

MINUTES
LESC CHARTER SCHOOLS SUBCOMMITTEE MEETING
September 11-12, 2014
East Mountain High School
25 La Madera Road, Sandia Park, New Mexico 87047

THURSDAY, SEPTEMBER 11, 2014

Representative Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) Charter Schools Subcommittee to order at 9:25 a.m.

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.

The following voting members of the LESL Charter Schools Subcommittee were not present:

Senators John Sapien, William P. Soules, and Pat Woods.

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

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

POLICY CONSIDERATIONS

The Chair recognized Kevin Force and Heidi Macdonald, LESL staff, and Abby Lewis, Assistant Attorney General, Civil Division, to discuss potential ambiguities and conflicts within the *Public School Code* and policy considerations for definitions relating to charter schools.

Mr. Force explained that provisions of the *Public School Code* that address the operation of the Public Education Department (PED) and the Public Education Commission (PEC) include:

22-2-21. Bullying and cyberbullying prevention programs. (2013)

“Local school boards” are required to promulgate bullying prevention policies, presumably to inform prevention programs. From the definitions in the General Provisions, it is at least uncertain if this term would include charter schools, either state- or locally chartered¹. Public schools, which do include charter schools, are to implement programs.

The A-B-C-D-F Schools Rating Act

22-2E-4. Annual ratings; letter grades; ratings based on standards-based assessments; right to school choice; distance learning; responsibility for cost; use of funds; additional remedy. (2013)

Paragraph (E) requires PED to ensure that a local school board, OR a governing body of a charter school, is appropriately prioritizing resources of schools rated ‘D’ or ‘F’.

It may be better, for clarity's sake, to refer to "a local school board or a governing body of a state-chartered charter school" OR to "local school boards and governing bodies of state-chartered charter schools."

The Public Schools Finance Act

22-8.6.1. Charter school budgets. (2010)

Language in this statute is indicative of generally unclear use of the terms "chartering authority" and either "local school board" or "charter schools division," ("CSD") and "Public Education Commission" ("PEC"), depending upon whether the school in question is locally or state-chartered. There are times when "chartering authority" may be interchangeable with either "local school board" or "CSD," (or "PEC") and times when it would be either inappropriate or confusing to do so.

22-8-11. Budgets; approval of operating budget. (2011)

Statutory language in this section shifts between references to:

- "Local school boards" and "school districts"; and
- "governing bodies of state-chartered charter schools" and "governing bodies of charter schools."

22-8-18. Program cost calculation; local responsibility. (2014)

Reference in this statute to the "governing body of charter schools" without further specificity suggests that governing bodies of locally chartered charter schools do bear fiscal responsibilities to their schools outside of the designation of local school boards and state-chartered governing bodies as boards of finance.

22-8-25. State equalization guarantee distribution; definitions; determination of amount. (2010)

Language in this statute reflects the general lack of clarity with regard to the 2.0 percent set-aside allocated to a charter school's authorizer for administrative services. This statute is another example of the tendency to use "authorizer," "department" and "CSD" interchangeably when the 2.0 percent set-aside is discussed in reference to state-chartered charter schools, where the actual "authorizer" is the PEC, but the withholding is allocated to CSD, in its capacity as administrative staff for the PEC, via the PEC's "attachment" to PED.

22-8-38. Boards of finance; designation.

A local school board *may* qualify as a board of finance for a school district, if it meets certain criteria. There is no separate requirement noted in the statute for a local school board to qualify as a board of finance for a locally chartered charter school.

22-8-39. Boards of finance; suspension.

Similarly to 22-8-38, the provisions for boards of finance for state charters differ from those for local charters. Paragraph (G) requires the department to consider commencing proceedings to

deny or revoke a charter to a state-chartered school if its governing council fails to qualify as a board of finance.

Ms. Macdonald then reviewed the following provisions in current law:

The Charter Schools Act

22-8B-4. Charter schools' rights and responsibilities; operation. (2011)

As noted in previous committee discussion, Paragraph (I) suggests that there are different eligibility criteria and calculation considerations for charter school transportation funding, depending upon whether a school is state- or locally chartered:

22-8B-6. Charter school requirements; application process; authorization; state board of finance designation required; public hearings; subcommittees. (2011)

According to Paragraph (A), “[a] local school board has the authority to approve the establishment of a charter school within the school district in which it is located.” The most notable issue here is the lack of differentiation between state- and locally chartered charter schools. The language of this section would indicate that local school boards may approve state-chartered charter schools.

22-8B-9. Charter school contract; contents; rules. (2011)

Like 22-8-25, above, and 22-8B-13, below, language in this section continues the ambiguity regarding the 2.0 percent set-aside for administrative costs. Specifically, Subparagraph (B)(8) requires the charter school contract to include in its terms “a detailed description of how the chartering authority will use the withheld 2.0 percent of the school-generated program cost.” As noted previously, the “chartering authority” for state charters is the PEC, while the CSD, as staff for the PEC but also operating as an agent of the PED, actually administers the moneys generated from the 2.0 percent.

22-8B-13. Charter school financing.

Paragraph (A) notes that “the school district or division” may withhold and use the 2.0 percent of the school-generated program costs for its administrative support of a charter school. Again, while the local school district will be the authorizer for a locally chartered charter school, the division, or CSD, is not in a similar position, but rather acts as staff for both the authorizer for state-chartered charters (the PEC) and PED. Language in the several statutes dealing with the administration of the 2.0 percent set-aside is inconsistent.

The Fine Arts Education Act

22-15D-5. Program plan and evaluation.

According to the *Fine Arts Education Act*, the department is to assist school districts and charter schools in developing fine arts programs. Section 22-15D-5 permits “school districts” and “state-chartered charter schools” to develop fine arts programs, but makes no specific, separate mention of locally chartered charter schools. While it is appropriate under current law for local

school districts, in their capacity as boards of finance for local charter schools, to deal with the fiscal aspects of a fine arts program, may it not be more appropriate for the governing councils of charter schools, who administer a mission specific to that school, to be responsible for setting special programmatic and curricular requirements for their schools? The committee may wish to consider clarifying the matter of which body is better situated to be responsible for the administration of fine arts programs at locally chartered charter schools.

The Bilingual Multicultural Education Act

22-23-2. Definitions (*Bilingual and Multicultural Education Act*); 22-23-5; Bilingual multicultural education program plan; evaluation. (2004)

“School board” means both local school boards and governing bodies of state-chartered charter schools. Moreover, “district” means a public school or schools in a district, or “a charter school”; this definition, however, fails to differentiate between locally chartered or state-chartered schools. Thus, under 22-23-5, similarly to provisions in the *Fine Arts Education Act*, local school boards and state charters may submit bilingual, multicultural education programs to PED, but no separate provision is made for the governing councils of locally chartered charter schools. Further, 22-23-5 goes on to note that bilingual programs shall be “located in the district,” and that the district shall be responsible for maintaining achievement and proficiency data.

The Public School Lease Purchase Act

22-26A-3. Definitions. 22-26A-6. Authorizing lease purchase arrangements; resolution; 22-26A-8. Authorization for local school board to submit question of lease purchase tax. 22-26A-10(A); Conduct of election; notice; ballot. 22-26A-13(A); Publication of notice; validation. (2009).

Under 22-26A-3:

- “school district” includes both a locally chartered or state-chartered charter school; and
- “local school board” includes the governing body of a chartered school, either locally or state-chartered. According to 22-8B-8(C), the application for a charter school must include a description of the educational program, student performance standards and curriculum that must meet or exceed the department's educational standards. However, these terms are not really interchangeable, and when these definitions are applied to other sections within this act, to include the possibility of all these terms, they may result in inadvertent self-reference or outright confusion.

Subsection (D)(1) of 22-26A-6, may be read as providing for a charter school that is located within another charter school, or itself, to notify its own governing body that the charter school has been approved for a lease purchase agreement.

In Section 22-26A-8, “school district” is being used to identify defined boundaries for the purpose of identifying “qualified electors.” However, charter schools, as such, do not have “qualified electors” in the sense that that term is being used in here, the more common understanding of “school district” as meaning a defined geographic area.

Similarly, in Paragraph (A) of 22-26A-10, “school district” is being used to define an area subject to a particular election, where state- and locally chartered charter schools do not hold elections.

Under Paragraph (A) of 22-26A-13, “school district” is again used to define a particular geographic area, in this case in order to identify the appropriate newspaper in which to publish notice. Charter schools, however, do not have discreet areas of general circulation in this sense of the term.

In this instance, it may be better to limit the scope of the respective definitions so that the definitions retain the meanings assigned to them in the General Provisions of the *Public School Code*, where necessary, and the statutory language particular to the *Public School Lease Purchase Act* be amended to more specifically refer to the pertinent sort of school or governing body.

Ms. Macdonald emphasized that after reviewing the various acts and many statutes within the *Public School Code*, it would seem that, in many of the instances where problems with the listed terms arise, the issues arise not so much out of problems with the definitional language as they do out of improper use of the terms themselves, or, in some cases, faulty redefinition of terms that are to be limited to the particular act or section in which they are contained. It appears that piecemeal amendment, laudable but erroneous attempts at concision, and inconsistent application of the terms within programmatic statutes lead most frequently to the problems identified in the list, above.

Mr. Force stated that while the definitions in the *Public School Code* may be tightened and updated, in most of the instances listed above, the issues probably could be addressed with:

- more precise use of defined terms and other language within each statute;
- consistent use of similar terms in similar and related statutes; or
- amendment of definitions specific to particular acts or sections of law.

The definitions listed below, he indicated, are among those terms that staff considered when reviewing the *Public School Code*. Suggested amendments, if applicable, are rendered in ~~strikeout~~/underline format:

- “School district” means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes. (§22-1-2 *NMSA (PSC)*);
- “Charter school” means a conversion school or start-up school authorized by the a chartering authority to operate as a public school, according to the provisions of the Charter Schools Act. (§22-8B-2 *NMSA (CSA)*);
- “Local school board” means the policy-setting body of a school district. (*NMSA* § 22-1-2 (*PSC*));

“Governing body” means the governing structure of a charter school as set forth in the school’s charter. (§22-8B-2 *NMSA (CSA)*); and

- “chartering authority” means either a local school board, for locally chartered schools, or the commission, for state-chartered charter schools. (§22-8B-2 *NMSA (CSA)*)

Referring to a document included in the subcommittee notebooks, *Proposed Definitions – Charter Schools Act*, reviewed problems experienced and proposed definitions for terms in the *Charter Schools Act*, including:

- local educational agency;
- lottery;
- enrollment preference;
- governing body training;
- non-discretionary waivers;
- material terms;
- performance indicators, measures, and metrics;
- performance targets;
- planning year;
- material violation;
- minimum educational standards; and
- support staff.

POLICY CONSIDERATIONS

School Transportation

The Chair recognized David Craig, LESC staff, to discuss current statute and administrative rule provisions and potential policy considerations relating to school transportation funding for local- and state-chartered charter schools.

Referring to a document developed by LESC staff that outlines these provisions for state-chartered charter schools and also for locally-chartered charter schools, Mr. Craig explained that locally-chartered charter schools are required to negotiate to- and from-transportation services for eligible students with the school district in which they are located. Administrative rule also limits transportation services for a locally-chartered charter school by means of a school bus or a per capita feeder agreement only. On the other hand, these requirements do apply to state-chartered charter schools. He emphasized that if the subcommittee considers amending current law for state-chartered charter schools, multiple sections of the *Charter School Act* and the *Public School Act* would need to be amended.

Two Percent Administrative Support Offset

The Chair recognized Ian Kleats, LESC staff, to discuss provisions in law relating to the 2.0 percent administrative withholding from charter schools' program costs. Among their provisions, he explained, those sections of statute:

- allocate to charter schools at least 98 percent of their school-generated program cost, allowing the school district or division to withhold up to 2.0 percent for administrative support (**22-8B-13**);
- require that each charter school contract include a detailed description of how the chartering authority will use the withheld 2.0 percent of the school-generated program cost (**22-8B-9**);

- define the state equalization guarantee (SEG) for state-chartered charter schools as the difference between the school-generated program cost and the 2.0 percent withheld by the department for administrative services (**22-8-25**); and
- require that school districts allocate the appropriate distribution to locally chartered charter schools in its district within five days of receiving the district’s SEG distribution, allowing school districts to deduct the administrative withholding prior to distribution (**22-8-15**).

Potential conflicts, Mr. Kleats stated included the following:

- **22-8B-13** uses permissive language with respect to the amount of withholding from state-chartered charter schools (“up to 2 percent”). However, the definition of SEG for those schools appears to mandate exactly 2.0 percent be withheld; and
- **22-8B-9** references how the chartering authority will use the withheld 2.0 percent, but in the case of state-chartered charter schools, **22-8B-13** and **22-8-25** grant the withholding authority to the Charter Schools Division (CSD) or the Public Education Department (PED), respectively, not the chartering authority.

Mr. Kleats emphasized that although not directly related to the 2.0 percent administrative withholding, the subcommittee may wish to consider that the definition of SEG for state-chartered charter schools in **22-8-25** neither permits nor requires deduction of local or federal revenue from program cost in the calculation of SEG:

To conclude, Mr. Kleats, referring to an attachment to the staff report, reviewed the final budgeted administrative withholding from each charter school for school year 2013-2014, indicating that:

- approximately \$1.94 million withheld by PED from state-chartered charter schools for administrative support;
- approximately \$1.48 million withheld by school districts from locally chartered charter schools for administrative support; and
- final audited data were not available for the reversion or expenditure of charter school administrative withholding by PED for FY 14.

Small School Size Adjustment

The Chair recognized Mr. Craig, LESC staff, to discuss the small school size adjustment and its impact to charter and school district revenues.

Mr. Craig explained that size adjustment units, or “small school” size adjustments, are terms used for the size adjustment section of the public school funding formula that applies specifically to schools (as opposed to school districts).

Referring to an attachment to the staff report, Mr. Craig reported that provisions in current law:

- specify that there are three statutory formulas pertaining to the calculation for school size adjustment units:

- one for elementary and middle/junior high schools a student membership of 200 or fewer;
 - one for senior high schools with a membership of 200 or fewer; and
 - one for senior high schools with a membership of 400 or fewer;
- indicate membership for the purposes of size adjustment program units that excludes students receiving C- or D-level special education services or students enrolled in three- and four-year-old developmentally disabled programs; and
 - indicates separate schools established to provide special programs, including but not limited to vocational and alternative education; shall not be classified as public schools for purposes of generating size adjustment program units.

With regard to elementary/junior high and senior high size adjustments, Mr. Craig noted that a review of units and revenue by charter school indicate that 77 of the 95 charter schools in operation generated:

- approximately 7,383 of the 21,145 total statewide school size adjustment units;
- \$28.1 million in funds through school size adjustment program units, or 34.9 percent of the total \$80.7 million generated under size adjustment program units; and
- after adjusting for other provisions in law that allow for a 2.0 percent reduction in charter school State Equalization Guarantee (SEG) distributions, the \$28.1 million generated represents 16.86 percent of the total \$167.1 million in charter schools' SEG.

The Chair requested that item 3 of the agenda, Cyber/Virtual School Funding: Comparison of State Models be heard as the first agenda topic on Friday, September 12, 2014.

There being no further business, the subcommittee recessed at 5:04 p.m.

FRIDAY, SEPTEMBER 12, 2012

CYBER/VIRTUAL SCHOOL FUNDING: COMPARISON OF STATE MODELS

The Chair recognized Ian Kleats, LESC staff, to discuss the funding of cyber/virtual schools, including a comparison of New Mexico funding to other states.

Referring the subcommittee to informational handouts, including a table illustrating the FY 14 program cost per MEM FY 14 program cost per MEM of the two New Mexico virtual charter schools, Mr Kleats stated that data in that table suggests:

- virtual charter schools generate significantly less program cost through the funding formula than other charter schools and traditional public schools. More specifically, the:
 - New Mexico Virtual Academy (NMVA) generated \$5,381 per MEM, approximately 26.3 percent less than the statewide average and 35.0 percent less than the average charter school;
 - New Mexico Connections Academy (NMCA) generated \$5,672 per MEM, approximately 22.3 percent less than the statewide average and 31.5 percent less than the average charter school; and

- The difference in funding levels appear to be attributable to:
 - values of the Training & Experience Index below the statewide average;
 - lower special education rates than other charter schools or the statewide average; and
 - below-average add-on units (size adjustment, enrollment growth, etc.).

Mr. Kleats noted that relative to the virtual school funding provided by other states that have separate provisions for fully online school funding, the New Mexico public school funding formula generates for virtual schools:

- less funding than nine states (California, Colorado, Iowa, Louisiana, Nevada, Oregon, Pennsylvania, Wisconsin, and Wyoming);
- more funding than three states (Florida, Georgia, and Kansas); and
- Comparable funding to three states (Arizona, Indiana, and Ohio).

With regard to online curricula and other services Mr. Kleats reported that NMCA contracts with Connections Education LLC, and NMVA contracts with K12 Inc.

To conclude, Mr. Kleats referred the subcommittee to Attachment 5 of the staff brief outlining the tuition schedule and services provided by the K12 International Academy, a private online school operated by that company.

NEW MEXICO CONNECTIONS ACADEMY STATE-CHARTERED CHARTER SCHOOL REPORT

The Chair recognized staff from the New Mexico Connections Academy (NMCA), including Athena Trujillo, Principal, and Chris Jones, Assistant Principal, for an overview of the charter school's operations.

To begin, Ms. Trujillo narrated a video highlighting school offerings, initiatives, and programs. Assisted by other school staff members, she then reviewed the contents of the NMCA 2014-2015 program guide and selected documents in a committee notebook handout, including: the

- slides of a NMCA Powerpoint presentation outlining the:
 - ✓ total number of students by grade level and location;
 - ✓ student proficiency in English and math;
 - ✓ total number and percentage of dropouts by school year or completion rates by grade level by school year; and
 - ✓ total number of graduates and graduation rate by school year;
- test schedules;
- Public Education Commission Performance Framework for the 2013-2014 school year;
- staff list by title and location;
- governing council members and location;
- course description by grade level; and
- finance information, including:
 - ✓ operating budget by school year;

- ✓ expenditure of special revenue, such as Instructional Material Fund allocations and Public Education Department distributions;
- ✓ list of contracted entities;
- ✓ reversion of funds, and
- ✓ cash balances by school year.

To conclude, Ms. Trujillo emphasized that based on family responses during the 2013-2014 enrollment process, the following statements indicate why New Mexico families consider NMCA:

- ✓ 34 percent – needed alternative to previous school(s);
- ✓ 10 percent – student was struggling academically;
- ✓ 9 percent – student needed a flexible schedule;
- ✓ 5 percent – student was bullied; and
- ✓ 5 percent – student had health issues.

CHARTER SCHOOL REPORT: ALBUQUERQUE PUBLIC SCHOOLS

Representative Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) Charter Schools Subcommittee to order at 9:03 a.m.

The following voting members of the LESC 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.

The following voting members of the LESC Charter Schools Subcommittee were not present:

Senators John Sapien, William P. Soules, and Pat Woods.

The Chair recognized Don Moya, Chief Financial Officer, Albuquerque Public Schools (APS), to discuss a district study related to small school size adjustment funding for charter schools and its FY 14 impact on the district.

As opening remarks to his presentation, Mr. Moya reported that APS supports the charter schools in the district. As examples, he noted that the district has:

- supported Albuquerque-based charter school with over \$35 million in the last six years;
- provided business management services for at least two charter schools; and
- assisted these schools in mitigating potential deficits.

He emphasized that the district conducted this study out of necessity, primarily because of declining enrollment in the district and as a sustainability initiative focused on resource management. He emphasized that as APS staff, he wanted to speak for the need for choice from -we want to speak for the need for choice from parents.

Mr. Moya explained that the small school size adjustment was established in the State Equalization Guarantee (SEG) Distribution, commonly referred to as the Public School Funding Formula, to provide revenues for small schools (typically rural schools), that would otherwise be

underfunded by the funding formula due to diseconomies of scale. He noted that some 20 years ago, when school districts began to voluntarily open smaller, alternative schools to serve different segments of the student population, legislation was enacted to make these schools ineligible for size adjustments; however, charter schools continued to be eligible for this adjustment.

Referring to a subcommittee handout, Mr. Moya reported that:

- in the past decade, Albuquerque-based charter schools have grown at a pace of 4 to five schools and their enrollment has increased by 800-900 students per year;
- from 2007 to 2015, there has been no net increase in APS funded enrollment;
- during that time, Albuquerque city enrollment grew by over 5,000 students and coincidentally charter schools grew by 5,000 students thus obscuring the impact to APS enrollment;
- in aggregate, Albuquerque-based charters would rank as the fourth largest school district in the state based on FY 14 SEG funding;
- Albuquerque-based charter schools receive approximately \$23 million in size and growth adjustments; and
- on a per pupil basis, this translates to approximately \$2,000 more per student for charter schools.

To conclude, Mr. Moya outlined “competitive response options” that the district is considering, including:

- resizing its infrastructure and changing its staffing formulas, such as increased classroom sizes, leaner support group; or
- at a time when other school districts across the country are consolidating into larger schools, financial incentives encourage APS to open more, smaller schools, such as opening small academies; and
- work to have the small school size adjustment for charter schools changed.

SUBCOMMITTEE DISCUSSION

After discussing the reports and testimony received by the subcommittee, the subcommittee considered the timeline for finalizing subcommittee recommendations to the LESC during the committee’s November interim meeting. As a result, LESC staff was directed to poll the subcommittee members to determine if a subcommittee meeting could be scheduled for either November 3 or November 7 to finalize subcommittee recommendations for presentation to the LESC during its November interim meeting.

The subcommittee then directed the LESC staff to work on the following discussion drafts for the subcommittee to review at their early November meeting:

A policy bill to re-examine the relationship between PED & PEC, with clarification (if needed) of "staff support" referenced in 22-8B-17(A).

A policy bill to remove (or phase out) charter schools' eligibility to receive the small school size adjustment... perhaps offset by the elimination of the 2% set-aside and/or the allowance of charter schools to generate their own at-risk calculation after the first year of operation.

A policy bill to remove state-chartered schools' eligibility for transportation distributions; instead, it should "permit" both locally-chartered and state-chartered schools to contract with the school district in which they are located for transportation services.

A policy bill to clarify whether charter schools are component units of their authorizers for the purposes of the Audit Act. (This might require two bills... one that makes them component units and one that makes them independent.)

A clean-up bill to address, at a minimum, the following:

- 22-2-21 -- Bullying/Cyberbullying to include charter governing councils
- 22-2E-4 -- A-F School Grading Act modifications
- 22-8-6.1 -- Charter School budget oversight
- 22-8-11 -- Charter School budget approval
- 22-8-18 -- Program cost calculation
- 22-8B-4R -- Definition of "management"
- 22-8B-4T -- Definition of "local education agency" (LEA)
- 22-8B-4.1 -- Definition of Lottery & Enrollment Preference (e.g., sibling)
- 22-8B-5.1-- Definition of Governing Council training
- 22-8B-6 -- Charter School authorization
- 22-8B-8N -- Clarify process for securing discretionary & non-discretionary waivers
- 22-8B-9 -- Two percent set-aside intended use
- 22-8B-9B2 -- Definition of "material term"
- 22-8B-9.1 -- Definition of "performance indicators", "performance targets", etc.
- 22-8B-12A -- Definition of "planning year"
- 22-8B-12K1 -- Definition of "material violation"
- 22-8B-12K2 Remove "minimum educational standards"
- 22-8B-13 -- Two percent set-aside "to authorizer"
- 22-15D-5 -- Fine Arts Education Act to include local charters
- 22-23-2 -- Bilingual Multicultural Act to include local charters
- 22-26A-X -- Lease Purchase Act modifications

ADJOURNMENT

There being no further business, the Chair adjourned the LESC subcommittee meeting at 12:39 p.m.