

**MINUTES
of the
THIRTY-FOURTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 5, 2011
Room 322, State Capitol**

The thirty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on October 5, 2011 at 9:15 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair
Mr. Paul Aguilar
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Dr. Carl Foster
Ms. Cecilia Grimes
Dr. Lisa Grover
Mr. Leonard Haskie
Mr. Robbie Heyman
Senate President Pro Tempore Timothy Z.
 Jennings
Sen. Lynda M. Lovejoy
Mr. Mike Phipps
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Sen. Cynthia Nava, Co-Chair
Tom Clifford, Secretary of Finance and
 Administration
Rep. Larry A. Larrañaga
Speaker of the House Ben Lujan
Mr. Kilino Marquez
Rep. W. Ken Martinez
Sen. George K. Munoz
Ms. Lilliemae Ortiz
Ms. Judy Rabon
Sen. Sander Rue

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Rachel Gudgel, Senior Fiscal Analyst, Legislative Finance Committee (LFC)
Frances Ramirez-Maestas, Director, Legislative Education Study Committee

Guests

A copy of the guest list is in the meeting file.

Handouts

Copies of the handouts and other written testimony are in the meeting file.

Wednesday, October 5

Representative Miera welcomed the task force members. Noting the temporary lack of a quorum, he indicated that the task force would convene as a subcommittee so the meeting could begin.

Update on Progress of Adequacy Standards Development for the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI)

Robert Gorrell, director, Public School Facilities Authority (PSFA), reported that the NMSD, the NMSBVI and the PSFA are on schedule according to the previously proposed schedule for establishment of adequacy standards discussed at prior PSCOOTF meetings. He attributed the progress to the hard work and committed participation on behalf of both special schools.

In response to a task force question, Mr. Gorrell explained that a charrette is an intensive planning session in which citizens, design experts and others collaborate on a vision for development of a construction project. He said it provides a forum for ideas and offers the unique advantage of giving immediate feedback to the design professionals. He added that, more importantly, the charrette process allows everyone who participates to be a mutual author of the plan. He said that through brainstorming and design activity, many goals are accomplished during a charrette.

1. Everyone who has a stake in the project develops a vested interest in the ultimate vision.
2. The design team works together to produce a set of finished documents that address all aspects of design.
3. Because the input of all the players is gathered at one event, it is possible to avoid the prolonged discussions that typically delay conventional planning projects.
4. The finished result is produced more efficiently and cost effectively because the process is collaborative.

Mr. Gorrell explained aspects of the NMSBVI and NMSD analytical charrette process, including: the observation of existing schools currently in operation; the review of existing information; and the definition of the functional drivers of typical school spaces and of additional space required for accommodations. He said these special purpose schools have three space drivers: (1) impairment accommodations; (2) low student-teacher ratios; and (3) a low student enrollment. He elaborated, saying that an eight-to-one student-teacher ratio is ideal, but the low student enrollment makes consistent ratios sometimes disproportionate. Additionally, he stated that the facilities need diagnostic, outreach and community support function space, as well as space for the student residential program. Mr. Gorrell told the task force that these are spaces that are lacking in traditional schools and therefore their existence presents a challenge.

Martica Casias, planning and design manager, PSFA, discussed the gross square footage requirements per student. She pointed out examples of various classroom and laboratory types, including general, preschool, science, art, music, technology, career preparation, culinary and life skills, industrial arts and a broadcast studio. She also pointed out the school administration rooms, including the nursing and health center, student dormitory, student housing common spaces, individual instruction spaces and the offices. She said the gross square footage per student becomes a footprint, and, in this case, when looking at the NMSD with 128 students, the

data illustrate a need for 968 square feet per student and a total school footprint of 96,000 square feet. She explained that inside of that footprint, the school will add what is required, as long as it is not below the minimum standards created. Mr. Gorrell added that the lower the student-to-teacher ratio, the greater the square footage per student.

Richard Romero, facilities specialist, PSFA, discussed the draft standards for the NMSD and the NMSBVI. He said the PSFA is hopeful that by using traditional standards in comparison to regular public schools, the NMSD and the NMSBVI buildings can be ranked among the traditional schools. He added that the fewer departures the specialty schools have from traditional schools, the better. He stated that the document provided to the task force explains how the PSFA arrived at the standards for the various spaces. Mr. Gorrell clarified that the term "expanded core curriculum", found within Item F on the first page of the draft for adequacy standards, is a new term. He said that instead of students going directly to science and math classes, they may attend a shop class with tools, which would fall into this category.

A few members of the task force asked what the NMSD and the NMSBVI need to reach basic adequacy standards and how the standards for students required to live on-site are separated from those who live at home. Finally, there was a question about funding progress. In response, Mr. Gorrell explained that the students attending the school are counted, as are the students living on-site, and the standards are applied to both groups. He said that the schools are ranked in regard to those standards and receive a funding percentage that is comparable to that of a traditional school. He clarified that the PSFA has decided to review each building and see if it can compete against an entire traditional school campus. Initially, he said the legislature approved deficiency correction funding of up to \$8 million.

Representative Miera asked that it be made clear whether or not all parties involved in this process have reached agreement.

As a point of clarification, Richard Gorman, project manager, NMSD, said that it is his understanding that the \$8 million allocated for the projects is to be shared between the two schools, and receiving the funds is contingent on whether the buildings involved fail to meet adequacy standards. He expressed concern that, by participating in the standards-based process, the two special schools will experience further delays in receiving grants for projects whose needs have been defined and demonstrated. He reminded the task force that because the NMSD and the NMSBVI are under the purview of the Higher Education Department (HED) and that the general obligation bond question failed on the November general election ballot, the two schools have not been granted funding. He emphasized that the schools are falling behind and said he hopes funding can be secured to deal with the immediate needs. He said that he is optimistic that adequacy standards will be developed by December but made clear that the square footage issues had not been presented to the schools until the day prior to this meeting, so the schools have not had the opportunity to review the standards. He noted that the standards-based assessment criteria have not been completed. He said the PSFA has been straightforward, and he thinks the assumptions involved will be close to accurate.

Julie Walleisa, principal, Dekker/Perich/Sabatini, and contract architect for the NMSBVI, said the schools are encouraged by the process and that involved parties are on the right path, which will allow the schools to make good decisions regarding the existing facilities. She

estimated that the NMSBVI has about \$14 million in deficiency corrections work to be done; however, she expressed concern about the assumptions being built into the standards.

In response to the comments regarding the \$8 million designated for the special schools, Mr. Gorrell stated that the purpose of that funding is to provide "backstop" funding for the schools, so they could count on at least that level of funding.

Several task force members asked if the NMSD and the NMSBVI could be shifted to the Public Education Department (PED) from the HED. Ms. Ball responded that the special schools were created in the state constitution, just like universities, and they answer to their respective boards of regents, which are appointed by the governor and approved by the senate. She said a constitutional amendment is required for the schools to be accountable to the PED. She also noted that both of the special schools have indicated a preference to continue administratively under the HED. She added, however, that the special schools' problem has always been having to compete with the other institutions under the HED for capital outlay funding.

Members of the task force inquired about project readiness, considering there is approximately \$4 million for each school. Mr. Gorman explained that the schools have two projects ready for design, and he is waiting on the authorization from the Public School Capital Outlay Council (PSCOC) to do so. He said \$4 million will complete only the second phase of one project, but \$6 million would cover two projects. Tim Berry, deputy director, PSFA, added that fiscal year 2012 has \$200 million available for funding for school projects, but he explained that due to obligated funding, only about \$98 million is available. Task force members requested a quantified amount for each school's project completion. Mr. Gorrell stated that it is possible for the council to authorize the design phases of these projects at its November 5 meeting. Representative Miera reminded Mr. Gorrell that the PSCOOTF's role is to oversee the PSCOC, and the PSCOOTF is sending the message for the PSCOC and the PSFA to move in the direction of funding the schools' projects in a timely manner.

Upon a motion by Senator Smith, seconded by Representative Saavedra, the task force unanimously agreed to request that the PSCOC allocate, at a minimum, by December 31, 2011, the PSCOC funds already approved for the special schools to continue with the deficiencies corrections work at both schools and to finish with establishment of adequacy standards for the special schools as soon as the rulemaking process makes it possible.

Regarding the failure of the higher education general obligation bond question on the ballot (which included funding for the NMSBVI and NMSD projects), task force members agreed that funding for these two schools should be in a question that is separate from the rest of the higher education projects on future general election ballot questions.

Charter School Facilities — Where We Are and How We Got Here

Representative Miera explained that, because of the length of the NMSBVI and the NMSD discussion, the above-named agenda item will be addressed at a subsequent PSCOOTF meeting.

Charter School Facility Issues — PED

Antonio Ortiz, director, Capital Outlay Bureau, PED, offered proposed changes to the Public School Buildings Act and the Public School Capital Improvements Act. Referring to Sections 22-25-3 and 22-26-3 NMSA 1978 (the authorization for local school boards to submit questions

of capital improvements tax imposition), he suggested having a concrete date instead of the term "timely", as it is currently phrased. This language will ensure that both the charter schools and the school district are bound, he said. He gave an example, stating that a school district usually passes a resolution that the school board approves in December, and the election takes place the following February. He stated that with the suggested change, the school board will pass a resolution for the future public school improvements funding in July. Second, Mr. Ortiz recommended that the term "local school districts" replace the term "department" in Sections 22-25-11 and 22-26-10 NMSA 1978 (expenditures by charter schools; reporting to the department). He said this statute requires two reports to be submitted to the PED by the charter schools; the first report is due in December and the second in January. The December report details the intent of the expenditure of local dollars, and the second report addresses the dollars spent the previous calendar year. He explained that the language change provides safeguards to the school district and the PED from audit findings.

Discussion ensued among the task force members, and points of clarification were asked regarding the two term changes. Representative Miera requested that Ms. Ball analyze this language to determine the process to alter the language, through statute or that rule.

In response to a question concerning audit issues and charter school auditors, Mr. Ortiz explained that the PED wishes to shift the responsibility back to the school districts because the mill levy funds allocated to the locally chartered charter schools are not state funds. He said that the PED is hearing different interpretations of statute and that some capital dollars are being used for operational costs to purchase items that the PED would not allow to be purchased; whereas, for example, Albuquerque Public Schools' (APS) interpretation of the statute does indeed allow these purchases.

Representative Miera noted that this issue will be discussed at the Legislative Education Study Committee meeting.

Patricia Mathews, Esq., director, Options for Parents, PED, briefly discussed public facilities available to charter schools. She said the issue is the lack of teeth in the provisions and said it needs clarification to support charter schools in their attempts to relocate into public buildings. If the state is trying to place charter schools into available public spaces, charter schools need to be able to leverage other funds and take action when space is available, she said. Ms. Mathews stated that the PED is making progress in placing charter schools into public facilities but that a question has been left unanswered — whether, in fact, some of the private leases might comply with statute, meaning whether a private landlord has provided an adequate facility and if the landlord has agreed to maintain the building. She stated that Mr. Berry reminded her of the expiration of Section 22-8B-4.1 NMSA 1978 (whether or not state-chartered charter schools have a state match). She said that there is approximately \$1.1 million in that fund now and that not many charter schools have tried to access those funds.

Conversation ensued between members of the task force and Ms. Mathews concerning charter schools moving into public facilities that are not adequate and money being spent on upgrading those facilities when it might have been cheaper to build new facilities. Dr. Grover suggested following statutes from best practice states as an example of how to amend New Mexico's statutes to fix this issue, and how to define "underutilized". She suggested research be

conducted on how to put more teeth into this law. She said this statute has been in place since 1999 and it can work better for both charter schools and school districts.

Charter School Facility Lease Agreement Concerns

Eugene E. Gant of the Public Education Commission (PEC) and former member of the Las Cruces Board of Education discussed concerns relative to the lease agreements between owners of facilities and charter schools. He said it is understood that these leases need to be in the best interest of the charter school, the taxpayers, the property owners and the students. He stated that for the 2011-2012 school year, New Mexico will pay \$10.8 million in lease assistance for 83 charter schools. He said that 12 additional charter schools have been approved by the PED or school districts. Based on the number of students planned for the start of the 2012-2013 school year, an additional \$1.8 million may be added to the total lease payments, he explained.

Mr. Gant expressed several concerns regarding several lease arrangements. He emphasized that the lease agreements are legal but may not be in the best interest of all parties involved. For example, he said that a foundation supporting a charter school currently receives the lease payments for a school facility that it does not actually own. The facility is owned by the school district and leased to the city, which in turn leases the facility to the foundation, he explained. He questioned why the school districts should not be receiving the lease assistance funds and what the foundation is doing with the funds received from the lease assistance. In addition, he stated that a charter school is paying as much as \$64,000 per year in addition to the lease payments received from the state. He said the question is not necessarily the amount of the lease but rather what operational funds are being used to cover the additional costs for the lease and what programs are not being provided to the students due to the operational dollars being used.

Mr. Gant opined that the problem is the lack of public facilities that will meet the schools' educational needs. He said that HB 283 has established facility standards that were long overdue; however, he said that requirements of the legislation may require a property owner to renovate a facility that would then drive up the cost of the lease. Therefore, he recommended the establishment of a standardized lease agreement for all charter schools to follow.

Discussion ensued among the task force members, Mr. Gant and Ms. Mathews about charter school leases. In response to the discussion, Mr. Gant stated that the information he presented is the official opinion of the PEC.

Charter School Facilities Issues — New Mexico Coalition for Charter Schools (NMCCS)

Tony Monfiletto, principal, Architecture, Construction and Engineering (ACE) Leadership High School, Albuquerque, said the school is in a partnership with Associated General Contractors and Vertical Construction. He said he has worked with the contractors to develop curricula for the students so they may adapt to the work force. He said the goal of the school is to transition the students either to college or to an apprenticeship, and he emphasized that ACE Leadership is not a vocational school. Mr. Monfiletto explained that the school serves students between the ages of 14 and 24, with a large number of young people who are high school dropouts and without other prospects. He said many of the students have children of their own, and many of them do not speak English. He concluded by stating that a goal of the school is to grow to 425 students.

Caryl Thomas, principal, Cesar Chavez Community School, Albuquerque, said the school opened in July 2004 as a locally chartered charter school within APS and was renewed as a state-chartered charter school. She stated that the school serves 185 students, with about 96% of them living in poverty. She said many of the students' academic skills scored as being sixth grade or below in math, and 68% of them were below ninth grade in reading. Ms. Thomas stated that through self-reporting and transcript review, the school conducted research on the history of the students and the results show that 86.6% of the students experienced: failing at least one class during their freshman year; earning fewer than two high school credits; and attending multiple high schools or dropping in and out of high school. She explained that the original mission of the school is to offer non-traditional hours. She said that feedback from the parents and students indicates that they appreciate the high level of support from teachers. A staff mentorship program exists in which every staff member has a caseload of 10 students and their families, which results in a 90% attendance rate of parents at the parent-teacher conferences, she reported. Lastly, she said the school graduated 43 students in the last academic year, with all of them registered either at the University of New Mexico, Central New Mexico Community College or the police academy. Concerning the school's facility, she said the charter school has moved into a private facility that the school considers to be its permanent home. She stated that, due to the timing of the school's charter renewal and the switch to being a state-chartered charter school, the school has not received Public School Buildings Act funding at this time.

Members of the task force inquired about the student needs at ACE, to which Mr. Monfiletto responded that some of the students have special needs. Discussion ensued about alternate placement of those students in other schools. Concern was expressed by various members of the task force about the age disparity of the students at ACE, which ranges from 14 to 24. Task force members were also concerned about the pressure these additional students (those above the age of 18) put on the funding formula unit value and expressed interest in acquiring other funding sources for these adult students.

Mr. Monfiletto explained that the 14-year-old and 24-year-old students are not in the school at the same time, and the school uses the facility as efficiently as it can to run the classes, day and night.

APS and Charter Schools — Working to Meet Capital Needs

Carrie Robin Menapace, legislative liaison and policy analyst, APS, briefly discussed the number of charter schools in Albuquerque. She said that there are 21 APS Board of Education-authorized charter schools (locally chartered charter schools) and 34 PEC-authorized charter schools (state-chartered charter schools), with five of those opening in the fall of 2012. Concerning the facility standards statutes that affect charter schools, she said that Section 22-8B-4.2 NMSA 1978 stipulates that charter school facilities must meet the same educational occupancy standards that traditional schools meet. She explained that charter schools that have been renewed at least once are eligible for grants pursuant to the Public School Capital Outlay Act and are evaluated the same way traditional schools are. She added that those grants may be used for lease assistance payments to the lessor for improvements made.

Ms. Menapace explained that by 2015, state statute requires that all charter schools be in public buildings or be in a building that is subject to a lease-purchase arrangement that has been entered into and approved, according to requirements of the Public School Lease Purchase Act. She continued, stating that if a charter school is not housed in one of the described facilities, the

charter school must demonstrate that the facility the school is in meets the statewide adequacy standards and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or to the state. In addition, in order to not be in a publicly owned facility by 2015, public buildings must not be available, or if publicly owned facilities are available, the charter school must prove that the facility does not meet the educational program needs of the charter school.

Mark Tolley, director, Charter and Magnet Schools, APS, discussed SB 446, passed by the 2011 legislature, explaining that it outlines the requirements of performance contracts for charter schools only. He said the statutory changes did not specifically affect the requirements for charter school facility standards, the requirements of a school district to provide capital to charter schools within its geographic boundary or the per-membership distribution of the Public School Capital Improvements Act (SB 9) or the Public School Buildings Act (HB 33) money to charter schools.

Brad Winter, Ed.D., chief operations officer, APS, highlighted several facility designs, including the co-location of charter schools with public schools, as done with the Native American Community Academy and Wilson Middle School; a new charter modular facility, as done with Robert F. Kennedy High Charter School; and the purchase of an existing private facility, as done with Montessori of the Rio Grande Charter School.

Ms. Menapace explained the APS Board of Education resolution adopted on September 20, 2011. She said that the resolution states that charter school statutes need clarification regarding capital responsibilities, per-membership distribution of funds, local district responsibilities to provide capital resources to state-authorized charter schools and prioritization in the authorizer's capital master plan. She added that the resolution states that a charter school should not affect the authorizing school district's audit when significant findings are levied against the charter school and that authorizing school districts should have the right to determine and execute a formal process of suspending the authority of a charter school's governing body for failing to meet provisions of state law or its charter, rather than moving to immediate revocation of the charter school.

Ms. Menapace explained that APS has established a memorandum of understanding (MOU) with six of its locally chartered charter schools to provide assistance for their facility needs. She said that each charter school agrees to: (1) pay its PSCOC lease-assistance funds to APS for the purchase of land, buildings and construction; (2) pay six percent of the school's state equalization guarantee operational funds to the district for maintenance and utilities costs; and (3) collaboratively spend the school's HB 33 funding on design costs, technology and small fixed asset purchases. In return, the district will provide a facility for the charter school that is constructed and managed by APS. She said that, currently, \$34 million of the district's capital master plan is dedicated to the establishment of charter school facilities.

Ms. Menapace noted that challenges arise from charter schools that do not sign the MOU. Offering background information, she explained that APS does not have control over how many charters are authorized in Albuquerque, but APS is responsible for the charter school facilities and the money involved with the facilities. She said that APS does not currently have vacant square footage, but APS does have bonding capacity, and the question is how to provide the needed square footage. She stated that if one thinks about the fact that charter schools are

supposed to be in public facilities by 2015, but that APS must include all schools in their bond issue, APS does not have the bonding capacity to provide facilities to all charter schools and maintain the traditional schools as well. She emphasized that the school board is concerned about this issue.

Martin R. Esquivel, chair, APS Finance and Audit committees, stated that the message APS is receiving from the legislature on these issues is to work with the charter schools and not against them. He said that, often, rhetoric becomes too hot, and APS is seen as having a lot of conflict with the charter schools, which is not true, and he would like to erase the perception that APS does not have sympathy for charter schools. He emphasized that there are significant legal inconsistencies that cause problems, such as what do to in terms of clarification of per-membership. Mr. Esquivel said that by keeping charter schools in APS's capital master plan and spending \$13 million above what charter schools are contributing places the school board in a difficult position because these dollars are taken from traditional schools' facilities needs. He stated that the statute is not clear about the authority APS has in this situation and that the lack of clarification is negatively affecting traditional schools. Finally, Mr. Esquivel said that SB 446 does provide more methodology in terms of spending on charter schools, but clarification is still needed about the relationship between the district board and the charter schools' respective governing boards. He said that he has found that the governing boards lack the legal and accounting sophistication needed to run a school.

Mr. Esquivel presented several questions for discussion. He stated that local school districts are responsible for capital needs for all traditional public schools, all locally authorized charter schools and all state-authorized charter schools. He asked if the districts have the capacity to meet those needs. Second, he asked if it is reasonable for school districts to require MOUs to provide adequate facilities. He posed the question of how prioritization of state-authorized charter schools affect a district's capital master plan. Finally, he asked if the per-membership distribution of funds is adequate to provide facilities to charter schools.

In response to a question from a task force member about school district responsibility for charter schools and the district's bonding capacity, Paula Maes, APS Board of Education president, confirmed that the school district is indeed responsible for the charter school funding as long as the charter school submits the necessary information to the school district in a timely manner. She clarified that all of the charter schools in Albuquerque are included in APS's capital master plan, but the difference is whether or not they are funded. She added that SB 446 will aid in the arena of disciplining charter schools for misuse of funds and that APS would like the ability to revoke the authority of a charter school's governing board instead of revoking the charter, allowing the charter school to be run by APS for a year.

Task force members inquired whether or not APS has a procedure in place for a deficiencies correction process. Ms. Menapace responded that it is dependent upon the deficiencies. During annual visits, the difference is whether the school has one or two minor infractions on which APS can work with the governing body versus major issues in audit findings. She stated that there is tension in the interpretation of the law because the charter school's governing council is autonomous and does not have to follow the advice APS offers it. She then said that APS's only choice is to revoke the charter.

Dr. Grover added that SB 446 states that the term of the contract will have a deficiencies correction process with a 30-day limit for each party to respond. She suggested that APS

implement SB 446 early because it is a law that is aligned with national best practices. She added that revoking a charter is difficult, and authorizers are typically hesitant to do this.

Other Business

Representative Miera appointed members to the qualifications based subcommittee.

Adjournment

There being no further business, the task force adjourned at 3:40 p.m.