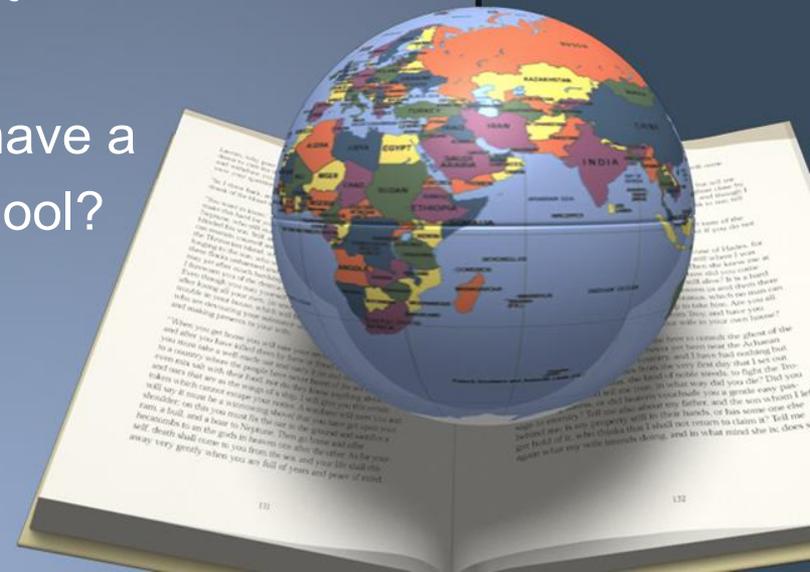


What a School District Needs to Know about Becoming the Chartering Authority for a Charter School:

1. Charter School Oversight Procedure and Protocol
2. What other responsibilities do School Districts have toward a charter school?
3. Charter School Act
4. Problems and gaps in the law
5. Charter School Lease: Checklist
6. Most common pitfalls
7. What do you do if you already have a ‘bad’ Lease with a Charter School?



Local Board Responsibilities

- First, a charter school must be chartered by a Chartering Authority, which can either be the State Charter School Commission (PED) or a Local School Board. Currently there are approximately 62 State and 36 locally chartered schools.
- If your School District is or considers becoming a “Chartering Authority” for a charter school, be aware that there are a lot of responsibilities that come with this title. These responsibilities are akin to becoming a “parent company”.



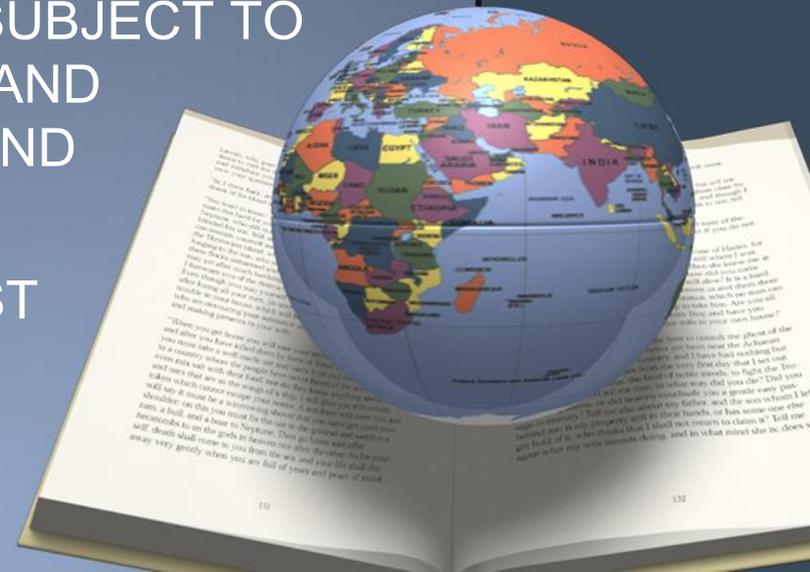
Local Board Responsibilities, cont'd

- You are responsible for the oversight (fiscal, academic and otherwise) of a charter school. If the charter school gets in trouble with PED, your School District may also have to get involved.
- There must be a contract between the chartering authority and the governing body of the charter school which is considered the final authorization for the charter school. Specific contractual requirements are set forth in NMSA § 22-8B-9. This chartering Agreement is different than any agreement for contractual services secured by the Charter from the school district.



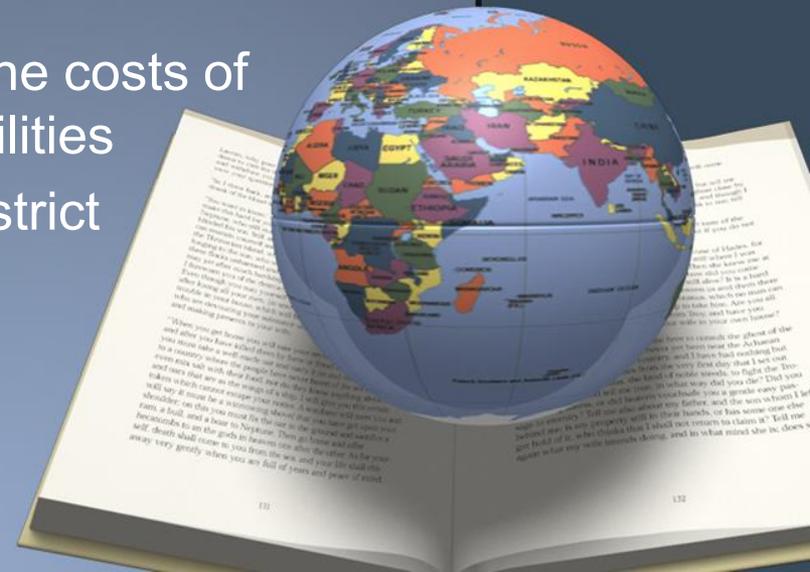
Local Board Authority

- A CHARTER SCHOOL SHALL BE A PUBLIC SCHOOL ACCREDITED BY THE DEPARTMENT AND SHALL BE ACCOUNTABLE TO THE CHARTERING AUTHORITY FOR PURPOSES OF ENSURING COMPLIANCE WITH ALL APPLICABLE LAWS, RULES AND CHARTER PROVISIONS.
- A CHARTER SCHOOL SHALL BE SUBJECT TO ALL FEDERAL AND STATE LAWS AND CONSTITUTIONAL PROVISIONS AND SHALL BE GOVERNED BY A GOVERNING BODY OF AT LEAST FIVE MEMBERS



Charter School Responsibilities

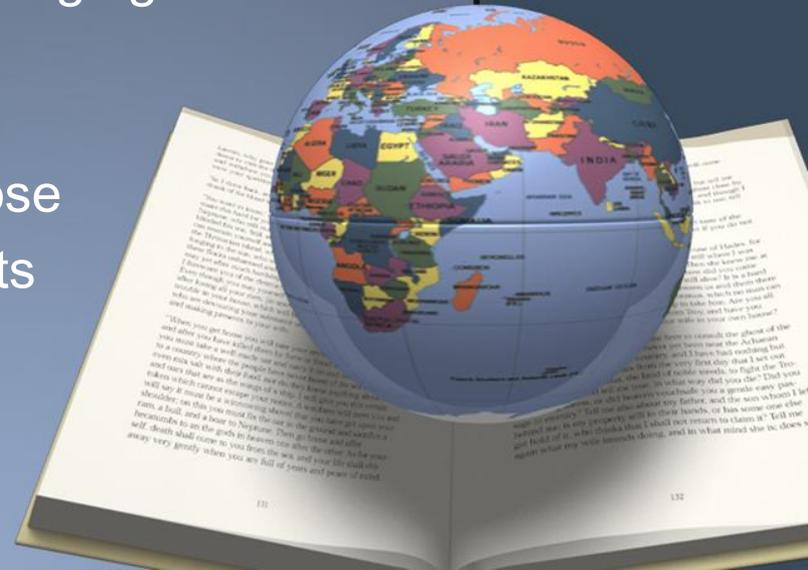
- A charter school is responsible for its own operation, including preparation of a budget, subject to audits pursuant to the Audit act and contracting for services and personnel matters. Charter School is included in the yearly audits required of all Public School Districts, so if the Charter School submits its audit late, your District will be late too, and face possible fines.
- A locally chartered school may pay the costs of operation and maintenance of its facilities or may contract with the school to district to provide facility operation and maintenance services.



Lease Agreements

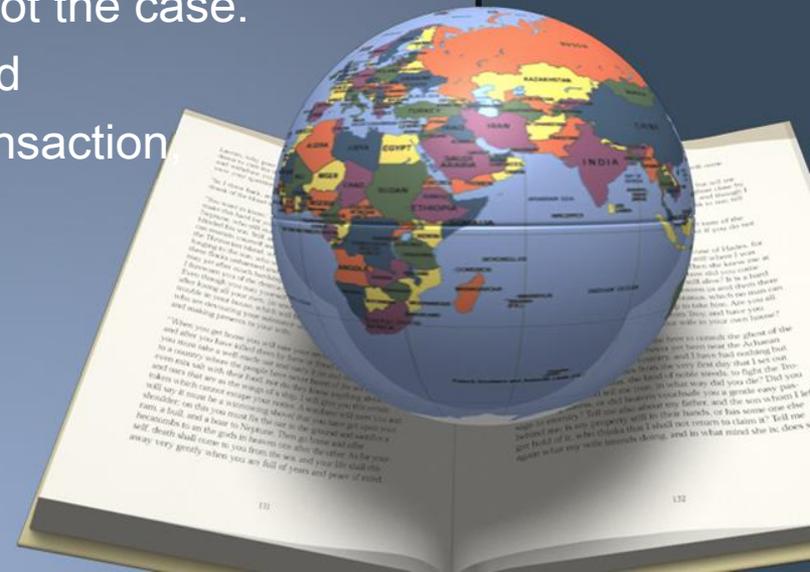
- NMSA § 22-8B-4(F) provides that “the school district in which a charter school is geographically located *shall* provide a charter school with available facilities for the school’s operation, unless the facilities are currently used for other educational purposes”), the Charter School may be in a position to argue that it is entitled to permanently remain at that Facility, regardless of the School District’s changing needs for space.

This may mean a School Board could lose control of the effective management of its facilities.



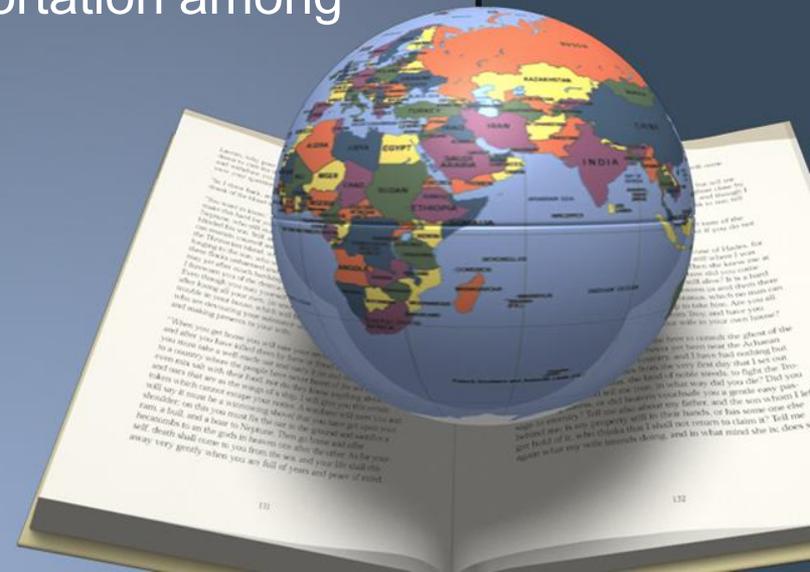
Unfair result

- There are several reasons for this seemingly “unfair” result. First, the applicable law (the Charter School Act, NMSA § 22-8B-1, et seq.) is still relatively new (enacted in 2005), and contains some “gray” areas. In addition, because it is relatively new, there is very little case law interpreting these unclear provisions. Second, when School Districts enter into a lease with a charter school, they may be under the wrong impression that they are dealing with a “sister” school or with a branch of itself. This is not the case.
- Transactions with Charter Schools should be viewed more as an “arm’s length” transaction and should be handled by the School Board’s attorneys.



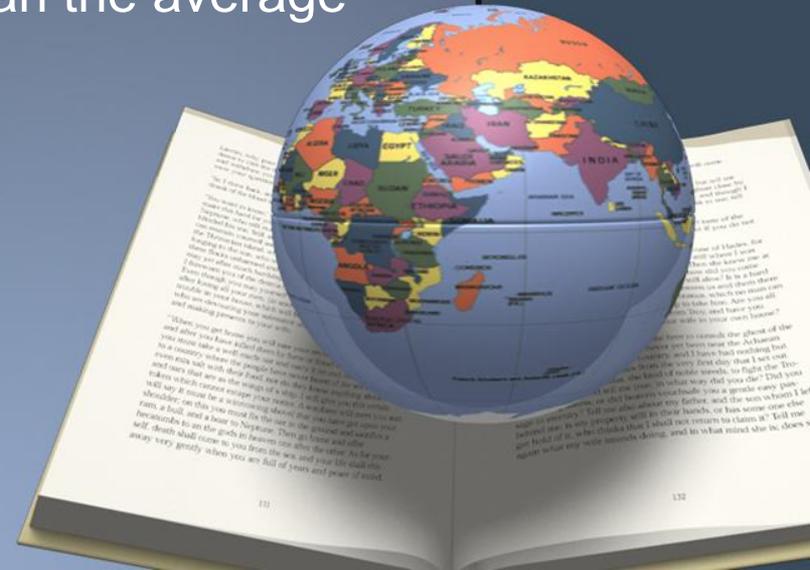
Lease considerations

- The lease should have very specific terms and include a provision that if the District determines at a later date that it needs the facility it leased to the charter school for its own school district purposes, that the lease can be terminated with reasonable written notice. The lease or the charter agreement should be clear about who will bear the expenses related to moving, set up and transportation among other things.



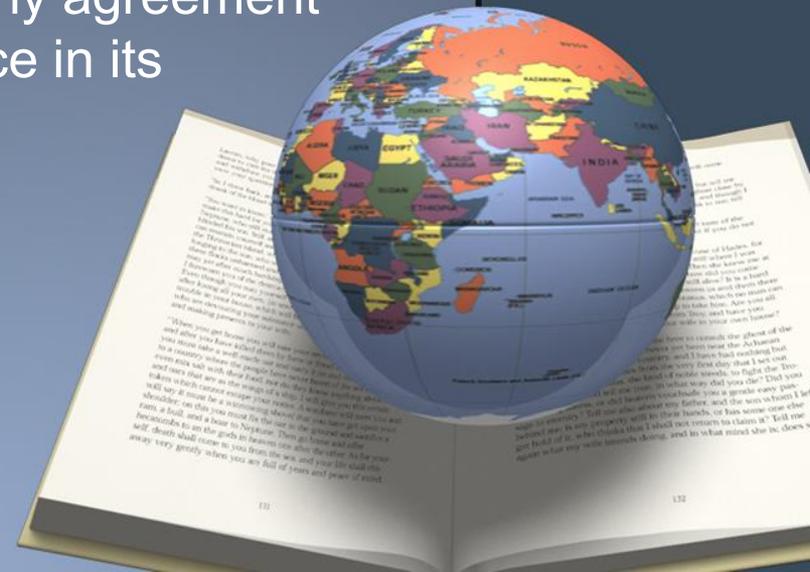
Lease

- After July 1, 2011 a leased facility must, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for that year or the charter school must demonstrate within eighteen months of occupancy or relocation of the charter school, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.



Checklist provisions

- This check list will assist you in ensuring that specific language is included in the lease. These terms are intended to provide clear and concise terms for the parties to the lease and to provide for the process should unforeseen consequences arise during the term of the lease. It is always advisable to have your legal counsel negotiate, or at least review, the terms of the contract before entering into any agreement but this checklist will provide guidance in its development



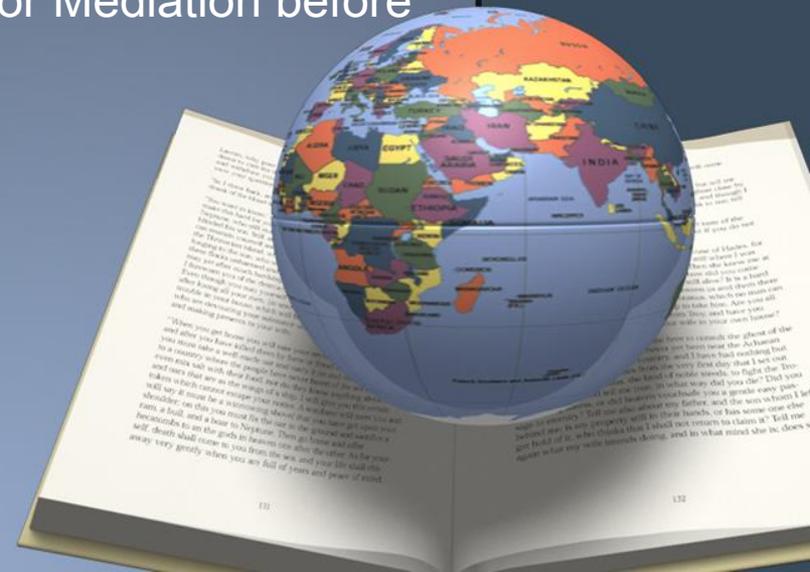
Lease Checklist

- Agreements are always between the Board of Education of the School District and the governing board of the charter school.
- Effective Date (date on which Lessee has a right to begin occupying the premises). Not the same as the “Term”.
- Term (duration of the lease)
- Rental Payments; escalation clauses
- Use
- Care and Maintenance (who will be responsible for maintenance and repair – be sure you are thoroughly addressing day-to-day maintenance, as well as bigger repairs.)
- Alterations and improvements; approval requirements
- Administrative fee provisions
- Default provisions
- possible lease purchase options
- Assignment and Subletting (will you allow it?)



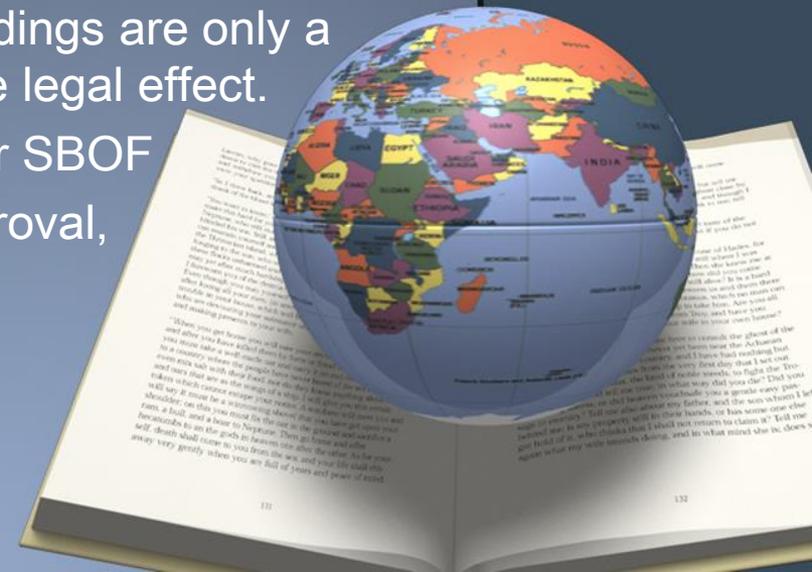
Lease Checklist, Cont'd

- ❑ Utilities
- ❑ Entry and Inspection (CSA provides that the Chartering Authority for a CS, must visit and inspect the CS at least on an annual basis).
- ❑ Indemnification – releases landlord from liability for any acts of omissions by lessee.
- ❑ Insurance
- ❑ Eminent Domain, Destruction of Premises, Other Physical Impossibilities of Occupancy – make sure you provide for a “what if” in case any of these things happen.
- ❑ Early Termination – EXTREMELY IMPORTANT
- ❑ Arbitration or Mediation before filing suit



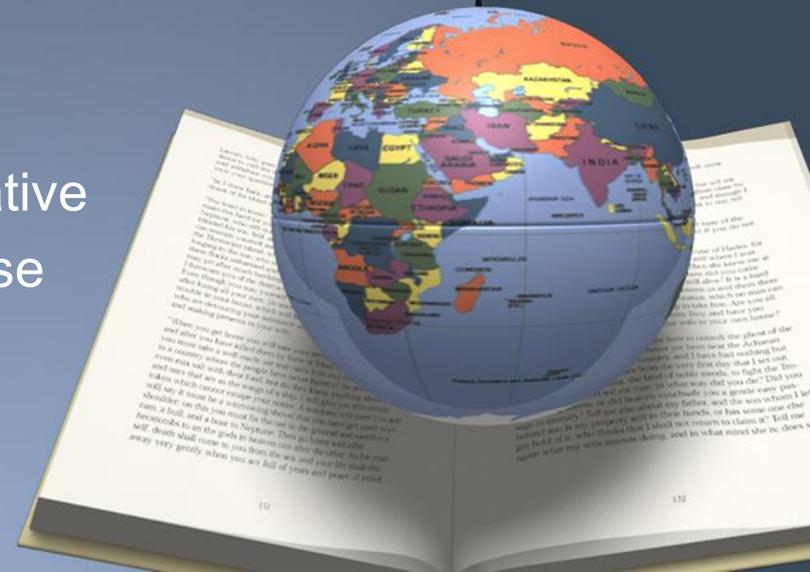
Lease Checklist, Cont'd

- ❑ Option to Renew –make clear that at the termination of the lease, renewal is not automatic and that landlord reserves the right to re-evaluate its own program needs, and may choose not to renew the lease if they need the facility.
- ❑ No Lease in Perpetuity -makes clear that nothing in the lease or in Section 22-8B-4(F) should be interpreted as creating a lease in perpetuity or as a permanent loss of possession of the school district's property.
- ❑ Headings Clause – provides that the headings are only a guide for the reader but have no separate legal effect.
- ❑ If you are going to provide in the lease for SBOF approval, or any other state agency approval, **BE SURE TO GET IT.**



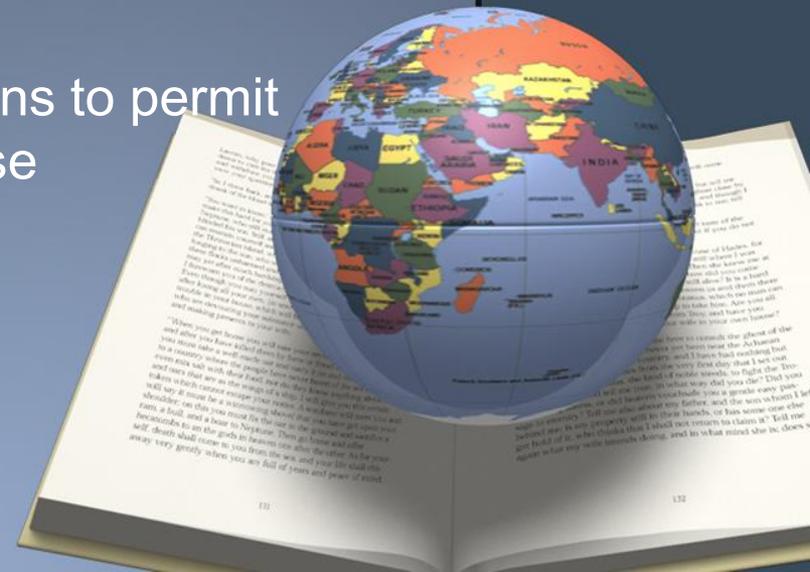
LEASE PURCHASE

- School Boards can enter into lease purchase arrangements with Charter Schools for existing facilities or for new facilities.
- Currently, there are limited financing arrangements available in the public finance market and generally it is a charter school foundation that is the borrower who acquires the property or funds the construction. The Charter School then leases it from the foundation. The lease payments are reimbursed to the Charter School through a lease reimbursement program.
- School Districts need to become creative in developing their own lease purchase arrangements.



Lease Purchase

- Possible financing mechanisms are:
- Use of general obligation bonds (a discretionary decision by the board) to remodel an existing building for lease/purchase to a charter school with the lease purchase payments used as a source to repay.
- Possible issuance of revenue bonds by the District with lease purchase payments applied to repay the bonds
- Possible changes to NMFA regulations to permit NMFA to fund through lease purchase
- Certificates of participation. (Would
- require changes to current law).



Thank you for your attendance

Jacquelyn Archuleta-Staehlin:
jstaehlin@cuddymccarthy.com

Charlotte H. Hetherington
chetherington@cuddymccarthy.com

1-866-679-4476

