

AGENDA ITEM EXECUTIVE SUMMARY

I. **Public Education Commission Meeting Date: June 15, 2017**

II. **Item Title:**

DISCUSSION AND POSSIBLE ACTION ON PROPOSAL FOR A PEC ATTORNEY

III. **Proposed Motions:**

IV. **Executive Summary:**

The Commissioners will discuss and vote on RFP Scope of Work for legal services.

The Public Education Department (“PED”) has made a proposal to the Public Education Commission (“PEC”) to provide funds for the purpose of contracting with one or more attorneys to provide limited legal representation for the PEC. The PED has proposed a budget of \$85,000 for such services. The amount requires an RFP process be used to secure the vendor and services.

The PED proposes to enter into an MOU with the PEC under the following terms and conditions.

A. The RFP responses will be evaluated based on the qualifications of the proposed attorney(s) to perform the scope of work.

B. The PEC shall select the RFP review committee, which shall include at least 5 members, to evaluate the RFP responses and ultimately to select attorney(s) vendors(s) from the pool of qualified RFP responses.

C. The PEC, not the PED will be the client of the attorney(s) providing legal services. The attorney(s) will take assignments from a majority vote of the PED, the Chair of the PEC or the Executive Committee of the PEC. An attorney client relationship will exist between the PEC and the attorney(s).

D. The attorney(s), PEC and PED shall be bound by the following ethical rules
16-108. Conflict of interest; current clients; specific rules.

F. Compensation from third party. A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by Rule [16-106](#) NMRA of the Rules of Professional Conduct.

16-106. Confidentiality of information

A. **Disclosure of information generally.** A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by Paragraph B of this rule.

B. **Disclosure of information;** specific circumstances. A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary :

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) to secure legal advice about the lawyer's compliance with these rules;
- (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based

upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

C. Inadvertent or unauthorized disclosure of information. A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

E. The attorney's will have a contract or contracts through the New Mexico Public Education Department. The parties to the contract will be the PEC, the selected attorney(s), and the PED. The contract(s) will be based on the scope of work set forth in the RFP and below the amount billed at the hourly rate established in the selected RFP response and not to exceed \$85,000 in total compensation for the term of the contract(s).

F. The attorney(s) will provide bills to the PEC Chair on a monthly basis with a general description of the work done, and the time spent within the budget established. The attorney(s) will keep a record of assignments requested by a majority vote of the PEC, the Chair of the PEC or the Executive Committee of the PEC. The Chair of the PEC shall review and approve the legal bills on a monthly basis and forward the approval to the PED for payment.

G. At the direction of the Chair of the PEC, the attorney(s) will discuss any legal issues with the Director of Options for Parents and Families that will impact the work of the Charter School Division as it provides staff support to the PEC.

H. The attorney(s) shall have access to public documents and information held at or generated by PED that are necessary to execute the scope of work. The selected attorney(s) and the Director of Options for Parents and Families shall collaboratively determine a process for requesting and producing the public documents and information held at PED that are necessary to execute the scope of work.

SCOPE OF WORK

The attorney shall provide legal advice to the PEC regarding questions of administrative law,

open government law, substantive New Mexico charter school law, New Mexico and Federal education law, and other areas of law required in executing the authority of the Public Education Commission as a chartering authority, Specifically, this includes:

- A.** Attend meetings of the PEC and provide legal advice as requested at those meetings as it relates to questions of administrative law, open government law, substantive New Mexico charter law, New Mexico and Federal education law, and other areas of law required in executing the authority of the Public Education Commission as a chartering authority.
- B.** Prepare letters or written decisions to charter schools and new school applicants regarding the authorizing decisions of the PEC and regarding corrective action taken or sanctions imposed by the PEC.
- C.** Provide legal representation to the PEC in any legal hearings required by the PEC relating to non-renewal, revocation or other authorizer sanctions of charter schools. This includes initial decision making hearings, appeal hearings before the Secretary or an appointed hearing officer on the Secretary's behalf, and appeal hearings in New Mexico courts regarding related PEC authorizing decisions.
- D.** Provide legal representation to the PEC regarding any appeals related to PEC authorizing decisions.
- E.** If requested by the Chair, provide a legal review of negotiation worksheets and renewals of Performance Contracts and Performance Frameworks during the term of the contract.
- F.** If requested by the Chair, provide legal representation during the negotiation process of performance contracts and or performance Frameworks.
- G.** Provide a legal Review of the annual report by the PEC for submittal to PED and provide legal guidance related to submission or finalization of the report.
- H.** The attorney(s) shall not provide legal advice or representation to the PEC for the purposes of bringing legal claim, in any jurisdiction or venue, on the PEC's own initiative against the PED or any representative of the PED as a named party.