

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

NO. D-101-CV-2014-01489

THE BOARD OF EDUCATION FOR THE
RIO RANCHO PUBLIC SCHOOLS,

Petitioner,

vs.

THE PUBLIC EDUCATION DEPARTMENT,
SECRETARY DESIGNATE HANNA SKANDARA AND
THE PUBLIC EDUCATION COMMISSION,

Respondents.

ORDER

THIS MATTER having come before the Court for hearing on April 18, 2017 on Petitioner's Statement of Review Issues, and the Court having considered and reviewed all matters of record in this case and being otherwise advised hereby states:

I. Introduction

This issue involves the granting by the Secretary of Education a waiver that allows the Albuquerque Public School District, AIMS Charter School ("AIMS") to open a second company in the Rio Rancho School District. The Court quotes the letter in full as it provides the citation to the applicable statute.

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 22-1-2 (B)(4) and 2-2-1-2.1(B)(3) I grant AIMS's requested waiver of the requirements set forth in Section 22-8B-4(L).

II. Applicable Statutes

Rule 1-075

A. Scope of rule. This rule governs writs of certiorari to administrative officers and agencies pursuant to the New Mexico Constitution when there is no statutory right to an appeal or other statutory right of review. For purposes of this rule, an "agency" means any state or local government administrative or quasi-judicial entity. This rule does not create a right to appeal or review by writ of certiorari. This rule does not govern appeals in matters relating to water rights under Article XVI, Section 5 of the New Mexico Constitution.

RULE 1-075. CONSTITUTIONAL REVIEW BY DISTRICT COURT OF ADMINISTRATIVE DECISIONS AND ORDERS, NM R DIST CT RCP Rule 1-075

H. Record on review. The writ of certiorari shall be substantially in the form approved by the Supreme Court and shall direct the agency to number consecutively the pages of the record on appeal taken in the proceedings and file it in accordance with Rule 1-005 NMRA within thirty (30) days after service of the writ on the agency or within such other period of time as the court may order. For purposes of this rule, unless the parties stipulate to a partial designation of the record by filing such a stipulation in the district court within five (5) days after the filing of the petition for the writ, the record on review shall consist of:

- (1) a title page containing the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;
- (2) a copy of all papers, pleadings, and exhibits filed in the proceedings of the agency, entered into or made a part of the proceedings of the agency, or actually presented to the agency in conjunction with the hearing, which shall be organized by date submitted to the agency beginning with the earliest paper or pleading;
- (3) a copy of the final decision or order sought to be reviewed with date of issuance noted thereon; and
- (4) the transcript of the proceedings, if any. If the transcript of the proceedings is an audio or video recording, the agency shall prepare and file with the district court a duplicate of the recording and index log. If the proceedings were stenographically recorded, the agency shall transcribe and file with the court those parts of the record specified by any party.

Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy. The agency shall give prompt notice to all parties of the filing of the record on review with the court.

RULE 1-075. CONSTITUTIONAL REVIEW BY DISTRICT COURT OF ADMINISTRATIVE DECISIONS AND ORDERS, NM R DIST CT RCP Rule 1-075

R. Standard of review. The district court shall apply the following standards of review:

- (1) whether the agency acted fraudulently, arbitrarily, or capriciously;
- (2) whether based upon the whole record on review, the decision of the agency is not supported by substantial evidence;
- (3) whether the action of the agency was outside the scope of authority of the agency; or
- (4) whether the action of the agency was otherwise not in accordance with law.

RULE 1-075. CONSTITUTIONAL REVIEW BY DISTRICT COURT OF ADMINISTRATIVE DECISIONS AND ORDERS, NM R DIST CT RCP Rule 1-075

T. District court decision. The district court, in its appellate capacity, shall issue a written decision, which may include:

- (1) remanding the case to the administrative agency with specific instructions for further proceedings and determinations; the remand may also include instructions to make the case ripe for judicial review;
- (2) reversing the decision under review, with a statement of the basis for the reversal as provided under Paragraph R of this rule; and
- (3) affirming the decision under review, with a statement of the basis for affirmance.

RULE 1-075. CONSTITUTIONAL REVIEW BY DISTRICT COURT OF ADMINISTRATIVE DECISIONS AND ORDERS, NM R DIST CT RCP Rule 1-075

PED authority and the Secretary's Authority on Waiver

B. Upon receiving a waiver request from a school that exceeds educational standards and in addition to the requirements set forth in Subsection A of this section, the department may waive:

- (1) the graduation requirement as provided in Section 22-13-1.1 NMSA 1978;
- (2) evaluation standards for school personnel; and
- (3) **other requirements of the Public School Code that impede innovation in education if the waiver request is supported by the teachers at the requesting school and the requesting school's local school board.**

§ 22-2-2.1. Additional department duties; waiver of certain requirements, NM ST § 22-2-2.1

L. 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 School Finance Act, the separate facilities shall be treated together as one school.

§ 22-8B-4. Charter schools' rights and responsibilities; operation, NM ST § 22-8B-4

As used in the Public School Code:

A. "academic proficiency" means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level;

B. "charter school" means a school authorized by a chartering authority to operate as a public school;

C. "commission" means the public education commission;

§ 22-1-2. Definitions, NM ST § 22-1-2

V. "secretary" means the secretary of public education

§ 22-1-2. Definitions, NM ST § 22-1-2

For the reasons stated and in accordance with Rule 1-075 The Agency's decision is affirmed. Any stays in this case are lifted and vacated. PEC's Motion to Dismiss is **DENIED**.

III. Specific Waiver

The language of the Waiver is pulled directly from the PED's letter.

Pursuant to the authority granted the Secretary in Section 22-2-2.1(B)(3), the Albuquerque Institute for Mathematics and Science (AIMS@UNM), whose current facility is located on the UNM South Campus and within the boundaries of the Albuquerque Public Schools, requests that the restrictions in Section 22-8B-4(L) be waived to permit AIMS@UNM to open a separate facility at a location on or near the UNM West Campus and within the boundaries of the Rio Rancho Public School District.

IV. Analysis

To begin a clear 22-8B-4(L) reading of a NMSA section only requires charter authority approval for a second school **within** the same district. The request for a waiver in this case asked to permit a second school in a different district. Regardless, all parties agree § 22-8B-4L applies.

Based on the clear reading of the statutes, the Public Education Department ("PED") did not exceed its statutory authority to grant a waiver.

Appellant's position in this case is understandable, but they are confronted with NMSA 1978 Section 22 that provides broad discretion to the PED to waive requirements of the Act, stating explicitly that the PED can waive "other requirements" of the Public School Code.

The PEC, who appeared at the hearing, seemed unconcerned with PED's position at oral argument that PED and the Secretary have general authority to abrogate PEC's authority under the use of the waiver powers. For the reasons stated, the Agency's decision is affirmed.

A. PED's decision was not arbitrary and capricious and the Agency's decision is supported by substantial evidence.

B. The Agency did not act outside its scope of authority and acts in accordance with the law. NMSA § 22-2-2.8 allows for such a waiver at the Secretary's discretion if its basis is established in the statute.

The school has received a grant from the Daniel's Fund to replicate its success at another facility. The essential question for the grant is whether the success of AIMS@UNM is a fortuitous accident caused by the specific composition of location, teachers, parents and students; or if AIMS@UNM found a manner of creating an educational environment that can result in the same success in another community, with other teachers, with difference parents, and with district students. Establishment of another facility allows AIMS@UNM to test this question and to demonstrate the educational innovation of its programs. According to the Secretary the restrictions in Section 22-8B-4(L) impede such innovation in education. That conclusion does not rise to the level of arbitrary and capricious.

The PEC heard this matter at its regular hearing on February 1, 2013. At the hearing, Dr. Gerlitz states unambiguously:

This is a school that has consistently achieved very fine results academically in all respects. There's a tremendous demand for the

school. And the amendment in front of us is in two parts—and, again, it's related to increase the enrollment cap from the current 360 students in grades six through twelve to 720 students in grades six through twelve. And then the second amendment is to get approval to inhabit a second building on the University of New Mexico campus to house that requested increase in enrollment.

Page 99, Lines 13-23.

After the presentation by the school's Director and Legal Counsel, Dr. Gerlitz went on to state:

Madame Chair, members of the Commission, after going through the documents submitted by the AIMS at UNM School, it is our recommendation that both of these amendments be approved. Thank you.

Pages 103-104, Lines 23-25, 1-2

As a result, we have a stable community and a stable philosophy, if you will. And we would like to replicate that on another site in order to accommodate the demand. We are asking that – we are working right now with the University of New Mexico to grant us a site, just as they have on the South Campus that we are located on now.

We cannot expand the South Campus – the South Campus building that we have, because we're landlocked. There is no room to expand. We are surrounded by other organizations. And so we would like to explore going to the North Campus. Obviously, I cannot – just as with Aldo Leopold, I cannot commit public funds until I have permission from this Commission.

That's all I have. If you have any questions, I would be happy to answer them.

Mr. Ivey-Soto: And, Madame Chair, members of the Commission, you know, part of the success of AIMS at UNM has been that we are, overall, a small school, given that we service grades six through twelve, that – and that we have a common mission.

Pages 101-102, Lines 17-25, 1-13

The Agency acted within its authority in its application of § 22-2-2.1 and 22-8B-4.

In accordance with 1-075T the Agency's action is **AFFIRMED**.

IT IS SO ORDERED.



HONORABLE DAVID K. THOMSON
District Court Judge, Division VI

A copy of this Order will be emailed on date of acceptance for efilng to all counsel who registered for service in this case as required by the rules.

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Abigayil Lewis, Esq.

Daniel Hill, Esq.

Albert V. Gonzales, Esq.

Martin Esquivel, Esq.