

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 329

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING SCHOOL DISTRICTS AND
CHARTER SCHOOLS TO CONSULT WITH TRIBAL LEADERS AND MEMBERS AND
FAMILIES OF STUDENTS WHEN CONSIDERING OPENING A PUBLIC SCHOOL
ON TRIBAL LAND; REQUIRING THAT CONSULTATION MUST INCLUDE NOT
JUST LAND USE BUT CULTURALLY RELEVANT PROGRAMMING, LANGUAGE
IMMERSION, SCHOOL CALENDARS, ACCOUNTABILITY, PROFESSIONAL
DEVELOPMENT FOR SCHOOL PERSONNEL THAT FOCUSES ON IMPROVING
EDUCATIONAL OUTCOMES FOR INDIAN STUDENTS AND OTHER MATTERS
IMPORTANT TO TRIBES; REQUIRING CONSULTATION WITH TRIBAL LEADERS
AND MEMBERS AND FAMILIES OF STUDENTS WHEN THE PUBLIC EDUCATION
DEPARTMENT, A SCHOOL DISTRICT OR A CHARTER SCHOOL IS
CONSIDERING CLOSING A SCHOOL ON TRIBAL LAND, INCLUDING PLANS
FOR WHERE STUDENTS WILL ATTEND SCHOOL AND HOW CULTURAL NEEDS
AND EDUCATIONAL OUTCOMES FOR INDIAN STUDENTS ATTENDING NEW
SCHOOLS WILL BE SATISFIED.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Code is enacted to read:

"~~[NEW MATERIAL]~~ DEPARTMENT--ADDITIONAL DUTIES--CLOSING A SCHOOL--CONSULTATIONS WITH TRIBAL LEADERS AND MEMBERS AND FAMILIES OF STUDENTS.--

A. Whenever the department is contemplating closing a public school on tribal land for any reason, it shall consult with tribal leaders and members and families of students attending the public school.

B. Consultation shall include, among other actions, meetings in which the department explains:

(1) the reasons for closing the public school;
(2) the reasons why the department has not or cannot provide additional resources to keep the public school open;

(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;

(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:

(a) culturally and linguistically responsive school policies;

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1 (b) rigorous and culturally meaningful
2 curricula and instructional materials;

3 (c) sensitivity to the tribe's calendar
4 of religious and other tribal obligations when making the
5 school calendar; and

6 (d) professional development for school
7 personnel at the public school to ensure that the best
8 practices used in teaching, mentoring, counseling and
9 administration are culturally and linguistically responsive to
10 students;

11 (5) how the educational outcomes for the
12 Indian students will be improved by attending another public
13 school;

14 (6) plans for the public school buildings that
15 will be left empty by the closure; and

16 (7) any other matters the department believes
17 provide an adequate explanation of the reasons for closing the
18 public school on tribal lands."

19 **SECTION 2.** A new section of the Public School Code is
20 enacted to read:

21 "[NEW MATERIAL] LOCAL SCHOOL BOARD--CONSIDERATION OF
22 OPENING OR CLOSING A PUBLIC SCHOOL ON TRIBAL LAND--CONSULTATION
23 WITH TRIBAL LEADERS AND MEMBERS AND FAMILIES OF STUDENTS.--

24 A. Whenever a local school board is contemplating
25 opening a public school on tribal land, in addition to

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1 negotiations involving land or buildings, the local school
2 board and the local superintendent shall consult with tribal
3 leaders and members and families of students who will be
4 eligible to attend the public school on the design of the
5 school's programming.

6 B. Consultation shall include, among other actions,
7 meetings in which the local school board and local
8 superintendent explain:

9 (1) how and why they reached the decision to
10 approach the tribe about opening a public school on tribal
11 land; and

12 (2) the level of their commitment to improving
13 educational outcomes for Indian students by opening a public
14 school and how that commitment will be manifested through:

15 (a) culturally and linguistically
16 responsive school policies;

17 (b) rigorous and culturally meaningful
18 curricula and instructional materials;

19 (c) sensitivity to the tribe's calendar
20 of religious and tribal obligations when making the school
21 calendar; and

22 (d) professional development for school
23 personnel at the public school to ensure that the best
24 practices used in teaching, mentoring, counseling and
25 administration are culturally and linguistically responsive to

1 students.

2 C. Whenever a local school board is contemplating
3 closing a public school on tribal land for any reason, it shall
4 consult with tribal leaders and members and families of
5 students attending the public school.

6 D. Consultation shall include, among other actions,
7 meetings in which the local board and the local superintendent
8 explain:

9 (1) the reasons for closing the public school;

10 (2) the reasons why the local school board has
11 not or cannot provide additional resources to keep the public
12 school open;

13 (3) locations of other public schools in the
14 vicinity to which students will be sent and the plan to
15 transport students to those schools;

16 (4) how the public school receiving new
17 students will consult with tribal leaders and members and
18 families of students attending the public school related to:

19 (a) culturally and linguistically
20 responsive school policies;

21 (b) rigorous and culturally meaningful
22 curricula and instructional materials;

23 (c) sensitivity to the tribe's calendar
24 of religious and other tribal obligations when making the
25 school calendar; and

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1 (d) professional development for school
2 personnel at the public school to ensure that the best
3 practices used in teaching, mentoring, counseling and
4 administration are culturally and linguistically responsive to
5 students;

6 (5) how the educational outcomes for the
7 Indian students will be improved by attending another public
8 school;

9 (6) plans for the public school buildings that
10 will be left empty by the closure; and

11 (7) any other matters the local school board
12 believes provide an adequate explanation of the reasons for
13 closing the public school on tribal lands."

14 SECTION 3. A new section of the Charter Schools Act is
15 enacted to read:

16 "[NEW MATERIAL] CHARTER SCHOOLS--PROPOSALS TO OPEN OR
17 CLOSE A PUBLIC SCHOOL ON TRIBAL LAND--CONSULTATION WITH TRIBAL
18 LEADERS AND MEMBERS AND FAMILIES OF STUDENTS.--

19 A. If a charter school applicant wants to open a
20 charter school on tribal land, it shall negotiate with and
21 receive the tribal government's approval for the public school
22 before the charter school authorizer acts on the application.
23 The applicant shall also consult with tribal leaders and
24 members and families of students who will be eligible to attend
25 the public school.

1 B. Consultation shall include, among other actions,
2 meetings in which the charter school applicant shall explain:

3 (1) how and why the applicant reached the
4 decision to approach the tribe about opening a public school on
5 tribal land; and

6 (2) the level of the charter school
7 applicant's commitment to improving educational outcomes for
8 Indian students by opening a public school and how that
9 commitment will be manifested through:

10 (a) culturally and linguistically
11 responsive school policies;

12 (b) rigorous and culturally meaningful
13 curricula and instructional materials;

14 (c) sensitivity to the tribe's calendar
15 of religious and tribal obligations when making the school
16 calendar; and

17 (d) professional development for school
18 personnel at the public school to ensure that the best
19 practices used in teaching, mentoring, counseling and
20 administration are culturally and linguistically responsive to
21 students.

22 C. Whenever a charter school authorizer is
23 contemplating closing a charter school on tribal land, for any
24 reason, it shall consult with tribal leaders and members and
25 families of students attending the charter school.

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1 D. Consultation shall include, among other actions,
2 open meetings in which the charter school authorizer and the
3 head administrator of the charter school explain:

4 (1) the reasons for closing the charter
5 school;

6 (2) the reasons why the charter school has not
7 or cannot provide additional resources to keep the charter
8 school open;

9 (3) locations of other public schools in the
10 vicinity to which students will be sent and the plan to
11 transport students to those schools;

12 (4) how the public school receiving new
13 students will consult with tribal leaders and members and
14 families of students attending the public school related to:

15 (a) culturally and linguistically
16 responsive school policies;

17 (b) rigorous and culturally meaningful
18 curricula and instructional materials;

19 (c) sensitivity to the tribe's calendar
20 of religious and other tribal obligations when making the
21 school calendar; and

22 (d) professional development for school
23 personnel at the public school to ensure that the best
24 practices used in teaching, mentoring, counseling and
25 administration are culturally and linguistically responsive to

1 students;

2 (5) how the educational outcomes for the
3 Indian students will be improved by attending another public
4 school;

5 (6) plans for the public school buildings that
6 will be left empty by the closure; and

7 (7) any other matters the charter school
8 governing body and head administrator believe provide an
9 adequate explanation of the reasons for closing the charter
10 school."

11 SECTION 4. Section 22-8B-6 NMSA 1978 (being Laws 1999,
12 Chapter 281, Section 6, as amended) is amended to read:

13 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
14 PROCESS--AUTHORIZATION--STATE BOARD OF FINANCE DESIGNATION
15 REQUIRED--PUBLIC HEARINGS--SUBCOMMITTEES.--

16 A. A local school board has the authority to
17 approve the establishment of a locally chartered charter school
18 within that local school board's district.

19 B. No later than the second Tuesday of January of
20 the year in which an application will be filed, the organizers
21 of a proposed charter school shall provide written notification
22 to the commission and the school district in which the charter
23 school is proposed to be located of their intent to establish a
24 charter school. Failure to notify may result in an application
25 not being accepted.

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1 C. A charter school applicant shall apply to either
2 a local school board or the commission for a charter. If an
3 application is submitted to a chartering authority, it must
4 process the application. Applications for initial charters
5 shall be submitted by June 1 to be eligible for consideration
6 for the following fiscal year; provided that the June 1
7 deadline may be waived upon agreement of the applicant and the
8 chartering authority.

9 D. An application shall include the total number of
10 grades the charter school proposes to provide, either
11 immediately or phased. A charter school may decrease the
12 number of grades it eventually offers, but it shall not
13 increase the number of grades or the total number of students
14 proposed to be served in each grade.

15 E. An application shall include a detailed
16 description of the charter school's projected facility needs,
17 including projected requests for capital outlay assistance that
18 have been approved by the director of the public school
19 facilities authority or the director's designee. The director
20 shall respond to a written request for review from a charter
21 applicant within forty-five days of the request.

22 F. An application may be made by one or more
23 teachers, parents or community members or by a public post-
24 secondary educational institution or nonprofit organization.
25 Municipalities, counties, private post-secondary educational

1 institutions and for-profit business entities are not eligible
2 to apply for or receive a charter.

3 G. An initial application for a charter school
4 shall not be made after June 30, 2007 if the proposed charter
5 school's proposed enrollment for all grades or the proposed
6 charter school's proposed enrollment for all grades in
7 combination with any other charter school's enrollment for all
8 grades would equal or exceed ten percent of the total MEM of
9 the school district in which the charter school will be
10 geographically located and that school district has a total
11 enrollment of not more than one thousand three hundred
12 students.

13 H. A state-chartered charter school shall not be
14 approved for operation unless its governing body has qualified
15 to be a board of finance.

16 I. The chartering authority shall receive and
17 review all applications for charter schools submitted to it.
18 The chartering authority shall not charge application fees.

19 J. The chartering authority shall hold at least one
20 public hearing in the school district in which the charter
21 school is proposed to be located to obtain information and
22 community input to assist it in its decision whether to grant a
23 charter school application. The chartering authority may
24 designate a subcommittee of no fewer than three members to hold
25 the public hearing, and, if so, the hearing shall be

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1 transcribed for later review by other members of the chartering
2 authority. Community input may include written or oral
3 comments in favor of or in opposition to the application from
4 the applicant, the local community and, for state-chartered
5 charter schools, the local school board and school district in
6 whose geographical boundaries the charter school is proposed to
7 be located.

8 K. The chartering authority shall rule on the
9 application for a charter school in a public meeting by
10 September 1 of the year the application was received; provided,
11 however, that prior to ruling on the application for which a
12 designated subcommittee was used, any member of the chartering
13 authority who was not present at the public hearing shall
14 receive the transcript of the public hearing together with
15 documents submitted for the public hearing. If not ruled upon
16 by that date, the charter application shall be automatically
17 reviewed by the secretary in accordance with the provisions of
18 Section 22-8B-7 NMSA 1978. The charter school applicant and
19 the chartering authority may, however, jointly waive the
20 deadlines set forth in this section.

21 L. A chartering authority may approve, approve with
22 conditions or deny an application. A chartering authority may
23 deny an application if:

24 (1) the application is incomplete or
25 inadequate;

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1 (2) the application does not propose to offer
2 an educational program consistent with the requirements and
3 purposes of the Charter Schools Act;

4 (3) the proposed head administrator or other
5 administrative or fiscal staff was involved with another
6 charter school whose charter was denied or revoked for fiscal
7 mismanagement or the proposed head administrator or other
8 administrative or fiscal staff was discharged from a public
9 school for fiscal mismanagement;

10 (4) for a proposed state-chartered charter
11 school, it does not request to have the governing body of the
12 charter school designated as a board of finance or the
13 governing body does not qualify as a board of finance; [øø]

14 (5) for a proposed charter school on tribal
15 land, it fails to receive approval from the tribal government;

16 or

17 [~~(5)~~] (6) the application is otherwise
18 contrary to the best interests of the charter school's
19 projected students, the local community or the school district
20 in whose geographic boundaries the charter school applies to
21 operate.

22 M. If the chartering authority denies a charter
23 school application or approves the application with conditions,
24 it shall state its reasons for the denial or conditions in
25 writing within fourteen days of the meeting. If the chartering

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1 authority grants a charter, the approved charter shall be
2 provided to the applicant together with any imposed conditions.

3 N. A charter school that has received a notice from
4 the chartering authority denying approval of the charter shall
5 have a right to a hearing by the secretary as provided in
6 Section 22-8B-7 NMSA 1978."

7 SECTION 5. Section 22-8B-12 NMSA 1978 (being Laws 1999,
8 Chapter 281, Section 12, as amended) is amended to read:

9 "22-8B-12. CHARTER SCHOOLS--TERM--OVERSIGHT AND
10 CORRECTIVE ACTIONS--SITE VISITS--RENEWAL OF CHARTER--GROUNDS
11 FOR NONRENEWAL OR REVOCATION.--

12 A. A charter school may be approved for an initial
13 term of six years; provided that the first year shall be used
14 exclusively for planning and not for completing the
15 application. A charter may be renewed for successive periods
16 of five years each. Approvals of less than five years may be
17 agreed to between the charter school and the chartering
18 authority.

19 B. During the planning year, the charter school
20 shall file a minimum of three status reports with the
21 chartering authority and the department for the purpose of
22 demonstrating that the charter school's implementation progress
23 is consistent with the conditions, standards and procedures of
24 its approved charter. The report content, format and schedule
25 for submission shall be agreed to by the chartering authority

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1 and the charter school and become part of the charter contract.

2 C. Prior to the end of the planning year, the
3 charter school shall demonstrate that its facilities meet the
4 requirements of Section 22-8B-4.2 NMSA 1978.

5 D. A chartering authority shall monitor the fiscal,
6 overall governance and student performance and legal compliance
7 of the charter schools that it oversees, including reviewing
8 the data provided by the charter school to support ongoing
9 evaluation according to the charter contract. Every chartering
10 authority may conduct or require oversight activities that
11 allow the chartering authority to fulfill its responsibilities
12 under the Charter Schools Act, including conducting appropriate
13 inquiries and investigations; provided that the chartering
14 authority complies with the provisions of the Charter Schools
15 Act and the terms of the charter contract and does not unduly
16 inhibit the autonomy granted to the charter schools that it
17 governs.

18 E. As part of its performance review of a charter
19 school, a chartering authority shall visit a charter school
20 under its authority at least once annually to provide technical
21 assistance to the charter school and to determine the status of
22 the charter school and the progress of the charter school
23 toward the performance framework goals in its charter contract.

24 F. If, based on the performance review conducted by
25 the chartering authority pursuant to Subsection D of this

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1 section, a charter school's fiscal, overall governance or
2 student performance or legal compliance appears unsatisfactory,
3 the chartering authority shall promptly notify the governing
4 body of the charter school of the unsatisfactory review and
5 provide reasonable opportunity for the governing body to remedy
6 the problem; provided that if the unsatisfactory review
7 warrants revocation, the revocation procedures set forth in
8 this section shall apply. A chartering authority may take
9 appropriate corrective actions or exercise sanctions, as long
10 as such sanctions do not constitute revocation, in response to
11 the unsatisfactory review. Such actions or sanctions by the
12 chartering authority may include requiring a governing body to
13 develop and execute a corrective action plan with the
14 chartering authority that sets forth time frames for
15 compliance.

16 G. Every chartering authority shall submit an
17 annual report to the division, including a performance report
18 for each charter school that it oversees, in accordance with
19 the performance framework set forth in the charter contract.

20 H. The department shall review the annual report
21 received from the chartering authority to determine if the
22 department or local school board rules and policies from which
23 the charter school was released pursuant to the provisions of
24 Section 22-8B-5 NMSA 1978 assisted or impeded the charter
25 school in meeting its stated goals and objectives. The

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1 department shall use the annual reports received from the
2 chartering authorities as part of its report to the governor,
3 the legislative finance committee and the legislative education
4 study committee as required by the Charter Schools Act.

5 I. No later than two hundred seventy days prior to
6 the date in which the charter expires, the governing body may
7 submit a renewal application to the chartering authority. A
8 charter school may apply to a different chartering authority
9 for renewal. The chartering authority shall rule in a public
10 hearing on the renewal application no later than one hundred
11 eighty days prior to the expiration of the charter.

12 J. A charter school renewal application submitted
13 to the chartering authority shall contain:

14 (1) a report on the progress of meeting the
15 academic performance, financial compliance and governance
16 responsibilities of the charter school, including achieving the
17 goals, objectives, student performance outcomes, state
18 standards of excellence and other terms of the charter
19 contract, including the accountability requirements set forth
20 in the Assessment and Accountability Act;

21 (2) a financial statement that discloses the
22 costs of administration, instruction and other spending
23 categories for the charter school that is understandable to the
24 general public, that allows comparison of costs to other
25 schools or comparable organizations and that is in a format

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1 required by the department;

2 (3) a copy of the charter contract executed in
3 compliance with the provisions of Section 22-8B-9 NMSA 1978;

4 (4) a petition in support of the charter
5 school renewing its charter status signed by not less than
6 sixty-five percent of the employees in the charter school;

7 (5) a petition in support of the charter
8 school renewing its charter status signed by at least seventy-
9 five percent of the households whose children are enrolled in
10 the charter school; ~~and~~

11 (6) a description of the charter school
12 facilities and assurances that the facilities are in compliance
13 with the requirements of Section 22-8B-4.2 NMSA 1978; and

14 (7) for charter schools located on tribal
15 land, documentation of ongoing consultation pursuant to the
16 Indian Education Act.

17 K. A charter may be suspended, revoked or not
18 renewed by the chartering authority if the chartering authority
19 determines that the charter school did any of the following:

20 (1) committed a material violation of any of
21 the conditions, standards or procedures set forth in the
22 charter contract;

23 (2) failed to meet or make substantial
24 progress toward achievement of the department's standards of
25 excellence or student performance standards identified in the

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1 charter contract;

2 (3) failed to meet generally accepted
3 standards of fiscal management; [~~or~~]

4 (4) for a charter school located on tribal
5 land, failed to comply with ongoing consultations pursuant to
6 the Indian Education Act; or

7 [~~(4)~~] (5) violated any provision of law from
8 which the charter school was not specifically exempted.

9 L. The chartering authority shall develop processes
10 for suspension, revocation or nonrenewal of a charter that:

11 (1) provide the charter school with timely
12 notification of the prospect of suspension, revocation or
13 nonrenewal of the charter and the reasons for such action;

14 (2) allow the charter school a reasonable
15 amount of time to prepare and submit a response to the
16 chartering authority's action; and

17 (3) require the final determination made by
18 the chartering authority to be submitted to the department.

19 M. If a chartering authority suspends, revokes or
20 does not renew a charter, the chartering authority shall state
21 in writing its reasons for the suspension, revocation or
22 nonrenewal.

23 N. If a chartering authority suspends, revokes or
24 does not renew the charter of a charter school located on
25 tribal land, the chartering authority and charter school shall

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1 consult with the tribe pursuant to Subsections C and D of
2 Section 3 of this 2019 act.

3 [N.] O. A decision to suspend, revoke or not to
4 renew a charter may be appealed by the governing body pursuant
5 to Section 22-8B-7 NMSA 1978."

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