

(F)(2) Ensuring successful conditions for high-performing charter schools and other innovative schools (40 points)

The extent to which—

- (vii) *The State has a charter school law that does not prohibit or effectively inhibit increasing the number of high-performing charter schools (as defined in this notice) in the State, measured (as set forth in Appendix B) by the percentage of total schools in the State that are allowed to be charter schools or otherwise restrict student enrollment in charter schools;*
- (vi) *The State has laws, statutes, regulations, or guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize, and close charter schools; in particular, whether authorizers require that student achievement (as defined in this notice) be one significant factor, among others, in authorization or renewal; encourage charter schools that serve student populations that are similar to local district student populations, especially relative to high-need students (as defined in this notice); and have closed or not renewed ineffective charter schools;*
- (vii) *The State’s charter schools receive (as set forth in Appendix B) equitable funding compared to traditional public schools, and a commensurate share of local, State, and Federal revenues;*
- (viii) *The State provides charter schools with funding for facilities (for leasing facilities, purchasing facilities, or making tenant improvements), assistance with facilities acquisition, access to public facilities, the ability to share in bonds and mill levies, or other supports; and the extent to which the State does not impose any facility-related requirements on charter schools that are stricter than those applied to traditional public schools; and*
- (ix) *The State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.*

In the text box below, the State shall describe its current status in meeting the criterion. The narrative or attachments shall also include, at a minimum, the evidence listed below, and how each piece of evidence demonstrates the State’s success in meeting the criterion. The narrative and attachments may also include any additional information the State believes will be helpful to peer reviewers. For attachments included in the Appendix, note in the narrative the location where the attachments can be found.

Evidence for (F)(2)(i):

- *A description of the State’s applicable laws, statutes, regulations, or other relevant legal documents.*

- *The number of charter schools allowed under State law and the percentage this represents of the total number of schools in the State. The number and types of charter schools currently operating in the State.*

Evidence for (F)(2)(ii):

- *A description of the State’s approach to charter school accountability and authorization, and a description of the State’s applicable laws, statutes, regulations, or other relevant legal documents.*
- *For each of the last five years:*
 - *The number of charter school applications made in the State.*
 - *The number of charter school applications approved.*
 - *The number of charter school applications denied and reasons for the denials (academic, financial, low enrollment, other).*
 - *The number of charter schools closed (including charter schools that were not reauthorized to operate).*

Evidence for (F)(2)(iii):

- *A description of the State’s applicable statutes, regulations, or other relevant legal documents.*
- *A description of the State’s approach to charter school funding, the amount of funding passed through to charter schools per student, and how those amounts compare with traditional public school per-student funding allocations.*

Evidence for (F)(2)(iv):

- *A description of the State’s applicable statutes, regulations, or other relevant legal documents.*
- *A description of the statewide facilities supports provided to charter schools, if any.*
- *Evidence for (F)(2)(v):*
- *A description of how the State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.*

Recommended Maximum Response Length: 6 pages

In New Mexico, a charter school is a public school developed by one or more parents, teachers, or community members authorized by the local school board or the New Mexico Public Education Commission to provide an alternative educational setting to parents and students in the public school system. Charter schools provide an opportunity to create new, innovative, and more flexible ways of

educating children. They are nonsectarian, nonreligious, and non-home-based public schools. As stated in Section 22-8B-3 NMSA 1978, “The Charter Schools Act is enacted to enable individual schools to structure their educational curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been replicated successfully in schools with diverse characteristics; to allow the development of different and innovative forms of measuring student learning and achievement; to address the needs of all students, including those determined to be at risk; to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; to improve student achievement; to provide parents and students with an educational alternative to create new, innovative, and more flexible ways of educating children within the public school system; to encourage parental involvement in the public school system; to develop and use site-based budgeting; and to hold charter schools accountable for meeting the department’s educational standards and fiscal requirements.”

(F)(2)(i) The extent to which the state has a charter school law that does not prohibit or effectively inhibit increasing the number of high-performing charter schools in the state, measured by the percentage of total schools in the state that are allowed to be charter schools or otherwise restrict student enrollment in charter schools. Evidence: A description of the state’s applicable laws, statutes, regulations or other relevant legal documents; the number of charter schools allowed under state law and the percentage this represents of the total number of schools in the state; the number and types of charter schools currently operating in the state.

Since 1993, the Public School Code has allowed charter schools to operate in New Mexico. From the original 5 that were authorized under the 1993 state legislation, the number of charter schools in New Mexico has grown to 73 operating in school year 2009-2010 with another 8 authorized to open for school year 2010-2011. Of those 81 charter schools, 21 have been either authorized or renewed as state-chartered charter schools, and the rest have been authorized by local school boards. While the largest concentration of charter

schools and students is in the Albuquerque metropolitan area, charter schools exist in 23 of New Mexico's 89 school districts and in urban, suburban, and rural areas. The Charter Schools Act is contained in Chapter 22, Section 8B of the New Mexico Statutes Annotated and is summarized in Appendix F-2-1.

Since the passage of the New Mexico Charter Schools Act in 1999, the number of students enrolled in charter schools has grown steadily. Charter schools enrolled 2,000 students in 2001 and over 12,000 students in 2009-10 (4% of the state's public school enrollment). Statewide, charter schools enroll a higher percentage of special education students than traditional public schools do (21% vs. 19%) and also a higher percentage of students who are eligible for free and reduced-price lunch (62% vs. 55%). More than half of New Mexico's charter schools are middle and high schools and 18 have been established to serve the needs of students classified as "at risk for failure."

New Mexico's Charter Schools Act contains a provision that permits 15 new charter schools to be authorized annually with a maximum of 75 new charters within any five-year period. This limitation has yet to come into play and will not, in actuality, impact the growth of charter schools in the state. New Mexico has a "high cap" as defined in Appendix B of the *Race to the Top* grant announcement. A "high cap" is defined as a cap that, if it were filled, would allow 10% or more of the total schools in the state to be charter schools. New Mexico currently has a total of 874 public schools: 793 traditional public schools, a number that is expected to remain constant; and 81 charter schools that constitute 9.3% of all public schools. If the maximum cap of 15 schools were authorized in 2010, the total number of charter schools would reach 96 and the total number of public schools would be 889; charter schools would comprise 10.8%, over 10% of the total of 889 public schools, thereby achieving the "high cap" criterion of 10% or more. Further, the number of newly authorized charter schools has never reached the 15-school maximum in any year or the 75-school maximum in any five-year period. In the event that more than 15 new charter schools are authorized in any year, state regulation provides that a lottery will determine which 15 of those schools will be approved to begin operation in the fiscal year following the lottery. The remaining newly authorized schools are automatically approved to begin operations in the second fiscal year following

the lottery. Thus, no newly authorized school is actually prevented from beginning operations due to the 15-school limit. In addition, if the 15-school limit is not reached in any year, the unfilled charter school slots remaining for that year are transferred to succeeding years up to a maximum of 75 schools in any five-year period.

New Mexico state law does not restrict student enrollment in charter schools except that an initial application for a charter school in a district with an enrollment of 1,300 students or less may not propose an enrollment that exceeds 10% of the district enrollment. This provision serves the same purpose of balancing financial resources necessary for both charter school and small district operational needs as does the 15/75 school provision described above. And, like the 15/75 provision, it serves solely as a safeguard to maintain adequate funding for those students who choose to remain in traditional schools and has never actually been a factor in charter school authorization. In larger districts, charter schools are free to set unlimited enrollment goals, with class sizes and student-teacher ratios subject to the same requirements of state law as traditional schools. Parents are free to apply for admission of their children to any or as many charter schools as they wish, with final admission based on a lottery selection process.

New Mexico law has no restrictions on charter school operations in certain geographic areas, and no limits on the number, or percent or demographics of students that may enroll in charter schools with the exception noted above. Accordingly, this provision of state law has not and does not “effectively inhibit increasing the number of high performing charter schools.”

The Charter Schools Act encourages many types of charter schools, including those that serve high-need student populations. For example, the Public Education Commission approved the International School at Mesa del Sol in Albuquerque to pursue authorization as an International Baccalaureate World School; it is also a candidate for the Primary Years Programme. The New Mexico School for the Arts is a statewide residential state-chartered charter high school that offers pre-professional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence. Another charter school, The Albuquerque Sign Language Academy, will open to serve students who are deaf or hard of hearing. Other charter schools in New Mexico are focused on meeting the educational needs of Native Americans and students with disabilities.

(F)(2)(ii) The state has laws, statutes, regulations or guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize and close charter schools; in particular, whether authorizers require that student achievement be one significant factor, among others, in authorization or renewal; encourage charter schools that serve student populations that are similar to local district student populations, especially relative to high-need students; and have closed or not renewed ineffective charter schools. Evidence: A description of the state’s approach to charter school accountability and authorization, and a description of the state’s applicable laws, statutes, regulations or other relevant legal documents. For each of the last five years: the number of charter school applications made in the state; the number of charter school applications approved; the number of charter school applications denied and reasons for the denials (academic, financial, low enrollment, other); the number of charter schools closed (including charter schools that were not reauthorized to operate).

The New Mexico Charter Schools Act, originally passed in 1999, provides the legal requirements for charter school application, authorization, reauthorization (renewal), and closure. From 1999 until 2007, only local school districts were empowered to authorize charter schools. In 2006, state law was amended to allow for state authorization of charter schools by the Public Education Commission in addition to authorization by local schools districts. State authorization of charter schools began in September, 2007. Charter schools are approved for an initial six-year term, with the first year designated as a planning year. Renewals are for five-year terms.

State-chartered schools are LEAs and are exempt from any requirements of the districts in which they are located. The schools have greater autonomy and therefore greater responsibility for their programs, management, and budgets. State-chartered schools are monitored by the Charter Schools Division of the Public Education Department and progress is reported to the Commission.

Authorization and Renewal Process

New Mexico's requirements for a new charter school application include a commitment from the founder(s) describing, among other things, the "... goals, objectives and student performance standards to be achieved ..." by the end of the first charter term and "... a description of the charter school's educational program, student performance standards and curriculum that must meet or exceed the department's educational standards..." (Section 22-8B-8, NMSA 1978)

The state's requirements for charter renewal allow a charter to be suspended, revoked, or not renewed if 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" (Section 22-8B-12 F(2) NMSA, 1978) and if a material violation of the charter, fiscal mismanagement, or other violation of law occurred during the term of the charter.

The Charter Schools Division has created initial application and renewal processes by which applicants must define clear, challenging, student achievement goals. Charter schools seeking renewal must demonstrate student achievement through reports of student scores on the state assessments (known as the NM Standards-Based Assessment or NMSBA) required under Title I of ESEA and other measures of student learning, such as short-cycle assessments.

Number of Charter School Applications Made and Approved Since 2005

Since 2005, 73 charter school applications have been made and 53 have been approved. Districts are not required to report the number of applications received, only the number authorized; in 2005, 21 charter schools were authorized by school districts and in 2006, 15 new charters were approved by districts. In 2007, the first year of state authorizing, 9 applications were received by the Public Education Commission and 2 were authorized. One application was received by a district that was also authorized, for a total of 3

new charters in 2007. In 2008, 11 applications were received by the Commission with 6 authorized and in 2009 the Commission received 16 applications of which 8 were authorized. No new charter authorizations were made by school districts in 2008 or 2009.

In 2005 and 2006 they authorized 36 charter schools. From 2007, the first year of state authorizing, to the present, a total of 37 applications were made and 17 were approved.

Number of Charter School Applications Denied and Closed Since 2005

From 2007 to 2009, 20 charter applications were denied by the Commission due to the inadequacy of the educational, financial and/or governance plans in the applications. Three district-chartered schools were closed from 2005 to 2007 due to findings of fiscal mismanagement. In 2008, one district charter was closed by the district for a combination of lack of academic progress, fiscal mismanagement and governance issues. In 2009, the Commission denied renewal as a state charter to one charter school due to lack of academic progress.

(F)(2)(iii) The state’s charter schools receive equitable funding compared to traditional public schools, and a commensurate share of local, state and federal revenues. Evidence: A description of the state’s applicable statute, regulations or other relevant legal documents and a description of the state’s approach to charter school funding, the amount of funding passed through to charter schools per student and how those amounts compare with traditional public school per-student funding allocations.

New Mexico charter schools are funded on the same per-pupil basis as are traditional schools and districts [see (F)(1)(ii) for the applicable statutes regarding funding of schools]. However, state law provides that: “The amount of funding allocated to a charter school shall not be less than ninety-eight percent of the school-generated program cost. The school district or division may withhold

and use two percent of the school-generated program costs for its administrative support of a charter school.” (22-8B-13 NMSA 1978) This amount, 98%, exceeds the criterion specified in Appendix B of the *Race to the Top* grant announcement which requires funding for charter schools that is “equal to or greater than 90% of that which is provided to traditional public school students.” For 2010-2011, the state will distribute \$3,712.45 per pupil, based on the formula described in Section (F)(1)(ii)(a); traditional public, as well as charter schools receive the same amount.

(F)(2)(iv) The state provides charter schools with funding for facilities (for leasing facilities, purchasing facilities or making tenant improvements), assistance with facilities acquisition, access to public facilities, the ability to share in bonds and mill levies or other supports; and the extent to which the state does not impose any facility-related requirements on charter schools that are stricter than those applied to traditional public schools. Evidence: A description of the state’s applicable statutes, regulations or other relevant legal documents and a description of the statewide facilities supports provided to charter schools, if any.

In addition to the per-pupil funding for operations, New Mexico, through the Public School Capital Outlay Council, provides charter schools with funding for lease payments in the amount of \$700 per student based on prior-year enrollment. Two years ago, a constitutional amendment was passed that allows districts and charter schools to enter into lease-purchase agreements for facilities. In 2007 and again in 2009, the New Mexico Legislature amended the Public School Capital Outlay law to support charter schools receiving local bond funding. Provisions of that law are contained in Appendix F-2-2.

New Mexico requires charter school facilities to meet the same standards of safety, size, and accessibility, known locally as E-Occupancy certification, as other public schools. The National Alliance for Public Charter Schools, in its January 2010 publication, *How State Charter Laws Rank Against the New Model Public Charter School Law*, noted New Mexico and four other states as leaders in facilities support policies for charter schools. The facilities of a charter school whose charter has been renewed at least once shall

be evaluated, prioritized, and eligible for grants pursuant to the Public School Capital Outlay Act (Section 22-24-1 NMSA 1978) in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used to provide additional lease payments for leasehold improvements made by the lesser. Bottom of Form

In Senate Bill 827, *Severance Tax Bond Projects*, of 2007, the Legislature appropriated \$4,500,000 for charter school facilities. And, in 2009, House Bill 76 directed the New Mexico Finance Authority to adopt rules governing the terms and conditions, criteria, and eligibility for determining loans made from Public Project Loan Fund to charter schools that include criteria for determining charter school eligibility for funding; and require that the New Mexico Public Education Department certify that a charter school is approved for funding through a fund and has met accountability standards.

(F)(2)(v) The state enables LEAs and charters to operate innovative, autonomous public schools other than charter schools.

Evidence: A description of how the state enables LEAs and charters to operate innovative, autonomous public schools other than charter schools.

New Mexico enables local school districts to operate innovative, autonomous public schools other than charter schools, such as magnet schools or special focus schools, generally through waivers allowed under regulation 6.29.1. Under the regulation, districts seeking to reorganize a school or institute collaborative school improvement must outline the expected educational benefits from their waiver requests. In 2010, New Mexico will clarify in its Standards for Excellence regulation (6.29.1) the process for establishing magnet schools as another route to creating innovative schools. Magnet schools have long operated in New Mexico. For example:

- For many years, the Albuquerque Public School District has operated Longfellow Elementary, which emphasizes dual language and fine arts; the career enrichment center which graduates students with associates degrees; New Futures School (a school for pregnant and parenting teens); and, School on Wheels (a school and career based alternative school). In the fall of

2010, APS will open Nex+Gen Academy, which will emphasize technology and 21st century skills. Sandia National Laboratories contributed nearly half a million dollars to help fund the partnership between the Albuquerque Public Schools and the New Technology Foundation to open the Nex+Gen Academy and Intel has agreed to purchase 200 laptop computers for the first group of students who will start class in the fall.

- The Santa Fe Public Schools operates the SER/Career Academy. Students who choose the academy have often had difficulties in traditional comprehensive high schools, prefer a smaller learning environment, may have personal issues or are returning from dropping out of high school. The Academy is also beneficial to fast learners who have grown bored in traditional classrooms. Students work at their own pace, learning is accelerated and credits are earned more quickly.
- Magnet and alternative schools are represented all over the state of New Mexico.