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November 4, 2021

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New Mexico Public Education Department

Rebekka Burt, Secretary
District 4, Rio Rancho

Via email

Rule.feedback@state.nm.us

Melissa Armijo, Member
District 1, Albuquerque

RE: Comment on 6.30.6 NMAC, Suspension of a Local School Board

David L. Robbins, Member
District 2, Albuquerque

Dear NMPED rulemaking staff:

Georgina Davis, Member
District 5, Aztec

Michael Chavez, Member
District 6, Deming

I am the Chair of the Public Education Commission (“PEC”). The PEC voted at its meeting of October 22, 2021 to have me submit comment on 6.30.6 NMAC on behalf of the full commission. I provide this comment here and appreciate the opportunity to do so. As you know, the PEC is the authorizer for state-chartered schools with powers as set forth in law under NMSA 22-8B-1 et.seq. There are times when the Secretary has certain powers to act regarding state-chartered schools while providing notice to the PEC of such action. The powers of the Secretary are often complimentary to the powers of the PEC. We believe that the Secretary has the power in this case to suspend a state-chartered school governing board, if necessary. We believe that this power should be explicitly discussed in this rule. We believe that the changes we propose provide complimentary powers to the Secretary to that of the PEC as contemplated in law.

Michael Taylor, Member
District 8, Roswell

K.T. Manis, Member
District 9, Hobbs

Steven J. Carrillo, Member
District 10, Santa Fe

We provide a red-line of our proposed changes which essentially clarifies that the Secretary has the ability to suspend a state-chartered school board when appropriate and following the same guidelines as are used for the suspension of a local school board.

The Rule, both in its existing form and in the proposed format, provides for the ability of the Secretary to suspend a local school board under various circumstance and by following certain processes. The PEC is not commenting on action against a local school board.

Complimentary powers and duties. We believe that it is important for both the Secretary of PED and the PEC to be able to take action when necessary related to a state-chartered schools. For example, state law and rule is clear that the department may suspend a governing body of a state-chartered school from action as a board of finance if the department reasonably believes that there is mismanagement, improper recording or improper reporting of public school funds under NMSA 22-8-39. The PEC can also take action against a state-charter if there is fiscal mismanagement through its powers to suspend or revoke a charter under NMSA 22-8B-12K. Often, if the PEC is notified that the PED has suspended a board of finance of a state-chartered school, the PEC will start revocation or suspension proceedings as well. This is an example of the complimentary powers to preserve public school funds.

Suspension for other actions. We believe that there are complimentary powers given to the Secretary and the PEC to take action in the event of mismanagement other than finances as well. NMSA 22-8B-12K provides the power of the PEC to suspend or revoke a charter for a variety of reasons:

A charter school may be suspended, revoked or not renewed by the chartering authority if the chartering authority determines that a charter school did any of the following:

- (1) committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;
- (2) failed to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract;
- (3) failed to meet generally accepted standards of fiscal management;
- (4) for a charter school located on tribal land, failed to comply with ongoing consultations pursuant to the Indian Education Act; or
- (5) violated any provision of law from which the charter school was not specifically exempted.

We believe that the Secretary has powers over state-chartered school board as well. For example, pursuant to NMSA 22-8B-4, a state-chartered school is the same as any other public school in many regards:

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services and shall not allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race,

religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses.

B. A charter school shall be governed by a governing body in the manner set forth in the charter contract; provided that a governing body shall have at least five members....

M. "A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [Chapter 22, Article 2CNMSA 1978].

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules....

The Secretary has the ability to enforce these laws as to all schools which should extend to state-chartered schools. For example,

22-8B-5. Charter schools; status; local school board authority.

D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions.

Need to complimentary powers. Generally, the powers of the PEC go to taking action against a school and its charter through suspension or revocation. The Secretary looks to have the power to take more targeted actions against a board. We believe that both sets of powers are needed. Take this hypothetical for example¹: suppose that a state-chartered governing board voted to disregard all public health orders of the Governor and the Secretary. If this action were taken, the PEC could take action to revoke or suspend the charter of the school under NMSA22-8B-12K which would allow the PEC to shut down the school. It could also submit a letter finding the school to be in breach of its contract under the PEC intervention ladder, and demand that it come into compliance. However, this is drastic action affecting the education of the students in that school and moves to revoke the entire charter of the school and its ability to operate.

¹ No state-chartered school has taken any action of this type. This is hypothetical only.

What arguably is a better action in this hypothetical would be for the Secretary to take action to suspend the state-chartered governing board and take the action needed to reinstate the compliance with the health orders. Under the rule, the Secretary would also come in front of the PEC to discuss the suspension. The PEC could then determine if it would take action against the school as well. However, the Secretary's more narrowed action could ensure that the education of the students was not disrupted while ensuring that the school followed required directives.

Without the power of the Secretary to take more narrowed action, the PEC is left with its power alone. That action always moves down a path towards revocation. This neither seems ideal nor required by statute. In our proposed red-line, we have preserved the communication between the Secretary and the PEC when actions are taken against a state-chartered school. This is an important component part of the process.

Please let us know if you have any questions regarding our comments. We appreciate the opportunity to comment and appreciate the ongoing partnership between the PEC, the Secretary and our schools to provide a quality education to our students.

If you have questions, please feel free to contact me.

Sincerely,

Patricia E Gipson

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Chair, Public Education Commission
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