

MINUTES
LESC CHARTER SCHOOLS SUBCOMMITTEE MEETING
October 15, 2014
State Capitol, Room 322
Santa Fe, New Mexico 87501

WEDNESDAY, OCTOBER 15, 2014

Representative Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) Charter Schools Subcommittee to order at 11:17 a.m., on Wednesday, October 15, 2014, in Room 322 of the State Capitol in Santa Fe, New Mexico.

The following voting members of the LESL Charter Schools Subcommittee were present:

Representatives Mimi Stewart, Chair, Dennis J. Roch, Vice Chair, Jimmie C. Hall, Rick Miera, James E. Smith, and Christine Trujillo; and Senators Craig W. Brandt, Linda M. Lopez, John M. Sapien, and William P. Soules.

The following voting member of the LESL Charter Schools Subcommittee was not present:

Senator Pat Woods.

Senator Daniel A. Ivey-Soto was also in attendance.

On a motion by Representative Roch, seconded by Senator Soules, the meeting agenda was approved.

PUBLIC EDUCATION COMMISSION REPORT

The Chair recognized Ms. Carolyn Shearman, Chair, Public Education Commission (PEC), and Ms. Abby Lewis, Assistant Attorney General, Civil Division, Attorney General Office, to report on the activities and timeline of the PEC, as well as provide a proposed budget based on the two percent administrative set-aside the Public Education Department (PED) receives for state-chartered charter schools.

Ms. Shearman proceeded to explain the yearly timeline of the PEC:

- January: notices of intent to file an application for a new state-chartered charter school are due;
- January to May: performance contract negotiations for new schools that have successfully completed the planning year and performance contract negotiated for renewing schools who were approved the previous December;
- May to July: performance frameworks renegotiation for those first-year schools completing one year of the performance contract;
- August: community input hearings held around the state on new charter applications;

- September: PEC regular meeting to approve or deny new charter school applications;
- October: renewal applications due; and
- December: PEC regular meeting to approve or deny renewal applications.

With regard to standing PEC agenda items, Ms. Shearman stated, the following are routine items on a monthly basis:

- charter amendments;
- staff updates on schools of concern;
- staff report on school improvement plans;
- commissioner requests for information concerning complaints received;
- commissioner request for schools to be placed under improvement plan or corrective action plan; and
- work with staff and attorneys to write improvement plans and/or corrective action plans.

Ms. Shearman also provided an overview of the PEC application and renewal history beginning in 2009. She stated that, currently in 2014, there were eight charter applications submitted to the PEC, with only two being approved. She also noted that the PEC has 23 renewal contracts to negotiate and 24 performance frameworks to be renegotiated in 2014. Lastly, Ms. Shearman provided the subcommittee with a chart depicting the 2013-2014 State Equalization Guarantee funding for all state- and locally chartered charter schools.

Ms. Lewis informed the subcommittee about PEC's proposed budget request based on the two percent administrative set-aside that PED receives for state-chartered charter schools. Referring to her handout, Ms. Lewis stated the following is included in the PEC's proposed budget:

- total salary and benefits: \$1,724,670.90 (includes 11 current positions and 12 additional positions requested);
- requested money for PEC contractual services: \$150,000;
- PEC expenses (in-state travel and transcription services): \$100,000;
- out of state travel: \$15,000;
- overhead expenses to PED (office space for PEC staff and services from PED bureaus): \$212,592.49; and
- overall total: \$2,202,263.39.

CHARTER SCHOOLS AS COMPONENT UNITS

The Chair recognized Mr. Evan C. Blackstone, Chief of Staff, Office of the State Auditor (OSA), and Ms. Melissa Spangler, Financial Audit Director, OSA, to present on charter schools as component units.

Mr. Blackstone informed the subcommittee that the following are financial audit requirements for charter schools in New Mexico:

- *New Mexico Audit Act*: requires government agencies to receive financial audits on an annual basis;
- *New Mexico Charter Schools Act*: requires that charter schools be subject to audits pursuant to the *Audit Act*;
- annual financial audits of government agencies are conducted by the OSA or independent auditors approved by the State Auditor; and
- the *Audit Act* specifically requires that these financial audits “be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.”

With regard to the professional standards applicable to government agency audits, Mr. Blackstone stated that, there are a range of professional standards and reporting standards that apply when conducting audits, such as:

- AICPA (American Institute of Certified Professional Accountants) professional standards (U.S. Auditing Standards): applies to independent audit firms that conduct audits;
- Government Auditing Standards “Yellow Book”: applies to governmental audits; and
- statements issued by the Governmental Accounting Standards Board (GASB): accounting for governmental financial activities which must be used by management for financial reporting and audit firms for auditing of the financial statements.

Mr. Blackstone stated that it is critical to understand the aforementioned professional standards in order to assess the “component unit” question.

Mr. Blackstone continued by informing the subcommittee on the definition of a component unit. He stated that GASB has established certain standards for financial reporting for a governmental “financial reporting entity,” and a financial audit covers the entire financial reporting entity. The financial reporting entity includes the “primary government” (e.g., a school district) and organizations for which the primary government is financially accountable. These organizations are called “component units.” Mr. Blackstone noted that GASB bases its definition of the financial reporting entity on the notion of financial accountability, which is used to describe the kind of relationship warranting the inclusion of a legally separate organization in the reporting entity of another government.

Referring to three key factors outlined in GASB 14 and GASB 61, Mr. Blackstone stated the following are critical in determining if a charter school is a component unit:

- financial accountability;
- fiscal dependency; and
- misleading to exclude.

Regarding whether a charter school is a component unit under GASB, Mr. Blackstone noted, the following items are fact specific and will need to occur:

- analysis must be conducted on a case-by-case basis by key personnel of the primary government, the charter school, and the independent auditor;

- the determination should be well documented and supported and provided to the independent auditor to audit and provide an opinion; and
- the OSA does not make these determinations.

Mr. Blackstone stated that the OSA conducted a survey of other states to find examples of charter school oversight and component unit reporting. Under the survey, the OSA asked the following questions:

- How are charter schools in your state authorized?;
- What is the governance structure of charter schools in your state?;
- Do the charter schools meet the criteria to be reported either as a component unit of a local school district or the state board/department of education?;
- Do the charter schools typically issue stand-alone financial statements? Does your state law require that charter schools issue stand-alone financial statements?; and
- Do the authorizing authorities/agencies of the charter schools have any responsibilities under state law to monitor the charter schools' annual financial audit reports? Are there any mechanisms or penalties for charter schools that receive poor opinions or audit findings?

The OSA, he continued, surveyed the following states: Arizona, Hawaii, Michigan, Missouri, Nevada, Ohio, Oklahoma, Oregon, and Utah. Mr. Blackstone summarized the main points from the survey results, which noted that:

- this is not just an issue in New Mexico;
- the component unit determination can depend on if the entity is a nonprofit charter school, statutory oversight, and
- elements of charter school contract; and some states have robust monitoring of charter school compliance.

To conclude, Mr. Blackstone stated the following are things to consider when determining if a charter school meets the underlying criteria for a component unit:

- policy changes should be thoroughly and carefully considered;
- auditors must comply with professional standards; and
- impacts on charter school oversight.

Mr. Blackstone noted that the subcommittee should be conscious of requiring stand-alone audit reports for charter schools, the strengthening, monitoring, and oversight of charter school compliance, and availability of funding and resources.

SUBCOMMITTEE REVIEW OF SCHOOL TRANSPORTATION DISCUSSION DRAFT

The Chair recognized Mr. David Craig, LESC Staff, and Mr. Antonio Ortiz, Transportation Director, Public Education Department (PED), to talk about the school transportation discussion draft.

Mr. Craig outlined the proposed changes for removal of state-chartered charter schools from transportation funding. In order to remove transportation allocations for state-chartered charter schools, Mr. Craig noted, provisions in current law would need to be changed to remove state-chartered charter schools from the following provisions:

- 22-8-26 NMSA 1978 Transportation distribution;
- 22-8-27 NMSA 1978 Transportation equipment;
- 22-8-29 NMSA 1978 Transportation distributions; reports; payments;
- 22-8-29.1 NMSA 1978 Calculation of transportation allocation; and
- 22-8-29.4 NMSA 1978 Transportation distribution adjustment factor.

Referring to these changes, Mr. Craig noted, would leave existing elements of the transportation funding formula intact for local school boards and districts.

Of particular importance, Mr. Craig explained, is placing state-chartered charter schools into the local school district negotiation process. For example, he stated, in order to allow state-chartered charter schools to participate in negotiations with a local school district and make the negotiation process non-mandatory for all charter schools, provisions in current law may require the following suggested changes:

- removing “locally chartered” from 22-8B-4 (I) NMSA 1978;
- leaving the “shall” language in place in 22-8B-4 (I) NMSA 1978 to require a negotiation process from a school district perspective; and
- adding an introductory clause indicating the negotiation process is optional for charter schools to 22-8B-4 (I) NMSA 1978.

To conclude, Mr. Craig offered suggestions the subcommittee may also wish to consider regarding addition of the following additional statements for clarity:

- placing provisions from rule into law that state: “the charter school may elect not to provide transportation services”; and
- a statement that clarifies that a negotiated agreement with a school district is not required in order to provide transportation services.

SUBCOMMITTEE DISCUSSION

The Chair reported that the subcommittee would be meeting in Albuquerque on Friday, November 7, 2014 to review discussion drafts of potential legislative recommendations to the Legislative Education Study Committee during its November interim meeting.

ADJOURNMENT

There being no further business, the Chair adjourned the LESC Charter Schools Subcommittee meeting at 3:28 p.m.