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# High-Quality Charter Authorizing Policy Profiles: New Mexico

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# New Mexico: Overview of State Law and Snapshot of Quality Authorizing Practices

## Introduction and Methodology

The National Charter School Resource Center (NCSRC) created the [Policy Framework for High-Quality Charter Authorizing Practices \(Framework\)](#) as a tool for assessing a State policy environment's support for high-quality authorizing practices. The Framework is based on a review of high-quality authorizing practices referenced in the Every Student Succeeds Act (ESSA) and literature by the National Association of Charter School Authorizers (NACSA) and the National Alliance of Public Charter Schools (Alliance).<sup>i</sup> NCSRC staff used this review to identify common themes or categories of policies that are essential to State support for high-quality authorizing and incorporated them into the Framework.

NCSRC then created High-Quality Charter Authorizing Policy Profiles (State Authorizing Profiles) that describe states' authorizing policy contexts based on the Framework. As of winter 2020, NCSRC staff created 19 profiles for the States that were awarded Charter School Programs (CSP) State Entities grants between FY2017 and FY2019, including:

- Alabama
- Arizona
- Arkansas
- Colorado
- Delaware
- Idaho
- Indiana
- Maryland
- Michigan
- Minnesota
- Mississippi
- New Mexico
- New York
- North Carolina
- Oklahoma
- Rhode Island
- Texas
- Washington
- Wisconsin

CSP State Entity (SE) Grants provide funding for State entities to support eligible applicants in planning and preparation for the opening of new charter schools and the replication and expansion of high-quality charter schools. Grant funds must also be used by the State entity to provide technical assistance to eligible applicants and to improve the quality of authorizing.

More State Authorizing Profiles may be added in the future. In addition, NCSRC may publish updated versions of State Authorizing Profiles to reflect changes in State policy.

The State Authorizing Profiles are intended to be used by state policymakers and practitioners to learn about their own authorizing policy environments and those of their peers. They may also be useful to charter school support organizations and charter management organizations that are looking to learn about different states' policy contexts.

Each State profile includes a (i) Framework Snapshot, which is an assessment of a State's authorizing practices using the Framework described in the first paragraph above and (ii) a more detailed description of the state context for each practice. The basis for the State Profiles was a review of the charter law and significant State policies for applicable states. Significant

state policies included those issued by the state education agency and/or state board of education. NCSRC used this review to identify whether the authorizing practices specified in the Framework were present in state law or policy. That is, boxes that were checked in the Framework Snapshot indicated that particular aspects of an authorizing practice(s) were included in state law or policy.

The State Authorizing Profiles provide a foundation for understanding authorizing practices in the State. The profiles are not an exhaustive review of the State’s authorizing policies and practices; it is intended to describe the key elements of the State’s policy context for supporting high-quality authorizing practices. Therefore, it is possible that certain State policies are not reflected in the profiles, and that individual authorizers within a state are implementing other practices as well. In addition, the review does not assess the quality of implementation of the policies; it is possible that state policy or statute articulates a quality practice that authorizers do not implement with fidelity.

Finally, state policy is one strategy for advancing high-quality authorizing practices and is the strategy we are focusing on in these profiles. However, there are other strategies and sources of support, including technical assistance and resources provided by state, regional, and local charter support associations. While this report does not address those other strategies, it provides a narrative of the policy context in which authorizers operate. We articulate this context to support authorizers and authorizer support organizations in understanding how to implement quality authorizing practices in their States.

## Overview of State Law

New Mexico's Charter School Act was first enacted in 1993 and allowed for traditional public schools to “convert” to charter schools.<sup>ii</sup> In 2005, the law was amended and changed the initial term for a charter school from five to six years, and provided that (i) the first year of a school's operation must be used for planning; and (ii) an application for renewal must include a report on the progress in meeting the accountability requirements of the Assessment and Accountability Act, and a description of the charter school facilities.<sup>iii</sup> In 2006, the law was amended to (i) implement a cap on start-up schools of no more than 15 schools opening in a year and a maximum of 75 charter schools in any five-year period; (ii) exempt State-chartered schools from several district requirements; and (iii) require charter schools to develop policies and procedures.<sup>iv</sup>

Amendments to the law in 2012 included requiring authorizers to monitor the performance of the charter schools it oversees; permitting authorizers to take corrective actions if a school's performance is unsatisfactory; requiring authorizers to submit an annual report to the charter school division; requiring the department to review the annual report to determine how waivers of requirements affected the school's performance; and requiring authorizers to develop processes for suspension, revocation, or nonrenewal of charter schools.<sup>v</sup>

# State Authorizing Profile: New Mexico

## Framework Snapshot<sup>1</sup>

### **Authorization**

- Does not cap charter school growth
- Provides for more than one authorizing pathway

*Application includes the following:*

- Specific application criteria
- Timelines
- Evaluation review process
- Process for denied applications

*Performance-based contract includes and provides for the following:*

- Separate post-application agreement
- Rights and responsibilities of authorizer and school
- Academic, financial, and operational performance expectations for schools
- Initial term of not more than five years
- Fiscal, legal, and programmatic autonomy for schools
- Independent charter school governing boards

### **Performance Monitoring**

- Provides for annual authorizer evaluation of schools based on the performance goals and expectations set forth in performance-based contract
- Establishes a comprehensive accountability/monitoring system that includes performance expectations and compliance requirements
- Minimizes schools' administrative and reporting burden
- Articulates authorizer action for schools that fail to meet performance expectations (e.g., probation, sanction, or turnaround)

### **Renewal/Revocation**

- Establishes a clear renewal process and decision-making criteria
- Requires that decisions to renew/revoke be based on student academic achievement
- Requires clear school closure procedures (e.g., parent notification, student enrollment, student record transfer, and disposition of assets)

### **Authorizer Accountability**

- Provides for a registration process for eligible authorizing entities
- Requires the State entity to review authorizers' performance
- Requires authorizers to adhere to standards for high-quality authorizing

### **Authorizer Leadership, Student Access, and Student Services**

- Requires a mission or strategic vision for authorizing
- Promotes quality authorizing by requiring technical assistance or professional development for authorizers and/or charter school applicants
- Ensures equitable access to all students
- Requires appropriate services for educationally disadvantaged students (e.g., students with special needs, English learners, students in foster care, or unaccompanied homeless youth)

### **Authorizer Funding**

- Provides a mechanism for guaranteed access to authorizer funding
- Includes a process for holding authorizers accountable for how funding is used

**Source(s):** New Mexico Statute § 22-8B.

<sup>1</sup> As noted in the Introduction and Methodology section, boxes checked in the framework snapshot indicate that aspects of an authorizing practice(s) were included in State law or policy. If individual authorizers create and follow a certain policy that is not in State statute or policy, then the box will not be checked for the entire State.

## Authorization

- Does not cap charter school growth
- Provides for more than one authorizing pathway

### Does not cap charter school growth

State statute establishes a cap of 15 start-up charter schools per year statewide and provides for a maximum of 75 start-up schools in any five-year period.

### Provides for more than one authorizing pathway

In New Mexico, local school boards and the public education commission can authorize charter schools.

*Application includes the following:*

- Specific application criteria
- Timelines
- Evaluation review process
- Process for denied applications

### Specific application criteria

State statute articulates a comprehensive list of required application elements including the following: a mission statement; the goals and student performance standards; a description of the charter school's educational program; a description of how the educational program will meet the needs of at-risk students; a proposed budget and a description of how an annual financial and administrative audit will be conducted; and a description of the governing structure.

### Timelines

State statute includes timelines for submission and review of applications. Applications must be submitted by June 1 to be considered for the next fiscal year, although this deadline may be waived by the applicant and authorizer together. If the application is submitted by June 1, the authorizer must provide a decision on the application by September 1 of that year.

### Evaluation review process

State statute provides a review process as well as reasons for denying an application such as the application is incomplete, does not offer an educational program that meets the requirements of the State statute, or the proposed administrative or fiscal staff were involved in fiscal mismanagement at another school. The statute requires "at least one public hearing in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application."<sup>vi</sup> Community input may include written or verbal comments.

### Process for denied applications

If an authorizer denies an application, it must document the reasons for the denial within 14 days of the meeting. Charter applicants that are denied may appeal the decision to the New Mexico Secretary of Education.

*Performance-based contract includes and provides for the following:*

- ☒ Separate post-application agreement
- ☒ Rights and responsibilities of authorizer and school
- ☒ Academic, financial, and operational performance expectations for schools
- ☒ Initial term of not more than five years
- ☒ Fiscal, legal, and programmatic autonomy for schools
- ☒ Independent charter school governing boards

### **Separate post-application agreement**

State statute provides for a separate post-application agreement between the authorizer and governing body. Specifically, “the chartering authority shall enter into a contract with the governing body of the applicant charter school within [30] days of approval of the charter application [and] the charter contract shall be the final authorization for the charter school and shall be part of the charter.”<sup>vii</sup>

### **Rights and responsibilities of authorizer and school**

State statute requires that the contract establish the rights and responsibilities of the authorizer and school, including “the chartering authority’s duties to the charter school and liabilities of the chartering authority,” and “signed assurances from the charter school’s governing body members regarding compliance with all federal and State laws governing organizational, programmatic and financial requirements applicable to charter schools.”<sup>viii</sup>

### **Academic, financial, and operational performance expectations for schools**

New Mexico statute requires that the contract articulate the “the criteria, processes and procedures that the chartering authority will use for ongoing oversight of operational, financial and academic performance of the charter school” and “the process and criteria that the chartering authority intends to use to annually monitor and evaluate the fiscal, overall governance and student performance of the charter school.”<sup>ix</sup> In addition, the statute requires that the performance provisions in the contract are based on a performance framework “that clearly sets forth the academic and operations performance indicators and performance targets that will guide the chartering authority’s evaluation of each charter school.”<sup>x</sup> Performance indicators and targets must include academic performance, academic growth, achievement gaps, attendance, financial performance and sustainability, and governing body performance in addition to other elements.

### **Initial term of not more than five years**

State statute allows charter schools to be approved for an initial term of six years, but only if the first year is used for planning. Charters may be renewed for five-year terms after the initial term.

### **Fiscal, legal, and programmatic autonomy for schools**

State statute provides for fiscal, legal, and programmatic autonomy through several provisions. It provides that a charter school is responsible for “its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and contracting for services and personnel matters.”<sup>xi</sup>

State law specifies the rules and provisions the state department of education must waive for all charter schools, including those that are related to “individual class load, teaching load, length

of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education.”<sup>xii</sup>

### **Independent charter school governing boards**

State statute provides that a school is governed by the charter school governing board and that no member of a local school board is able to be a member of a charter board. It also states the specific responsibilities of the charter board that indicate it is independent, stating, “a charter school shall be responsible for: its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and contracting for services and personnel matters.”<sup>xiii</sup>

## **Performance Monitoring**

- Provides for annual authorizer evaluation of schools based on the performance goals and expectations set forth in performance-based contract
- Establishes a comprehensive accountability/monitoring system that includes performance expectations and compliance requirements
- Minimizes schools’ administrative and reporting burden
- Articulates authorizer action for schools that fail to meet performance expectations (e.g., probation, sanction, or turnaround)

### **Provides for annual authorizer evaluation of schools based on the performance goals and expectations set forth in performance-based contract**

Authorizers are required to evaluate schools according to the charter contract and conduct annual site visits as part of the performance review. During the site visit, the authorizer must “determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract.”<sup>xiv</sup>

### **Establishes a comprehensive accountability/monitoring system that includes performance expectations and compliance requirements**

State statute provides for a comprehensive accountability/monitoring system, stating that the authorizer should “monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract.”<sup>xv</sup> State statute also requires annual site visits as part of the performance review of a charter school “to provide technical assistance to the charter school and to determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract.”<sup>xvi</sup>

### **Minimizes schools’ administrative and reporting burden**

State statute does not reference minimizing charter schools’ administrative and reporting burden.

### **Articulates authorizer action for schools that fail to meet performance expectations (e.g., probation, sanction, or turnaround)**

State statute provides for the authorizer to take corrective actions or exercise sanctions if they deem necessary after a performance review. These sanctions “may include requiring a governing

body to develop and execute a corrective action plan with the chartering authority that sets forth time frames for compliance.”<sup>xvii</sup>

## Renewal/Revocation

- Establishes a clear renewal process and decision-making criteria
- Requires that decisions to renew/revoke be based on student academic achievement
- Requires clear school closure procedures (e.g., parent notification, student enrollment, student record transfer, and disposition of assets)

### Establishes a clear renewal process and decision-making criteria

New Mexico statute articulates a clear renewal process and criteria for renewal decisions. Charter boards are required to submit renewal applications 270 days before the charter expires. The application must contain a number of elements including, “a report on the progress of meeting the academic performance, financial compliance and governance responsibilities of the charter school, including achieving the goals, objectives, student performance outcomes, State standards of excellence and other terms of the charter contract” and “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.”<sup>xviii</sup> In addition, State statute specifies reasons for nonrenewal, including failing to make progress towards achievement of the performance standards in the charter contract and failing to meet appropriate standards for fiscal management.

### Requires that decisions to renew/revoke be based on student academic achievement

State law states that a charter may be revoked or nonrenewed for several reasons, including failing “to meet or make substantial progress toward achievement of the department’s standards of excellence or student performance standards identified in the charter contract.”<sup>xix</sup>

### Requires clear school closure procedures (e.g., parent notification, student enrollment, student record transfer, and disposition of assets)

New Mexico statute requires authorizers to develop a charter school closure protocol prior to closing any schools. The school closure protocol should “ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the provisions of Subsection C of this section.”<sup>xx</sup> In addition, the protocol shall “specify tasks, time lines and responsible parties, including delineating the respective duties of the charter school, the governing body and the chartering authority.”

## Authorizer Accountability

- Provides for a registration process for eligible authorizing entities
- Requires the State entity to review authorizers’ performance
- Requires authorizers to adhere to standards for high-quality authorizing

### Provides for a registration process for eligible authorizing entities

State statute does not require a registration process for eligible authorizing entities.

### **Requires the State entity to review authorizers' performance**

The Public Education Department is required to issue an annual report to the governor, the legislative finance committee, and the legislative education study committee on charter schools' performance drawing from the authorizer annual reports. However, this report assesses charter school and not authorizer performance.

### **Requires authorizers to adhere to standards for high-quality authorizing**

State statute requires authorizers to implement policies and practices “consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including”: (i) organizational capacity and infrastructure; (ii) evaluating charter applications; (iii) performance contracting; (iv) charter school oversight and evaluation; and (v) charter school suspension, revocation and renewal processes.<sup>xxi</sup>

## **Authorizer Leadership, Student Access, and Student Services**

- Requires a mission or strategic vision for authorizing
- Promotes quality authorizing by requiring technical assistance or professional development for authorizers and/or charter school applicants
- Ensures equitable access to all students
- Requires appropriate services for educationally disadvantaged students (e.g., students with special needs, English learners, students in foster care, or unaccompanied homeless youth)

### **Requires a mission or strategic vision for authorizing**

New Mexico statute does not require each authorizer to develop a strategic mission or vision for authorizing.

### **Promotes quality authorizing by requiring technical assistance or professional development for authorizers and/or charter school applicants**

State statute requires the Charter Schools Division within the New Mexico Public Education Department to provide technical assistance to charter schools.

### **Ensures equitable access to all students**

State statute requires charter schools to enroll students either “on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the start-up school.”<sup>xxii</sup> It prohibits discrimination “on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services.”<sup>xxiii</sup> State law does not allow charter schools to charge tuition or to have admission requirements.

### **Requires appropriate services for educationally disadvantaged students (e.g., students with special needs, English learners, students in foster care, or unaccompanied homeless youth)**

State law requires charter schools to “comply with all applicable State and federal laws and rules related to providing special education services” including the federal Individuals with Disabilities Education Act (IDEA) and its implementing State and federal rules.<sup>xxiv</sup> The law

also requires that charter applications include “a description of the way a charter school’s educational program will meet the individual needs of the students, including those students determined to be at risk.”<sup>xxv</sup>

## Authorizer Funding

- ☒ Provides a mechanism for guaranteed access to authorizer funding
- ☒ Includes a process for holding authorizers accountable for how funding is used

### Provides a mechanism for guaranteed access to authorizer funding

State statute allows charter schools to allocate funding for authorizing from the charter school’s overall funding. To this end, “the school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.”<sup>xxvi</sup>

### Includes a process for holding authorizers accountable for how funding is used

As previously mentioned, the New Mexico Department of Education is required to issue an annual report to the governor, the legislative finance committee, and the legislative education study committee on the charter schools’ performance drawing from the authorizer annual reports. In addition to other elements, the report must include “an assessment of the successes, challenges and areas for improvement in meeting the purposes of the Charter Schools Act, including the division’s assessment of the sufficiency of funding for charter schools, the efficacy of the State formula for chartering authority funding and any suggested changes to State law or policy necessary to strengthen the State’s charter schools.”<sup>xxvii</sup>

## Endnotes

<sup>i</sup> Language in ESSA Framework Details section below was taken directly and adapted from Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESSA), §§ 4301 to 4311 (20 U.S.C. §§ 7221 to 7221j)—<https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/state-entities/funding-and-legislation/>; Language in the NACSA: Framework Details section below were taken directly or adapted from the following resources: National Association of Charter School Authorizers: Quality Authorizing Practices; Reinvigorating the Pipeline; Authorizer Accountability Model Language; Higher Education Institution Authorizers; Leadership, Commitment, Judgment: Elements of Successful Charter School Authorizing: Findings from the Quality Practice Project; Principles and Standards for Quality Charter School Authorizing; Putting an End to Authorizer Shipping; Language in the Alliance: Framework Details section below were taken directly or adapted from the following resources: National Alliance for Public Charter Schools: 2019 State Charter Law Ranking—<https://www.publiccharters.org/ranking-state-public-charter-school-laws-2019>; 2016 Model Charter School Law—<https://www.publiccharters.org/sites/default/files/migrated/wp-content/uploads/2016/10/2016ModelCharterSchoolLaw.pdf>

<sup>ii</sup> Report to the Legislative Finance Committee, *Program Evaluation of New Mexico Charter Schools*, New Mexico Legislature (July 23, 2010). Retrieved from [https://www.nmlegis.gov/Entity/LFC/Documents/Program\\_Evaluation\\_Reports/PED%20-%20Program%20Evaluation%20of%20New%20Mexico%20Charter%20School%20-%20FINAL.pdf](https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/PED%20-%20Program%20Evaluation%20of%20New%20Mexico%20Charter%20School%20-%20FINAL.pdf)

<sup>iii</sup> New Mexico Public Education Department, New Mexico Charter School Statutes. Retrieved from <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi4g7ucl7DtAhVLEVkJFHfRhDC4QFjAAegQIAhAC&url=https%3A%2F%2Fwebnew.ped.state.nm.us%2Fwp-content%2Fuploads%2F2018%2F01%2FNew-Mexico-Charter-School-Statutes-pdf-1.pdf&usg=AOvVaw33ArM1IO8nVyTuFp53zpZv>

<sup>iv</sup> *Id.*

<sup>v</sup> *Id.*

<sup>vi</sup> NM Stat § 22-8B-6(j).

<sup>vii</sup> NM Stat § 22-8B-9.

<sup>viii</sup> NM Stat § 22-8B-9(B)(4) and (6).

<sup>ix</sup> *Id.*

<sup>x</sup> NM Stat 22 8B-9.1(A)

<sup>xi</sup> NM Stat § 22-8B-4(C).

<sup>xii</sup> NM Stat § 22-8B-5(B).

<sup>xiii</sup> NM Stat § 22-8B-4(C)(1)(2).

<sup>xiv</sup> NM Stat § 22-8B-12(G).

<sup>xv</sup> *Id.*

<sup>xvi</sup> NM Stat § 22-8B-12(E).

<sup>xvii</sup> NM Stat § 22-8B-12(F).

<sup>xviii</sup> NM Stat § 22-8B-12(J).

<sup>xix</sup> NM Stat § 22-8B-12(K).

<sup>xx</sup> NM Stat § 22-8B-12.1(A).

<sup>xxi</sup> NM Stat § 22-8B-5.3(H).

<sup>xxii</sup> NM Stat § 22-8B-4.

xxiii *Id.*

xxiv NM Stat § 22-8B-4(T).

xxv NM Stat § 22-8B-8.

xxvi NM Stat § 22-8B-13(A).

xxvii NM Stat § 22-8B-17.1.