

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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November 15, 2011 (*corrected March 15, 2012*)

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

RE: STAFF REPORT: LESC WORK GROUP ON CHARTER SCHOOL APPEALS

Introduction

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

- reviewed 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; and
- explained the process by which charter schools may appeal adverse decisions of chartering authorities.

During the discussion following that presentation, committee members expressed 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.

In response to the directive from the Chair, LESC 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 the Attachment).

This staff report:

- summarizes the meetings and discussions of the work group;
- presents the recommendations of the work group; and
- provides some background about the current appeals process and recent legislation that the work group has employed in its recommendations.

Meetings and Discussions of the Work Group

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

- Section 22-8B-7 NMSA 1978, *Appeal of denial, nonrenewal, suspension or revocation; procedures*;
- the LESC 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. 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 denied 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”; 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 (see “Background,” below). However, that legislation does not go into effect until July 1, 2012; and it would be several years before any existing charter schools come under those new provisions.

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; and
- the greater continuity of provisions enacted through law than through regulation.

At the second meeting, on August 30, work group members reviewed the charter school appeals practices in other states, as presented in a compilation by the Legislative Council Service. This compilation illustrated the variety of approaches that states have taken:

- fourteen states and the District of Columbia provide no appeal process for denied charter school applications; rather, denied charters must reapply;
- twenty-one states allow for appeals to be heard by a state board or state commission on education, whose members are elected in some cases and appointed in others;
- two states have an independent panel to hear appeals of charter applications;
- one state allows denied charter school applications to be placed on the ballot for local elections; and
- two states provide an appeal to the secretary of education or the public education department.

Work group members also discussed in more detail a number of approaches that had been proposed during the first meeting, 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.

At this meeting, members reached agreement on several points:

- that some of the issues that concerned LESC members and that prompted the creation of the work group could be resolved through better communication among the Public Education Department (PED), the PEC, and the Secretary-designate;
- that implementation of SB 446 will eventually make any appeals process unnecessary;
- that SB 446 should be amended to clarify that its provisions apply to renewals as well as to new applications; and
- that, rather than amending the appeals process itself, the implementation of SB 446 should be accelerated.

As the August 30 meeting concluded, the work group reached consensus on three recommendations:

- amend SB 446 to clarify that the charter contract provisions apply to renewals as well as to new applications and to require that all charter schools have contracts in place by July 2013;
- make no amendments to the current provisions for charter school appeals at this time, with the understanding that, once it is fully implemented, SB 446 will eliminate the need for most, if not all, appeals; and
- encourage the Charter Schools Division in PED and the Secretary of Public Education to collaborate fully with the PEC regarding the criteria for accepting or rejecting initial charter applications, for accepting or rejecting applications for renewal, and for revoking existing charters.

In September, a smaller group – comprising staff from the LESC, PED, the Legislative Finance Committee, and the Legislative Council Service – met to consider how SB 446 might be amended to reflect the recommendations of the work group. As this discussion progressed, the recommendation that all charter schools have contracts in place by July 2013 began to seem problematic in several ways:

- Negotiating by that time 84 contracts between authorizers and charter schools presents significant logistical challenges, especially with regard to the two largest authorizers: the PEC and Albuquerque Public Schools. Some sort of phase-in would be more pragmatic and probably more effective in ensuring thorough implementation of the statute.
- Some charter schools would have new contracts in place with only a year or two to demonstrate student academic performance under those new terms.
- Some local school boards and locally chartered charter schools might find the deadline difficult to meet.
- If the intent of the recommendation is to implement not just the charter contract provisions but all the provisions of SB 446, additional amendments to the law would be needed regarding other new provisions such as the performance framework; the chartering authority's oversight, corrective actions, and site visits; and the closure protocols.

In an effort to honor the spirit of the work group's recommendation and to address these concerns, the representatives at this meeting proposed an alternative: phase in the application of SB 446 to existing charter schools, beginning with the 12 approved in 2011 and continuing according to the other schools' renewal dates.

To consider this alternative, there was a third meeting of the primary work group on November 8. At that time, the members in attendance reviewed the issues identified by the drafting group, agreed to the phase-in of SB 446, and recommended that charter schools and their authorizers be advised that they could voluntarily come under those provisions ahead of the timetable in the phase-in.

Recommendations of the Work Group

The LESC Work Group on Charter School Appeals makes the following recommendations:

- Encourage the Charter Schools Division in PED and the Secretary of Public Education to collaborate fully with the PEC regarding the criteria for accepting or rejecting initial

charter applications, for accepting or rejecting applications for renewal, and for revoking existing charters.

- Amend SB 446 to clarify that the provisions apply to charter renewals as well as to new applications.
- Amend SB 446 to accelerate the implementation of all of its provisions, as follows:
 - for new charter schools approved between July 1, 2011 and July 1, 2012, the provisions of SB 446 shall be applied by February 15, 2013;
 - for new charter schools approved after July 1, 2012, the provisions of SB 446 shall be applied within 30 days of the approval of the charter; and
 - for existing charter schools whose renewals are due after July 1, 2012, the provisions of SB 446 shall be applied within 30 days after renewal.
- Amend SB 446 to clarify that, if they both agree, charter schools and their chartering authorities may come under the provisions of SB 446 ahead of the timetable described above.

Background

Authorizing State-chartered Charter Schools

As the LESC has realized, the current appeals process in the *Charter Schools Act* creates some awkward, if not conflicting, situations, especially with regard to state-chartered charter schools. These situations result from the overlap of duties and responsibilities among the PEC, the Charter Schools Division (CSD) in the PED, and the Secretary of Public Education.

- Although the chartering authority is the PEC and although the number of applications and requests for renewal has increased over time, the commission does not have a staff of its own. Rather, it must rely on the staff of the PED.
- Despite its authority over charter schools, the PEC does not have rulemaking authority.
- In determining whether to accept or reject a charter application or request for renewal, the PEC considers the recommendation of the CSD, which is based upon the CSD's interpretation of statutory provisions and examination of relevant data. In some cases, the PEC has acted according to the recommendations of the CSD; in others, it has acted contrary to those recommendations.
- If the PEC rules against a charter applicant, that applicant may appeal to the Secretary of Public Education, the cabinet secretary in charge of PED.
- If the appeal is of a decision that the PEC made contrary to the recommendation of the CSD, the staff of the CSD is placed in the awkward position of representing the PEC for an action taken against the staff recommendation.
- Finally, 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.

Provisions of Charter School Contract Legislation Enacted in 2011

As referenced 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 process 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.

LESC WORK GROUP ON CHARTER SCHOOL APPEALS

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