

# New Mexico Register / Volume XXXI, Issue 13 / July 14, 2020

This is an amendment to 6.80.5 NMAC, Sections 1, 7, 8, 9, 10, 11, 12, and 13 effective 7/14/2020.

**6.80.5.1**                    **ISSUING AGENCY:** Public Education Department, hereinafter the department. [6.80.5.1 NMAC - N, 7/25/2017; A, 7/14/2020]

**6.80.5.7**                    **DEFINITIONS:**

- A. "Applicant" means a source, individual, or entity that has submitted an application to the department 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. "Department-assigned training course code" means the code assigned to an application package that meets the substantive review requirements.
- D. "Designated curriculum" means the curriculum that was provided in the application submitted to the department for the purpose of receiving approval to provide training to governing bodies.
- E. "Designated facilitator" means the individual identified in the application submitted to the department for the purpose of receiving approval to provide training to governing bodies.
- F. "Eligible facilitator" means a proposed facilitator who is not disqualified for any of the reasons identified in Subparagraphs (b) and (c) of Paragraph (2) of Subsection E of 6.80.5.11 NMAC.
- G. "Governing body member" means a member of a governing body of a charter school who will be a voting member upon completion of the initial seven-hour training provided by the department or who has completed the initial seven-hour training and is a voting member.
- H. "School specific onboarding" means the action or process of integrating a new governing body member into the school by familiarizing the new governing body member with the school's governance structure and requirements, other governing body members, financial status (including budget), history, contract, goals, model, staff, strengths, and challenges, and current academic, financial, and organizational performance. [6.80.5.7 NMAC - N, 7/25/2017; A, 7/14/2020]

**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 provided by approved providers.
- B. The department shall provide guidance that identifies specific standards within each area; however, applicants may identify additional standards within each area to address the needs of individual governing bodies and governing body members. The new governing body training shall include:
  - 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, legal, and organizational performance requirements;
  - 5) one hour of training on equity and culturally and linguistically responsive practices; and
  - 6) three hours of additional training standards identified by the individual governing bodies and governing body members.
- C. If a governing body member resigns his or her term prior to the end of the first fiscal year of service, the additional training 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, 7/25/2017; A, 7/14/2020]

#### **6.80.5.9 MANDATORY GOVERNING BODY TRAINING COURSE CONTINUING GOVERNING BODY MEMBERS:**

- A. Unless exempted from specific hourly training requirements as described below, each governing body member continuing to serve on a governing body beyond the end of 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. The department shall provide guidance that identifies specific standards within each area; however, applicants may identify additional standards within each area to address the needs of individual governing bodies and governing body members. The continuing governing body training shall include:
- 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;
  - 3) two hours of training on understanding and evaluating academic data;
  - 4) one hour of training on open government, legal, and organizational performance requirements [regarding free public school education; and;
  - 5) one hour of training on equity and culturally and linguistically responsive practices.
- B. Governing body members who have served on a governing body beyond the end of their first fiscal year of their service may be exempted from specific hourly training requirements based on the school's fiscal performance.
- 1) For any school that has received an unmodified annual audit in each of the past three years with no material weaknesses, no multi-year repeat findings, no significant deficiencies, and that has received no more than two compliance findings in the current 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.
  - 2) The department shall annually identify the schools that are eligible, under the criteria established above, to claim an exemption for their governing body members.
- C. The mandatory governing body training course shall 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 in each of the areas identified above shall be related to specific areas of growth within each area for individual governing bodies or governing body members based on the annual governing body 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, 7/25/2017; A, 7/14/2020]

#### **6.80.5.10 GOVERNING BODY TRAINING REPORTING AND COMPLIANCE:**

- A. Annually no later than July 1, each charter school shall ensure the department 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 name of the governing body member;
  - 2) the name of the school for which the identified governing body member serves on the governing body; and
  - 3) the governing body training's department-assigned training course code.
- C. Failure to timely provide records of attendance and 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 department to the authorizer. Additionally, the non-compliance may result in progressive disciplinary action by the department or the authorizer, based on the authority of that entity, 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 or governing body member for any noncompliant governing body member who is still serving on the governing body;
  - 2) withholding, by the department, of no more than five percent of the charter school's monthly funding until the school comes into compliance with the requirements when the school has failed to comply with its corrective action plan and has one or more non-compliant members still serving on the governing body;
  - 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, funding has been withheld for at least 30 days, and the non-compliant governing body member is still serving on the governing body; and
  - 4) revocation or non-renewal of the school's charter when prior disciplinary action has not resulted in the school [coming into compliance] becoming compliant and has the non-compliant governing body member [is] still serving on the governing body. [6.80.5.10 NMAC - N, 07/25/2017; A, 7/14/2020]

#### **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. 6.80.5 NMAC 4
- B. The department shall, at a minimum, accept application packages on a biannual basis from applicants seeking to be approved providers. The department shall publish the application and application deadlines on its website annually no later than January 1. The department may approve trainings provided by the department or other state agencies on its own review without requiring the

department or another state agency to apply for approval of the training; this review may also occur upon request from a governing body member.

- 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 department 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 department'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 areas identified in Subsection A of 6.80.5.9 NMAC; 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 department 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 department 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 department within 14 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 D of 6.80.5.11 NMAC, and the applicant's file shall be closed.
  - 4) The department 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 14 days of receipt.
    - a. If the department determines the application package was erroneously designated as administratively incomplete, the department shall reopen the applicant's file and send a written notice of administrative completeness to the applicant.

- b. If the department 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 department shall send a written notice of administrative completeness to the applicant.
  - 6) If the department 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. 6.80.5 NMAC 5
- 1) Within the overall review timeframe, the department 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 at the time of the activity that was the reason for the suspension, revocation, or non-renewal;
    - c. the designated facilitator proposed by the applicant has not been convicted of a crime of moral turpitude, 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 areas identified in 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 application includes a technology description that identifies methods that will be used to verify participant engagement throughout the training and terminate the training if the participant is not engaged. Virtual training shall also include an assessment of information understanding and retention at the end of training. The assessment shall be aligned to the training, shall not be passed with a score below eighty percent, and shall not allow multiple attempts by the participant. The applicant describes a process it will use to evaluate the quality of the trainings, which includes end of training evaluations completed by all attendees to evaluate:

- i. the knowledge and skill of the facilitator;
    - ii. the quality and relevance of the information;
    - iii. what actions the attendees will take based on what they learned in the governing body training; and
    - iv. 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 department shall provide the applicant a notice of denial or approval.
  - 1) If an application package meets the substantive requirements, the department 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 areas identified in Subsection A of 6.80.5.9 NMAC that the training will fulfill;
    - d. the training's department-assigned training course code; and
    - e. a copy of the approved application package.
  - 2) If an application package does not meet the substantive requirements, the department 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 department within 14 days of the date of notice.
  - 1) The request for reconsideration shall contain: 6.80.5 NMAC 6
    - 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 D of 6.80.5.11 NMAC, and the applicant's file shall be closed.
- H. The department shall review a revised application package and request for reconsideration that is submitted according to Subsection G of this section and provide a decision on the request for reconsideration within 21 days of receipt.
  - 1) If the department determines the revised application package meets the substantive requirements, the department shall provide a written notice of approval in accordance with Paragraph (1) of Subsection F of 6.8.50.11 NMAC.
  - 2) If the department determines the revised application package does not meet the substantive requirements, the department 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, 7/25/2017; A, 7/14/2020]

#### **6.80.5.12 APPROVED GOVERNING BODY TRAINING REPORTING REQUIREMENTS:**

- A. Annually no later than July 1, each approved provider shall submit a report to the department 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;
    - b. the training's department-assigned training course code;
    - c. the name of each governing body member attendee and the charter school on whose governing body they serve;
    - d. sign in and sign out sheets for all attendees;
    - e. for virtual trainings, the score on each assessment taken and the summary of participant engagement; and
    - f. copies of 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 time;
    - c. the training's department-assigned training course code;
    - d. the proposed location of the training;
    - e. whether the training is open for general attendance by governing body members or is being offered to a specific, limited audience;
    - f. the cost of the training; and
    - g. the process for registration if the training is open for general attendance by governing body members.
- B. For any governing body trainings that were not reported as proposed trainings in the July 1 report to the department, the approved provider shall provide written notice to the department at least 14 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 shall provide the department with written notice within seven days if at any time the designated facilitator's status as an eligible facilitator changes for the reasons outlined in Items (i-iv) of Subparagraph (h) of Paragraph (2) of Subsection E of 6.80.5.11 NMAC.
- D. Annually no later than July 30, the department shall publish a list of all governing body trainings that are open for general attendance by governing body members on the department's website.
- 1) The listing shall include:
    - a. the date and start time;
    - b. the training and facilitator name;
    - c. the training's department-assigned training course code;
    - d. the location of the training, if available; 6.80.5 NMAC 7
    - e. the number of approved hours for which the training will be eligible;
    - f. the requirements identified in Subsection A of 6.80.5.9 NMAC that the training will fulfill;
    - g. the cost of the training;
    - h. the process for registration; and
    - i. whether the governing body training is proposed or confirmed.

- 2) Within seven days of receipt of notice that governing body training will be provided, for which the department did not receive notice in the annual reports, the department 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 department 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, 7/25/2017; A, 7/14/2020]

#### **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, and the designated facilitator was in the role at the school at the time of the activity that was the reason for the suspension, revocation, or non-renewal; 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 department determines there is reason to suspend or revoke the approved provider status, the department shall provide a written notice of contemplated revocation or suspension. (1) The notice shall contain: (a) the training 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 department 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 14 days [or] of receiving the notice. The response shall contain: 6.80.5 NMAC 8 (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 department shall review a response to a notice of contemplated revocation or suspension within 21 days of receipt. (a) If the department determines the suspension or revocation is appropriate and justified, the department shall provide a written notice of suspension or revocation in accordance with Paragraph (1) of Subsection B of [6.8.50.13] 6.80.5.13 NMAC. (b) If the department determines the suspension or revocation is not appropriate and justified, the department shall provide a written notice that identifies: (i) the continued term of approval for each of the training 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 department shall, within seven 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 department shall also provide notice on its website that the approved provider has had its approval revoked [for] or suspended. [6.80.5.13 NMAC - N, 7/25/2017; A, 7/14/2020] HISTORY OF 6.80.5 NMAC: [RESERVED]