



**Issue Brief  
to  
The PUBLIC SCHOOL CAPITAL OUTLAY  
OVERSIGHT TASK FORCE**



**PSCOOTF Capital Outlay Work Group  
Review of Charter School Facilities Issues  
September 24, 2012**

**DRAFT**

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Each year, the PEC and districts authorize new charters, creating a need for space to house these schools.

As charters locate in new facilities, the amount of public school gross square footage increases.

Section 22-8B-4 requires all newly authorized and relocated charters locate in public facilities by 2015. To date, 42% meet this requirement.

PSFA staff estimates that it spends 80-100 hours per charter school on plan review, facilities assessment, data entry, and lease assistance.

Charter schools account for 3% of total public school gross square feet and 5.1% of all public school membership.

Charter schools can waive various spaces in facilities if they demonstrate an alternative method of delivery. Gyms, libraries and media centers are examples of spaces charters can waive, meaning that PSFA does not require them to meet adequacy.

PSFA staff prepared this brief and reviewed by the Public School Capital Outlay Council (PSCOC)

### **INTRODUCTION**

Each year the Public Education Commission (PEC) and school districts consider authorization of new charter schools. The growth of charter schools is significant but also creates several issues for the schools themselves, the PSCOC, and the Public School Facilities Authority (PSFA) particularly when it comes to facilities. The PSFA Charter School working group has organized this report around four problem statements associated with their work on charter school facilities.

#### **Problem Statements:**

1. Some Charter schools could benefit from PSFA, PED's or the Charter School Coalition's experience or expertise in planning for their facility needs and/or managing those facilities in which they locate.
2. Section 22-8B-4 NMSA 1978 requires school districts to offer available space to charter schools but there is no administrative procedure to implement this provision.
3. Charter schools could benefit from forming more advantageous leases.
4. Charter schools may differ significantly from traditional schools in facility needs based upon their educational programs. We can expect to see these differences increase with virtual schools, some of which do not require student attendance in a facility but deliver their curriculum online.

### **OBJECTIVE OF ANALYSIS**

The purpose of this brief is to identify the issues that PSFA experiences in working with charter schools from a facilities standpoint. It also presents policy considerations and analysis of ways to improve charter school facility planning and management.

### **KEY FINDINGS**

In preparing this report, PSFA identified the following key findings:

#### **Statistics:**

- As of the recently completed 2011-12 school year, there are 96 charter schools operating in New Mexico, 52 of which are state-authorized and 44 are district-authorized. Some of these schools are still in their

planning year and have yet to enroll students.

- Certified 40-day enrollment numbers for the 2011-12 school year showed that charter school enrollment numbered 17,364 or 5.1% of all public school students in New Mexico.
- The applicant charter schools under consideration in 2012 could increase the charter school enrollment to over 20,000 students if PEC and districts authorize all.
- Charter school Gross Square Footage (GSF) totals 1,633,546 or 3% of all public school GSF. In total, all public schools comprise 58,680,000 GSF.
- Out of the 96 charters, 24 have located in public facilities, 2 are in a lease purchase situations, and 14 lease from non-profits. All of these situations meet the requirements of Statute 22-8B-4.2, requiring charters to be in public facilities by 2015 or meet certain exceptions. In total 40 schools or 41% meet the requirement.
- Charter schools can waive various spaces in facilities if they demonstrate an alternative method of delivery. Gyms, libraries, and library/media centers are examples of spaces charter schools can waive in a facility, meaning that PSFA does not require them for the school to meet adequacy.

## **LEGISLATIVE BACKGROUND**

The New Mexico Charter School Act, Section 22-8B-4 NMSA 1978 and subsequent amendments outline clear implications for charter school facilities, particularly in ensuring that charter schools locate in educationally and conditionally adequate facilities that are fiscally responsible for taxpayers. The New Mexico Legislature first authorized the formation of charter schools in 1992 through Section 22-8B-4 NMSA 1978, referred to as the Charter School Act, but the original legislation only allowed traditional public schools to convert to charter schools. According to the New Mexico Coalition of Charter Schools, few schools took advantage of this legislation and of those that did, only one survives.

The Legislature passed two key bills amending the Charter School Act, which helped foster charter school survival as well as growth. In 1999, the Legislature passed Senate Bill 192, which amended Section 22-8B-4 NMSA 1978 and allowed creation of district-authorized start-up charter schools in addition to conversion schools. In 2006, the Legislature passed Senate Bill 600, the second key piece of legislation that amended Section 22-8B-4 NMSA 1978 to allow the Public Education Commission (PEC) to authorize charter schools independently of a local school district. Local authorization still remains an option for proposed charter schools but more existing and new schools seek state-authorization. These two bills helped to increase the number of charter schools and thus created more demand for facilities.

Most recently, the 2011 Legislature passed House Bill 283 in which the most significant facilities requirement is that on or after July 1, 2011, new or existing charter schools could not locate in a facility whose condition rating was not equal or better than the average wNMCI for all New Mexico Public Schools. It also required applicant charters to provide a facilities master plan/educational specification document approved by PSFA with their application to PED.

Another critical component of Section 22-8B-4, and perhaps the most significant for facilities, is the requirement for all new or renewed charters to be located in public facilities or meet other requirements. In

2005, the legislature placed into statute a deadline of 2010 for charters to meet this requirement. As the 2010 deadline approached, only a small fraction of schools were in public facilities prompting the 2009 Legislature to amend the deadline, pushing it back to 2015. The following section outlines the specific language regarding charter schools from the portions of the statute that pertain to charter school facilities. See **Appendix A** for the full versions of Section 22-8B-4 NMSA 1978 and Section 22-8B-4.2.

***Section 22-8B-4.2***

*On or after July 1, 2011, a new charter school shall not open and an existing charter school shall not relocate unless the facilities of the new or relocated charter school, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for that year or the charter school demonstrates, within eighteen months of occupancy or relocation of the charter, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.*

*D. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school:*

*(1) is housed in a building that is:*

*(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; or*

*(b) subject to a lease-purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act [22-26A-1 NMSA 1978]; or*

*(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:*

*(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and*

*(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.*

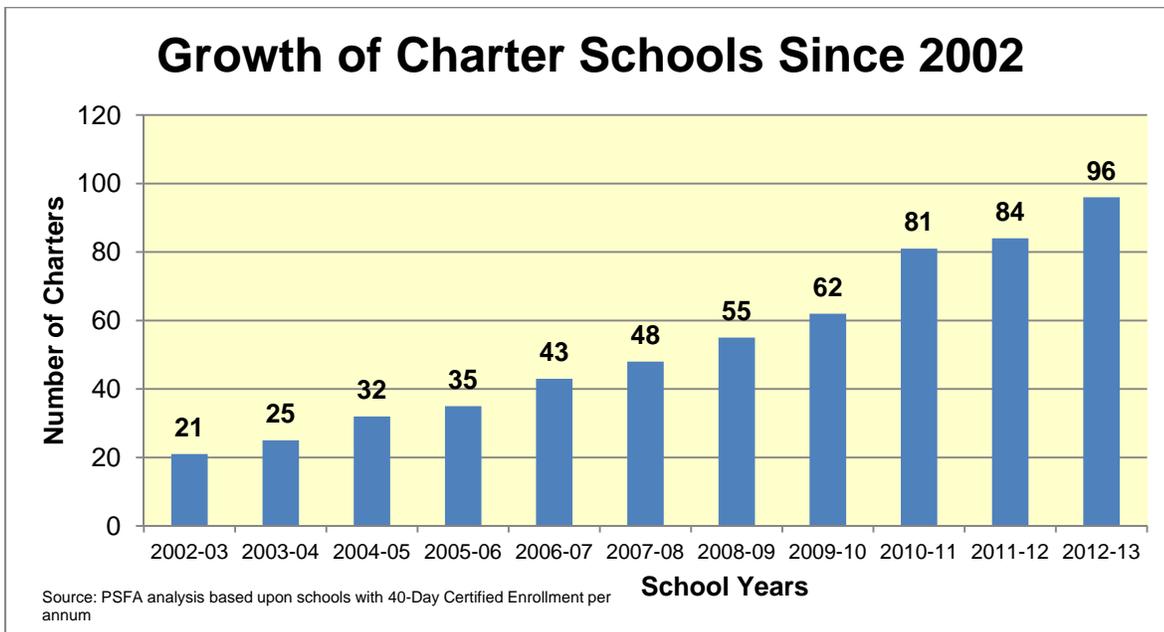
*The other portion of the legislation pertinent to this brief is **Section 22-8B-4** under Charter Schools' rights, responsibilities; operation.*

*F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently*

*used for other educational purposes. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Subparagraph (b) of Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and, provided further, that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.*

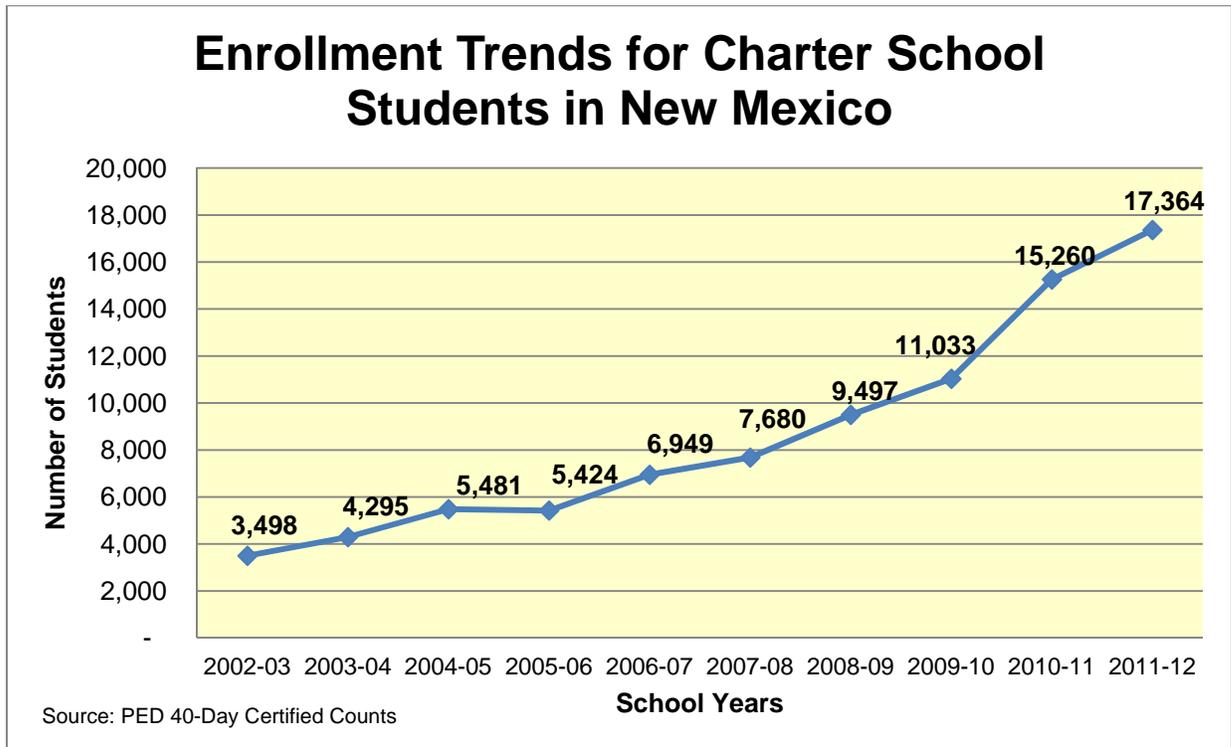
**GROWTH**

The growth of charter schools has certainly been dynamic in the past few years in terms of both number of schools and students served. Figure 6.01 shows the growth of the number of charter schools over the past ten years.



**Figure 6.01: Growth of Charter Schools Since 2002**

Charter school enrollment has also increased every year. In 2002, charter schools served 3,500 students. Today, that number is 17,364 students or 5.1% of all public school students in the State of New Mexico. Figure 6.02 illustrates the growth in Charter enrollment over the past ten years.



**Figure 6.02: Charter School Enrollment Trends 2002-2011**

The majority of charter schools in the state are located within the geographical boundaries of the Albuquerque Public School District, however, there are charter schools in 17 other school districts as the map in Appendix G illustrates. Charters as well as alternative schools are not required to have attendance boundaries.

The 2012 applications, which PEC is currently considering, include additional schools proposed for Alamogordo as well as a virtual school that transcends district boundaries and may enroll students from throughout the state. The increase of charter schools brings with it the need to find space to appropriately house these types of schools that comply with the provisions of Section 22-8B-4 NMSA 1978 and subsequent amendments. The following policy considerations seek to assist in this process.

**Policy Consideration #1: Provide Charter Schools with Increased Facilities Knowledge and Experience**

This policy option under consideration begins with the notion that charter schools can benefit from facilities knowledge and experience through a dedicated centralized resource. This scenario would require creation of appropriate support to help charter schools choose and then manage safe facilities. This support could be a statewide resource for charter schools and could reside in either the Charter School Division of the Public Education Department, PSFA, Charter School Coalition, or a private contractor. Some of the job duties of this resource could include:

- Keeping a data base of available spaces that a charter school might be able to occupy,
- Reviewing capacity and utilization of traditional public schools to determine if space in existing educational facilities is available.

- Serve as a liaison between public school districts and charter schools to facilitate the sharing of facilities available or other public agencies,
- Developing and presenting workshops or training to help existing and applicant charter schools understand the requirements of the various statutes and rules related to school facilities,
- Developing standardized lease and lease-purchase agreements to help manage these processes more transparently and consistently, and
- Assisting in FMP/Ed spec development, especially in the absence of state funding for FMP/Ed Spec assistance grants.

PSFA has not performed a detailed analysis for providing these centralized support services. PSFA currently interacts with charters by performing the following tasks, expending well over 1 FTE:

- Review of Facilities Master Plan/Educational Specifications (FMP/Ed Specs),
- Physical assessment of facilities for compliance with the wNMCI provisions of HB283, as well as conformance to the building code requirements of a facility for educational E-Occupancy,
- Support the charter's facilities maintenance responsibilities,
- Ranking the charter schools in the PSFA Facilities Assessment Database (FAD); and
- Managing the Lease Payment Assistance Program.

In total, PSFA staff estimates that it spends up to 80-100 hours per proposed, existing, newly-authorized, or relocated charter school. This time is on top of the amount of time spent on other duties for traditional public schools and involves plan review, building assessment, data entry, and travel between PSFA offices and the charter locations.

### *Significant Issues*

PSFA has found that most charter schools lack either a dedicated person or resources with facility knowledge and experience in facility planning, management, maintenance, and operations. As a result, charter schools have located in inadequate facilities and/or don't focus on building maintenance and operation needs once they are in a facility. Since a charter school's first responsibility is for student education, they may not have the resources to hire a dedicated facilities person nor have the time to learn the role themselves. Establishing this resource could provide the facilities guidance that the charters need and could decrease time spent away from managing the school's educational delivery.

For example, a charter school in Las Cruces had difficulty with facility decision making. This school was authorized prior to House Bill 283 and was, therefore, not required to develop an FMP/Ed Spec document (Appendix B describes the PSFA's charter school FMP/Ed Spec program in greater detail ) or to have a weighted New Mexico Condition Index score at least equal to the statewide average. The school did not have anyone who had knowledge about facilities. Consequently, the Board selected a facility that met the general classroom space requirements of the statewide adequacy standards, E-Occupancy and building

code. However, the school has found that the facility does not support their educational program and has spent the last two years trying to locate a suitable facility.

After hiring a planning consultant, the school developed a FMP/Ed Spec and appointed a leader to coordinate their search. Their leader, a medical doctor, is using the FMP/Ed Spec but may still not have the knowledge or experience to effectively conduct the facility search.

### ***Impacts/Pros of this Policy Consideration***

Establishing adequate charter school coordination could lead to potentially positive outcomes:

- **Pros:** Charters schools will be able to move into adequate and compliant space from the start and will not have to worry about moving or finding another space within a few years, as has been the case in the past. This would help to ensure the charters' success.
- **Pros:** The support could help charter schools in managing their preventive maintenance plans ensuring a longer facility life, and thereby reducing the amount of money the school will need to spend for building repairs.
- **Pros:** Could lessen reliance on foundations..

### ***Obstacles to Deployment/Cons of Policy Consideration***

Some obstacles and cons of this policy consideration include:

- **Cons:** Decreased revenues are a continuous obstacle to all government or private sector services.
- **Cons:** Charters may not understand the benefits of adequate facility support resources and may view this resource as unwarranted state intrusion on their autonomy.

### **Policy Consideration #2: Provide For Better Charter School Facility Planning**

This policy option under consideration is to reinstate the Charter School Capital Outlay Fund. This fund provided charter schools with local match funding to hire planning consultants to prepare their FMP/Ed Specs plans, resulting in higher quality facility decisions. PSFA has not done a cost-benefit analysis of this scenario.

### ***Significant Issues***

The State established the Charter School Capital Outlay fund in 2007, primarily to assist state-authorized charter schools with their local match, but also allows use for all charter schools to meet match requirements. The PSCOC has provided master planning assistance grants to school districts to help cover the cost of the FMP, provided the District provided its own local match. Beginning in 2008, the PSCOC authorized access to the master plan grant program to state-authorized charters (district-authorized charters must be included in the district FMP). The Charter School Capital Outlay Fund paid 40% of the local match, which made it easier for the charter school to participate in the program as they would not have to pay their full local match. Since 2008, the PSCOC has authorized \$253,505 for the State share of charter

school FMP/Ed Specs from the Charter School Capital Outlay Fund along with \$99,908 to assist districts with their local share (See Appendix C for information on PSCOC awards for charter school FMP/Ed Specs).

Appropriations to the Charter School Capital Outlay Fund reverted in 2011; yet HB283 requires applicant charter schools to complete a FMP/Ed Spec document with their application to PED.

Understanding that an applicant charter may have limited financial resources, PSFA streamlined its FMP/Ed Specs process specifically for applicant charter schools to enable them to produce this document without the need to hire a consultant. Several applicant charter schools produced these documents themselves with mixed results in quality and detail.

These mixed results may correlate to charter resources, including the knowledge, experience, and expertise of staff preparing the plans. For example, the 2012 applicant pool consisted of charter organizations with schools operating in other states that had more facility-related experience. These prospective applicants submitted far more detailed plans with a better idea of their space needs than those with limited experience who know about their educational program but not necessarily how that program translates to their facility needs.

Charter schools face numerous start up costs including the development of an educational program, teacher and administrator salaries, the purchase of supplies and other costs associated with opening a new school of which are beyond the scope of this analysis. Paying for a plan on their own without state assistance may be problematic for most. With the charter school fund in place, they were able to offset a portion of their required match, enabling more charters to participate in the planning process. New requirements for Senate Bill 9 (SB-9) and House Bill 33 (HB-33) distribution allow state-authorized charters to tap into these revenue streams but there is no requirement that these funds be used for planning.

#### ***Impacts/Pros of this Policy Consideration***

The FMP/Ed Specs provide critical guidance for the charter schools in selecting an appropriate facility. By going through the FMP/Ed Spec process, the charter school can focus on the spaces required to accommodate planned programs, which aids it in locating the most appropriate facility. In addition, the consultant can help them navigate through the requirements of Section 22-8B-4.2 NMSA 1978, HB283, and the PSFA adequacy planning guide so they would be less likely to locate in inadequate and non-compliant space.

#### ***Obstacles to Deployment/Cons of this Policy Consideration***

Currently, budget and funding remains an obstacle/con for re-authorizing this fund. There are competing interested for limited dollars.

**Policy Consideration #3: Make authorizing bodies that approve/renew charters responsible for acquiring and managing their facilities.**

This policy option under consideration is based upon the notion that approval of new and existing charters, and the financial liability of their capital facility costs should be on the governing body authorizing the school district charter.

**Background**

Charter schools must gain approval to deliver their educational program either from the school district where they are located or from the state Public Education Commission (PEC). Generally, charter schools need to demonstrate they fulfill a need not met by the school districts educational delivery method. If the school district or PEC rejects or elects not to renew a charter after five years, the charter school may appeal the decision to the Public Education Department (PED). Charter schools receive approvals at five year intervals.

Under the policy option under consideration the school district or PEC would assume full responsibility for charter schools facilities needs. As with traditional public school facilities expectations, the school district or PEC would be responsible for the charter schools facility needs. These needs may include providing, providing funding for, or procuring new or existing school space Providing maintenance, custodial service and utilities; and financially supporting all other costs associated with providing an adequate facility. All funding, including but not limited to proportionate SB9 & HB33 distributions that would be made to the charter school would instead be allocated to the charter schools authorizer. This will require a statutory change.

**District Authorized Charter:**

If the charter applies to a school district, and the district authorizes it, the district would provide appropriate facilities or would negotiate a lease agreement with a third party for appropriate facilities.

***Significant Issues***

- The school district would be fully responsible for all charter school facility needs. This will require statutory change.
- If a charter is not authorized directly by the district’s school board, it would not be a district authorized charter. The state would not have authority to override the district’s chartering decisions. This will require statutory change.

**State Authorized Charter:**

If the charter applies to the PEC, and the PEC authorizes it, the PEC would provide appropriate facilities or would negotiate a lease agreement with a third party for appropriate facilities.

***Significant Issues***

The PEC has no staff and may have to utilize the Public Education Department (PED) Charter School Division (CSD) to administer facility acquisition and management. This could be done

#### **Policy Consideration #4: Enforce Facility Sharing Requirements of 22-8B-4**

This policy consideration is to develop an administrative process to assist the State in enforcement of Section 22-8B-4, which requires school districts to offer available space to charter schools (for an explanation on how PSFA interprets available space, see Appendix D). Section 22-8B-4 NMSA 1978 F, requires school districts to offer available space to charters unless these spaces are currently in use for educational purposes (specific language shown on page 5-6). PSCOC, PSFA, or PED do not have an administrative process to enforce this provision.

#### ***Significant Issues***

Some districts and schools have unutilized and vacant space that might be appropriate for charter school location. However, charters have not fully taken advantage of these situations. The amount of public school facility gross square footage continues to increase while schools with the underutilized facilities continue to pay to heat and cool these underutilized spaces diverting funds from education. This is an inefficiency in the use of both capital and operational dollars. The New Mexico Board of Finance has a policy that requires districts to offer space to a charter school prior to disposition, and the term “disposition” does not include demolition.

The PSCOC could make compliance to Section 22-8B-4 F a condition of a capital outlay award as they did with the 2012-13 awards. In this situation, the PSCOC made an award contingent on the district considering providing charter school space in an unutilized facility adjacent to the subject school.

#### ***Impacts/Pros of Policy Consideration***

The policy consideration would give PSCOC the opportunity to draft a set of administrative rules and procedures to better fulfill the requirements of Section 22-8B-4 and create a thoughtful procedure that considers all stakeholders. Any procedure developed pursuant to this recommendation should grant PSCOC authority to ensure that school districts offer their available facilities to charter schools including repurposing to a non-educational function or demolition, provided the space is conditionally and educationally adequate to meet the charter schools needs.

Some pros and positive impacts of this policy consideration include:

- **Pro:** Better implementation could lead to better utilized public school facilities.
- **Pro:** Charters could move into space that is already classified as E-occupancy and contain existing or shared spaces charters may utilize like media centers or gyms.
- **Pro:** The lease provisions allow districts to recover funds to assist in maintenance and operations of the school.
- **Pro:** By charter schools locating in already existing but unutilized space, capital dollars will be maximized.

### ***Obstacles to Deployment/Cons of Policy Consideration***

Some obstacles and cons of this policy consideration include:

- It may be difficult for school districts to offer available space to charters due to programmatic requirements.
  - Schools cite the need for additional space to conduct testing and online assessments.
  - Space that appears to be unutilized and available may in fact be purposed for special programs or events that do not occur regularly during the school week but are used nonetheless.
  - Districts retain local control of their properties and may want to retain their facilities in the event of growth or changes in program.
  - They may also want to sell vacant unwanted facilities to another entity. If a district offers its facilities to charters, it represents a government to government transaction with streamlined requirements.
  - Logistically, it may be difficult to carry out and needs clearly defined space allocation within the school so that the charter and school have access to facilities and common areas without distracting the other.

### **Policy Consideration #5: Assist Charter Schools in Lease Management**

This policy option under consideration begins with the notion that it is fiscally sound policy to develop a standardized lease instrument that will lead to greater transparency in the use of charter school lease funds. The main problem with the current lease structure is that there are a variety of leases that make it difficult to know if the leases are fair and reasonably structured. Lack of transparency leads to uncertainty in the way the charter spends tax payer money. An unstructured lease also puts a strain on maintenance since responsibility for maintenance is often unclear without pre-defined language (For more information on the PSCOC Lease Assistance Program, see Appendix E).

### ***Significant Issues***

There is a lack of transparency that makes it difficult to determine how lease money flows once it has been allocated from the State. For example, current lease documents don't always identify the maintenance costs or responsibility or even the total amount of square footage the lease covers. Lease terms also present a major concern for charter schools. Since the charter must be renewed every five years, there is an uncertainty tied to renewal that may cause inflated costs in the lease. In short, there is no consistency among the lease documents. PSFA has found that the most successful leases contain the following elements:

- Defined gross square footage that the lease covers,
- Clearly defined lease terms,
- Defined types of space the lease covers (classroom space, administrative space, etc),
- Identification of responsibility for maintenance and custodial duties and costs,

- Statement indicating that the lessor maintains site, facility, and systems in good working order,
- Identification of responsibility for utility costs, and

### ***Impacts/Pros of Policy Option***

The pros of this policy option center on making the leases user friendly for both the state and charter schools and increased transparency. A standardized lease can be easier to use by:

- making the process predictable for PSFA staff as well as easier for charters to understand,
- making tracking lease payments easier and clearly identify who benefits from the payments, and
- minimizing the need for lengthy legal review.

### ***Obstacles/Cons to Deployment of Policy Option***

- A potential con to a standardized lease is that it might be ignoring the need for flexibility to meet unique conditions of the facility or site.
- The standardized lease would require centralized approval authority over lease approval.

### **Policy Consideration #6: Strengthen the “Be in Public Facilities” Language in the PSCOA**

The policy option under consideration begins with the notion that it is beneficial for charter schools to be located in publicly owned facilities and the current statute regarding “available and adequate” deadlines could be more clearly defined.

### ***Significant Issues***

After July 1, 2015, new charter schools cannot open and existing ones will not be renewed unless the charter school is housed in a public building. A public building is one owned by the school, a school district, the state, or any subdivision of the state and federal and tribal government facilities are also considered public buildings.

In addition, charter schools who are engaged in a lease-purchase arrangement are considered compliant in meeting the requirement to be in a public building.

There are exceptions and the policy option under consideration is to strengthen the language of the exceptions in order to reign in the costs of the lease assistance program.

The exceptions, per Section 22-8B-4.2 NMSA 1978, state a new or existing charter school may open and/or be renewed if the school demonstrates that:

- (a) *the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and*

*(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.*

In paragraph (a), The language is a stance that that addresses future capital outlay assistance; it does not contain cost to the lease assistance program (for full version of Section 22-8B-4.2, see Appendix A).

### ***Scenarios and Impacts***

To contain the lease assistance program costs and incentivize charter schools to step up their efforts to locate available spaces in public facilities, a possible language change to consider is as follows:

*(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state and the facility lease costs are not funded by the lease assistance program in Section 22-24-4(I) of the public school capital outlay act ; and*

In paragraph (b) 1), “not available or adequate” are undefined terms and therefore can be ambiguously applied. Without relating to some definition of what “available or adequate” is, the statement makes certain that charter schools will be able to remain open and operating in private leases indefinitely. In other words, it makes the deadline devoid of meaning and enforceability if they are in a facility meeting the criteria I paragraph (a) above.

In addition, charter schools who are engaged in a lease-purchase arrangement are considered compliant in meeting the requirement to be in a public building.

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

### ***Pros to Policy Consideration***

- **Pro:** Charter schools locating in adequate E-Occupancy space as soon as they commence operation,
- **Pro:** The Lease-Assistance program would be easier to manage and puts more responsibility on the building owner and school.

### ***Obstacles/Cons to Policy Consideration***

- **Con:** The deadline is approaching and less than half of charter schools are in public buildings, and
- **Con:** Public building availability may be an issue in some communities

**Policy Consideration #7: Develop Capabilities to Respond to Innovations in Charter, Alternative, and Family School Program Delivery and Facilities Needs**

This policy option under consideration begins with the notion that PSFA needs to address innovative and unique charter school program delivery and facility needs. Virtual charter schools that deliver their education online may not require students to access their facility, and may provide an adequate facility to administer testing in a non-educational facility. This is an evaluation of current policy and current statute to ensure that adequate facilities are provided for virtual charter schools.

***Significant Issues***

Charter schools offering online curriculum are nothing new in New Mexico. There are charter schools in the Albuquerque area that have been in operation for several years and deliver their education online but still require regular student attendance to their facility. Charter schools that offer an online curriculum and don't require student attendance at a facility are an emerging nationwide trend. One such school is already operating in New Mexico, one is approved to begin operating, and another is seeking authorization. The school seeking authorization is especially unique since it will transcend district boundaries allowing student enrollment from throughout the state. A student could potentially live in Lea County and enroll in this school despite it having its office in another part of the state. In its FMP/Ed Specs, the school states that only on rare occasions will students need to visit the school's office (called teaching center) and students are not required to be physically present. Some of the specific issues and questions this type of school brings up include:

- New Mexico state law requires all students attending the school need to be in a proctored room and seated for state testing. How will the school provide these facilities and will they be appropriate for the students taking the test?
- Section 22-8B-4 NMSA 1978 requires all schools to have E-occupancy.

PSFA understands that a virtual school can locate in an E, B, or A occupancy facilities. As required occupancy is dependent upon primary use, if students are not physically present, "B" occupancy is suitable for educational offices. However, for meetings or testing where over 50 people would be present a room "A" occupancy classified room would have to be provided. For instance, the room could be in:

- A school,
- Place of worship,
- Motel/hotel meeting room,
- Public library/community center meeting room,
- Government building with meeting space, and
- Private business with conference room.

### ***Impacts/Pros of Policy Consideration***

This policy consideration would have the following positive impacts/pros

- An agreed administrative policy would allow PSFA to efficiently protect the health, safety, and welfare of students by ensuring adequate testing facilities,
- Would allow PSFA or other regulatory agency clear direction to develop a procedure or process to ensure proper notification and assessment of virtual school testing space.

### ***Obstacles/Cons to Deployment of Policy Consideration***

Obstacles and cons to the policy consideration include:

- A statutory change to 22-8B-4 would be required.
- Administrative policy would have to be well created.

**Appendix A: Charter School Legislation Pertaining to Facilities: Section 22-8B-4 and Section 22-8B-4.2**

**22-8B-4. Charter schools' rights and responsibilities; operation.**

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting 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.

B. A charter school shall be governed by a governing body in the manner set forth in the charter contract; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school. No member of a local school board shall be a member of a governing body for a charter school or employed in any capacity by a locally chartered charter school located within the local school board's school district during the term of office for which the member was elected or appointed.

C. A charter school shall be responsible for:

(1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and

(2) contracting for services and personnel matters.

D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter contract. Facilities used by a charter school shall meet the standards required pursuant to Section [22-8B-4.2](#) NMSA 1978.

E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.

F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Subparagraph (b) of Paragraph (1) of Subsection I of Section [22-24-4](#) NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and provided further that any lease payments received by a school district may be retained by the

school district and shall not be considered to be cash balances in any calculation pursuant to Section [22-8-41](#) NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978]. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act [Chapter [22](#), Article 8 NMSA 1978], the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section [22-2-8](#) NMSA 1978 and the Assessment and Accountability Act [Chapter [22](#), Article 2C NMSA 1978].

N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state, except that, if all or any portion of a state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.

O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

History: Laws 1999, ch. 281, § 4; 2000, ch. 82, § 2; 2001, ch. 348, § 1; 2003, ch. 153, § 32; 2005, ch. 221, § 2; 2006, ch. 94, § 31; 2007, ch. 366, § 16; 2011, ch. 14, § 1.

#### **22-8B-4.1. Charter schools' enrollment procedures.**

A. Start-up schools and conversion schools are subject to the following enrollment procedures:

(1) a start-up school may either enroll students 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; and

(2) a conversion school shall give enrollment preference to students who are enrolled in the public school at the time it is converted into a charter school and to siblings of students admitted to or attending the charter school. The conversion school may either enroll all other students 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 conversion school.

B. In subsequent years of its operation, a charter school shall give enrollment preference to:

(1) students who have been admitted to the charter school through an appropriate admission process and remain in attendance through subsequent grades; and

- (2) siblings of students already admitted to or attending the same charter school.

**History:** 1978 Comp., § 22-8B-4.1, enacted by Laws 2000, ch. 82, § 3.

#### **22-8B-4.2. Charter school facilities; standards.**

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. 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 [Chapter [22](#), Article 24 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 lessor.

C. On or after July 1, 2011, a new charter school shall not open and an existing charter school shall not relocate unless the facilities of the new or relocated charter school, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for that year or the charter school demonstrates, within eighteen months of occupancy or relocation of the charter, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.

D. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school:

- (1) is housed in a building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; or

(b) subject to a lease-purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act [Chapter [22](#), Article 26A NMSA 1978]; or

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

E. Without the approval of the public school facilities authority pursuant to Section [22-20-1](#) NMSA 1978, a charter school shall not enter into a lease-purchase agreement.

F. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section or the requirements of Subsections B, C and D of this section, as applicable; and

(2) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school.

History: Laws 2005, ch. 221, § 3; 2005, ch. 274, § 2; 2007, ch. 366, § 17; 2009, ch. 258, § 1; 2011, ch. 69, § 2.

## **Appendix B: PSFA FMP/Educational Specifications Program and Charters**

PSFA has two programs to help guide school districts in their facility planning; the district-wide facilities master plan (FMP) and the project specific educational specifications (Ed Specs). Beginning with the 2008-09 FMP awards cycle, PSFA applied these two programs to state-authorized charter schools and awarded them assistance grants to pay for consultants for planning services. The school district's FMP covers the capital needs of all district facilities including district-authorized charters and PSFA staff will not approve a plan that does not cover all district educational facilities.

Given the unique needs and characteristics of charters, however, PSFA worked in conjunction with FMP/Ed Spec consultants to create a hybrid FMP/Ed spec process and checklist specific to charters. Whereas, the FMP and Ed Spec are two separate documents for traditional school districts, PSFA allowed the FMP and Ed Spec to be combined for charter and also streamlined the process by removing unnecessary criteria that may not be applicable to charter schools.

The FMP/Ed Spec assistance grants applied to existing state-authorized charters who have been through at least one renewal cycle, with the charter providing a local match based upon the district where they are geographically located (it is important to note that the state-authorized charter school is autonomous but for charter share calculation, PSFA used the local match of the local district). The State established a \$4.5 charter school capital outlay fund that helped to offset the local match by providing money to help pay the cost of the plan. This statutory provision has now been repealed and the remaining money reverted. At the same time, House Bill 283 required all prospective charter schools applying to the PEC to turn in a FMP/Ed Spec document with their application beginning with 2012 applicants, even if a school has not selected a facility. This requirement's intent helps prospective charter schools to begin thinking about the spaces they will need to deliver their education and guide them in facility selection.

As of August 18, 2012, 21 state-authorized charter schools that have been renewed have FMP/Ed Spec documents.

**Appendix C: State and Charter School Capital Outlay Funding for FMP/Ed Specs since 2008 Awards Cycle**

See Appendix C for a table breaking down yearly PSCOC and Charter School Capital Outlay fund FMP/Ed Specs expenditures per year since 2008.

Award Year	State Share	Charter School Capital Outlay Fund	Total State and Charter School Fund
2008-09	\$65,278	\$18,038	\$83,316
2009-10	\$70,700	\$37,320	\$108,020
2010-11	\$66,235	\$27,367	\$93,602
2011-12	\$51,293	\$17,183	\$68,476
TOTALS	\$253,505	\$99,908	\$353,414

## Appendix D: PSFA’s Capacity and Utilization Analysis in Determining Available Space

The question as to what constitutes available space needs examination. PSFA interprets available space to mean underutilized or vacant space. PSFA evaluates available space both on a district wide and individual school scale in order to determine if the district or school needs additional space based on growth or portable replacement. It has not looked at available space in the context of housing charters within a school in significant detail. PSFA examines available space in two ways. The first way is to look at a school’s working capacity, identified in its master plan, in relation to its current enrollment count Working capacity is the capacity of the school based on general and special education classrooms and discounting specialized space like music rooms. For example, the table below shows the enrollment count for two hypothetical schools, the working capacity number, and available capacity.

School	40-Day Enrollment	Working Capacity	Available Capacity
Washington ES	550	500	-50
Adams ES	375	500	125

In the example, Adams ES has capacity for an additional 125 students while Washington is overcapacity. However, capacity alone does not provide a full picture of a school’s available space. PSFA also relies on a utilization study to determine how the school is using its spaces. While Adams ES looks like it could have the space to accommodate the students, those students might be spread around several classrooms, giving the impression that the school has full utilization when in reality, each classroom could be housing a small number of students, which could be inefficient depending on the purpose. The utilization reveals how and to the extent that the school is using its space. Even if the school is using the space to house a small number of students, PSFA may ask the school whether the classes could be consolidated with another similar grade level or subject in order to create more room to accommodate growth or house additional programs. These two types of analysis could provide useful in determining if a school district has available space to accommodate charters.

Many school districts, particularly in rural areas of the State, built their schools several years ago when they had a much larger enrollment. Through the past several decades, many of these districts have experienced enrollment decline leaving empty classrooms or facilities that might be appropriate for charter schools. The vast majority of charters, however, locate in larger school districts that have experienced growth and where available space in existing public schools may be not be readily available, especially for charter school with a large enrollment. On paper, the District or school looks like it has available space but it could be spread out among several rooms, wings, or schools and would not easily house an entire charter school dependent on contiguous space.

The other aspect of this issue applies particularly to vacant facilities and more specifically to why the facility is no longer in use. Another reason that districts might have vacant space is due to replacing facilities that are no longer adequate. The facility may have a high weighted wNMCI due to conditional

and/or educational adequacy issues, which may have prompted replacement of the school. Part of the Section 22-8B-4 F states that the available space must meet all occupancy standards as specified by the PSCOC, meaning space may be available but if it is not code compliant or has a high wNMCI score due to conditional or educational adequacy deficiencies, it may not be appropriate for a charter school.

Conversely, a district may experience shifting demographics making a school unnecessary at its current location. In this case, depending on the facility's condition, it could house a charter school.

Even if space is found to be available within a school district, a primary focus of this problem is that the PSCOC has not established an administrative process for implementation of this requirement. PSFA has amended its charter school FMP/Ed Specs requirements checklist to ensure that charters inquire about available space in district facilities but it is only a checkbox but does not require the school to include details about their conversation or identify the person they spoke with at the district. Without an administrative process, this requirement is difficult to implement. The 2015 deadline for charters to be in public compliant space that meets E-occupancy and wNMCI further compounds this issue since the deadline is quickly approaching.

**Appendix E: Information on PSCOC's Lease Assistance Program**

**PSCOC Lease Payment Assistance Program**

**History**

<b>Year</b>	<b>Rate</b>	<b>Max Award</b>	<b>Awards</b>	<b>Number of Awards</b>
2004-2005	\$300/MEM	\$4 million	\$2,041,261	40 total awards/34 charter <sup>1</sup>
2005-2006	\$477/MEM <sup>2</sup>	\$4 million	\$3,973,258	51 total awards/46 charter
2006-2007	\$600/MEM	\$7.5 million	\$5,046,095	63 total awards/56 charter
2007-2008	\$700/MEM	\$7.5 million	\$6,375,293	68 total awards/61 charter <sup>3</sup>
2008-2009	\$719.60/MEM <sup>4</sup>	\$7.5 million	\$7,302,193	75 total awards/64 charter
2009-2010	\$724.71/MEM <sup>5</sup>	\$ No Limit	\$8,221,670	77 total awards/69 charter
2010-2011	\$721.81/MEM <sup>6</sup>	\$ No Limit	\$9,883,579	86 total awards/80 charter
2011-2012	\$733.35/MEM <sup>6</sup>	\$ No Limit	\$10,780,043	90 total awards/83 charter
2012-2013	\$756.83/MEM <sup>6</sup>	\$ No Limit	\$13,433,436	98 total awards/92 charter <sup>7</sup>  (Pending)

<sup>1</sup> Includes \$284,400 for retroactive amounts to charters in first year of operation.

<sup>2</sup> \$600/MEM reduced to stay within \$4M cap.

<sup>3</sup> First year to allow lease of facilities from District.

<sup>4</sup> \$700/MEM increased by CPI of 2.8%.

<sup>5</sup> \$700/MEM increased by CPI of 3.53%.

<sup>6</sup> \$700/MEM decreased by CPI correction for FY 09 = 1.9%, FY 10 = 1.6%,  
FY 11 = -0.4%, FY 12 = 1.6%, FY 13 = 3.2%

<sup>7</sup> Awards to be approved September 7th, 2012

## 2009-2010 Awards

Total Awards: \$8,221,670 (77) Total Awards to Charters: \$8,071,995 (69)

- 10 State Charters
- 6 Charters in first year of operation
- 15 in public building/ 1 partially in public building/ Lindrith in public bldg. -no lease cost
- 45 charters limited by MEM
- 24 charters limited by actual lease cost
- % of Actual –vs.- Reimbursement: 63.7%

Charter Schools Only:

	<b>Low</b>	<b>High</b>	<b>Total</b>	<b>Average</b>
Total Square Feet:	2,982	50,445	1,182,326	17,135
SF Per MEM:	10	240	6,832	99
Actual Lease Cost (annual):	\$1,200	\$1,053,455	\$12,728,739	\$184,474
Cost Per SF:	\$0.40	\$20.88		\$10.76

## 2010-2011 Awards

Total Requests: \$9,883,579 (86) Total Requests for Charters: \$9,749,850 (80)

- 32 State Charters
- 9 Charters in first year of operation
- 22 in public building/ East Mountain High School partially in public building/ (Lindrith in public bldg. -no lease cost, 3 charters leasing from counties, 12 from districts, 2 from the Federal Gov., 1 from city, 2 from Tribal, 3 from colleges or Universities and 10 nonprofit)
- 2 schools in lease purchase agreements
- 48 charters limited by MEM
- 38 charters limited by actual lease cost
- % of Actual –vs.- Reimbursement: 65.8%

Charter Schools Only:

	<b>Low</b>	<b>High</b>	<b>Total</b>	<b>Average</b>
Total Square Feet:	3,387	59,899	1,332,080	16,862
SF Per MEM:	11	342	7,641	97

Actual Lease Cost (annual):	14,460	1,053,455	14,869,846	185,873
Cost Per SF:	.03	38.99		11.51

## **2011-2012 Awards**

Total Requests: \$10,780,043 (90)      Total Awards for Charters: \$10,634,630 (83)

- 41 State Charters
- 3 Charters in first year of operation
- 24 in public building/ East Mountain High School partially in public building/ (Lindrith in public bldg. -no lease cost, 3 charters leasing from counties, 13 from districts, 2 from the Federal Gov., 1 from city, 2 from Tribal, 3 from colleges or Universities and 13 nonprofit)
- 3 schools in lease purchase agreements
- 50 charters limited by MEM
- 33 charters limited by actual lease cost
- % of Actual –vs.- Reimbursement: 66.3%

Charter Schools Only:

	<b>Low</b>	<b>High</b>	<b>Total</b>	<b>Average</b>
Total Square Feet:	3,584	61,500	1,432,242	17,256
SF Per MEM:	20	316	8,197	98
Actual Lease Cost (annual):	1,200	700,000	16,119,660	194,213
Cost Per SF:	.03	52.51		11.93

## **2012-2013 Applications**

Total Requests: \$13,433,436.00      Total Requests for Charters: \$13,295,927.00

- 52 State Charters
- 11 Charters in first year of operation
- 24 in public building/ (Lindrith in public bldg. -no lease cost), 3 charters leasing from counties, 12 from districts, 1 from the Federal Gov., 2 from city, 3 from Tribal, 3 from colleges or Universities and 16 nonprofit)
- 5 schools in lease purchase agreements
- 52 charters limited by MEM
- 40 charters limited by actual lease cost
- % of Actual –vs.- Reimbursement: 66.9%

Charter Schools Only:

	<b>Low</b>	<b>High</b>	<b>Total</b>	<b>Average</b>
Total Square Feet:	666	92,527	1,880,810	20,444
SF Per MEM:	10	368	9644	105
Actual Lease Cost (annual):	1200	700,000	19,453,341	211,449
Cost Per SF:	.03	56.46		12.42

## **Appendix F: Glossary**

**A-Occupancy** – Building code classification that designates places for assembly

**B-Occupancy** – Building code classification that designates space for offices

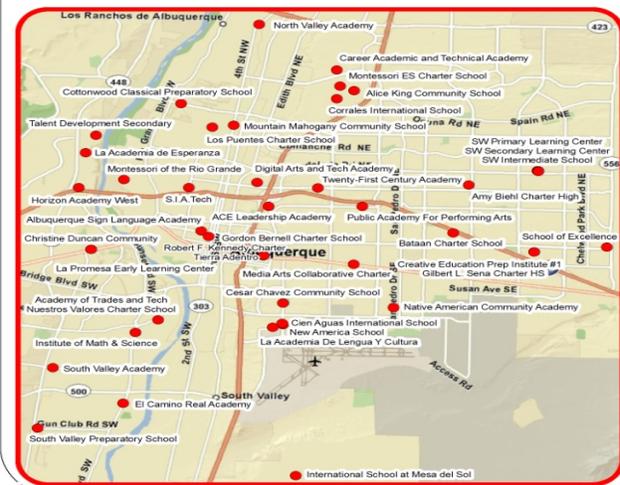
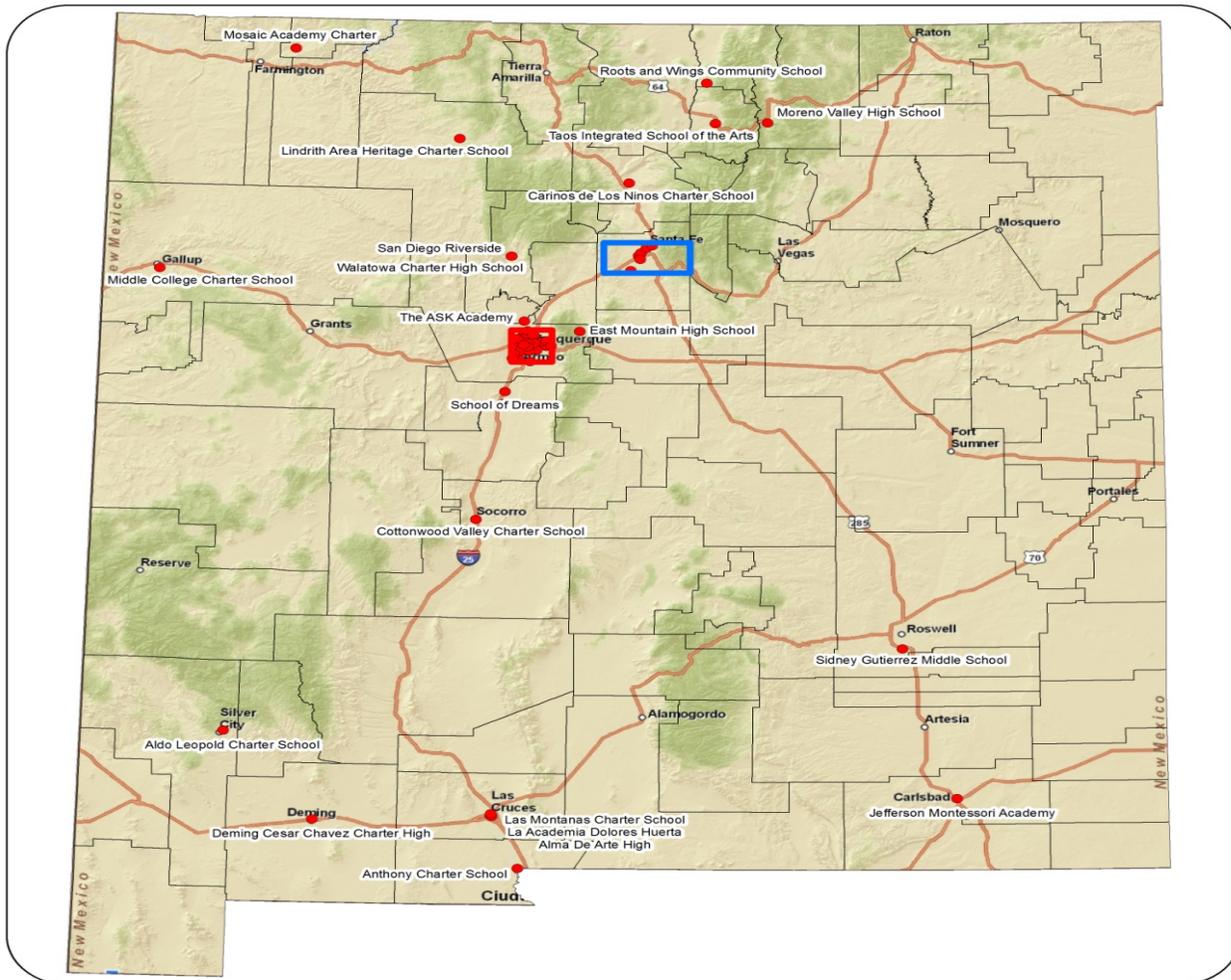
**E-Occupancy** - Building code classification for facility that is designed and constructed to meet the life, health and safety requirements for the education of children through the 12th grade.

**FMP/Ed Specs** – Planning document unique to a state-authorized and applicant charter that identifies the school’s educational program, space needs, and capital projects/sources of funding. The document is unique in that it combines the FMP and Ed Specs, which are separate documents for traditional school districts.

**wNMCI** – Weighted New Mexico Conditions Index

**Appendix G: Charter School Location Map (following page)**

## New Mexico Charter Schools



**Legend**

- New Mexico Charter Schools
- School District Boundry

Created 7/26/12 By AM NMPSFA  
Sources: NMPSFA, ESRI Basemap