

NOTICE OF DISPUTE

VIA EMAIL AND U.S. MAIL

September 20, 2022

Public Education Commission Chair Rebekka Burt
300 Don Gaspar
Santa Fe, NM 87505
PEC.DistrictFour@state.nm.us

Re: Notice of Dispute

Dear Chair Burt,

Pursuant to Section 6, Paragraph 12 of the Charter Contract between the New Mexico Public Education Commission and Cesar Chavez Community School, Cesar Chavez Community School is providing you that a dispute exists between the parties arising out of the interpretation of the Contract. Pursuant to Article 6, Paragraph 11 of the Contract notices to the Commission are to be provided to the Chair.

Section 12 of Cesar Chavez Community School's charter contract outlines a dispute resolution process. CCCS is hereby giving the PEC notice that a dispute exists between the parties with regard to the interpretation of Section Four, Paragraph 11 of the contract. This paragraph reads:

11. **Sites:** The School shall provide educational services, including the delivery of instruction, at the following location(s):

Cesar Chavez Community School
1325 Palomas Dr SE
Albuquerque, NM 87108

The School shall ensure the Facilities meet the charter school facilities standards in Section 22-8B-4.2(A, C, D) NMSA 1978, and shall ensure that the facilities comply with all applicable federal, state and local health and safety standards and other applicable laws, regulations and rules. The School shall provide the Lease(s) or Lease Purchase Agreement(s) for all facilities, which is attached to this contract as Attachment J incorporated herein by reference,

It has become apparent that the Commission's interpretation of this paragraph is that it prohibits the provision of educational services or instruction off campus and prohibits provision of educational services or instruction in an online or virtual setting. At the outset it should be noted that Section 4, Paragraph 11 pertains to the school's facility and not its educational plan.

Cesar Chavez Community School does not interpret this paragraph to preclude the provision of educational services or instruction online. Moreover, Cesar Chavez

Community School does not interpret this paragraph as prohibiting the provision of educational services or instruction outside of the school site.

Cesar Chavez Community School also notes that the Commission has included substantially similar language in most of the contracts it has entered with charter schools. However, in some instances the language has been modified to state that educational services and instruction may *only* be provided at the school site. See for example, Charter Contract between the Public Education Commission and Roots and Wings Community School:

The School shall provide educational services, including the delivery of instruction, only at the following authorized location(s):

It is also worth noting that the Charter Contract between the Public Education Commission and Roots and Wings Community School also contemplates that educational services and instruction will take place outside of the school site. As you may know that school utilizes an expeditionary learning model and their pedagogical approach includes actual expeditions as part of the curriculum. These expeditions are in fact included in the charter contract.

The school offers front country adventures (grades K-2), three-day backpack trips (grades 3-5), and five-day backpack trips (grades 6-8) through which they experience the wonders of the wilderness and the transformation that comes from pushing themselves beyond their perceived limits. The experiences are provided at least two times a year. Students come to the school for these types of outdoor opportunities that are not offered in most public schools.

Moreover, other schools with identical language to Section 4, Paragraph 11 of Cesar Chavez Community School's Contract provide a substantial portion of their educational services and instruction online in a virtual setting. For example, Southwest Secondary Learning Center provides a substantial portion of their educational services and instruction via virtual instruction. Additionally, many schools the Commission authorizes have begun providing "online only" options for students.

I note that Section 4, Paragraph 6 of the Contract outlines the Comprehensive Educational Program for the school:

6. **Comprehensive Educational Program of the School:** The School's educational program shall be as described below:

I. CCCS offers individualized, flexible scheduling and a high level of individual support to help students connect or reconnect with school and earn a diploma. With nine years' experience serving this population, we are convinced that having the students prepared and poised for their next steps beyond graduation is one of the most crucial long-term services we can provide. Thus all that is included in the renewal priorities will contribute to this final, overarching goal for preparing CCCS students for their next step.

II. CCCS Key Commitments:

- Small classes will be maintained (average 17:1);
- Students will have an assigned mentor who will implement the CCCS mentoring program;
- Student progress will be tracked, as appropriate to each student's needs, challenges and goals, by assessing credit completion, rate/timeliness of credit completion, attendance, behavior, scheduling, etc.
- Higher-level thinking, problem-solving and life applications will be incorporated into curriculum planning and instruction using strategies such as Paideia Seminar;
- Community service, service learning, work experience and/or experiential learning will be offered to students at CCCS;
- Teen parenting support will be provided through social work, parenting curriculum and community resources.

III. Key Commitments for Staff:

- CCCS will schedule training and in-service days for staff;
- Staff development will include training in strategies focused on areas such as higher-level thinking, problem-solving, life applications, and trauma-informed strategies

Cesar Chavez Community School continues to deliver the educational program outlined in the contract, and continues to execute its mission. Cesar Chavez Community School notes that Section 4, Paragraph 6 of the Contract contemplates the provision of educational services and instruction off campus. Specifically, the Contract contemplates that Cesar Chavez Community School is to offer “[c]ommunity service, service learning, work experience and/experiential learning” to its students, and that all of these educational services and modes of instruction have occurred off campus or in a online setting. In fact, when Cesar Chavez Community School was initially approved as a state authorized charter school its instruction was completed asynchronously through a “packet” program, and students were free to complete the curriculum wherever they chose.

It also must be noted that the prior contract between the Commission and Cesar Chaves Community School contained identical provisions outlining the School's educational program. See Charter School Contract Between the New Mexico Public Education Commission and Cesar Chavez Community School dated July 1, 2014, Section 8.01(a)(iii). As stated above, during the pendency of the July 1, 2014, contract Cesar Chavez Community School provided nearly all of its instruction asynchronously through a “packet” program, and students were free to complete the curriculum wherever they chose.

It should be noted that the PEC has included language in contracts with other schools that specify whether the school can engage in online or virtual instruction. See, for example, the PEC's contract with Vista Grande High School which states:

VGHS has in-person instruction 90% of the time. VGHS does offer a night school for students who need alternative hours for schooling. The night school program uses an online format with direct instruction and tutoring for students.

Additionally, the PEC's contract with THRIVE Community School states in the same section:

The school intends to offer in-person instruction 100% of the time; however, will offer virtual instruction if required by the state, local, or federal government. If virtual instruction is provided, the school will provide students with one-to-one devices, if needed, and require students to be on-screen during instruction unless modified in a student educational plan.

No similar provision is found in Cesar Chavez Community School's contract. I also note that logically these prohibitions and restrictions are found in the contract under the schools' educational plans, and not in section that identifies the schools' sites.

It appears that Cesar Chavez Community School is the only school in which the Commission is interpreting the language of Section 4, Paragraph 11 of the Contract to prohibit the provision of any educational services or instruction off campus and to prohibit any provision of online instruction. Not only does Cesar Chavez Community School dispute this interpretation of the Contract, but its application also exclusively to Cesar Chavez Community School is arbitrary and capricious.

Clearly there is no legal prohibition against online instruction in New Mexico. It is used widely by school districts and charter schools. Indeed, the Commission authorizes several schools that are either completely online or utilize online instruction as part of their program. The Commission is clearly capable of drafting contracts that either prohibit or limit the use of online instruction. Contract interpretation dictates that the Commission must have included those prohibitions or limitations for a reason. In other words, the Commission would not have limited schools from using online instruction in their contracts unless the Commission believed such practice was otherwise permissible.

Now the Commission appears to rely on Section 4, Paragraph 11 of the Contract to impose a prohibition on online instruction that clearly does not exist in the Contract. Similarly, the Commission appears to interpret Section 4, Paragraph 8, Subparagraph iii, to prohibit the use of online instruction. This belies that the Commission itself authorizes several schools that utilize online instruction, and schools that have identical language to the language included in Cesar Chavez Community School's Contract. Cesar Chavez Community School disputes the Commission's interpretation of this clause of the Contract.

The Commission also apparently interprets Section 4, Paragraph 6 of the Contract to prohibit online instruction. As stated above, the Commission has had no problem specifically prohibiting the use of online instruction in contracts with other schools. It chose not to do so here, and Cesar Chavez Community School disputes the Commission's interpretation of this clause of the Contract.

The Commission also apparently interprets Section 4, Paragraph 2 of the Contract to prohibit online instruction. Cesar Chavez Community School disputes the Commission's interpretation of this clause of the Contract. This clause identifies the School's mission. It does not specify that the School may only utilize in-person instruction, or prohibit the School from using online instruction. Rather, the School's mission highlights the need for flexibility in delivery of instruction to its students. Cesar Chavez Community School specifically disputes that it is not following the mission or comprehensive educational program as specified in the Contract.

Moreover, Cesar Chavez Community School disputes that it was required to obtain an amendment to its Contract pursuant to Section 6, Paragraph 2 in order to continue to provide online instruction. As outlined above, the Contract does not prohibit or restrict the use of online instruction and no amendment is required.

Cesar Chavez Community School welcomes your response.

Sincerely,



Dan Hill

Attorney for Cesar Chavez Community School

Cc: Julia Barnes, Attorney for PEC
Tani Arness, Head Administrator for Cesar Chavez Community School
Anacelie Verde-Claro President, Governance Council, Cesar Chavez Community School