

CHARTER SCHOOL LEASE PURCHASE AGREEMENTS

AGENCY: Public Education Department (PED) and Public School Facilities Authority (PSFA)

DATE: September 15, 2016

PURPOSE OF HEARING: Review of issues surrounding charter school lease purchase agreements.

WITNESS: PED staff (invited); Robert Gorrell, Director, New Mexico Public School Facilities Authority (invited)

PREPARED BY: Marit Rogne

EXPECTED OUTCOME: Increased understanding of trends in charter school lease purchase agreements and actionable policy recommendations.

	PSCOC Awards	Total Lease Cost
2010-2011	\$9,410,938.20	\$14,735,545.66
2011-2012	\$10,623,301.62	\$16,119,659.56
2012-2013	\$11,467,142.64	\$19,072,429.38
2013-2014	\$12,828,187.70	\$19,202,325.60
2014-2015	\$14,482,434.11	\$21,453,444.04

Source: PSFA

A recent review of charter school leases and lease purchase agreements submitted to the Public School Facilities Authority (PSFA) for consideration of lease assistance funding revealed ongoing issues with charter school leases and lease purchase agreements. Several charter schools have entered into lease purchase agreements without Public Education Department (PED) approval, at least one has agreed to what appears to be prohibited interest rates, and in many instances the agreements do not on their face appear to be agreements that are in the best interest of the charter school. With the requirement that new charter schools and renewed charter schools be in a public building, a PED-approved lease purchase agreement, or a lease that meets the other two statutory requirements, it will become increasingly important for charter schools, charter school authorizers, PED, and PSFA to continue to work together to ensure charter schools understand laws around leases, lease purchase agreements, and facility requirements that must be met to receive a new charter or have an existing charter renewed.

This brief outlines statutory requirements for charter schools and school districts to enter into a lease purchase agreement and issues identified by PSFA, PED, and LESC staff in their review of charter school lease purchase agreements.

Statutory Requirements. The Public School Lease Purchase Act, Section 22-26A-1 NMSA 1978, allows a school district or charter school to enter into a lease purchase arrangement if its governing body determines it is in the best interest of the school. A lease purchase agreement, or financing agreement, is an agreement for leasing a facility with an option to purchase for a price that is reduced according to cumulative lease payments made. The Public School Lease Purchase Act implements the provision of Article 9, Section 11 of the constitution of New Mexico, which declares a lease purchase agreement is not a debt if there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property and the agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments. A 2015 amendment to the act requires the governing body, defined as the governing structure of a charter school or the local school board, to forward PED a copy of the proposed lease purchase arrangement and the source of funds identified to make payments. Pursuant to Section 22-26A-4(B) NMSA 1978, a governing body is prohibited from entering into a lease purchase agreement without the approval of PED. Additionally, statute limits the interest rate of lease purchase agreements to 12 percent.

Lease Purchase Agreements Vary. Proposed charter school lease purchase agreements are approved by PED based on the standard, “Does the agreement meet the requirements of the Lease Purchase Act?” However, statute does not require PED to conduct further review, for example, to determine if a proposed lease purchase agreement is the most cost-effective arrangement for the school. PSFA determines compliance for lease reimbursement awards, but

Lease Purchase and Lease with Option to Purchase Examples (dollars in thousands)		
School	Taos Academy	Leadership High School
Type	Lease purchase agreement	Lease with option to purchase agreement
Date of PED approval	6/30/2016	3/21/2014
Lessor	Taos Academy Foundation	ACE Leadership High School Foundation
Length of lease	7/1/2016-6/30/2017	3/24/2014-4/1/2031
Total sale price	\$3,000	\$5,064.6
Loan amount	\$2,100	\$5,064.6
Loan period in years	30	20
Interest rate	7.75%	5.09%
Total interest paid	\$3,316.1	\$2,481.5
Scheduled monthly payment	\$15	\$33.7
Scheduled number of payments	360	247
Actual number of payments	360	205
Early payments	\$900	\$775
Extra payments	\$0	\$763
Final cost	\$6,316.1	\$9,854.7
		Option price \$1.00; Lessee may only acquire the School Site on "Option Date"
		Source: PSFA

they are also not required to determine if a lease purchase agreement is the most cost-effective arrangement. As a result, lease purchase agreements vary widely in format and in terms of how much they financially benefit charter schools.

Lease Purchase Agreements versus Lease Agreements with Option to Purchase. Lease purchase agreements and lease agreements with option to purchase are different, though both financing agreements potentially meet the requirements of the Public School Lease Purchase Act.

A lease purchase agreement is a lease combined with a sale contract. The sale of the property is scheduled to occur on a specific date, depending on the terms of the agreement. A portion of lease payments are applied toward the purchase price of the property until it is paid in full. Taos Academy is an example of a charter school in a PED-approved lease purchase agreement.

A lease agreement with option to purchase is a lease agreement that provides an option to purchase the property. Like a lease purchase agreement, a lease agreement with an option to purchase will stipulate a purchase price and interest rate for the purchase of the property. However, the option to purchase must be exercised during the specified option period. In contrast with lease purchase agreements, lease payments are not always applied toward the purchase price from the commencement of the lease. ACE Leadership High School is an example of a charter school in a PED-approved lease with an option to purchase.

Cost-effectiveness. The Public School Lease Purchase Act does not have provisions requiring a review of lease purchase agreements to determine if they are cost-effective. The act caps the interest rate at 12 percent (the maximum permitted by the Public Securities Act) and limits the final payment to 30 years after the date of execution, but does not provide other financial specifications. As a result, the financial benefit of lease purchase agreements varies. For example, East Mountain High School, a state-chartered charter school in Albuquerque, is in a 15-year lease purchase agreement for a \$4 million facility with an interest rate of 5.5 percent, resulting in \$1.9 million in total interest paid. In comparison, The Ask Academy, a state-chartered charter school in Rio Rancho, has a 30-year lease purchase agreement with an interest rate of 7 percent, resulting in total interest payments of \$9.1 million – well above the \$6.7 million purchase price. A nonprofit foundation may be formed solely for the purpose of providing a facility for a charter school and this is the case for The Ask Academy. The Ask Academy submits lease payments to The Ask Academy Education Foundation, which purchased the property on behalf of the charter school. The terms of the foundation acquisition of the property are unclear, making it difficult to determine if only the cost of the foundation purchase is being passed onto the charter school or if the foundation is being enriched above its investment. In many cases, charter schools have not submitted enough information to determine if the lease purchase agreement is

Submission of Proposed Lease Purchase Arrangement

- Public School Facilities Authority Approval
- Terms of Proposed Lease Purchase Arrangement
- Compliance with Open Meetings Act
- Resolution of Governing Body
- Source of Funds
- Ownership of Building or Other Real Property
- Pledging of Charter School Revenues or Other Assets
- Submission of Proposed Lease Purchase Arrangement

2015 Public Building Deadline

New and renewed charter schools are required to be in public facilities or subject to an approved lease purchase agreement by the July 1, 2015 deadline pursuant to Subsection D of Section 22-8B-4.2 NMSA 1978, or meet one of the two other enumerated exceptions. If charter schools are not housed in a public facility or in a lease purchase agreement, the charter school must demonstrate that their facility meets average statewide adequacy standards and that the owner of the facility is contractually obligated to maintain those standards at no additional cost.

Paragraph D (2a) Section 22-8B-4.2 NMSA 1978

the most cost-effective alternative for acquiring the property.

Oversight. It is the responsibility of the governing body of a charter school to determine if a lease purchase arrangement is in the best interest of the charter school. The governing body of the charter school must hold a meeting in consideration of the acquisition of a building or other real property in accordance with Subsection B of Section 22-26A-6 NMSA 1978. Statute requires the governing body to then forward the proposed lease agreement to PED.

PED Approval. PED approves proposed lease purchase and lease with an option to purchase agreements. However, Attachment Charter Schools Approved Lease Purchase Arrangements shows approval status does not always mean the charter school is actually in a lease purchase agreement. Even if a proposed lease purchase agreement is approved, it is not always utilized. For example, the Anansi Charter School’s proposed lease purchase agreement was approved by PED in December 2014, but to date the charter school has not exercised the option to purchase. Additionally, several charter schools believe they have entered into a lease purchase agreement and have represented this to the Public School Facilities Authority (PSFA), but their agreements have never been submitted to PED for approval and as such are only considered lease agreements. This distinguishing factor could affect the schools’ compliance with the 2015 public building deadline requirements and eligibility for lease assistance funding.

PED provides charter schools with a checklist for submission of proposed lease purchase arrangements and then determines if the charter school’s submission meets the requirements of the Public School Lease Purchase Act. Although it is up to the governing body of a charter school to determine if a lease purchase arrangement is in the best interest of the school, there appears to be a gap between the cost-effectiveness of PED-approved and non-PED-approved lease purchase agreements. For example, Santa Fe Academy for Technology and the Classics has a PED-approved lease purchase arrangement with an interest rate of 4.25 percent, while La Academia de Esperanza has an interest rate of 15 percent in a lease with option to purchase that is not on the PED list as approved, and exceeds the statutory cap of 12 percent.

2015 Public Building Deadline. There are currently charter schools in lease purchase agreements that have not been approved by PED as well as charter schools in leases with an option to purchase where the option has not been exercised that do not have provisions that require the landlord to maintain the facility. For example, South Valley Preparatory School is in a lease with an option to purchase agreement that is not on the PED list as approved, plus the option to purchase expired on January 1, 2016. The lease does not require the owner to maintain facilities and is a “triple-net lease,” a lease agreement where the lessee agrees to pay all real estate taxes, building insurance, and maintenance in addition to rent and utilities payments.

Property Ownership. Several charter schools with lease purchase

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 state.

**Paragraph N Section 22-8B-4
NMSA 1978**

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.

agreements that have not been approved by PED appear to transfer fee simple ownership in the property to the foundation they are purchasing from upon the final payment. An example is The GREAT Academy, a state-chartered charter school in Albuquerque. The GREAT Academy is in a lease purchase agreement that is not on the PED list as approved. The terms of the lease purchase agreement state that upon the final payment, the school transfers ownership to the foundation. On its face, these types of arrangements appear to violate the anti-donation clause of the New Mexico constitution and state statutes that outline procedures for disposing of real property.

Another issue is lease purchase agreements that have been exercised but not fulfilled as a result of the termination of a charter school. If a charter school goes out of business, assets of the charter school revert to the authorizer of the charter school according to Subsection N of Section 22-8B-4 NMSA 1978. It is unclear if an authorizer would be able to assume a lease purchase agreement pursuant to this provision if the authorizer wanted to. These issues need to be resolved to ensure that public investments are not lost to private owners.

Conclusion. Variation in charter school lease purchase agreements in terms of cost-effectiveness and adherence to statute suggests a need for increased oversight of lease purchase agreements beyond PED approval of proposed agreements. Currently the Public School Lease Purchase Act gives the charter school governing body the responsibility for determining if a lease purchase arrangement is in the best interest of the charter school. All other lease purchase agreements over \$5 million are reviewed by the Capitol Buildings Planning Commission pursuant to Section 15-10-2 NMSA 1978 to determine if the lease purchase agreement is the most cost-effective alternative for acquiring the property. However, school purchases are exempt from this provision. Increased oversight of charter school lease purchase agreements in a similar manner may benefit charter schools and the state. One option might be to expand the role of charter school authorizers as an accountability measure. The Public Education Commission authorizes and renews state-chartered charter schools and local school boards authorize and renew locally chartered charter schools. Charter school authorizers could examine lease purchase agreements upon authorization and renewal. Currently, charter schools do not appear to be submitting lease purchase agreements for review as part of the renewal process. Another option may be increased training for charter school governing bodies around lease purchase agreements or a set standard for cost-effectiveness. This will ensure lease purchase arrangements are financially beneficial and allow charter schools to focus on their mission of quality programs and innovation in education.

School	Date Approved	Contact Person	Email	PSFA Status/Comments
Media Arts Collaborative Charter School	5/2/2009	Glenna Voigt	gvoigt@nmmediaarts.org	Lease Purchase Option Exercised; Media Arts Collaborative Charter School #2
Montessori of the Rio Grande	8/14/2009	Bonnie Dodge	msbonnie@mrcharter.org	No lease purchase option; leasing from district (APS)
The International School at Mesa del Sol Charter School	12/23/2009	Sean Joyce	sjoyce@tism.org	No lease purchase; lease between Mesa del Sol, LLC and The International School at Mesa del Sol
Anansi Charter School	12/15/2014	Michele Hunt	mhunt@acsiaos.org	Lease Agreement with Option to Purchase; Charter School has not exercised the option to purchase
Academy of Trades & Technology	9/26/2011	John Rodarte	jrodarte@atths.com	Lease with Option to Purchase; option to exercise purchase not on file
East Mountain Charter School	1/9/2012	Monique Siedschlag	msiedschlag@eastmountainhigh.net	Lease Purchase on file
El Camino Real Charter School	5/18/2012	Paym Greene	paym.greene.ecra@gaggle.net	Lease Purchase on file; warranty deed
Monte del Sol Charter School	11/2/2012	Robert A. Jessen	arjessen@montedelisol.org	Lease with Option to Purchase; Not a Lease-Purchase pursuant to the Public School Lease Purchase Act because payments are not comprised of principal and interest and purchase price is not reduced according to payments made
Digital Arts and Technology Academy	8/12/2013	Evalyne Hunemuller	evalynne.hunemuller@datacharter.org	Lease Purchase agreement between Albuquerque Municipal School District 12 (APS) and DATA
ACE Leadership High School	3/21/2014	Tori Stephens-Shauger	tori@aceleadership.org	Lease with Option to Purchase with approval pursuant to Lease Purchase Act.
Mountain Mohogany Community School		Baylor del Rosario	b.delrosario@mountainmahogany.org	Lease Purchase Agreement
Albuquerque Charter Academy (SIA Tech)	5/23/2014	Erik Bose	erik.bose@abqcharteracademy.org	Lease with Option to Purchase
Cottonwood Classical Preparatory School	8/8/2014	Sam Obenshain	sam.obenshain@cottonwoodclassical.org	Lease with Option to Purchase; option date 12/1/2022
Los Puentes Charter School	9/19/2014	Micaela Smith	msmith@lospuentes.k12.nm.us	Lease Purchase with PED approval
Santa Fe/ Academy for Technology & the Classics	9/19/2014	Susan Lumley	slumley@sfs.info	Lease Purchase with PED approval
Taos Academy Charter School	6/30/2016	Traci Filiss	tfiliss@taosacademy.org	Lease Purchase with PED approval
Albuquerque School of Excellence	Pending	Salih Aykac	sav@abqse.org	Lease Purchase pending PED approval
Cottonwood Valley Charter School	Pending	Kimberly Schaffer	kschaffer@cottonwoodvalley.org	Lease Purchase pending PED approval
The ASK Academy	Pending	Daniel Busse	dbusse@theaskacademy.org	Lease Purchase pending PED approval
Horizon Academy West	Pending	Cynthia Carter	ccarter@hawest.net	Lease only on file
La Academia de Esperanza				Lease with Option to Purchase; not on PED list as approved
Sage Montessori Charter School				Lease with Option to Purchase; not on PED list as approved
Alice King Community School 8100 Mountain Rd (new)				Lease Purchase; not on PED list as approved
Corrales International School				Lease Purchase; not on PED list as approved
South Valley Preparatory School				Lease with Option to Purchase; not on PED list as approved; Note purchase option expired 1/1/16
The GREAT Academy				Lease Purchase; not on PED list as approved