

STATE OF NEW MEXICO
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State Capitol North, 325 Don Gaspar, Suite 200
Santa Fe, New Mexico 87501
Phone: (505) 986-4591 Fax: (505) 986-4338
<http://www.nmlegis.gov/lcs/lesc/lescdefault.aspx>

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September 26, 2012

MEMORANDUM

TO: Legislative Education Study Committee
FR: David Harrell
RE: STAFF REPORT: CHARTER SCHOOLS UPDATE

Introduction

During the August 2012 interim meeting, the Legislative Education Study Committee (LESC) heard a staff report on charter schools that provided another update on the status of the 12 charter schools that had been approved in 2011; that reviewed the schedule of public hearings for the 14 applications for new charter schools to open in school year 2013-2014; and that provided additional information about virtual charter schools, together with some policy options that the LESL might consider.

This staff report for the September 2012 LESL meeting will:

- report the status of the final four charter schools still pending at the time of the August 2012 report;
- review the process of renewing a charter and the renewal application kit developed by the Charter Schools Division (CSD) in the Public Education Department (PED); and
- report the decisions of the Public Education Commission (PEC) on the applications for new charter schools in school year 2013-2014.

The report concludes with a background section that illustrates the legal questions that the PEC raised about virtual charter schools and that briefly describes the kinds and locations of charter schools operating in New Mexico in school year 2012-2013.

The Final Four

As reported in August 2012, four of the 11 charter schools that the PEC had initially approved in September 2011 to operate in school year 2012-2013 had still not met the conditions placed upon their approval as of August 20, 2012. Now, however, the CSD reports that all four have met the conditions and have begun their operations. More specifically:

- in late August, Estancia Valley Classical Academy, in Moriarty, received a temporary certificate of educational occupancy (E-occupancy) good through September 30, with the expectation that the school will receive its permanent E-occupancy certification once certain electrical work and construction of pedestrian walkways and parking lots are completed. The school opened on September 4;
- La Tierra Montessori School of the Arts, in Española, delayed opening school until September 10 in order to resolve the E-occupancy issue. The school received its E-occupancy certification on September 7;
- Sage Montessori Charter School, in Albuquerque, received its E-occupancy certification on August 23 and began the school year on August 27; and
- Uplift Community School, in Gallup, conducted individual assessment conferences with students and families off-site on September 4; received its E-occupancy certification on September 6; and the director reports that school began on September 10.

Charter Renewals

Statutory Provisions

In brief, the *Charter Schools Act* requires that an application to renew a charter contain the following documents:

- a report on the school's progress toward meeting its academic performance, financial compliance, and governance responsibilities;
- a financial statement that discloses the costs of administration, instruction and other spending categories "that is understandable to the general public [and] that allows comparison of costs to other schools or comparable organizations";
- a copy of the charter contract;
- a petition in support of the charter renewal signed by not less than 65 percent of the school's employees;
- a petition in support of the charter renewal signed by at least 75 percent of the households whose children are enrolled in the school; and
- a description of the school's facilities and assurances that those facilities comply with the requirements of law.

According to PED, 10 charter schools are scheduled to submit their renewal applications by October 1, 2012. As further provided in law, these schools may apply either to the PEC or to their respective local school boards.

Revised Renewal Application

For the current renewal cycle, the CSD issued a new charter renewal application kit that charter schools renewing with the PEC must use and that local school boards may use for the charters renewing with them. Among other features, the 47-page document outlines the stages in the renewal application process, defines pertinent terms, and includes the forms that renewal applicants must use. The new process requires that all submissions be made in electronic format, whether email, CD, or flash drive.

Although more details are provided in the attachment (an excerpt from the renewal application kit), the schedule of major events in the renewal process with the PEC is as follows:

- October 1, 2012, 5:00 p.m. – submission of renewal application to CSD;
- October 2 through December 3, 2012 – CSD and PEC review of renewal applications;
- December 13-14, 2012 – PEC meeting to approve or deny requests for renewal; and
- December 17, 2012 through January 29, 2013 – contract between the governing body of the charter school and the PEC.

The renewal application kit advises applicants that the CSD will make recommendations regarding renewal to the PEC based on “the renewal application, analysis from the CSD staff, status reports provided by the PED’s divisions and bureaus, and if applicable, the local school district.” Furthermore, the CSD’s recommendations will be based on the four criteria in law that comprise grounds for revoking or not renewing a charter:

- a material violation of any of the conditions, standards, or procedures in the charter contract;
- failure to meet or make substantial progress toward the department’s minimum educational standards or student performance standards identified in the charter contract;
- failure to meet generally accepted standards of fiscal management; or
- violation of any provision of law from which the charter school was not specifically exempted.

Status of New Applications for School Year 2013-2014

Applicants

As noted during the staff update in July, the CSD received 14 applications to open new charter schools in school year 2013-2014; and no applications were submitted to local school boards. The 14 applications submitted to the PEC include applications from three of the four out-of-state organizations profiled in the June LESC staff update:

- Academic Opportunities Academy, headquartered in El Paso, Texas, carried through with its plans to open charter schools in Anthony and Deming although it withdrew its applications for schools in Alamogordo, Carlsbad, and Las Cruces;
- New Mexico Connections Academy, affiliated with Connections Education, based in Maryland, applied to open a single virtual charter school in Santa Fe; and

- Starshine Academy, headquartered in Phoenix, applied to open the Lisa Law Peace School, also in Santa Fe.

The other applications submitted to the CSD came from:

- Columbus Community School, located within the Deming Public Schools district;
- Electus Academy, Health Leadership High School, and Indigo Hill Charter School, all located within the Albuquerque Public Schools (APS) district;
- Health Sciences Academy, located within the Gadsden Independent Schools district; and
- Taos International School and Taos Mountain Charter School, in Taos.

Altogether, then, considering the three withdrawn applications, when the PEC met on September 19 and 20, 2012, the commissioners were scheduled to rule on 11 applications for new state-chartered charter schools.

Recommendations of the CSD

As required under the *Charter Schools Act*, the PEC scheduled public hearings on these applications in the affected districts during the week of August 20 “to obtain information and community input to assist it in its decision whether to grant a charter school application.” Then in late August and early September, the CSD issued its recommendations and posted them on the PED website. Of the 11 applicants, the CSD recommended denying seven and approving four, all with conditions.

In general, the recommendation to deny approval was based on the incompleteness or inadequacy of the application in certain respects or the inability of the applicants, during the capacity interview, to demonstrate the experience, knowledge, or competence successfully to open or operate a charter school in New Mexico.

For those applicants that the CSD recommended the PEC approve – Health Leadership High School, New Mexico Connections Academy, Taos International School, and The Electus Academy – three standard conditions applied. The applicant must:

- obtain standing as an approved board of finance before June 30, 2013;
- secure a facility that meets the Public School Facilities Authority approval in terms of educational occupancy standards and the New Mexico average weighted condition index; and
- complete the CSD’s planning-year checklist.

In the case of The Electus Academy, however, the CSD specified a number of additional concerns to be addressed during the planning year, concerns over student assessment, personnel policies, governance, and other aspects of the application.

As indicated, the only application affiliated with an out-of-state organization that the CSD recommended approving was the New Mexico Connections Academy, a virtual charter school. Although the CSD found some shortcomings in the application – insufficient detail in the mission statement and a lack of understanding and preparation for serving special education students, for example – it also noted a number of strengths, among them:

- a clearly defined, research-based philosophical approach and curriculum;
- a governing body with a wide range of expertise, knowledge, and experience;
- general student policies “appropriate for an online school”; and
- sufficient evidence of need for the school.

The CSD recommendation to approve the application of the New Mexico Connections Academy also noted, “There may be a question concerning the ability of the Public Education Commission to approve state-wide virtual programs” (see “Background,” below).

Decisions of the PEC

The PEC met on September 19 and 20 to rule on the applications. Although the agenda listed all 14 schools, three of them (noted above) were identified as withdrawn; and as the meeting progressed, two others – Indigo Hill Charter School and Taos Mountain Charter School – were announced as having withdrawn their applications, also. Given the withdrawals, nine applications remained.

As the PEC began its deliberations, Ms. Kelly Callahan, Interim Director, Options for Parents, PED, explained the review process that the CSD had used with each application. Five review teams – each one comprising a CSD staff member, a charter school principal or head administrator, and a charter school business officer – evaluated the applications according to a scoring rubric provided by the CSD.

As further assistance to the PEC in its deliberations, the CSD also compiled a detailed census report of charter schools in New Mexico. This document includes a list of the applicant schools with their proposed district location, grade levels to be served, proposed enrollment cap, total local district enrollment excluding charter schools, total number of all charter schools already in the district, total enrollment of all charter schools in the district, and the charter school enrollment as a percentage of district enrollment. It also includes data about school grades, wait lists, and the focus of each charter school currently in operation in those districts where applicants proposed to locate new charter schools.

For each application that the PEC considered during the hearing on September 19 and 20, the CSD was allowed 10 minutes to present its recommendation; the applicant was allowed 15 minutes to respond or to provide additional comments; and the PEC members were allowed up to 45 minutes to ask questions of either party. In most cases, the PEC acted in accordance with the recommendations of the CSD. By unanimous vote, the commissioners denied the applications from:

- Health Sciences Academy, in Gadsden;
- Academic Opportunities Academy, in Anthony;
- Academic Opportunities Academy, in Deming;
- Columbus Community School, in Columbus; and
- Starshine Academy Lisa Law Peace School, in Santa Fe.

Also in accordance with the recommendations of the CSD, the PEC approved, with conditions, the application from Health Leadership High School in Albuquerque; however, the PEC imposed other conditions in addition to those recommended by the CSD.

Contrary to the recommendations of the CSD, however, the PEC denied the applications from:

- New Mexico Connections Academy;
- Taos International School; and
- The Electus Academy.

Among their reasons for denying the application from New Mexico Connections Academy (on a vote of six to three), commissioners cited:

- research indicating that the test scores of students in virtual schools are generally lower than those of students in traditional schools;
- the current availability of online learning through the New Mexico Cyber Academy and IDEAL-NM (Innovative Digital Education Learning-New Mexico), as well as online programs in a number of school districts throughout the state;
- the inconsistent Internet connectivity throughout the state, suggesting that not all students would have equal access to a virtual charter school;
- the potential for harm to communities and districts throughout the state whose students enroll in the charter school, especially if, through this precedent, other virtual charter schools were to open; and
- the tenuous legal authority of the PEC to approve a virtual charter school. On this point, commissioners noted that the law is arguably ambiguous, but they cited two legal statements – a formal opinion from the CSD counsel in 2009 and an advisory letter from the Attorney General in 2008 – as well as rules of the PED, all suggesting that virtual charter schools are not permitted in New Mexico (see “Background,” below).

Despite these objections, commissioners also found value in virtual education: as an alternative for students unable to attend a traditional school; as a supplement, through blended learning, to traditional schooling; and as a means of reducing the dropout rate. Some commissioners also suggested that, by approving the application, the PEC could force a resolution to the legal questions.

On a vote of eight to one, the PEC denied the application by Taos International School for three main reasons:

- the school seemed not to offer anything not already available in the community;
- the educational plan received a low score in the CSD recommendation; and
- Taos already has five charter schools that comprise 27 percent of the district’s enrollment and that have spaces for more than 400 additional students.¹

With The Electus Academy, the PEC was concerned that the proposed budget allocated \$1.3 million from operational funds to pay lease costs. Commissioners also indicated that the school did not seem to offer any programs or opportunities not already available in the Albuquerque area and that, in general, the school would not be in the best interests of students or the community. On a vote of five to four, the PEC denied this application.

¹ The CSD recommendation notes that, if this school were approved, charter schools would serve approximately 42 percent of the district enrollment in Taos.

Finally, as provided in the *Charter Schools Act*, any of the eight applicants whose applications the PEC denied may appeal to the Secretary-designate of Public Education within 30 days of the PEC's decision.

Background

Uncertain Legal Status of Virtual Charter Schools in New Mexico

As noted above, PEC members cited certain legal opinions and PED rules as they questioned the legal status of virtual charter schools in New Mexico.

In 2009, three organizations applied to the PEC to become state-chartered virtual charter schools.² All three schools were denied charters in accordance with the recommendations of the Assistant Secretary of Education at that time, who found inadequacies in their applications. Although these inadequacies were unrelated to the proposed virtual education program, the Assistant Secretary was also concerned with the legality of virtual charter schools in general, and he sought a legal opinion on the matter from the counsel of the CSD.

- In brief, counsel opined that New Mexico law contemplated schools as “brick and mortar” buildings with a physical presence in a particular place, tied to “attendance areas,” with “walk zones,” and “allowable class sizes,” all of which suggested that the Legislature had in mind the physical presence of children in school buildings. Additionally, he noted that the Legislature could have permitted virtual schools when it passed the *Statewide Cyber Academy Act*, but did not.³ Counsel concluded, therefore, that the PEC could not legally authorize virtual charter schools.⁴
- The CSD counsel also indicated that not just any building would satisfy this legislative intent: “As virtual charter schools, the applicants will not have a brick and mortar school building, but rather they are proposing to have learning centers or administrative offices located in the state where students may occasionally meet face-to-face with a teacher.”⁵

PED rules that commissioners alluded to read as follows:

A charter school shall be a nonsectarian, nonreligious, and non-home-based public school that operates within the geographic boundaries of a public school district.

Distance learning courses provide an opportunity for schools within the state to expand their course offerings and expand access to learning resources. While distance learning technologies may occasionally be used as full-time educational programming for students in unusual circumstances, asynchronous distance learning shall not be used as a

² The three schools proposed were Sandia Academy, Senator Dennis Chavez Academy, and the Kaplan Academy of New Mexico.

³ In an advisory letter issued on February 19, 2008, the Attorney General reached a similar conclusion.

⁴ The current position of the PED on this legal opinion from 2009 is unknown. LESC staff first inquired in early June 2012, and the most recent response from PED is that the matter is still under review.

⁵ In its application, the New Mexico Connections Academy proposed “a teaching/learning center in Santa Fe” for the virtual charter school it hoped to open.

substitute for all direct, face-to-face student and teacher interactions unless approved by the local board of education.

Charter Schools Operating in New Mexico in School Year 2012-2013

According to PED, 95 charter schools are operating in New Mexico during school year 2012-2013. Of those, 52 are state-chartered charter schools authorized by the PEC; and 43 are locally chartered charter schools authorized by their respective school boards. Fifty-four charter schools are located within the APS district. Of those, 34 are state-chartered and 20 are locally chartered.

Instructions: 2012 State Charter Renewal Application Process and Review Stages

Form and Point of Contact	<p>All submissions should be prepared utilizing the <i>2012 State Charter Renewal Application Kit</i>. Brevity, specificity, and clarity are strongly encouraged. Any questions regarding the application and the review process must be directed to Kelly Callahan at Kelly.Callahan2@state.nm.us or (505) 827-6532. During this process, applicants must first consult with Ms. Callahan about contacting other CSD or PED staff members for assistance and information.</p>
Deadlines	<p>2012 State Charter Renewal Applications must be submitted to Kelly Callahan at Kelly.Callahan2@state.nm.us or at the address found at the bottom of this section by 5:00 p.m. Monday, October 1, 2012. Renewal applications will be date stamped by the CSD staff at the time of submission.</p> <p>Please note that Part C requires you to submit a copy of your most current charter and amendments. This document must be saved as a pdf and scanned and sent electronically as part of the entire application.</p>
Manner of Submission	<p>Only electronic copies will be accepted (by email, CD, or flash drive): All applicants <u>must submit an electronic version</u> of their renewal application. Electronic versions can be emailed to Kelly Callahan Kelly.Callahan2@state.nm.us by no later than close of business, 5:00 p.m. Monday, October 1, 2012. You may also submit your application on a CD Rom or a flash drive by the deadline. All documents must be submitted in pdf format. Please be sure to convert your document and then save it, before attaching it to an email. You are strongly encouraged to create a receipt when sending your email document. CSD is not responsible for advising you on how to properly convert your documents.</p>
Technical Assistance Workshops (June – September)	<p>The CSD will provide technical assistance workshops for the charter renewal application process between June and September, 2012. Applicants will be notified of the date, time, and location.</p>

<p>Review Period and Renewal Site Visit</p> <p>(October 1–October 31)</p>	<p>A review team will analyze the Renewal Applications. The CSD staff will hold renewal site visits prior to the completion of the preliminary renewal analysis. This site visit is designed to verify the evidence and documentation supporting the renewal application.</p>
<p>CSD Preliminary Renewal Analysis</p> <p>(November 2)</p>	<p>The CSD will send each renewal applicant a preliminary renewal analysis by November 2. This analysis will identify areas of concern and/or issues in need of clarification from the charter school’s progress report, the requested changes, and/or the renewal application.</p>
<p>Response to Preliminary Renewal Analysis</p> <p>(November 2–14)</p>	<p>Renewal applicants may respond in writing to the information contained in the preliminary renewal analysis. These responses must be submitted by no later than close of business, 5:00 p.m. on Wednesday, November 14. These responses must be submitted electronically to Kelly Callahan at Kelly.Callahan2@state.nm.us. You are strongly encouraged to create a receipt when sending your email document.</p>
<p>CSD Director’s Recommendation</p> <p>(December 6)</p>	<p>The CSD will send a recommendation to the PEC to approve or deny the renewal application on December 6, 2012. Renewal applicants will receive a copy of the recommendation prior to the PEC acting on the application.</p>
<p>Final Authorization Meeting of Commission</p> <p>(December 13–14)</p>	<p>The PEC will hold a public decision-making meeting to approve, approve with conditions, or deny the renewal application on December 13–14, 2012.</p>
<p>Contract Negotiations</p> <p>(December 17–January 29)</p>	<p>If approved, the chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the renewal application.</p>