

**BEFORE THE PUBLIC EDUCATION COMMISSION
STATE OF NEW MEXICO**

IN THE MATTER OF:

**THE PROPOSED REVOCATION OF THE LEARNING COMMUNITY CHARTER
SCHOOL CHARTER**

NOTICE OF HEARING AND PREHEARING ORDER

Pursuant to NMSA 1978, §§ 22-8B-5.3 (G), 22-8B-12 (K-L), 22-8B-16 and the New Mexico Public Education Commission's (Commission) June 6, 2013, order, the Commission will hear the proposed revocation of The Learning Community Charter School (TLC) charter on **Monday, July 29, 2013 from 9:00 a.m. to 1:00 p.m., at the Old Supreme Court Room (Red Room), Second Floor, Bataan Memorial Building, 407 Galisteo (South of the Jerry Apodaca Building), Santa Fe, New Mexico.** The purpose of the hearing is to take evidence concerning the possible revocation of TLC's charter due to alleged actions or omissions by TLC which, if proven, amount to violations of the Charter Schools Act as set forth in NMSA 1978, § 22-8B-12 (K) (1-4) and to issue a decision. While the undersigned will preside over the hearing, the Commission by motion and vote in the noticed public meeting will decide the matter. In conducting the hearing the following shall apply:

1. Pursuant to NMSA 1978, § 22-8B-12 (L) the Charter Schools Division of the New Mexico Public Education Department (CSD) shall provide to TLC timely notification of the prospect of revocation and the reasons therefore. If CSD has not already done so, its formal notification and the reasons therefore must be submitted to the Commission as provided below by close of business July 15, 2013.

2. Pursuant to NMSA 1978, § 22-8B-12 (L), TLC is entitled to a reasonable time to prepare and submit to the Commission a response to the proposed action. The Commission understands that CSD has already provided TLC with the required notice of proposed action and, further, takes administrative notice that on June 6, 2013, TLC was notified of the proposed action, the reasons therefor and the Commission's order setting this matter for hearing. Because of this, TLC's response to the proposed action is due in the Commission's office in the manner set forth below by the close of business on July 22, 2013.

3. The parties should note that prehearing motions are disfavored by the Commission and any motions the parties wish to make shall be raised as preliminary matters at the hearing.

4. The hearing will be electronically recorded and transcribed by a certified court reporter. At hearing, CSD shall have the burden of proving by preponderant evidence that the acts or omissions complained of in its notification occurred. Preponderant evidence is that evidence which indicates that it is more likely than not that an asserted act or omission occurred.

5. Each party shall have one hour to present its case in chief. A party may make a brief opening statement or waive such statement in its discretion. Parties may call witnesses who will be sworn and may otherwise submit other evidence as permitted by the undersigned. Brief cross-examination of witnesses offering direct testimony will be permitted. The cross-examination of witnesses shall be limited to the scope of the direct testimony offered. Re-direct and re-cross examination of such witnesses shall not be permitted. Following the direct testimony and cross-examination of a witness, if any, Commissioners members may ask brief questions of the witness. The parties will not be permitted to ask follow-up questions after

questioning by Commission members. Only CSD and TLC will be permitted to call witnesses, introduce evidence and cross-examine witnesses.

6. Because CSD bears the burden of proof, it shall present its case in chief first then TLC will present its case in chief. CSD should be prepared to address the substantive issues asserted by its notification and should also be prepared to address aggravating and mitigating facts, if any. TLC should be prepared, among other things, to substantively address the assertions set forth in CSD's notification of possible action and to address the consequences to TLC of possible sanctions. Both parties should be prepared to answer questions regarding the fundamental operation of the school including, but not limited to, total enrollment numbers and enrollment numbers by grade, teaching hours, current curriculum, TLC's school calendar for 2013-2014, complete financial details regarding the school and any related foundations and any other matters related to the continuation or closure of the school.

7. Consistent with well-established principles of administrative law, the Commission will not strictly adhere to the Rules of Evidence during the hearing and the undersigned may admit any evidence into the record in her sole discretion. For example, hearsay may be introduced and considered, and will be given its due weight. The undersigned may limit or otherwise exclude testimony that is incompetent, irrelevant, immaterial or unduly repetitious. The decision to exclude or limit evidence will be made by the undersigned in her sole discretion.

8. The rules of privilege shall apply during the hearing.

9. Because of the potential effect of the Commission's decision on a number of different groups, including TLC students, parents, teachers and staff, members of the public will be afforded thirty minutes total to comment before the Commission begins deliberation.

Members of the public shall be required to sign up prior to the hearing and shall have two

minutes each to address the Commission. There will be no further comment allowed once the thirty minute period has run so members of the public are encouraged to sign up early if they wish to address the Commission. The Commission may consider the public comments with respect to the weight of the evidence presented by the parties or with respect to interpretation of law or matters of public policy within the Commission's jurisdiction and discretion. Members of the public commenting will not be permitted to question any witnesses or introduce any evidence. They will be limited only to comment. Following public comment, the Commission will enter into deliberations and no one other than Commission members and Commission counsel, as appropriate, can participate.

10. The undersigned may take notice of cognizable facts and of general, technical or scientific facts within its specialized knowledge.

11. Following the presentation of all evidence and the conclusion of witness testimony/questioning, each party may present closing arguments. The respective parties are responsible for determining how to order their cases and manage the time afforded to them.

12. The parties should take care to avoid ex parte communications with Commission members during the pendency of this matter. Subject to paragraph 3 set forth above, procedural questions should be addressed to the undersigned in writing in the manner set forth below. In extraordinary circumstances, for example where time is of the essence, procedural issues should be addressed to the Commission's counsel who will in turn notify the undersigned as appropriate.


13. The Commission's determination of this matter shall be issued in writing. *See, e.g.,* NMSA 1978, § 22-8B12 (M). Pursuant to NMSA 1978, § 22-8B12 (L) (3) the Commission's written decision shall be submitted to the New Mexico Public Education

Department (NMPED). In the event that the Commission suspends or revokes TLC's charter, TLC may appeal that decision to the NMPED Secretary pursuant to NMSA 1978, § 22-8B-12 (N)

All documents required to be filed with the Commission pursuant to this Order shall be addressed to Beverly Friedman, Commission Liaison, New Mexico Public Education Commission, 300 Mabry Hall, Santa Fe, NM 87505, or, if submitted electronically, to Beverly.friedman@state.nm.us Paper filing must include an original document and nine copies. Upon receipt, Ms. Friedman shall transmit all party filings to the Commission's Chairwoman and counsel for proper disposition.

IT IS SO ORDERED.

DATED this 3RD day of July, 2013.


CAROLYN SHEARMAN
Chairwoman
New Mexico Public Education Commission