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PUBLIC EDUCATION DEPARTMENT
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HANNA SKANDERA
SECRETARY OF EDUCATION

SUSANA MARTINEZ
Governor

BEFORE THE SECRETARY OF EDUCATION
NEW MEXICO PUBLIC EDUCATION DEPARTMENT

)
IN THE MATTER OF THE BOARD OF EDUCATION)
OF THE)
GALLUP MCKINLEY COUNTY SCHOOL BOARD)
_____)

NOTICE OF DISAPPROVAL AND FAILURE TO MEET
REQUIREMENTS

COMES NOW the Secretary of Education, and under the authority granted by Sections 22-2-1, 22-2-2(C) and 22-2-14 of the Public School Code, Section 9-24-5 of the Public Education Department Act, and 6.30.6 of the New Mexico Administrative Code, hereby issues this **Notice of Disapproval and Failure to Meet Requirements** (“Notice”), to the Gallup McKinley County School Board (“the Board”).

The Board has failed to meet the requirements of law, standards or rules of the Public Education Department (“PED”), or department directives, which are enumerated below. Pursuant to 6.30.6.9(B) NMAC, “within thirty (30) calendar days after the receipt of this Notice the Board shall: (1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or (2) submit plans satisfactory to the department to meet the requirements and remove the cause for disapproval.” If after thirty (30) days from receipt of this Notice, the Board “has failed or refused to comply with the specific and attendant requirements set forth in [this] [N]otice, including submitting

a satisfactory plan of compliance to the department, an alternative order of suspension that states the cause(s) for the suspension, the effective date and time the suspension will begin, [and] any other information deemed relevant by the secretary shall be issued.” 6.30.6.9(D) NMAC.

1.

THE BOARD’S ACTIONS ARE IN DIRECT CONTRAVENTION OF THE DEPARTMENT DIRECTIVE ISSUED BY THE SECRETARY AND ARE IN VIOLATION OF THE PUBLIC SCHOOL CODE.

Suspension of the authority of a school board is warranted “whenever there has been a failure to meet requirements of law, standards or rules of the public education department as to any part of the school district or charter school under their respective control.” 6.30.6.8(A) & (C) NMAC. *See also* Section 22-2-14(G), NMSA 1978. Whether or not to commence the suspension process shall be at the discretion of the secretary. 6.30.6.8 NMAC.

The Secretary, in order to determine that there has been a failure to meet the requirements of law, department standards, or department rules, shall consider the following factors, as enumerated by 6.30.6.8(C) NMAC: 1) the existence of a pattern of noncompliance with requirements of any applicable law, department standards, state or federal rules or department directives; 2) the nature and severity of the noncompliance; and 3) the reasons given by the local school board for failing to comply with applicable law, department standards, state or federal rules or department directives. The regulation does not state that such factors are exclusive and therefore, in order to make the required determination, the Secretary may also consider any factors that a reasonable fact finder would consider relevant to a determination that the school board has failed to meet the requirements of law, department standards or department rules.

The failure of the Board to meet the requirements of law, department standards, rules or directives, consists of the following:

- a. The Board has not withdrawn the letter of direction issued to the Superintendent thereby directly violating a department directive.

On August 24, 2016, the Secretary of Education mailed a letter to the members of the Gallup McKinley County School Board. The August 24, 2016 letter from the Secretary informed the Board that after reviewing a letter of direction that the Board had provided to the Superintendent upon his return from administrative leave, she had reached the conclusion that the letter of direction reflected a gross overreach of the Board's authority and was contrary to law. The Secretary therefore, required the Board to "withdraw this letter of direction immediately and allow the Superintendent to do his job."

PED has been informed by the Superintendent that the Board has not withdrawn the letter of direction, as required. As further evidence of the failure to withdraw the letter of direction, it is the Secretary's understanding that the Board's evaluation of the Superintendent relies on provisions of the letter of direction. As late as October 18, 2016, board members, in emails discussing the Superintendent's evaluation, continued to rely on the terms of the letter of direction, as a means of critiquing the Superintendent.

By failing to withdraw the letter of direction that had previously been issued to the Superintendent, the Board is creating a situation in which they are violating not only a clear and concise department directive, but are also violating the Public School Code by making it impossible for the Superintendent to perform his functions as required.

Specifically, and as related to this Notice, a local Superintendent shall: (1) carry out the educational policies and rules of the state board and local school board; (2) administer and supervise the school district; (3) employ, fix the salaries of, assign, terminate or discharge all employees of the school district." 22-5-14(B) NMSA 1978. Pursuant to Section 22-5-14, NMSA 1978, it is the Superintendent who is given the duty of administering and supervising the District.

This failure by the Board to comply with a clear department directive constitutes a severe act of noncompliance with a department directive because it directly interferes with the Superintendent's ability to perform his responsibilities as directed by the Public School Code. Further, the time that has passed since the Secretary's letter of August 24, 2016, has provided the Board with more than adequate time and opportunity to act upon this department directive. Thus, there appears to have been no effort by the Board to correct their actions and officially withdraw the letter of direction.

b. On-going interference with decisions that are the responsibility of the Superintendent.

The August 24, 2016 letter from the Secretary further required the members of the Board to attend training specific to its roles and responsibilities. PED has been advised that the members of the Board did in fact attend such training as required. However, it has been brought to the attention of PED that the members, despite this training, persist in taking actions that interfere with the authority of the Superintendent, thereby violating the Public School Code.

The PED has been advised that on or about November 29, 2016, Board Member Lynn Huenemann sent an email directly to an employee who had been terminated, and was in the process of working with the District personnel department on matters relating to his termination, to inquire as to whether the employee wished to either make a statement to the Board or file an appeal. Further, PED is advised that Board Member Kevin Mitchell contacted the principal of Tohatchi High School, Mr. Whiteagle, inquiring about certain employment actions that had been taken in regard to a particular employee regarding the employee's licensing status. It is PED's understanding that the principal had addressed the situation and informed Board member Mitchell that he did not feel comfortable discussing personnel issues directly with individual Board members.

In the August 24, 2016 letter to the School Board, the Secretary made it clear that "the day-to-day operations of the school district, as well as the hiring or firing of staff, are not within the School

Board's authority." The School Board members were directed to cease and desist from their pattern of overreaching into District personnel matters. The Secretary made it clear that the department directive required the Board members to leave District personnel matters to the Superintendent to address, the Board members received training regarding compliance with their role in this regard, and yet, this behavior has continued.

These incidents are indicative of a pattern of noncompliance by the Board both with the department directive outlined in the August 24, 2016 letter from the Secretary, and with applicable state law specifically allocating such matters to the Superintendent.

c. The Board has not exercised sufficient oversight over the Indian Education Committee.

In addition to the above-mentioned letter from the Secretary on August 24, 2016, the Secretary also sent a letter to the Board President on August 22, 2016, relating to the Johnson O'Malley Program Agreed Upon Procedures report. The Secretary, by this letter of August 22, 2016, required the District to submit a corrective action plan to the department to address the findings of the Johnson O'Malley Program audit. While the District has submitted such a plan, and appears in all essential ways to be in compliance with such plan, it has come to PED's attention that the Indian Education Committee, on or about November 10, 2016, may have passed a resolution stating that the Indian Education Committee members "are not accepting the Corrective Action Plan."

The Board is responsible for oversight of the Indian Education Committee. It is clear that the above-mentioned Resolution of the Indian Education Committee, if passed, directly violates the department directive in the Secretary's letter of August 22, 2016.

2.

REQUIREMENTS OF THE SCHOOL BOARD

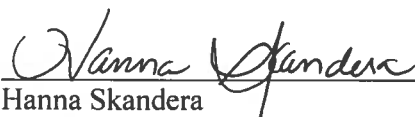
Within thirty (30) calendar days after the receipt of this Notice the Board must:

(1) Provide a copy of a letter addressed to the Superintendent, with proof of service to the Superintendent, indicating that the Board has immediately withdrawn the letter of direction. The Board must also remove all language from the letter of direction appearing in the Superintendent's evaluation, specifically in Section V of the evaluation.

(2) The Board must require the Indian Education Committee to comply with the department directive relating to the Johnson O'Malley Program Agreed Upon Procedures report, by rescinding the above-mentioned resolution, if it was passed, or provide a satisfactory explanation as to why the Indian Education Committee's failure to do so does not violate the department's directive.

(3) The Board must provide a plan satisfactory to the department, to ensure that the Board members do not continue to engage in actions that interfere with the responsibilities and duties of the Superintendent when such duties and responsibilities are specifically within the purview of the Superintendent. This plan must provide for more than additional training by the Board members and should, by way of possible example, include provisions providing for enactment and implementation of board policies that specifically address and prohibit such behavior.

If, after thirty (30) days from receipt of this Notice, the Board has not complied with the specific requirements set forth in this Notice, including providing proof of the withdrawal of the letter of direction, removing the letter of direction provisions from Section V. of the Superintendent's evaluation, and submitting a satisfactory plan of compliance to the department, an alternative order of suspension that states the cause(s) for the suspension, the effective date and time the suspension will begin, and any other information deemed relevant by the secretary, shall be issued.

By: 
Hanna Skandera
Secretary of Education

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Notice of Disapproval and Failure to Meet Requirements* sent to the following individuals, this 15th day of December, 2016 via certified mail and email:

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