

GALLUP-McKINLEY COUNTY PUBLIC SCHOOLS

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"GROWING STUDENTS TO BE PRODUCTIVE CITIZENS IN A MULTI-CULTURAL SOCIETY"

July 6, 2018

SERVICE OF PROCESS

Governing Council
% Dr. Robert Hunter
Chief Executive Officer
Middle College High School
705 Gurley Street
Gallup, New Mexico 87301

NOTICE OF INTENT TO REVOKE CHARTER

COMES NOW, the Superintendent of Schools for the Gallup-McKinley County Schools ("Administration") and gives notice to the Governing Council of the Middle College High School of the intent by the Superintendent of Schools under Sections 22-8B-5.3(G) and (H)(5) and 22-8B-12 of the Charter School Act to seek from the Board of Education for the Gallup-McKinley County Schools ("Chartering Authority"), the chartering authority, its Order of Revocation terminating the charter contract and/or denying renewal of a charter contract for Middle College High School so that it may no longer have the ability or authority to operate as a charter school under the jurisdiction of the Board of Education for the Gallup-McKinley County Schools.

The Administration gives notice that the following reasons are deemed sufficient to revoke and/or not renew the charter for Middle College High School:

1. Contrary to Section 22-8B-9(A) of the Charter School Act, there exists no executed charter contract creating the charter school. Without it being the final authorization of the charter school, the Charter School does not legally exist. With no original contract authorizing the charter school, the charter contract renewal of 2012, is not based on a viable charter contract as to remedy the lack of a final authorization for the creation of the Charter School in violation of Section 22-8B-12(J)(3) of the Charter School Act. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(4) of the Charter School Act.

2. The Governing Council of the Charter School has on multiple occasions and continues to operate in a manner that violates the New Mexico Open Meetings Act, N.M. Stat. Ann. §§ 10-15-1 to 10-15-4, (2013) (“OMA”). The law is clear that a charter school is a public school that operates as part of a political subdivision of the State. *See Kreuzer v. Aldo Leopold High Sch.*, 2018-NMCA-005, ¶ 41, 409 P.3d 930, 939 (N.M. Ct. App. 2018). Local school board meetings, including those for the governing bodies of charter schools are subject to the Open Meetings Act, which provides that “[a]ll meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.” N.M. Stat. Ann. § 10-15-1(A) (2013); N.M. Stat. Ann. § 22-8B-2(G) (2015). “Thus, when a meeting is conducted for the purpose of formulating public policy, discussing public business, or taking any action within the authority of a public body, the meeting must be open to the public.” *Treloar v. Cty. of Chaves*, 2001-NMCA-074, ¶ 28, 130 N.M. 794, 802, 32 P.3d 803, 811 (N.M. Ct. App. 2001), *citing* Section 10-15-1(B). As a result, either the Governing Council of the Charter School has acted outside of duly-called open meetings or its Chief Executive Officer (“CEO”) was been acting independently without the knowledge or authority of his governing body. Either way the current actions of the Charter School after 2012 are contrary to law and are rendered null and void, as a matter of law. *See* N.M. Stat. Ann. § 10-15-1(B) (2013) and N.M. Stat. Ann. § 10-15-3(A) (1997); *see also Swinney v. Deming Bd. of Educ.*, 117 N.M. 492, 494, 873 P.2d 238, 240 (N.M. 1994) (any attempt by a local board of education to take an action which is in conflict with a state statute, the action would be “*ultra vires* and void” and will not prevail). The OMA is very clear that no action of a school board; charter school governing body or any policy-making body, for that matter, can occur outside of a duly-called public meeting under the Open Meetings Act, in which a quorum of the governing body is present and a vote is taken on the proposed action. *See id.*; *see also* N.M. Stat. Ann. § 22-8B-2(G) (2015).

The Governing Council of the Charter School has passed a resolution in which it delegated and transferred all of its authority and the ability to act on its behalf to its CEO. Such a delegation of the authority of a policy-making body to take action on its behalf to one individual is contrary to and violates the provisions of the Open Meetings Act. *See New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 75, 382 P.3d 923, 943 (N.M. Ct. App. 2016), *cert. denied* (N.M. July 20, 2016); N.M. Att’y Gen. Op. 90-27 (1990); and Attorney General’s Open Meetings Act *Compliance Guide*, p. 9 (8th ed. 2015). As such, Dr. Hunter, as CEO of the Charter School, has taken official action within the exclusive authority of the Governing Council of the Charter School to include all matters related to the acceptance, accounting, transfer, allocation, distribution, budgeting, appropriation and expenditure of public funds applicable only to the Governing Council under Sections 22-8-38 and 22-8-40 of the Public School Finance Act to safeguard, control and appropriate public funds associated with the Charter School related or pertaining to the Governing Council’s board of finance under Section 22-8B-6(H) of the Charter School Act. This misconduct is a violation of law, and this is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1); (3) and (4) of the Charter School Act.

Dr. Hunter illegally and without appropriate authority reviewed, signed and executed the Charter School Contract of July 1, 2018, in violation of the OMA rendering the contract null and void, as a matter of law. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act.

Dr. Hunter illegally and without appropriate authority sought an amendment of the Charter Contract to seek an increase in enrollment in violation of the OMA rendering the request for amendment null and void, as a matter of law. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act.

Dr. Hunter illegally and without appropriate authority sought an appeal to the Secretary-Designate of the Public Education Department when the Chartering Authority denied the request for an amendment of the Charter Contract for an increase in enrollment in violation of the OMA rendering the request for amendment null and void, as a matter of law. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act.

Contrary to Section 22-8B-9(A) of the Charter School Act, Dr. Hunter illegally and without appropriate authority proposed a Charter Contract to the Chartering Authority without entering into negotiations for said contract within the time frame set forth in the Act and has not sought negotiations in violation of the OMA and the Act rendering the Charter Contract null and void, as a matter of law. More important, the Chartering Authority never reviewed, approved or executed the Charter Contract also rendering it null and void, as a matter of law. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act.

Any and all official actions of the Charter School, which are based on the exclusive authority of its Governing Council but taken exclusively by Dr. Hunter are null and void, as a matter of law for violating the OMA. Such conduct is sufficient justification for revocation of the charter. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1); (3) and (4) of the Charter School Act.

3. Dr. Hunter and the Governing Council of the Charter School have expelled, removed or let go students from the Charter School for lack of attendance and attendance issues without complying with the provisions of Section 22-12-7 of the Compulsory School Attendance Law and failing to uphold and implement the provisions of the New Mexico Administrative Code promulgated by the New Mexico Public Education Department known as § 6.11.2 NMAC (Rights and Responsibilities of the Public Schools and Public School Students. As such, the students are also considered expelled from the Gallup-McKinley County Schools under Section 22-8B-5(G) of the Charter School Act. However, the Charter School has failed to report such students to the Gallup-McKinley County Schools ("School District") and the students were expelled in violation of the student's procedural due process rights under § 6.11.2 NMAC contrary to their civil rights. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) and Section 22-8B-7(C)(1) of the Charter School Act.
4. Dr. Hunter and the Governing Council of the Charter School have failed to conduct sufficient oversight and control of students or appropriately discipline a student or students at the Charter School for student-on-student sexual harassment or report such student disciplinary matters to the Chartering Authority as required under Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681 and Section 22-8B-4(A) of the Charter School Act. Such failures of oversight and control of students could also result in denial of the civil rights of the alleged victim. In addition, the Chartering Authority has been discovered in the minutes of the Governing Council's meeting of a bullying attack incident with students in 2014 that was never reported to the School District or to the PED. It is likely that this earlier incident implicates

either a violation of Title IX or Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (“Title VI”) and Section 22-1-4(A) of the Public School Code and Section 22-8B-4(A) of the Charter School Act. as the alleged victim. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) and Section 22-8B-7(C)(1) of the Charter School Act.

5. Dr. Hunter and the Governing Council of the Charter School have allocated the salary of the CEO into other categories of work to appear as if the Charter School is operated with minimal expenditure for school administration. However, there is no clear evidence that Dr. Hunter provides services to the Charter School in any other areas or positions, including teacher or counselor sufficient to justify the allocation of salary utilizing public funds in violation of the Anti-Donations Clause of Article IX, Section 14 of the New Mexico Constitution and where the Governing Council has violated Sections 22-8-38 and 22-8-40 of the Public School Finance Act to safeguard, control and appropriate public funds associated with the Charter School related or pertaining to the Governing Council’s board of finance under Section 22-8B-6(H) of the Charter School Act.

In addition, similarly it has been reported that Dr. Hunter teaches UNM students while being paid for his services as CEO of the Charter School in violation of the Anti-Donations Clause of Article IX, Section 14 of the New Mexico Constitution and where the Governing Council has violated Sections 22-8-38 and 22-8-40 of the Public School Finance Act to safeguard, control and appropriate public funds associated with the Charter School related or pertaining to the Governing Council’s board of finance under Section 22-8B-6(H) of the Charter School Act. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1); (3) and (4) of the Charter School Act.

6. The Charter School has maintained policies, procedures and practices as to the admission of students and as to the operations of the Charter School that has had disparate impact on Native American students in violation of the civil rights of applicant students and current students under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*; Section 22-1-4(A) of the Public School Code and Section 22-8B-4(A) of the Charter School Act. Here, the Charter School fails in its policies, procedures and practices to reflect the actual diversity of the School District’s total Native American enrollment in providing a fair and equitable school choice for parents of local students. For the current school year of 2017-2018 the Charter School’s enrollment is only 37% Native American (based on 40-day count) where the School District’s enrollment is 82.8% Native American.

The Charter School has failed to surpass an enrollment of 47.62% of Native American students since the 2011-2012 school year. The enrollment of Native American students has decreased since 2011 and has remained stagnant despite the Charter School’s increase in enrollment and the accumulation over the last three (3) years of more than \$639,000 in cash balance, which equals nearly 50% of its current annual budget, choosing inappropriately and contrary to the academic and financial needs of students to otherwise prioritize the accumulation of cash revenue over improving the overall diversity of its student body or its academic achievement. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) and Section 22-8B-7(C)(1) of the Charter School Act.

7. The Charter School has maintained in every application for a charter that the mission and purpose of the Charter School is to meet the academic needs of “at risk” students. This assertion has is false, and in fact, the Charter School has maintained policies, procedures and

practices in its admissions that disfavors the groups from where “at-risk” students derive. These students typically come from challenging socioeconomic backgrounds where parents cannot afford the costs of transportation to and from the Charter School and/or of providing of meals for their students. However, it is these excluded students who are predominantly categorized as “at-risk” students and a large percentage are also members of minority groups. As such, the Charter School maintains attendance policies and practices that has had a disparate impact on minority students in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*; Section 22-1-4(A) of the Public School Code and Section 22-8B-4(A) of the Charter School Act. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) and Section 22-8B-7(C)(1) of the Charter School Act.

8. Dr. Hunter and the Governing Council of the Charter School have unjustifiably been giving additional public funds from the PED for its operation under the “at-risk” index under Section 22-8-6.1(B) of the School Finance Act for students it has deliberately placed hurdles in the way of their enrollment. However, due to the Charter School’s policies and practices, it is the School District that provides services to a large percentage of the “at-risk” students that were to be serviced by the Charter School as intended by the School Finance Act. In fact, the Charter School’s enrollment of “at-risk” students is so low, it does not even qualify for federal Title I funds to assist those it does enroll. As such, the Charter School is inappropriately obtaining the increased funding under the at-risk index. This misconduct is in violation of the Anti-Donations Clause of Article IX, Section 14 of the New Mexico Constitution and where the Governing Council has violated Sections 22-8-38 and 22-8-40 of the Public School Finance Act to safeguard, control and appropriate public funds associated with the Charter School related or pertaining to the Governing Council’s board of finance under Section 22-8B-6(H) of the Charter School Act. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1); (3) and (4) of the Charter School Act.
9. In order to manipulate the school grades issued by the PED to favor the Charter School, Dr. Hunter and the Governing Council of the Charter School have falsified reporting to the Chartering Authority that is forwarded on to the PED on student attendance and on the issuance of student discipline in violation of the Public Records Act, N.M. Ann. § 14-3-1, *et. seq.* (1978) and § 6.20.2.24(C) NMAC. While there has been no reporting of student discipline to the Chartering Authority for entry into PED tracking systems, the minutes of Governing Council’s meetings reveals notice to the governing body of student disciplinary matters, and the Chartering Authority was been notified by third parties of student discipline imposed by the University of New Mexico on students of MCHS for academic dishonesty without notice to the Chartering Authority for reporting to the PED. This misconduct also demonstrates a pattern and practice of attempting to inflate the PED school grade for the Charter School. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act.

With regard to student attendance, the Charter School has reported attendance at or near 100% each academic school year despite its failure to demonstrate that the Charter School actually takes attendance of its courses or those conducted by the University of New Mexico under Board of Education Policy JE utilizing PowerSchool under the School District’s policies for attendance and PED requirements for attendance reporting. The attendance numbers provided by the Charter School are false or, at least inaccurate for failure to utilize policies, procedures and processes to fully monitor student attendance as required under Board of Education Policy JE. This misconduct can be demonstrated in a school year with the Charter School claiming 100% attendance, its Governing Council was informed by Dr. Hunter that students were “let

go” for attendance. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act.

10. The Chartering Authority finds that the academic progress of the Charter School to be deficient and continuing to decline despite falsification of attendance data intended to benefit the Charter School’s school grade with the PED. This lack of academic progress is further rationale for revocation. It is very apparent by the PED grading system and student growth scores that the Charter School is in a continual decline harming the academic achievement of individual students. While the Chartering Authority understands the need for high-quality school options for students, the Charter School is, however, falling short under the requirements of the Charter School Act at Section 22-8B-4(M). In fact, the school grade distribution has declined since 2015 from the grade of “A” to the grade of “C”:

School grade distribution since 2013

Grade	Attendance =
2013 = A	100%
2014 = A	98%
2015 = A	98%
2016 = B	100%
2017 = C	98%

The actual issue addressed by the Chartering Authority, at its duly-called open meetings in which the Charter School has sought amendments to its Charter Contract, was that the Charter School grades are declining significantly, and in addition, the attendance reflected by Charter School is not accurate. Simply put, the Chartering Authority does not believe that the Charter School has had 100% attendance or even 98% attendance for any of the school years it has been operating. The Chartering Authority believes that the Charter School does not track attendance for students attending college classes while reporting incomplete attendance at or very near the 100% level to get all the school grade points for reporting these high attendance rates that are false. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act

It is important to note here that the over the last two (2) years for the Charter School the specific point total drop for school grades was from 81.64 in 2015 to 57.95 in 2017. This is despite the falsification to the PED of attendance of students to the advantage of the Charter School in the grading of schools. As such, the true academic progress for the Charter School most likely is substandard and a disservice to the students it serves. These inconsistencies may also explain why the Charter School is also reflecting a decrease in the number of graduates leaving with Associate Degrees over the same time period as the school grades have declined.

11. The Chartering Authority finds that the academic progress of the Charter School to be deficient and continuing to decline despite the exorbitant cash balance it has that exceeds \$639,000 that equals approximately 50% of its current annual budget. This enormous cash balance has not been used for meeting the academic needs of students, and its accumulation over the last three (3) years as school grades have declined has harmed the overall academic progress of all students. The Chartering Authority believes that the focus of the Charter School under its current leadership has been in the accumulation of an inordinately large cash balance and not on the expenditure of monies for resources to arrest the declining academic performance of the Charter School.

While fabricating to the public and parents that most of the Charter School's students come from the home school or private school environments, approximately 75% of the Charter School's students actually come from the School District. However, students enrolling at the Charter School, who left the School District academically proficient, declined in academic proficiency while in attendance at the Charter School. The Chartering Authority believes that of 62 current students of the Charter School who came from the School District and who were also tested by the School District for academic proficiency before enrolling in the Charter School, 60% lost their academic proficiency while enrolled with the Charter School in testing conducted in 2017. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1); (3) and (4) of the Charter School Act.

12. Dr. Hunter and the Governing Council of the Charter School have falsified budget documents and information to overstate the hours of instruction to inflate its allocation of public funds from the PED for its operations; to incentivize the salaries of employees and of Dr. Hunter and to falsely appear as be exceeding the academic hours of the School District. In actuality, the Charter School follows the academic calendar of the University of New Mexico, which is insufficient in total academic days and hours to provide the necessary hours of instruction mandated for a public school. The abbreviated calendar operated by the University is contained within an academic calendar for the Charter School, in which students do not attend classes during the academic calendar of the Charter School until the University itself begins classes even though the Charter School's calendar states instruction has already begun for students. As such, the Charter School pays for teachers and staff for a portion of an empty academic calendar enhancing their pay as compared to other public schools, while not teaching or supporting students. This misconduct is in violation of the Anti-Donations Clause of Article IX, Section 14 of the New Mexico Constitution and where the Governing Council has violated Sections 22-8-38 and 22-8-40 of the Public School Finance Act to safeguard, control and appropriate public funds associated with the Charter School related or pertaining to the Governing Council's board of finance under Section 22-8B-6(H) of the Charter School Act. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1); (3) and (4) of the Charter School Act.
13. Over the past five (5) years, the Charter School has made multiple organizational changes to the Charter School failing to seek amendments to the Charter Contract of 2012 from the Chartering Authority and contrary to its application for a charter renewal and contrary to Sections 22-8B-4(B) and 22-8B-9(A) of the Charter School Act. The Charter School has had a school principal and other administrative personnel that are no longer present currently at the Charter School, and in 2014, the Charter School unilaterally recruited and hired a CFO and no longer had the School District conduct or prepare its finances and budget. This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act.
14. In addition, in its application and in its Charter Contract of 2012, the Charter School maintained that it would be following the policies of the School District. However, the Charter School has unilaterally promulgated its own policies and violated those of the School District. The following is a list of Board of Education policies violated by the Charter School in violation of the Charter Contract and its application: Board of Education Policy AC (Nondiscrimination/Equal Opportunity); Board of Education Policy JB (Equal Educational Opportunities); Board of Education Policy JE (Attendance and Discipline Records); Board of Education Policy BBAA (Board Member Authority and Responsibilities); Board of Education

Policy BDD (Board-Superintendent Relationship); Board of Education Policy BG (School Board Policy Process); Board of Education Policy DA (Fiscal Management Goals/Priority Objectives); Board of Education Policy JA (Student Policies Goals/Priority Objectives); Board of Education Policy JHB (Truancy); Board of Education Policy JIC (Student Conduct); Board of Education Policy JK (Student Discipline); Board of Education Policy JK-EA (Student Discipline Records); Board of Education Policy JKD (Student Suspension/Expulsion); Board of Education Policy GBEA (Statement of Ethics for School Employees); and Board of Education Policy GBEB (Staff Conduct). In addition, the Charter School has violated the following regulations from policies: Regulation JE-R (Student Attendance); Regulation JH-R (Student Absences and Excuses); Regulation JHB-R (Truancy); and Regulation JK-R (Student Discipline). This is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) of the Charter School Act.

15. In the event that any of the above reasons for revocation is deemed not to be sufficient individually for revocation of the Charter School's charter the accumulation of multiple violations as set forth herein is sufficient justification for revocation of the charter under Section 22-8B-12(K)(1) and (4) and Section 22-8B-7(C)(1) of the Charter School Act.

The Charter School has a right to a hearing before the Board of Education for the Gallup-McKinley County Schools, as the Chartering Authority, to challenge my intent to seek an order revoking the Charter School's charter. You may, again, request this hearing by submitting a written request for a hearing to the Superintendent of the for the Gallup-McKinley County Schools within twenty (20) days from the date this Notice of Intent to Revoke Charter is served upon the Charter School.

Your request to address the Chartering Authority will be granted if made as set forth herein. The Board of Education shall meet to hear your challenge. You will be provided with at least ten (10) calendar days written notice of the date, time and place of the hearing. The hearing before the Board of Education will be convened and conducted as described in the Notice of Hearing.

 FOR

MICHAEL HYATT
SUPERINTENDENT OF SCHOOLS