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July 18, 2012

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

RE: STAFF REPORT: CHARTER SCHOOLS: UPDATE

Introduction

During the June 2012 interim meeting, the Legislative Education Study Committee (LESC) heard a staff update on charter schools that described the status of 12 charter schools that had been approved in 2011 and that reviewed the 43 notices of intent to open new charter schools that had been submitted in January 2012. This staff report for the July 2012 LESC meeting will:

- update the status of those 12 schools (11 of them approved by the Public Education Commission (PEC) and the other one by Farmington Municipal Schools); and
- identify new applications for charter schools that resulted from the notices of intent.

Status of Approved Charter Schools for School Year 2012-2013

State-chartered Charter Schools

As noted in the June staff update, the PEC placed several conditions on its approval in September 2011 of the 11 applicants for state-chartered charter schools (see "Background," below, for a list of those conditions):

- Southwest Aeronautics, Mathematics, and Science Academy, William W. and Josephine Dorn Charter Community Schools, Mission Achievement and Success, Sage Montessori Charter School, and Coral Community Charter (all in Albuquerque);
- McCurdy Charter School and La Tierra Montessori School of the Arts and Sciences, in Española;
- Uplift Community School, in Gallup;
- New America School-Las Cruces;
- Estancia Valley Classical Academy, in Moriarty; and
- La Jicarita Community School, in Peñasco.

At a hearing on June 27, 2012, the PEC heard testimony not only from representatives of these 11 schools but also from the Public School Facilities Authority (PSFA) and the Charter Schools Division (CSD) of the Public Education Department (PED) 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: because the buildings had not met the educational occupancy standard, because 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.

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, Mr. Paul Aguilar, Deputy Secretary, Finance and

Operations, 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 each case, 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 New Mexico Virtual Academy (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. As illustrated under “Background,” below, 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 (MOU) 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.

According to the Superintendent of Farmington Municipal Schools, the school board planned to review the application once again at the meeting on July 17, with the expectation that the school will open on August 20.

New Applications for School Year 2013-2014

As noted during the staff update in June, the CSD received 43 notices of intent to open new charter schools in school year 2013-2014. Of those, 14 have applied to the PEC to become state-chartered charter schools. These include applications from three of the four out-of-state organizations profiled in the June 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.

Evidently, the fourth of the out-of-state organizations – Responsive Education Solutions, located in Lewisville, Texas – decided not to apply for any of the five Premier High Schools that been the subjects of notices of intent.

The other applications submitted to the CSD are from:

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

With 14 of the 43 potential applicants filing with the PEC, 29 others may have filed with local school boards throughout the state. In an effort to determine which of these schools had applied to local school boards, LESC staff contacted each district in which a notice of intent had indicated a potential charter school would be located. These efforts were somewhat inconclusive, however, partly because many school staff members are on vacation during mid-July. Even so, both APS and Santa Fe Public Schools reported receiving no applications for locally chartered charter schools; and two school districts – Grants-Cibola County Schools and Silver Consolidated Schools – reported that their potential applicants had chosen not to apply after all.

Background

Conditions Imposed by the PEC

With each charter application that the PEC approved in 2011, the term of the charter was for six years, including a planning year (school year 2011-2012); and there were six conditions attached to the approval, to be met by June 30, 2012, the end of the planning year. The first condition varied according to the needs and circumstances of the application; but the other five were standard, common to all approved applications:

- the governing body must apply to the PEC before the end of the planning year (June 30, 2012) to be designated as a board of finance and must acknowledge that it is not entitled to receive any state or federal funding until the PEC grants its status as a board of finance;
- the charter school must demonstrate to the CSD that, prior to beginning operations, the PSFA has certified that the facility the school intends to occupy will receive a condition rating equal to or better than the average for all public schools in the state; or that the charter school can demonstrate that within 18 months of occupancy it has a plan for achieving the weighted New Mexico Condition Index;
- the charter school must acknowledge that, to comply with recent changes in federal law that affect New Mexico's eligibility for federal charter school program funds, all charter contracts are legally binding; and PED shall use increases in student achievement for all groups of students as the most important factor when determining to renew or revoke

the school's charter, "regardless of current language in the *Charter Schools Act*, whether implied or explicit";

- the charter shall be effective upon the applicant's sending to CSD a statement signed by the founders that they accept the conditions of approval; and
- prior to the end of the planning year, the charter school must demonstrate that it has satisfied these conditions before commencing full operation.

Conditions Imposed by Farmington Municipal Schools

Among the conditions that the board of Farmington Municipal Schools placed on the approval of the NMVA in 2011:

- the school will serve only grades 6-12, not K-12 as proposed;
- enrollment will be limited to 500 students rather than the proposed 1,600;
- the school must provide a detailed plan for meeting the needs of English language learners, special education students, and Native American students;
- the school must provide a detailed plan for the assessment and access to the learning center of students from outside the school district; and
- the governing council must enter into a MOU with the curriculum vendor, K12 Virtual Schools, LCC (K12), regarding the services the vendor will provide, the vendor's involvement in the school's decision-making process, the resolution of any disputes between the vendor and the school, and the financial relationship between the vendor and the school.¹

To address these conditions of approval, the school and K12 provided several documents:

- a draft English language learners plan;
- *New Mexico Virtual Academy Special Education Policies and Procedures*;
- *New Mexico Virtual Academy Regional Testing Plan for Students*;
- *New Mexico Virtual Academy Plan for Engaging Native American Students and Families*; and
- *Educational Products and Services Agreement*, which is the MOU between the NMVA governing council and K12.

¹ With this condition, a particular concern of the superintendent was that "the entire educational program is dependent upon the vendor . . . [and that] if K12 were not to continue to provide their services to the school, the school would not exist as it has proposed in the application."