

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

THE BOARD OF EDUCATION FOR THE
RIO RANCHO PUBLIC SCHOOLS,

Petitioner,

v.

No. _____

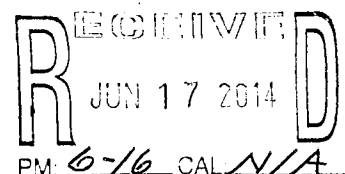
THE PUBLIC EDUCATION DEPARTMENT,
SECRETARY-DESIGNATE HANNA SKANDERA &
THE PUBLIC EDUCATION COMMISSION,
Respondents.

**PETITION FOR WRIT OF CERTIORARI FROM AN ORDER OF THE
SECRETARY-DESIGNATE OF EDUCATION, HANNA SKANDERA**

COMES NOW Petitioner Board of Education for Rio Rancho Public Schools (hereinafter, "the District"), by and through its counsel of record, Cuddy & McCarthy, LLP and pursuant to RULE 1-075 NMRA 2010 files this Petition for Writ of Certiorari from an Order of the Secretary-Designate of Education, Hanna Skandera (hereinafter, the "Petition") with the District Court and states as follows:

BACKGROUND

The District, an aggrieved party as provided in RULE 1-075 NMRA 2010, seeks review of the May 15, 2014 decision by Secretary-Designate of Education, Hanna Skandera, waiving the requirements of NMSA 1978, Section 22-8B-4(L) for the Albuquerque Institute for Mathematics and Science at UNM (hereinafter "AIMS"), pursuant to the Secretary-Designate's limited authority under NMSA 1978, § 22-2-2.1(B)(3) . See attached **Exhibit A**. The District submits this Petition on the grounds that the decision by the Secretary-Designate to grant the waiver is arbitrary and capricious and not supported by the facts or law. In addition, the authority to grant



the waiver is outside of the purview of the Secretary-Designate's statutory authority and more soundly resides with the Public Education Commission.

1. JURISDICTION

Article VI, § 13 of the New Mexico Constitution sets out the general jurisdiction parameters for District Courts, conferring jurisdiction of all special proceedings granted by Statute or by Rules to the District Courts.

RULE 1-075 NMRA 2010 grants jurisdiction over constitutional reviews of administrative decisions and orders, where there is no statutory right to an appeal or other statutory right of review to the District Courts.

Venue is proper as provided in NMSA 1978, § 38-3-1(G).

This appeal is timely filed, as required under RULE 1-075(D) NMRA 2010.

2. DESCRIPTION OF AGENCY PROCEEDINGS

On May 15, 2014, Secretary-Designate of Education, Hanna Skandera, issued a letter granting waiver to AIMS of the requirement in NMSA 1978, § 22-8B-4(L), which permits a single charter school to “maintain separate facilities at two or more locations within the same school district” (emphasis added). The waiver releases AIMS from all restrictions in § 22-8B-4(L) on future locations of this school. AIMS sought waiver of the referenced provision because it wishes to establish a second location for its educational services outside the bounds of Albuquerque Public School District, and within the bounds of Rio Rancho Public School District, which is located in the City of Rio Rancho and in Sandoval County. For the following reasons, the District contests the Secretary-Designate's letter as invalid, beyond the scope of authority provided in the Charter Schools Act or in § 22-2-2.1; and other laws granting waiver power to a Secretary of PED. (See NMSA 1978, §§ 22-8B-5(C), and 22-1-10.)

3. PARTIES TO AGENCY PROCEEDINGS

The New Mexico Public Education Department (hereinafter “PED”) is a state governmental agency created under the provisions of the New Mexico Constitution, Article XII, § 6 and NMSA 1978, §22-2-1 et. seq., otherwise known as the New Mexico Public Schools Code, and is a party against whom the District is taking this appeal.

The New Mexico Public Education Commission (“PEC”) is statutorily created to work with the Public Education Department to develop the five-year strategic plan and other duties as provided for by law (NMSA 1978, § 22-2-2.2), and is a party against whom the School District is taking this appeal. The PEC is authorized pursuant to NMSA 1978, § 22-8B-16 to “approve, deny, suspend or revoke the charter of a state-chartered school, and pursuant to NMSA 1978, § 22-8B-4(L), to authorize a “single charter school to maintain separate facilities at two or more locations within the same school district” (emphasis added).

Secretary-Designate Hanna Skandera is the governing authority of the Public Education Department and except as provided by law has management and direction over all public schools in the State. (NMSA 1978, §22-2-1(A)).

AIMS is a State-Chartered school, chartered by the PEC to locate and operate in the Albuquerque Public School District in Albuquerque, Bernalillo County, New Mexico. AIMS submitted the Request for Waiver of NMSA 1978, § 22-8B-4(L), to Secretary-Designate Skandera.

4. PETITIONER IS ENTITLED TO RELIEF SOUGHT

Petitioner is entitled to review and to a stay of the waiver, pending review, because the Secretary-Designate’s decision is outside the scope of her authority as granted by applicable

laws; is arbitrary and capricious, not supported by substantial evidence, and because the actions of the Secretary-Designate are not otherwise in accordance with the law.

The Secretary-Designate's action raises questions of statewide impact and imperative public importance due to the timing in relation to the opening of schools for the 2014-2015 school-year. Because the question is likely to recur with other charter schools, the need for a uniform decision applicable to all additional waiver requests directed to the Secretary-Designate is great.

In the instant matter, the Secretary-Designate utilized a provision in a general statute which provides for waiver of some requirements to override the authority of the Public Education Commission to the detriment of at least one local school district. Specifically, the Secretary-Designate ignored the limiting factors in Subsection A of § 22-2-2.1, and Subsection B(1) and (2), and exercised unlimited discretion to waive any other requirement of the Public School Code, as well.

First, the Subsection relied on by the Secretary-Designate contains four limitations which have not been met: 1) there is no evidence that the location of a second school within the Albuquerque School District would impede "innovation in education"; 2) there is no evidence that the local school board of the Albuquerque Public School District made any show of support for expansion into another District; 3) there is no evidence demonstrating that the local Board of the Rio Rancho School District requested such expansion; 4) the plain language of § 22-2-2.1 limits the power to waive to matters which are in *pari materia* with the other matters expressly permitted in this Statute. *See*, § 22-8B-5(C), authorizing the Department to waive those provisions in § 22-2-2.1 A and B(1)-(2) as well as driver's education, but not authorizing waivers under § 22-2-2.1(B)(3). If the Secretary-Designate can pick and choose to waive any provision

of the Charter School Act, then there is no reason for the legislature to have granted the power over state charter school applications, renewals or decisions under § 22-8B-4 to the PEC.

The District Court cannot affirm the decision of the Secretary-Designate if it is “arbitrary, capricious or an abuse of discretion or not supported by substantial evidence in the records. A ruling may be deemed arbitrary and capricious if the department failed to consider an important aspect of the problem, offered an explanation that runs counter to the evidence before the department, or ‘is so implausible that it could not be ascribed to a difference in view.’” *Rio Grande Chapter of the Sierra Club v N.M. Mining Comm’n.*, 2003 NMSC-005, ¶12, 133 N.M. 97, 61 P.3d 806. “An agency abuses its discretion when its decision is not in accord with legal procedure or supported by its findings, or when the evidence does not support the findings.” *Oil Transp. Co. v N.M. State Corp. Comm’n.*, 1990-NMSC-072, ¶25, 110 N.M. 568, 798 P.2d 169.

If, in fact, the Court finds the Secretary has the authority to waive the expansion requirements in § 22-8B-4(L) without initial consideration by PEC, then it must identify the overarching authority which would permit this usurpation of power. That power has not been legislatively granted in the Charter Schools Act. The PEC is the statutory chartering authority for state chartered schools such as AIMS. See NMSA 1978, § 22-8B-6(C), providing that a “charter school applicant shall apply either to a local school board or the [PEC] for a charter.” Under the Secretary-Designate’s interpretation of § 22-2-2.1(B)(3), the requirement that a charter application must be approved by either a local board or the PEC could be waived. The materials submitted to the Secretary-Designate by AIMS contain a request from the AIMS governing council. However, by definition, the governing council is not a “local school board.” See NMSA 1978, § 22-8B-2(F), defining the governing body of a charter school as “the governing structure

as set forth in the school's charter, and NMSA 1978, § 22-1-2(H), defining "local school board" as the "policy setting body of a local school district."

Second, the decision by the Secretary-Designate provides no findings of fact of any kind and specifically none with regard to the element of impeding innovation in education. The Secretary-Designate sought no input from the PEC, or the local Albuquerque and Rio Rancho Boards of Education. Rio Rancho Public Schools contends that allowing charter schools to open facilities in areas outside of their original local education agency ("LEA") boundaries within the District will have an adverse impact on innovation in education. The results will be the dilution of educational control and oversight. With a set up outside of the boundaries of the original LEA who will have any authority to oversee the delivery of educational services? In the instant matter the Rio Rancho Public Schools would have little to no oversight of the public education being provided to students in its local attendance area at AIMS since it is originally chartered in the Albuquerque Public School District. The implementation of the common core standards anticipates that there will be a level of consistency in the provision of educational services. Under the Secretary-Designate's interpretation of § 22-2-2.1(B)(3), she could waive all statutory oversight delegated to the PEC.

The decision of the Secretary-Designate to grant a waiver with no findings of fact and no opportunity to be heard for opposing the decision leaves the Rio Rancho Public Schools Board of Education with only one option and that is to seek judicial review of the decision and proper application of the arbitrary and capricious standards. The notion that a state chartered school can open up a facility in any school district without consideration of the impact on the local District and its students meets the definition of "implausible". The unfettered ability to open a school wherever a charter school wishes is "not believable, not plausible, not likely and not realistic".

Merriam Webster Dictionary 2014. The Secretary's waiver is unlimited as to additional locations.

The ability to grant a waiver in this particular circumstance is outside the authority of the Secretary for several reasons. State statute provides that the Secretary is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law. NMSA 1978, Section 22-2-1(A) (Emphasis added). The statute also provide that the Public Education Commission "shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove those charter applications." NMSA 1978, 22-8B-16. As noted in the factual statements, the Public Education Commission has not approved the application by AIMS to open a branch school within the Rio Rancho Public Schools attendance area. In fact, AIMS represented to the PEC at its February 1, 2013 hearing that it intended to locate on the "north campus" of UNM. AIMS seeks to circumvent the authority of the PEC by seeking a waiver under NMSA 1978, 22-2-2.1(B)(3).

While the statute does allow some waiver of the Public School Code by the Secretary there are limitations to that authority. The grant of governing authority must be tempered by the language of the statute which provides the language, "except as otherwise provided by law." In this case the law has removed from the Secretary-Designate the decision regarding state charter school applications. The statues specifically grant that authority to the PEC. In this matter the Secretary-Designates interpretation of the statutory limits of her authority is erroneous and the court should consider that in overturning her decision. A court's guiding principle when construing statutes is to determine and give effect to the legislative intent. *New Mexico Indus. Energy Consumers v NM Public Reg. Comm'n.*, 2007-NMSC-053 ¶20, 142 NM 533, 168 P.3d

1053: “4.2.3 [W]e look first to the plain language of the statute, giving words their ordinary meaning, unless the Legislature indicates a different one was intended.” *Marbob Energy Corp. v. NM Oil Conservation Comm’n.*, 2009-NMSC-013, ¶9, 146 NM 24, 206 P.3d 135. “Courts will overturn a clearly incorrect administrative interpretation.” *See, New Mexico Pharmaceutical Ass’n v. State*, 1978-NMSC-054 ¶ 63. Furthermore, the Secretary-Designate’s action is not based on a “long standing interpretation of a doubtful or uncertain statute by an administrative agency charged with administering that statute.” *See, Martinez v. Research Park, Inc.*, 1965-NMSC-46, ¶ 263. Rather, the Secretary-Designate’s action is a novel interpretation of two separate statutes. The Legislature clearly intended to grant decision making authority with regards to state chartered schools to the PEC and not the Secretary-Designate. The Court, when applying the ordinary meaning of the language of NMSA 1978, § 22-8B-16¹ must set aside the decision granting the waiver to AIMS.

The language of the Charter School Act makes it even clearer that the legislature contemplated that charter schools would serve students in the attendance boundaries of the school district where the charter school is located. *See* NMSA 1978, § 22-8B-4(F). “The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school’s operation unless the facilities are currently used for other educational purposes.” The statute goes on to say, “With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but for purposes of calculating program units pursuant to the Public

¹ “The Commission shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove of those charter applications. The commission may approve, deny, suspend or revoke the charter of state chartered charter school in accordance with the provisions of the Charter School Act. . . .” NMSA 1978, § 22-8B-16. *See also* NMSA 1978, § 9-24-9 and NM Constitution Article XII, § 6

School Finance Act the separate facilities shall be treated together as one school.” NMSA 1978, § 22-8B-4(L). (emphasis added).

The Legislature made it clear that approval of state chartered charter schools is within the sole purview of the Public Education Commission and they also were clear on the geographical boundaries of charter schools to be within the attendance area of the school district where they are physically situated. The only reasonable outcome is to set aside the waiver granted by the Secretary-Designate and deny AIMS request to open a facility in Rio Rancho Public Schools attendance area.

The Secretary-Designate’s action raises questions of state-wide impact. Based on the reasoning in the Secretary’s letter of May 15th, a school chartered in Las Cruces could expand into surrounding districts, or even districts which are not contiguous. The Secretary-Designate’s action also impacts school transportation, and other local school district responsibilities for facilities, enrollment, and provision of services. Due to the timing and proximity to the new school-year, these actions are of imperative public importance.

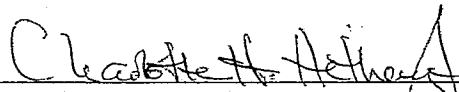
For the foregoing reasons, Rio Rancho Public School District requests the Court issue its Writ of Certiorari to the Public Education Department, Secretary-Designate and to the Public Education Commission to review the proceedings relating to AIMS’ request to establish a location in the Rio Rancho Public School District.

Appellant will complete service of the Notice of Review on the New Mexico Public Education Department, Secretary-Designate and the Public Education Commission, as required under RULE 1-075(E) NMRA 2010. Proof of Service will be filed upon completion of service.

Appellant requests that the Clerk of the Court docket this appeal for consideration by this Court. Under NMSA, 1978, § 22-1-2(R), a school district is a "political subdivision of the state for the administration of public schools . . ." and pursuant to RULE 1-075(F) NMRA 2010, no docketing fee or other cost shall be imposed on the School District in filing this Petition for Writ of Certiorari.

CUDDY & McCARTHY, LLP

By:


CHARLOTTE H. HETHERINGTON
JACQUELYN ARCHULETA-STAEHLIN
ATTORNEYS FOR THE BOARD OF EDUCATION FOR
THE RIO RANCHO PUBLIC SCHOOLS

CERTIFICATE OF SERVICE

Thereby certify that on this 16th day of June 2014, I caused a true and correct copy of the foregoing *Petition for Writ of Certiorari from an Order of the Secretary-Designate of Education, Hanna Skandera*, to be mailed by First-Class U.S. mail, postage prepaid, to the following parties:

Public Education Department
c/o Hanna Skandera, Secretary-Designate
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Santa Fe, NM 87501

State of New Mexico
Attorney General Gary King
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Santa Fe, NM 87504-1508

AIMS Charter School
c/o Daniel Ivey-Soto, Esquire
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Albuquerque, NM 87110-5662

AIMS Charter School
Albuquerque Institute for Mathematics and Science
933 Bradbury SE
Albuquerque, NM 87106

Public Education Commission
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HANNA SKANDERA
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SUSANA MARTINEZ
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VIA U.S. MAIL

May 15, 2014

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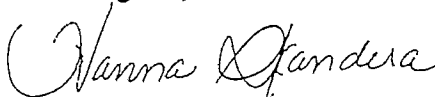
Dr. Stephen Cabaniss
UNM Chemistry Department Chair
MSC03 2060
Albuquerque, NM 87313-0001

**RE: AIMS's Request for Waiver of NMSA Section 22-8B-4(L) Pursuant to NMSA 1978,
Section 22-2-2.1**

Dear Ms. Sandoval-Sinder and Dr. Cabaniss,

The Albuquerque Institute for Mathematics and Science at UNM (AIMS) submitted a request pursuant to NMSA 1978, Section 22-2-2.1(B)(3) requesting that I waive the requirements of NMSA 1978, Section 22-8B-4(L). I find that AIMS's request meets the requirements of Section 22-2-2.1(B)(3) and pursuant to the authority provided by Sections 22-2-2 (B)(4) and 22-2-2.1(B)(3) I grant AIMS's requested waiver of the requirements set forth in Section 22-8B-4(L).

Warm regards,



Hanna Skandera
Secretary of Education

