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Via Email Only

The Honorable Rebekkah Burt and Ms. Julia Barnes, Esq.
New Mexico Public Education Commission
300 Don Gaspar
Santa Fe, NM 87501

Re: *Matthews Fox, P.C.'s response to August 3, 2022 request to schools for input on "Amendment Forms"*

Dear Chair Burt and Ms. Barnes:

We reviewed each of the forms in sequence and made comments in that order. It may be that comments made in early forms were repeated, but we do not know in what order the PEC will consider the proposed policies.

Preliminarily, as we have reiterated on numerous occasions, we object to the process the PEC uses to adopt policies that are affectively rules as defined by the State Rules Act. NMSA 1978, §14-4-1, *et seq.* Consequently, under no circumstances is our firm or the clients we represent waiving our ongoing objection. We again request that the PEC communicate directly with the Public Education Department to coordinate a rule making process as contemplated by the law.

We are providing the comments contained in the redlined version of each proposed policy on behalf of those clients we represent in this work to avoid any presumption by the PEC or any of its members that the schools, by their silence, are acquiescing to the polices as stated. Please note that this endeavor required significant time and effort, consequently, we ask that the PEC consider in good faith the input solicited by the Chair from all charter schools before adopting these policies as "rules."

During our review we identified common concerns in all of the policies. We may have repeated them in some of the forms individually, but please see the list below for overall comments about the substance of and the procedures described in the proposed policies.

General comments applicable to all policies reviewed:

1. Current contracts between state-authorized charter schools and the PEC require that all amendments to the charter contract be signed by both parties. The forms proposed are administrative and will not result in an approved signed amendment to the contract after the final vote. Tracking amendments has been a problem in the past. There should be a form amendment as part of the packet that can be signed by the school representative in advance of the PEC vote. If the PEC approves the amendment, then the PEC chair can the sign the amendment, which will result in a

- fully executed amendment that can be posted along with the charter contract online. At a minimum, each amendment should be numbered and dated.
2. Every proposed policy has included in the instructions a “checklist” that is reiterated in the accompanying application form, which is redundant. The application form should just have a place for each required item of the check list. The instructions can articulate that the application must be complete to be considered.
 3. By including the boilerplate “Data for PEC Consideration” it appears the PEC is conducting a mini-charter renewal consideration for every amendment (and notice) request. This requires the school to provide information that is irrelevant to the amendment/notice at hand. The PEC should follow its intervention strategies if a charter school is not in compliance or otherwise failing to meet the terms of its charter and not complicate the amendment consideration by asking for extensive information that is generally not targeted to requested amendment or notice. The PEC could rely on a status report from CSD based on information routinely gathered through site visit reports and other reporting requirements through the date of considering the amendment, if the intent is to establish whether there are other compliance/performance issues that would preclude approving the amendment.
 4. Every request for an amendment should include a place for PEC to articulate its basis for denying the amendment which is provided to the school. The school can then exercise its right to appeal.
 5. PEC appears to be using the term “amendment” in an attempt to standardize this process and forms. However, this is legally incorrect and a notice versus an amendment should be treated distinctly as is contemplated by the charter contract. The language in the “instructions” and “forms” that consistently refers to every action as an “amendment” is a misnomer and conflicts with the charter contract. Imprecise use of legal terms creates conflicts, confusion and misleads the charter schools as to their contractual obligations and authority of the PEC.

I have attached to our email a zipped folder with our comments on each proposed policy. Please advise immediately, if you are unable to open the documents.

We understand that the PEC will consider the input provide by our firm at its August 18, 2022 work session. We understand this meeting is being held in Ruidoso. Unfortunately, this will limit the ability for public appearances and the provide only one opportunity for input on these policies, and no opportunity to review final versions before the vote.

If possible, I will respond to questions before the August 18, 2022 meeting. I do not anticipate incurring the expense for our clients to travel to Ruidoso but will attend virtually. If a virtual appearance will preclude an opportunity to respond to questions, please let me know.

Sincerely,

MATTHEWS FOX, P.C.

By: _____
Patricia Matthews

Enclosures

Cc: Susan B. Fox w/o enclosures