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July 16, 2014

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force

**RE: REVIEW OF 2012-2013 STAFF REPORTS AND COMMITTEE DISCUSSION
REGARDING VIRTUAL CHARTER SCHOOLS**

During the July 2012 and 2013 interim hearings, the Legislative Education Study Committee (LESC) heard testimony and received staff reports regarding issues related to virtual charter schools. This staff brief will review the major points of those committee presentations, as well as any relevant committee discussion.

July 18, 2012 LESC Hearing (Portales)

The July 2012 staff report on virtual charter schools served as an introduction to the topic for the committee, noting the recent opening of the New Mexico Virtual Academy (NMVA) in Farmington, and the then-imminent opening of Connections Academy in Santa Fe. The report focused on a number of issues fundamental to the consideration of virtual charter schools in the state, including:

- definitions of virtual schools, such as that offered by the National Association of Charter School Authorizers ("An educational organization that offers K-12 courses through Internet-based methods, with time and/or distance separating the teacher and learner. Students enroll to earn credit towards grade-level advancement and/or graduation.");
- some issues of day-to-day operations, including:

- time spent in both online instruction and student work conducted offline;
 - the proliferation of community learning centers, allowing students to visit classroom-like settings where students and teachers log on at the same time;
 - field trips and other opportunities for social interaction;
 - regular teacher “office hours”; and
 - online assessments to inform the coming week’s instruction;
- potential student-populations served by virtual education, noting that parties on all sides of the issue of virtual schools agree that such settings are not appropriate for every student, and that students who tend to do well in these programs are those who are committed to independent, self-regulated learning, without daily face-to-face guidance and support from instructors;
 - delivery of the program, noting that distance in time or space is central to the delivery of a virtual educational program;
 - costs associated with virtual schools, indicating that some sources suggest that virtual charter schools’ per-pupil costs can be much lower than traditional schools, as a result of the lower overhead and start-up costs often associated with virtual schools; however, the report also indicated that some issues of virtual instruction, such as lab equipment, individually furnished to each student, may cost substantially more than in traditional public schools;
 - funding schemes, as funding based on traditional count days may make less sense for virtual schools where coursework can be completed at any time, noting especially the possibility of inter-district competition for students and their accompanying funding units, as well as the possibility of outcomes-based funding;
 - recruitment and enrollment, including discussion of the fact that, for the NMVA, at least, the majority of students come from jurisdictions other than the one in which the academy is actually located;
 - student achievement, discussing various studies that present achievement at virtual charters (in comparison with traditional-school peers) as either better, worse or substantially similar, depending upon which study is cited;
 - assessments, accountability and determining the authenticity of student work;
 - teacher professional development, noting that while most states do not require specialized, online education training, there are several jurisdictions that do have such requirements, as well as discussing the role of colleges of education in developing effective training for online instruction;
 - the role of the chartering authority, including a number of particular areas which chartering bodies should consider in reviewing applications for charter schools, such as:
 - expertise in educational technology;
 - contracts with school management organizations;
 - performance record of the applicant with regard to other schools;
 - data management systems and academic reporting;
 - expansion of virtual charter schools, and ensuring that expansion will not come at the expense of student learning;
 - the issue of special education services, as virtual charter schools retain the same responsibilities as traditional schools under the *Individuals with Disabilities Education Act*; and
 - business concerns of virtual charters, discussing the importance of the relationship between schools and the providers of their educational programs.

The report also discussed a number of legal issues related to charter schools (discussed in further detail, below), such as:

- the definition of the term “school,” in New Mexico law;
- statutory prohibitions regarding potential parties to a contract for management of virtual schools; and
- class action lawsuits alleging securities violations against K12, Inc.

Definition of the Term, “School”

In 2009, several applications to begin state-chartered virtual charter schools were denied by the Public Education Commission (PEC), which decisions were upheld by the Secretary of Public Education, prompting appeal to the district court, where the secretary’s decision was upheld. Although the denials were predicated upon insufficiencies in the schools’ respective applications, the Assistant Secretary of Education was also concerned with the legality of virtual charter schools in general, and sought a legal opinion from the Charter School Division (CSD) counsel, who opined that New Mexico law contemplated schools as “brick and mortar” buildings, tied to particular places such as attendance areas, walk zones, as well as factors like allowable class size, and therefore, due to this and other legal considerations, virtual charters would not be permissible under NM law. (See Attachment 1, *PED Charter Schools Division Counsel Opinion in re: Virtual Charter Schools, 9/4/09.*) In 2013, however, Public Education Department (PED) General Counsel released an opinion in direct opposition to the 2009 CSD opinion, refuting the latter’s assertions, point by point. (See Attachment 2, *NM PED General Counsel Opinion, Virtual Schooling in New Mexico, 1/2/13.*)

Statutory Prohibitions Regarding Potential Parties to a Contract for Management of Virtual Charter Schools

The *Charter Schools Act* contains the following prohibition: “The governing body [of a charter school] shall not contract with a for-profit entity for the management of the charter school.” While this prohibition seems clear in theory, it may be difficult to apply in practice, as the term “management” is not defined. The MOU between K12 and the NMVA enumerated a large number of administrative tasks that the private company is to perform. The only service that K12 does not perform, the company said, is managing instruction. According to K12, however, these tasks do not constitute management of the school because the company does not have the authority to determine policy for the school, only to recommend policy.

Please also note that the Attorney General’s Office (AGO) issued an opinion in April of this year, indicating, among other issues, that the agreement between NMVA and K12 did, indeed, rise to the level of management, placing the school in a position of dependency on K12, Inc. regarding issues of regular operation and control of the school¹. A representative from the AGO is here today to review that opinion and answer questions for the committee.

¹ NM AG Opinion No. 14-03, April 1, 2014.

Class Action Lawsuits Alleging Securities Violations against K12, Inc.

Allegations of unfair or illegal business practices by virtual charter schools have arisen in several states; of particular interest was a class action suit brought against K12, Inc. in early 2012, alleging violations of securities law and rule. The lawsuits were apparently precipitated by a story published in the *New York Times* on December 12, 2011, that examined the rise of online schools in general, with a focus on K12, Inc. in particular. Plaintiffs alleged that, between September of 2009 and December of 2011, K12, Inc., as well as certain of its officers, concealed material information and made false and misleading statements relating to K12's business and financial condition. Other allegations included:

- K12 and certain of its officers violated federal securities laws by issuing materially false and misleading statements regarding K12's business and prospects;
- K12 engaged in improper and deceptive recruiting and sales strategies, aimed at enrolling students regardless of how well suited they might be to the company's curriculum;
- as a result of K12's aggressive recruiting practices, the company experiences student retention problems and high rates of withdrawal;
- K12 failed to disclose administrative pressure from upper management to pass students despite poor or nonexistent academic performance, so as to maintain high enrollment levels and continued government funding;
- a significant number of K12 students failed to meet federal and state standards of academic achievement;
- according to various academic benchmarks, K12 students chronically underperformed when compared with their peers at traditional schools;
- K12 schools often have much higher student-to-teacher ratios than the company advertizes;
- defendants' statements regarding the company's performance and practices were false, misleading, and lacked a reasonable basis;
- as a result of defendants' misleading statements, K12 common stock traded at artificially inflated prices during the Class Period; and
- after the publication of the *New York Times* article, the price of K12 common stock fell approximately 23.5 percent, on December 13, and 34.4 percent by December 16, on unusually high trading volume, thereby causing harm to plaintiffs.

Eventually, in March of 2013, parties settled the lawsuit, with payment of \$6.75 million to company investors; however, the settlement did not require that K12 admit to any wrongdoing. Rather, parties agreed to the dismissal of claims about K12's academics and quality, with the settlement agreement focused on how the company disseminated information about student enrollment and retention.

Committee Discussion

During the discussion of the July 2012 staff presentations on virtual charter schools, one committee member expressed concern that a virtual charter school, which draws students from all over the state, could be authorized by a local school board rather than the PEC. This committee member was also concerned that the MOU between K12 and the NMVA may violate the prohibition, cited in the staff report and presentation, against a for-profit entity operating a charter school.

On this point, another committee member suggested that the law is ambiguous in terms of what constitutes management, which is different from the procurement of services. The decision-making authority, this member said, must be with the charter school's governing board, not the company that provides the virtual education program.

A committee member suggested adding a "bad actor" provision to the *Charter Schools Act* to cover circumstances such as those that apparently gave rise to the lawsuits against K12, Inc.; this member asked Ms. Hanna Skandera, Secretary-designate of Public Education, whether PED would be amenable to such a provision. In reply, Ms. Skandera described the department's upfront intentions to examine the performance of charter schools and indicated that a bad actor provision should be part of the review. The committee member encouraged the Secretary-designate to scrutinize virtual charter schools, especially in terms of safeguards for students and communities.

July 18, 2013 LESC Hearing (Ruidoso)

The July 2013 report and presentation on virtual charter schools focused on:

- a review of the 2012 interim discussions on virtual charters (see above);
- a presentation by representatives of K12, Inc., and the New Mexico Virtual Academy; and
- discussion of pertinent legislation from the 2013 regular legislative session.

Presentation by K12, Inc., and the New Mexico Virtual Academy

Ms. Mary Gifford, Regional Vice President of K12, Inc., and Ms. Mari Adkins, Special Education Manager of NMVA presented to the committee, reviewing details of the nature of the NMVA program and curriculum. Specifically, NMVA is a charter school authorized by the Farmington Municipal School District with a governing council comprised of local leaders and business owners that:

- serves 500 students in grades 6-11 (with grade 12 to be added for SY 2013-14);
- has New Mexico certified, highly qualified teachers to deliver and guide instruction;
- has a drop-in learning center in Farmington that can accommodate 45 students (approximately 12 students attended the learning center on a daily basis in SY 2012-13);
- students take all state assessments;
- students must meet state standards and district/state graduation requirements;
- students must receive special services and accommodations as required by laws and individual education plans;
- students must demonstrate attendance/engagement consistent with state laws and regulations; and
- utilizes the K12 curriculum as its instructional model.

Ms. Adkins also detailed NMVA's demographics, noting that 75 percent of its students reside in seven counties, including 28 percent residing in Bernalillo County. Noting that approximately 81 percent of NMVA students reregister, Ms. Adkins provided withdrawal rates for NMVA:

- an overall withdrawal rate of 29.8 percent;
- a middle school withdrawal rate of 17 percent; and

- a high school withdrawal rate of 51.6 percent.

Ms. Gifford went on to compare standards-based assessments (SBA) results from NMVA students with those from their peers at Farmington Municipal Schools (FMS) and students statewide, noting that:

- in general, a higher percentage of NMVA students scored proficient and above in reading than FMS and statewide students; and
- in general, a lower percentage of NMVA students scored proficient and above in math than FMS and statewide students.

Moreover, SBA results for science showed that a higher percentage of NMVA students scored proficient and above compared to their district and statewide counterparts for grades 7 and 11, which were the only tested grades in that subject.

Legislation from the 2013 Regular Legislative Session

During the December 2012 and January 2013 interim meetings, the committee reviewed a list of policy options from interim meeting discussions and reports, including:

- prohibition of virtual charter schools;
- delayed approval of other virtual charter schools until outstanding questions and issues can be addressed; and
- review of the *Public School Code* and other parts of state law to identify those sections that may affect or be affected by virtual charter schools and amend or repeal them as needed or enact new sections to accommodate and regulate virtual charter schools.

Although the committee did not endorse any specific legislation, a majority of the members did vote to delay the approval of virtual charter schools until outstanding issues were resolved.

The 2013 legislative session saw several bills that would have impacted virtual charter schools in New Mexico, only one of which was endorsed by the LESC, and none of which were signed into law:

- HB 392a, *Public Education Commission as Independent*, endorsed by the LESC:
 - removed the Commission's administrative attachment to PED;
 - granted the PEC rulemaking authority;
 - shifted \$375,000 from the program cost allowance, withheld by PED for the administration of charter schools, to PEC;
 - restructured the charter school application and appeal process, so that decisions regarding the authorization of state-chartered charter schools, as well as appeals from decisions regarding the authorization of both state and district-level charter schools, would have been decided by the PEC; and
 - passed both houses, but was vetoed by the Governor, who cited concerns about:
 - separation of powers;

- interference with the statutorily mandated duties of the Secretary of Public Education; and
 - the application process, which afforded a chartering authority an effective “pocket veto,” by interpreting the absence of a ruling on an application for 60 days as a denial of the application.
- CS/CS/HB 460, *School Management Contracts & Charter Boards*:
 - prohibited private entities from managing public schools through contracts with school boards, PED, or charter schools;
 - amended the definition of “start-up school” to restrict the development of such schools to New Mexico residents;
 - limited applications for new charters to New Mexico residents, public postsecondary educational institutions and New Mexico nonprofit organizations;
 - passed both houses, but ultimately was pocket-vetoed.
- *CS/SB 338, *Define Virtual Charter School & Moratorium*, which added a temporary provision to the *Charter Schools Act* establishing a moratorium on initial applications for full-time online charter schools, from June 1, 2013 to May 31, 2014, to allow the LESC and PED time to review outstanding issues and questions regarding the impact of full-time online charter schools, and propose changes to law, if necessary to accommodate and regulate online charters. *CS/SB 338 passed the Senate, but did not leave the House Education Committee.

Committee Discussion

Initial committee discussion focused on the service agreement between K12, LLC (a wholly owned subsidiary of K12, Inc.) and the NMVA Governing Council, and whether the prescribed responsibilities of K12 under the agreement rose to the level of “management.”

Other issues of concern to members included:

- the availability of Advanced Placement classes in virtual charter schools;,
- how state funding follows a student from his or her original district to the virtual charter school, and vice versa;
- verification of student work; and
- how virtual charters are to be included in the teacher and school leader evaluation program, particularly with regard to the observation of teachers.

MEMORANDUM

TO: Don Duran,
Assistant Secretary of Education
Charter Schools Division

FROM: Rudolph P. Arnold, Counsel

RE: Virtual Schools

DATE: September 4, 2009

You have requested my opinion whether the Public Education Commission can authorize virtual charter schools that are not brick and mortar, discernible as buildings, designed to educate students in particular places. In the alternative, you have asked whether the secretary of public education can grant waivers, of the requirements contained in the public school code to allow for the creation of virtual schools in New Mexico.

Based on my examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to me at this time, it is my opinion that the Public Education Commission does not have the authority to approve virtual charter schools that are not brick and mortar, discernible as buildings, designed to educate students in particular places. It is my opinion that the secretary cannot grant waivers, of the requirements contained in the public school code to allow for the creation of virtual schools in New Mexico.

ANALYSIS:

Charter school applicants have submitted applications for state-chartered charter schools which rely primarily on distance learning as the method of instruction. 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.

A basic canon of statutory construction is that terms should be read according to their plain meaning. See *Wilson v Denver*, 125 N.M. 308, 314, 961 P.2d 153 (1998). The New Mexico statutes contain definitions of public school and school. The Public School Code, Section 22-1-2 NMSA 1978 provides:

M. "public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is **discernible as a building or group of buildings** generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school; (Emphasis added.)

N. "school" means a supervised program of instruction designed to educate a student in a **particular place**, manner and subject area; (Emphasis added.)

These definitions reflect the intent of the legislature to define public schools in New Mexico as brick and mortar, discernible as buildings, designed to educate students in particular places.

Another indication of the intent of the legislature to define public schools in New Mexico as brick and mortar, discernible as buildings, designed to educate students in particular places is found in Section 22-1-4 NMSA 1978. This statute makes available a free public school education to students in New Mexico. As evidenced by the language regarding enrollment in schools, Section 22-1-4 contemplates the physical presence of students in schools, it provides, in part:

- E. A local school board shall adopt and promulgate rules governing enrollment and reenrollment at public schools other than charter schools within the school district. These rules shall include:
- (1) definition of the school district boundary and the boundaries of attendance areas for each public school;
 - (2) for each public school, definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as "walk zones";
 - (3) priorities for enrollment of students as follows:
 - (a) first, students residing within the school district and within the attendance area of a public school;
 - (b) second, students enrolled in a school ranked as a school that needs improvement or a school subject to corrective action;
 - (c) third, students who previously attended the public school; and
 - (d) fourth, all other applicants;
 - (4) establishment of maximum allowable class size if smaller than that permitted by law; (Emphasis added.)

The plain language of Section 22-1-4 focuses upon "residence," "attendance area," "allowable class size," and other descriptive terms that suggest that, when passing this legislation, the legislature had in mind the physical presence of children in school buildings.¹

¹ Relying upon these same provisions in statute, the Attorney General also concluded the legislature had in mind the physical presence of children in school buildings, N.M. Atty. Gen advisory letter 2/19/08

Additionally, the legislature could have permitted virtual schools when it enacted the Statewide Cyber Academy Act, [22-30-1 to 22-30-8, NMSA 1978]. The Act reflects the special treatment the legislature provides for distance learning. The fact that the language used throughout the Act refers only to courses suggest that, when passing this legislation, the legislature had in mind courses to supplement offerings at schools not the creation of distance learning schools. In addressing the issue of funding for distance learning, Section 22-30-6A of the Act provides:

A student must be enrolled in a public school or a state-supported school and must have the permission of the student's local distance education learning site to enroll in **a distance learning course**. A distance learning student shall only be counted in the student's primary enrolling district for the purpose of determining the membership used to calculate a school district's state equalization guarantee. A student shall have only one primary enrolling district, (Emphasis added).

This language in the Act clearly indicates that the legislature intended that funding for students participating in distance learning would be based upon a school district's state equalization guarantee given to the school that permitted the student to take a distance learning course. Funding for virtual schools would have required adjustments to the state equalization guarantee and was not contemplated by the legislature when the Cyber Academy Act was passed.²

Based on the plain language of the provisions in statutes there is no ambiguity that public schools in New Mexico are brick and mortar, discernible as buildings, designed to educate a students in a particular place. Therefore the Public Education Commission cannot authorize virtual charter schools that do not have brick and mortar, discernible as buildings, designed to educate students in a particular place.

The applicants have requested that the secretary waive the provisions of the statutes that require a school to be brick and mortar, discernible as buildings, designed to educate a students in a particular place. The powers of the secretary of public education are set forth in Section 22-2-1 NMSA 1978 which provides:

A. The secretary is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law.

B. The department may:

- (1) adopt, promulgate and enforce rules to exercise its authority and the authority of the secretary;
- (2) enter into contracts to carry out its duties;
- (3) apply to the district court for an injunction, writ of mandamus or other appropriate relief to enforce the provisions of the Public School Code [22-1-1 NMSA 1978] or rules promulgated pursuant to the Public School Code; and
- (4) **wave provisions of the Public School Code as authorized by law**. (Emphasis added).

The secretary's authority to grant waivers is limited by this statute.

² Sharon S. Ball & J. Placido Garcia, Jr., New Mexico, in National Center for Education Statistics, Public School Finance Programs of the United States and Canada: 1998-99 (2001), available at <http://nces.ed.gov/edfin/pdf/StFinance/NewMexi.pdf>. discusses factors in the state equalization formula.

There is language in the department's rule on distance learning that the charter school applicants seem to rely upon for the secretary's authority to create virtual schools. The public education department's rule at 6.30.8.8A NMAC provides:

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

The charter school applicants have interpreted this rule as permitting the full-time educational programming for students in virtual schools as a substitute for all direct, face-to-face student and teacher interactions, if approved by the local board of education or, in this case, the secretary of education. Two charter school applicants³ have submitted plans to teach courses in cyber space and require students to attend sessions at a learning center to satisfy the requirements for some face-to-face teacher interaction and a brick and mortar presence in New Mexico. Any reading of the distance learning rule to permit full-time virtual schools would conflict with the statutory requirements that public schools in New Mexico are brick and mortar, discernible as buildings, designed to educate students in a particular place.

A cabinet secretary, board, or commission must have statutory authority to promulgate rules. The state Supreme Court has stated: "The authority of an administrative agency to 'promulgate ... regulations must be found in and is limited by statute. ", Howell v. Heim, 118 N.M. 504, 882 P.2d 541 (1994) (citations omitted). Regulations are presumptively valid and will be upheld if reasonably consistent with the authorizing statutes, New Mexico Mining Ass'n v. New Mexico Water Quality Control Comm., 2007NMCA-010, ¶ 12, 141 N.M. 41, 46. It is well established that if there is a conflict or inconsistency between statutes and regulations promulgated by an agency, the language of the statutes shall prevail, See, e.g., Jones v. Employment Servs. Div., 95 N.M. 97, 99, 619 P.2d 542, 544 (1980), cf. Gladden Motor Co. v. Eunice Sch. Bd., 142 N.M. 483, 486 (N.M. Ct. App. 2007). Case law authority has also clearly established that an agency has no authority to enact a rule contrary to the plain meaning of the statute, State ex rel. Helman v. Gallegos, 114 N.M. 414, 418-419 (N.M. Ct. App. 1992).

Any waivers granted by the secretary must be based upon some provisions authorized by law. I have found no provision of the Public School Code that authorizes the secretary to waive the requirement that public schools in New Mexico are brick and mortar, discernible as buildings, designed to educate students in a particular place. The secretary does not have the authority to grant a waiver that would allow an applicant to operate a charter school in a manner which is contrary to the plain meaning of the statute.

³ Sandia Academy and Senator Dennis Chavez Academy

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RECEIVED

JAN 14 2013

January 14, 2013

EXTERNAL MEMORANDUM

LESC

TO: Representative Rick Miera

THROUGH: Hanna Skandera, Secretary-Designate 

FROM: Hilary A. Noskin, PhD, JD, General Counsel 

RE: **LEGAL OPINION-VIRTUAL SCHOOLING IN NEW MEXICO**

The following is my opinion ("Opinion") on a number of issues regarding the creation of virtual schools in New Mexico, taking courses through distance learning and/or at virtual schools, use of distance learning and virtual courses across districts, and the use of virtual schools for full-time schooling.

This opinion is based on the fundamental legislative tenants of public schooling in New Mexico.

"The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed and that the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal."¹

The legal authority (statutes, regulations, case law) must be read in plain meaning, and to give flexibility to the Department and the Secretary to meet the enormously diverse needs of the students and parents utilizing the public school system. The legislative requirement is that public education must be available to all students in New Mexico and for the New Mexico Public

¹ NMSA 1978 §22-1-1.2(A). All Sections identified in the text that are not otherwise identified are Sections of NMSA 1978.

Education Department (“Department”) to utilize the innovative and creative opportunities available through technology to further that end.²

Previous opinions state that it was the “legislative intent” to prohibit the creation of virtual schools. My interpretation is contrary to that opinion. **The New Mexico Legislature continues to add new laws to allow the use of technology and it does not expressly prohibit virtual schools. Therefore, it is clear that the legislative intent should be interpreted as favoring the establishment of virtual coursework and schools.**

Specifically, in regards to the Rudolph P. Arnold (2009)³ opinion, legislative intent is depicted as “indicated” or interpreted when there is clear legislative direction (see cited statute and rule throughout the instant Opinion) to the contrary because the language is stated within the statutes. For example, in review of §22-30-3, the Arnold opinion states the Legislature indicates the legislative intent was to only offer courses to supplement offerings at schools because of the state equalization guarantee calculations. The actual language in that Section clearly states “The statewide cyber academy shall provide distance learning courses for grades six through twelve...”. Another example in the Arnold opinion is his interpretation states that “Any reading of the distance learning rule (referring to NMAC 6.30.8) to permit full-time virtual schools would conflict with the statutory requirements that public schools in New Mexico are brick and mortar, discernible as buildings, designed to educate students in a particular place.” However, it clearly states in that rule if there are unusual circumstances or “unless approved by the local board of education.” In these instances, there is no need for interpretation. It is definitively stated in the statutory and regulatory language. The answers below are designed in response to the questions.

Question 1: Whether Virtual Schools, As Public Schools, Are Allowed To Be Created In New Mexico.

Short Answer 1

Yes, as long as the requirements below are satisfied. There is no evidence that the statutes prohibit the creation of virtual schools. The chronological evolution of statutes and regulations are evidence of the legislative intent to support the use of technology to provide a quality education to all students in New Mexico.

The following requirements do allow for students to physically attend schools, but do not preclude students from attending virtual schools.

Requirements

- **A supervised program of instruction;**

² §§22-1-1 et seq. Public School Code (PSC); §22-2E-1 et seq.; §§22-8B-1 et seq. Charter Schools Act; §22-12-2, 5 Compulsory School Attendance; §§22-15A-1 et seq. Technology For Education; §§22-30-1 et seq. Cyber Academy Act; NMAC 6.19.8; NMAC 6.80.4.18 Charter Schools-Distance Learning; NMAC 6.30.1 et seq. PED Distance Learning Requirements; NMAC 6.29.1 Standards For Excellence.

³ Rudolph P. Arnold, Counsel, (2009) Memorandum to Don Duran, Assistant Secretary of Education, State of New Mexico entitled *Virtual Schools*. Hereafter identified as “Arnold”.

- A single attendance center where students can attend either physically or sign in to a dedicated entity;
- A building where students can either physically attend, or an administration building that houses the dedicated entity = “brick and mortar” interpretation;
- Open enrollment, distance enrollment can qualify-rules not determined by local board of education for charter schools⁴;
- The virtual school is located in New Mexico; and
- Students have one primary enrolling district.
- Note: there is no actual “brick and mortar” language in the statute or rule.

Full-time “asynchronous” learning allowed when there are “unusual circumstances”, a school that has received a D or F for two consecutive years or approved by a local board of education.⁵ “Unusual circumstances” is NOT a defined term by statute or rule.

Analysis Question 1

It is my opinion that the creation of virtual schools in New Mexico is not only allowed, but it is the intent of the New Mexico State Legislature to create virtual schools and use any appropriate and rigorous means to enhance the education of students in New Mexico. This is evidenced by the chronological evolution of the legislation from the Public School Code (PSC) NMSA 1978 §§ 22-1-1 through 22-1-11; to the Charter Schools Act §§ 22-8B-1 through 22-8B-17.1; to the Technology For Education Action §§22-15A-1 through 22-15A-13; and through the Cyber Academy Act §§22-30-8. The creation of virtual schools does include certain requirements mandated by statutes and regulations. However, there is no provision that would prohibit the creation of virtual schools in New Mexico.

My opinion is generally contrary to a previous opinion from Arnold and is distinguishable from an opinion drafted by the Attorney General’s Office (2008)⁶. It is based on review of the statutory language in conjunction with the review of the chronological evolution of the laws identified above. I do agree with the Attorney General’s opinion in that the PSC is “not inconsistent with the Statewide Cyber Academy Act or the [Public Education Department] PED’s Distance Learning rule.”

The Arnold opinion states that “Based on the plain language of the provisions in the statutes there is no ambiguity that public schools in New Mexico are brick and mortar, discernible as buildings, designated to educate students in a particular place. Therefore, the Public Education Commission cannot authorize virtual charter schools that do not have brick and mortar, discernible as buildings, designed to educate students in a particular place.”[*emphasis added*]

There is no “bricks and mortar” language in the direct legal authority, so I assume that Arnold’s use of “bricks and mortar” throughout his opinion is to define an actual structure rather

⁴ §22-1-4(F) “a local school board of education shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district.”

⁵ NMAC 6.30.8 et seq. and 6.29.1;§22-8-18 (B)

⁶ Andrea R. Buzzard, Assistant Attorney General, (2008), Attorney General Opinion Letter to The Honorable Al Park, New Mexico State Representative, entitled *Opinion Request-Open Enrollment and Distance Education*.

than a materials requirement for constructing a building. **It is my opinion that the plain language actually states that there can be virtual schools as long as certain requirements are met.** There is no evidence of a plain language prohibition against the creation of virtual charter schools in the statutes. Therefore, based on actual language in the legal authority, there is no ambiguity that the Public Education Commission **does have** the ability to authorize virtual schools.

The following details my statutory and legal authority interpretation supporting the above stated opinions and answers. They are linked to the above mentioned requirements in Short Answer 1.

Requirements:

- 1) A supervised program of instruction;**
- 2) A single attendance center where students can attend either physically or sign in to a dedicated entity;**
- 3) A building where students can either physically attend, or an administration building that houses the dedicated entity.**

§22-1-1.1 Public School Code (“PSC”)-Legislative Findings and Purpose (2004)
(A) Legislature finds...improvements are necessary to enhance and upgrade delivery of quality education in NM.
(F) ...systematically evaluate instructional improvement and student progress, increase parental involvement in the public schools and recognize that teachers should be treated as professionals.

This Section speaks to the Legislative intent to continuously improve and promote new thinking and technology to meet the purpose of the law. A legislative body is a contemplative and slow moving body. It is specifically designed to make laws not easily amendable. Alternatively, the Legislature could have expressly prohibited virtual schools and it did not.

§22-1-2(M) PSC-Definition: School is “a supervised program of instruction designed to educate a student in a particular place, manner and subject area.”

Arnold emphasizes the term “particular place”. To his interpretation, it would be at a specific physical place. (NOTE: Arnold identifies this section as section N). As Arnold states, A basic canon of statutory construction is that terms should be read according to their plain meaning. See *Wilson v. Denver*, 125 N.M. 308, 314, 961 P.2d 153 (1998). The first definition of “Place” according to The American Heritage Dictionary (1982); and according to Dictionary.com (2012) is: “a particular portion of space, whether of definite or indefinite extent.” So if we follow Arnold’s direction of using the “plain meaning of a word”, then “particular place” can be interpreted as enrollment in a specific class that is held and identified in a specific space (taking up cyberspace); or signing into a specifically designed server or entity controlling the virtual school. **Therefore, students do not need to be physically present at a school.**

§22-1-2(K) Definition: Private School is “a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board.

The fact that the term “on-site” is used in this definition and is not used in the Public School definition shows that the Legislature wanted to make clear that a program needed to be “on-site”. This does not mean that private schools cannot also offer offsite programs. It is directed to the fact that the Legislature would have put this language into the statute in reference to the Public School definition if the intent was to identify the programs as “on-site.”

§22-1-2(L) Definition: Public School is “that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either elementary, middle, junior high or high school or any combination of those and includes a charter school.

§22-1-2(P) Definition: School Building is “A public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district.”

Arnold’s interpretation of these Sections is that the Legislature intended for students to go physically to buildings for instruction by teachers. (Arnold identifies this cite as M). **However, in reviewing the actual language of the definitions, and the lack of an express prohibition, there is flexibility in the definition of a “Single Attendance Center. It can mean enrollment in a class or a place where people go to attend-either in person or by connecting to the server or place of holding the cyber classes.**

It is stated and clear that a building is necessary. This building could be an administration building and/or other building identified by the statute that houses the server or the place where the accountability for the program. The use of “on-site” in the private school definition, and the Cyber Academy Act (analyzed below) taken in conjunction with the language from PSC Legislative Purpose (see above) to identify where “improvements are necessary to enhance and upgrade delivery of quality education in NM”—the Legislative intent was actually to allow for schooling outside of the traditional school and not to limit students to being physically at a school building. Again, this does not preclude students from being at a building, but it does not limit them to only being physically present in a building.

Requirements continued:

4) Open enrollment, distance enrollment can qualify.

§22-1-2 H. "local school board" means the policy-setting body of a school district;
R. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

- §22-1-4 (A-D) Free Public Schools: Open Enrollment- Free public schooling shall be available to any school age person who is a resident of this state and has not received a high school diploma or its equivalent.
- §22-1-4 E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools **other than charter schools within the school district.**
- §22-1-4 F. In adopting and promulgating rules governing enrollment and re-enrollment at public schools **other than charter schools within the school district...**
- §22-5-4 Local school boards; powers; duties. (2005) A local school board shall have the following powers or duties: A. subject to the rules of the department, develop educational policies for the school district; N. give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency.

Arnold and the Attorney General cite Section E that discusses boundary areas, walk zones and residence areas. They state that Section 22-1-4 contemplates the physical presence of students in public schools. They also say that the word attendance/and allowable class size supports this contemplation.

The interpretation by Arnold and the Attorney General are incorrect. Section E clearly states that a local school board does NOT adopt the rules for charter schools. Additionally, review of the actual statutory language provides evidence contrary to the Arnold and Attorney General opinion. 1) The Legislature stated that free public schooling shall be available. Therefore, if the Legislature wanted to say that enrollment only applied to physically present students, they would have stated it. 2) The earlier interpretation is correct in that there was contemplation of physically attending students because there will continue to be physically attending students. 3) The earlier interpretation is not correct in that it would limit enrollment to only physically attending students. 4) Attendance is absolutely an integral part of virtual schooling. It is part of any online class. **Allowable class size does not preclude students from taking distance learning coursework.** Again, there is nothing in the actual statutory language that prohibits the use of virtual schools. It does state that there will be open enrollment.

- §22-8B-2 A. Definition: Charter School is “a conversion school or start-up school authorized by the chartering authority to operate as a public school to operate as a public school”
- §22-8B-2 B. Definition: Chartering Authority is “either a local school board or the commission [PEC]
- §22-8B-3 Purpose “Charter Schools Act is enacted individual schools to structure their educational curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been

replicated successfully in schools with diverse characteristics...to provide parents and students with an educational alternative to create new, innovative and more flexible ways of educating children within the public school system..."

- §22-8B-4 Rights and Responsibilities A. Prohibits discrimination;...
D. A charter school may contract... the provisions of any service or activity ...in order to carry out the education program described in its charter contract...
J. nonsectarian, nonreligious and non-home based public school.

The Charter Schools Act expressly states that charter schools are designed to be innovative, flexible, have standards that meet the public school standards, must meet all applicable laws and regulations, and meet the basic tenets of a public school as described under the PSC. A charter school may contract to meet the educational program—this would include utilizing distance learning.

- §22-15A-4 Technology For Education Act (promulgated in 1999): Bureau Duties In accordance with the policies and regulations of the state..., A. administer the provisions of the Technology for Education Act; B. Develop a statewide plan for the integration of educational technology into the public schools and coordinate technology-related education activities with other state agencies, the federal government, business consortia and public or private agencies or individuals; C. assist school districts to develop and implement a strategic, long-term plan for utilizing education technology in the school system;

- §22-15B-1 The legislature finds that: A. (1) local school districts need increased access to information technologies, extensive professional development and sustained network support to use technology effectively;
B. The purpose of this act is to establish a statewide educational technology opportunity program for New Mexico's teachers and students by creating a partnership between private industry, state government and local school districts that will build, distribute and install low-cost, network-ready computers in New Mexico classrooms over the next three years.

These Sections of the Technology For Education Act speaks to the responsibility of the Bureau to utilize technology and integrate it statewide. It also illustrates legislative intent to increase the use of technology and availability of methods in order to enhance educational opportunities.

- §22-30-2 Cyber Academy Act A. "course provider" means a person that supplies educational course content for distance learning courses;
B. "distance learning course" means an educational course that is taught where the student and primary instructor are separated by time or space and linked by technology;
C. "distance learning student" means a qualified student as defined in Section 22-8-2 NMSA 1978 who is enrolled in one or more distance learning courses for credit;

D. "learning management system" means a software application that facilitates online instruction; and

§22-30-3 Statewide Cyber Academy Created The "statewide cyber academy" program is created in the department. The statewide cyber academy is a collaborative program among the department, the higher education department, telecommunications networks and representatives of other state agencies engaged in providing distance education. **The statewide cyber academy shall provide distance learning courses for grades six through twelve and professional development for teachers, instructional support providers and school administrators.**

Arnold states that language in the Cyber Academy Acts **indicates** the legislative intent was to only offer courses to supplement offerings at schools. He continues that based on the school districts, state equalization guarantee calculations given to the school permits the student to take a distance learning course not the creation of distance learning schools.

There is no evidence in the language to support the Arnold interpretation. As identified above, the statutory language **states**, does not **indicate**, that the "statewide cyber academy shall provide distance learning courses for grades six through twelve." The language provides for distance learning opportunities. The language does not prohibit a full-time schedule of coursework or full-time virtual schools.

Requirements continued:

- 5) The virtual school is located in New Mexico; and**
- 6) Students have one primary enrolling district.**

§22-8B-2 F. "governing body" means the governing structure of a charter school as set forth in the school's charter;

§22-8B-5 A. The local school board may waive only locally imposed school district requirements for locally chartered charter schools.
B. A state-chartered charter school is exempt from school district requirements. A state-chartered charter school is responsible for developing its own written policies and procedures in accordance with this section.
C. The department shall waive requirements or rules and provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] pertaining to [virtual] individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education. The department may waive requirements or rules and provisions of the Public School Code pertaining to graduation requirements. Any waivers granted pursuant to this section shall be for the term of the charter granted but may be suspended or revoked earlier by the department.

D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions.

§22-8E-5 Charter school district responsibilities; exemptions from Public School Code. (2005) A. The charter school district shall promulgate policies to ensure that the individual needs of students and schools in the district are met.
B. The charter school district is exempt from provisions of the Public School Code [Chapter 22 NMSA 1978] and rules adopted pursuant to that act pertaining to the length of the school day, staffing patterns, subject areas and instructional materials.
C. The department may waive other requirements the secretary deems appropriate. History: Laws 2005, ch. 292, § 5.

§22-30-6 A distance learning student shall only be counted in the student's primary enrolling district for the purpose of determining the membership used to calculate a school district's state equalization guarantee. A student shall have only one primary enrolling district for purposes of membership.

NMAC 6.80.4.18 Charter Schools-Distance Learning A. A charter school offering or seeking to offer distance learning courses to students shall comply with 6.30.8 NMAC.
B. Any charter school offering or seeking to offer distance learning courses in New Mexico pursuant to the Charter Schools Act [NMSA 1978 Chapter 22, Article 8B] must be physically located in the state of New Mexico.

NMAC 6.30.8.9 Participation and Monitoring C. If a student participates in a distance learning course offered by a district or charter school other than the students enrolling district, the student shall be counted only once as a qualified student for state equalization guarantee [SEG].

The requirements are clearly laid out: a primary enrolling district and/or the charter school must be located in New Mexico. The provisions in the NMAC were drafted to prevent abuses related to the SEG and false claims for SEG and monies. There is nothing in the language that mandates students to physically attend school at a school building.

Question 2: Whether Students From One District Are Allowed To Take Distance Learning Courses Offered Through Another District.

Short Answer 2

Yes, if;

- 1) A student is enrolled in a public school or state supported school; **and**
- 2) The student has permission of the student's local distance education learning site.

Analysis Question 2

§22-8-2 Public School Finances. Definitions A. "ADM" or "MEM" means membership; B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days;...

M. "qualified student" means a public school student who:

- (1) has not graduated from high school;
- (2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
- (3) in terms of age:
 - (a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year;
 - (b) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department; or
 - (c) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education services pursuant to rules of the department;

§22-8-14 Public school fund. A. The "public school fund" is created.
B. The public school fund shall be distributed to school districts and state-chartered charter schools in the following parts:

- (1) state equalization guarantee distribution;
- (2) transportation distribution; and
- (3) supplemental distributions:
 - (a) out-of-state tuition to school districts;
 - (b) emergency; and
 - (c) program enrichment.

§22-8-25. State equalization guarantee distribution; definitions; determination of amount. (2010) A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost. 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.

§22-8E-5. Charter school district responsibilities; exemptions from Public School Code. (2005)
A. The charter school district shall promulgate policies to ensure that the individual needs of students and schools in the district are met.

B. The charter school district is exempt from provisions of the Public School Code [Chapter 22 NMSA 1978] and rules adopted pursuant to that act pertaining to the length of the school day, staffing patterns, subject areas and instructional materials.

C. The department may waive other requirements the secretary deems appropriate. History: Laws 2005, ch. 292, § 5.

§22-12-5 Compulsory School Attendance A. Local school boards may admit school age persons who do not live within the school district to the public schools within the school district when there are sufficient school accommodations to provide for them. [Note: Charter schools and their governing entity determine for charter schools].

B. Local school boards may permit school-age persons to transfer to a school outside the child's attendance zone but within the school district when there are sufficient school accommodations to provide for them.

§22-30-2. Definitions. (2007) As used in the Statewide Cyber Academy Act:

A. "course provider" means a person that supplies educational course content for distance learning courses;

B. "distance learning course" means an educational course that is taught where the student and primary instructor are separated by time or space and linked by technology;

C. "distance learning student" means a qualified student as defined in Section 22-8-2 NMSA 1978 who is enrolled in one or more distance learning courses for credit;

D. "local distance learning site" means a school district or charter school that offers and grants credit for distance learning courses to distance learning students enrolled in the school district or charter school;

E. "primary enrolling district" means the school district or charter school in which the distance learning student is enrolled;

22-30-5. Statewide cyber academy; duties. (2007) The statewide cyber academy shall:

A. establish a distance learning course delivery system that is efficient and cost-effective and that uses a statewide service center and regional hosts to provide approved distance learning courses;

B. select regional hosts based on pre-existing experience and capacity to facilitate the delivery of distance educational programs, including public post-secondary educational institutions, regional education cooperatives and school districts;

C. provide technical and program support to regional hosts and local distance learning sites;

D. ensure that all distance learning courses offered by course providers are taught by highly qualified teachers⁷ or members of the faculty of accredited post-secondary educational institutions and meet state academic content and

⁷ See also §22-2C-3 requirements to be sufficiently academically challenging to meet or exceed federal requirements.

performance standards;

E. provide for reasonable and equitable means to allocate the costs of distance learning courses among the statewide cyber academy, the course providers and the school districts whose students are enrolled in a distance learning course;

F. give first priority to the delivery of distance learning courses for credit to distance learning students who have the greatest need because of geographic location or circumstances in which a school district may have difficulty delivering essential course instruction due to financial restraints or lack of highly qualified teachers; provided that in fiscal year 2008 the statewide cyber academy shall include, among those distance learning students who are determined to have the greatest need, distance learning students served by school districts that are members of regional education cooperatives three, eight and nine;

§22-30-6 Distance learning students. A. A student must be enrolled in a public school or a state-supported school and must have the permission of the student's local distance education learning site to enroll in a distance learning course.⁸ A distance learning student shall only be counted in the student's primary enrolling district for the purpose of determining the membership used to calculate a school district's state equalization guarantee. A student shall have only one primary enrolling district for membership.

This statutory language absolutely allows for students to enroll in distance learning courses across district lines. This clearly states in the statutory language that a student **shall** have only one primary enrolling district. It also allows for students to enroll in distance education learning courses with permission from the student's local distance education learning site. The primary enrolling district may or may not serve as the local distance education learning site (see discussion of charter schools below). Additionally, students enrolled in charter schools are allowed to take distance courses with the approval of their charter school acting as its local distance education learning site. This statutory language also states that there will provision "for reasonable and equitable means to allocate the costs of distance learning courses among the statewide cyber academy, the course providers and the school districts whose students are enrolled in a distance learning course...".

Question 3: Whether Students Are Allowed To Utilize Distance Learning As Full-Time Schooling.

Short Answer 3

Yes, in the following circumstances:

- 1) **If a student has one primary enrollment district; and**
- 2) **If there is a series or schedule of "synchronous" learning programs in combination with the "asynchronous" learning; or**
- 3) **If there exists unusual circumstances;**
- 4) **If the school has received a "D" or "F" for two (2) consecutive years; or**
- 5) **If approved by the local board of education.**

⁸ Charter school or governing body where applicable.

Analysis Question 3

- §22-30-2 Cyber Academy Act. Definitions A. "course provider" means a person that supplies educational course content for distance learning courses;
B. "distance learning course" means an educational course that is taught where the student and primary instructor are separated by time or space and linked by technology;
C. "distance learning student" means a qualified student as defined in Section 22-8-2 NMSA 1978 who is enrolled in one or more distance learning courses for credit;
D. "local distance learning site" means a school district or charter school that offers and grants credit for distance learning courses to distance learning students enrolled in the school district or charter school;
E. "primary enrolling district" means the school district or charter school in which the distance learning student is enrolled;
F. "regional host" means an educational institution, school district or other entity selected by the statewide cyber academy to coordinate the delivery of distance learning courses within a broad geographic region of the state;
- §22-30-3 Statewide Cyber Academy Created The "statewide cyber academy" program is created in the department. The statewide cyber academy is a collaborative program among the department, the higher education department, telecommunications networks and representatives of other state agencies engaged in providing distance education. The statewide cyber academy shall provide distance learning courses for grades six through twelve and professional development for teachers, instructional support providers and school administrators.

Arnold stated that language in the Cyber Academy Acts indicates that the legislative intent was to only offer courses to supplement offerings at schools. He stated that funding for virtual schools would have required adjustments to the state equalization guarantee and was not contemplated by the legislature when the Cyber Academy Act was passed. Arnold states that the legislature could have permitted virtual schools when it enacted the Act.

Legislature could have expressly prohibited virtual schools, it did not. The language states that courses and course work will be made available through a cyber school. That is the plain meaning and reading of the statute. If the primary enrolling district is a charter school, and that school is a full-time virtual school, then as long as the student only has one primary enrolling district-that student is in compliance.

- §22-5-4. Local school boards; powers; duties. (2005) A local school board shall have the following powers or duties: A. subject to the rules of the department, develop educational policies for the school district; N. give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency.

NMAC 6.30.8 General Parameters A. 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 substitute for all direct, face-to-face student and teacher interactions **unless approved by the local board of education**.
B. Local distance learning sites shall provide onsite access to the necessary technology for participation in distance learning courses involving internet-based instructions.

The Attorney General's opinion cites this language from the rule that "distance learning...shall not be used as a substitute for all direct face-to-face student and teacher interactions."

Arnold states that "The charter school applicants have interpreted this rule as permitting the full-time educational programming for students in virtual schools as a substitute for all direct, face-to-face student and teacher interactions, if approved by the local board of education or in this case, the secretary of education...Any reading of the distance learning rule to permit full-time virtual schools would conflict with the statutory requirements that public schools in New Mexico are brick and mortar, discernible as buildings, designed to educate students in a particular place." (see Arnold page 4, paragraph 2).

Contrary to the Arnold opinion, the rule clearly states "unless approved by the local board of education. The statute states that the local board of education is "subject to the rules of the department." The legislative intent, as evidenced by the evolution of legislation promulgated, is that distance learning courses were intended to help schools expand offerings and access to learning resources. In my opinion this would include creation of virtual schools that would further expand these offerings. Additionally, there is an option of offering some synchronous courses along with the asynchronous coursework. Finally, the statute makes clear that if there exists unusual circumstances then full-time distance education is also allowed. No interpretation is needed, it is plainly stated within the language of the statute.

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