

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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August 24, 2011

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

RE: STAFF REPORT: OPTIONS FOR PARENTS: CHARTER SCHOOLS

Introduction

During the May 2011 meeting, the Legislative Education Study Committee (LESC) heard a staff update on charter schools in New Mexico that addressed two points:

- the 46 letters of intent to start a charter school that had been submitted in January 2011; and
- the reversal, on appeal, by the Secretary-designate of Public Education of the denial by the Public Education Commission (PEC) of three requests for charter renewal, together with an account of the process by which charter schools may appeal adverse decisions of chartering authorities.

During the discussion following that presentation, committee members expressed interest in the number of letters of intent (the highest number in any year so far) and concerns about conflicts in the appeal process, especially with regard to state-chartered charter schools. Afterward, the Chair directed LESC staff to form a work group to examine the appeals process and to make recommendations for amending it.

This staff report not only provides an update on the two points from the May meeting but also addresses two other subjects likely to have some bearing on those points. Therefore, this report includes:

- an update on the applications for new charter schools;
- a status report on the LESC Work Group on Charter School Appeals;
- a review of the provisions of charter school contract legislation enacted in 2011; and
- a national perspective on charter schools and charter school policies in New Mexico.

Applications for New Charter Schools

The *Charter Schools Act* requires a chartering authority to review all applications submitted to it and to hold at least one public hearing in the school district in which the charter school is proposed to be located. The purpose of the public hearing is “to obtain information and community input to assist [the chartering authority] in its decision whether to grant a charter school application.”

As the staff report in May indicated, each year there have been fewer actual applications than letters of intent; and that pattern has continued this year, with approximately 50 percent fewer applications than letters of intent. The PEC received 21 applications by the July 1 deadline, and at least two other applicants applied to their respective local school boards.¹

- On August 9, Albuquerque Public Schools (APS) held a hearing on the application submitted by the Kenny Thomas Preparatory School for a charter whose curriculum, according to APS, would focus on science, technology, engineering, and math (STEM) education, with an additional focus on health.
 - The applicant’s plan was to begin with grades 6, 7, and 8 and to phase in the high schools grades over the five-year term of the charter.
 - During its meeting on August 17, the school board denied the application.
- On August 11, Farmington Municipal Schools held a hearing on the application of the New Mexico Virtual Academy for a charter to operate “a full-time virtual public school open to any grade K-12 child eligible for attendance in public schools in New Mexico.” According to the district superintendent, the school board:
 - has scheduled a second public hearing for August 25;
 - will take written public comment through August 26; and
 - plans to announce its decision in a meeting scheduled for September 22.

During the week of August 8, the PEC scheduled public hearings in nine school districts across the state (see Attachment 1). For this presentation, Ms. Carolyn Shearman, Commissioner, will provide a brief account of those hearings.

¹ The number of applications to local school boards is presented as tentative because the Charter Schools Division in Options for Parents within the Public Education Department does not track local applications and because not every school district replied to an LESC staff query.

LESC Work Group on Charter School Appeals

In response to the directive from the Chair, LESG staff invited 12 representatives of constituencies involved in or affected by charter school appeals to serve on a work group to review the appeals process in the *Charter Schools Act* and to make recommendations for amending it as needed (see Attachment 2).

During the first meeting, on August 4, 2011, work group members reviewed and discussed a number of documents pertaining to the appeals process:

- Section 22-8B-7 NMSA 1978, *Appeal of denial, nonrenewal, suspension or revocation; procedures*;
- the LESG staff report from May 2011;
- Senate Bill 446, *Charter School Contracts* (Laws 2011, Chapter 14), which, effective next year, will require a number of provisions related to contracts between charter schools and their authorizers that may affect the appeals process;
- *Charter School Appeals*, an overview of the topic by the National Association of Charter School Authorizers (NACSA). Among other points, this report:
 - makes a distinction between the “deprivation” that occurs when a charter application is denied and when an existing charter is either not renewed or revoked;
 - suggests that having multiple authorizers can be a suitable alternative to an appeals process for rejected applications; and
 - observes that forcing an authorizer to accept a charter school that it had previously denied “tends to force both parties into a dysfunctional relationship”;
- a list of charter school appeals from 2004 to 2009, with an indication of their outcomes (an attachment to a previous LESG staff report);
- excerpts from two federal laws: the *Consolidated Appropriation Act of 2010* and the *No Child Left Behind* (NCLB):
 - NCLB identifies the categories of students for whom achievement must be measured; and
 - the appropriation act specifies criteria that make a state eligible for funding, one of which is that the authorized chartering authorities must use “increases in student academic achievement for all groups of students described in [NCLB] . . . as the most important factor when determining to renew or revoke a school’s charter”; and
- two lists compiled by the Education Commission of the States summarizing states’ policies regarding charter school appeals: one of denied applications and the other of revoked or nonrenewed charters.

There was broad agreement that, once fully implemented, the charter school contract legislation enacted in 2011 may make an appeals process unnecessary. However, that legislation does not

go into effect until July 1, 2011; and some recourse for charter schools is probably needed in the meantime. As the first meeting progressed, work group members discussed such points as:

- the necessity that any appeals be made to a neutral third party and that the appeals process be fair and transparent;
- the need to keep the interests of students uppermost in mind;
- the need for better training for chartering authorities;
- the effects of the fiscal climate on local school boards' interest in approving or renewing charter schools;
- the value of a more thorough review of the appeals policies and practices in other states;
- the importance of defining "student academic achievement," especially with regard to federal requirements; and
- the greater continuity of provisions enacted through law than through regulation.

Work group members also proposed a number of approaches to consider, among them:

- distinguishing between appeals of a denied application and appeals of charter nonrenewals or revocations;
- providing the PEC with its own dedicated staff and budget;
- creating a third chartering authority that would authorize and oversee charter schools upheld on appeal;
- anticipating or accelerating the implementation of the charter school contract legislation;
- using binding arbitration instead of an appeals process; and
- eliminating the possibility of a charter school or applicant appealing the imposition of unacceptable conditions imposed by the chartering authority.

The work group will meet again on August 30 to continue the discussion and to consider recommendations.

Provisions of Charter School Contract Legislation Enacted in 2011

As noted above, significant charter school legislation was enacted in 2011 (SB 446, *Charter School Contracts*, or Laws 2011, Chapter 14) to provide for contracts between chartering authorities and charter schools, effective July 1, 2012. Among its general provisions, this legislation:

- requires that the contract be part of the charter;
- allows either the charter school or the chartering authority to appeal to the Secretary of Public Education to finalize the terms of the contract in the event that the two parties cannot agree or if the two cannot agree on the process for revision or amendment to the terms of the contract;
- establishes procedures regarding conflicts of interest for a charter school governing body and administration; and
- requires an annual evaluation process for charter schools.

Among the provisions that may reduce or even eliminate the need for a formal appeals process are:

- requirements that, among other features, the contract contain:
 - the criteria, processes, and procedures that the chartering authority will use for ongoing oversight of operational, financial, and academic performance of the charter school;
 - a detailed description of how the chartering authority will use the 2.0 percent of the school-generated program cost to which it is entitled;
 - the process and criteria that the chartering authority will use in its annual monitoring and evaluating the fiscal, overall governance, and student performance of the charter school;
 - the dispute resolution processes that the parties have agreed to use, for which the bill prescribes minimum components;
 - the criteria, procedures, and timelines that the parties have agreed upon to address charter revocation and deficiencies found in the annual status report; and

- a requirement that the contract be based upon a performance framework “that clearly sets forth the academic and operations performance indicators, measures and metrics that will guide the chartering authority’s evaluation of each charter school.” This performance framework must include such measures as:
 - student academic performance and growth;
 - achievement gaps;
 - attendance;
 - recurrent enrollment;
 - postsecondary readiness and graduation rates for high schools;
 - financial performance and sustainability; and
 - the performance of the governing body, including compliance with laws, rules, and the terms of the charter contract.

The charter school contract legislation also assigns several additional duties to the chartering authority. Among them, the chartering authority:

- must develop and maintain chartering policies and practices that are consistent with nationally recognized standards for quality authorizing;
- must set annual performance targets in consultation with its charter schools;
- must review state assessment data provided by each charter school that the chartering authority oversees;
- may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities, among them conducting “appropriate inquiries and investigations,” as long as the chartering authority “does not unduly inhibit the autonomy granted to the charter schools that it governs”;
- must visit each charter school at least once annually to provide technical assistance and to determine the status of the charter school and its progress toward achieving its performance framework goals;

- must promptly notify the governing body if its review finds that a charter school’s fiscal, overall governance, or student performance or legal compliance is unsatisfactory; and provide a reasonable opportunity for the governing body to remedy the problem;
- may take appropriate corrective actions or impose sanctions, other than revocation;
- if revocation is warranted, must follow prescribed procedures;
- must develop a closure protocol to ensure timely notification to parents, orderly transition of students and their records to new schools, and proper disposition of school funds, property, and other assets; and
- submit an annual report to the Charter Schools Division of the Public Education Department (PED) for each charter school that it oversees.

Another potential effect of this legislation is to increase the fiscal accountability of charter schools, an issue addressed by HB 98, *Charter School Audit Monitoring*, which the LESC endorsed in 2011 but which did not pass. That bill would have addressed the case of a charter school whose audit shows internal control deficiencies or material weaknesses; and, among other provisions, it would have required the chartering authority to monitor the charter school’s accounting and internal control system and the school’s fiscal condition until the deficiencies or material weaknesses are corrected and the next audit shows no deficiencies or weaknesses.

In addition to the provisions already noted – such as the emphasis in the performance framework on the charter school’s financial performance and sustainability; the authority of the authorizer to conduct appropriate inquiries and investigations; and the required notification in the event that the authorizer’s review finds any fiscal issues – the legislation requires that the contract contain signed assurances by the members of the governing body regarding compliance with all federal and state laws governing applicable financial requirements, among other things. Furthermore, the charter school contract legislation also prohibits a member of the school’s governing body, as well as immediate family members, from having any financial interest in a for-profit or nonprofit entity contracting with the charter school for professional services, goods, or facilities.

Clearly, this legislation changes the relationship between charter schools and their authorizers, and it expands the responsibilities of both parties. Although no specific plans are available yet, the Charter Schools Division in PED’s Options for Parents has begun preparing for the implementation of these provisions in July 2012.

A National Perspective on Charter Schools and Charter School Policies in New Mexico

During the August 2010 meeting, the LESC heard a presentation by Dr. Lisa Grover, who at the time was the Chief Executive Officer, New Mexico Coalition for Charter Schools (NMCCS), about quality initiatives that the coalition was pursuing. One of those initiatives was a framework for building charter school quality in New Mexico that had been developed by members of the NMCCS as part of a national effort. The framework is modeled on *A Framework for Academic Quality: A Report from the National Consensus Panel on Charter School Academic Quality* (June 2008). This report states that it is the product of a national effort

called Building Charter School Quality (BCSQ), a three-year project funded by the Charter Schools Program in the US Department of Education.

For this presentation, Dr. Grover, who is now the Senior Director of State Advocacy for the National Alliance for Public Charter Schools, will continue the discussion of the BCSQ recommendations to improve the charter school environment. She will be joined by Mr. David Hansen, Vice President for Policy and Advocacy, National Association of Charter School Authorizers; and together they will offer some observations on quality authorizing of charter schools, the potential effects of New Mexico's charter school contract legislation, and the charter school appeals process. Both Dr. Grover and Mr. Hansen, incidentally, are members of the LESC Work Group on Charter School Appeals.



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PRESS RELEASE

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Public Education Commission Schedules Community Input Hearings in August for 21 New Charter School Applicants

Santa Fe – The New Mexico Public Education Commission (PEC) has scheduled community input hearings for 21 new charter school applicants August 8-12, 2011 in various locations around the state.

The hearings will be held in Las Cruces, Deming, Albuquerque, Moriarty, Taos, Penasco, Espanola, Santa Fe, and Gallup for charter schools who have applied for authorization through the PEC. The PEC became the official state authorizer for charter school in 2006 with the passage of the New Mexico Charter Schools Act.

Each community public input hearing is scheduled for 90 minutes. During the public hearings, members of the PEC will listen to presentations from the charter school applicants. Following this presentation, local school district representatives and members of the public will have an opportunity to speak for or against the proposed school. The PEC will then have an opportunity to question the applicant(s) on their charter application.

Public input about any of the charter school applications may also be received in writing to the PEC by sending letters or emails to New Mexico Public Education Commission, c/o Beverly Friedman, 300 Don Gaspar, Santa Fe, New Mexico 87501 or Bev.Friedman@state.nm.us. Public input for each charter application will be accepted for three business days after the applicant's PEC hearing. The deadline for input is 5:00 p.m. of the third business day after each applicant's hearing.

PEC members will vote to authorize or deny the applications at their next PEC meeting.

A complete listing of the community input hearings is attached to this release and is also available at www.ped.state.nm.us. Applications for the 21 new charter schools is located at <http://www.ped.state.nm.us/Charter/2011/index.html>. Any questions about the hearings can be directed to the New Mexico Public Education Department's Charter Schools Division at 505-222-4762.

****Schedule is attached to this release.**

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2011 Community Input Hearings ----- August 8-12, 2011

Date	District	School	Time	Place	Last Day for Public input
Monday August 8, 2011	Las Cruces	New America *The Great Academy	8:00 am	Hotel Encanto 705 South Telshor San Augustine Room Las Cruces, NM 88011	August 11 at 5:00 pm
	Deming	Columbus Community School	1:30 pm	Community Center 500 N. Boundary Columbus, NM	August 11 at 5:00 pm
Tuesday August 9, 2011	Albuquerque	Southwest Aeronautics *The Electus Academy *William W. & Josephine Dorn Charter Community School	8:00 am	Anderson-Abruzzo Albuquerque International Balloon Museum 9201 Balloon Museum Dr. NE Albuquerque, NM 87113	August 12 at 5:00 pm
			Afternoon Session		
Wednesday August 10, 2011	Albuquerque	Pursuit Academy *Truly Educate *Coral Community Charter	8:00 am	Anderson-Abruzzo Albuquerque International Balloon Museum 9201 Balloon Museum Dr. NE Albuquerque, NM 87113	August 15 at 5:00 pm
Thursday August 11, 2011	Taos	TIHMS	8:00 am	Rio Grande D 120 Civic Plaza drive Taos, NM 87571	August 15 at 5:00 pm
	Penasco	*La Jicarita Community School	11:00am	Penasco Community Center 14136 State Rd 75	August 15 at 5:00 pm
	Española	*McCurdy *La Tierra	2:30 pm	Northern New Mexico College 921 Paseo de Oñate Española, NM 87532	August 15 at 5:00 pm
	Friday August 12, 2011	Santa Fe	StarShine *Santa Fe Trail	8:00 am	Public Education Department Mabry Hall 300 Don Gaspar Santa Fe, NM 87501
				3:30 pm	
	Gallup	*Uplift Community School	3:30 pm	UNM Gallup Campus 200 College Rd Auditorium Room CH 248 Gallup, NM 87301	August 15 at 5:00 pm

*Denotes that the times will depend on the length of the previous hearing and will begin as soon as the previous hearing is completed. The last day the Public Education Commission (PEC) will accept input from the applicant will be 3 calendar days after the public hearing at 5:00 pm. Written input or emails should be sent to Beverly Friedman at 300 Don Gaspar Ave., Santa Fe, NM 87501 or bev.friedman@state.nm.us.

LESC WORK GROUP ON CHARTER SCHOOL APPEALS

Members:

Kim Bannerman, Staff Attorney
Legislative Council Service

Gene Gant, Commissioner
Public Education Commission

Lisa Grover, Senior Director of State Advocacy
National Alliance for Public Charter Schools

Rachel Gudgel, Senior Fiscal Analyst
Legislative Finance Committee

Joe Guillen, Executive Director
New Mexico School Boards Association

Bobbie Gutierrez, Superintendent
Santa Fe Public Schools

David Hansen, Vice President for Policy and Advocacy
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