

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF THE SECRETARY OF EDUCATION
300 DON GASPAR AVENUE
SANTA FE, NM 87501

In the Matter of:

THE GREAT ACADEMY
And its Governing Body,
Appellants,

vs. NMPED Contract Impasse Appeal No. _____

THE NEW MEXICO PUBLIC EDUCATION COMMISSION
Respondent.

RESPONSE TO EXPEDITED NOTICE OF CONTRACT IMPASSE APPEAL AND BRIEF IN SUPPORT

Respondent, the New Mexico Public Education Commission ("PEC") responds to the Expedited Notice of Contract Impasse Appeal for the GREAT Academy ("TGA") by and through its counsel, Julia Hosford Barnes. The PEC has not met as a Commission since May 20, 2022 when it voted to propose the Contract to TGA as attached to the Expedited Notice. This response may be supplemented by the PEC after its next meeting on June 17, 2022. However, the Executive Committee of the PEC asked that a response be filed now. It is the position of the PEC Executive Committee, considering the position PEC has articulated in its previous discussions related to the school,¹ that:

- A) There will be better outcomes for the students at TGA if the school has a shortened charter term and is required to show consistent and immediate improvement². The PEC Executive Committee acknowledges that the Secretary has already provided guidance

¹ PEC Meeting transcript of May 20, 2022, pages 79-106, <https://webnew.ped.state.nm.us/wp-content/uploads/2022/06/May-20-2022-PEC-Meeting-Transcript.pdf>

² For example, when the graduation rate was highlighted in a Corrective Action Plan for this school year and PEC Commissioners identified that success of the seniors was important, TGA responded and improved its graduation from 20 – 38% graduation rates in 2018 - 2019 school year to 100% in 2021-2022 school year.

on the Request for Clarification on May 26, 2022, and TGA rejected the request for a shortened charter term and, instead, filed the Expedited Notice; and

- B) High expectations related to student outcomes and spending on students need to be in place and should be reflected in the conditions for the contract term. The condition to spend 68% on students should be retained.

With regard to paragraph B above, the PEC provides the following information. The PEC undertook contract negotiations with TGA as directed by the Secretary to include conditions that the Secretary directed be included. The Expedited Notice implies that the PEC, itself, identified the condition and required these conditions on its own when both the District Court³ and the Secretary⁴ contemplated and directed that specific conditions be identified. One of the conditions identified and directed by the Secretary is a condition on the amount of TGA's instructional spending. The PEC negotiating team, later accepted by the full PEC, identified that 68% of TGA's budget should be spent in the classroom. This condition should be upheld.

The percentage selected - 68% - was based on a performance measure placed in the 2020 legislative budget for charter schools⁵. This percentage is reasonable and should be attainable, regardless of enrollment at the school. Further, and of greater concern to the PEC, is the consistent budgeting of funds by TGA in a manner that does not support students, but rather supports the school's leaders, Jasper and Keisha Matthews. In October 2021, the PEC submitted letters to the Office of

³ "The Secretary of the New Mexico Public Education Department is hereby ordered to reverse the decision of the Public Education Commission and order the approval of Appellants' charter with any condition(s) the Secretary deems appropriate and otherwise permitted by law." Order of the Court Reversing March 19, 2021 Decision and Order of the Secretary of the New Mexico Public Education Department, page 26.

⁴ "IT IS FURTHER ORDERED that in entering into the contract, the New Mexico Public Education Commission and the GREAT Academy include, but not be limited to, conditions pertaining to the GREAT Academy Foundation operations, the GREAT Academy Foundation financial conditions, the GREAT Academy's instructional spending, the GREAT Academy Personnel and Payroll, and conditions involving the GREAT Academy Governing Board training and board operations consistent with the training." Decision and Order of the Secretary on Contract Negotiations, page 3.

⁵ 2020 HB2, page 180 identifies a performance outcome for charter schools be that 68% of dollars budgeted by charter schools be used for instructional support in budget categories 1000, 2100 and 2200.

General Counsel at the PED, the State Auditor, the Attorney General and the FBI regarding its concerns over spending that resulted in income being paid to leadership rather than spent in classrooms. Over \$1,000,000 in rent pre-payment was paid to a foundation supporting the school and ultimately 25% of those funds were paid to, or for the benefit of, the Matthews and 19% of the entire school operating budget was paid to, or to benefit, the two of them in 2019.⁶ This trend continued into this past school year. Keisha Matthews first entered into an employee contract on June 24, 2021 for the school year 21-22. However, three months later, Ms. Matthews resigned as an employee, received a payout for accrued leave, and became a contractor for six months. She was then rehired as an employee for the last three months of the school year. Through this series of job changes with large economic benefits to Ms. Matthews, and not offered to any other employee, Ms. Matthews was paid 30% more, or \$31,000 more,⁷ than the original contract for the school year for same services.⁸

Finally, the PEC believes that the lease payments to the foundation from TGA for the building are substantially more than the mortgage and building costs paid by the foundation. The condition document now requires that TGA and the foundation use funds only for

- a. building expenses,
- b. building maintenance and mortgage payments,
- c. retiring credit card debt that exists as of 5/20/22 and
- d. lawyer and accountant services for the Foundation.

It is possible that the amount paid to the foundation could be renegotiated. If any of those funds came from operating expenses, those could be allocated to instruction.

As a condition of its charter, the governing board should be required to meet a high level of classroom spending and ensure that it does not pay more on contracts to the leaders than is necessary.

⁶ See TGA Memo in Support of Investigation sent to PED/OGC, page 5-6.

⁷ Ms. Matthews' original employment contract, executed on June 24, 2022 was for \$104,400. The combination of employee salary, payout for leave upon resignation, contractor pay and second employee contract during SY 2021-2022 resulted in payment to Ms. Matthews of \$135,400 or a 130% increase over the original contract.

⁸ Further, the contractor documentation (entered into from October 2021 through March 30, 2022) included provisions allowing training and travel paid to Ms. Matthews with no expenditure limitations that would have been imposed on her as an employee of the school.

TGA serves students with high academic needs. The school should be required to show that it is prioritizing these needs, not the financial goals of the school leaders.

The PEC requests that the Secretary approve the contract as approved by the PEC in order to ensure that the students at TGA receive the education they require.

Respectfully submitted,

/s/ Julia Hosford Barnes
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This is to certify that a copy
of this pleading was emailed to:

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On 6/8/22

Julia Hosford Barnes