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August 22, 2012

**MEMORANDUM**

**TO:** Legislative Education Study Committee  
**FR:** David Harrell  
**RE: STAFF REPORT: CHARTER SCHOOLS: UPDATE**

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**Introduction**

During the July 2012 interim meeting, the Legislative Education Study Committee (LESC) heard a staff update on charter schools that described the status of the 12 charter schools that had been approved in 2011 and that reviewed the 14 applications for new charter schools to open in school year 2013-2014. Also in July, the committee heard a staff report providing an overview of the features, issues, questions, and other matters related to virtual charter schools.

This staff report for the August 2012 LESC meeting will:

- update yet again the status of those schools scheduled to open in fall 2012;
- review the schedule of public hearings for the 14 new applications; and
- provide additional information about virtual charter schools, together with some policy options that the LESC might consider.

**Status of Approved Charter Schools for School Year 2012-2013**

***State-chartered Charter Schools***

On June 27, 2012, the Public Education Commission (PEC) held the first of two meetings at which commissioners heard status reports on the 11 charter schools that the PEC had approved, with conditions, in 2011. As reported to the LESC in July, only one of the 11 approved schools

– Southwest Aeronautics, Mathematics, and Science Academy – had met all of the conditions by the time of the June PEC meeting; and another school – La Jicarita Community School – had requested and been granted an additional planning year.

By the time of the second PEC meeting (August 9, 2012), two other schools – Mission Achievement and Success and McCurdy Charter School – had satisfied all the conditions; however, as reported by the Public School Facilities Authority (PSFA) and the Charter Schools Division (CSD) at the Public Education Department (PED), seven other charter schools still had conditions outstanding, whether with regard to facilities or school policies:

- Coral Community Charter, Sage Montessori Charter School, and William W. and Josephine Dorn Charter Community School, in Albuquerque;
- Estancia Valley Classical Academy, in Moriarty;
- La Tierra Montessori School of the Arts and Sciences, in Española;
- New America School, in Las Cruces; and
- Uplift Community School, in Gallup.

During their discussion of these schools in August, commissioners raised points similar to those raised during the June PEC hearing (see “Background,” below), and they expressed their continued concern that so many conditions remained unmet so close to the beginning of school. The Director of the CSD explained that, in some cases, schools had delayed their starting dates to address the outstanding conditions. Even so, as this staff report was being completed (August 20, 2012), the status of some schools was still pending.

According to the CSD and school officials:

- Coral Community Charter and the New America School have satisfied the remaining conditions, and both schools opened on Monday, August 20; and
- William W. and Josephine Dorn Charter Community School has submitted all required plans and policies to the CSD;
- however, with the other four schools, certain conditions still remain to be addressed:
  - Estancia Valley Classical Academy is awaiting zoning approval, to be considered at a meeting on August 22;
  - La Tierra Montessori School of the Arts is awaiting its educational occupancy certification;
  - Sage Montessori Charter School is expecting its educational occupancy certification during the week of August 20 and planning to begin school on August 27; and
  - Uplift Community School has received its educational occupancy certification for two of three portables, with the third expected to arrive (and meet the standards) on August 21, with school scheduled to begin on September 4.

### ***Locally Chartered Charter School***

The only locally chartered charter school approved in 2011 was the New Mexico Virtual Academy (NMVA), a virtual charter school approved by the Farmington Municipal Schools Board, also with conditions (see “Background,” below). In addition to its report on the facilities of the state-chartered charter schools at the PEC hearing on August 9, the PSFA noted that the facility that the NMVA planned to use as its learning center had not yet achieved

educational occupancy status. However, on August 20, the PSFA notified the school that the facility had met the weighted condition index criterion and had been certified for educational occupancy.

### **New Applications for School Year 2013-2014**

As noted during the staff update in July, the CSD received 14 applications to open new charter schools in school year 2013-2014; and no applications were submitted to local school boards. The 14 applications submitted to the PEC include applications from three of the four out-of-state organizations profiled in the June LESC staff update:

- Academic Opportunities Academy, headquartered in El Paso, Texas, has carried through with its plans to open charter schools in Alamogordo, Anthony, Carlsbad, Deming, and Las Cruces;
- Connections Education, based in Maryland, has applied to open a single virtual charter school in Santa Fe; and
- Starshine Academy, headquartered in Phoenix, which had submitted notices of intent for four schools, has applied to open only one, the Lisa Law Peace School, in Santa Fe.

The other applications submitted to the CSD are from:

- Columbus Community School, located within the Deming Public Schools district;
- Electus Academy, Health Leadership High School and, Indigo Hill Charter School, all located within the Albuquerque Public Schools (APS) district;
- Health Sciences Academy, located within the Gadsden Independent Schools district; and
- Taos International School and Taos Mountain Charter School, in Taos.

As required under the *Charter Schools Act*, the PEC has scheduled public hearings on these applications in the affected districts during the week of August 20 (see Attachment 1 for the schedule of hearings).

### **Additional Information about Virtual Charter Schools**

#### ***Updates***

Since the staff report in July, there have been some notable developments related to virtual charter schools:

- According to media reports, North Carolina Learns, Inc. (NC Learns) – the nonprofit organization that, together with K12 Inc., had sought to open a locally chartered virtual charter school – has decided to appeal the decision of the Superior Court overturning an administrative judge’s decision and thereby denying the charter. The attorney representing NC Learns before the state Court of Appeals is a sitting member of the North Carolina State Senate.
- After issuing the request for proposals in July 2011, the US Department of Education (USDE) has funded the Center on Online Learning and Students with Disabilities. A cooperative project of the Center for Research on Learning at the University of Kansas,

the Center for Applied Special Technology, and the National Association of State Directors of Special Education, this new center is exploring “how online learning can be made more accessible, engaging, and effective for K-12 learners with disabilities by investigating approaches that address learner variability within the range of conditions under which online learning occurs.” Three of the center’s updates posted in August 2012 illustrate some particular areas of inquiry:

- *Advantages and Disadvantages for Special-Needs Students in Online Learning;*
  - *Do Charter Schools Avoid Students with Disabilities?;* and
  - *Making Online Learning Work for Students with Disabilities.*
- The National Education Policy Center at the University of Colorado in Boulder recently published a study of full-time virtual schools run by the company K12 Inc. in five states: Arizona, Arkansas, Idaho, Ohio, and Pennsylvania.
    - “While we share the excitement of new technologies and the potential these have to improve communication, teacher effectiveness, and learning,” the report concludes, “we are convinced policymakers should move forward cautiously and only after piloting and thoroughly vetting new ideas.”
    - In fact, this report recommends that policymakers slow the growth of or put a moratorium on full-time virtual schools until questions about student achievement can be answered.<sup>1</sup> Also needed, this report says, are suitable performance measures and funding mechanisms that reflect the actual costs of educating students.
  - According to a recent story in *Education Week* (August 8, 2012) educators are becoming concerned about the effects of online instruction on the roles and the employment of teachers. A case in point is Eagle County Schools (Colorado), which recently cut three foreign-language teacher positions (in French and German) and replaced them with online instruction as one of several means of addressing a budget shortfall.
  - Both the PEC and the staff of the Legislative Finance Committee (LFC) have expressed interest in working with the LESC to address the issues raised by virtual charter schools.

### ***Policy Options***

Given the information about virtual charter schools that the committee has received so far during the 2012 interim, as well as the interest of the PEC and the LFC staff, members may

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<sup>1</sup> The Assembly in New Jersey recently passed a bill for a one-year moratorium on virtual charter schools, but the Senate took no action. However, in July 2012 the New Jersey Department of Education deferred approval of a full-time virtual charter school using the K12 Inc. curriculum and other services, directing the school to a planning year instead. One of the objections to the school was that virtual charter schools are neither contemplated nor authorized by the state legislature. In a similar vein, two applicants for virtual charter schools in Maine recently withdrew their applications after the Maine Charter School Commission decided to postpone decisions on virtual charter schools because of concerns about school governance and quality. And in Iowa a recent legislative analysis has questioned the authority of the Iowa Department of Education (DOE) under current state law to authorize two online-only academies: one affiliated with K12 Inc. and the other with Connections Education. According to this analysis, the concern is not the technology but the role of legislature, rather than the DOE, in making “thoughtful and effective law in [this] area.”

wish to consider legislation for the upcoming long session in 2013. If so, there are at least three major policy options:

- prohibit virtual charter schools (an option that the committee entertained in 2010<sup>2</sup>);
- delay approval of other virtual charter schools until outstanding questions and issues can be addressed; or
- review the *Public School Code* and perhaps other parts of state law to identify those sections that may affect or be affected by virtual charter schools and amend or repeal them as needed or enact new sections to accommodate and regulate virtual charter schools.

Of course, the first option would have to account in some way for the NMVA in Farmington. It might also include an expansion of the Statewide Cyber Academy either to enhance the opportunities for blended learning for students throughout the state or to provide a statewide virtual public school. The other two options would require a thorough review of state law at some point, whether this interim or next. Attachment 2 suggests the level of detail that this review might involve.

The fundamental concepts of virtual charter schools could be addressed either through piecemeal amendments to the *Charter Schools Act* (as illustrated in Attachment 2) or through the enactment of a new article in the *Public School Code*, something on the order of the *New Mexico School for the Arts Act*. In that case, the charter school authorized through that act was thought to be different enough from charter schools in general that a new article was needed; and a similar argument could be made for virtual charter schools as well. This approach could be facilitated through a review of virtual charter school laws in other states<sup>3</sup> and a review of the principles of model legislation recommended by the International Association for K-12 Online Learning.

Whatever approach is taken to address virtual charter schools through legislation, several acts and laws in addition to the *Charter Schools Act* would merit review, among them:

- the *Assessment and Accountability Act*;
- the *Compulsory School Attendance Law*;
- the *Public School Capital Outlay Act*;
- the *Public School Finance Act*;
- the *School Personnel Act*; and
- the *Statewide Cyber Academy Act*.

In addition, a review of tax laws – the *Corporate Income and Franchise Tax Act* and provisions for gross receipts taxes, for example – may also be in order to determine what tax liability may

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<sup>2</sup> In the 2010 legislative session, a bill sponsored by the LESC defined a virtual charter school as “an educational program that uses a proprietary curriculum and that is designed to deliver more than one-half of the program to the student electronically in the student’s home or other site that is not a public school.” Except for the Statewide Cyber Academy and IDEAL-NM, the bill would have prohibited virtual charter schools in New Mexico. Ultimately, action on the bill was postponed indefinitely when the House Rules Committee found it not germane.

<sup>3</sup> The Education Commission of the States has compiled educational technology and virtual school legislation enacted since 2000. In 2012 alone, laws enacted in Florida, Georgia, Utah, Michigan, and Rhode Island, among other states, seem to address issues applicable to New Mexico.

be incurred by the providers of virtual education programs, many of them private companies headquartered in other states.<sup>4</sup>

Finally, as the July staff report suggested, technology has created educational opportunities and techniques that state law never envisioned and, in most cases, has yet to address; and virtual charter schools can be an effective educational approach for certain students under certain conditions. Part of the challenge for policymakers is to ensure educational quality without stifling innovation.

## **Background**

### ***State-chartered Charter Schools***

As already noted, the PEC placed several conditions on its approval in September 2011 of the 11 applicants for state-chartered charter schools. At a hearing on June 27, 2012, the PEC heard testimony not only from representatives of these 11 schools but also from the PSFA and the CSD regarding the schools' progress toward meeting those conditions, as well as the requirements of the CSD's planning year checklist.

While all of the schools had met most of the conditions, only one – Southwest Aeronautics, Mathematics, and Science Academy – had met them all as of June 27. In some cases, the deficiencies were related to incomplete items in the planning year checklist; in other cases facilities were the issue: the buildings had not met the educational occupancy standard, they did not satisfy the weighted condition index prescribed in legislation enacted in 2011, or both.

Overall, however, both the PSFA and the CSD indicated that the schools were making progress toward meeting the remaining conditions, in most cases by either August or early September. The CSD in particular emphasized the work that the schools had been performing during their planning year, including attending several training sessions hosted by the CSD and pursuing a variety of means to secure suitable facilities.

Before hearing the individual cases and acting on resolutions regarding the schools' commencement of operations, PEC members discussed the circumstances of approval, with particular attention to the 2011 legislation noted above. That legislation, in effect for the first time this year, provides as follows:

A new charter school shall not open and an existing charter school shall not relocate unless the facilities of the new or relocated charter school, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for that year or the charter school demonstrates, within eighteen months of occupancy or relocation of the charter, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.

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<sup>4</sup> On this point, the July staff report highlighted the business relationship between a virtual charter school and the provider of the virtual education program. Since then, a column in the *Washington Post* (August 17, 2012) has reported an interview with the head of an investment firm called Entertainment Properties Trust, who says that charter schools in general are a wise part of an investment portfolio because they are a safe, stable, high-demand, recession-resistant business, funded through public money and supported through bipartisan efforts.

That provision notwithstanding, however, commissioners were advised by legal counsel that they could approve the schools with conditions once again, with the understanding that the schools cannot open their doors until the additional conditions are met.

The prospect of conditional approval led to a discussion of funding. Because the charter schools would begin receiving their State Equalization Guarantee as of July 1, commissioners asked what would happen if, after all, one or more of the schools failed to meet the conditions in time to open this year. In response, the Deputy Secretary of Finance and Operations at PED, explained that the funds would have to be returned. An additional issue, the Deputy Secretary noted, would be any contracts with teachers and other staff members. On this point, legal counsel suggested that the school would have to discharge employees through a reduction-in-force process.

With these points in mind, the PEC members heard presentations by each of the 11 schools, asking numerous questions not only about facilities but also about school policies, special education services, and other aspects of the schools' operations. In accordance with the recommendations of the CSD, the PEC granted 10 of the schools authorization to commence full operations as state-chartered charter schools – in nine of the cases, however, on the condition that the school “cannot occupy a facility with students” until the specified conditions are met.

One school, La Jicarita Community School, asked for an additional planning year because it had been unable to obtain a suitable facility. That request was granted, with the understanding that the school must apply in spring 2013 for authorization to commence operation and that, when finally approved, the charter would be for only four years.

### ***Locally Chartered Charter School***

Like the 11 schools approved by the PEC, the NMVA, approved by the board of Farmington Municipal Schools in September 2011, worked during its planning year to meet the conditions applied by the school board. The NMVA submitted a number of documents intended to satisfy these conditions; however, at a meeting on June 14, 2012, the school board tabled approval because some expected amendments to the memorandum of understanding between the school's governing body and the provider of the virtual educational program, K12 Inc., had not been completed and because the special education policies and procedures were not sufficiently aligned with the district's manual.

During the meeting on July 17, the board approved the application with the additional condition that the facility to be used as the learning center meet the educational occupancy standard by August 15. As noted above, that final condition has been met.

2012 Community Input Hearings -- August 20-24, 2012

Date	District	School	Time	Place	Last Day for Public input**
<b>Monday August 20, 2012</b>	<b>Taos</b>	Taos International School	<b>9:00 am</b>	Taos Coronado Hall El Taoseno Room 120 Civic Plaza Dr. Taos, NM 87571	August 23 at 5:00 pm
	<b>Taos</b>	* Taos Mountain Charter School	<b>10:30 pm</b>		August 23 at 5:00 pm
Afternoon Session	<b>Santa Fe</b>	*New Mexico Connections (Virtual School)	<b>2:00 pm</b>	Public Education Department Mabry Hall 300 Don Gaspar Santa Fe, NM	August 23 at 5:00 pm
		*Starshine Lisa Law Peace School	<b>3:30 pm</b>	Public Education Department Mabry Hall 300 Don Gaspar Santa Fe, NM 87501	August 23 at 5:00 pm
<b>Tuesday August 21, 2012</b>	<b>Albuquerque</b>	Indigo Hills Charter School	<b>8:00 am</b>	New Mexico Activities Association 6600 Palomas Ave. NE Albuquerque, NM 87109	August 24 at 5:00 pm
		*Health Leadership Academy	<b>9:30 am</b>		August 24 at 5:00 pm
		*The Electus Academy	<b>11:00 am</b>		August 24 at 5:00 pm
<b>Wednesday August 22, 2012</b>	<b>Deming</b>	Columbus Community School	<b>9:00 am</b>	Community Center Columbus, NM	August 25 at 5:00 pm
	<b>Deming</b>	* Academic Opportunities Academy	<b>11:30 am</b>	Conference Center 119 E. Pine Street Deming , NM 88031	August 25 at 5:00 pm
Afternoon Session	<b>Las Cruces</b>	*Academic Opportunities Academy	<b>4:00 pm</b>	Frank Obrien Papen Community Center 304 W. Bell St. Las Cruces, NM 88005	August 25 at 5:00 pm

<b>Thursday August 23, 2012</b>	<b>Gadsden</b>	Academic Opportunities Academy-Anthony  *Health Science Academy	<b>8:00 am</b>  <b>9:30 am</b>	Women's Intercultural Center 303 Lincoln St Anthony, NM 88021	August 26 at 5:00 pm
	<b>Alamogordo</b>	*Academic Opportunities Academy	<b>1:30 pm</b>	Alamogordo Family Recreation Center 1100 Oregon Ave. Alamogordo, NM	August 26 at 5:00 pm
<b>Friday August 24, 2012</b>	<b>Carlsbad</b>	Academic Opportunities Academy	<b>8:00 am</b>	Riverwalk Recreation Center Power House Room 400 Riverwalk Drive Carlsbad, NM	August 27 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.

\*\*Deadlines listed above for Public Input will be strictly enforced. Public Input can be sent electronically to:

<http://www.ped.state.nm.us/Comments> and written input should be sent to Public Education Commission, c/o Beverly Friedman at 300 Don Gaspar Ave., Santa Fe, NM 87501.

**A SAMPLE OF STATUTORY PROVISIONS  
THAT MAY NEED REVIEW OR AMENDMENT  
TO ADDRESS VIRTUAL CHARTER SCHOOLS**

Statutory Citation	Provision	Issue	Policy Options
22-1-2 E	<p>The term “home school” means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science.”</p> <p>The term “public school” means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school.”</p>	<p>Because students in a virtual charter school typically log on from home and because a parent is usually expected to oversee or even provide instruction, this definition of the term “home school” may be insufficient to distinguish a virtual charter school from a home school.</p> <p>Because a virtual charter school may exist only on the Internet, with no brick-and-mortar presence, it may not satisfy the definition of the term “public school.”</p>	<p>Amend the definition to clarify that it excludes virtual charter schools (see 22-8B-2); or amend the definition to clarify that it includes virtual charter schools, thereby making them non-public schools.</p> <p>Leave unchanged, subject to interpretation; or amend this provision specifically to exclude virtual charter schools or to clarify that they are therefore not permitted.</p>
22-1-2 L	<p>The term “school” means a supervised program of instruction designed to educate a student in a particular place, manner and subject area.”</p>	<p>Because a virtual charter school may exist only on the Internet, with no brick-and-mortar presence, it may not satisfy the definition of the term “school.”</p>	<p>Leave unchanged, subject to interpretation; or amend this provision specifically to exclude virtual charter schools or to clarify that they are therefore not permitted.</p>
22-1-2 M	<p>The term “school” means a supervised program of instruction designed to educate a student in a particular place, manner and subject area.”</p>	<p>Because a virtual charter school may exist only on the Internet, with no brick-and-mortar presence, it may not satisfy the definition of the term “school.”</p>	<p>Leave unchanged, subject to interpretation; or amend this provision specifically to exclude virtual charter schools or to clarify that they are therefore not permitted.</p>

Statutory Citation	Provision	Issue	Policy Options
22-1-4 E	<p>"A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include: definition of the school district boundary and the boundaries of attendance areas for each public school . . . [and] areas designated as 'walk zones' . . ."</p> <p>[Definitions]</p>	<p>Even though this provision excludes charter schools, its references to physical boundaries and walk zones suggests the intent of the Legislature to define a public school in terms of the physical presence of children in school buildings (see 22-1-2 L and M).</p>	<p>Amend this provision to accommodate virtual schools, including virtual charter schools.</p>
22-8B-2	[Definitions]	<p>The term "virtual charter school" is neither used nor defined in the <i>Charter Schools Act</i>.</p>	<p>Provide a definition, perhaps based on HB 191 (2010), definitions used in other states' laws, definitions used by professional organizations, or some combination of the above.</p>
22-8B-4 J	<p>"A charter school shall be a nonsectarian, nonreligious and non-home-based public school."</p>	<p>Because students typically log on from home and because a parent is usually expected to oversee or even provide instruction, virtual charter schools may be home-based.</p>	<p>Provide an exemption for virtual charter schools; or prescribe that a certain portion (majority) of the instruction be provided by a teacher employed by the virtual charter school.</p>
22-8B-4 R	<p>"The governing body [of a charter school] shall not contract with a for-profit entity for the management of the charter school."</p>	<p>Many providers of virtual education programs are private, for-profit entities. Depending upon the terms of agreement between the governing body and the vendor, these providers may become involved in certain aspects of the operation of the school, suggesting that the for-profit entity is indeed managing the school.</p>	<p>Define or clarify the meaning of the phrase "management of the charter school"; distinguish between management and procurement of services; prescribe the policies or decisions that must be determined by the governing body.</p>

Statutory Citation	Provision	Issue	Policy Options
22-8B-4 T	[Compliance with all applicable state and federal laws and rules related to special education services]	A virtual charter school has the same obligations as any other public school.	Prescribe enrollment policies that address needs of special education students; provide that virtual charter schools may contract for special education services.
22-8B-4.2	[Requirement that a charter school be in a public building or meet other criteria by July 1, 2015]	A strictly virtual charter school may not need a building at all; however, see 22-8B-4 J; 22-1-2 L and M; and 22-1-4 E.	Exempt virtual charter schools if such schools are determined not to require facilities or not to require public facilities; leave unchanged if same conditions apply.
22-8B-5.1	“The department shall develop a mandatory training course for all governing body members that explains department rules, policies and procedures, statutory powers and duties of governing boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department.” [Powers and duties of the chartering authority]	Given the potential of great good or great harm by virtual charter schools, the National Association of Charter School Authorizers (NACSA) advises, “It is the responsibility of authorizers to carry out due diligence and careful scrutiny” in considering applications for virtual charter schools. To provide proper oversight, the chartering authority may need to be a party to any agreement between the governing body of a virtual charter school and the provider of the virtual education program.	Include issues and aspects of virtual education among the topics covered by the mandatory training.
22-8B-5.3			Add a requirement that the chartering authority be a party to the agreement between the governing body of a virtual charter school and the provider of the virtual education program (see 22-8B-9 B (14)).

Statutory Citation	Provision	Issue	Policy Options
22-8B-6 C	"A charter school applicant shall apply to either a local school board or the commission for a charter."	Because virtual charter schools can enroll students from any district throughout the state, the decision of a local school board to authorize a virtual charter school may have a significant effect on other districts, suggesting the need for a state charter.	Require that applicants for virtual charter schools apply only to the Public Education Commission (PEC); or require that the PEC provide secondary approval.
22-8B-6 F	"An application may be made by one or more teachers, parents or community members or by a public post-secondary educational institution or nonprofit organization."	While the intention of this provision may have been to limit applicants to those within New Mexico, the language arguably does not prohibit nonprofit organizations or other permissible entities from other states from applying to open charter schools in New Mexico.	Leave unchanged; or clarify either that the permissible entities may be located in other states or must be located in New Mexico.
22-8B-6 G	"An initial application for a charter school shall not be made after June 30, 2007 if the proposed charter school's proposed enrollment for all grades or the proposed charter school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades would equal or exceed ten percent of the total MEM of the school district in which the charter school will be geographically located and that school district has a total enrollment of not more than one thousand three hundred students."	The geographic location of a virtual charter school is probably less significant than that of a traditional charter school, which likely would draw most of its students from the host district and few, if any, students from other districts; whereas, a virtual charter school is likely to draw more students from other districts.	Exempt virtual charter schools from this provision; or amend the provision to make it apply to the MEM of any district with fewer than 1300 students.

Statutory Citation	Provision	Issue	Policy Options
22-8B-6 J	“The chartering authority shall hold at least one public hearing in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application.”	Virtual charter schools are likely to draw more students from districts other than the district in which the school is located.	Require hearings in the districts/regions that the applicant has targeted to serve.
22-8B-6 L (5)	“A chartering authority may deny an application if . . . the application is . . . contrary to the best interest of the charter school’s projected students, the local community or the school district in whose geographic boundaries the charter school applies to operate.”	Because virtual charter schools may recruit and enroll students from all over the state, the “best interest” provision may need to be broader-based.	Amend the provision to include communities and school districts from throughout the state that the virtual charter school intends to serve.
22-8B-8 I	The charter application must include “a description of the governing body and operation of the charter school . . . .”	NACSA has emphasized the importance of expertise in educational technology on the part of chartering authorities and governing boards of virtual charter schools.	Add a new criterion requiring that at least some members of the governing board possess expertise in educational technology.
22-8B-8 M	The charter application must include “a description of how the charter school plans to meet the transportation and food service needs of its students.”	Virtual charter schools are unlikely to provide transportation and food service because their students are unlikely to need them.	Add the phrase “if applicable” to the end of that provision.
22-8B-9 B (14)	If the charter school contracts with a third-party provider, the charter contract must include “the criteria and procedures for the chartering authority to review the provider’s contract and the charter school’s financial independence from the provider.”	Because the terms of a contract with a provider of a virtual education program are likely to be more extensive and pervasive than the terms of contracts with other third-party providers (tutoring services, for example), this provision may not ensure sufficient oversight, particularly with regard to the charter school’s financial independence from the provider.	Add more explicit language addressing the terms of agreement between the governing board and the provider of the virtual educational program (see 22-8B-5.3).

Statutory Citation	Provision	Issue	Policy Options
22-8B-12 E	<p>“As part of its performance review of a charter school, a chartering authority shall visit a charter school under its authority at least once annually to provide technical assistance to the charter school and to determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract.”</p>	<p>For a virtual charter school, the site that the chartering authority must visit may be problematic. Is it a central learning center, which typically houses some offices and perhaps some classroom space and servers; or is it other locations where students access the Internet and the virtual educational programming; or is it the students’ homes, where most of the online learning probably occurs?</p>	<p>Exempt a virtual charter school from this requirement; or specify what constitutes the school site that the chartering authority must visit (see 22-1-2 L and M; and 22-1-4 E).</p>
22-8B-16	<p>“The commission [PEC] 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.”</p>	<p>Because virtual charter schools can enroll students from any district throughout the state, the decision of a local school board to authorize a virtual charter school may have a significant effect on other districts, suggesting the need for a state charter.</p>	<p>Add language to this effect: “Provided that only the commission shall receive applications for initial chartering for virtual charter schools and renewals of charters for virtual charter schools” (see 22-8B-6 C).</p>