

**Julia Hosford Barnes, P.C.**

**Legal Memorandum**

To: PEC  
From: Julia Barnes  
Re: Lease review by PSFA  
April 19, 2024

Is the lease review by PSFA adequate to ensure that schools enter into a lease with their private landlord that ensured that the landlord pays what is required? Yes.

The charter school law (NMSA 22-8B-4.2.D. (2) requires

*the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state.*

The standards are found in NMAC 6.27.30.8

Once the lease is entered into with this provision in it, this becomes a contractual provision for the school to enforce. Neither PEC nor PSFA will ensure that the lease is complied with. The school should do that.

However, PSFA, does require proof that the lease contains a provision that requires the landlord to comply with the landlord's obligations. PSFA has the following documents to assist charter schools in understanding the requirements for a building and to understand who should pay for various items in a lease.:

1. A lease amendment form if the existing lease does not have the required language; and
2. A chart of variances for charter schools that should the required elements for a building.

Given the fact that state charters apply for lease assistance and PSFA checks for the required language prior to providing lease assistance, this should be sufficient to ensure that the right provision is in the lease. Then the school should ensure that the lease is followed.

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