

## MEMORANDUM

**TO:** Don Duran, Assistant Secretary of Education  
Sam Obenshain Program Manager

**FROM:** Rudolph P. Arnold, Counsel

**RE:** Single sex Schools

**DATE:** August 9, 2010

You have requested my opinion whether the Public Education Commission can authorize a coeducational charter school that proposes to offer only single-sex classrooms. Based on my examination of the relevant Federal and New Mexico statutes, regulations, opinions, and case law authorities, and on the information available to me at this time, it is my opinion that the Public Education Commission, as the chartering authority, should not approve a coeducational charter school that proposes to offer only single-sex classrooms.

### ANALYSIS:

A charter school applicant has submitted an application for a state-chartered charter school which will admit boys and girls and proposes to teach them in separate single-sex classrooms. No coeducational classes will be offered.

Pursuant to New Mexico law, an approved state-chartered charter school is a single-school LEA. The applicant contends that the exception in 34 CFR § 106.34(c)(2) allows a single-school LEA to operate a school without complying with the applicable Federal regulation that requires public school districts which offer single-sex classrooms to offer a comparable coeducational classroom to every student.

The rationale for the exception for single-sex charter schools that are single-school LEAs is that, absent the exception in 34 CFR § 106.34(c)(2), it would be unduly burdensome to require developers and supporters of such schools to establish and operate an additional substantially equal school to meet the needs of the excluded sex.

The charter school applicants have interpreted the exception in the regulations for single-sex charter schools that are single-school LEAs as permitting them to operate a charter school that will be organized as two different and innovative academies-one for the boys and one for the girls- that utilizes single gender classrooms. Choreographed socialization opportunities between the genders will occur during community/service learning providing a venue for developing appropriate relationships. In addition to providing socialization opportunities, joint activities between the boys and girls academies will be integrated within the curriculum.

Upon initial review of the applicant's proposal for the school, it appears that the exception in 34 CFR § 106.34(c) (2) is applicable. However, the exception is for **single-sex charter schools**. What the applicant is proposing is **not** a single-sex charter school but a coeducational school that will provide the education in single-sex classrooms. Since the applicant is not offering enrollment in coeducational classes in the same subjects, enrollment in single-sex classes is not voluntary. It is my opinion that a coeducational charter school that provides only single sex classrooms would violate the applicable Federal regulations governing single-sex classrooms and single-sex schools.