PED-provided governing body training, withholding some or all funding from the charter school if it fails to comply with the corrective action plan, suspension of the governing body's authority when funding is withheld for at least 30 days, and revocation or non-renewal of the school's charter if prior disciplinary action fails to prompt the charter school's compliance.

Rule Hearing Public Comments on Governing Body Training Reporting and Compliance. Some individuals noted the progressive sanctions for noncompliance interfere with the relationship between the authorizer and the charter school. Sanctions may override terms of the charter contract or performance framework with no clarity as to when PED is the appropriate actor versus a charter school's authorizer. One person indicated that sanctions against a charter school are outside the purview of Section 22-8B-5.1 NMSA 1978, which only contemplates two actors, PED and governing body members. It was also noted that there is no statutory authority for withholding funds from a charter school that fails to comply with governing body training requirements.

Governing Body Training Provider Approval. Training may only be from a designated curriculum to be provided by a designated facilitator approved by PED, with PED approvals lasting for terms of 36 months, with the understanding that it can be revoked at any time. CSD must accept applications to become approved providers at least biennially. Applications must be reviewed for administrative completeness within 25 days, and within 75 days for substantive review, yielding a review process that may last up to 100 days.

An application will be deemed administratively complete if it: identifies a specific person as a proposed facilitator; contains all required information and materials and is formatted as required; includes at least one of the required components of mandatory new member training; and all templates are unmodified, completed, and from the current application cycle. An applicant whose application is deemed incomplete may request reconsideration by PED.

Applications will be substantively approved only if: the applicant shows the designated facilitator has the necessary knowledge, skills, and experience in the designated curriculum; the proposed facilitator has not been associated with a charter school that has had its board of finance suspended or its charter revoked or not renewed, and has not been convicted of a crime of moral turpitude, had a professional license revoked, or been subject to disciplinary action for ethical or fiscal misconduct; the proposed curriculum addresses at least one required component of new or continuing governing body member training, and is legally and factually accurate; time allotted for provision of training is sufficient and not excessive; any fee charged for the training is reasonable as compared with local and national providers; the proposed curriculum is designed to improve governing body members' skills and knowledge, comply with applicable laws, and ensure the charter school meets academic performance expectations. If the training is to be provided virtually, it must use methods to verify participant engagement, and include a final assessment that must be passed with a score of at least 80 percent.

CSD must provide a written notice of approval or denial upon completion of substantive review. A denial must include specific reasons the application failed substantive review and a copy of the denied application. Denied applicants may request reconsideration within 10 days of the notice of denial; reconsideration requests must address each named deficiency from the original application, or the applicant's file will be closed. If denied again, CSD must provide a written notice of final denial, although the applicant may reapply under established application deadlines.

Rule Hearing Public Comments on Governing Body Training Provider Approval. One individual suggested there was no authority in Section 22-8B-5.1 NMSA 1978 to delegate training to third parties, noting that the statute says the “*department* shall develop a mandatory training course for all governing body members” and notify members of the dates of the training.

Approved Training Reporting Requirements. Each approved provider must submit an annual report to CSD, including details on prior-year training that include the date and start and end times of the training, the training and facilitator name, the name of each attendee and their corresponding charter school, the fees charged and collected, sign-in and -out sheets, materials and agendas, a summary of attendees' evaluations of the training, and for virtual training, the score of each assessment and a summary of participant engagement. Information required for all confirmed or proposed trainings for the coming year includes the date and start and end times of the training, the training and facilitator name, the proposed location of the training, the cost of the training, and the process for registration for the training. Failure of a provider to submit these reports may result in revocation or suspension of approved provider status.

Suspension or Revocation of Training Approval. CSD may revoke or suspend the approval of any approved provider for reasons including: failure to provide the required annual reports or reports of upcoming training that were not identified in the annual reports in a timely manner; suspension of the facilitator's charter school's board of finance designation or revocation of its charter; failure to keep appropriate and accurate records of training; and providing a training represented as approved when it is not.

The division must notify a provider that it is contemplating revocation of approval. The notice is to include the name and code for the course under consideration, the reasons why the revocation or suspension is being considered, the term and scope of any suspension, and the process for responding to the notice. A provider who receives this notice has 10 days to reply by providing a clear statement responding to each of the reasons for the potential action, with supporting evidence and documentation. The division must reply within 15 days. If the suspension or revocation is inappropriate, the division must provide notice of continued term of approval, with specific evidence indicating why the contemplated action was not justified.

This is an amendment 6.29.1 NMAC, Section 9, effective xx/xx/xx17.

6.29.1.9 PROCEDURAL REQUIREMENTS:

A. Duties and powers of the local board of education or governing body of a charter school. In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the local board of education (or governing body of a charter school, where indicated) shall:

(1) review, approve and support the district's EPSS and each school site-level EPSS, or the charter school's EPSS;

(2) employ and evaluate the local superintendent or charter school administrator;

~~(3) develop a planned program of training annually, in which each member of the board participates, to assist in the performance of specified duties; this planned program shall align with the district's EPSS; training shall include the following requirements and procedures.~~

~~(a) All local school board members shall receive a total of five hours of annual training.~~

~~(b) Newly elected or appointed local school board members, who are in office for less than a year, shall receive three of the five hours from attending a training course developed by the department and sponsored by the New Mexico school boards association (NMSBA). The additional two hours of annual training for new board members shall consist of sessions sponsored by the NMSBA and approved by the department.~~

~~(c) All board members who have been in office for one or more years shall attend five hours of annual training sponsored by the NMSBA and approved by the department.~~

~~(d) In order to be credited with attendance at these courses, each attendee shall comply with written attendance procedures established by the department. Prior to September 1 of each year, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member. The school district's accountability report shall include the names of those local school board members who failed to attend annual mandatory training (see Section 22-2C-11(G) NMSA 1978);]~~

(3) develop a planned program of training annually, in which each member of the board participates, to assist in the performance of specified duties; this planned program shall align with all requirements of statute and any other department regulations;

(4) delegate administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain from involvement in delegated administrative functions;

(6) review district or charter school policies on an annual basis and revise as needed;

(7) award high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that district or charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve the annual district or charter school budget;

(11) be responsible for oversight of revenue and expenditures within the district or charter school budget; and

(12) coordinate with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to Section 22-5-4 NMSA 1978 and the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

B. Duties and powers of the district superintendent or the administrator of a charter school. In addition to the powers and duties set out in Section 22-5-14 NMSA 1978 of the Public School Code, the local superintendent (or charter school administrator, where relevant) shall:

(1) administer local board's (or governing body of a charter school's) policies, state and federal requirements and applicable laws, including the Public School Code;

(2) be accountable for student achievement; budget management; expenditure of funds; dissemination of information; district or charter school communications; development, implementation and evaluation of the EPSS and all other district or charter school business;

(3) review, approve and support the district EPSS and each school site-level EPSS or the charter school's EPSS;

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 [Chapter 22, Article 8B NMSA 1978] must be physically located in the state of New Mexico.

[6.80.4.18 NMAC - N, 6/30/08]

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 1st 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 1st. The 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 1st 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, 6/30/08; 6.80.4.19 NMAC - N, 6/30/09]

6.80.4.20 [GOVERNING BODY TRAINING:

~~A. All governing body members of charter schools shall attend five hours of training at least annually on topics that include department rules, policies and procedures, statutory powers and duties of governing boards, legal concepts pertaining to public schools, finance and budget and other relevant matters.~~

~~B. Governing body members who have been in office for one or more years shall attend five hours of annual training approved by the department that is sponsored by the New Mexico school boards association (NMSBA) or the New Mexico coalition for charter schools (NMCCS).~~

~~C. Newly selected governing body members who have been in office for less than a year, shall receive three of the required five hours from attending a training course developed by the department and sponsored by the NMSBA or the NMCCS. The additional two hours of annual training for new governing body members shall consist of sessions approved by the department that are sponsored by the NMSBA or by the NMCCS.~~

~~D. In order to be credited with attendance at training courses, each attendee shall complete written attendance forms provided by the department and kept on file with the charter schools. Prior to September 1 of each year, the NMSBA or the NMCCS shall provide each head administrator of a charter school with a list of training hours earned annually by each governing body member. The accountability report of the school district or charter school shall include the names of those governing body members who failed to attend annual mandatory training.~~

~~E. The governing body of a charter school shall develop a planned program of training consistent with this section that ensures that each member of the governing body participates and complies.]~~

[6.80.4.20 NMAC - Rp, 6.80.4.20 NMAC, xx/xx/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, 6/30/09]

HISTORY OF 6.80.4 NMAC:

Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

6.80.4 NMAC, Charter School Application and Appeal Requirements, 12/3/01

History of Repealed Material:

6.80.4 NMAC, Charter School Application and Appeal Requirements - Repealed, 6/29/07

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 80 ALTERNATIVE EDUCATION - CHARTER SCHOOLS
PART 5 CHARTER SCHOOL GOVERNING BODY TRAINING REQUIREMENTS

6.80.5.1 ISSUING AGENCY: Public Education Department
[6.80.5.1 NMAC - N, 07/01/2017]

6.80.5.2 SCOPE: This rule shall apply to all charter schools.
[6.80.5.2 NMAC - N, 07/01/2017]

6.80.5.3 STATUTORY AUTHORITY: Section 22-8B-5.1, NMSA, 1978
[6.80.5.3 NMAC - N, 07/01/2017]

6.80.5.4 DURATION: Permanent
[6.80.5.4 NMAC - N, 07/01/2017]

6.80.5.5 EFFECTIVE DATE: July 1, 2017 unless a later date is cited at the end of a section.
[6.80.5.5 NMAC - N, 07/01/2017]

6.80.5.6 OBJECTIVE: To establish the mandatory training course requirements for all governing body members.
[6.80.5.6 NMAC - N, 07/01/2017]

6.80.5.7 DEFINITIONS:

A. "applicant" means a source, individual or entity that has submitted an application to the Division for approval to provide governing body training.

B. "approved provider" means a source, individual or entity approved by the Department to provide Governing Body Training that consists of a designated curriculum provided by a Designated Facilitator.

C. "day" means business days.

D. "department" means the public education department.

E. "division" means the charter schools division.

F. "designated curriculum" means the curriculum that was provided in the application submitted to the Division for the purpose of receiving approval to provide training to governing bodies.

G. "designated facilitator" means the individual identified in the application submitted to the Division for the purpose of receiving approval to provide training to governing bodies.

H. "governing body" means the governing body of a charter school as set forth in the school's charter.

I. "governing body training" means the training required pursuant to Section 22-8B-5.1 NMSA 1978 to educate governing body members and ensure compliance with all applicable laws, which training may be obtained from any approved provider.

J. "governing body member" means a voting member of a governing body of a charter school.

K. "eligible facilitator" means a proposed facilitator who is not disqualified for any of the reasons identified in Subparagraph (b) and (c) of Paragraph (2) of Subsection E of 6.80.5.11 NMAC.

[6.80.5.7 NMAC - N, 07/01/2017]

6.80.5.8 MANDATORY GOVERNING BODY TRAINING COURSE - NEW GOVERNING BODY MEMBERS:

A. Within the first fiscal year of service, each new governing body member shall complete a governing body training course that consists of, at a minimum, 10 hours of governing body training.

B. No new governing body member may attend a governing body meeting and vote on any governing body business without first completing the seven hours of required training described below through a course provided by the department:

(1) two hours of training on public official/charter school governing body ethics and responsibilities;

(2) two hours of training on charter school fiscal requirements;

(3) one hour of training on understanding and evaluating academic data;

(4) one hour of training on open government requirements; and

(5) one hour of training on legal and organizational performance requirements.

C. If extraordinary circumstances exist and a new governing body member is unable to attend the in-person course provided by the department within two months of being voted on to a governing body as a new member, the member may submit a waiver request accompanied by an explanation of the extraordinary circumstances. PED will process the waiver request within 14 days of receipt.

(1) Extraordinary circumstances exist if the individual has documented professional commitments or personal commitments that prevent the individual from attending one the scheduled training dates or if the trainings being offered are located more than 100 round trip miles from the member's home address.

(2) If granted, a waiver will allow the board member to complete essential two hour training through a virtual course provided by the department. To meet the requirements of the waiver, the member must score at least eighty percent on an assessment at the end of the course on the first attempt and must demonstrate engagement throughout the course. Additionally, the member will be required to complete the seven hour in-person course provided by the department within 12 months of beginning service as a board member.

D. The remaining hours required to complete the 10 hours of governing body training may be completed at any time during the new governing body member's first fiscal year of service and may be provided by any approved provider.

(1) The training may include extended time within any of the required training standards identified above based on the needs identified by the school's governing body.

(2) The training may include school specific onboarding if the school's administrator or governing body is an approved provider.

E. If a governing body member resigns his or her term prior to the end of the first fiscal year of service, the additional hours required for that fiscal year shall be prorated based on the number of full and partial months during which the governing body member served and rounded to the nearest full hour.
[6.80.5.8 NMAC - N, 07/01/2017]

6.80.5.9 MANDATORY GOVERNING BODY TRAINING COURSE - CONTINUING GOVERNING BOARD MEMBERS:

A. Unless exempted from specific hourly training requirements as laid out below, each governing body member continuing to serve on a governing body beyond their first fiscal year of service shall annually complete a governing body training course that consists of, at a minimum, eight hours of governing body training provided by approved providers which addresses the following standards:

(1) one hour of training on public official/charter school governing body ethics and responsibilities;

(2) three hours of training on charter school fiscal requirements pursuant to the Public School Finance Act, NMSA 1978 § 22-8-1 et seq.;

(3) two hours of training on understanding and evaluating academic data, including state assessment data, school and teacher accountability systems data and interim and summative academic assessment data;

(4) one hour of training on open government and public school access requirements; and

(5) one hour of training on understanding and overseeing the organizational performance of a charter school.

B. Governing body members who have served on a governing body for more than one year may be exempted from specific hourly training requirements based on the school's academic or fiscal performance.

(1) For any school that has maintained a letter grade of B or better for the three most recent years and has received no rating below C in any area of the report card during that same time, the school's governing body members shall be exempted from the requirement to complete two hours of training relating to understanding and evaluating academic data.

(2) For any school that has received an unmodified annual audit in each of the past three years with no material weaknesses, no repeat findings, no significant deficiencies, and no more than two compliance matters in any given year, the school's governing body member shall be exempted from two of the three hours of required training relating to charter school fiscal requirements.

(3) In order to claim an exemption, a governing body member must complete an assurance that they have met the requirements for exemption. Assurances are subject to confirmation by the department.

C. The mandatory governing body training course may be completed in one or multiple sessions during the fiscal year.

D. The mandatory governing body training course may not consist of any of the same governing body training that was completed by the governing body member in any of the prior years of the same contract term as long as additional governing body training is available.

E. Annually, the governing body training should be related to specific areas of growth for individual boards or governing body members based on the annual board evaluation.

F. If a governing body member who is no longer in the first fiscal year of his or her service on the governing body resigns his or her term prior to the end of the fiscal year, the hours required for that fiscal year shall be prorated based on the number of full and partial months during which the governing body member served and rounded to the nearest full hour.

[6.80.5.9 NMAC - N, 07/01/2017]

6.80.5.10 GOVERNING BODY TRAINING REPORTING AND COMPLIANCE:

A. Annually no later than July 31, each charter school must ensure the division receives a record of attendance and completion for all governing body members who served on the governing body in the prior fiscal year. The record of attendance and completion may be provided either by the charter school or by the approved provider that provided the governing body training. Records are subject to verification by the department.

B. Records of attendance and completion shall include:

- (1) the governing body member;
- (2) the school for which the identified member serves on the governing body;
- (3) the governing body training's department-assigned course code.

C. Failure to timely provide evidence of completion of the required number of governing body Training hours for all governing body members who served on the governing body of the school in a fiscal year shall be reported by the division to the authorizer. Additionally, the noncompliance may result in progressive disciplinary action by the department or the authorizer, which may include but is not limited to:

- (1) requiring the creation of a corrective action plan and completion of mandatory department-provided governing body training at the expense of the school;
- (2) withholding, by the department, some of all of the charter school's funding until the school comes into compliance with the requirements when the school has failed to comply with its corrective action plan;
- (3) suspension, by the department, of any or all of the governing body's authority when the school has failed to comply with its corrective action plan and funding has been withheld for at least 30 days; and
- (4) revocation or non-renewal of the school's charter which prior disciplinary action has not resulted in the school coming into compliance.

[6.80.5.10 NMAC - N, 07/01/2017]

6.80.5.11 GOVERNING BODY TRAINING PROVIDER APPROVAL

A. No source, individual or entity may provide governing body training, as defined in the charter schools act, unless it is an approved provider providing a designated curriculum with a designated facilitator. The approved provider may provide, as governing body training, only those designated curricula with the designated Facilitators for which it has received approval from the department. Department approvals are valid for a term of 36 months, but may be revoked at any time.

B. The division shall, at a minimum, accept application packages on a biannual basis from applicants seeking to be approved providers. The division shall publish the application and application deadlines on its website annually no later than January 1.

C. Review timeframes. The timeframes for approving or disapproving an application package are:

- (1) administrative completeness review: 25 Days;
- (2) substantive review: 75 Days; and
- (3) overall: 100 Days.

D. Administrative review. The administrative completeness review begins the day after the division receives an application package.

- (1) An application package to provide governing body training shall be administratively complete if:
 - (a) the application package identifies a specific individual as a proposed facilitator;
 - (b) the application package contains all the required information, materials, documents, attachments, signatures, and notarizations identified in the application posted on the division's website;
 - (c) all the application package's components are formatted as required;

(d) the proposed designated curriculum addresses at least one of the required standards identified in items Subsection B or C of 6.80.5.8; and

(e) all templates are unmodified, completely filled out, and from the current application package.

(2) If the application package is administratively incomplete when received, the Division staff shall provide the Applicant a notice of deficiency that states the reasons the application package was found to be administratively incomplete.

(a) Upon written notice to the applicant that the application package is administratively incomplete, the division staff shall close the applicant's file.

(b) If the submission deadline has not yet passed, an applicant may correct deficiencies in an administratively incomplete application package and submit a new application package in the same application cycle.

(3) An applicant who believes their application was erroneously designated as administratively incomplete may submit a written request for reconsideration to the division within 10 Days of the date of notice.

(a) The request for reconsideration shall contain a clear statement indicating how the previously submitted application package fulfilled each of the requirements that were identified as having been deficient. The request for reconsideration shall not provide any new or additional information, documents, or materials.

(b) A request for reconsideration that does not address each deficiency identified in the notice or that contains new or additional information, documents, or materials shall not be considered and the applicant shall be notified that the request was not submitted according to subsection and the applicant's file is closed.

(4) The division staff shall review a request for reconsideration that is submitted according to Paragraph (3) of Subsection D of 6.80.5.11 NMAC and provide a decision on the request for reconsideration within 10 days of receipt.

(a) If the division staff determines the application package was erroneously designated as administratively incomplete, the division staff shall reopen the applicant's file and send a written notice of administrative completeness to the applicant. If the division staff determines the application package was correctly designated as administratively incomplete, the applicant's file shall remain closed.

(5) If the application package is administratively complete the division shall send a written notice of administrative completeness to the applicant.

(6) If the division does not provide a notice of deficiency or administrative completeness to the applicant within the administrative completeness review time-frame, the application package is deemed administratively complete.

E. Substantive review. The substantive review begins when an application package is determined to be administratively complete.

(1) Within the overall review timeframe, the division shall provide the applicant with written notice of its decision to approve or disapprove the application to provide governing body training.

(2) The department shall approve an applicant to provide a designated curriculum with a designated facilitator if the applicant meets the following substantive requirements:

(a) the applicant has provided evidence that demonstrates the designated facilitator has knowledge, skills, and experience constituting expertise in the area of the designated curriculum;

(b) the designated facilitator proposed by the applicant has not been a governing body member, administrator, senior leader or business manager of a charter school that had its board of finance suspended or its charter revoked or non-renewed;

(c) the designated facilitator proposed by the applicant has not been convicted of a crime of moral turpitude and has not had a professional license revoked and has not been subject to disciplinary action for ethical or fiscal misconduct;

(d) the applicant has demonstrated that the proposed designated curriculum addresses at least one of the required standards identified in items Subsection B or C of 6.80.5.8 NMAC or Subsection A of 6.80.5.9 NMAC and is legally and factually accurate;

(e) the time allotted or planned for providing the training is sufficient and not excessive for the proposed content and materials provided;

(f) if the applicant intends on charging a fee for the governing body training, the fee is reasonable as compared to local and national providers of similar trainings;

(g) the proposed designated curriculum is designed to improve governing body Members' knowledge, skills, and abilities to fulfill their statutory duties, comply with all applicable laws, and ensure charter schools meet the academic performance expectations of the department and the authorizer;

(h) if the training is to be provided virtually, the training includes methods to verify participant engagement throughout the training time period and end the course if participate engagement is not verified. Virtual training must also include an assessment of information understanding and retention at the end of training. The assessment must be aligned to the training, shall not be passed with a score below eighty percent, and shall not allow multiple attempts by the participant.

(i) The applicant describes a process it will use to evaluate and improve the quality of the trainings, which includes end of training evaluations completed by all attendees to evaluate:

(ii) the knowledge and skill of the facilitator;

(iii) the quality and relevance of the information;

(iv) what actions the attendees will take based on what they learned in the governing body training ; and

(v) the value of the governing training in improving the attendees' knowledge, skills, and abilities to fulfill their statutory duties and comply with all applicable laws.

F. Upon completion of the substantive review, the division shall provide the applicant a notice of denial or approval.

(1) If an application package meets the substantive requirements, the division shall provide a written notice of approval that contains:

(a) the name of the training and facilitator;

(b) the number of approved hours for which the training will be eligible;

(c) the standards identified in Subsection B of 6.80.5.8 that the training will fulfill, if any;

(d) the training's department-assigned course code; and

(e) a copy of the approved application package.

(2) If an application package does not meet the substantive requirements, the division shall provide a written notice of denial that contains:

(a) a specific description of the reasons the application package did not meet the substantive requirements; and

(b) a copy of the denied application package.

G. An applicant that receives a notice of denial may submit a revised application package and written request for reconsideration to the division within 10 days of the date of notice.

(1) The request for reconsideration shall contain:

(a) a clear statement indicating how the previously submitted application package has been revised to address the deficiencies identified in the written notice of denial; and

(b) a revised application package with changes tracked with strikeouts, and red, underlined insertions.

(2) A request for reconsideration that does not address each deficiency identified in the notice shall not be considered and the applicant shall be notified that the request was not submitted according to subsection and the applicant's file is closed.

H. The division shall review a revised application package and request for reconsideration that is submitted according to Subsection G and provide a decision on the request for reconsideration within 15 days of receipt.

(1) If the division determines the revised application package meets the substantive requirements, the division shall provide a written notice of approval in accordance with Paragraph (1) of Subsection F of 6.8.50.11 NMAC.

(2) If the division determines the revised application package does not meet the substantive requirements, the division shall provide a written notice of final action and denial in accordance with Paragraph (2) of Subsection F of 6.8.50.11 NMAC. The applicant may submit a new application pursuant to any established application deadlines.

[6.80.5.11 NMAC - N, 07/01/2017]

6.80.5.12 APPROVED GOVERNING BODY TRAINING REPORTING REQUIREMENTS

A. Annually no later than July 15, each approved provider must submit a report to the division on all trainings provided during the prior fiscal year and all planned or proposed dates to provide training in the upcoming year.

- (1) For each training provided in the prior fiscal year, the report shall include:
 - (a) the date and start and end time;
 - (b) the training and facilitator name;
 - (c) the training's department-assigned course code;
 - (d) the name of each governing body member attendee and the charter school on whose governing body they serve;
 - (e) the total amount of fees charged and collected;
 - (f) sign in and sign out sheets for all attendees;
 - (g) the materials presented and agenda;
 - (h) for virtual trainings the score on each assessment taken and the summary of participant engagement; and
 - (i) a summary of the attendees' end of training evaluations.
- (2) For all confirmed or proposed dates for the upcoming year, the report shall include:
 - (a) whether the governing body training is proposed or confirmed;
 - (b) the date and start and end time;
 - (c) the training and facilitator name;
 - (d) the training's department-assigned course code;
 - (e) the proposed location of the training;
 - (f) whether the training is open for general attendance by Governing Body Members or is being offered to a specific, limited audience;
 - (g) the cost of the training; and
 - (h) the process for registration if the training is open for general attendance by governing body members.

B. For any governing body training s that were not reported as proposed trainings in the July 15 report to the division, the approved provider must provide written notice to the division at least 10 days prior to providing governing body training . The notice shall include the information identified in Paragraph (2) of Subsection A of 6.80.5.12 NMAC.

C. Each approved provider must provide the division with written notice within five days if at any time the designated facilitator's status as an eligible facilitator changes for the reasons outlined in Subparagraph (i) Items (ii-iii) of Paragraph (2) of Subsection E of 6.80.5.11 NMAC.

D. Annually no later than July 30, the division shall publish a list of all governing body trainings that are open for general attendance by governing body members on the division's website.

- (1) The listing shall include:
 - (a) the date and start and end time;
 - (b) the training and facilitator name;
 - (c) the training 's department-assigned course code;
 - (d) the location of the training;
 - (e) the number of approved hours for which the training will be eligible;
 - (f) the special hour requirements identified in Subsection B of 6.80.5.8 that the training will fulfill, if any;
 - (g) the cost of the training;
 - (h) the process for registration; and
 - (i) whether the governing body training is proposed or confirmed.

(2) Within five days of receipt of notice that governing body training will be provided, for which the division did not receive notice in the annual reports, the division shall update the listing on its website with the information identified in Subsection C of 6.80.5.12 NMAC.

E. Annually no later than August 15, the division shall publish on its website the prior year reports, described in Paragraph (1) of Subsection A of 6.80.5.12 NMAC from each approved provider.

F. Failure to timely provide the reports required in Subsections A and B of 6.80.5.12 NMAC may result in revocation or suspension of the approved provider status.
[6.80.5.12 NMAC - N, 07/01/2017]

6.80.5.13 SUSPENSION OR REVOCATION OF APPROVAL OF GOVERNING BODY TRAINING

- A.** Any approved provider may have that approval suspended or revoked for the following reasons:
- (1) Failure to timely provide the reporting identified in 6.80.5.12 NMAC, including:
 - (a) annual reports, or
 - (b) reports of trainings that will be provided that were not identified in the annual reports.
 - (2) A change in the status of the designated facilitator as an eligible facilitator as a result of any of the following:
 - (a) the charter school of which the designated facilitator is a governing body member, administrator, senior leader or business manager has its board of finance suspended or its charter revoked or non-renewed; or
 - (b) the designated facilitator is convicted of a crime of moral turpitude or has a professional license revoked or has been subject to disciplinary action for ethical or fiscal misconduct.
 - (3) Failure to keep appropriate and accurate governing body training records, which may include:
 - (a) falsifying attendance records for any governing body member;
 - (b) failing to provide or collect responses to the end of training survey;
 - (c) failing to provide verification of completion or attendance; or
 - (d) failing to keep sign-in and sign-out logs.
 - (4) Providing a governing body training that is not approved while identifying the training as approved, which may include:
 - (a) using a facilitator other than the designated facilitator;
 - (b) using a curriculum other than the designated curriculum;
 - (c) charging a fee in excess of the reasonable fee identified in the application; or
 - (d) providing training for a time period that is substantially shorter than the time for which the training is approved.

B. If the division determines there is reason to suspend or revoke the approved provider status, the division shall provide a written notice of contemplated revocation or suspension.

- (1) The notice shall contain:
 - (a) the course codes and names for which the revocation or suspension is being considered;
 - (b) a specific description of the reasons for the suspension or revocation;
 - (c) if the division is proposing a suspension, the term and scope of the suspension; and
 - (d) the process for responding to the notice of contemplated revocation or suspension.
- (2) An approved provider that receives a written notice of contemplated revocation or suspension may submit a response within 10 days of receiving the notice. The response shall contain:
 - (a) a clear statement that responds to each of the reasons for the contemplated action; and
 - (b) evidence or documentation to support the statement.
- (3) The division shall review a response to a notice of contemplated revocation or suspension within 15 days of receipt.
 - (a) If the division determines the suspension or revocation is appropriate and justified, the division shall provide a written notice of suspension or revocation in accordance with Paragraph (1) of Subsection B of 6.8.50.13 NMAC.
 - (b) If the division determines the suspension or revocation is not appropriate and justified, the division shall provide a written notice that identifies:
 - (i) the continued term of approval for each of the course codes and names for which the revocation or suspension was being considered; and
 - (ii) the specific response and evidence that supported the finding that the suspension or revocation was not appropriate or justified.

C. If an approved provider is suspended or revoked, the division shall, within five days of the action remove that approved provider's trainings from the listing on its website identified in Subsection D of 6.80.5.11 NMAC. The division shall also provide notice on its website that the approved provider has had its approval revoked for suspended.

[6.80.5.13 NMAC - N, 07/01/2017]