



State of New Mexico
OFFICE OF THE STATE AUDITOR

Hector H. Balderas
State Auditor

Carla C. Martinez
Deputy State Auditor

August 5, 2014

Via Email and U.S. Mail

Joe Provonzie, President
Governing Council
Southwest Secondary Learning Center
10301 Candelaria Rd NE
Albuquerque, NM 87112

Larry Kennedy, President
Governing Council
Southwest Aeronautics, Mathematics and
Science Academy
4100 Aerospace Parkway NW
Albuquerque, NM 87120

Re: Risk Review of Southwest Secondary Learning Center (SSLC) and Southwest Aeronautics, Mathematics and Science Academy (SAMS) for Fiscal Years 2012 and 2013

Dear Mr. Provonzie and Mr. Kennedy:

As State Auditor, it is my duty under the Audit Act (Section 12-6-1 NMSA 1978 et. seq.) to provide New Mexico's citizens with a professional and unbiased opinion regarding the financial affairs and integrities of government agencies. Accordingly, the purpose of this letter is to notify you of the results of a comprehensive risk review conducted by the Office of the State Auditor (OSA) related to the financial affairs of Southwest Secondary Learning Center (SSLC), and Southwest Aeronautics, Mathematics and Science Academy (SAMS), which are state-chartered charter schools under the oversight of the New Mexico Public Education Commission (PEC) and the Public Education Department (PED). As detailed in this letter, the OSA's review identified numerous risks involving the SSLC's and SAMS's financial affairs. I am greatly concerned by these risks and the current investigation by the Federal Bureau of Investigation (FBI), and your Governing Councils should move swiftly to strengthen controls over the schools' operations, increase accountability and reduce risks of financial fraud, waste and abuse.

Specifically, SSLC and SAMS should take immediate corrective action to reduce identified risks and resolve any related audit findings. The risks outlined in this review are compounded by the FBI's investigation and by certain results of SSLC's fiscal year 2013 financial audit which are included in PED's fiscal year 2013 financial audit report. The PED audit report has been officially released by my office and is public record. Related to the schools' upcoming fiscal year 2014 financial audit, my office will refer this risk review to the charter schools' independent public accountant (IPA) and request that they consider the results in their planning and performance of test work. My office stands ready to assist you in facilitating communications with your IPA and your Councils' finance subcommittees and audit committees. Pursuant to Section 22-8-12.3(C) NMSA 1978, your Governing Councils must maintain finance subcommittees that make "recommendations to the [Governing Councils]" on procurement and serve as "external monitoring committee[s]" on "other financial matters." In addition, Section 22-8-12.3(D) NMSA 1978 requires that your Governing Councils appoint audit committees that, among other

duties, shall “attend the entrance and exit conferences for annual and special audits;” “meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit;” “be accessible to the external financial auditors as requested to facilitate communication with the board and the superintendent;” and “track and report progress on the status of the most recent audit findings and advise the local school board on policy changes needed to address audit findings.” In light of this risk review and the FBI investigation, it is critical that these finance subcommittees and audit committees strictly carry out their statutory duties.

I also strongly recommend that state oversight agencies take steps to ensure that the governing authorities and management of the charter schools remain accountable and implement and adhere to robust policies and procedures that protect New Mexico’s significant financial investment in education. The PED and the PEC should take appropriate oversight actions within their statutory and regulatory authorities to ensure the risks outlined in this letter are addressed in the best interest of taxpayers. For example, PED possesses authority over boards of finance of state-chartered charter schools pursuant to Sections 22-8-38 and 22-8-39 NMSA 1978. Moreover, Section 22-8B-12(D) NMSA 1978 requires PEC, as the chartering authority, to “monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees.” The PEC also “may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, including conducting appropriate inquiries and investigations.” I would also recommend that the New Mexico Legislature, which produced a program evaluation report in 2013 related to charter school leases, consider the results of this review and study ways to strengthen accountability over education funds. It is critical that the financial affairs and transactions of our schools be wholly transparent to the public and oversight agencies. New Mexicans should be confident that its school districts and charter schools, and their governing bodies and management, strictly adhere to state laws that protect the integrity of the procurement process, require proper and timely disclosures of conflicts of interest, and prohibit unlawful profiteering by public officials and employees.

Finally, I should disclose to you that during the course of our review OSA auditors and investigators identified and assessed certain risks that we determined were appropriate to refer to the FBI. As we notified you in our letter dated July 15, 2014, we intended to request certain additional information from Dr. Scott Glasrud and SSLC and SAMS staff in order to finalize our review. We subsequently submitted requests to Dr. Glasrud for additional information and scheduled a round of interviews with several school employees and officials; however, the intervening investigative actions of the FBI superseded the completion of our fact-finding on certain matters which are not discussed in this letter.

I. Risk Review Summary

Our comprehensive risk review consisted of fact-finding procedures conducted pursuant to the Audit Act, Sections 12-6-1 through 12-6-14 NMSA 1978, and the Audit Rule, specifically Section 2.2.2.15(C)(1) NMAC. Among our fact-finding procedures, OSA auditors and investigators evaluated certain concerns involving SSLC’s financial operations and potential conflicts of interest; examined current and prior year financial audit findings for SSLC; reviewed working papers of the IPA who conducted the charter schools’ annual financial audits; and analyzed the results of the IPA’s test work related to referrals made by the OSA. The OSA also reviewed certain laws and regulations as they relate to SSLC’s and SAMS’s compliance: 1) New Mexico Procurement Code, Sections 13-1-21 to 13-1-199 NMSA 1978; 2) provisions of the Public School Code prohibiting certain sales by charter school personnel, specifically Section 22-21-1 NMSA 1978; 3) the New Mexico Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978; and 4) provisions in the Charter Schools Act relating to conflicts of interest, specifically Section 22-8B-5.2(B) NMSA 1978.

Finally, as part of our fact-finding procedures, OSA staff performed a site visit of SSLC, SAMS, Southwest Primary Learning Center (SPLC) and Southwest Intermediate Learning Center (SILC) on February 18 and 19, 2014. During our site visit, the OSA met with staff from the SPLC, SILC, SSLC and SAMS, as well as Board Members for SSLC and SAMS. The OSA made several requests to management of the charter schools for various documents and information, including documents related to personnel, payroll, real property leases, and procurement and contracts for SSLC's and SAMS's aircraft and school aviation program. Throughout this fact-finding process, OSA's auditors and investigators submitted numerous inquiries and requests to management of the charter schools. Management was afforded multiple opportunities to respond to these inquiries and requests for additional information.

In general, our review focused on the schools' leases of aircraft and property from Southwest Educational Consultants, Inc. (SEC) (which also does business under the name "Diamond Aviation"), a business co-owned by an Instructor for SSLC and the Head Administrator for all four charter schools. The Instructor, Dr. Dalene "Dolly" Juarez, and the Head Administrator, Dr. Scott Glasrud, are also the co-founders of SSLC, SAMS, SPLC and SILC. As Head Administrator for SSLC and SAMS, Dr. Glasrud is responsible for the procurement functions at both SSLC and SAMS. The significant amount of public funds paid by SSLC and SAMS to SEC/Diamond Aviation over numerous fiscal years, in addition to the conflict of interest concerns inherent to this business relationship, also prompted the need for this risk review.

Overall, our review identified numerous risks, internal control deficiencies and potential violations of law related to SSLC's and SAMS's procurement of aircraft and services for the schools' aviation program. Fundamental to these problems is the direct conflict of interest between Dr. Glasrud's personal financial interest in Diamond Aviation and his broad and influential authority as Head Administrator for SSLC and SAMS. As co-owner of Diamond Aviation, Dr. Glasrud continues to be paid significant sums of public funds under contracts Diamond Aviation has with the charter schools. Yet as Head Administrator of those schools, Dr. Glasrud maintains actual control over the schools' employees and operations, including procurement processes. We found serious deficiencies in these procurement processes related to the schools' repeated hiring of Dr. Glasrud's Diamond Aviation over multiple fiscal years. In many cases, the schools failed to follow a transparent competitive bidding process when hiring Diamond Aviation and it remains unclear what role Dr. Glasrud may have directly or indirectly played in various aspects of SSLC's and SAMS's procurement of his company. In one instance, Dr. Glasrud, on behalf of his company, responded to bid invitations for plane rental services that the school mysteriously never published yet awarded to Diamond Aviation. In another case which raises serious concerns about potential manipulation of the procurement process, the schools' request for proposals for aviation goods and services was tailored so restrictively that it appears to have given Diamond Aviation an unfair advantage over other potential bidders. Moreover, we found certain instances in which Dr. Glasrud directly negotiated contract terms favorable to Diamond Aviation and signed contracts on behalf of both Diamond Aviation and SSLC. Finally, we reviewed certain instances in which there was no evidence of proper disclosures of Dr. Glasrud's conflict of interest and the Governing Councils of SSLC and SAMS "waived" Dr. Glasrud's participation in the procurement process only after the school awarded the contracts to Diamond Aviation. In addition to other potential violations of state law, these instances appear to have subverted the stated purpose of the Procurement Code which is "to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity" (Section 13-1-129 NMSA 1978).

More specifically, based on the contracts we reviewed SSLC paid Diamond Aviation a total of \$588,000 in fiscal years 2010, 2011 and 2012 for the lease of aircraft. However, the charter school did not provide the OSA any procurement documentation that evidenced SSLC followed any competitive bidding process or documented how it selected Diamond Aviation for the contracts. We also noted that Dr. Glasrud signed SSLC's fiscal year 2010 and 2011 contracts on behalf of Diamond Aviation, not SSLC. Conversely, for fiscal year 2012 Dr. Glasrud signed SSLC's contract with Diamond Aviation in his capacity as the Head Administrator for SSLC. Also in fiscal year 2012, we found that Dr. Glasrud, on behalf of Diamond Aviation, submitted a written response to an invitation for bid for airplane rental services that SSLC never published. After our review of the documentation provided by SSLC and SAMS, it is unclear what role Dr. Glasrud may have directly or indirectly played in various aspects of SSLC's and SAMS's procurement of his company, Diamond Aviation/SEC, in fiscal year 2012 and prior fiscal years.

We also noted numerous risks associated with SSLC's and SAMS's procurement of Diamond Aviation in fiscal year 2013. For instance, SSLC and SAMS failed to provide the OSA documentation that it was in compliance with certain procurement requirements related to the bidding process. We also found that the specifications contained in the RFP issued by the schools were particularly restrictive and potentially precluded vendors other than Diamond Aviation from bidding on the contract. Most concerning, however, is that the OSA was not provided any documentation that demonstrated representatives of Diamond Aviation properly disclosed Dr. Glasrud's and Dr. Juarez's substantial financial interest associated with the fiscal 2013 procurement of their business. Moreover, the governing councils of SSLC's and SAMS's took action to "waive" Dr. Glasrud's participation in the procurement process, but only after the contract had already been bid, negotiated and awarded. In short, multiple instances we reviewed for fiscal years 2010 through 2013 appear to violate certain provisions of the Procurement Code, the Charter Schools Act and the Governmental Conduct Act.

Our review also revealed a lack of internal controls for the flight program and a general lack of transparency in certain areas regarding the charter schools. For instance, we were not provided sufficient documentation by SSLC or SAMS to indicate that the schools monitor or maintain adequate reporting on aircraft instruction provided to students. Because the OSA was unable to review detailed information on the aircraft, we could not determine or verify whether the costs charged by Diamond Aviation for the use of the planes were reasonable and necessary. We were also unable to determine whether the aircraft were used solely for the purposes stated in the aircraft leases. We recommend PED and PEC review the flight logs for students, instructors and the aircraft to ensure that costs associated with the aviation program, specifically the aircraft, are supported with adequate documentation, as it appears there is a lack of internal controls. We urge the governing authorities of SSLC and SAMS to facilitate PED's and PEC's access to these documents.

The OSA also identified certain risks related to the lease of building space to SSLC and SAMS by Dr. Glasrud's and Dr. Juarez's private business, SEC. In fiscal years 2012 and 2013, SSLC paid SEC \$243,573 to lease a portion of the building which is located on Montgomery Blvd. in Albuquerque. Based on our review, it is unclear if the lease is a necessity and whether the approval of expenditures is in the best interest of the taxpayers. Dr. Glasrud denied the OSA's request for certain information which would be critical to a determination in this regard. In view of these issues, we strongly recommend PED evaluate the legitimacy of SSLC's need for the Montgomery Complex. In addition, we recommend the master lease agreement be reviewed to determine whether the benefits of the lease to SSLC outweigh the conflict of interest presented by the Head Administrator's financial interest in the lease. Again, we urge SSLC and SAMS to cooperate with the PED and PEC in any inquiries they may make.

The final sections of this risk review describe certain risks we identified related to the charter schools' governance and employee salaries and contracts. For example, we discovered that the policies for the governing councils of SSLC and SAMS grant the Head Administrator an influential role in selecting Council members for each charter school. This augments concerns about the independent and impartial evaluation of the charter schools' transactions that enhance the financial interest of the Head Administrator. We found one instance in which the Head Administrator for SSLC, in his official capacity, made a direct recommendation to the SSLC Governing Council that it approve an action that would enhance his financial position. Moreover, we found that the SSLC Governing Council did not appear to properly notice and openly vote on the execution of numerous employment contracts for the Head Administrator, which violates New Mexico administrative rules. The OSA also noted several other concerns related to the employee contracts of top-level administrative staff for the charter schools. We found particularly high base salaries, generous accruals of annual leave days, and several issues and inconsistencies in what is documented in the employee contracts versus what was explained to the OSA during our site visit. Additionally, we were not provided adequate documentation to demonstrate how the charter schools determined the salary for each position or how the full-time equivalent (FTE) was calculated for each school. Therefore, there is a risk that all top-level administrative staff of the charter schools may be overcompensated based on inaccurate FTE.

As a final note to this summary and as noted above, our review is intended to assist the charter schools and their oversight authorities by identifying issues and providing recommendations designed to strengthen the schools' financial operations. SSLC and SAMS should take immediate corrective action to reduce identified risks and resolve any related audit findings. Related to the schools' upcoming fiscal year 2014 financial audit, my office will refer this risk review to the charter schools' IPA and request that they consider the results in their planning and performance of test work. In addition, the PED and the PEC should take appropriate oversight actions within their statutory and regulatory authorities to ensure the risks outlined in this letter are addressed in the best interest of taxpayers. It is the responsibility of the State's oversight agencies to ensure that governing bodies and management of schools remain accountable and implement and adhere to robust policies and procedures that protect New Mexico's significant financial investment in education. This risk review is also intended to assist these oversight agencies in carrying out those responsibilities.

II. Aircraft and the Charter Schools' Aviation Program

The OSA identified numerous risks, internal control deficiencies and potential violations of state law related to SSLC's and SAMS's procurement of items and services for their aircraft and school aviation program for fiscal years 2010 through 2013. Throughout this time period, the SSLC has entered into yearly agreements with Diamond Aviation to lease two aircraft owned by SEC for the school's aviation program. Although SEC is properly registered to do business in New Mexico, the OSA noted in our review that SEC also does business as (DBA) "Diamond Aviation." Diamond Aviation is not a registered name found in New Mexico's publicly available business registration records. The fiscal year 2012 and 2013 SSLC lease agreements and the fiscal year 2013 SAMS lease agreements for aircraft only indicated the name Diamond Aviation and did not reflect SEC on the lease agreements.

The co-owners of SEC are Dr. Scott Glasrud and Dr. Dalene "Dolly" Juarez. Dr. Glasrud and Dr. Juarez are also the co-founders of SSLC, SAMS, SPLC and SILC. Dr. Glasrud has an employee contract with each of the four charter schools as the Head Administrator. Dr. Juarez has an employee contract with SSLC as an Instructor for fiscal years 2012 and 2013. In fiscal year 2012, SSLC paid \$216,000 to SEC for the lease of aircraft. In fiscal year 2013, SSLC and SAMS each paid \$99,000 to SEC for the lease of aircraft, for a total of \$198,000.

The OSA requested and reviewed procurement documentation for the aircraft and school aviation program, including SSLC's and SAMS's contracts with SEC and Bode Aviation, which SSLC and SAMS utilize to provide the aircraft and certain maintenance and labor for the leased aircraft. Section 13-1-74(A) NMSA 1978 defines procurement as "purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction."

A. SSLC and SAMS Procurement of Aircraft from Southwest Educational Consultants, Inc., DBA Diamond Aviation

1. SSLC's Failure to Seek Competitive Bids for Leases with SEC/Diamond Aviation for Fiscal Years 2010 and 2011

During our fact-finding procedures, we requested SSLC provide any and all documentation related to SSLC's procurement of Diamond Aviation for fiscal years 2010 and 2011. While SSLC provided the OSA its contracts with Diamond Aviation for fiscal years 2010 and 2011, the charter school did not provide any additional procurement documentation that evidenced SSLC followed any competitive bidding process or documented how it selected Diamond Aviation for those contracts. The Procurement Code requires these types of procurements to be achieved through competitive sealed bid or competitive sealed proposal pursuant to Sections 13-1-102 through 13-1-117 NMSA 1978, which is not evidenced in the documentation provided by SSLC.

What is evidenced is that at the beginning of fiscal year 2010, SSLC renewed its fiscal year 2009 contract with Diamond Aviation for the lease of one aircraft (Diamond DA40). In March 2010, SSLC terminated its contract with Diamond Aviation and executed a new contract with Diamond Aviation for the period of April 1, 2010 through June 30, 2010 for the lease of two aircraft (Diamond DA40 and Cessna 172S). For fiscal year 2010, the total amount to be paid under those contracts by SSLC to Diamond was \$156,000. In fiscal year 2011, SSLC again executed contracts with Diamond Aviation for the lease of the same two aircraft. Under that contract, Diamond Aviation was to be paid \$216,000. Dr. Glasrud signed all contracts on behalf of Diamond Aviation, not SSLC, for these fiscal years.

2. Procurement Risks Related to SSLC's Fiscal Year 2012 Contract with Diamond Aviation, Purchase Order with Bode Aviation and Request for Bids

On July 1, 2011, SSLC executed a contract with Diamond Aviation for the lease of the same two aircraft it had previously leased from Diamond Aviation in the prior fiscal year. The contract reflects that Dr. Glasrud signed the contract on behalf of SSLC, not Diamond Aviation. Additionally, on July 1, 2011, SSLC created a purchase order for payment to Bode Aviation in the amount of \$45,000 for flight school expenses (\$20,000), aircraft services (\$15,000) and insurance expense (\$10,000). The charter school did not provide the OSA any procurement documentation that evidenced SSLC followed any competitive bidding process or documented how it selected Diamond Aviation or Bode Aviation for these goods and services.

Despite its contract with Diamond Aviation and purchase order for Bode Aviation, on September 17 and 18, 2011, SSLC advertised in the Albuquerque Journal (Journal) that it was "accepting bids for items and services related to the school's aviation program," and that the bids were due to SSLC no later than October 3, 2011. Based on the documentation provided by SSLC, it does not appear the Journal printed the entire solicitation. As a result, on September 29, 30 and October 1, 2011, SSLC re-advertised in the Journal with a revised due date for bids of October 17, 2011.

The revised solicitation printed by the Journal indicated that SSLC was “accepting bids for items and services related to the school’s aviation program.” It stated that “bids should be on official company letterhead and include the bid number for the service or items included.” The published solicitation did not contain any explicit notice that SSLC sought bids for the rental of aircraft. The request for bid or “RFB” numbers and requirements referenced in the published solicitation were as follows:

- a. RFB 12-001 100 LL Aviation fuel. “Priced per gallon. Fuel must be available at Double Eagle Airport on demand.”
- b. RFB 12-002 Maintenance services for Cessna 172 and Diamond DA 40 aircraft. “Prices should include hourly shop rates. Bidders should include applicable certifications and service center designations for aircraft types.”
- c. RFB 12-003 Flight training services. “Prices should include hourly rates for ground instruction and dual flight instruction in a Cessna 172 and/or Diamond DA40. Bids should include instructor qualifications, availability, and a company profile including applicable Part 61 or 141 certifications.”

SSLC received a written response from Dr. Glasrud on behalf of SEC dated September 29, 2011, the same day SSLC published its revised second solicitation for items and services in the Journal. SEC’s response, which SSLC date stamped received on September 30, 2011, indicated that it pertained to SSLC’s “RFB 12-004 Airplane Rental” solicitation. However, “RFB 12-004 Airplane Rental” was not included in either of the two SSLC solicitations published in the Journal. Furthermore, SSLC did not provide, nor could the OSA identify, any supporting documentation that evidenced SSLC published a notice for “RFB 12-004 Airplane Rental” in the Journal or another newspaper of general circulation.

Based on our review, it appears SSLC never published any notice of an invitation for bid for airplane rental services in accordance with Section 13-1-104 NMSA 1978, which requires “[a]n invitation for bids or notice thereof . . . be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located.” In addition, no documentation of a competitive sealed bid was provided by SSLC for “RFB 12-004;” nevertheless, Dr. Glasrud responded to RFB 12-004 for airplane rental services. Although Section 13-1-104 (C) NMSA 1978 does allow that *copies* of a notice or invitation for bids may be distributed to prospective bidders through electronic media, SSLC did not provide any documentation that would support it directly sent SEC or Dr. Glasrud a notice of invitation for bids as a “prospective bidder.” Even if SSLC had sent an invitation directly to Dr. Glasrud, there was never a “RFB 12-004” in the original published solicitation.

Notably, the specifications related to RFBs 12-001 were restricted to Double Eagle Airport, and the specifications for RFBs 12-002 and 12-003 were restricted to two types of aircraft: Cessna 172 and Diamond DA40. At the time of the published solicitation, SSLC was already leasing these two aircraft from Diamond Aviation under the contract signed July 1, 2011. It raises the question why SSLC would publish a solicitation for services for specific planes owned by Diamond Aviation if it also may have been intending to seek competitive bids from other vendors for airplane rental services.

Despite SSLC’s procurement solicitation described above, SSLC did not cease its expenditures to Diamond Aviation or Bode Aviation under the July 2011 contract and purchase order, respectively. SSLC did not cancel its July 1, 2011 contract with Diamond Aviation or execute a new contract with Diamond Aviation in fiscal year 2012. Additionally, SSLC did not provide the OSA any documentation

indicating a bidder responded to RFBs 12-001, 12-002 or 12-003. We were not provided any documentation that a new purchase order or contract was issued following SSLC's published solicitation, nor were we provided any documentation to indicate how SSLC selected Bode Aviation based on the published RFBs. In response to our requests for documentation related to SSLC's expenditures to Bode Aviation, SSLC provided New Mexico General Services Department (GSD) Statewide Price Agreement (No. 31-000-12-00100). However, as discussed in Section II(3)(B) below, SSLC's expenditures would not have been covered under this statewide price agreement. At the end of fiscal year 2012, SSLC paid Bode Aviation a total of \$33,856.

Finally, SSLC's failure to engage in a competitive bidding process prior to executing a contract with Dr. Glasrud's Diamond Aviation on July 1, 2011 potentially violated the Governmental Conduct Act, specifically Section 10-16-7 NMSA 1978. That section provides, "[u]nless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency . . . or with a business in which the public officer or employee . . . has a substantial interest." Furthermore, by signing the July 1, 2011 contract on behalf of SSLC, Dr. Glasrud took official action as a public employee to enter SSLC into a contract with a business in which he has a substantial financial interest. This action raises further concerns about potential Governmental Conduct Act violations, and SSLC's independent auditor included a finding in SSLC's fiscal year 2012 financial audit related to Dr. Glasrud's conflict of interest and signature on the July 1, 2011 contract (see finding CS 12-03-Y in PED's fiscal year 2012 financial audit report).

After our review of the documentation provided by SSLC and SAMS, it is also unclear what role Dr. Glasrud may have directly or indirectly played in various aspects of SSLC's and SAMS's procurement of his company, Diamond Aviation/SEC, in fiscal year 2012 and prior fiscal years. As Head Administrator for SSLC and SAMS, Dr. Glasrud is responsible for the procurement functions at both SSLC and SAMS. This raises concerns about potential violations of certain provisions of the Procurement Code and the Charter Schools Act, Chapter 22, Article 8B NMSA 1978. The Procurement Code, specifically Section 13-1-190 NMSA 1978, makes it unlawful for a public employee "to participate directly or indirectly in a procurement when the employee knows that the employee . . . has a financial interest in the business seeking or obtaining a contract." "Procurement" is defined by the Procurement Code as "all procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration" (Section 13-1-74(B) NMSA 1978). The Charter Schools Act, specifically Section 22-8B-5.2(B) NMSA 1978, provides that a charter school employee shall not "participate in selecting, awarding or administering a contract with the charter school if . . . [the employee] has a financial interest in the entity with which the charter school is contracting." A violation of this section of the Charter Schools Act "renders the contract voidable."

3. Procurement Risks Related to SSLC's and SAMS's RFP and Lease for Aircraft and Aviation Services in Fiscal Year 2013

On July 1, 2012, SSLC once again executed a contract with Diamond Aviation for the lease of the same two aircraft it had leased in prior years, a Diamond DA40 and a Cessna 172. However, also on July 1, 2012, SAMS executed a contract with Diamond Aviation for the lease of the same two planes. SAMS's first Council meeting was October 2011; however, students were not present until August of 2012. We were not provided any documentation indicating that any procurement process pursuant to the Procurement Code was initiated for SSLC and SAMS prior to execution of these July 1, 2012 contracts.

On November 1, 2012, SSLC, SAMS and SEC (Diamond Aviation) mutually cancelled their contracts signed on July 1, 2012, and SSLC and SAMS initiated an RFP process for goods and services for the school aviation program. It appears this cancellation was spurred by the inclusion of finding CS 12-03-Y (related to Dr. Glasrud's signing SSLC's July 1, 2011 contract with Diamond Aviation, discussed above) in SSLC's fiscal year 2012 financial audit report. In a letter dated September 23, 2013, from Matthews Fox, a law firm representing SSLC, to PED, the attorney indicated that, "[w]hen this issue was identified by the auditors in 2012 [related to the conflict of interest violation cited in finding CS 12-03-Y], without question both sides agreed to cancel the contract and invoked an entire new RFP process to ensure full compliance with the New Mexico Procurement Code."

On November 3 and 4, 2012, SSLC and SAMS published a notice in the Journal requesting "competitive sealed qualifications-based proposals" for the lease of two aircraft. Section 13-1-119 NMSA 1978 indicates that competitive sealed qualifications-based proposals are for "procuring the services of architects, landscape architects, engineers or surveyors for state public works projects or local public works projects." The procurement solicitation (entitled RFP 01-2013), requested bids be submitted no later than November 13, 2012. Although the published notice requested "competitive sealed qualifications-based proposals," it appears that the request was erroneously labeled as such. Our review of the documentation provided for RFP 01-2013 appears as though the solicitation was actually for competitive sealed proposals pursuant to Sections 13-1-111 through 13-1-117 NMSA 1978, given that "competitive sealed qualifications-based proposals" are limited to public works projects.

In response to their published notice, SSLC and SAMS received a proposal from only one bidder – Diamond Aviation. The evaluation committee for RFP 01-2013 met on November 26, 2012 to discuss the proposal. During the OSA's review of the evaluation criteria spreadsheet, we noted that each evaluation committee member awarded Diamond Aviation a perfect score in all areas of the evaluation.

Based on our review, SSLC and SAMS failed to provide documentation that they were in compliance with the following procurement requirements for competitive sealed proposals pursuant to the Procurement Code:

- a. Pursuant to Section 13-1-111 NMSA 1978, the schools' central purchasing office was required to make a written determination that the use of competitive sealed bidding for items of tangible personal property or services was either not practicable or not advantageous to SSLC and SAMS. SSLC and SAMS did not provide a written determination that they complied with this requirement of state law.
- b. Pursuant to Section 13-1-112 NMSA 1978, the request for proposal shall include "the form for disclosure of campaign contributions given by prospective contractors to applicable public officials pursuant to 13-1-191.1 NMSA 1978." SSLC and SAMS did not include a form for disclosure of campaign contributions in their solicitation for prospective contractors to complete and file with their proposals.
- c. Below are additional items noted during the Office's review of RFP 01-2013:
 - i. RFP 01-2013 for SSLC and SAMS had specific requirements noted under the headers of "Technical Specifications and Standards," "Operational Cost and Efficiency Specifications and Standards," and "Availability of Aircraft for the Program." Based on our review, it appears the required specifications under these

headers were very restrictive and potentially excluded vendors other than Diamond Aviation from bidding on this procurement. For example, RFP 01-2013 included language requiring the aircraft to “fit in an enclosed hangar with a 40 foot wide door” and “both aircraft must be available at the Double Eagle Airport seven days per week, between the hours of 6:00am through 12:00am.” Additional language included “while not in flight, aircraft must be accessible to the Schools’ personnel and students each day as determined by educational staff for classroom instruction, and the aircraft must be available for the fall, spring and summer programs; the dates to be set by the Schools’ calendars and must be available in the event that flight programs extend beyond the end of the semester or begin prior to the semester to be determined on a case by case basis.”

This raises concern about compliance with Section 13-1-164 NMSA 1978, which requires “all specifications shall be drafted so as to ensure maximum practicable competition and fulfill the requirements of state agencies and local public bodies.”

- ii. The evaluation committee for RFP 01-2013 consisted of three members: two Council Members (one from SILC and one from SPLC) and the Flight Program Coordinator from SAMS and SSLC. During our site visit and fact-finding procedures, the OSA learned that the Head Administrator plays a significant role in the selection of Board Members, including reviewing nominations of prospective Board Members, interviewing prospective nominees, and nominating “chosen successor[s]” to the charter schools’ councils (see Section IV(A) on Governance below). In addition, pursuant to the Charter Schools Act, specifically Section 22-8B-10 NMSA 1978, a head administrator of a charter school “shall employ, fix the salaries of, assign, terminate and discharge all employees of the charter school.” Therefore, the Head Administrator also exercises substantial authority over the Flight Program Coordinator from SAMS and SSLC.

At a minimum, the Head Administrator’s influence and authority (both in policy and in law) over the members of the evaluation committee creates the perception that the committee was not independent and impartial in its decision-making and evaluation of SEC’s response to RFP 01-2013.

- iii. The letter of transmittal from SEC regarding RFP 01-2013 was not signed. The solicitation required the letter of transmittal to “be signed by the person authorized to contractually obligate the organization.” Despite this requirement, the evaluators failed to deem SEC’s proposal non-responsive and reject it on that basis, in accordance with the requirements of the RFP (p.9 Section 2.f of RFP). We also noted that this criteria was excluded from the evaluation criteria spreadsheet (evaluator form).
- iv. During the OSA’s review of the evaluation criteria spreadsheet, we noted that each evaluation committee member awarded Diamond Aviation a perfect score in all areas of the evaluation despite the discrepancies as detailed below.
 - a. Per the safety specifications and standards, the aircraft “must pass screening through the NTSB Accident Reports for safety analysis and compared with

safety records of other aircraft submitted in this application process.” The response was “[t]his will be done at the discretion of the Lessee.”

- b. Per the operational cost and efficiency specifications and standards, the aircraft must “be insurable for a competitive and affordable cost.” The response was “[t]his will be done at the discretion of the Lessee.”

Based on our review of the meeting minutes of the SAMS Council, the Council met on November 27, 2012 at 7:30 a.m. and considered and approved a resolution “declaring [the Council’s] intent to enter into a contract with Southwest Educational Consultants, Inc. DBA, Diamond Aviation . . . for the lease of two airplanes for the operation of the School’s high school flight-training program.” Later that same day, SSLC’s Council met at 2 p.m. and considered and approved a nearly identical resolution. Both resolutions state that “on November 26, 2012, the review committee met to review the RFP and the contract terms proposed by DIAMOND. The Procurement Manager and DIAMOND, thereafter, negotiated terms consistent with SAMS’s [and SSLC’s] budget and agreeable to the parties.” However, in response to our inquiries regarding the process, the Principals for SSLC and SAMS stated that the contracts between SSLC, SAMS and Diamond Aviation “were negotiated during the November 27, 2012 meeting during the discussion of the recommendation by the evaluation committee.” The Principals stated that Dr. Glasrud was the only person in attendance at the negotiations representing Diamond Aviation/SEC. Additionally, SSLC and SAMS were represented by an attorney from the law firm, Matthews Fox, not the Procurement Manager.

In the resolutions, the Councils of SAMS and SSLC also “waived” Dr. Glasrud’s and Dr. Juarez’s prohibited participation in the procurement under state law. The Procurement Code, specifically Section 13-1-190 NMSA 1978, makes it unlawful for a public employee “to participate directly or indirectly in a procurement [which includes preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration] when the employee knows that the employee . . . has a financial interest in the business seeking or obtaining a contract.” However, another section of the Procurement Code, Section 13-1-194 NMSA 1978, allows a local public body to “grant a waiver from unlawful employee participation” in the procurement if the local public body makes a determination that 1) the financial interest of the public employee has been publicly disclosed; 2) the public employee “will be able to perform his procurement functions without actual or apparent bias or favoritism;” and 3) the public employee’s participation in the procurement “is in the best interests” of the local public body. With regard to these conditions, the resolutions state that “Scott Glasrud and Dalene Juarez have fully disclosed their financial interest in the proposed Lease Agreement to [the Councils of SAMS and SSLC] and understanding this conflict, the [Councils have] determined that it is in [SAMS’s and SSLC’s] best interest to grant a waiver from the employee participation prohibition.” Both resolutions also provide that “the Procurement Manager represents to the [Governing Councils of SAMS and SSLC] that management of the proposed contract, if approved, would be assigned to the Business Manager of [SAMS and SSLC] and would not be overseen, reviewed or under the control of Dr. Glasrud and consequently, he would be able to perform his procurement functions without actual or apparent bias or favoritism regarding this agreement.” For Dr. Juarez, the resolutions state that she “is not in a position to influence or participate in procurement functions.”

The nature and timing of this waiver by the Councils of SSLC and SAMS raises concerns since it was granted *after* the contract had already been bid, negotiated and awarded. As mentioned earlier in this review, Dr. Glasrud is responsible for the procurement functions at both SSLC and SAMS as the Head Administrator for both schools. At the same time, Dr. Glasrud was the only representative for Diamond Aviation in the negotiations of the contracts with SSLC and SAMS. In response to the OSA’s inquiries,

the Principals for SSLC and SAMS stated that Dr. Glasrud “was not involved in the RFP development or associated procedures led by SAMS and SSLC for the two airplanes.” Nevertheless, the Council’s “waiver” action does not fully alleviate concerns regarding what role Dr. Glasrud may have directly or indirectly played in the procurement of his own business.

In any event, despite the two Councils’ attempt to waive Dr. Glasrud’s participation in the procurement, independent auditors found during SSLC’s recently released financial audit for fiscal year 2013 that the Head Administrator signed and approved purchase orders and checks to Diamond Aviation in violation of the Charter Schools Act, specifically Section 22-8B-5.2(B) NMSA 1978 (see finding CS 2012-03-Y, repeated and modified finding from fiscal year 2012, page II-170 in PED’s fiscal year 2013 financial audit report). That section prohibits a charter school officer or employee from participating in the selection, award or administration of a contract with the charter school if “[the officer or employee] has a financial interest in the entity with which the charter school is contracting.” A violation of this section of the Charter Schools Act “renders the contract voidable.” Although the Councils’ November 27, 2012 resolutions certified that management of the Diamond Aviation contracts “would be assigned to the Business Manager of [SAMS and SSLC] and would not be overseen, reviewed or under the control of Dr. Glasrud,” auditors found that Dr. Glasrud approved both the purchase order, signed payments and “continues to be involved with the process of the payments on the contract.”

The resolutions further state that “DIAMOND has publically disclosed that its sole shareholders are Scott Glasrud and Dalene (“Dolly”) Juarez, both employees of SSLC . . . a conflict of interest fully recognized by the [SAMS and SSLC Governing Councils].” The Governmental Conduct Act, specifically Section 10-16-7 NMSA 1978, provides, “[u]nless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency . . . or with a business in which the public officer or employee . . . has a substantial interest.”

Clearly one intent of both aforementioned resolutions was to mitigate the obvious conflict with employees Dr. Glasrud and Dr. Juarez leasing their aircraft, via Diamond Aviation, to SSLC and SAMS. The resolutions alone do not meet the requirements set forth in Section 10-16-7 NMSA 1978. First, the language of Section 10-16-7 NMSA 1978 states that the *public officer or employee* must disclose their substantial interest through public notice. The onus is on the public officer or employee, in this case Dr. Glasrud and Dr. Juarez, to take a proactive measure to publicly disclose their substantial interest. The resolutions that were provided to the OSA simply state: “DIAMOND has publicly disclosed that its sole shareholders are Dr. Glasrud and Dr. Juarez, both employees of SSLC. Pursuant to the terms of the proposed contract, both would have a direct financial interest in the agreement with SSLC; a conflict of interest fully recognized by the SSLC (SAMS) Governing Council.” The OSA was not provided with any documentation that demonstrated how or when either Dr. Glasrud or Dr. Juarez gave any type of public disclosure of their substantial interest in Diamond Aviation as specified in the resolutions described above.

Although public notice is not defined in the Governmental Conduct Act, guidance from the New Mexico Attorney General’s compliance guide states that public notice should be sufficient so that “...at a minimum, anyone who is reasonably attentive to developments concerning the applicable government agency would be alerted to the situation.” The purpose of this provision of the Governmental Conduct Act is to provide transparency and accountability for any business done with a public entity and to ensure that no “backroom deals were made to favor insiders, perhaps at an unfair cost to taxpayers.” In

analyzing the sufficiency of a public notice of a conflict pursuant to Section 10-16-7 NMSA 1978, a key question is *when* the public notice was made in relation to the awarding and execution of the contract. In order for the public notice of a conflict to be effective, as intended by Section 10-16-7 NMSA 1978, it necessarily must be made before the contract is awarded to allow for objections to be raised by members of the public and to alert other potential bidders.

In this case, the resolutions state: “WHEREAS, on November 26, 2012 the review committee met to review the RFP and the Contract terms proposed by DIAMOND...” This sentence indicates that the contract may have already been awarded to Diamond Aviation at the time of the November 26th meeting, and at that meeting the contract was already being negotiated. The resolutions then go on to state that Diamond Aviation had publicly disclosed and the Council had acknowledged the conflict with Dr. Glasrud and Dr. Juarez. Again, because the resolutions do not give any insight into when or how the employee’s substantial interest was disclosed, the fact that the governing councils may have “fully recognized the conflict”, after the contract was already awarded invalidates the purpose of Section 10-16-7 of the Governmental Conduct Act.

Notably, in the minutes from two other SSLC Governing Council meetings (Tuesday, September 7, 2011 and Tuesday, June 4, 2013) there are very clear records that Dr. Glasrud made comments about public disclosures of potential conflicts. During the September 7, 2011 Council Meeting, Dr. Glasrud stated that on an annual basis disclosures would be made about financial interests that employees had in SSLC. He then stated that he and Dolly [Juarez] still owned SEC which was leasing the Montgomery Complex to SSLC. Again on Tuesday, June 4, 2013, Dr. Glasrud made a similar statement about council members needing to disclose any financial interests they had in the school. This statement was made in relation to a discussion about all conflicts of interest needing to be listed on an application for lease assistance relating to the Candelaria building, which houses SSLC, SPLC and SILC. Although none of the Council Members, including Dr. Glasrud, had a financial interest in the Candelaria building, Dr. Glasrud took the opportunity to again remind the Council that he and Dolly still owned SEC.

Given the evidence of Dr. Glasrud’s explicit disclosures of the existing conflicts of interest in these instances, the lack of similar recorded minutes regarding the alleged public disclosure as it relates to the Diamond Aviation lease either to the SAMS or the SSLC Governing Council is inexplicable and does not support the assertions made in the Resolutions.

SSLC and SAMS each executed contracts with Diamond Aviation on November 27, 2012 for the lease of the aircraft. We noted during our review of the contracts that SSLC’s contract with Diamond Aviation contains a section entitled, “Conflict of Interest.” That section details the conflict of interest related to the lessor (Diamond Aviation) being owned by Dr. Glasrud and Dr. Juarez, who are the original founders of SSLC. SAMS’s contract with Diamond Aviation also contains a “Conflict of Interest” section; however, the section differs from that found in SSLC’s contract. It states, “[I]essor warrants that she/he/it/they presently has no interest and shall not acquire any interest, direct or indirectly, which would conflict in any manner or degree with the performance of this Agreement.” Moreover, the contract for SAMS does not include the conflict of interest disclosure.

In addition, we noted in our review of the contracts that SSLC and SAMS are responsible for maintaining the leased aircraft which are owned by Diamond Aviation, including all maintenance costs and rental of hangar costs. However, the bid specifications for RFP 01-2013 stated that the “lessor [Diamond Aviation] must provide all maintenance recommended by the manufacturer (any and all service bulletins) which will be performed upon reasonable notice to the maintenance and airworthiness directives as directed by the FAA will be performed by the Lessor at Lessor’s expense. The Lessor will

provide replacement parts and major overhaul of engines, airframe and avionics.” Also, the draft contract included in the bid packet contained the same language as in the RFP. The response from Diamond Aviation in its proposal to this requirement was “we will comply with this section of the standards.” In fact, the evaluation committee for RFP 01-2013 awarded Diamond Aviation a perfect score based on this response to the evaluation criteria. However, in the final negotiated contracts this responsibility was reversed and placed on SSLC and SAMS, which are now responsible for paying these maintenance costs.

B. SSLC’s and SAMS’s Improper Use of a Statewide Price Agreement as Basis for Expenditures to Bode Aviation, Inc.

SSLC and SAMS utilized New Mexico General Services Department (GSD) Statewide Price Agreement (No. 31-000-12-00100) to procure Bode Aviation to provide goods and services, such as instructors, service, labor, environment charges, and certifications. For SSLC, the total amount paid during fiscal year 2013 was \$29,280. For SAMS, the total amount paid during fiscal year 2013 was \$368.08.

Although Section 13-1-129 NMSA 1978 allows for school districts to bypass competitive sealed bid requirements by procuring goods or services using existing statewide price agreements (commonly referred to as “piggybacking”), a school district may only do so if the items or services procured by the school district meet the “same standards and specifications” as those under the statewide price agreement. SSLC and SAMS did not adhere to this requirement in their use of Statewide Price Agreement No. 31-000-12-00100 to procure Bode Aviation. Upon reviewing this documentation, we noted that the statewide price agreement limits aircraft maintenance services to specific aircraft (Aircraft: Cessna 421C, N605P, S/N 1041). This is not the same aircraft SSLC and SAMS utilize for their flight program and for which they procured Bode Aviation’s maintenance services. Additionally, we noted that the majority of SSLC’s and SAMS’s expenditures for fiscal years 2012 and 2013 would not have been covered under the statewide price agreement as the date range for the statewide price agreement was for February 18, 2013 to February 17, 2014. SSLC and SAMS did not provide the OSA any additional agreements that would have supported SSLC’s or SAMS’s expenditures of maintenance costs to Bode Aviation.

C. Lack of Internal Controls for the Flight Program

During our review, we determined that expenditures related to Bode Aviation for fiscal years 2012 and 2013 were charged to SSLC. Since SAMS started in August of 2012, it appears SAMS should have paid for a portion of the Bode Aviation invoices as they also participated in the flight program. However, neither SSLC nor SAMS maintains or monitors documentation which would support the appropriate apportionment of costs amongst the schools for the flight program. Therefore, it is undeterminable whether SSLC may be shouldering costs for the program that should be paid by SAMS, or vice versa.

OSA staff inquired of Dr. Glasrud if SAMS had reimbursed SSLC for its portion of the Bode Aviation expenditures. Dr. Glasrud indicated that no reimbursements were made from SAMS to SSLC, but he did indicate that SAMS should have been responsible for a portion of the invoices. He further indicated that the general ledgers for SSLC and SAMS would be adjusted to correct the issue. Given SAMS and SSLC are separate charter schools created under two distinct charters, this inaccurate reporting of financial data and inability to track which charter school is properly responsible for certain flight program costs raises concerns. Therefore, these accountability and transparency problems should be addressed as there appears to be a lack of internal controls over these expenditures.

Furthermore, the OSA was not provided sufficient documentation by SSLC or SAMS to indicate that they monitor or maintain adequate reporting on aircraft instruction provided to students. The only monitoring related to the flight program are the flight logs, which are maintained by each student and instructor. SSLC and SAMS did provide a few copies of students' flight logs, but we could not determine if we were given a complete set of data. The OSA tried to confirm the in-flight times of students and instructors through another method; however, Dr. Glasrud indicated that the SSLC and SAMS flight instructor(s) are paid on contract and not required to track their time hourly for the aviation program. Bode Aviation invoices do provide hours for the student, but these only account for a very small portion of the flight instruction as the instructors under contract with SSLC and SAMS provide the large majority of the flight instruction.

Because the OSA was unable to review detailed information on the aircraft, we were unable to determine that the aircraft were used solely for the purposes stated in the aircraft leases. In addition, without supporting documentation, the OSA was unable to determine or verify whether the costs charged by Diamond Aviation for the use of the planes are reasonable and necessary. Therefore, we strongly recommend that the PED and PEC review the flight logs for students, instructors and the aircraft to ensure that costs associated with the aviation program, specifically the aircraft, are supported with adequate documentation, as it appears there is a lack of internal controls. We urge the governing authorities of SSLC and SAMS to facilitate PED's and PEC's access to these documents.

As was noted earlier, the requirements for the aircraft that were sought for lease in RFP 01-2013 were so specific that at best, they may have been prohibitive to other bidders; while at worst, they may have been written specifically to describe the two planes owned by Diamond Aviation. Further, the Governing Councils of both SAMS and SSLC made declarations in resolutions that attempted to waive any conflict that existed due to Diamond Aviation contracting with the two schools. School officials have asserted that the success of the aviation program depended on students having constant access to the aircraft for their use throughout the academic year. This need for constant access, although not constant use of the aircraft, was also a requirement in the RFP that Diamond Aviation represented it could meet, but this requirement also likely had the effect of precluding other potential bidders from responding to RFP 01-2013. The OSA has not been provided with any documentation that demonstrates that the success of the flight program is contingent upon students having constant access to two aircraft, as opposed to a viable alternative such as structured schedules for flight instruction using the planes. Ostensibly, other vendors may have been competed for the contracts if they did not have to completely surrender the use of their planes for an entire academic year.

Despite the specificity of the RFPs, and the subsequent contracts that were awarded to Diamond Aviation from SSLC and SAMS, at the October 1, 2013 Governing Council Meeting for SAMS and SSLC, the Finance Committee for each Council presented an agenda item regarding the need for a third airplane. According to the minutes of the meetings for SAMS and SSLC, Dr. Glasrud recused himself from speaking on the matter and it was instead presented by two other members of the Finance Committee. The minutes provided to the OSA reflect that the Committee members explained that students in the flight program were having problems with their training schedule when either of the school's planes was unavailable due to required maintenance. A Committee member is quoted in the minutes as stating, "[w]hen the plane is out of service, the students are missing flight time and falling behind." The members of the Finance Committee stated that to alleviate this issue, Diamond Aviation was willing to offer a third plane to students at no extra rental cost; however, SSLC and SAMS would each incur one half of the cost of the hangar space for the third plane as well as the additional insurance to add the third plane to the school's existing insurance policy. As reflected in the minutes, Board Member Larry Kennedy explained that the lease between the school and Diamond Aviation provided the

following: *“The Lessor agrees to lease to Lessee, for its exclusive use during the term of this Agreement the following identified aircraft (“Aircraft”) or other aircraft as may be substituted by Lessor that meet the Lessee’s specifications...”* Although this provision of the lease does allow Diamond Aviation to substitute other planes that meet the school’s detailed specifications, the lease does not allow for or contemplate that Diamond Aviation may *add* costs associated with maintaining more than two planes.

During the discussions of the third plane, two board members presented their experiences with the flight program and how difficult it had been with only the two available planes. At the end of the discussions, motions were made and passed to accept Diamond Aviation’s offer of a third plane and to pay one-half of the hangar costs as well as the additional insurance costs. Because there is no information in the minutes about the actual amount of the hangar expense or the additional insurance, nor what process (if any) would be followed to pay these expenditures, it is unclear whether the Councils discussed these critical issues. The OSA inquired with Dr. Glasrud via email on March 6, 2014 in an attempt to clarify the information in the Council minutes as well as the ultimate expense regarding the third plane. In his response of the same date, Dr. Glasrud stated: *“we are in the process of acquiring another airplane to serve as the ‘substitute’... There will be no additional lease expense or contract to the school. We are only trying to guarantee that there are always two planes available for student use.”* Despite the fact that Dr. Glasrud claimed that there would be no additional expense to the school, later in the email he stated: *“Although we have not completed all of the necessary paperwork (or paid for it) the substitute airplane looks like it will be N739HK- it is also a Cessna 172.”*

It appears that the information about the third plane that the Council discussed and voted on in October of 2013 is inconsistent with the information that was presented in Dr. Glasrud’s email response to the OSA in March of 2014. Dr. Glasrud’s email indicated that six months after the Council had approved acquiring a third plane that it still had not done so, which calls into question the actual importance and necessity for the third plane. Dr. Glasrud attempted to clarify in his email that the third plane would only be substituted for use when one of the two originally leased planes was not operable due to maintenance; however, given that the OSA has not received any documentation regarding the actual use of the two originally leased planes for student flight time, we were unable to gauge how often that situation has occurred and what impact it has had on student in-flight times. Finally, the fact that there is no documentation regarding the actual cost of the third plane calls into question whether the Council had enough accurate information to legitimately approve the acquisition and use of the third plane. Due to this lack of information, we are unable to determine the actual use of the airplanes or ascertain the direct benefit to students relative to the expense. Likewise, we are also unable to verify the schools’ need and stated justifications for expenses associated with a third plane.

While Dr. Glasrud stated in his email that there would be no additional cost or contractual obligation to the school, the Council understood and agreed that the school would be responsible for paying to insure the third plane, and for one half of the cost of the hangar. There is an inconsistency between what the Council approved and the information that Dr. Glasrud provided. Based on our review, it appears the Council approved costs associated with the third plane without properly assessing reliable information.

III. Lease of Real Property - Building on Montgomery Blvd. Northeast in Albuquerque

During our site visit interviews with SSLC’s co-founders, they explained that when SSLC was founded in 2001 the charter school was unable to secure a loan of its own since it was a newly created agency. As a result, Dr. Glasrud and Dr. Juarez decided to personally guarantee the lease of the building at 9904 Montgomery Blvd. NE (the Montgomery Complex) to be utilized by SSLC. A lease was signed

between SEC and the lessor of the building and, in turn, SEC leased the Montgomery Complex to SSLC. This building was used as the charter school's main facility until August 2004.

In August 2004, the charter school moved to a building at 10301 Candelaria Rd. NE. The Candelaria building is leased from a third party trust and is occupied by SPLC, SILC and SSLC. SSLC continues to rent the Montgomery Complex from SEC even though the charter school now resides in the building located on Candelaria. SSLC's co-founders explained to OSA staff that a portion of the Montgomery Complex does not adequately support the needs of SPLC, SILC and SSLC, but the Complex is maintained for alternative uses for SSLC. However, during our site visit interviews, the OSA was given conflicting explanations as to the purpose of the Montgomery Complex and the number of students that utilize the building. During our visit to the Montgomery Complex, we noted that approximately 10 to 15 students were present in a small portion of the building rented by SSLC.

In the November 1, 2012 SSLC Governing Council meeting minutes, the Council re-approved the lease of the Montgomery Complex. Even though the Council votes every year to approve the lease of the building, at least one Board Member admitted that he had never visited the Montgomery Complex.

SSLC expenditures for the portion of the Montgomery Complex utilized for fiscal year 2013 and 2012 were \$120,147 and \$114,426, respectively. The OSA requested from Dr. Glasrud a copy of the master lease between SEC and the owner of the building. Dr. Glasrud indicated that this was personal information and he would not provide the documentation to OSA staff. Therefore, we could not independently verify if SEC is charging SSLC more than the cost of the master lease as indicated in the Legislative Finance Committee Report dated January 14, 2013 (pg. 23). Furthermore, there was no documentation provided to the OSA to demonstrate that SSLC followed any procurement procedures related to the lease of the building. Additionally, OSA staff reviewed the yearly lease agreements from fiscal year 2009 to 2014 and we were unable to determine the square footage of the building, as it did not appear to be included in the lease agreement.

In fiscal year 2013, all of the charter schools applied for and received lease assistance through the Public School Capital Outlay Council (PSCOC). However, SSLC did not apply for lease assistance for the lease of the Montgomery Complex. Pursuant to the Public School Capital Outlay Act, Chapter 22, Article 24 NMSA 1978, the PSCOC may approve lease assistance awards for the purpose of making reimbursements to school districts and charter schools for leasing classroom facilities. The application process for this lease assistance requires the school district or charter school to complete a "Conflict of Interest Questionnaire" in which the school must, among other things, "describe the property selection process and actions taken to ensure that the leased premises were in the best interest of the district/school;" "describe how the lease premises support the current or future space needs of the district/school;" and describe the selection process and whether the leased facility was "selected competitively from other potential school sites."

The PSCOC lease assistance application also requires the charter school to disclose any direct or indirect financial interest that a charter school official or employee has in the lease, to describe the financial interest and to state whether the financial interest was properly disclosed to the governing body prior to the execution of the lease. If SSLC had sought lease assistance through the PSCOC, the conflict of interest between SEC and SSLC co-founders would have had to be disclosed on the application. Per review of the general ledger, it appears the lease is funded through operational funds, primarily the state equalization guarantee (SEG). In addition, it was noted that SSLC is currently coding these expenditures to function "1000 - Instruction" rather than "2610 - Operation of Buildings" as indicated by the PED

Uniform Chart of Accounts. As such, the instructional function appears inflated in the financial statements.

SAMS also entered into a lease agreement with SEC for the rental of a portion of the building at 9904 Montgomery Blvd NE. The Council minutes dated October 4, 2011 indicate that the building was used for a temporary office location, parent meeting space, and storage and staging area for equipment while the Double Eagle building was renovated. For fiscal year 2012, the expenditures amounted to \$15,000 for rent payments in April, May, and June 2012. The OSA was unable to determine if SAMS utilized the same portion of the building also used by SSLC, given that we could not ascertain the square footage covered by SSLC's lease agreement and Dr. Glasrud denied the OSA's request for a copy of the master lease agreement. There was no documentation provided to the OSA to demonstrate that SAMS followed any procurement procedures on leasing the building.

Based upon the OSA's fact-finding, it is unclear if the Montgomery Complex lease is a necessity and whether the approval of expenditures for the building is in the best interest of taxpayers. We strongly recommend that SSLC's and SAMS's governing authorities as well as PED evaluate the legitimacy of SSLC's need for the Montgomery Complex. In addition, we recommend the master lease agreement be reviewed to determine whether the benefits of the lease to SSLC outweigh the conflict of interest presented by the Head Administrator's financial interest in the lease. Furthermore, given that SAMS paid \$15,000 to lease a portion of the building, we recommend that the PED and PEC review SSLC's and SAMS's lease agreements with SEC to verify that SAMS did not lease the same portion of the building as SSLC. Again, we urge SSLC and SAMS to cooperate with the PED and PEC in this regard.

IV. Risks Related to Internal Control Issues and Expenditures

A. Governance

During our site visit and fact-finding procedures, the OSA learned that Dr. Glasrud, the Head Administrator, plays a significant role in the selection of Board Members of the respective charter schools, including reviewing nominations of prospective Board Members, interviewing prospective nominees, and nominating "chosen successor[s]" to the charter schools' councils. Furthermore, the Council Policies for SSLC and SAMS indicate the Board President "works in close collaboration with the Head Administrator in achieving the school's mission." Also, the Board President and Board Members "[play] a role in formally evaluating the Head Administrator." In addition, under the Council Policies for SSLC and SAMS, the policy for "Board Vacancies" indicates the following procedures to fill a vacancy:

1. "Any member of the school, community, or existing Board may nominate a person to fill the position by writing a letter of support to the Head Administrator of the school.
2. The Head Administrator shall review all nominations and shall interview qualified nominees.
3. The Head Administrator shall nominate the chosen successor at the next regular or special Board meeting and the nominee shall be approved by the majority vote of the Board of Directors present."

During our review of the Council meeting minutes for SSLC, it was noted that in the April 2013 minutes the Council met in executive session to discuss and accept the Head Administrator's evaluation, which was subsequently approved. Additionally, in the April 2013 meeting minutes for SAMS, the

Council met in executive session to discuss the Head Administrator's evaluation. The Head Administrator's evaluation was subsequently approved in the June 2013 meeting minutes.

Because the Head Administrator plays an influential role in selecting Board Members for each charter school and the Council for each school evaluates the Head Administrator, this augments concerns about the independent and impartial evaluation of the charter schools' transactions that enhance the financial interest of the Head Administrator.

On a related note, based on review of SSLC's Council meeting minutes for August 7, 2012, October 2, 2012, and March 5, 2013, Dr. Glasrud, in his capacity as the Head Administrator, introduced a new board member during the meeting; however, there is no documentation in the meeting minutes to indicate there was a majority vote to approve the nominee as indicated in the policy. Section 10-15-1(G) NMSA 1978, of the Open Meetings Act provides in pertinent part that "...the policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decision and votes taken that show how each member voted."

B. Reimbursements

Per our review of documentation analyzed, it appears that SSLC and SAMS are not properly reimbursing employees or following their policies and procedures approved by the Council for travel reimbursements. The SSLC's and SAMS's "Board of Director's Policy Manual" related to travel and reimbursement states "the employee must present receipts and complete a travel reimbursement voucher upon return." In addition, it indicates "mileage shall be reimbursed at the rate established by the Internal Revenue Service as amended annually."

1. For the employees reviewed, SSLC did not reimburse the employees for sales taxes incurred for purchases related to reimbursement.
2. For one of three travel reimbursements at SSLC and two of two travel reimbursements at SAMS that we reviewed, the supporting documentation did not include the receipts or a completed travel reimbursement voucher as required by the policy.
3. For two of three travel reimbursements at SSLC that was reviewed by the OSA, the supporting documentation indicated that mileage was reimbursed at \$.444/mile; however, the policy indicates that mileage is reimbursed at the IRS rate. For the time period under review, the rate was \$.555/mile (IRS 2012 Standard Mileage Rate).

C. Employee Salaries and Contracts

Per review of documentation related to employee contracts, we noted particularly high base salaries and generous accruals of annual leave days for certain employees of the four charter schools. Additionally, in reviewing the salary information, the OSA noted several issues and inconsistencies in what is documented in the employee contracts versus what was explained to the OSA during our site visit. For instance:

First, the OSA noted that all top-level administrative staff members for the charter schools receive generous accruals of annual leave days. Below are a few examples:

1. Each charter school has the position of “Head Administrator”, but we noted in our review that only one individual (Dr. Glasrud) is employed in all four positions under four separate employment contracts. Under those contracts for July 1, 2012 to June 30, 2014, the Head Administrator accrued a total of 80 annual leave days (20 annual leave days per charter school under each contract). The Head Administrator’s contract for July 1, 2013 to June 30, 2015, allows him to accrue 25 annual leave days from SSLC, SPLC and SILC, and 20 annual leave days from SAMS, for a total of 95 annual leave days. This is a total increase of 15 annual leave days from fiscal year 2013 to fiscal year 2014.

Further, the contracts for SSLC, SPLC, and SILC read that “[u]nused annual leave may be accumulated or paid at year end (at Head Administrator’s discretion) to a total of no more than 70 working days of unused leave. Upon cancellation or expiration of this contract, no payment shall be made for more than 70 days of unused annual leave. At the Head Administrator’s discretion unused annual leave may be sold back to the school at the rate of \$277.96 per day.” The contract for SAMS reads that “[u]nused annual leave maybe accumulated or paid at year end (at Head Administrator’s discretion) to a total of no more than 70 working days of unused leave. Upon cancellation or expiration of this contract, no payment shall be made for more than 70 days of unused annual leave. At the Head Administrator’s discretion unused annual leave may be sold back to the school at the rate of \$0 per day.”

2. Each charter school has the position of “Administrator” (separate from the Head Administrator), but we noted in our review that only one individual is currently employed in all four positions under four separate employment contracts for fiscal year 2014. For fiscal year 2014, as the Administrator for all four schools he is allowed to receive 25 annual leave days per school for a total of 100 annual leave days between his four contracts. This is a total increase of 20 annual leave days from fiscal year 2013 to fiscal year 2014.

In fiscal year 2013, this same individual had four separate employment contracts as Administrator for SSLC and SILC, Principal at SAMS, and Assistant Principal at SPLC. Under these contracts he received a total of 80 annual leave days (20 annual leave days per charter school under each contract).

3. Both SSLC and SAMS have the position of “Aviation Program Director” and “Transportation Director,” but we noted in our review that only one individual is employed in all four positions under four separate employment contracts. Pursuant to his fiscal year 2014 contracts as Aviation Program Director for SSLC and SAMS, this individual is allocated a total of 44 annual leave days (22 annual leave days per charter school under each contract). Pursuant to his fiscal year 2014 contracts as Transportation Director for SSLC and SAMS, this individual is allocated a total of 50 annual leave days (25 annual leave days per charter school under each contract).
4. Each charter school has the position of “Director,” but we noted in our review that only one individual is employed in all four positions under four separate employment contracts. Pursuant to her contracts for fiscal year 2013, this individual received 13 annual leave days per school for a total of 52 annual leave days. For fiscal year 2014, as the Director for all four schools, she is allowed to receive 25 annual leave days for a total of 100 annual leave days. This is a total increase of 48 annual leave days from fiscal year 2013 to fiscal year 2014.

Second, the OSA was not provided adequate documentation to demonstrate how the charter schools determined the salary for each position or how the full-time equivalent (FTE) was calculated for each school. In response to our inquiries, the Head Administrator stated, “FTE is based on school need. No report on hours.” Below are a few examples:

1. The Head Administrator for SSLC, SPLC, and SILC has an FTE of .40 for each charter school, which is a total of 1.2 FTE.
2. The Administrator for SAMS (a position separate from the Head Administrator) stated that he works almost full-time at the SAMS school. During our reviews of his employment contracts, we noted this employee is paid as the Administrator for all four schools with an FTE of .50 for SSLC, .30 for SAMS, .10 for SPLC and .10 for SILC for a total of 1.0 FTE.
3. The Principal (a position separate from Administrator) has an FTE of .55 for SSLC, and .25 for SPLC and .30 for SILC, which is a total of 1.10 FTE.
4. During our review of employment contracts, we noted that there is an Administrator (separate from the Head Administrator) position at each of the four charter schools and a Principal position at SSLC, SPLC, and SILC. When OSA staff inquired with the Head Administrator why there was not a Principal position at SAMS, he stated “the Principal is a title that requires an administrative license. The terms ‘Administrator’ and ‘Principal’ are used synonymously.” Using this logic, it is unclear why a Principal position exists for SSLC, SPLC and SILC if the Administrator and Principal positions are synonymous.

Third, OSA staff was unable to determine what duties certain employees are performing for each school position as employee contracts do not specify duties to be performed. Therefore, there is a risk that all top-level administrative staff of the charter schools may be overcompensated based on inaccurate FTE. Below are a few examples:

1. The Aviation Program Director and Transportation Director positions are contracted as separate employee contracts for each position for SSLC and SAMS; however, there is only one individual performing both positions under four separate employment contracts. The Aviation Program Director’s FTE is .50 for SSLC and .50 for SAMS. The Transportation Director’s FTE is .25 for SSLC and .25 for SAMS. This is a total of 1.5 FTE between all contracts.
2. The Head Administrator for SAMS has an employment contract with the school, but he does not receive an FTE or a base salary for SAMS. The Head Administrator’s contract for SAMS reads, “subject to the provisions of the approved budget, the Head Administrator shall, during the term hereof, receive a salary of \$1.00 per year, for a total salary to be paid of \$1.00 payable in installment, less required or authorized deductions.” As previously discussed, the Head Administrator for SAMS is also employed by SSLC, SPLC and SILC as Head Administrator for those schools. Under each of those contracts, the Head Administrator is paid a total of \$240,635 (\$70,045 by each school, including an additional \$30,500 for retirement savings plans under the contract with SSLC). Notably, SAMS administrative costs for employing a Head Administrator are significantly lower than the other three separately chartered charter schools. This raises concern that costs between SAMS and the other three schools may have been shifted and inequitably allocated.

Additional items noted during our review of employee salaries and contracts.

1. From July 1, 2008 through the date of this letter, SSLC has executed six employment contracts (and two related contract amendments) with the Head Administrator. Those contracts are the following:
 - “2008-2010 Head Administrator Contract” for the period July 1, 2008 through June 30, 2010; executed by the parties on June 10, 2008.
 - “2009-2010 Head Administrator Contract” for the period July 1, 2009 through June 30, 2010; executed by the parties on June 1, 2009. An amendment to this contract was executed on May 14, 2010.
 - “2010-2012 Head Administrator Contract” for the period July 1, 2010 through June 30, 2012; executed by the parties on May 21, 2010.
 - “2011-2013 Head Administrator Contract” for the period July 1, 2011 through June 30, 2012; executed by the parties on June 30, 2011.
 - “2012-2014 Head Administrator Contract” for the period July 1, 2012 through June 30, 2014; executed by the parties on July 1, 2012. An amendment to this contract was executed November 13, 2012.
 - “2013-2015 Head Administrator Contract” for the period July 1, 2013 through June 30, 2015; executed by the parties on June 4, 2013.

Under all his employment contracts with SSLC except for the 2010-2012 contract, Dr. Glasrud received an annual employer contribution to a 403(b) Plan in the amount of \$30,500. The contracts for 2008-2010, 2009-2010 and 2011-2013 read that this “school funded contribution” was “an incentive for continued employment with the school.” Although the Head Administrator’s contract for 2012-2014 did not initially include language requiring payment of the contribution, our review of the SSLC Council’s November 13, 2012 meeting minutes revealed that Dr. Glasrud recommended to the Council that it reinstate the contribution:

“Scott [Dr. Glasrud] stated that in years past the Board had approved a match to his 403B or 457 Plan through Legacy Financial Services. Due to the unexpected change in the business office, he thought it would be prudent if the Board was so inclined to continue the match to have a new motion from the Board stating such. Scott explained that this is based on the IRS and a calendar year instead of the fiscal year the school operates on so the entire payment will need to occur either in later November or December if approved.”

The Council unanimously approved the contribution not to exceed IRS limits. That same day, a contract amendment was executed to the Head Administrator’s fiscal years 2012-2014 contract to include a \$30,500 payment to his 403(b) or 457 Plan. SSLC generated a check on December 28, 2012 payable to ING for the Head Administrator’s contribution; however, the check was subsequently voided because it had been made out to the incorrect vendor. A new check was generated on December 31, 2012 payable to MG Trust. We noted during our review that Dr. Glasrud signed the December 31, 2012 check for his own contribution.

In this set of circumstances, Dr. Glasrud in his official capacity made a direct recommendation to the Council that it approve an action that would enhance his financial position. He also signed the check for his own contribution. These actions raise concerns about potential violations of the Governmental Conduct Act, specifically Section 10-16-4(A) NMSA 1978, which provides that “[i]t is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position.” Section 10-16-2(H) NMSA 1978 defines an “official act” as “an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority.”

Finally, OSA obtained the payroll register detail from fiscal years 2006 through 2014 to determine if payroll distributions had been executed through payroll as the contribution was part of the Head Administrator's employment contract and should be recorded through payroll and reported on his W-2 tax form. We noted only two payroll payments: one for fiscal year 2013 on December 28, 2012 and one for fiscal year 2014 on July 15, 2013.

2. During our review of the minutes for the SSLC Council from July 5, 2011 through January 7, 2014, we noted that the execution of the Head Administrator's contracts and their related amendments did not appear to be properly noticed and voted on openly at public meetings of the Council. These instances appear to violate 6.66.3.8(C) NMAC, which provides the following: “No administrator contract, including any amendment or addendum, shall be signed, entered into, or executed that has not first been properly noticed and voted on openly at a public meeting held pursuant to the Open Meetings Act (10-15-1 to 10-15-4, NMSA 1978).”

V. Conclusion

Given the serious nature of the risks we identified and detailed in this risk review, I hope that your Governing Councils will take appropriate measures to ensure the risks are adequately addressed. SSLC and SAMS should take immediate corrective action to reduce these risks and resolve any related audit findings. Statements on Auditing Standards provide that the financial statements are management's responsibility, and management is responsible for adopting sound accounting policies and for establishing and maintaining internal control that will, among other things, initiate, authorize, record, process, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements. The charter schools' management should establish adequate internal controls over financial reporting, implement measures to prevent and detect fraud, and implement corrective action for audit findings in a timely manner.

In addition, the PED and PEC should exercise appropriate oversight action to ensure the risks are addressed. The PED and the PEC are vested with certain oversight authority which can be exercised to ensure the risks outlined in the letter are addressed in the best interest of the taxpayers. I also recommend that the New Mexico Legislature and its appropriate interim committees consider the results of this review and study ways to strengthen accountability over education funds. It is critical that the financial affairs and transactions of our schools be wholly transparent to the public and oversight agencies. This risk review is also intended to assist them in carrying out those responsibilities, and I hope your charter schools will cooperate with their agencies in any oversight efforts that they may take.

I appreciate your consideration of this risk review and my office stands ready to assist you in your efforts to address the matters detailed above. Please do not hesitate to contact my office should you have any questions.

Respectfully,



Hector Balderas, Esq., CFE
New Mexico State Auditor

cc: Governing Council Members – SSLC, SAMS, SPLC and SILC
Hanna Skandera, Secretary-Designate, Public Education Department
Carolyn Shearman, Chair, Public Education Commission and PEC Members
Legislative Finance Committee
Legislative Education Study Committee
Moss Adams LLP