

August 17, 2016 -- Advisory Letter -- Opinion Request-Notice of a Virtual School's Intent to Apply for a Charter

Patricia Gipson, Chair
New Mexico Public Education Commission
4010 Firethorn Ct.
Las Cruces, NM 88011

Re: Opinion Request-Notice of a Virtual School's Intent to Apply for a Charter

Dear Ms. Gipson:

Former Chairman Carolyn Shearman requested an opinion concerning the application of the Charter Schools Act's notice requirements for proposed charter schools to a statewide virtual charter school.¹ In particular, you ask:

(1) whether the organizers of a proposed statewide virtual charter school are required to provide written notice to every school district in the state of the organizers' intent to apply for a charter; and

(2) whether a state-chartered charter school constitutes its own stand-alone school district for purposes of the notice requirements.

As discussed below, based on our review of the applicable law, we conclude that (1) the organizers of a statewide virtual charter school need notify only the Public Education Commission ("PEC") and the school district in which the virtual charter school will be located; and (2) a state-chartered charter school is not a stand-alone school district for purposes of the notice requirements.

Both questions raised by the request concern the provisions of the Charter Schools Act, NMSA 1978, § 22-8B-6 (B) requiring notice of proposed establishment of a charter school. A charter school application may be filed with either a local school board or the PEC, depending on whether the school will be a locally-chartered or state-chartered charter school. *Id.* § 22-8B-6(C). The Act requires notice before an application is filed with either chartering authority:

No later than the second Tuesday of January of the year in which an application will be filed, the organizers of a proposed charter school shall provide written notification to the commission and the school district in which the charter school is proposed to be located of their intent to establish a charter school.

Id. § 22-8B-6(B). See also Public Education Department ("PED") Rules, Notice of Intent to Establish a Charter School, 6.80.4.8 NMAC.

(1) Application of Notice Requirements to Statewide Virtual Charter School

The organizers of a proposed charter school must provide the written notification required by Section 22-8B-6(B) to the Public Education Commission (“PEC”) and “the school district in which the charter school is proposed to be *located*” (emphasis added). Under the applicable rules of statutory construction, the meaning of an undefined word or phrase in a statute “is determined by its context, the rules of grammar and common usage.” NMSA 1978, § 12-2A-2. See also *Bettini v. City of Las Cruces*, 1971-NMSC-054, ¶ 6, 485 P.2d 967, 968 (“[s]tatutory words are presumed to be used in their ordinary and usual sense”). The word “located” is not defined in the Charter Schools Act. Based on the context in which the word “located” is used and its ordinary meaning, we believe that the legislature intended the organizers of a charter school to provide the notification required by § 22-8B-6(B) to the school district in which the charter school will be geographically located.

Nothing in § 22-8B-6(B) or elsewhere in the Charter Schools Act suggests that the legislature intended the organizers of a proposed charter school to provide the required notification to the school district or school districts in which the students of the proposed charter school would be located. PED’s rules require charter schools that provide instruction online, or “distance learning,”² to have a physical location in the state. See 6.80.4.18 NMAC (“[a]ny charter school offering or seeking to offer distance learning courses in New Mexico pursuant to the Charter Schools Act must be physically located in the state of New Mexico”). Accordingly, the organizers of a statewide virtual charter school should be able to identify a school district where the proposed charter school will be “located” for purposes of § 22-8B-6(B)’s notification requirements.

(2) Status of a State-Chartered Charter School

Charter schools are accountable to their chartering authorities “for purposes of ensuring compliance with applicable laws, rules and charter provisions.” NMSA 1978, § 22-8B-5(D). Otherwise, each charter school operates independently. A charter school is governed by its own governing body and is “responsible for ... its own operation, including preparation of a budget, ... [and] contracting for services and personnel matters.” *Id.* 22-8B-4(B), (C). Although each charter school operates as an independent entity, New Mexico law generally defines a “charter school” as a “public school.” See, e.g., NMSA 1978, § 22-8B-2(A) (charter school is “authorized by the charter authority to operate as a public school”); § 22-8B-4(J) (“[a] charter school shall be a nonsectarian, nonreligious and non-home-based public school”); § 22-8B-5(D) (“[a] charter school shall be a public school accredited by [PED] ...”).

As discussed above, § 22-8B-6(B) requires the organizers of a proposed charter school to notify the PEC and the “school district” where the proposed charter school will be located. Because charter schools are public schools under New Mexico law, not school districts, charter schools are not among the intended recipients of the required notification.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General’s opinion on the matters discussed above. Such an opinion

would be a public document, available to the general public. Although we are providing our legal advice in the form of a letter rather than an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide this letter to the public.

Sincerely,

Jennie Lusk
Assistant General Counsel

cc: Carolyn Shearman, Commissioner

[1] For purposes of this letter, a “virtual charter school,” is a charter school that provides instruction online rather than in-person in a traditional classroom or “brick and mortar” school. A “statewide virtual charter school” provides online instruction to students throughout the state.

[2] PED’s rules implementing the Statewide Cyber Academy Act, NMSA 1978, ch. 22, art. 30, define “distance learning” as “the technology and educational process used to provide instruction for credit or grade when the course provider and the distance-learning student are not necessarily physically present at the same time or place. 6.30.8.7 NMAC. See *also* NMSA 1978, § 22-30-2(B) (defining “distance learning course” as “an educational course that is taught where the student and primary instructor are separated by time or space and linked by technology).”