

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER**

Petitioners

v.

Case No. DPH 0809-24

**ALBUQUERQUE INSTITUTE FOR
MATHEMATICS and SCIENCE Charter
School, ALBUQUERQUE PUBLIC SCHOOLS, and
NEW MEXICO PUBLIC EDUCATION DEPARTMENT,**

Respondents.

DECISION ON THE DISTRICT'S MOTION TO DISMISS

Jane B. Yohalem, Due Process Hearing Officer

This matter is before the due process hearing officer on the District's *Motion to Dismiss*. The hearing officer having considered the District's motion to dismiss, the due process complaint, and the legal memoranda submitted by both the District and Parents, hereby denies the District's motion to dismiss. The basis for this decision follows.

The District has argued that a charter school is a Local Education Agency (an LEA) for purposes of the Individuals with Disabilities Education Act of 2004 (IDEA). The IDEA and its implementing regulations provide, in relevant part, that, if a charter school is an LEA, rather than a public school within the district, then the District has no responsibility for the provision of special education in that school. 20 U.S.C. § 1413(a)(5); 34 C.F.R. § 300.209(c). On the other hand, the IDEA provides that, if a charter school is a public school of the LEA, the LEA must serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools. 20 U.S.C. § 1413(a)(5); 34 C.F.R. § 300.209(b).

In arguing that the charter school is an LEA, rather than a public school within the District, the District relies on several provisions in the 2007 amendments to New Mexico's Charter School

Act, NMSA 1978, §§ 22-8B-1 *et seq.* The district claims that the deletion in the 2007 amendments to the Charter School Act of the language previously in NMSA 1978, § 22-8B-2(A) (1999), describing a charter school as a public school “within a school district,” signaled a decision by the Legislature to change locally-chartered charter schools from public schools “of the LEA” in which they chartered, to LEA’s in their own right. (The Legislature also removed the phrase “within a school district” from NMSA 1978, § 22-8B-4(J). That section, in the 2007 amendments, describes a charter school as simply “a ... public school,” rather than “a ... public school that operates within a school district.”

Although this argument is initially persuasive, a closer look at the statute reveals a different Legislative intent in making these changes to the Act. First, in § 22-8B-4(T) (2007), the Legislature added a section specifically stating that a state-chartered charter school (a new type of charter school created by the 2007 amendments) is a “local education agency” responsible for determining students’ needs for special education and related services. Although locally-charted charter schools are made responsible by that same statutory section for complying with state and federal special education laws, they are not described in this subparagraph, or elsewhere in the Charter School Act as LEA’s.

Second, the removal of the phrase “within a school district” when describing charter schools in the Act can more readily be explained in a way which does not indicate an intent by the Legislature to convert locally-chartered schools into LEA’s. The primary change to the Act made by the Legislature in 2007 was the addition of state-chartered charter schools. In this context, the removal of the phrase “within a school district” in describing charter schools generally was necessary to expand the definition of a charter school to include both charter schools locally-chartered charter schools and state-chartered charter schools. The deleted phrase would not accurately describe the new state-charted charter schools which plainly are not schools “within a school district.”

The District's argument that this simple change in a phrase in the law was intended to work a major change in the relationship of district's to their locally-chartered charter schools is, therefore, not supported by the language of the amendments or by the Legislative intent behind those amendments. The explicit language of § 22-8B-4(T) (2007), specifically making state-chartered charter schools into LEA's, while not doing the same for locally-chartered charter schools, is dispositive. That provision is not undercut by the changes in wording elsewhere in the Act, especially given the other readily apparent explanation for these changes.

For these reasons, the District's motion to dismiss is denied.

The District has also challenged the propriety of the relief requested by Parents on behalf of Student. The hearing officer will take this opportunity to clarify the limits of a due process hearing officer's authority. The hearing officer has authority to consider only whether the particular Student on whose behalf the complaint is brought is receiving a free appropriate public education. In terms of remedy, the hearing officer is limited to remedies which directly affect the services provided to that Student. Remedies which go to the District's overall relationship to the charter school and to how the District administers its special education program, are not within the authority of the hearing officer to order. Because some of the remedies sought from the District, such as training of staff who will actually work with Student, may be appropriate here, depending, of course, on the evidence presented at the hearing, the hearing officer will not dismiss the District from this case at this time. Nonetheless, the parties are directed that the hearing officer will not hear evidence or order remedies which go beyond meeting the needs of this Student. Systemic issues are appropriately raised in a state-level complaint or in some other forum, not in a due process hearing.

THIS DECISION RENDERED THIS 13th DAY OF JUNE, 2009.

Jane B. Yohalem
Due Process Hearing Officer
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this *Decision* was transmitted by e-mail and first class mail to counsel for the parties and to Albert Gonzales, at the PED (by mail only) on this 13th day of June, 2009.

Jane B. Yohalem
Due Process Hearing Officer