Item No. 8

AGENDA ITEM EXECUTIVE SUMMARY

I. **Public Education Commission Meeting Date:** December 10-11, 2015

II. **Item Title: DISCUSSION AND POSSIBLE ACTION ON POLICY RECOMMENDATION FOR INVESTIGATIONS AND COMPLAINT POLICIES**

III. **Executive Summary and Proposed Motions:**

Attached to this report, CSD has provided a proposed Written Complaint Policy and Protocol. This report includes the proposed policy, a track changes version from the prior version presented at the PEC's November meeting, and a proposed submission form.

The changes, identified in the track changes version, were made based on public comment and feedback. The changes identify that this policy is intended to address complaints coming from public members outside of the PED. The bulk of the policy addresses complaints that are not complaints, but rather are allegations of statutory or contractual violations.

The changes also address a concern that CSD would investigate allegations outside of its authority or jurisdiction. Instead it specifies that complaints that are appropriately investigated by an outside agency or another division would be referred to that appropriate entity. An appendix of agencies/divisions is provided.

The changes also provide that a school may opt to seek review from the PEC directly if it does not agree with CSD's findings that there is a contractual or statutory violation and does not agree with CSD's required evidence of compliance.

The revisions also address concerns about the information that will be kept and made available in the school's public file. Rather than keeping all evidence and documents collected and reviewed, the public file will contain only the initial complaint, a notice of complaint and correspondence with the school, and the final findings.

Some public comment has indicated this is not a proper policy as complaints are addressed by 8.11 of the contract. CSD believes this position ignores the reality that a complaint is not the same as an allegation of non-compliance with the law or the contract. A complaint is defined as: "a statement that a situation is unsatisfactory or unacceptable." An allegation, however, is defined as: "a claim or assertion that someone has done something illegal or wrong." This policy proposal is intended to address this difference and enable the PEC, through the support of the CSD, to protect the public interest and ensure it is able to enforce the contract and the charter school act which provides:
22-8B-5.3. Chartering authority; powers; duties; liability.
A chartering authority shall:
…
F. **monitor**, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, **the performance and legal compliance of charter schools under their authority**; [and]
G. **determine whether a charter school merits suspension, revocation or nonrenewal**."

Proposed Motion Language

-Move to adopt the policy presented in today's materials.

-Move to adopt the policy presented in today's materials, with the changes discussed on the record today.

-Make no motion.

Background:

Statutory Provisions:

22-8B-12 (D) - A chartering authority shall 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. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, *including conducting appropriate inquiries and investigations*; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

22-8B-17 - The "charter schools division" is created in the department. The division shall:

A. provide staff support to the commission;

Contractual Provisions:

Section 4.03 (f)(iii) - The Authorizer shall conduct and/or require oversight activities according to its policies and procedures to allow the Authorizer to fulfill its responsibilities under the Act, *including conducting appropriate inquiries and investigations, when warranted*.

Section 4.03 (f)(vi) - The Authorizer *shall notify the School in a timely manner* of *unsatisfactory performance* on the organizational, academic or financial frameworks, o*r any other factor that may result in an improvement plan, corrective action, nonrenewal or revocation as determined* during the annual site visit or *at any other time*.

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Section 8.11 (a) - The School must establish a process for resolving community, parental, and other public complaints. The process shall afford the opportunity for the complainants to be heard by the head administrator and/or the School's governing body. The governing body shall be the final determiner of the complaint *unless the complainant has additional legal remedies or requirements provided by law*.

Section 8.11 (b) - The Authorizer agrees to notify the School of all written complaints about the School that the Authorizer receives. The notification shall be made immediately or as soon as is practicable under the circumstances, but not later than 10 business days after its receipt by the Authorizer. The notice shall include the substance of the complaint, taking into consideration any complainant's request for anonymity. The *School shall respond to the complaint according to its prescribed complaint procedures* and shall *notify the Authorizer* through its legal counsel *of the School's response* to the complaint *within the timeframe prescribed in the notice of the complaint*.

Policy:

A. Upon receipt of any written complaint from a public member outside of the PED, the Charter School Division (CSD) will evaluate the complaint within 10 business days to determine if the complaint ~~contains any allegations~~is an allegation of statutory, regulatory, or contractual non-compliance.

B. If a complaint ~~does~~is not ~~contain any allegations~~an allegation of statutory, regulatory, or contractual

non-compliance, CSD will provide the school that is the subject of the complaint with notice of the complaint, and copy the complainant, within 10 business days of CSD's receipt of the complaint.

1) The notice of the complaint shall:

a) describe the substance of the complaint,

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b) include a copy of the complaint, redacted as necessary to protect a complainant's request for anonymity, and

c) require the school to notify CSD of the school's response to the complaint, which must comply with the school's established process for resolving community, parental, and other public complaints, no later than ~~30~~45 calendar days after the notice of complaint is sent to the school.

2) If the school does not timely provide CSD notification of the school's response to the complaint, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.

3) The school's response and ~~all correspondence including the initial complaint and~~ CSD's notice of complaint shall be kept in the school's public file, with redactions necessary to protect the identity of students and other confidential information.

C. If a complaint ~~contains one or more allegations~~ is an allegation of statutory, regulatory, or contractual

~~non-compliance~~violations, CSD will either engage in fact finding regarding the allegations through an investigation or, where jurisdiction over the matter the properly lies with another agency or division, refer the allegation(s) to the appropriate agency or division.

1) When it is appropriate for CSD to engage in fact finding regarding the allegations through an investigation, CSD will provide the school that is the subject of the ~~complaint~~allegations with notice of investigation of non-compliance, and copy the complainant, within 10 business days of CSD's receipt of the

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~~complaint~~allegations.

~~1)~~a) The notice of investigation of non-compliance shall:

~~a)~~i. specifically identify the statutory, regulatory, or contractual provisions that the school is alleged to be violating,

~~b)~~ii. specifically identify the documents, evidence, and information the school must provide,

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~~c)~~iii. include a copy of the ~~complaint~~allegations, redacted as necessary to protect a complainant's request for anonymity, and

~~d)~~iv. require the school to provide the requested documents, evidence, and information no later than 10 business days after the notice of investigation is sent to the school.

~~2)~~b) A school may request an extension of the time to respond in writing. CSD shall grant an extension of no more than 5 business days.

~~3)~~c) If the school does not timely provide CSD the requested documents, evidence, and information, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.

~~4)~~d) ~~Within 30 calendar days of the receipt of the documents, evidence, and information, CSD shall notify the school of its determination if the alleged violations are confirmed or disproved, or if more information is needed.~~ If more information is needed, CSD may request additional information using the same protocol as used to initially request information or may conduct either an announced or unannounced ~~site~~auditing visit to the school.

e) ~~The school's response, all~~ Within 45 calendar days of the receipt of the documents, evidence, and information ~~gathered as part of the~~, CSD shall notify the school of its preliminary fact finding and findings regarding compliance.

f) The school shall have 15 business days to provide additional

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information, evidence, and a response to the CSD's preliminary fact finding and findings regarding compliance.

2) When it is appropriate for CSD to refer the allegation(s) to another agency or division of investigation, ~~and all correspondence including the initial complaint and CSD's~~ CSD will forward the allegations, and copy the school and complainant, within 10 business days of CSD's receipt of the allegation.

a) The notice of communication with the other agency or division shall:

i. specifically identify the statutory, regulatory, or contractual provisions that the school is alleged to be violating,

ii. include a copy of the allegations, which when copied to the school will be redacted as necessary to protect a complainant's request for anonymity, and

iii. request the agency provide CSD an update on their investigation ~~of non-compliance~~or process in handling the allegations as soon as possible.

~~5)~~3) The initial allegations, all correspondence concerning the allegations, as well as the final factual findings or the outcome of an investigation by CSD or any other division or agency shall be kept in the school's public file, with redactions necessary to protect the identify of students and other confidential information.

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~~6) If the CSD finds the allegations are confirmed and the charter school's fiscal, overall governance or legal compliance therefore appears *unsatisfactory*:~~

4) ~~The~~ If CSD conducts a fact finding investigation which reveals non-compliance that can be corrected by the school:

a) CSD ~~will~~shall present the findings and required evidence of compliance, with a timeframe for submission of no less than 10 and no more than 30 business days, in a written report~~,~~ no later than ~~60 calendar~~30 business days after the findings are identified, to:

i. the charter school's head administrator, and

ii. the president of the governing body.

b) The charter school, through its head administrator or governing body, ~~shall respond to CSD with evidence to address the CSD's findings within 15 calendar days of receiving the written report~~may either accept the CSD report and requirements or may request to be added to the next PEC agenda for the PEC to consider facts, findings, and required evidence of compliance presented in the CSD report along with any response, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

c) If the charter school's ~~response~~ does not request to be placed on the PEC's agenda and does not timely provide ~~sufficient~~the evidence ~~to change CSD's findings that the charter school's fiscal, overall governance or legal~~ of compliance ~~appears *unsatisfactory*,~~required by CSD within the timeframes presented in the written report, CSD shall notify the school that CSD will be ~~presenting~~considered by the PEC at

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the next scheduled meeting. CSD will provide the PEC with its findings in the written report and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

5) If CSD conducts a fact finding investigation which reveals non-compliance that cannot reasonably be corrected by the school. CSD shall notify the school that CSD will be considered by the PEC at the next scheduled meeting. CSD will provide the PEC with its findings in the written report, and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

6) If another agency or division conducts an investigation and identifies non-compliance:

a) If the agency or division establishes specific requirements and reporting to demonstrate compliance, the school shall provide CSD with evidence of compliance with those required actions.

b) If the agency or division does not establish requirements to demonstrate compliance, the CSD shall provide a written report acknowledging the other agency's findings and establishing required evidence of compliance, with a timeframe for submission of no less than 10 and no more than 30 business days, no later than 30 business days after the other agency's findings are provided to the CSD, to:

i. the charter school's head administrator, and

ii. the president of the governing body.

c) The charter school, through its head administrator or governing body, may either accept the CSD requirements or may request to be added

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to the next PEC agenda for the PEC to consider facts, findings, and required evidence of compliance presented in the CSD report along with the school'sany response, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the PEC as part of the "Schools of Concern" agenda item at ascheduled PEC meeting no later than 60 calendar days after CSD receives thedate.

c)d) If the charter school's responsedoes not request to be placed on the PEC's agenda and does not timely provide the evidence of compliance required by CSD within the timeframes presented in the written report, CSD shall notify the school that CSD will be considered by the PEC at the next scheduled meeting. CSD will provide the PEC with its findings in the written report and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

d)7) AtIf the school is added to the PEC's agenda for the PEC meeting at which the CSD presents its findings, the PECt o determine whether the charter school's fiscal, overall governance or legal compliance is unsatisfactory and what action should be taken to correct the charter school's fiscal, overall governance or legal compliance. In, in making this determination, the PEC shall consider:

i.a) all correspondence regarding the complaint and allegations to or from CSD,

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~~ii.~~b) the CSD report,

~~iii.~~c) the initial ~~complaint with the~~ allegations of non-compliance,

~~iv.~~d) reports from other regulatory divisions or agencies, or law enforcement agencies,

~~v.~~e) the charter school's response to CSD,

~~vi.~~f) all written evidence provided by the charter school to the CSD at least ~~7~~10 calendar days prior to the PEC meeting, and

~~vii.~~g) the charter school's presentation during the PEC meeting.

~~e)~~8) If the PEC determines that the charter school's fiscal, overall governance or legal compliance is unsatisfactory, the PEC may, depending on the severity of the identified non-compliance:

~~i.~~a) notify the governing body of the charter school that it must provide the CSD with evidence that it has remedied the problem ~~no later than 7~~as early as 10 business days prior to the next PEC meeting;

~~ii.~~b) require the governing body of the charter school to work with CSD to develop and execute a corrective action plan that sets forth time frames for compliance, submit that plan ~~no later than 7~~as early as 10 business days prior to the next PEC meeting, and present the plan to the PEC for approval at the next PEC meeting; ~~or~~

c) issue a notice of intent to revoke the charter and schedule a revocation hearing~~.~~; or

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d) take or recommend other action as legally permissible.

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Appendix of External Divisions/Agencies with Jurisdiction over Alleged Violations

Special Education Bureau –Special education law violations

EEOC – Employment law violations

Office of Civil Rights – Civil rights violations

_____ - ADA compliance

Licensure Complain Division – licensure complaints

PSFA - Facilities violations

Local Police Department - Criminal activity

School Budget Division – budget violations/misfeasance

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New Mexico Public Education Department
Charter School Division - Complaint Form

Submissions will not be processed without evidence that you have sought resolution with the school and its governing body first.

Date

Email Address

First Name

Last Name

Street Address

Street Address Line 2

City

State

Zip Code

Date of incident or situation

School Name

Please describe process you have utilized to seek resolution with the school and its governing body. Include date of correspondence with school and school's governing body and school's response.

Please describe what happened and identify any violations of law or the charter contract. Be as detailed as possible.

Desired outcome

*Please attach the following:

1) Evidence and documentation to support the facts described.

2) All correspondence, with attached documents, between you and the governing body and or leadership of the school regarding the matter of the complaint.

3) Evidence that you have sought resolution of this matter with the school's governing body.

Background:

Statutory Provisions:

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22-8B-17 - The "charter schools division" is created in the department. The division shall:

A. provide staff support to the commission;

Contractual Provisions:

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Section 4.03 (f)(vi) - The Authorizer *shall notify the School in a timely manner* of *unsatisfactory performance* on the organizational, academic or financial frameworks, o*r any other factor that may result in an improvement plan, corrective action, nonrenewal or revocation as determined* during the annual site visit or *at any other time*.

DRAFT

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Section 8.11 (b) - The Authorizer agrees to notify the School of all written complaints about the School that the Authorizer receives. The notification shall be made immediately or as soon as is practicable under the circumstances, but not later than 10 business days after its receipt by the Authorizer. The notice shall include the substance of the complaint, taking into consideration any complainant's request for anonymity. The *School shall respond to the complaint according to its prescribed complaint procedures* and shall *notify the Authorizer* through its legal counsel *of the School's response* to the complaint *within the timeframe prescribed in the notice of the complaint*.

Policy:

A. Upon receipt of any written complaint from a public member outside of the PED, the Charter School Division (CSD) will evaluate the complaint within 10 business days to determine if the complaint is an allegation of statutory, regulatory, or contractual non-compliance.

B. If a complaint is not an allegation of statutory, regulatory, or contractual non-compliance, CSD will provide the school that is the subject of the complaint with notice of the complaint, and copy the complainant, within 10 business days of CSD's receipt of the complaint.

   1) The notice of the complaint shall:

      a) describe the substance of the complaint,

b) include a copy of the complaint, redacted as necessary to protect a complainant's request for anonymity, and

c) require the school to notify CSD of the school's response to the complaint, which must comply with the school's established process for resolving community, parental, and other public complaints, no later than 45 calendar days after the notice of complaint is sent to the school.

2) If the school does not timely provide CSD notification of the school's response to the complaint, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.

3) The school's response and CSD's notice of complaint shall be kept in the school's public file, with redactions necessary to protect the identity of students and other confidential information.

C. If a complaint is an allegation of statutory, regulatory, or contractual violations, CSD will either engage in fact finding regarding the allegations through an investigation or, where jurisdiction over the matter the properly lies with another agency or division, refer the allegation(s) to the appropriate agency or division.

1) When it is appropriate for CSD to engage in fact finding regarding the allegations through an investigation, CSD will provide the school that is the subject of the allegations with notice of investigation of non-compliance, and copy the complainant, within 10 business days of CSD's receipt of the allegations.

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a) The notice of investigation of non-compliance shall:

   i. specifically identify the statutory, regulatory, or contractual provisions that the school is alleged to be violating,

   ii. specifically identify the documents, evidence, and information the school must provide,

   iii. include a copy of the allegations, redacted as necessary to protect a complainant's request for anonymity, and

   iv. require the school to provide the requested documents, evidence, and information no later than 10 business days after the notice of investigation is sent to the school.

b) A school may request an extension of the time to respond in writing. CSD shall grant an extension of no more than 5 business days.

c) If the school does not timely provide CSD the requested documents, evidence, and information, CSD shall provide a reminder and notify the school that if they do not provide a response prior to the release of the agenda for the next PEC meeting, the school will be included on the agenda under the "Schools of Concern" agenda item.

d) If more information is needed, CSD may request additional information using the same protocol as used to initially request information or may conduct either an announced or unannounced auditing visit to the school.

e) Within 45 calendar days of the receipt of the documents, evidence, and information, CSD shall notify the school of its preliminary fact finding

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and findings regarding compliance.

f) The school shall have 15 business days to provide additional information, evidence, and a response to the CSD's preliminary fact finding and findings regarding compliance.

2) When it is appropriate for CSD to refer the allegation(s) to another agency or division of investigation, CSD will forward the allegations, and copy the school and complainant, within 10 business days of CSD's receipt of the allegation.

   a) The notice of communication with the other agency or division shall:

      i. specifically identify the statutory, regulatory, or contractual provisions that the school is alleged to be violating,

      ii. include a copy of the allegations, which when copied to the school will be redacted as necessary to protect a complainant's request for anonymity, and

      iii. request the agency provide CSD an update on their investigation or process in handling the allegations as soon as possible.

3) The initial allegations, all correspondence concerning the allegations, as well as the final factual findings or the outcome of an investigation by CSD or any other division or agency shall be kept in the school's public file, with redactions necessary to protect the identify of students and other confidential information.

4) If CSD conducts a fact finding investigation which reveals non-compliance that can be corrected by the school:

   a) CSD shall present the findings and required evidence of compliance, with a timeframe for submission of no less than 10 and no more than

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30 business days, in a written report no later than 30 business days after the findings are identified, to:

i. the charter school's head administrator, and

ii. the president of the governing body.

b) The charter school, through its head administrator or governing body, may either accept the CSD report and requirements or may request to be added to the next PEC agenda for the PEC to consider facts, findings, and required evidence of compliance presented in the CSD report along with any response, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

c) If the charter school's does not request to be placed on the PEC's agenda and does not timely provide the evidence of compliance required by CSD within the timeframes presented in the written report, CSD shall notify the school that CSD will be considered by the PEC at the next scheduled meeting. CSD will provide the PEC with its findings in the written report and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

5) If CSD conducts a fact finding investigation which reveals non-compliance that cannot reasonably be corrected by the school. CSD shall notify the school that CSD will be considered by the PEC at the next scheduled meeting. CSD will provide the PEC with its findings in the written report and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled

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PEC meeting date.

6) If another agency or division conducts an investigation and identifies non-compliance:

   a) If the agency or division establishes specific requirements and reporting to demonstrate compliance, the school shall provide CSD with evidence of compliance with those required actions.

   b) If the agency or division does not establish requirements to demonstrate compliance, the CSD shall provide a written report acknowledging the other agency's findings and establishing required evidence of compliance, with a timeframe for submission of no less than 10 and no more than 30 business days, no later than 30 business days after the other agency's findings are provided to the CSD, to:

      i. the charter school's head administrator, and

      ii. the president of the governing body.

   c) The charter school, through its head administrator or governing body, may either accept the CSD requirements or may request to be added to the next PEC agenda for the PEC to consider facts, findings, and required evidence of compliance presented in the CSD report along with any response, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

   d) If the charter school's does not request to be placed on the PEC's agenda and does not timely provide the evidence of compliance required by CSD

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within the timeframes presented in the written report, CSD shall notify the school that CSD will be considered by the PEC at the next scheduled meeting. CSD will provide the PEC with its findings in the written report and all responses, evidence or documents submitted by the school to CSD at least 10 calendar days prior to the scheduled PEC meeting date.

7) If the school is added to the PEC's agenda for the PEC to determine whether the charter school's fiscal, overall governance or legal compliance is unsatisfactory and what action should be taken to correct the charter school's fiscal, overall governance or legal compliance, in making this determination, the PEC shall consider:

    a) all correspondence regarding the allegations to or from CSD,
    b) the CSD report,
    c) the initial allegations of non-compliance,
    d) reports from other regulatory divisions or agencies, or law enforcement agencies,
    e) the charter school's response to CSD,
    f) all written evidence provided by the charter school to the CSD at least 10 calendar days prior to the PEC meeting, and
    g) the charter school's presentation during the PEC meeting.

8) If the PEC determines that the charter school's fiscal, overall governance or legal compliance is unsatisfactory, the PEC may, depending on the severity of the identified non-compliance:

    a) notify the governing body of the charter school that it must

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provide the CSD with evidence that it has remedied the problem as early as 10 business days prior to the next PEC meeting;

b) require the governing body of the charter school to work with CSD to develop and execute a corrective action plan that sets forth time frames for compliance, submit that plan as early as 10 business days prior to the next PEC meeting, and present the plan to the PEC for approval at the next PEC meeting;

c) issue a notice of intent to revoke the charter and schedule a revocation hearing; or

d) take or recommend other action as legally permissible.

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PSFA - Facilities violations

Local Police Department - Criminal activity

School Budget Division – budget violations/misfeasance

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