



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
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SECRETARY OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

June 2, 2023

Sent Via Email and Certified Mail

Brenda Atencio
Acting President
La Tierra Montessori School of the Arts and Sciences
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Patricia Herrera
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Re: Notice of Immediate Suspension of School Board of Finance

Dear Ms. Atencio & Ms. Herrera,

This correspondence serves as notice of the immediate suspension of the school board of finance for La Tierra Montessori School of the Arts and Sciences (LTMS). This immediate suspension is pursuant to NMSA 1978, §22-8-39 *Boards of finance; suspension*, which provides in part that “[t]he department may at any time suspend a local school board... 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...” It is also pursuant to the corresponding Rule 6.21.2.11 NMAC, *State Funds Enforcement Process*.

Your school has demonstrated mismanagement and has otherwise demonstrated lack of compliance with this statutory provision. The Department is therefore exercising its authority

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under this provision to immediately suspend the board of finance. The following includes reasons for this determination.

On May 9, 2023, the New Mexico Public Education Commission (PEC) notified the Administration and Governing Board LTMS of its decision to revoke the charter of the school. The notification letter gave the reasons for the decision and informed the school of its due process rights regarding the decision to revoke. It appears that on May 26, 2023, the Governing Board voted to appeal the decision to the Secretary of the New Mexico Public Education Department (PED). While this decision has not yet been received by the Office of the Secretary, it is important to ensure the school remains a viable entity under generally accepted financial expectations until the appeal process is concluded.

To accomplish this, under the provisions of NMSA 1978, § 22-8-39, the designation as “board of finance for public school funds” provided to the Governing Board of LTMS is hereby suspended. Effective immediately, the School Budget Bureau of the PED will take control of all public school funds under the control of the LTMS governing board and will act as a fiscal agent for the charter school. This suspension will be in effect pending an appeal of the revocation and the outcome of the appeal, or until such time as the PED determines LTMS is capable of acting as a board of finance.

This decision is not made lightly and is not being taken to in any way influence the outcome of the appeal process. The Secretary, as provided for in NMSA 1978, § 22-2-1, is responsible for the control, management and direction of all public schools. As noted, until such time as the appeal process is concluded, the Secretary must ensure that the assets of the school are preserved to be available for students if needed.

This decision is based on several issues that have been identified by staff of the PED School Budget Bureau and the Options for Parents and Families Division. These issues fall into three categories: budget, audit, and operations.

As it regards budget:

- 1) LTMS is late with its SY2024 budget submission despite an extension having been granted by the PED School Budget Bureau.
- 2) The facility lease for SY2024 is set to expire on or about August 31, 2023, as referenced in correspondence to your entity, and provisions for a facility have not yet been identified. Correspondence, dated May 3, 2023, delivered by Tsay Corporation communicated that your entity is required to leave the premises within 120 days from the date of the correspondence, and references that your deposit will not be returned pursuant to Section 28- Events of Default.
- 3) As of the morning of last day of employment, staff had not been informed of their employment status for SY2024 as required under the provisions of NMSA 1978, § 22-10A-22, providing “on or before fifteen working days prior to the last day of the school year, the superintendent shall serve written notice of reemployment or termination on each licensed school employee employed by

the public school.” It is not possible to establish a proper budget without knowing the staff requirements for the following year.

- 4) Based on information and belief, the school has not provided for public input into the budget. Under the provision contained in NMSA 1978, § 22-8-1, “the department shall not approve and certify an operating budget of any school district or charter school that fails to demonstrate that parental involvement in the budget process was solicited.”

For these reasons, I am also directing the School Budget Division of the PED to set the SY2024 budget at a level that meets statutory requirements.

As it regards audit:

- 1) For SY2022, the PED auditor noted that because of the significance of the matters identified during the audit, the auditor was unable to obtain sufficient appropriate audit evidence to provide a basis for audit opinions on the financial position or changes in financial position. The auditor noted that “this was the result of the lack of complete and timely disclosures and representations of relevant communications from oversight agencies and pending litigation that could have a significant impact on additional audit procedures.” The auditor further noted that “we were unable to satisfy ourselves by other auditing procedures in order to provide audit opinions on those financial statements.” In simple terms, the condition of the school financial records are not being kept in a manner consistent with generally accepted accounting principles that can ensure measures are taken to prevent fraud, waste and abuse.
- 2) In addition to the above, the disclaimer was issued as the result of a number of material weaknesses and non-compliance items noted in the audit. These include noncompliance with operating budget amendments, lack of evidence of an annual inventory of property, lack of internal controls over payroll, the lack of audit committee meetings to oversee financial controls, overspending budgeted items.

As it regards operations:

- 1) LTMS has not conducted a lottery to establish membership for SY2024.
- 2) As noted above, the lease for the school facility is due to expire on or about August 31, 2023, and it is not clear where the school will operate in future years. The PEC is charged with approving location changes and a request to do so has not been submitted.

You will be contacted by the School Budget Director and staff to begin the process of transferring control of bank accounts and other financial documents. It is important to preserve assets to ensure that statutory provisions can be met as the appeal process unfolds. Please ensure that your staff including the head of school and business manager make themselves available as needed to execute the financial transition.

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Sincerely,

DocuSigned by:

Arsenio Romero

Arsenio Romero, Ph.D.

Secretary of Education

cc: Antonio Ortiz, Director of Finance & Operations
Scott Wright, Director of Operations
Sara Cordova, School Budget Director
Corina Chavez, Director of Options for Parents & Families
Amanda DeBell, Deputy Secretary of Teaching, Learning and Innovation
Governing Board of La Tierra Montessori School of the Arts and Sciences (LTMS)