

## POTENTIAL AMBIGUITIES AND CONFLICTS WITHIN THE PUBLIC SCHOOL CODE: POLICY CONSIDERATIONS FOR DEFINITIONS

### Provisions of the *Public School Code* that address the operation of the Public Education Department (PED) and the Public Education Commission (PEC)

#### 22-2-21. Bullying and cyberbullying prevention programs. (2013)

“Local school boards” are required to promulgate bullying prevention policies, presumably to inform prevention programs. From the definitions in the General Provisions, it is at least uncertain if this term would include charter schools, either state- or locally chartered<sup>1</sup>. Public schools, which do include charter schools, are to implement programs. While traditional public schools, and presumably locally chartered charter schools, would be expected to implement their programs according to local school board policy, it is unclear from the language of the statute what policies would inform state-chartered charter school bullying prevention programs, as these schools lack a district to look to for such guidance. Paragraph (A) notes that PED shall set guidelines; it is possible, though not explicit, that state-chartered charter schools would base the implementation of their programs directly upon these PED guidelines. The issue is uncertain and the statute would benefit from greater clarity.

In this instance, the committee may wish to consider specific and separate reference to requirements for each sort of school.

#### **The A-B-C-D-F Schools Rating Act**

#### 22-2E-4. Annual ratings; letter grades; ratings based on standards-based assessments; right to school choice; distance learning; responsibility for cost; use of funds; additional remedy. (2013)

Paragraph (E) requires PED to ensure that a local school board, OR a governing body of a charter school, is appropriately prioritizing resources of schools rated ‘D’ or ‘F’.

It may be better, for clarity’s sake, to refer to “a local school board or a governing body of a state-chartered charter school” OR to “local school boards and governing bodies of state-chartered charter schools.”

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<sup>1</sup> “Local school board” means the policy-setting body of a school district, and “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.

## ***The Public Schools Finance Act***

### 22-8.6.1. Charter school budgets. (2010)

Language in this statute is indicative of generally unclear use of the terms “chartering authority” and either “local school board” or “charter schools division,” (“CSD”) and “Public Education Commission” (“PEC”), depending upon whether the school in question is locally or state-chartered. There are times when “chartering authority” may be interchangeable with either “local school board” or “CSD,” (or “PEC”) and times when it would be either inappropriate or confusing to do so.

The committee may wish to consider deciding upon one usage convention for these cases and applying it consistently throughout the statutes, at least where possible. In this case, it is probably appropriate to use the individual terms, rather than the catch-all “chartering authority,” especially as the chartering authority for state-charters, the PEC, relies upon the CSD for staffing needs, in any event, and the statutory language includes no stated preference for the more general term. This issue does bring into relief the accompanying issue of legal authority over state charters, which rests with the PEC, as opposed to practical or fiscal authority over state charters, which in many cases necessarily includes the CSD.

### 22-8-11. Budgets; approval of operating budget. (2011)

Statutory language in this section shifts between references to:

- “Local school boards” and “school districts”; and
- “governing bodies of state-chartered charter schools” and “governing bodies of charter schools.”

In subparagraph (A)(3), the reference to “a local school board” and the “governing body of a charter school” may be an oversight. For clarity, the committee may wish to amend the statute so that this subparagraph refers to the “governing body of a state-chartered charter school.”

### 22-8-18. Program cost calculation; local responsibility. (2014)

Reference in this statute to the “governing body of charter schools” without further specificity suggests that governing bodies of locally chartered charter schools do bear fiscal responsibilities to their schools outside of the designation of local school boards and state-chartered governing bodies as boards of finance. (Cf 22-8-15, [Allocation limitation], where districts allocate distributions from the public school fund to their locally chartered schools.) Alternatively,

perhaps the language merely suffers from a lack of specificity regarding charter schools, so that it would be better if this section referred to “local school boards” and “governing body of *state-chartered* charter schools,” retaining the locally chartered school board of finance designation and responsibilities for local school boards.

Should the committee consider requiring locally chartered governing boards to qualify as boards of finance in a manner similar to their state-chartered peers, thus creating a more a parallel, and thus possibly more equitable, system between the two sorts of charter schools? Or is further specificity regarding state-chartered schools sufficient to resolve any confusion?

22-8-25. State equalization guarantee distribution; definitions; determination of amount. (2010)

Language in this statute reflects the general lack of clarity with regard to the 2.0 percent set-aside allocated to a charter school’s authorizer for administrative services. While the statute in this case does specifically refer to state-chartered charter schools, the entity described by the statutory language as withholding the 2.0 percent is the “department,” where it may be more appropriate to refer to the CSD, in this case. Regardless, this statute is another example of the tendency to use “authorizer,” “department” and “CSD” interchangeably when the 2.0 percent set-aside is discussed in reference to state-chartered charter schools, where the actual “authorizer” is the PEC, but the withholding is allocated to CSD, in its capacity as administrative staff for the PEC, via the PEC’s “attachment” to PED.

22-8-38. Boards of finance; designation.

A local school board *may* qualify as a board of finance for a school district, if it meets certain criteria. There is no separate requirement noted in the statute for a local school board to qualify as a board of finance for a locally chartered charter school. On the other hand, a state-chartered charter school’s governing body *shall* qualify as a board of finance for the charter school; failure to so qualify would result in a delay of the charter school’s first year of operation, and such failure constitutes grounds to deny, or revoke a school’s charter. There does not appear to be similar consequences to a locally chartered charter school for failure of a local school board to qualify as a board of finance. Nevertheless, the use of the permissive “may” indicates a scenario where a local school board either fails to qualify, or the department declines to approve, a local school board as a board of finance.

What happens in the event that a local school board is not so designated, for whatever reason? Should the governing bodies of locally chartered schools be designated boards of finance for their schools, similarly to those of state-chartered schools? Or is the apparent lack of parallel structure between the two types of charter schools just one of those factors to be considered when the founders of a potential new charter school are deciding whether to seek state or local

charter status? The committee may wish to consider specifying that local school boards qualify as boards of finance for locally chartered charter schools in addition to school districts.

22-8-39. Boards of finance; suspension.

Similarly to 22-8-38, the provisions for boards of finance for state charters differ from those for local charters. Paragraph (G) requires the department to consider commencing proceedings to deny or revoke a charter to a state-chartered school if its governing council fails to qualify as a board of finance.

Is it appropriate or realistic to apply parallel provisions to local school boards? Or, as queried above, would it be advantageous to require locally chartered governing councils to qualify as boards of finance?

**The Charter Schools Act**

22-8B-4. Charter schools' rights and responsibilities; operation. (2011)

As noted in previous committee discussion, Paragraph (I) suggests that there are different eligibility criteria and calculation considerations for charter school transportation funding, depending upon whether a school is state- or locally chartered:

- Locally chartered schools are required to negotiate with a school district for transportation, with limits that may not be established to extend beyond the borders of the school district.
- Provisions regarding state-chartered schools are less clear:
  - state-chartered charter schools are subject to the same requirements as school districts for remaining transportation funding balances (See 22-8-26(B));
  - state charters may provide additional services for established program needs, subject to approval of the state transportation director (22-8-26(E));
  - however, it is unclear whether all state-chartered charters actually receive a transportation funding distribution or are merely eligible for it. While allocations for state charters are required to be *calculated* under 22-8-29.1, 22-8-29 only requires that the allocations be based on the funding formula and the state-chartered charter school's tentative transportation budgets. (See 22-8-29 and 22-8-29.1.)

22-8B-6. Charter school requirements; application process; authorization; state board of finance designation required; public hearings; subcommittees. (2011)

According to Paragraph (A), “[a] local school board has the authority to approve the establishment of a charter school within the school district in which it is located.” The most notable issue here is the lack of differentiation between state- and locally chartered charter schools. The language of this section would indicate that local school boards may approve state-chartered charter schools.

For purposes of clean-up and clarity, the use of the personal pronoun, “it,” should be avoided, here, in favor of a more definite construction, such as “[a] local school board has the authority to approve the establishment of a [locally chartered] charter school within that school board’s district.”

#### 22-8B-9. Charter school contract; contents; rules. (2011)

Like 22-8-25, above, and 22-8B-13, below, language in this section continues the ambiguity regarding the 2.0 percent set-aside for administrative costs. Specifically, Subparagraph (B)(8) requires the charter school contract to include in its terms “a detailed description of how the chartering authority will use the withheld 2.0 percent of the school-generated program cost.” As noted previously, the “chartering authority” for state charters is the PEC, while the CSD, as staff for the PEC but also operating as an agent of the PED, actually administers the moneys generated from the 2.0 percent.

#### 22-8B-13. Charter school financing.

Paragraph (A) notes that “the school district or division” may withhold and use the 2.0 percent of the school-generated program costs for its administrative support of a charter school. Again, while the local school district will be the authorizer for a locally chartered charter school, the division, or CSD, is not in a similar position, but rather acts as staff for both the authorizer for state-chartered charters (the PEC) and PED. Language in the several statutes dealing with the administration of the 2.0 percent set-aside is inconsistent.

### ***The Fine Arts Education Act***

#### 22-15D-5. Program plan and evaluation.

According to the *Fine Arts Education Act*, the department is to assist school districts and charter schools in developing fine arts programs. Section 22-15D-5 permits “school districts” and “state-chartered charter schools” to develop fine arts programs, but makes no specific, separate mention of locally chartered charter schools. While it is appropriate under current law for local school districts, in their capacity as boards of finance for local charter schools, to deal with the fiscal aspects of a fine arts program, may it not be more appropriate for the governing councils of

charter schools, who administer a mission specific to that school, to be responsible for setting special programmatic and curricular requirements for their schools<sup>2</sup>? The committee may wish to consider clarifying the matter of which body is better situated to be responsible for the administration of fine arts programs at locally chartered charter schools.

### ***The Bilingual Multicultural Education Act***

22-23-2. Definitions (*Bilingual and Multicultural Education Act*); 22-23-5; Bilingual multicultural education program plan; evaluation. (2004)

“School board” means both local school boards and governing bodies of state-chartered charter schools. Moreover, “district” means a public school or schools in a district, or “a charter school”; this definition, however, fails to differentiate between locally chartered or state-chartered schools. Thus, under 22-23-5, similarly to provisions in the *Fine Arts Education Act*, local school boards and state charters may submit bilingual, multicultural education programs to PED, but no separate provision is made for the governing councils of locally chartered charter schools. Further, 22-23-5 goes on to note that bilingual programs shall be “located in the district,” and that the district shall be responsible for maintaining achievement and proficiency data. Insofar as locally chartered governing councils are responsible for administering their own mission<sup>3</sup>, might special programmatic and curricular decisions regarding their schools be better left in their hands? The committee, as above, may wish to clarify which body is the more appropriate choice to submit these programs to the department.

### ***The Public School Lease Purchase Act***

22-26A-3. Definitions. 22-26A-6. Authorizing lease purchase arrangements; resolution; 22-26A-8. Authorization for local school board to submit question of lease purchase tax. 22-26A-10(A); Conduct of election; notice; ballot. 22-26A-13(A); Publication of notice; validation. (2009).

Under 22-26A-3:

- “school district” includes both a locally chartered or state-chartered charter school; and
- “local school board” includes the governing body of a chartered school, either locally or state-chartered.

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<sup>2</sup> According to 22-8B-8(C), the application for a charter school must include a description of the educational program, student performance standards and curriculum that must meet or exceed the department's educational standards.

<sup>3</sup> Id.

However, these terms are not really interchangeable, and when these definitions are applied to other sections within this act, to include the possibility of all these terms, they may result in inadvertent self-reference or outright confusion.

- Subsection (D)(1) of 22-26A-6, may be read as providing for a charter school that is located within another charter school, or itself, to notify its own governing body that the charter school has been approved for a lease purchase agreement.
- In Section 22-26A-8, “school district” is being used to identify defined boundaries for the purpose of identifying “qualified electors.” However, charter schools, as such, do not have “qualified electors” in the sense that that term is being used in here, the more common understanding of “school district” as meaning a defined geographic area.
- Similarly, in Paragraph (A) of 22-26A-10, “school district” is being used to define an area subject to a particular election, where state- and locally chartered charter schools do not hold elections.
- Under Paragraph (A) of 22-26A-13, “school district” is again used to define a particular geographic area, in this case in order to identify the appropriate newspaper in which to publish notice. Charter schools, however, do not have discreet areas of general circulation in this sense of the term.

In this instance, it may be better to limit the scope of the respective definitions so that the definitions retain the meanings assigned to them in the General Provisions of the *Public School Code*, where necessary, and the statutory language particular to the *Public School Lease Purchase Act* be amended to more specifically refer to the pertinent sort of school or governing body.

## **Conclusion**

After reviewing the various acts and many statutes within the *Public School Code*, it would seem that, in many of the instances where problems with the listed terms arise, the issues arise not so much out of problems with the definitional language as they do out of improper use of the terms themselves, or, in some cases, faulty redefinition of terms that are to be limited to the particular act or section in which they are contained. It appears that piecemeal amendment, laudable but erroneous attempts at concision, and inconsistent application of the terms within programmatic statutes lead most frequently to the problems identified in the list, above.

While the definitions in the *Public School Code* may be tightened and updated, in most of the instances listed above, the issues probably could be addressed with:

- more precise use of defined terms and other language within each statute;
- consistent use of similar terms in similar and related statutes; or
- amendment of definitions specific to particular acts or sections of law.

The definitions listed below are among those terms that staff considered when reviewing the *Public School Code*. Suggested amendments, if applicable, are rendered in strikeout/underline format:

- “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. (§22-1-2 NMSA (PSC));
- “Charter school” means a ~~conversion school or start-up~~ school authorized by ~~the~~ a chartering authority to operate as a public school, according to the provisions of the Charter Schools Act. (§22-8B-2 NMSA (CSA));
- “Local school board” means the policy-setting body of a school district. (NMSA§ 22-1-2 (PSC));
- “Governing body” means the governing structure of a charter school as set forth in the school’s charter. (§22-8B-2 NMSA (CSA)); and
- “chartering authority” means either a local school board, for locally chartered schools, or the commission, for state-chartered charter schools. (§22-8B-2 NMSA (CSA))