

**MINUTES**  
**LESC CHARTER SCHOOLS SUBCOMMITTEE MEETING**  
**September 24, 2014**  
**New Mexico Junior College**  
**1 Thunderbird Circle, Hobbs, New Mexico 88240**

**WEDNESDAY, SEPTEMBER 24, 2014**

Representative Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) Charter Schools Subcommittee to order at 1:06 p.m., on Wednesday, September 24, 2014, in the Bob Moran Multipurpose Room at the New Mexico Junior College in Hobbs, New Mexico.

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

Representatives Mimi Stewart, Chair, Dennis J. Roch, Vice Chair, Jimmie C. Hall, and Christine Trujillo; and Senator William P. Soules.

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

Representatives Rick Miera, and James E. Smith; and Senators John M. Sapien, Craig W. Brandt, Linda M. Lopez, and Pat Woods.

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

**REVIEW OF LEGISLATIVE AND EXECUTIVE ACTION: HB 392a (2013), *PUBLIC EDUCATION COMMISSION AS INDEPENDENT***

The Chair recognized Ms. Heidi Macdonald, LESC staff, for an overview of HB 392a (2013), *Public Education Commission as Independent*, including the veto message in House Executive Message Number 38.

Ms. Macdonald explained that HB 392a proposed to amend sections of the *Public Education Department Act* and the *Charter Schools Act* to establish the Public Education Commission (PEC) as a separate, independent entity from the Public Education Department (PED). She noted that among its provisions, the legislation would have:

- removed the PEC's administrative attachment to PED; and
- added new subsections to:
  - permit the PEC to employ staff as needed to assist the commission in the execution of its duties, subject to appropriation by the Legislature;
  - direct the PEC to prepare an annual budget; and
  - require the PEC to report annually to the Legislature and the governor;
- granted authority to the PEC to approve or deny applications for the establishment or renewal of state-chartered charter schools;
- stipulated that no fees may be charged for the consideration of an application, either by the PEC or any other chartering authority;

- required the chartering authority to rule, in a public hearing on an application by September 1 so long as it was submitted by the preceding July 1;
- stipulated that the absence of a ruling on a charter school application shall constitute a final denial of the charter, which an applicant may appeal;
- stipulated that a denial of an application by:
  - a local school board, acting as chartering authority, may be appealed to the PEC by either the applicant or the charter school governing body; and
  - a final decision of the PEC may be appealed to the district court by either the applicant or the governing body;
- permitted the PEC, on its own motion, to review a local school board's decision to grant or renew a charter to determine:
  - if the decision was arbitrary and capricious; or
  - the establishment or operation of the charter would:
    - violate state or federal civil rights laws;
    - violate any court order; or
    - threaten the health and safety of students in the district;
- directed the commission to revoke the charter if it makes any of the above findings;
- noted that a decision by the PEC under this section is final; and
- permitted an applicant or governing body to appeal a final decision by the PEC to the district court.

Additional provisions, she noted, would have:

- required the PEC to review a local school board's decision to deny, not renew, suspend, or revoke a charter when they receive a notice of appeal from an applicant or governing body;
- allowed an applicant or governing body to appeal such decisions by local school boards by providing the PEC with a notice of appeal:
  - within 30 days of the local school board's decision;
  - that limits the grounds for appeal to those grounds that were the basis of the school board's decision; and
  - that includes a brief statement of why the board's decision was wrong;
- required the PEC to review the board's decision within 60 days of receipt of the notice of appeal;
- stipulated that the PEC may grant a charter to the applicant, as a state-chartered charter school, if the commission finds that the board's decision was:
  - arbitrary and capricious;
  - not supported by any evidence; or
  - in violation of law; and

- stipulated that an applicant may appeal the decision of the PEC under this section to the district court.

Amendments from the House Education Committee, Ms. Macdonald noted, included:

- providing rulemaking authority to the PEC in order to implement the provisions of HB 392; and
- transferring \$375,000 from the program cost allowance, withheld by the PED for administration of charter schools, from PED to PEC.

With regard to the veto message, Ms. Macdonald stated, the Executive expressed concern that by creating an independent PEC and removing the secretary of the PED from the chartering process, the bill:

- undermined the existing separation of powers and the internal system of checks and balances;
- prohibited the secretary from executing the secretary’s managerial and administrative duties pursuant to section 9-24-8 NMSA 1978; and
- permitted the PEC to abdicate the duty to approve or deny a charter school application by permitting a type of “pocket veto” of applications where the absence of a ruling constitutes a final decision denying the charter application.

### **CHARTER SCHOOL RISK REVIEW FINDINGS**

The Chair recognized Mr. Ian Kleats, LESC staff, to summarize the risk review by the Office of the State Auditor (OSA) of the Southwest Secondary Learning Center (SSLC) and the Southwest Aeronautics, Mathematics and Science Academy (SAMS).

Mr. Kleats informed the subcommittee that the results of this risk review were sent to the respective presidents of the governing councils for each school in a letter dated August 5, 2014. According to the letter, he explained, the OSA examined:

- risks associated with the charter schools’ aviation programs;
- the leasing of real property to the charter schools by Southwest Educational Consultants, LLC (SEC), a business co-owned by the school’s head administrator and another school employee; and
- other risk related to internal control issues and expenditures, including:
  - charter school governance;
  - travel reimbursements; and
  - employee salaries and contracts.

With regard to the risks associated with the charter schools’ aviation programs, Mr. Kleats noted that the OSA letter referred to the:

- procurement of aircraft from a business co-owned by the school’s head administrator and another employee, where:

- it does not appear that the provisions of the Procurement Code were followed with respect to seeking competitive bids;
  - it appears that, in at least one instance, conflicts of interest arising from the schools' head administrator co-owning the company, from which aircraft were leased, were not disclosed; and
  - in other instances, prohibitions against conflicts of interest in the Procurement Code were waived only after the contract had already been bid, negotiated, and awarded;
- improper use of statewide price agreement, which would otherwise allow the schools to bypass a competitive bid process, as a basis for procuring goods or services from a specific company; and
  - lack of internal controls for the flight programs, where:
    - goods and services procured and paid for by one school were used by both schools without an appropriate apportionment of costs amongst the schools;
    - the OSA was unable to obtain sufficient documentation to indicate that the schools monitor or maintain adequate reporting on aircraft instruction to students, thus making it impossible to verify whether the costs charged by contractors are reasonable and necessary; and
    - modifications to contracts discussed and voted on by the governing council were apparently made without discussion of the amount of additional expenditures.

Mr. Kleats continued with the risks associated with the leasing of real property to the charter schools. He stated that the OSA letter states that SSLC leased a building on Montgomery Boulevard in Albuquerque from SEC. While the charter school now resides at a different location, he stated, SSLC continues to lease space at the Montgomery Complex from SEC. The OSA, he noted, found that SSLC may be improperly coding this expenditure as instruction, rather than operation of buildings, which could artificially inflate the instruction function in its financial statements.

Other risks related to internal control issues and expenditures highlighted in the OSA letter, Mr. Kleats stated, include:

- charter school governance, where:
  - the head administrator plays an influential role in selecting councils members;
  - the governing council, which the head administrator has a hand in appointing, is responsible for evaluating the head administrator, raising concerns about the independent and impartial evaluation of the charter schools' transactions that enhance the financial interest of the head administrator; and
  - it appears that provisions of the Opening Meetings Act were not being followed in at least one instance when appointing a new member to the governing council;
- travel reimbursements were either improperly calculated or not documented appropriately; and
- issues with employee salaries and contracts.

To conclude, Mr. Kleats reviewed potential policy considerations relating to charter school governance:

### *Identification of Significant Issues*

- ensure that a charter authorizer has access to annual and special audit reports:
  - the *Public School Finance Act* requires that each charter school shall have an annual audit and that, at the completion of the annual or any special audit, the school district or charter school shall submit a copy of the audit report to the PED; and
  - potentially amend that section of law to include the chartering authority as a recipient of the audit report;
- provide the Public Education Commission (PEC) with staff to conduct random internal audits of state-chartered charter schools:
  - the OSA is authorized to audit the financial affairs and transactions of an agency to be audited in whole or in part, but the OSA staff cannot reasonably perform special audits on a significant proportion of state-chartered charter schools each year;
  - according to statute, as a chartering authority, the PEC shall “monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority;” and
  - results of internal audits could inform PEC decisions to require corrective action plans and whether to renew charters or not; and
- amend provisions of the *Charter Schools Act* relating to conflicts of interest to require notification of the chartering authority when public disclosure of conflict of interest is required by other sections of law, such as the *Procurement Code*.

### *Enforcement Mechanisms*

- explicitly allow financial sanctions against charter schools for unsatisfactory performance reviews as part of the current structure of progressive discipline:
  - “A chartering authority may take appropriate corrective actions or exercise sanctions, as long as such sanctions do not constitute revocation, in response to the unsatisfactory review. Such actions or sanctions by the chartering authority may include requiring a governing body to develop and execute a corrective action plan with the chartering authority that sets forth time frames for compliance.” [22-8B-12(F) NMSA 1978]; and
  - financial sanctions could mirror those already allowed within the *Public School Finance Act* for failure to submit annual audit reports, which allow PED to withhold a portion of a district or charter school’s SEG. [22-8-13.1 NMSA 1978]

## **GOVERNANCE REQUIREMENTS IN CHARTER SCHOOL PERFORMANCE CONTRACTS**

The Chair recognized Ms. Abby Lewis, Assistant Attorney General, Civil Division; and Mr. Mark Tolley, Director, Schools of Choice, Office of Innovation, Albuquerque Public Schools (APS), to discuss the charter school performance frameworks for state-chartered charter schools and locally chartered charter schools respectively.

Ms. Lewis outlined the charter school performance frameworks that the Public Education Commission (PEC) uses specifically with state-chartered charter schools. She noted the performance framework paperwork was adopted from the National Association of Charter School Authorizers (NACSA) and modified to reflect the needs of charter schools in New Mexico.

The charter school performance framework, Ms. Lewis explained, informs the PEC how well the governing body is doing. Referring to the *New Mexico Public Education Commission Charter School Performance Framework* included in the subcommittee notebooks, Ms. Lewis stated that the provisions referring to governance council requirements, as well as holding governance boards accountable, allow the PEC to rate the governance board as meeting the standard, working to meet the standard, or falling far below the standard.

Mr. Tolley reviewed the *Albuquerque Public Schools Charter School Performance Framework* included in the subcommittee notebooks. He indicated that while the APS and PEC performance frameworks conform to the framework provisions in current law (Section 22-8B-9.1), differences may occur because of the district's role as an authorizer of locally chartered charter schools. For example, he explained, the financial performance framework for APS authorized charter schools includes certain information relating to audit findings over a four-year period. As the locally authorized charter schools are component units of the district, he noted, APS staff attend both the entrance and exit of each charter school's annual independent audit and also monitor and oversee corrective action for repeat findings. He noted that district staff is currently assisting one of the district's charter schools in addressing a potential deficit.

To conclude, Mr. Tolley noted that the APS performance framework includes optional measures developed by NACSA in consideration of New Mexico school data, including measures related to student growth and to student achievement (proficiency).

## **CHARTER SCHOOL GOVERNANCE MODELS**

The Chair recognized Ms. Heidi Macdonald, LESC staff, to review charter school governance models.

Ms. Macdonald reported that pursuant to the *Charter Schools Act*, 22-8B-8(I)1-3 NMSA 1978, a charter school application is required to include a description of the governing body and operation of the charter school, including:

- 1) how the governing body will be selected;
- 2) qualifications and terms of members, how vacancies on the governing body will be filled and procedures for changing governing body membership; and

- 3) the nature and extent of parental, professional educator and community involvement in the governance and operation of the school.

She noted, however, that according to a July 23, 2010 program evaluation report on charter schools by the Legislative Finance Committee (LFC), there may be a conflict of interest between the school's administrator and its governing body in certain instances, namely:

- administrators who are also founders of schools, select board members and replacements to the governing board; and
- in turn, the governing board approves administrators' salaries and hiring recommendations.

To remedy this potential conflict, Ms. Macdonald added, LFC staff suggested in its report that charter school governing body members should have a conflict of interest disclosure form on file with the school or charter authorizer.

Ms. Macdonald stated that according to Dr. Gary R. Gruber, a consultant with Carney, Sandoe, and Associates in Santa Fe, there are three models of charter school governance boards that are used in most charter schools today:

- a school committee or council composed of parents, teachers, administrators, and others;
- a board of directors with officers, by-laws, and delegation of management to a principal, chief administrator/director, or head of a school; and
- owner/operator, either non-profit foundation or for-profit, with or without a board or committee.

According to the Colorado Department of Education's Governance and Leadership Best Practice Resources, Ms. Macdonald stated, potential issues related to charter school governance boards may include:

- individual board members acting outside their decision-making authority;
- conducting meetings without adhering to legal requirements, by not properly noticing a meeting, taking action in a workshop or executive session, or discussing inappropriate topics in executive session;
- meeting too often and too long;
- micromanaging or failing to focus on what matters most; and
- neglecting the board's responsibilities to create and be governed by board policies.

To conclude, Ms. Macdonald reviewed the recommendations for effective governance , including the following factors to be considered when establishing governance for a charter school listed in the Colorado Charter School Handbook:

- **governance structure**
  - first step is to establish the charter school's governance structure and reporting lines;
  - document the roles and responsibilities for the lead administrator and the governing board; and
  - the initial governing board should establish how meetings will be conducted, how issues with parents and staff will be addressed, how meetings will be conducted, how

issues with parents and staff will be addressed, and how meetings will be documented in the minutes;

- **corporate documents**
  - establish a written vision and mission statement; and
  - create and maintain written bylaws and governing board policies;
- **board expertise and training;**
  - all board members must be trained in basic board function and responsibilities;
  - an orientation for new board members should be developed and delivered; and
  - every board member should be provided a copy of the original charter application, the charter contract, bylaws, and governing board policies;
- **strategic planning and goal setting** will ensure that: the governance board adheres to its original intent for the charter school; and
- **election of new members**
  - the process for and frequency of elections for new board members should be outlined in the bylaws and board policy;
  - members may be appointed or elected by the membership; and
  - new board members should sign a board member agreement.

### **SUBCOMMITTEE DISCUSSION**

Subcommittee members discussed items for the members review in October, which could include the afternoon of October 15 and part of the day on October 16. In consideration of the agenda for those meetings, the members requested LESC staff to determine if:

- a report from the Public Education Commission would be available;
- staff from the Office of the State Auditor would be available to discuss charter schools as component units of their authorizer; and
- PED staff would be available to discuss amendments relating to school transportation distributions to state-chartered charter schools.

Staff were also requested to develop a discussion draft relating to the powers and duties of the governing councils of charter schools by adapting applicable provisions in current law for local school boards (Section 22-5-9), namely taking out those provisions relating to an election but adding provisions requiring the publication of vacancies and the method for accepting applications.

Finally, the Chair requested LESC staff to review the provisions of HB, 522, *Charter Schools Federal Grant Requirements*, that was passed by the Legislature during the 2013 legislative session but pocket vetoed.

## **ADJOURNMENT**

There being no further business, the Chair adjourned the LESC subcommittee meeting at 4:05 p.m.