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October 12, 2011 (*Revised October 24, 2011*)

**MEMORANDUM**

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

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**Introduction**

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

- an update on the applications for new charter schools; and
- a status report on the LESG Work Group on Charter School Appeals.

Since that report, chartering authorities have rendered their decisions on the applications; and the work group has continued its deliberations. Therefore, this report provides:

- an update on the public hearings and decisions of the chartering authorities that received applications, together with information about appeals that have been filed; and
- a brief account of the progress of the LESG Work Group on Charter School Appeals.

**Public Hearings and Decisions of Chartering Authorities**

Altogether, there were 24 applications for new charter schools submitted by the deadline of July 1, 2011: 21 to the Public Education Commission (PEC) and one each to Albuquerque Public Schools (APS), Española Public Schools, and Farmington Municipal Schools.

Of those 24 applications, 12 were approved, all with conditions (11 by the PEC and one by Farmington Municipal Schools).

In addition, one charter school authorized by APS has had its charter revoked.

### ***Public Education Commission***

After holding a series of public hearings in affected districts throughout the state during the week of August 8, the PEC held a two-day hearing on September 15 and 16 in Santa Fe. This hearing was to receive the recommendations of the Charter Schools Division (CSD) on the various applications, to hear comments from the applicants, and to render decisions on the applications.

Before the individual applicant presentations began, Ms. Patricia Matthews, the Director of Options for Parents, the part of the Public Education Department (PED) that houses the CSD, introduced the newly hired General Manager of CSD, Ms. Kelly Callahan; and she explained the process through which the CSD reviewed the applications and developed its recommendations.

- Following the recommendation of the National Association of Charter School Authorizers, Ms. Matthews said, the CSD implemented a review process using internal and external reviewers for each of the 21 applications. Four teams reviewed four applications each, and one team reviewed five. Each team was composed of three members: “a team lead and a consultant with expertise specific to charter schools and a licensed school business manager who was, or is, the business manager for one or more charter schools.” The Attachment provides the names, roles, and affiliations of these team members.
- To review the applications, Ms. Matthews continued:
  - team members met by phone or in person several times to discuss the applications and to prepare for “capacity interviews,” which were 90-minute question-and-answer sessions with the applicants;
  - team members debriefed after each capacity interview;
  - team leads attended the community input hearings for their respective applicants and prepared a synthesized analysis and summary evaluation of each application; and
  - team leads met with either Ms. Matthews or Ms. Callahan to discuss the recommendations before they were signed, either by Ms. Matthews or Ms. Callahan.
- Finally, Ms. Matthews explained that, because of her legal representation of some of the applicants during her previous work as an attorney representing charter schools, she did not participate in the review or recommendations of six of the 21 applicants: (1) Santa Fe Trail Middle School; (2) Sage Montessori Charter School; (3) the GREAT Academy-Las Cruces; (4) Southwest Aeronautics, Mathematics and Science Academy; (5) New America School-Las Cruces; and (6) Estancia Valley Classical Academy. Instead, Ms. Callahan reviewed and signed those recommendations and presented those recommendations to the PEC.

Throughout the rest of the meeting, the PEC considered each application in turn and, in each case, voted according to the recommendation of the CSD.

- The PEC voted **to deny** the applications of:
  - The Electus Academy, The Baldrige Academy, Ray of Hope Charter School, Pursuit Academy, and Truly Educated (all in Albuquerque);
  - Columbus Community School, in Deming/Columbus;
  - The GREAT Academy-Las Cruces;
  - Santa Fe Trail Middle School and StarShine Academy Santa Fe School; and
  - TIHMS Public Charter School, in Taos.
  
- The PEC voted **to approve, with conditions**, the applications of:
  - 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.

With each approved application, the term of the charter is for six years, including a planning year; and there are six conditions attached to the approval. The first condition varies according to the needs and circumstances of the application; but the other five are standard, common to all approved applications.

1. 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;
2. the charter school must demonstrate to the CSD that, prior to beginning operations, the Public School Facilities Authority (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;
3. 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";
4. 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
5. prior to the end of the planning year, the charter school must demonstrate that it has satisfied these conditions before commencing full operation.

The condition regarding student performance may merit further explanation.

- The federal *Consolidated Appropriation Act of 2010* 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 [the *No Child Left Behind Act of 2001*] . . . as the most important factor when determining to renew or revoke a school’s charter.”
- The phrase “regardless of state law” is perhaps an acknowledgement that the *Charter Schools Act* identifies four criteria for denying a renewal or revoking a charter, one of which relates to student performance standards but all of which appear to have equal weight. In other words, because state law does not make student achievement the primary factor in determining whether to renew or revoke a school’s charter, PED is apparently attempting to comply with that federal requirement through this condition for approval.

As of this writing, according to PED, none of the 10 denied applicants and none of the 11 approved with conditions have filed a notice of appeal.

### ***Local School Boards***

- On August 9, 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.
  - According to the Director of Charter and Magnet Schools, the applicant has not filed an appeal.
- During the summer of 2011, the internal audit staff of APS, in response to complaints and at the request of the Legislative Finance Committee, performed an audit of the financial processes and internal controls of Career Academic Technical Academy Charter School (CATA).
  - In brief, the audit found weak internal controls and general mismanagement of the school’s finances, exacerbated by the number of family members employed at the school.
  - On September 21, the APS school board voted to revoke the school’s charter, effective at year’s end.
  - APS reports that CATA did not file an application to renew the charter by the deadline of October 3.
  - On October 10, the school board voted to suspend the charter school’s governing council and to assume day-to-day operations of the school.
  - APS reports that CATA has decided not to appeal the revocation or oppose the suspension.

- On August 11 and again on August 25, Farmington Municipal Schools held public hearings 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.”
  - At a special meeting on September 22, the board of Farmington Municipal Schools, following the recommendations of the superintendent, approved the charter application but with a number of conditions. Among these conditions:
    - 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 memorandum of understanding with the curriculum vendor, K<sup>12</sup> Virtual Schools, LCC, 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.<sup>1</sup>
  - In addition to these conditions, the board applied the conditions related to facilities and student academic achievement noted above for charter schools approved by the PEC.
  - The superintendent has advised LESC staff that the school plans to appeal some, if not all, of the conditions.
- On August 17, the board of Española Public Schools held a hearing to consider an application for a charter from Sangre de Cristo Charter School.
  - The agenda for the September 21 meeting of the school board included this application as an action item; however, according to the district, the motion to approve the application failed because it never received a second.
  - Furthermore, the item was not included in the agenda for the October 5 meeting of the board, and the district reports that it was not discussed during the meeting.
  - According to PED, the school has filed an appeal on the grounds that the school board failed to follow the law.<sup>2</sup>

### **LESC Work Group on Charter School Appeals**

The work group met for a second time on August 31, 2011. After an extensive discussion, the members reached consensus on three recommendations, one of which requires amendments to

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<sup>1</sup> With this condition, a particular concern of the superintendent was that “the entire educational program is dependent upon the vendor . . . [and that] if K<sup>12</sup> were not to continue to provide their services to the school, the school would not exist as it has proposed in the application.”

<sup>2</sup> The *Charter Schools Act* requires a chartering authority to rule on an application in a public meeting by September 1 of the year in which the application was received. The act also requires the Secretary of Public Education to review the application if the chartering authority does not act by that date.

legislation enacted in 2011, legislation that requires performance contracts between charter schools and their authorizers.<sup>3</sup> The amendments that the work group recommended (1) would have clarified that these provisions apply not just to new applications but also to charter renewals; and (2) would have applied these provisions to all charter schools by July 2013.

However, efforts to draft this second amendment raised a number of questions and issues that could not be resolved through email correspondence among the work group members. Therefore, the work group will hold at least one more meeting, with the intention of presenting recommendations to the LESC in November.

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<sup>3</sup> Among its general provisions, this legislation (SB 446, *Charter School Contracts*, or Laws 2011, Chapter 14): 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.

**CHARTER APPLICATION REVIEW TEAMS  
CHARTER SCHOOLS DIVISION  
PUBLIC EDUCATION DEPARTMENT**

**Team One**

Ms. Karen Ehlert, Team Lead

*CSD*

Ms. Sandy Beery, Consultant

*Director, Taos Integrated School of the Arts*

Ms. Kay Girdner, Business Manager

*Business Manager, East Mountain High School*

**Team Two**

Ms. Marjorie Gillespie, Team Lead

*CSD*

Ms. Cindy Montoya, Consultant

*Head Administrator, New Mexico School for the Arts*

Ms. Diane Gunn, Business Manager

*Business Manager, Mountain Mahogany Community School*

**Team Three**

Dr. Robert Olix, Team Lead

*CSD*

Mr. Doug Wine, Consultant

*Principal, East Mountain High School*

Ms. Deanna Gomez, Business Manager

*Provider of business management services to charter schools*

**Team Four**

Ms. Shelly Cherrin, Team Lead

*Principal, Alice King Community School*

Ms. Julia Barnes, Consultant

*Cofounder of the New Mexico School for the Arts*

Mr. Randy Freeman, Business Manager

*Business Manager, Turquoise Trail Charter School*

**Team Five**

Mr. Brad Richardson, Team Lead

*Member, Governing Council of the International School at Mesa del Sol*

Dr. Lisa Grover, Consultant

*Director of State Advocacy for the National Alliance of Public Charter Schools*

Ms. Mary Scofield, Business Manager

*Business Manager, El Camino Real Charter School*