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PEC MEMO

Re: Proposed rule on Board Suspensions
Meeting date 10/21/21 Working Session
Date: 10/18/2021

NOTES: Here is information on the proposed rule on governing board suspensions.

The PED by statute can suspend a board of finance, including that of a charter school. That law remains. Nothing in this rule change impacts that.

In this rule, the Secretary is able to suspend a board for other reasons. It is presently limited to local school boards and does not appear to relate to state charter governing boards. It appears to be a rule that implements NMSA 22-2-14 regarding local school boards.

I suggest that the PEC comment to allow the Secretary to be able to suspend a charter school board for other reasons, other than finances, if needed. If the Secretary suspended a state charter, the Secretary would come before you at a public meeting to discuss.

I attach a red-line draft here.

I am concerned that the PEC's authority to take action as against a state charter school board is limited. You can suspend, revoke or non-renew a charter. I think that the Secretary should be able to take action against a board. For example, if a state charter governing board voted to not comply with any COVID rules, you could suspend the charter and shut down the school. However, it may be less harsh and more appropriate to have the Secretary suspend the board and allow the school to continue.

Here is the law related to the PEC that is relevant.

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Provisions that create state charter schools as public schools and subject to the PED's authority.

22-8B-4. Charter schools' rights and responsibilities; operation.

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services and shall not allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses.

B. A charter school shall be governed by a governing body in the manner set forth in the charter contract; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school. No member of a local school board shall be a member of a governing body for a charter school or employed in any capacity by a locally chartered charter school located within the local school board's school district during the term of office for which the member was elected or appointed.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978].

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

22-8B-5. Charter schools; status; local school board authority.

D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions.

Limitations on PEC authority

The charter school act is very specific and limited action that the PEC can take. In an extraordinary situation, the PEC could likely take action to suspend a charter school, which could result in the school governing board being suspended, but that is not entirely clear.

NMSA 22-8B-12 K provides "A charter school may be suspended, revoked or not renewed by the chartering authority determines

- (1) committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;
- (2) failed to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract;
- (3) failed to meet generally accepted standards of fiscal management;
- (4) for a charter school located on tribal land, failed to comply with ongoing consultations pursuant to the Indian Education Act; or
- (5) violated any provision of law from which the charter school was not specifically exempted.

The proposed changes would not change the PEC's authority and would give the Secretary clearer authority to act as well if necessary.

Here are some provisions that relate to this rule.

The rule looks to implement 22-5-4 in particular (for context)

Here are the statutes that the rule looks to address

22-2-14. Local school boards; public schools; suspension; procedures.

A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the department. The department shall give written notification to a local school board, local superintendent and school principal, as applicable, of any failure to meet requirements by any part of the school district under the control of the local school board. The notice shall specify the deficiency. Instructional units or administrative functions may be disapproved for such deficiencies. The department shall disapprove instructional units or administrative functions that it determines to be detrimental to the educational process.

B. Within thirty days after receipt of the notice of failure to meet requirements, the local school board, local superintendent and school principal, as applicable, shall:

(1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or

(2) submit plans satisfactory to the department to meet requirements and remove the cause for disapproval.

C. The secretary, *after consultation with the commission*, shall suspend from authority and responsibility a local school board, local superintendent or school principal that has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The department shall act in lieu of the suspended local school board, local superintendent or school principal until the department removes the suspension.

D. To suspend a local school board, local superintendent or school principal, the secretary shall deliver to the local school board an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be held by the department, at which the local school board, local superintendent or school principal may appear and show cause why the suspension should not be put into effect. Within five days after the hearing, the secretary shall make permanent, modify or withdraw the alternative order.

E. The secretary may suspend a local school board, local superintendent or school principal when the local school board, local superintendent or school principal has been notified of disapproval and when the department has sufficient reason to believe that the educational process in the school district or public school has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before a public hearing can be held.

F. The department, while acting in lieu of a suspended local school board, local superintendent or school principal, shall execute all the legal authority of the local school board, local superintendent or school principal and assume all the responsibilities of the local school board, local superintendent or school principal.

G. The provisions of this section shall be invoked at any time the secretary, after consultation with the commission, finds the school district or public school has failed to attain and maintain the requirements of law or department standards and rules.

H. The commission shall consult with the secretary and may recommend alternative actions for the secretary's consideration.

I. A local school board, local superintendent or school principal aggrieved by a decision of the secretary may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

The Board of finance law not affected by this rule:

22-8-38. Boards of finance; designation.

A. Upon written application to and approval of the department, a local school board may be designated a board of finance for public school funds of the school district. A local school board designated as a board of finance may require all funds distributed to, allocated to or collected for the school district or the public schools under its jurisdiction to be deposited with it. The department shall designate a local school board as a board of finance if:

- (1) the local school board shows to the satisfaction of the department that it has personnel properly trained to keep accurate and complete fiscal records;
- (2) the local school board agrees to consult with the department on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;
- (3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and
- (4) the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

B. A charter school applicant requesting a charter from the commission shall submit a plan detailing how its governing body will qualify for designation as a board of finance for public school funds of the charter school. The governing body of a proposed state-chartered charter school shall qualify as a board of finance before the first year of operation of the charter school. The governing body of a state-chartered charter school designated as a board of finance may require all funds distributed to, allocated to or collected for the state-chartered charter school to be deposited with the governing body. The commission shall designate the governing body of a state-chartered charter school as a board of finance if:

- (1) the governing body shows to the satisfaction of the commission that it has personnel properly trained to keep accurate and complete fiscal records;
- (2) the governing body agrees to consult with the division on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

(3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

(4) the governing body was not a governing body of a charter school or does not have a member who was a member of a governing body of a charter school that was suspended and not reinstated as a board of finance.

C. Failure of the governing body of a proposed state-chartered charter school to qualify for designation as a board of finance constitutes good and just grounds for denial, nonrenewal or revocation of its charter.

22-8-39. Boards of finance; suspension.

The department may at any time suspend a local school board or governing body of a state-chartered charter school from acting as a board of finance if the department reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's or governing body of a state-chartered charter school's control. When a local school board or governing body of a state-chartered charter school is suspended from acting as a board of finance, the department shall:

A. immediately take control of all public school funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance;

B. immediately have an audit made of all funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance and charge the cost of the audit to the school district or state-chartered charter school;

C. act as a fiscal agent for the school district or state-chartered charter school and take any action necessary to conform the fiscal management of funds of the school district or state-chartered charter school to the requirements of law and good accounting practices;

D. report any violations of the law to the proper law enforcement officers;

E. act as fiscal agent for the school district or state-chartered charter school until the department determines that the local school board or governing body of a state-chartered charter school is capable of acting as a board of finance or until the department determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school;

F. inform the local school board or governing body of a state-chartered charter school in writing of the department's determination as to who is to act as board of finance or fiscal agent for the school district or state-chartered charter school and also inform the

county treasurer in writing if it determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school; and

G. consider commencing proceedings before the commission to suspend, revoke or refuse to renew the charter of the state-chartered charter school in the case of a state-chartered charter school that has engaged in serious or repeated mismanagement, improper recording or improper reporting of public school funds under its control.

LEA

Higher education in the U.S. A local education agency, or LEA, is a public authority that is designed to oversee the implementation of education policies as set forth by the federal L. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given;

