

USE OF 2 PERCENT STATE EQUALIZATION GUARANTEE SET-ASIDE FOR STATE-CHARTERED CHARTER SCHOOLS

AGENCY: Public Education Department (PED)

DATE: September 15, 2016

PURPOSE OF HEARING: Review PED's use of the "2 percent withholding" from charter schools for administrative purposes.

WITNESS: Paul Aguilar, Deputy Director of Finance and Operations, PED

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EXPECTED OUTCOME: Better understanding of how PED uses more than \$2 million in 2 percent withholdings to support state-chartered charter schools.

"The division" refers to the Charter Schools Division of PED.

"The chartering authority" refers to the PEC for state-chartered charter schools, and the district for locally-chartered charter schools.

A subject of much discussion over the past six years has been how the 2 percent withheld from charter school state equalization guarantee distributions (SEG) is used. Multiple concerns exist regarding the 2 percent withholding. Conflicting language in statute raises questions regarding which entity is entitled to state-chartered charter schools' 2 percent withholding, what constitutes "administrative services" or "administrative support," and whether the eligible entity should be required to demonstrate how the 2 percent withholding from a specific charter school is used to support that charter school. Additionally, there is a current lack of detail available on how the withholding is used to provide administrative services or administrative support to state-chartered charter schools.

Statutory Provisions and Conflicts. Several provisions of the Public School Code create confusion as to how the 2 percent withholding is to be used to support state-chartered charter schools. The statutes also fail to clarify which entity – the Public Education Commission (PEC) or the Public Education Department (PED) – is entitled to use those dollars. Both the Public School Finance Act and the Charter Schools Act include provisions allowing reduction of a state-chartered charter school's SEG by 2 percent for administrative services or administrative support. Paragraph A of Section 22-8-25 NMSA 1978 of the Public School Finance Act states:

"for state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services."

Section 22-8B-13 NMSA 1978 of the Charter Schools Act states:

"The school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school."

Both of these provisions appear to declare PED as the entity entitled to withhold the 2 percent from state-chartered charter schools. However, in 2011, amendments were made to the Charter Schools Act that required performance contracts between authorizers and charter schools. Due to concerns about the use of the 2 percent withholding, the new provisions required a detailed description of how the 2 percent would be used. Specifically, Paragraph B(9) of Section 22-8B-9 NMSA 1978 states:

"the charter contract shall include ... a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section 22-8B-13 NMSA 1978."

These provisions create confusion as to which entity – PED or PEC – is entitled to use the 2 percent withholding.

Section 22-8B-13 NMSA 1978 specifies that the 2 percent withholding be made for the administrative support of a charter school, suggesting that the entity spending the 2 percent withholding should be able to demonstrate how the 2 percent withheld from a specific charter school is used to support that school. PED has not been able to demonstrate how it is using the 2 percent received from each state-chartered charter school to support that school specifically.

According to Section 2. 01 of the template, the role of PED is to “provide staff support to [PEC] to perform its oversight functions; provide technical support to the School and make recommendations regarding denial, suspension or revocation of the School.”

In practice, PED is withholding the 2 percent and using it to support the Charter Schools Division, administrative staff in other departments, and the Public Education Commission (PEC). However, unlike local authorizers, PEC is not given direct authority over their use of the 2 percent withholding.

2 Percent Withholding History
State Charters (FY09 - FY16)

	Two Percent Amount	N. of Charters
FY09	\$ 158,998	4
FY10	\$ 404,332	13
FY11	\$ 1,037,226	33
FY12	\$ 1,286,210	40
FY13	\$ 1,664,985	51
FY14	\$ 1,936,457	54
FY15	\$ 1,667,925	44
FY16	\$ 2,590,865	62

Source: PED

Performance Contracts. Performance contracts required by the 2011 amendment to the Charter School Act must include “a detailed description” of how the chartering authority will use the 2 percent withholding. All charter schools founded after 2011 will have a performance contract, and existing charter schools will be placed on one at their next renewal. Performance contracts will be completely phased-in by 2018.

On their website, PED offers a template to guide charter schools in authoring their performance contract. Paragraph A in Section 4. 02 of the template inserts direct language from statute. It states,

“The amount of funding allocated to the School shall be not less than ninety-eight percent of the school-generated program costs. The Authorizer may withhold and use the two percent of the school-generated program cost for its administrative support of the School. The Authorizer shall use the two percent fee for the following purposes:

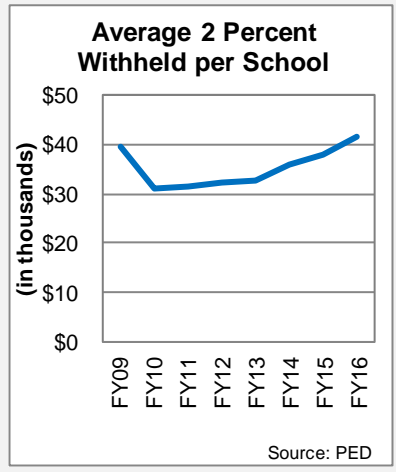
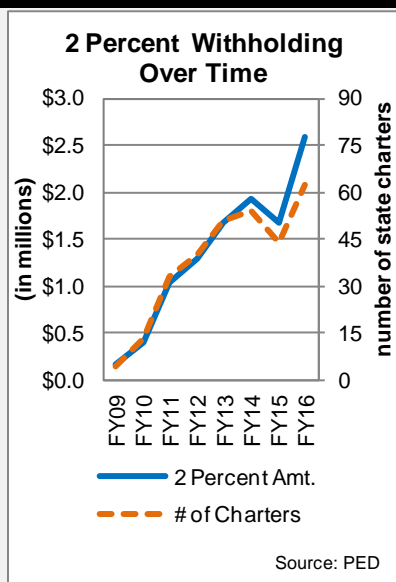
[insert the intended use of the 2%]”

In the above clause, “the Authorizer” is defined as the PEC. Since the Charter Schools Act describes performance contracts as a relationship between state-chartered charter schools and the PEC, the contract does not legally bind PED to disclose how the funds are used, or even use them for their intended purpose.

Case Study: New Mexico Connections Academy (NMCA). NMCA’s performance contract fills in the blank that PED’s template offers by stating that a “portion” of the 2 percent should go to the Charter School Division’s staff salaries and benefits, some to the PEC’s travel expenditures and cost of supplies, and some to other departments in PED that work with charter schools, such as Special Education, Title I, and Student Nutrition.

PED staff indicated this is boilerplate language used in all state-chartered charter schools’ performance contracts. The language is notably vague, raising questions about its compliance with the statutory requirement to “include a detailed description” of how the withholding will be used, and about whether the salaries, supplies, and travel expenditures constitute true “administrative support.”

2 Percent Withholding History. The amount of money that is withheld by PED from state-chartered charter schools has been steadily growing at a rate similar to the number of state-chartered charter schools in New Mexico. In the 2008-2009 school year, the PEC authorized the first four state-chartered charter schools, which generated close to \$159 thousand in 2 percent withholdings for PED, averaging about \$37 thousand per school. As one may expect, more charter schools meant more 2 percent withholdings. In the 2015-2016 school year, PED withheld close to \$. 6 million, an average of about \$41 thousand per school.



In PED's FY18 budget request submission, the department included a footnote explaining that revenue from the 2 percent withholding was included in positions funded by general funds, not other state funds.

PED Use of the 2 Percent Withholding. Statute requires the 2 percent withholding be used for “administrative services” or “administrative support.” This implies that the money is withheld from the state-chartered charter schools in order to serve them. It is unclear whether PED is actually using the entire amount of 2 percent withholding to support state-chartered charter schools.

For example, in FY13, PED withheld approximately \$1.7 million from state-chartered charter schools, but according to LFC documents, PED reverted approximately \$294 thousand, or 17.8 percent of the total 2 percent withholding, and spent approximately \$370 thousand, or 22.2 percent on expenses not directly related to charter school oversight. A portion of that \$370 thousand was spent on a statewide Information Technology disaster recovery plan. It is unclear how the rest of the total withholdings were spent.

In previous years, PED would include a listing of each specific position budgeted with other state funds (OSF) in its budget submission. PED has two sources of OSF – educator licensure fees and the 2 percent withholding. From FY09 to FY14, it was easy for staff to identify which positions were budgeted with educator licensure fees (generally, licensure bureau staff) and which positions were budgeted with the 2 percent withholding (all other staff).

However, with the FY15 budget request submission, positions funded with 2 percent withholding were included with positions funded from general fund revenue (rather than OSF). This effectively limited the transparency of how the department is specifically budgeting positions with the 2 percent withholding. At this time, it is unclear why the 2 percent withholding has not been properly accounted for in PED's budget request submissions; staff has requested an explanation from PED staff, but to date has not received one.

Conclusion. Existing statutory conflicts and vague language have brought about ineffective and non-transparent practices. For this reason, the Legislature may consider making the following changes:

- Clearly articulate whether the PED or the PEC is entitled to the 2 percent withheld from state-chartered charter schools.
- Use either “administrative support” or “administrative services,” and clearly define what constitutes such support.
- Determine whether the entity that withholds the 2 percent needs to be able to demonstrate how it is being used for each specific school. To attain transparency, PED's accounting practices would need to be altered to effectively track where the 2 percent is used.