



STATE OF NEW MEXICO
PUBLIC EDUCATION COMMISSION

300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-6661
www.ped.state.nm.us

SUSANA MARTINEZ
GOVERNOR

HANNA SKANDERA
SECRETARY-DESIGNATE OF EDUCATION

M. Andrew Garrison, Chair
District 1, Albuquerque
Term Expires: 12-2012
Health & Wellness Administrator
Bernalillo County Government

Carolyn Shearman, Vice-Chair
District 9, Artesia
Term Expires 12-2012
Artesia Board of Education/VP
Retired Dean Division of Business and Science
Eastern NM University

Eugene Gant, Secretary
District 7, Las Cruces
Term Expires 12-2014
Retired Army Officer
Member, PSCOC
Member, NM Public Library Commission
Past member: Las Cruces Board of Education

Millie Pogna, Member
District 2, Albuquerque
Term Expires 12-2014
State Board of Education/NM Public
Education Commission since 1978

Michael Canfield
District 3, Albuquerque
Term Expires 12-2012

Carla Lopez, Member
District 4, Santa Fe
Term Expires 12-2012
Public Information Administrator

VACANT
District 5, Gallup-McKinley

Gilbert G. Peralta, Member
District 6, Socorro
Term Expires 12-2014
Elementary School Principal
Socorro Public Schools

Vince Bergman, Member
District 8, Roswell
Term Expires 12-2012
Retired Business owner

Jeff Carr, Member
District 10, Taos
Term Expires 12-2012
High school teacher
Taos Public Schools
Mayor Pro Tem, Eagle Nest, NM
Municipal Judge 2005-2008

PEC REPORT TO THE LESC

August 24, 2012

Introduction

The Public Education Commission (PEC) was created by Constitutional amendment in 2003 with duties assigned through various statutes. 22-8B-16 NMSA 1978 grants to the Commission specific duties and powers relating to charter schools: "The commission shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove those charter applications. The commission may approve, deny, suspend or revoke the charter of a state-chartered charter school in accordance with the provisions of the Charter Schools Act." The statute goes on to detail how chartering authority for a charter school existing before July 1, 2007 may be transferred from an LEA to the Public Education Commission.

PEC ISSUES

I. APPEAL PROCESS

The most pressing issue the public education commission faces is that its role as state authorizer has been diminished to being advisory only by the circuitous appeal process:

In determining whether to accept or deny an initial charter application, the PEC Commissioners read and thoroughly evaluate each application, read and consider the recommendations and in-depth evaluations on each application provided by the Public Education Department (PED) Charter School Division (CSD), hold public hearings throughout the state to gather input from the founders, supporters, and opponents of each proposed charter school, and vote in an open meeting to either approve or deny (with stated reasons) the application.

The process for deciding whether to accept or deny a renewal charter school application is somewhat shorter in that the school does not present a full application, only any proposed changes to the current charter, as well as all required information pertaining to past performance. Again, the decision to approve or deny the renewal application is made in an open meeting with reasons stated for denial.

Appeals of PEC decisions may be made by the charter school applicant to the Secretary of Education as authorized by 22-8B-7 (A) NMSA 1978 which states: "The secretary, upon receipt of a notice of appeal or upon the secretary's own motion, shall review decisions of a chartering authority concerning charter schools in accordance with the provisions of this section." Section B defines the process and concludes with the sentence: "The decision of the secretary shall be final."

According to a staff report to the Legislative Education Study Committee (LESC) on May 25, 2011, "This appeal route places the Secretary between two opposing parties: on one side, the charter applicant; and on the other, an elected statewide body that, among other duties advises the secretary on education policy and that considers in its deliberations the recommendations of a division within the department that the secretary oversees."

As also noted by the LESC staff report, "A different dimension to this complex relationship emerged in a similar case in 2007. At that time, the CSD recommended that the PEC approve the application of Cottonwood Classical Preparatory School; however, the Commission acted contrary to the CSD recommendation and denied the application. Cottonwood Classical then appealed to Secretary of Education Dr. Veronica Garcia, who reversed the PEC's decision. In the appeal hearing, the staff of the CSD found themselves in the position of representing the PEC for an action taken against the staff recommendation."

Another example of this complex issue is the 2010 reversal by the Acting Secretary of Education of the PEC's denial of the GREAT Academy's application—which was made in concurrence with the Charter Schools Division recommendation. In her Decision and Order, the acting secretary placed an unprecedented total of ten (10) conditions on the school. These conditions were the same basic issues the Commissioners found to be the problems with the original application.

When the Secretary of Education overturns their decision(s), the PEC does not have the same recourse as the applicant, which is legal action in district court. Several applicants have taken this avenue; however, even if the statutes allowed the PEC to appeal the reversal decision, the PEC realistically cannot pursue this action as they do not have dedicated legal counsel funds available to support such action.

An LESC task force studying the appeals process during the 2011 interim found that many states use methods other than having the Secretary of Education, or equivalent, serve as the appeal authority; this better serves all parties involved with appeals with regard to a separation of duties.

The PEC does not have its own staff to provide day-to-day support for the commission. The current staff of one also provides support to other offices with the PED. Statute provides that the PED's Charter Schools Division shall serve as the PEC's staff. With our state's education under governor control, the PEC has had to work with four different division heads since 2008: Dr. Don Duran, Mr. Sam Obenshain, Ms. Patty Matthews, and Ms. Kelly Callahan. With so much organizational turnover, we have lost a lot of our work and risk a future with little institutional history with regard to charter schools.

Currently, there are fifty-two (52) state chartered charter schools in New Mexico with the PEC charged with oversight and charter renewal evaluation duties. The oversight work is conducted by the CSD through regularly scheduled visits to the schools and review of annual reports and audits. The staff of the CSD is limited. The authorized staff is for eight individuals under the leadership of the Director for Parent Options Division. The CSD is tasked to provide staff support to the PEC, perform annual reviews and inspections of all state chartered charter schools, to provide technical support to all charter schools within the State of New Mexico, review and approve state-authorized charter school budget matters, review and make recommendations for authorization or denial for new and renewal charter school applications, interface with PED Departments and other state agencies for information pertaining to charter schools, and provide support as requested by School Districts relative to their charter schools.

II. LACK OF RULE-MAKING AUTHORITY

Minimum Educational Standards: In December 2010, the PEC declined to renew the charters of three (3) then-district chartered schools to be renewed as state chartered charter schools. The Commissioners in making their decision stated that the charter renewal must be denied because the charter school:

Failed to meet or make substantial progress toward achieving student performance standards identified in the charter application or the **department's minimum educational standards**, which the PEC considers to be adequate yearly progress (AYP) per the federal *No Child Left Behind Act of 2001*. (emphasis added)

In her Decision and Order in each case, the Secretary of Education Designee reversed the decision of PEC for the three charter schools. As the Secretary of Education Designee explained, "the term [department's minimum educational standards] is not defined in current law or rule; rather it is a vestige of an earlier time, prior to the enactment of education reform legislation in 2003."

Also in each of the three cases, the Secretary-Designee states:

Until and unless the Legislature clarifies the clearly obsolete language in Section 22-8B-12(G) permitting a charter school to be denied renewal if it "failed to meet or make substantial progress toward achievement of the department's minimum educational standards . . . [,]" I decline to uphold an authorizer's nonrenewal of a charter application solely or primarily on the basis that it did not meet AYP.

Each Decision and Order also cites:

Despite the PEC's assertion that "part of the 'charter school bargain' is accountability to increase student performance in exchange for freedom and incentives to be creative," there is no requirement in law that charter schools demonstrate a higher standard than traditional public schools, nor does law or rule "impose a basic charter school bargain that charter schools have greater autonomy in exchange for greater accountability." (LESC staff report, May 25, 2011)

Definitions of Material Violations of the Charter School Contract: 22-8B-12-F (1) states: "A charter may be suspended, revoked or not renewed by the chartering authority if the chartering authority determines that the charter school "committed a material violation of any of the conditions, standards or procedures set forth in the charter"

Currently, neither statute nor rule definitively establishes what constitutes a material violation of a charter school charter. To date, no rules have been proposed by PED addressing the issue of minimum educational standards," or "material violations" thus leaving the PEC Commissioners a standard to be used when evaluating the new group of renewals that will be filed October 1, 2012. Current statute still requires the applicants to meet the department's minimum educational standards that the Secretary-Designee has stated are not valid.

The issue of non-definition of what is or is not a material violation of a school charter leaves the PEC Commissioners and local school boards without firm ground upon which to make a decision of the revocation or denial of a charter renewal. As hypothetical examples, a charter can clearly state that the school will NOT charge students to attend classes, or that it has established a waiting list and students will only be admitted to the school based on that list, knowing that a violation of either would likely have no consequences.

This issue has been discussed by the PED, CSD and PEC for several years without resolution or any movement forward to establish rule(s) as guidance to the PEC or LEAs.

III. ESTABLISH PEC AS AN INDEPENDENT BODY

The PEC is asking the LESL to support legislation making the Public Education Commission an independent body with the authority to carry out all statutory duties and responsibilities, rule-making authority in the matter of charter schools, operational control of a dedicated staff sufficient to support the work of the Commission, and a line-item budget sufficient to accommodate the Commission's duties and responsibilities

This request includes the elimination of the appeal process (22-8B-7 (A), (B), and (E); retaining only

sections (C) and (F). Section F would need to be amended to read: "A person aggrieved by a final decision of the secretary *PEC or local school board* may appeal the decision to the district court pursuant to the provisions of Section 9-3-1.1 NMSA 1978.

Rationale:

- As the charter school movement continues to grow in New Mexico, the workload for the PEC and its staff, the Charter Schools Division of PED, continues to grow as well. Letters of Intent received indicating an interest in establishing a state-chartered charter school in the state numbered 43 for school year 2013-14. PEC/CSD received 46 Letters of Intent for school year 2012-13, 43 in 2010, 32 in 2009, 36 in 2008, and 25 in 2007.
- Of the 43 letters received for school year 2013-14, four (4) were from out-of-state charter management organizations (CMOs) and one (1) was from an in-state party seeking to establish a virtual school. These CMOs, all self-identified as nonprofit organizations, indicated an intent to establish 18 schools in multiple locations during the first charter school term if approved as state chartered charter schools. To date, the PED has established no rules and/or procedures to adequately address the complex issues related to virtual schools. These schools are becoming increasingly popular throughout the country and necessitate special and specific rules and procedures for initial approval/denial, oversight, and renewal.
- The PEC and its on-loan staff in the PED's Charter Schools Division complete the charter school application evaluation in a very short period of time with the ultimate approval or denial of the applications following the process stated previously. It is a lengthy, time consuming, and exacting process that is designed to be fair to all parties and help ensure that students in New Mexico receive the best education possible.
- Approval or denial of applications for new charter schools as well as renewal of existing charter schools are still made using statutory language not supported by rule or legislation.

The following is an excerpt from an opinion letter provided by Cuddy & McCarthy law firm, July 2, 2012, detailing "Powers, Duties and Responsibilities of the Public Education Commission" :

"Rather than the State Constitution, the powers and duties of the Commission are found in various statutes. Thus, a constitutional amendment would not be required to change the powers and duties of the Commission. Instead, simple statutory changes through the legislative process could be used to make such changes. Since one of your duties in state statutes is to provide information and recommendations to the legislature, the Commission can recommend, to the legislature, changes."

PEC has other equally important concerns. Among them are:

- Public Education Five-Year Strategic Plan: Section 22-2-2.2 outlines, among other duties of the PEC, that "the Commission will work with the PED to develop the five-year strategic plan for public elementary and secondary education in New Mexico. ."

Part B states that the commission shall "(1) solicit input from local school boards, school districts and the public on policy and governance issues and report its findings and recommendations to the secretary and the legislature, and (2) recommend to the secretary conduct and process guidelines and training curricula for local school boards."

In our very early existence as the PEC, Commissioners were involved with the writing of the strategic plan for the PED that was to serve as the plan for elementary and secondary education in New Mexico.

The PED Strategic Plan 2011, Kids First, New Mexico Wins, was written and published without any input from the PEC.

- Charter School Legislation: There has been a lack of inclusion of PEC Commissioners in the development of legislation and rule making process that directly affect the charter schools that have been authorized by the PEC. Example: SB446. It was only by accident that a Commissioner found out that SB446 was being brought before legislative committees prior to vote on the Senate floor. Some of the original language in SB446 would not have been in the best interest of the current or future charter schools in New Mexico.
- Charter School Facilities and the Eighteen (18) Month Plan:

HB283 lists facility requirements that must be met by charter schools. It does not have any definitive ramifications in statute if the school does not meet the requirement to "meet or exceed the wNMCI standard". There are no rules or guidelines for the PEC or LEA to follow should the charter school fail to meet this obligation. The State of New Mexico is paying the State Equalization Guarantee (SEG) associated with the students who attend the school and providing funds through the Lease Assistance program. Many charter schools are paying more for the leases than received in Lease Assistance. In some cases the amount of the lease is a great deal more than provided through Lease Assistance.

The Eighteen Month Plan allows new charter school applicants to begin school in buildings that do not meet the wNMCI average. If the charter applicants have a plan, approved by PSFA, which details how the school will be housed in approved facilities within an eighteen-month period. Currently, neither the PEC nor LEAs have statutes or rules that define action steps at the end of eighteen (18) months. It is possible that an appeal would be granted to the school even if the facilities do not meet wNMCI as required in HB283.