

STATE OF NEW MEXICO
COUNTY OF MCKINLEY
ELEVENTH JUDICIAL DISTRICT COURT

FILED
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McKinley County
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JODIE SCHWEBEL
CLERK OF THE COURT
Monica Sanchez

No. D-1113-CV-2025-00492

K12 VIRTUAL SCHOOLS, L.L.C.,
a Delaware limited liability company,
STRIDE, INC., a Delaware corporation,
and THE NEW MEXICO FOUNDATION
FOR OPEN GOVERNMENT, INC., a
New Mexico nonprofit corporation,

Keeler, Bradley L.

Plaintiffs,

v.

BOARD OF EDUCATION FOR THE
GALLUP-MCKINLEY COUNTY SCHOOLS,

Defendant.

**COMPLAINT FOR VIOLATIONS OF THE OPEN MEETINGS ACT
AND THE PUBLIC SCHOOL CODE**

I. INTRODUCTION, BACKGROUND, AND JURISDICTION

1. In this case, Plaintiffs K12 Virtual Schools, L.L.C. (“K12”) with its parent company, Stride, Inc. (together, “Stride”) and The New Mexico Foundation for Open Government, Inc. (“NMFOG”, and together with K12 and Stride, the “Plaintiffs”), seek invalidation of actions by Defendant Board of Education (the “Board”) for the Gallup-McKinley County Schools (the “District”) because those actions were conducted at meetings that did not comply with New Mexico’s Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4, (1974, as amended through 2013) (“OMA”), or with NMSA 1978, Section 22-5-4.16 (2024), a provision of the Public School Code, NMSA 1978, Chapter 22, Articles 1-5 and 6-35 the (“Public School Code”), to which the Board and the District are subject.

2. Pursuant to OMA, no action of the Board shall be valid unless taken or made at a meeting held in accordance with the requirements specified at Section 10-15-1 of OMA. NMSA 1978, § 10-15-3(A) (1997).

3. The OMA provides that an individual can apply for enforcement through the district courts, including through injunction, mandamus or other appropriate order, provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or *not acted on the claim within fifteen days of receiving it*. NMSA 1978, § 10-15-3(B) (1997) (Emphasis added).

4. Plaintiffs each provided notice of multiple violations of the OMA to the Board as explained *infra*, and the Board failed to act on the claim within fifteen (15) days of these notices.

5. The OMA also provides for awarding costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of OMA. NMSA 1978, § 10-15-3(C) (1997).

6. The Board's live audio and video webcasts of its meetings are required to be accessible through the District's website and must provide a user interface that allows members of the public to submit written or verbal comments. NMSA 1978, § 22-5-4.16.

7. Stride's subsidiary, K12, and the District entered into an Educational Products and Services Agreement ("EPSA") on June 16, 2020. *See* attached Exhibit A.

8. The EPSA has a term of six (6) years, and the expiration date of its initial term is June 30, 2026.

9. On April 1, 2025, Mike Hyatt sent Stride a letter alleging material breaches of the EPSA and announcing that "the Board" was "terminating the [EPSA] for cause," effective June 30, 2025 – a year before its scheduled expiration date. The letter demanded a "remedy" for K12's

alleged material breaches of the EPSA – a demand that Section 12.1 of the EPSA authorizes only after expiration of the 45-day cure period without curative action – and gave “*Notice by the Board ... that the [EPSA] will not be renewed.*” (emphasis added) *See* letter attached as Exhibit B (the “April 1 Letter”).

10. On April 4, 2025, in violation of the EPSA’s exclusivity provision at Section 6.1.1, the District issued a Request for Proposals (“RFP” or “RFP-2025-15KC”) entitled “Virtual (Online) School, Grades K-12 Multi-Year Agreement,” No. RFP-2025-15KC. *See* attached Exhibit C.

11. The Board did not authorize the issuance of the RFP before it was issued.

12. Proposals in response to the RFP were due by April 28, 2025.

13. The Board voted to terminate the EPSA on May 16, 2025, the 46th day after the April 1 termination notice was given, without considering the potentially curative actions by Stride, despite Stride sending two letters to the District addressing the allegations in the April 1 Letter and summarizing efforts to address the District’s concern.

14. In seeking to avoid an OMA enforcement action by the New Mexico Department of Justice (the “NMDOJ”), the Board’s attorney has since argued incorrectly that (1) the April 1 Letter represented the contractually required notice of an opportunity to cure material breaches within 45 days, (2) the Board sought on May 16 to “ratify” the Superintendent’s “unauthorized” action in issuing it, (3) the ratification of the notice was retroactive to the date of the April 1 Letter, and (4) the Board therefore had the right to terminate the EPSA at its May 16 special meeting, because 45 days had elapsed without curative action. *See* Exhibit D (Letter from Board’s Attorney to NMDOJ).

15. This argument not only ignores the language of the April 1 Letter – which purports to “terminat[e]” the EPSA, and to demand a “remedy” for uncured breaches, in the name of the Board – but also disregards the law of New Mexico, which holds that actions taken in violation of OMA cannot be retroactively ratified, *see Palenick v. City of Rio Rancho*, 2012-NMCA-018, ¶ 9, 270 P.3d 1281, *rev’d on other grounds*, *Palenick v. City of Rio Rancho*, 2013-NMSC-029, 306 P.3d 447.

16. Due to the OMA violations set forth below, the Board’s actions that should be invalidated include: 1) the purported “ratification” of the District’s administration’s, that is, Mike Hyatt, the District’s Superintendent and his leadership staff (the “Administration”), actions on terminating Stride’s contract with the Board, including because those actions cannot be retroactively ratified; 2) issuance of a request for proposals for online virtual instruction, and the award of a contract pursuant to that request for proposals, because no Board action was taken to authorize the issuance of such request for proposals; 3) withholding of payments to Stride in an amount of at least \$7.5 million under a valid contract; 4) directing the District’s attorney to recover damages caused by alleged material breaches by Stride; 5) directing the District’s attorney to work with the Administration to file complaints to appropriate State and Federal agencies regarding Stride; and 6) directing the Administration to begin debarment proceedings under the Procurement Code: all because these actions were conducted at a meeting that did not comply with the OMA (collectively, the “May 16 Actions”). *See Palenick*, 2012-NMCA-018, ¶ 9.

17. In addition, the Board’s subsequent attempt on July 11, 2025 to “cure” violations of the OMA committed at its May 16, 2025 meeting should be invalidated because such attempt was untimely, inadequate, and the meeting at which the Board attempted to achieve such “cure” also did not comport with the OMA’s requirements.

18. Plaintiffs K12 and Stride are Delaware corporations with headquarters in Reston, Virginia.

19. Plaintiff NMFOG is a nonpartisan, nonprofit organization headquartered in Albuquerque, New Mexico, whose mission is to help individuals, businesses, students, educators, journalists, lawyers, and other engaged citizens understand, obtain, and exercise their rights under the Inspection of Public Records Act, the OMA, the Arrest Record Information Act, the First Amendment to the United States Constitution and Article II Section 17 of the New Mexico Constitution, as well as to help public officials understand and discharge their obligations under those statutes and constitutional provisions.

20. Pursuant to NMSA 1978, Sections 22-5-1 to -4 (1967, as amended through 2015) of the Public School Code, Defendant Board is the governing body of the District, which is located in McKinley County in the State of New Mexico (“State”).

21. The Board has the capacity to sue and be sued on behalf of the District. NMSA 1978, § 22-5-4(E) (2005).

22. This Court has personal jurisdiction over the parties.

23. This Court is the proper venue for this action.

II. OMA VIOLATIONS AT THE BOARD’S MAY 16, 2025 SPECIAL MEETING

24. On May 16, 2025, the Board held a special meeting at which it sought, among other things, to “[r]atify the actions of the Administration to provide notice to Stride Inc./K12 of material breaches of the contract and to demand a remedy.” Notably, it did not seek to ratify the non-renewal notification in the April 1 Letter. *See* attached Exhibit E (Agenda for Board’s May 16, 2025 Special Meeting).

25. Before taking any other actions at this special meeting, including those described in paragraphs 26-28 below, the Board voted improperly to close the meeting to the public by entering into executive session, but failed to adhere to OMA's requirements for doing so. Specifically, Board Member Michael W. Schaaf's motion to enter into executive session failed to state the legal authority for closing the meeting and failed to state with reasonable specificity the matters to be discussed in the closed, executive session, as required by OMA. NMSA 1978, § 10-15-1(I)(1) (2013). *See* Video Recording of GMCS Board of Education Special Meeting (May 16, 2025), https://www.youtube.com/watch?v=VHKdzqqN_SM.

26. At this special meeting, the Board voted improperly to terminate the EPSA with K12. *See* attached Exhibit F (Meeting Minutes for Board's May 16, 2025 Special Meeting).

27. Additionally, the Board voted improperly to "begin termination processes under the Procurement Code," to direct the Administration to "cease all payments to [K12] until proof of compliance with services required and delivered as required and outlined in the contract," and directed the District's counsel improperly to work with the Administration to "file complaints to the appropriate State and Federal agencies" regarding K12's alleged actions and omissions. *Id.*

28. Finally, the Board voted improperly to direct the Administration to "begin [the] debarment process" under the Procurement Code, NMSA 1978, Sections 13-1-28 to -199 (1984, as amended through 2024) ("Procurement Code"), and make report of such action to State and Federal procurement agencies. *Id.*

29. Notice of the Board's May 16, 2025 Special Meeting was posted on the District's website, as other meetings typically have been, but such notice failed to include language required by the Board's 2025-2026 Open Meetings Resolution. The omitted language is intended to provide individuals with disabilities information on how to request special services and accommodations

in order to attend or participate in the meeting (the “Disability Access Language”). A copy of the Board’s Resolution for 2025-2026 (May 12, 2025) (the “Open Meetings Resolution”) is attached hereto as Exhibit G.

30. The notice for this meeting failed to include the required Disability Access Language. *See* Exhibit H (Notice for Board’s May 16, 2025 Special Meeting).

31. The Board’s attorney has since admitted that this omission was inconsistent with OMA in his letter in response to the NMDOJ. *See* Exhibit D.

32. As of May 13, 2025, approximately, 804 NMDCA students had disabilities.

33. In addition, the notice for the May 16, 2025 Special Meeting did not provide adequate notice as to how members of the public could attend the meeting virtually. *See* Exhibit H (Notice for Board’s May 16, 2025 Special Meeting).

34. In contrast to the way in which it conducted other broadcasted meetings, and in violation of Section 22-5-4.16, the Board required that anyone wishing to view the May 16, 2025 Special Meeting using the District’s YouTube stream must register to view the proceedings and provide a reason for requesting such access.

35. At the Board’s May 16, 2025 meeting, Stride, K12, and their representatives were denied the right to address any of the allegations or provide any public comment to the Board, despite the fact that K12 was the subject of every item on the agenda for such meeting and despite the fact that Stride, through its counsel, had followed the District’s procedures in making a request to make a public comment.

36. Members of the public who attended the May 16, 2025 Special Meeting in-person, including parents of students enrolled in K12’s program, were also improperly denied the right to provide public comment to the Board.

37. Similarly, members of the public who attended this Special Meeting virtually were improperly denied the right to provide public comment to the Board.

38. All items on the Board's agenda for the May 16, 2025 Special Meeting were improperly passed "unanimously" by members of the Board present on that day. *See Exhibit F.*

39. Notably, the minutes of the Board's May 16, 2025 Special Meeting fail to record who made the motion to close the meeting to enter into executive session and failed to record the vote of each individual on the motion, contrary to NMSA 1978, Section 10-15-1(G) (2013) and Section 10-15-1(I)(1). *See Exhibit F.*

40. In his letter to the NMDNJ, the District's attorney admitted that the Board did deviate from its normal practice of reading the agenda item prior to entering the executive session, in order to justify its entry into executive session at the May 16th Special Meeting. *See Exhibit D.*

41. In addition, the Board improperly failed to make the minutes of its May 16, 2025 Special Meeting available for inspection to the public within ten (10) working days following such meeting and to approve, amend, or disapprove such minutes at the next meeting of a quorum of the Board, as required by NMSA 1978, Section 10-15-1(G) (2013) (" . . . Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present.").

42. Because the Board's May 16, 2025 Special Meeting was not in accordance with Section 10-15-1 of the OMA, any and all actions taken by the Board at the meeting are invalid, and therefore the May 16 Actions are invalid. NMSA 1978, § 10-15-3(A).

43. Because the Board's May 16 Actions are invalid for failure to comply with OMA, such actions are arbitrary and capricious, contrary to law, and lacking substantial evidence. Thus, the Court should invalidate the Board's May 16 Actions.

44. Stride provided notice to the District that the Board violated OMA relative to its May 16, 2025 Special Meeting on May 30, 2025, and June 11, 2025, through letters by which it also protested the District's issuance of the RFP and the proposed award of a contract to Graduation Alliance pursuant thereto. *See* attached Exhibit I, Protest Letters (May 30 Letter - pages 3, 5-6; June 11 Letter – pages 3-7).

45. The Board did not take action to correct the May 16, 2025 OMA violations alleged by Stride within fifteen (15) days of Stride's latest notice of OMA violations at such meetings, or in other words, by June 26, 2025.

46. NMFOG provided notice to the District that the Board violated the OMA relative to its May 16, 2025 Special Meeting on July 17, 2025. *See* attached Exhibit J.

47. The Board did not take action to correct the May 16, 2025 OMA violations alleged by NMFOG within fifteen (15) days of NMFOG's notice of OMA Violations at such meeting, or in other words, by August 1, 2025.

48. The Board's actions on May 16, 2025 were not taken in compliance with the requirements of OMA or the Public School Code, as described above and as explained in the attached letter to the District from the NMDOJ's Government Counsel and Accountability Bureau. *See* attached Exhibit K.

Specifically:

a. In violation of OMA, Section 10-15-1(D), the Board's notice of the meeting omitted Disability Access Language required by the Board's own 2025-2026 OMA resolution, for the May 16 meetings;

b. In violation of the spirit of OMA and the letter of the Public School Code, Section 22-5-4.16, the Board restricted public on-line access to the meeting, effectively enabling

the Board to censor public comment and compile a distorted record of public sentiment about the actions that the Board had evidently already decided to take;

c. In violation of OMA, Section 10-15-1(I)(1), the Board voted to go into closed session without affording the public specific notice of the topics of the closed session and without providing legal authority for the closure;

d. In violation of OMA, Section 10-15-1(B), Mike Hyatt, the District's Superintendent – without prior Board approval – unilaterally and privately provided notice to K12 of alleged material breaches of the EPSA, purported to terminate the EPSA, and issued an RFP for the same services that K12 is exclusively authorized to provide;

e. Accordingly, the Board violated OMA by attempting to “ratify” the above actions and to take additional actions dependent on the above actions, including demanding a remedy for K12's alleged material breaches of the EPSA, initiating formal proceedings under the Procurement Code to terminate the EPSA, ceasing all payments to K12 under the EPSA, filing complaints about K12 with state and federal agencies, and launching formal debarment proceedings against K12 under the Procurement Code (the District has improperly issued a suspension notice to K12). *See* Exhibit L (Suspension Notice).

III. OMA VIOLATIONS AT THE BOARD'S MAY 27, 2025 SPECIAL MEETING

49. On May 27, 2025, the Board voted to award a contract to Graduation Alliance with OpenEd, both Utah corporations, as a result of their proposal submitted in response to RFP-2025-15KC. *See* attached Exhibit M (Meeting Minutes for Board's May 27, 2025 Special Meeting).

50. The notice that the Board gave for its May 27, 2025 Special Meeting violated the OMA by failing to include the required Disability Access Language specified in the Board's Open Meetings Resolution. *See* Exhibit N (Notice for Board's May 27, 2025 Special Meeting).

51. In addition, the Board improperly failed to make the minutes of its May 27, 2025 meeting available for inspection to the public within ten (10) working days following such meeting and to approve, amend, or disapprove such minutes at the next meeting of a quorum of the Board, as required by Section 10-15-1(G).

52. Because the Board's May 27, 2025 Special Meeting was not in accordance with Section 10-15-1 of the OMA, any and all actions taken by the Board at the meeting are invalid, and therefore the Board's award of a contract to Graduation Alliance with OpenEd as a result of the RFP at the meeting is invalid. § 10-15-3(A).

53. The Board's award of a contract to Graduation Alliance with OpenEd as a result of RFP-2025-15KC is invalid for failure to comply with OMA, and such award is therefore arbitrary and capricious, contrary to law, and lacking substantial evidence. Thus, the Court should invalidate the Board's award of a contract to Graduation Alliance and Open Ed as a result of the RFP at its May 27, 2025 Special Meeting.

54. Stride provided notice to the District that the Board violated OMA relative to its May 27, 2025 Special Meeting on May 30, 2025, and June 11, 2025, through letters by which it also protested the District's issuance of the RFP and the proposed award of a contract to Graduation Alliance pursuant thereto. See attached Exhibit I, Protest Letters (May 30 Letter - pages 3, 5-6; June 11 Letter – pages 3-7).

55. The Board did not take action to correct the May 27, 2025 OMA violations alleged by Stride within fifteen (15) days of Stride's latest notice of OMA violations at such meetings, or in other words, by June 26, 2025, as required by the OMA.

56. NMFOG provided notice to the District that the Board violated OMA relative to its May 27, 2025 Special Meeting on July 17, 2025, as required by the OMA. *See* attached Exhibit J.

57. The Board did not take action to correct the May 27, 2025 OMA violations alleged by NMFOG within fifteen (15) days of NMFOG's notice of OMA Violations at such meeting, or in other words, by August 1, 2025, as required by the OMA.

58. The Board's actions on May 27, 2025 were not taken in compliance with the requirements of OMA, see paragraphs 50-51 above, and as explained in the attached letter to the District from the NMDOJ's Government Counsel and Accountability Bureau. *See* attached Exhibit K. Specifically, this letter identified the omission of the Disability Access Language required by the District's Open Meetings Resolution from the Board's notice for its May 27, 2025 Special Meeting as a violation of OMA.

IV. OMA VIOLATIONS AT THE BOARD'S JULY 11, 2025 SPECIAL MEETING

59. On July 11, 2025, the Board held another special meeting at which it attempted to address only the OMA violations it committed at its May 16, 2025 Special Meeting. *See* attached Exhibit O (Agenda for Board's July 11, 2025 Special Meeting).

60. At this meeting, the Board adopted the resolution attached hereto as Exhibit P. The resolution adopted at this meeting purports to "cure" the violations the Board committed at the May 16, 2025 Special Meeting by amending the agenda and the minutes for said meeting, neither of which constitute the method prescribed by OMA for "curing" violations thereof. *See* NMSA

1978, § 10-15-3(B) (“... A public meeting held to address a claimed violation of the [OMA] shall include a summary of comments made at the meeting at which the claimed violation occurred.”).

61. The Board’s noncompliance with OMA’s cure provisions is evidenced by the fact that there was no discussion whatsoever by the Board about what transpired at the May 16, 2025 Special Meeting or such meeting’s compliance with OMA, or lack thereof, as required by the OMA.

62. Furthermore, this attempt at curing the OMA violations committed at the May 16, 2025 Special Meeting was untimely, as it occurred more than 15 days after the Board was provided written notice of the claimed violations, contrary to OMA’s requirement that claimed violations be addressed within such 15-day period. *Id.* (“However, nothing in [the OMA] shall prevent an individual from independently applying for enforcement through the district courts, *provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it.*”) (emphasis added).

63. Aside from the fact that the action that the Board took on July 11, 2025 was untimely and failed to appropriately cure the May 16 OMA violations, the Board’s July 11, 2025 Special Meeting was also afflicted by violations of the OMA.

64. Stride called these violations to the Board’s attention by letter dated July 16, 2025 and addressed to its legal counsel, a copy of which is attached hereto as Exhibit Q.

65. NMFOG also notified the Board chair of violations committed at the July 11 Special Meeting by letter dated July 17, 2025, a copy of which is attached hereto as Exhibit I.

66. Specifically, Stride and NMFOG alerted the Board that it had violated the OMA relative to the July 11, 2025 Special Meeting in the following ways:

a. The notice given to the public for the July 11, 2025 Special Meeting was inadequate because: (i) it was not posted to the District’s website at least 72 hours in advance, as required by the District’s Open Meetings Resolution, and; (ii) such notice did not include the final agenda for the meeting and did not advise the public that the final agenda for the meeting could be obtained at the Office of the Superintendent at least 72 hours prior to the meeting, as required by OMA and the District’s Open Meetings Resolution;

b. The agenda for the July 11, 2025 Special Meeting was inadequate because: (i) it was not made available to the public at least 72 hours in advance of the July 11, 2025 Special Meeting, contrary to OMA and the District’s Open Meetings Resolution; and (ii) such agenda failed to contain a list of specific items of business to be discussed or transacted at the meeting, also contrary to OMA;

c. The Board took action on a resolution that was not specifically listed on the agenda for the July 11, 2025 Special Meeting and the item listed on the agenda for such meeting did not reflect the actual content of the resolution adopted at that meeting, contrary to OMA;

d. The Board violated the OMA by engaging in a “rolling quorum” in which a quorum of the Board evidently discussed the resolution and adoption of such resolution outside of a properly noticed open meeting, as required by OMA, evidenced by the fact that the Board engaged in no discussion whatsoever at the meeting concerning the resolution, and the motion to approve such resolution nonetheless passed unanimously. The Board thus deprived the public of its right to “attend and listen to the deliberations and proceedings [of the Board,]” as required by NMSA 1978, Section 10-15-1(A).

67. The Board’s action purporting to “cure” the OMA violations committed at its May 16, 2025 Special Meeting through the adoption of a resolution at its July 11, 2025 Special Meeting

is invalid and without effect because such action was untimely, inadequate, and the meeting was noticed and conducted contrary to OMA's requirements. *See* NMSA 1978, § 10-15-3(A) (1997) (“No resolution, rule, regulation, ordinance or action of any . . . policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of [the OMA].”).

68. The Board's July 11, 2025 Special Meeting was not in accordance with Section 10-15-1 of the OMA, and therefore any and all actions taken by the Board at such meeting are invalid, and the Board's adoption of the resolution intended to cure the OMA violations committed at its May 16, 2025 Special Meeting is invalid. *See* NMSA 1978, § 10-15-3(A).

69. Stride provided notice to the District that the Board violated OMA relative to its July 11, 2025 Special Meeting on July 16, 2025, and NMFOG provided such notice on July 17, 2025. *See* attached Exhibit Q and Exhibit I.

70. The Board did not take action to correct its July 11, 2025 OMA violations within fifteen (15) days of the latest notice of violation of OMA at such meeting, or in other words, by August 1, 2025, as required by the OMA.

V. CONCLUSIONS AND REQUEST FOR RELIEF

71. Plaintiffs having given proper notice to the Board of its violations of the OMA at its May 16, 2025, May 27, 2025 and July 11, 2025 Special Meetings, and the Board having failed to take proper action to cure its noncompliance within the fifteen (15) days permitted by OMA, this complaint is therefore ripe and in compliance with Section 10-15-3(B).

72. The Board's actions to ratify its May 16 Actions, including the Administration's April 1, 2025 decision to terminate the EPSA, are invalid due to its violations of OMA. *Palenick v. City of Rio Rancho*, 2012-NMCA-018, ¶ 9.

73. Because the issuance of an RFP requires Board approval, the Administration's issuance of an RFP on April 4, 2025, purporting to cover the same services that are the subject of the EPSA, is invalid.

74. Because the RFP was invalid (and contrary to the Procurement Code), the District's execution of a contract with Graduation Alliance pursuant to the RFP is also invalid.

75. The Board's action to award a contract to Graduation Alliance with Open Ed at its May 27, 2025 Special Meeting is invalid due to its violations of OMA. *Trujillo v. Gonzales*, 1987-NMSC-119, ¶ 8, 106 N.M. 620, 747 P.2d 915 (concluding that an agreement made outside of a "duly constituted meeting of the Board" did not bind the policymaking body partly because OMA "provides that no action of any commission or other policy-making body shall be valid unless it is taken or made at a meeting held in accordance with the [OMA].") (citations omitted).

76. The Board's attempt to cure the violations committed at its May 16, 2025 Special Meeting by adopting a resolution at its July 11, 2025 Special Meeting is invalid due to its violations of OMA. *Id.*

WHEREFORE, Plaintiffs pray for a judgment and an order:

A. Confirming that the Board violated OMA and the Public School Code at its May 16, 2025, May 27, 2025, and July 11, 2025 meetings.

B. Issuing an order invalidating the actions taken at those meetings, including the termination of the EPSA with K12, the award of a contract to Graduation Alliance and Open Ed pursuant to the RFP, and the purported "cure" of the OMA violations committed at the Board's May 16, 2025 meeting.

C. Ordering the District to cancel the RFP, and only reissue it after it has complied with appropriate processes in accordance with law, including obtaining proper approval by the

Board to issue an RFP for the services sought in RFP-2025-15KC, and incorporating all requirements for RFPs issued under the Procurement Code.

D. Enjoining the Board and the District from performing under its invalid and illegal contract with Graduation Alliance which resulted from the District's invalid RFP for Virtual Online School services.

E. Enjoining the District from filing complaints with any state or federal agencies about Stride until it has complied with appropriate processes in accordance with law.

F. Reversing the District's issuance of a Determination of Debarment (Suspension) against Stride.

G. Reversing the District's withholding of payments to Stride.

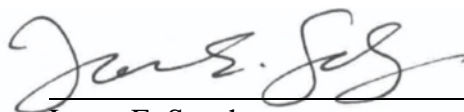
H. Awarding pre- and post-judgment interest on the unpaid amounts due to Stride.

I. Awarding costs and attorneys' fees incurred herein to Plaintiffs, pursuant to Section 10-15-3(C).

J. Awarding such further relief as the Court deems just and proper.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.



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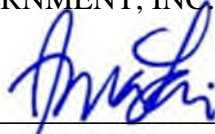
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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2025, I electronically filed the foregoing with the Clerk of the Court using the Court's electronic filing system, and served counsel for Defendant Board of Education for the Gallup-McKinley County Schools via electronic mail.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By /s/ Laura E. Sanchez
 Laura E. Sanchez

Exhibit A

**EDUCATIONAL PRODUCTS AND SERVICES
AGREEMENT**

Between

GALLUP-MCKINLEY COUNTY SCHOOL DISTRICT

And

K12 VIRTUAL SCHOOLS LLC

**FOR THE DESTINATIONS CAREER ACADEMY OF NEW MEXICO
AT GALLUP-MCKINLEY COUNTY SCHOOLS
FOR GRADES K THROUGH 12**

Exhibit A

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EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT

Between the
GALLUP-MCKINLEY SCHOOL DISTRICT
And
K12 VIRTUAL SCHOOLS LLC

This EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT (“**Agreement**”) is made and entered into, by and between the Gallup-McKinley School District of New Mexico (hereinafter the “**District**”) and K12 Virtual Schools LLC, a Delaware limited liability company (hereinafter “**K12**”), each a “**Party**” together the “**Parties**”, as of the date signed by both Parties, and includes the following exhibits:

- a. Exhibit A (Products and Services)
- b. Exhibit B (K12 Proprietary Marks)
- c. Exhibit C (Form Notice of Intent)

RECITALS

A. **WHEREAS**, the Board of Education for the Gallup-McKinley County Schools is the governing body of the Gallup-McKinley County Schools organized and existing under the laws of the State of New Mexico, acting by and through its duly constituted Board of Education representing a political subdivision of the State of New Mexico. *See* N.M. Stat. Ann. § 22-1-2(R)(2003); N.M. Stat. Ann. § 22-5-4 (2003) (the “**Board**”).

B. **WHEREAS**, the Gallup-McKinley County Schools (“School District”) desires to utilize technology-based applications combined with teacher/student/parent involvement, to provide full-time virtual on-line school program. Such on-line program, will serve grades K through 12 and be known as the Destinations Career Academy of New Mexico (the “**Program**”) and shall be available exclusively for the benefit of students throughout the State of New Mexico.

C. **WHEREAS**, the Program may also be referred to in abbreviated form, for example, as DCA-NM.

D. **WHEREAS**, K12 and its Affiliates were established, among other things, for the following purposes:

- promoting and encouraging new methods of effective education;
- implementing innovative and effective instructional systems in elementary and secondary education.

E. **WHEREAS**, K12 will provide the School District with a variety of educational products and services in furtherance of the Program. These educational products and services include providing K12 owned and licensed curriculum, online school and learning management systems; teacher support, training, recruitment, and hiring; Program administration services; technology services for a student account management system and other administrative and technology support services specified in this Agreement.

F. **WHEREAS**, it is the intention of both Parties to enter into a long-term relationship in which the Board governs the Program while K12 provides comprehensive educational products and services, including administrative services, and in which K12 will help assure the financial solvency of the Program in accordance with the terms of this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

Exhibit A

1. DEFINITIONS. For the purposes of this Agreement, capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in this Section 1 as follows:

1.1. Affiliates. An Affiliate of K12 is an entity that controls, is controlled by, or under common control with K12, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through the ownership of securities, by contract or otherwise.

1.2. Applicable Law. Applicable Law is defined herein as the Constitution of the State, the State education laws and/or code, the federal Elementary and Secondary Education Act, the federal Individuals with Disabilities in Education Act, other applicable federal, state or local statutes, ordinances and regulations, any amendments to or recodification of the aforementioned laws, and other binding rulings applicable to public schools in the State.

1.3. Not used.

1.4. Fiscal Year. The Fiscal Year shall run July 1 through June 30.

1.5. Not used.

1.6. Program. The Program shall be the School District’s public online educational offerings, to be known as Destinations Career Academy of New Mexico at the Gallup-McKinley County Schools (“DCA-NM”) or any substantially similar Program names.

1.7. Program Revenues: Funding will be based on the revenues and income generated or appropriated for and received by or on behalf of the School District as attributable virtual students and basic and special education average of the 80-day and 120-day Membership/Student Counts. A second and final adjustment will be made with the setting of the Final SEG Unit Value by the Secretary of the Public Education Department per statute on or before January 31 of the current fiscal year and any funding adjustments included for growth units.

1.8. Shareholder. A Shareholder is a holder of greater than one percent (1%) of K12’s outstanding shares of common stock.

1.9. State. The State is New Mexico.

1.10. Student. A Student is any student enrolled and/or otherwise taking course(s) in the Program or previously enrolled, including those pupils who have withdrawn.

1.11. Student Support Staff. Student Support Staff is defined as any position, other than teachers, that provides direct services to the Program and its Students, which may include a Guidance Counselor, Academic Coach or similar positions.

1.12. Teachers. Teachers are staff providing direct instruction to the students, including master and lead teachers and lab attendants, if any.

2. RELATIONSHIP OF THE PARTIES.

2.1. Status of the Parties. K12 is not a division or any part of the Board or the School District. The School District is a political subdivision of the State of New Mexico authorized under State law, governed independently by the Board and is not a division or a part of K12. The relationship between the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement. K12 is an independent contractor to the Board. Nothing herein will be construed to create a

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partnership or joint venture by or between the Board/School District and K12. Neither Party will be the agent of another. The Board/School District and their employees will in no case represent to third parties, and will whenever needed disclaim to such parties, any ability to bind K12 to any duty imposed by contract, other than this Agreement or as otherwise agreed in writing by K12.

3. K12 RESPONSIBILITIES, EDUCATIONAL PRODUCTS AND SERVICES.

3.1. Description of Educational Products. During the Term, K12 and Affiliates shall license to the School District solely for use in the Program, on a non-exclusive, non-assignable, non-sublicensable basis the products and offerings as described in Exhibit A, to include curriculum, access to an online school and learning management system(s), instructional tools and other products and product related services as set forth in Section I of Exhibit A (collectively the “**Educational Products**”). K12 will have sole responsibility for creating and implementing the Academic Excellence Framework (or its successor), which shall be the instructional program for the Program. Notwithstanding the forgoing, no Educational Products shall be provided for the purpose of benefiting the School District, the Program or any personnel or students for any school year beyond the expiration or termination of this Agreement.

3.2. Description of Administrative and Technology Services. During the Term, K12 and Affiliates shall provide to the School District solely for the Program “**Administrative Services**”, including Program administration services, teacher recruiting, training and administration, and “**Technology Services**” to include a student information system, hosting of an online platform, a student account management system and related technical support and other educational services as described in Exhibit A. The Administrative Services and Technology Services shall collectively be referred to as the “**Services.**” Notwithstanding the forgoing, no Services shall be provided for the purpose of benefiting the School District, the Program or any personnel or students for any school year beyond the expiration or termination of this Agreement.

3.3. Place of Performance. Performance of Services is not required to be rendered on the School District’s premises, if any, unless specifically stated in Exhibit A or for compliance with Applicable Law.

3.4. Academic and Attendance Reports. No later than the tenth day of each month, or at such other interval as the Parties may agree, K12 will provide the following K12-standard reports for students in the Program to the School District in a format to be agreed upon by the Parties:

- 3.4.1. All Student Report – All students who have ever applied to the Program (active and withdrawn) with related student demographic data;
- 3.4.2. D2L Detail Report – Information on student progress in Desire 2 Learn (“D2L”) platform courses (grades 6-12), including grade to date and number of submitted assignments;
- 3.4.3. Incremental Progress Report – Information on student progress in Online School (“OLS”) platform courses (grades K-5) broken out by week as well as in the aggregate;
- 3.4.4. Final Grade Report – Final grades assigned and approved for completed courses by student and school;
- 3.4.5. Duration Report – The login date and the duration that the student and/or the Learning Coach (“LC”) was logged into the OLS or D2L;
- 3.4.6. Aggregate Attendance Report – Total hours of attendance by subject, grand total hours of LC-logged OLS attendance by student, and total days by student; and
- 3.4.7. Any other academic and attendance data as the Parties may agree upon from time to time.

3.5. Standards of K12 Performance.

3.5.1. K12 Compliance. K12 will provide the Educational Products and Services set forth in this Agreement and any amendments hereto in accordance with Applicable Law and Board policies made known to K12 in writing and relating to the Program. Subject to Section 12, K12 shall also comply with changes in Board policies applicable to the Program within thirty (30) days of receipt of written

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notice and a copy thereof; however, Program Policies (as defined in Section 4.3) shall be adopted in accordance with Section 4.3 and Board policies cannot and do not revise, amend or create additional rights or obligations to either Party of this Agreement, except as may be agreed to by both Parties in a written amendment hereto.

3.5.2. Confidentiality of Records/FERPA. The School District shall ensure that K12 has the right to access personnel, financial, and Student data related to the Program. As such, K12 will maintain the confidentiality of Program personnel, student and other records in accordance with the requirements of Applicable Law. The School District recognizes and agrees that for purposes of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; 34 CFR Part 99 (“**FERPA**”) and the State laws governing the confidentiality of student records, K12 has a legitimate educational interest for purposes of the School District disclosing a student’s educational records to K12. The School District shall define “school officials” and “legitimate educational interest” as permitted by FERPA, broadly enough to permit the provision of the Educational Products and Services hereunder. Upon access to student records and information derived from student records, K12 shall be responsible for the protection of confidential student records and shall comply with any and all requirements of the School District as to the protection of confidential student records under the FERPA and the Individuals with Disabilities Education Act (“**IDEA**”) (20 U.S.C. § 1400 *et seq.* 34 CFR Part 300).

3.5.3. Licensure or Other State Requirements. Except as otherwise provided in this Agreement, K12 will comply with all applicable licensure or other requirements of the State and any regulations promulgated thereunder.

3.5.4. Non-Discrimination. K12 prohibits discrimination in all its programs and activities on the basis of race, color, religion, sex, national origin, age, disability, and where applicable, marital status, familial status, and sexual orientation and on all other bases required by Applicable Law.

3.5.5. Student Discipline. K12’s employees and instructors are not school disciplinarians and will not take part in any disciplinary action involving a student of the School District. K12’s employees will not attempt to administer school discipline or punishment to any student. However, if a student is engaging in misconduct, potentially violent or criminal actions, K12 may immediately remove the student from the Program, subject to appropriate follow up actions with the Principal. If members of K12’s staff believes a violation of the law or policy has occurred by a student K12 shall contact the Principal or the Superintendent of Schools who will determine whether law enforcement action is appropriate or whether student discipline is appropriate except when an affirmative duty exists under State law to report a matter directly to law enforcement such as the duty of personnel to report suspected child abuse or neglect.

3.5.6. Academic Comparisons. If, in two consecutive back-to-back years, for any of the Program’s elementary (grades K to 5), middle (grades 6 to 8) and high (grades 9 to 12) schools, that school’s Overall Performance metric for Academic Performance, as determined and made public by the New Mexico Public Education Department (“**Metric**”) is below the average Metric of Similarly Situated Schools at the same grade level, then K12 shall develop a remediation plan for that school with input from the District, which may include enrollment criteria, and shall implement it no later than the start of the next school year. The Similarly Situated Schools are those subsets of public elementary, middle and high schools (five of each) in New Mexico that, as proposed by K12 and agreed upon in writing by the School District by December 31, 2020 (with any proposed changes to be proposed and agreed upon in writing by each subsequent December 31), are most similar to the Program’s elementary, middle and high schools based upon the following metrics as determined and made public by the New Mexico Public Education Department: percentage of students eligible for a free or reduced lunch, percentage of minority students, percentage of economically disadvantaged students and percentage of students with disabilities.

Exhibit A**4. DISTRICT RESPONSIBILITIES.**

4.1. Not used.

4.2. Oversight of K12 and the Program. The School District shall be responsible for monitoring K12's performance under, and compliance with, the terms of this Agreement in accordance with Applicable Law.

4.3. Adoption of Policies. The Parties acknowledge and agree that in providing the Services, it shall be the responsibility of K12 to recommend various policies for the operation of the Program ("**Program Policies**"). K12 will implement procedures consistent with such policies, but the School District retains ultimate responsibility for adopting policies, including those with respect to enrollment, and for overseeing K12's implementation of Services. K12 will cooperate with such oversight and policy implementation subject to Sections 3.4.1. K12 and the School District will work collaboratively and in a timely manner on the creation of Program policies that may include, but are not limited to, policies relating to transfer and admissions procedures, student conduct online, school calendars, procedures for resolution of parent or student complaints, and the responsible use of computer equipment and other instructional property. To the extent any of the foregoing collaborative policies are not in effect, the Parties agree that K12's standard policies and best practices applicable to the Program shall be used to avoid a lack of any policy. The School District shall promptly provide K12 written copies of all policies adopted and must promptly notify K12 in writing of any changes to such policies.

4.4. Program Related Correspondence. The School District shall provide K12 with any reports, documents and other findings that are related or may have an impact on the Program and/or K12's obligations herein. Such Program related correspondence includes, but is not limited to, Board resolutions and reports, State audit preliminary and final reports, findings and correspondence, and any reports, financial or otherwise, submitted to a State regulatory body. The School District shall not unreasonably withhold information and shall cooperate with K12 to ensure K12 has the needed data and information within the School District's control in a timely manner.

4.5. School District Compliance. The School District will perform its obligations under this Agreement and shall comply with, and govern itself in a manner consistent with the requirements of Applicable Law and expectations of Parties as set forth herein.

5. SPECIAL EDUCATION, SECTION 504 AND ENGLISH LANGUAGE LEARNERS.

5.1. Special Education. Pursuant to Applicable Law, including the Individuals with Disabilities Education Act ("IDEA", 20 U.S.C. 1400), the School District, as the Local Education Agency ("LEA"), is ultimately responsible for appropriately communicating and implementing any policies, required special education and related services to Special Education Students. K12 shall assist the School District with the provision of services for Special Education Students. K12's assistance will include, approving enrollments in accordance with related policies and Applicable Law, providing general education curriculum, recruiting teachers and providing procurement support for related service providers. All policies defining the services and support to Special Education Students must be approved by the Board.

5.2. ELL and 504. Pursuant to Applicable Law including Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.), the Equal Educational Opportunities Act (20 U.S.C. 39) and Title III of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (20 U.S.C. 28 and 70), the School District (as the LEA) is ultimately responsible for communicating and implementing any policies, required educational and related services to English Language Learners ("ELL") and Students access to education issue under Section 504 of the Rehabilitation Act of 1973 ("504"), as amended. K12 shall assist with the School District's obligations by providing translation assistance during enrollment for ELL Students (and their guardians), recruiting ELL-licensed teachers as required, providing general education curriculum and providing procurement support for services to ELL and 504 Students consistent with this Agreement. All

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policies defining the services and support to ELL Students and for the 504 population of Students must be approved by the Board.

6. FINANCIAL MATTERS.

6.1. Financial Risk Mitigation. As an inducement for entering into this Agreement, the Parties agree that K12 is willing to assume the financial risks set forth herein, subject to all of the risk mitigation efforts set forth below, each of which are material terms of this Agreement:

6.1.1. Exclusivity. K12 shall be the sole provider of the Educational Products and Services for the Program to provide an online educational program for any of grades K to 12 for students unless otherwise waived in writing by an authorized officer of K12. Nothing within this provision shall be construed to preclude or limit the Board of Education in the exercise of its fiduciary obligations to the School District and to monitor the performance of this Agreement. However, the School District shall not procure goods and services from a third party that are otherwise included in the Educational Products and Services provided by K12 under this Agreement. Any changes required to the Educational Products and Services for the Program by K12 must occur consistent with this Agreement. Notwithstanding anything to the contrary in this provision, exclusivity shall not be required for any grade(s) that is no longer offered under this Agreement.

6.1.2. Financial Risk Remedies. In the event the School District materially breaches this Agreement or otherwise acts in a manner that will have the effect of materially increasing K12's obligations, including payment obligations, or materially decreasing its rights herein, including changing the name of the Program, or adopting adverse policies and the Agreement is not terminated, then to the extent K12 has not otherwise expressly agreed to such material change in writing, K12 reserves the right to invoke any remedies available to it, including termination as set forth in Section 12 effective immediately beginning with the Fiscal Year that such breach or action occurred in addition to other remedies available.

7. TERM OF AGREEMENT.

7.1. Term. This Agreement will become effective upon the date of full execution for the benefit of the Fiscal Year commencing on July 1, 2020 ("**Effective Date**") and will expire on June 30, 2026 ("**Initial Term**") unless sooner terminated under the Section 12 of this Agreement.

7.2. Renewal. Following the Initial Term, this Agreement will automatically extend for up to two successive additional periods of two (2) year(s) (each such period a "**Renewal Term**"), unless (a) either Party provides the other with written notice of intent not to automatically renew at least one (1) year before the expiration of the then-current Initial Term or Renewal Term (as applicable); or (b) the Agreement is sooner terminated under Section 12. The Initial Term and any Renewal Terms will be referred to collectively as the "**Term**".

8. PRICING, FEES AND PAYMENT.

8.1. Not Used.

8.2. Educational Product, Administrative and Technology Fees. In consideration of the value of the Educational Products, Administrative Services and Technology Services provided by K12, the School District will pay K12 and its Affiliates a "**Products, Administrative and Technology Services Fee**" equal to eight thousand three hundred and ninety nine dollars (\$8,399.00) for each Student enrolled in the Program in a Fiscal Year.

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- 8.2.1. Unit Value Adjustment. For each school year after School Year 2020-2021, the Products, Administrative and Technology Fee shall be increased or decreased, as appropriate, as compared to the prior school year by the same percentage as the Percent Change Year to Year for the Final Unit Value, as reported by the New Mexico Public Education Department, for that school year. The adjusted fee shall be the Adjusted Products, Administrative and Technology Fee (“Adjusted Fee”) for that school year. The Adjusted Fee for School Year 2020-2021 shall be the amount set forth in Section 8.2 of this Agreement.
- 8.2.2. Impact Aid. The Adjusted Fee shall be reduced by one thousand eight hundred dollars (\$1,800.00) for each Student the School District establishes that the School District will not receive and has not received Impact Aid under Title VII of the Elementary and Secondary Education Act, as may be amended or recodified from time to time.
- 8.2.3. Special Education. For each one percent (1%) of the special education enrollment of the Program the Adjusted Fee shall be increased by one hundred and twenty six dollars and eighty one cents (\$126.81) for all Students enrolled in the Program for that Fiscal Year.
- 8.2.4. Payment of Program Expenses. The Adjusted Fee as revised by the changes set forth in Sections 8.2.2 and 8.2.3 shall be known as the Final Adjusted Fee for the Fiscal Year. The Parties hereby acknowledge that out of the amounts paid to K12 pursuant to Section 8.2, K12 shall be responsible for paying all costs and expenses incurred by K12 in providing the Educational Products, Administrative Services and the Technology Services referenced in Exhibit A of this Agreement, including, but not limited to, Teacher and Student Support Staff related salaries and costs and payments to third-party vendors and contractors obtained by K12 and its Affiliates for the Program, and that the balance remaining after the payment of such expenses shall be K12’s fee.
- 8.2.5. Resident Students. Notwithstanding anything in the Agreement to the contrary, Final Adjusted Fees shall not be paid to K12 for Students who are residents of the School District and were enrolled in School District public schools during the school year prior to enrolling in the Program; provided, however, such limitation shall be up to an amount equal to two percent (2%) of the total Program population. For example, if there were one thousand (1,000) students in the Program, including twenty-five (25) students who are residents of the School District and were enrolled in School District public schools during the school year prior to enrolling in the Program, only funding received by the School District for five (5) of those twenty-five (25) resident students shall be included in Program Revenue.
- 8.3. Business Judgment. The School District hereby agrees, in the exercise of its business judgment, that the economic arrangement included herein, including the fees payable to K12 hereunder are reasonable, necessary, and fair compensation for the Educational Products and Services provided for the Term.

9. PERSONNEL SUPPORTING THE PROGRAM

- 9.1. K12 Administrative Program Staff. K12 will employ and determine the employment terms for administrative personnel who may include a Director of School Operations (“DOS”) or equivalent administrative staff position (which such person shall be K12’s highest ranking employee assigned to the school), and such other staff, as K12 deems necessary to deliver the Educational Products and Services described in this Agreement. The responsibilities and performance of K12’s staff will be consistent with Applicable Law. Such administrative personnel may be assigned to the Program on a full- or part-time basis. Except as set forth in Section 9.2, K12 will have the sole authority to select, supervise, direct, compensate and determine compensation, evaluate, transfer, promote, discipline and dismiss its staff members. The DOS (or designee) shall provide to the Principal all data necessary for submission to the School District’s student information system. The Principal or that person’s designee shall be responsible for such submissions.

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9.2. Program Teachers and Student Support Staff. K12 shall employ and be ultimately responsible for the Teachers and Student Support Staff for the Program to deliver the Educational Products and Services hereunder, except in limited circumstances where K12 deems it reasonably necessary for the School District to employ such staff. The Teachers and Student Support Staff personnel shall be State-certified or possess the necessary credentials, qualifications, background and conduct checks to the extent required by Applicable Law. The Principal shall have the authority to use the benchmarks and requirements in the New Mexico Teacher Evaluation System (or its successor), performance management objectives and metrics each of which are created and provided by K12 and the Academic Excellence Framework (or its successor) to supervise and evaluate the teachers.

9.3. Complaints About K12 Staff. If the School District is dissatisfied or concerned about the job performance of a K12 staff member assigned to the Program, the Board or its designee shall discuss the matter first with the DOS or its equivalent. K12 shall periodically evaluate K12's employees assigned to the Program with regard to their job performance in coordination with the DOS and Principal. In the event that Principal has determined that K12's employees have job performance deficiencies or unsatisfactory job performance, the K12 employee's immediate supervisor within K12 shall meet with the Principal to discuss whether remedial action can be taken to improve the employee's job performance or whether the employee shall be replaced. In the event the School District has a concern or is not satisfied with the DOS' job performance, the Board will provide K12 official written notice pursuant to this Agreement and set forth the specific issues and requested action with supporting documentation, and K12 shall review such request and respond in a timely manner. The School District maintains the right to immediately remove from the Program any student or K12 employee who poses an immediate threat or danger to personnel or students. This ability to remove such individuals shall include but is not limited to, the School District's needs to conduct necessary investigations of complaints and/or concerns raised about the interaction between teachers and students pending final action by K12 and the School District.

9.4. Principal. The School District shall be solely responsible for the employment, supervision and dismissal of its Principal of the Program. The Principal's responsibilities will be set by the School District and shall be consistent and limited to that in Section 4.2. If K12 is dissatisfied or concerned about the job performance of the Principal assigned to the Program, K12 will inform the Superintendent (or a designee other than the Principal) with requested action and supporting documentation. The Superintendent (or a designee other than the Principal) shall review and respond in a timely manner. The Principal shall invite the DOS to all meetings and conferences, whether in-person, by telephone or virtual, with more than one K12 employee and shall send all e-mails or other electronic or written communications sent to one or more teachers to the DOS at the same time that they are sent to the teacher or teachers.

9.5. Determination of Employer Entity. The Parties anticipate that, except as otherwise required by Applicable Law, the DOS and all other administrative personnel will be provided by K12. In the event that K12 determines that it is necessary or desirable that any of the K12 staff members providing services under this Agreement become an employee of the School District, K12 shall notify the Board of such determination in writing and upon the written agreement of the Board, such K12 staff member shall become an employee of the School District; such change shall become effective on the date agreed to by the Parties.

9.6. Background Investigations on K12 Employees. As part of its Administrative Services, K12 will be responsible for arranging for and payment of criminal background checks to be conducted on its employees assigned to the Program to the extent required under Applicable Law and will maintain documentary evidence that it has done so. Upon the School District's request, K12 will provide the School District with documentary evidence of its compliance, including review of the result of said background checks, subject to any privacy restrictions or confidentiality requirements imposed by Applicable Law. The Principal shall provide the acceptable and nonacceptable criteria used by the District for evaluation of background checks. K12 will use criteria no less restrictive than the District's criteria.

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10. PAYMENT OF PRODUCT AND SERVICE FEES.

10.1. Payment of Fees. The School District shall pay K12 monthly for all fees and costs due to K12 under Section 8 of this Agreement, with each payment due no later than thirty (30) days after funding for students in the Program is received by the School District. The School District shall provide to K12 all documentation regarding funding received by the School District for students in the Program no later than thirty (30) days after funding for students in the Program is received by the District.

10.2. Interest. Except solely for amounts disputed in good faith pursuant to Section 10.5, if the School District fails to pay K12 when due pursuant to Section 10.1, then in addition to any other remedies, K12 reserves the right to charge and the School District agrees to pay interest on the past due amount at the lesser of one and one-quarter percent (1¼%) per month or the maximum rate allowed by Applicable Law. All payments made hereunder will be made to K12 (or its designated Affiliate) by wire transfer to the account provided by K12 in writing, unless an alternative payment method is provided for in the K12 invoice.

10.3. Taxes. Except as otherwise stated herein, K12 is not responsible for any taxes or third-party charges related to the activities, or the ownership or operation of the Program within the boundaries of the School District. Without limiting the foregoing, the School District agrees to pay any sales, use, property, excise, value-added, or other similar taxes, if any, imposed by Applicable Law, except for taxes based on K12's income. For the avoidance of doubt, all fees for the Educational Products and Services set forth herein are exclusive of such taxes.

10.4. Not Used.

10.5. Disputed Amounts. The School District shall notify K12 in writing prior to a payment due date of any amount it disputes in good faith ("Dispute Notice"). The Dispute Notice shall detail the reasons for such dispute and the Board agrees to pay all undisputed amounts in accordance with Section 10.2. The Parties shall seek to resolve these disputed amounts in accordance with the dispute resolution provisions set forth in Section 22. Notwithstanding anything to the contrary in this Agreement, K12 may file suit in a court of competent jurisdiction to recover all past due amount.

10.6. Non-Payment Remedies. If the School District fails to pay any amount for which a timely Dispute Notice is not received, then notwithstanding anything in this Agreement to the contrary, in addition to invoking any other legal or equitable rights available to K12, upon ten (10) days written notice to the Board, K12 reserves the right to: (i) suspend the provision of any or all of its Educational Products and Services offered hereunder; (ii) cease processing enrollments for any new Program students; and/or (iii) terminate this Agreement at the end of the then-current school year or for the coming school year if such notice is provided to the Board no later than June 30. The School District shall be liable for costs incurred by K12 to collect any undisputed amounts due hereunder, including reasonable attorneys' fees.

11. OTHER SCHOOLS. The Parties acknowledge that K12 and its Affiliates will have the right to render similar services and provide similar products to other persons or entities, including, but not limited to, other public or private schools, institutions or districts within and outside of the State. K12 agrees to refrain from rendering similar services or provide similar products to any person or entity physically located within the boundaries of the School District.

12. TERMINATION. Events of termination are as follows:

12.1. Termination for Cause. Except as otherwise provided herein, the Parties shall use good faith efforts to resolve all disputes relating to this Agreement as set forth in Section 22; however, either Party may terminate this Agreement for cause at any time with ninety (90) days' prior written notice to the other Party. Termination for cause shall mean the breach of any material term or failure to fulfill any material condition, term, provision, representation, warranty, covenant or obligation contained in this Agreement, and a failure to cure such a

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breach within forty-five (45) days after receiving written notification from the terminating Party. Upon termination of this Agreement, the non-breaching Party shall be entitled to seek any remedies for which it would be entitled at law or in equity. Additionally, in the event the School District does not cure the material breach of this Agreement as set forth in this provision K12, in its sole discretion, may continue performance so long as there are no outstanding payments due to K12 and its Affiliates in lieu of terminating this Agreement, but such continuance shall not be deemed a waiver of any of K12's rights hereunder, including termination.

12.2. Termination Based on Performance Comparisons. If all of the Program's elementary, middle and high schools have been discontinued pursuant to Section 3.4.6 of this Agreement, then this Agreement is deemed to be terminated as of the last day of the last discontinued school.

12.3. Termination for Material Reduction in Program Revenue. K12 may terminate this Agreement in the event there is a material reduction in Program Revenue below the amount for the prior Fiscal Year or such reduction will materially increase the financial risk to K12 in providing the Educational Products and Services. K12 shall notify the Board of its intent to terminate under this provision and provide the Board thirty (30) days' notice so that the Parties may work together to find alternative funding or other means to offset the reduction in Program Revenue. If the Parties are unable to find additional revenue or other means in the thirty (30) day time-frame, K12 may terminate this Agreement and such termination shall be effective: (i) immediately upon written notice by K12 to the Board, if notice or publication of such reduction is given at least ninety days (90) prior to the commencement of the school year to which such reduction is applicable; or (ii) at the end of the school year upon written notice to the Board if notice or publication of such reduction is given during the school year to which such reduction is applicable. In the event K12 elects not to terminate this Agreement in accordance with this provision, K12 may reasonably revise and determine the level of products and services to be provided in accordance with Applicable Law, considering any such funding reduction.

12.4. Termination in the Event of Certain Changes. K12 may terminate this Agreement effective immediately upon written notice to the School District in the event that the Board adopts or amends a policy or the Principal provides direction, in either case without the prior written approval of K12, and the effect of such amendment, policy or direction could reasonably be determined to require K12 to increase materially the level of services required to be provided hereunder or to increase materially the financial risk to K12 arising from its performance of its obligations hereunder, thus rendering K12's performance economically unviable as determined by K12. In the event the Board adopts such an adverse policy or the Principal provides such direction in the middle of a school year, K12 agrees to use its best efforts to complete the then current school year without waiving any rights and remedies hereunder.

12.5. Change in Applicable Law. If any change in Applicable Law enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of any Party to carry out its obligations under this Agreement, such Party, upon written notice to the other Party (which notice may be given at any time following enactment of such change in Applicable Law, whether or not such change is effective on the date of such enactment or is effective at a later date), may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith. If the Parties are unable to renegotiate and agree upon revised terms within ninety (90) days after such notice of renegotiation, then this Agreement will be terminated effective at the end of the school year in which such notice was given, unless earlier termination is necessary to protect the health, welfare, or safety of students.

13. TERMINATION EFFECTS. Effects of termination are as follows:

13.1. Outstanding Payments Due. Except as otherwise agreed by the Parties in writing, termination does not relieve the School District of any obligations for payments outstanding to K12 as of the date of termination or other obligations that continue upon termination as provided in this Agreement.

Exhibit A

13.2. Return of Equipment. Return of K12-provided equipment, if any, is mandatory. K12 will request from students, by and through the student's parents or guardians that they return all K12 assets including, but not limited to, computers, related equipment and non-consumable materials that may be provided by or on behalf of K12 upon the expiration or termination of this Agreement, or, if earlier, upon their discontinuation of enrollment in the Program, in accordance with the policies governing the use and reclamation of such materials. K12 shall assume the sole risk and responsibility for any and all lost or damaged computers, monitors, software and other hardware provided and used during the Term of this Agreement.

13.3. Fees Owed. In the event this Agreement terminates as provided for herein, or it expires pursuant to its terms, and unless otherwise agreed by the Parties in writing, the School District shall owe for all products provided and services rendered in accordance with this Agreement for the period up to and including then current Fiscal Year of the termination or expiration and the School District shall pay off the outstanding fees due to K12. All such fees will be determined up to and including the year in which this Agreement terminates or expires.

14. INTELLECTUAL PROPERTY RIGHTS.

14.1. Proprietary Materials. K12 (and its Affiliates and respective licensors) own all rights, including but not limited to, copyright title, and interest in and to any educational materials, curriculum, learning management systems, instructional content, trade secrets, know-how, artwork, graphics, software, marketing materials and any documents or derivative works related thereto, made available by K12 or its Affiliates to the School District or for the Program (collectively, "K12 Proprietary Materials").

14.2. Rights in K12 Proprietary Marks. K12 and its Affiliates own all rights, title and interest, including any goodwill, in and to their respective trademarks, service marks, logos, trade dress, Program names, trade names and domain names, including but not limited to the Program names and logos and those trademarks and names identified in Exhibit B hereto (collectively, "K12 Proprietary Marks"). Any rights or goodwill the School District may have established in the foregoing will be assigned to K12.

14.3. Limited License of Intellectual Property. K12 hereby grants the School District a royalty-free, non-exclusive, non-transferable license to use the K12 Proprietary Materials and the K12 Proprietary Marks during the Term in connection with the Program as contemplated in this Agreement. If School District employees create any original works for use in connection with, or for incorporation into any K12 Proprietary Materials, K12 is hereby granted a perpetual, royalty-free, worldwide right and license to exploit, use distribute, modify and create derivative works from such works in any medium and for any purpose.

14.4. Limitations On Use of Intellectual Property.

14.4.1 The District shall not modify, adapt, alter or translate the K12 Proprietary Marks. The School District shall only use the K12 Proprietary Marks in the form set forth in Exhibit B, or as otherwise required or approved of in writing by K12.

14.4.2 The School District shall not disassemble, reverse engineer, modify, alter, or create derivative works from the K12 Proprietary Materials without the prior written consent of K12. In addition, the School District shall frame or embed, or cause to be framed or embedded, any website owned by K12.

14.4.3 In connection with use of the K12 Proprietary Marks and the K12 Proprietary Materials by the Board/School District and the Program staff, the Board/School District shall include any trademark notice, copyright notice, or other legal notice required by K12 at its sole discretion and the Board/District shall abide by the trademark quality control provisions herein and set forth in Exhibit B.

Exhibit A

14.4.4 The School District shall not sublicense any rights under this Agreement without the advance written approval of K12, which may be withheld in K12's sole discretion.

14.4.5 The District shall ensure its Program staff are aware of and abide by the license rights and restrictions granted herein.

14.5. Trademark Quality Control; Notice. At all times during the Term, the School District shall ensure that educational services rendered by the School District for the Program under the K12 Proprietary Marks maintain a level of quality that meets or exceeds generally accepted standards for educational service organizations and K12's additional quality standards established over time as K12 deems applicable. K12 shall have, at reasonable times and on reasonable notice, the right to inspect and/or monitor any educational services rendered by or for the School District under the K12 Proprietary Marks to ensure compliance with this Section. The School District shall give prompt notice to K12 of any written and/or formal complaint by any student, governmental body, regulatory agency, consumer organization or any other third party concerning the quality or safety of the Board's services offered under the K12 Proprietary Marks.

14.6. Ownership of Intellectual Property. The Board agrees that: (a) no right, title or interest in the K12 Proprietary Materials or K12 Proprietary Marks, or any other intellectual property of K12 (including K12 patents) conveys to the Board, except for the right to use such materials and marks in accordance with the terms herein; (b) the K12 Proprietary Materials and the K12 Proprietary Marks are the sole property of K12; and (c) any use by the Board, District or Program of the K12 Proprietary Marks, and all goodwill derived therefrom, shall inure to the benefit of K12. The District agrees to notify K12 promptly in writing of any known or suspected infringement of the K12 Proprietary Materials or the K12 Proprietary Marks, and to cooperate, at K12's request and expense, in any action to establish, protect, or preserve K12's exclusive rights in the K12 Proprietary Materials and K12 Proprietary Marks.

14.7. Effect of Termination on Licenses. In the event of expiration or termination of this Agreement, the School District will promptly discontinue use of the K12 Proprietary Materials and the K12 Proprietary Marks, and will, within thirty (30) days after termination, destroy all materials using, embodying, displaying, or otherwise containing the K12 Proprietary Materials or the K12 Proprietary Marks, including those in the possession of the School District, the Program employees, Students, and sublicensees of the School District.

14.8. Publicity/Press Release. K12 may refer to and identify the Program in a listing of new, representative or continuing or prior customers in press releases, on its website, or in other marketing materials or dissemination of information. The Parties may agree to cooperate in joint marketing activities or in issuing a joint press release at the request of either of them, subject to prior written consent and approval of the form and substance of both the Program and K12.

14.9. License Audit. If necessary, K12 may audit the use of the Educational Products and the School District agrees to reasonably cooperate with such audit. The School District agrees to pay within thirty (30) days of written notification, any fees applicable to the School District's or its Program staff's use of the Educational Products in excess of the license rights granted herein and/or K12 may revoke the related technical support and unauthorized license(s).

15. LIMITS ON LIABILITY AND DAMAGES.

15.1. LIMIT OF LIABILITY. K12'S MAXIMUM LIABILITY AND OBLIGATION TO THE SCHOOL DISTRICT AND THE SCHOOL DISTRICT'S EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE RECOVERY OF ACTUAL DIRECT DAMAGES UP TO THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT IN THE PRIOR SIX (6) MONTHS.

Exhibit A

15.2. CONSEQUENTIAL DAMAGES. EXCEPT IN CONNECTION WITH ITS INDEMNITY OBLIGATIONS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST SAVINGS, LOST PROFITS, LOST SALES, BUSINESS INTERRUPTIONS, DELAY DAMAGES, DAMAGES FOR THIRD PARTY CLAIMS, LOST OR DESTROYED DATA, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER OCCASIONAL SHORT-TERM INTERRUPTIONS OF SERVICE OR PRODUCTS, WHICH ARE NOT UNREASONABLE UNDER COMPARABLE INDUSTRY STANDARDS OR INTERRUPTIONS OF SERVICE OR PRODUCTS RESULTING FROM EVENTS OR CIRCUMSTANCES BEYOND K12'S REASONABLE CONTROL SHALL BE CAUSE FOR ANY LIABILITY OR CLAIM AGAINST K12 HEREUNDER, NOR SHALL ANY SUCH OCCASION RENDER K12 IN BREACH OF THIS AGREEMENT.

16. INDEMNITY. The Party charged with indemnifying and/or defending under this provision (the "**Indemnifying Party**") shall conduct the defense in any such third party action arising as described herein and the Party claiming the benefits of this Section 16 (the "**Indemnified Party**") promises to cooperate with such defense, provided the Indemnifying Party reasonably consults with the Indemnified Party on any settlement (subject to the consent requirement in the last sentence of this paragraph). Notwithstanding the foregoing, the Indemnified Party may, at its own expense, assist in such defense if it so chooses, provided that the Indemnifying Party shall be entitled to control such defense and all negotiations relative to the settlement of any such claim. Any settlement that would admit any liability on the part of the Indemnified Party shall require such Indemnified Party's prior written consent.

16.1. Indemnification of the School District. K12 will indemnify, defend, and save and hold the School District and all of its employees, officers, directors, trustees, subcontractors, and agents, their respective successors and permitted assigns, harmless against any and all claims, demands, suits, or other forms of liability including without limitation costs and reasonable attorneys' fees (each a "**Claim**") that may arise out of, or by reason of, any (a) breach of any expressed representation or warranty, covenant or agreement made or to be performed by K12 pursuant to this Agreement, (b) noncompliance by K12 with any Applicable Law in connection with the School District's operations, but excluding any Claims that arise from conduct undertaken in accordance with the Board's or School District's instructions, procedures or written policies, except where such instructions arise from and are in accordance with specific advice or explicit recommendations formally provided by K12, and (c) act or omission of K12 or any of its employees, officers, directors, trustees, subcontractors or agents in connection with the School District's operations that results in injury, death, or loss to person or property, except to the extent any Claims arise out of actions or omissions of the School District or the Board. K12 and its Affiliates shall not be liable for any Claims related to the enrollment, placement and provision of services to any Students with special education, ELL or 504 needs, except to the extent caused by K12 and its Affiliates.

16.2 Indemnification of K12. To the extent permitted by Applicable Law, the School District will indemnify, defend, and save and hold K12 and its Affiliates and all of their respective employees, officers, directors, trustees, subcontractors, and agents, their respective successors and permitted assigns, harmless against any and all Claims that may arise out of, or by reason of, any (a) breach of any expressed representation or warranty, covenant or agreement made or to be performed by the School District pursuant to this Agreement, (b) noncompliance by or on behalf of the School District or Board with any Applicable Law in connection with School District's operations, (c) act or omission of the School District or Board or any of its employees, officers, directors, trustees, subcontractors or agents in connection with the School District's operations that results in injury, death, or loss to person or property except to the extent any Claims arise out of actions or omissions of K12, and (d) for any Claims that are related to the School District's or Board's action or inaction with respect to the enrollment, placement and provision of services to any Students with special education, ELL or 504 needs, except to the extent caused by K12 or its Affiliates.

Exhibit A

16.3 Liability. Notwithstanding anything to the contrary in this Agreement, as between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from the negligence of its employees. The liability of the Gallup-McKinley County School District No. 1 shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq. NMS 1978, as amended. This Agreement contains the understanding between the School District and K12 only and shall not create or confer on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise against the named parties, their officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, consultants, or advisors. Nothing in this Agreement limits or directs the application of any applicable or relevant law as applied by any court or agency of competent jurisdiction and nothing in this Agreement constitutes a waiver of sovereignty to the extent it would or would not apply in any particular matter.

16.4. Indemnification Procedures.

16.4.1. Notice Requirement. Each Indemnified Party must give written notice to the other of the existence of a Claim promptly after such Indemnified Party first receives notice of the existence of the potential Claim, provided that such Indemnified Party will not be foreclosed from seeking indemnification hereunder by any failure to provide such prompt notice except and only to the extent the Indemnified Party actually incurs an incremental expense or otherwise has been materially prejudiced as a result of such delay.

16.4.2. Defense and Settlement of Claims. Each Indemnified Party seeking indemnification hereunder will permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of such Claim, provided, that (i) counsel for the Indemnifying Party who will conduct the defense of such Claim must be reasonably satisfactory to such Indemnified Party and (ii) such Indemnified Party may participate in such defense at such Indemnified Party's expense. Except with the prior written consent of the Indemnified Party seeking indemnification hereunder, the Indemnifying Party, in the defense of any Claim, will not consent to entry of any judgment or enter into any settlement. In the event that any Indemnified Party seeking indemnification hereunder has been advised by counsel for the Indemnifying Party that such Indemnified Party may have available to it one or more defenses or counterclaims that are different from, or in addition to, one or more of those that may be available to the Indemnifying Party in respect of such Claim and, in such counsel's reasonable opinion, such counsel could not assert such defenses or counterclaims without creating a conflict of interest, such Indemnified Party will have the right to take over and assume control over the defense of such claim at the sole cost of the Indemnifying Party, provided that if such Indemnified Party does so take over and assume control, such Indemnified Party will not settle such claim without the written consent of the Indemnifying Party. In the event that the Indemnifying Party does not accept the defense of any matter as above provided, the Indemnified Party seeking indemnification hereunder will have the right to defend against such Claim, provided that such Indemnified Party will not settle such Claim without the written consent of the Indemnifying Party. In any event, any Indemnified Party seeking indemnification hereunder and the Indemnifying Party will cooperate in the defense of any claim subject to this Section entitled "Indemnification".

17. ASSIGNMENT. Except as otherwise provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party provided, however, K12 may assign all of its rights and obligations under this Agreement to any Affiliate, acquiror, or successor in interest to the extent not otherwise expressly prohibited by Applicable Law. K12 may delegate the performance of its duties hereunder to any person, contractor or entity but K12 shall be responsible for the performance, in accordance with the terms of this Agreement, of any services performed by its delegates.

Exhibit A

18. INSURANCE.

18.1. Liability Coverage. The School District shall provide and maintain, at its own expense, during the Term of this Agreement a program of insurance or self-insurance covering its activities and operations hereunder that with respect to School District's operations that complies with the coverage requirements of both of the New Mexico Tort Claims Act, N.M. Stat. Ann. § 41-4-1 et seq. (1978) and the Public School Insurance Authority Act, N.M. Stat. Ann. § 22-29-1 et seq. K12 shall initiate and maintain during the Term of this Agreement, at its own expense, general liability insurance (including contractual liability insurance to cover the respective indemnification obligations herein) for not less than \$5,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). K12 will initiate and maintain during the Term and for two (2) years thereafter, employment practices liability insurance and errors and omissions insurance, each in limits of no less than \$1,000,000 per claim/aggregate. Each Party's general liability and contractual liability insurance will be written to cover claims incurred, discovered, manifested, or made during or after the Term.

18.2. Evidence of Insurance. Each Party will furnish a certificate of insurance evidencing such coverage to the other Party within seven (7) days of written request by a Party. The Parties will endeavor to provide thirty (30) days' advance written notice to the other Party of any cancellation or material adverse change, including impairment of the limit of liability by twenty-five percent (25%) or more, to such insurance.

18.3. Insurance Coverage No Limitation on K12's Rights. Each Party will furnish a certificate of insurance evidencing such coverage to the other Party within seven (7) days of written request by a Party. The Parties will endeavor to provide thirty (30) days' advance written notice to the other Party of any cancellation or material adverse change, including impairment of the limit of liability by twenty-five percent (25%) or more, to such insurance.

18.4. Workers' Compensation Insurance. Both Parties will initiate and maintain workers' compensation insurance for its respective employees working at or for the Program, as required by Applicable Law.

18.5. Cooperation. All Parties will comply with any information or reporting requirements required by the other Party's insurer(s), to the extent reasonably practicable.

19. REPRESENTATIONS AND WARRANTIES.

19.1. Representations and Warranties of K12. K12 hereby represents and warrants to the School District:

19.1.1. Organization and Good Standing. K12 is a company duly organized, validly existing, and in good standing under the laws of the State of Delaware and is a wholly owned subsidiary of K12 Inc.

19.1.2. Power and Authority; Authorization; Binding and Enforceable Agreement. K12 has full limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by K12 and constitutes the valid and legally binding obligation of K12, enforceable against K12 in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

19.1.3. Professional Services. K12 warrants that the Services will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards, and deliverables, if any, will materially comply with the agreed upon functional specification set forth in the applicable Exhibit A, if used in a manner consistent with the conditions for which it was designed.

Exhibit A

THE FOREGOING WARRANTIES MADE BY K12 IN THIS SECTION (AND ITS SUBSECTIONS) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND K12 AND ITS AFFILIATES MAKE NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS. WITHOUT LIMITING THE FOREGOING, K12 MAKES NO GUARANTEES AND SHALL NOT BE LIABLE FOR NON-AVAILABILITY OF THE K12 WEBSITE, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS.

19.1.4. Non-Conformities. The foregoing warranties shall not apply to defects or non-conformities: (a) resulting from software, hardware or interfacing not supplied by K12, its Affiliates or authorized contractors; or (b) resulting from inadequate or improper maintenance, modification, storage or usage of the K12-provided materials by the District, its employees or Students. In addition, the foregoing warranty shall not apply to requirements not expressly included in this Agreement.

19.2. Representations and Warranties of the District. The School District hereby represents and warrants to K12:

19.2.1. Organization and Good Standing. The School District is a public school entity, duly organized, validly existing, and in good standing under the laws of the State of New Mexico.

19.2.2. Power and Authority; Authorization; Binding and Enforceable Agreement. The School District has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by the School District and the Board and constitutes the valid and legally binding obligation of the School District, enforceable against it in accordance with its terms and conditions, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

19.2.3. Authority Under Applicable Law. The Board has the authority under Applicable Law to: (i) contract with a company to obtain the Services and all other products, programs and services under this Agreement; (ii) to execute, deliver, and perform this Agreement; and (iii) to incur the obligations provided for under this Agreement.

19.2.4. Non-Contravention. The execution, delivery and performance of this Agreement by the School District will not constitute, under any other agreement, note, lease, or other instrument to which the School District is a party or by which it or any of its assets is bound, any violation, breach or event of default by the District or any other party thereto.

19.2.5. Provision of Authority to K12. The School District has provided and will provide K12 with all authority and power necessary and proper for K12 to undertake its responsibilities, duties, and obligations provided for in this Agreement.

19.2.6. Program Authorization. The Program has been duly authorized by the Board in accordance with Applicable Law. The School District has delivered to K12 a true and complete copy of the Board Resolution approving the Program. The School District will use best efforts to renew any approvals required for the Program during the Term. The School District shall ensure that K12's authorized designee (as delegated by the EVP of School Services) is involved in any renewal or modifications of any third-party agreements, including collective bargaining agreements, that may impact this Agreement and that K12 is provided with copies of all such final documents to the extent not precluded by Applicable Law.

Exhibit A

19.2.7. Public School Insurance Authority. The School District is, and at all times during the Term of the Agreement, shall remain a participant in the Public School Insurance Authority for all coverages and reimbursements offered thereby.

20. OFFICIAL NOTICES. All notices and other communications required by the terms of this Agreement will be in writing and sent to the Parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Notice may be given by: (i) certified or registered mail, postage prepaid, return receipt requested, (ii) reputable overnight carrier, postage prepaid, or (iii) personal delivery (with written receipt confirming such delivery). Notice will be deemed to have been given (i) three business days after mailing as described in clauses (i) or (ii) of the foregoing sentence, or (ii) on the date of personal delivery. Electronic mail does not constitute notice under this Agreement. The addresses of the Parties are:

For K12:

K12 Virtual Schools LLC
ATTN: President of Academics, Policy and Schools
2300 Corporate Park Drive, Suite 200
Herndon, Virginia 20171
Phone: (703) 483-7000

With Copy To:

K12 Inc.
ATTN: General Counsel
2300 Corporate Park Drive, Suite 200
Herndon, Virginia 20171
Phone: (703) 483-7000

For School District:

Mike Hyatt
Superintendent of Schools
Gallup-McKinley County Schools
640 Boardman Drive
Gallup, New Mexico 87301
Phone: (505) 721-1000
Fax: (505) 721-1199
mhyatt@gmcs.org

With Copy To:

Andrew M. Sanchez
HIMES, PETRARCA AND FESTER, CHTD
5051 Journal Center Blvd. NE, Suite 320
Albuquerque, New Mexico 87109
(505) 259-2069
Fax: (312) 565-0000
asanchez@edlawyer.com

21. NON-SOLICITATION/NON-HIRING.

21.1. Non-Solicitation. Each Party agrees that during the Term of this Agreement and for a period ending twelve (12) months after the expiration or termination of this Agreement for any reason, unless mutually agreed by the Parties in writing, one Party will not directly solicit, recruit for employment, offer employment to, offer subcontracting opportunities to, or otherwise employ or use the services of any employees of the other Party or their related companies if that employee or former employee had been assigned to or worked under this Agreement.

21.2. Unpermitted Solicitation/Hiring Remedies. In the event of such unpermitted use or engagement by a Party or its related company of such consultant or employee whether directly or indirectly, in contravention of the clause immediately above, the other Party, at its option, may seek receipt of a sum equivalent to one hundred percent (100%) of that employee's base starting salary with the new employer, or seek any legal or equitable relief against such actions including, but not be limited to, immediate injunctive relief in any court of competent jurisdiction.

Exhibit A

21.3. Solicitation Exceptions. For the avoidance of doubt, newspaper, periodical or Internet-based listings of employment opportunities by a Party shall not be considered direct or indirect solicitation of an employee of the other Party; however, such Party shall continue to be precluded from engaging or otherwise using a Party's employee, former employee or consultant as provided for in Section 21.2.

22. DISPUTE RESOLUTION, VENUE AND GOVERNING LAW.

22.1. Dispute Resolution Procedure. The Parties agree that they will, within a period not to exceed ten (10) days, attempt in good faith to settle all disputes arising in connection with this Agreement amicably in the ordinary course of business escalating up to the Superintendent of the School District and the President of Academics, Policy and Schools (or their designee) for K12. If a dispute is not resolved in the ordinary course of business, the aggrieved Party may proceed to arbitration and/or invoke other remedies in accordance with this Agreement.

22.2. Arbitration. Subject to Section 22.1, if an aggrieved Party elects to arbitrate an unresolved dispute pursuant to the Section immediately above, the Parties hereby agree to proceed to mandatory binding arbitration in Bernalillo County, New Mexico, pursuant to the then existing rules of the American Arbitration Association. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties. Judgment upon the award rendered shall be final and binding and may be enforced by any state or federal court with competent jurisdiction over the arbitrated matter. Each Party will bear its own costs and expenses associated with the dispute resolution procedures set forth in this Section except that the Parties will share equally any fees payable to a professional arbitrator.

22.3. Injunctive Relief. Notwithstanding the foregoing dispute resolution procedures, the School District acknowledges that in the event it breaches any of K12's intellectual property rights, K12 may suffer irreparable harm in which the full extent of damages may be impossible to ascertain and monetary damages may not be an adequate remedy. In its sole discretion, K12 may seek immediate judicial relief as available in law or equity. K12 will be entitled to enforce its intellectual property rights under this Agreement by an injunction or other equitable relief without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy. The decision by K12 not to seek judicial relief during the agreed dispute resolution procedure, will not create any inference regarding the presence or absence of irreparable harm.

22.4. Governing Law. The laws of the State of New Mexico without regard to its conflict of laws provisions will govern this Agreement, its construction, and the determination of any rights, duties, and remedies of the Parties arising out of or relating to this Agreement. Nothing in this Agreement shall be interpreted as constituting consent by the School District to be subject to the jurisdiction of the Navajo Nation or any of its agencies related to its operation; employment of administrators, teachers or staff; the education and safeguarding of students: supervision or disciplining of students; or any other governmental duty or function of the School District as a New Mexico public school district, and the School District specifically denies any waiver of jurisdiction to the Navajo Nation by the execution of this Agreement or its actions in furtherance of this Agreement.

23. FORCE MAJEURE. Notwithstanding any other provisions of this Agreement, no Party will be liable for any delay in performance or inability to perform (except for payments due hereunder) due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, accident, labor strike, Internet outage, pandemic, epidemic or other acts beyond a Party's reasonable control and unrelated to its fault or negligence.

Exhibit A

24. COORDINATION, EXERCISE OF APPROVAL OR CONSENT RIGHTS.

24.1. Coordination; Exercise of Approval or Consent Rights:

24.1.1. Coordination and Consultation. The Parties will coordinate the performance of their respective activities hereunder and will establish such procedures as they shall mutually agree to be effective for achieving the purposes of this Agreement and allowing each of them to perform its obligations and exercise its rights under this Agreement. Without limiting the generality of the foregoing, K12's legal counsel and the School District's legal counsel will consult from time to time with respect to the requirements of Applicable Law and the School District's policies as they relate to the Program's operations.

24.1.2. Approval or Consent Rights. In performing services and its other obligations under this Agreement, or in exercising its rights under this Agreement, including granting or withholding any consents or approvals or making any requests of the other Party, each Party must act reasonably (including as to the timing of its actions) except to the extent that this Agreement provides that it may act as it determines "in its sole judgment" or "its sole discretion," or words to that effect, in the applicable provision. Whenever it is provided in this Agreement that the Parties will or may agree as to a certain matter, each Party will have the right to agree or disagree in its sole discretion following good faith discussions.

25. MISCELLANEOUS.

25.1. Entire Agreement. This Agreement including its attachments hereto constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all previous and contemporaneous oral and written negotiations, commitments, agreements, warranties, representations and understandings. This Agreement will not be altered, amended, modified, or supplemented except in a written document executed by the Parties.

25.2. Counterparts, Facsimile or PDF Transmissions. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument. Each Party may rely on facsimile or PDF signature pages as if such facsimile or PDF pages were originals.

25.3. Amendment. This Agreement will not be altered, amended, modified, or supplemented except in a written document executed by the Parties.

25.4. Waiver. No waiver of any provision of this Agreement will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Agreement, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.

25.5. Interpretation. The Parties hereto acknowledge and agree that the terms and provisions of this Agreement, will be construed fairly as to all Parties hereto and not in favor of or against a Party, regardless of which Party was generally responsible for the preparation of this Agreement.

25.6. Severability. In the event any term, provision or restriction is held to be illegal, invalid or unenforceable in any respect, such finding shall in no way affect the legality, validity or enforceability of all other provisions of this Agreement. To the extent that any of the services to be provided by K12 are found to be overbroad or an invalid delegation of authority by the Board, such services will be construed to be limited to the extent necessary to make the services valid and binding.

25.7. Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

Exhibit A

25.8. No Third-Party Rights. This Agreement is made for the sole benefit of the District and K12 and their respective successors and permitted assigns. Except as set forth in Sections 14 and 16 and except for each Affiliate of K12, which shall be a third party beneficiary of this Agreement, nothing in this Agreement will create or be deemed to create a relationship between the Parties to this Agreement, or any of them, and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

25.9. Survival of Termination. All representations, warranties, and indemnities expressly made in this Agreement will survive termination of this Agreement.

25.10. Headings and Captions. The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the date set forth below.

**For and on behalf of
GALLUP-MCKINLEY SCHOOL DISTRICT**

**For and on behalf of
K12 VIRTUAL SCHOOLS LLC**

Signed: _____

Signed: _____

Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

Exhibit A**EXHIBIT A**
Curriculum and Services

I. Educational Products and Product-Related Services. During the Term, K12 and its Affiliates will provide or cause to be provided to the District for the Program and its Students and its personnel the Educational Products and product-related services. The Educational Products to be provided in accordance with the terms of the Agreement, as K12 determines in its reasonable discretion are as follows:

A. Online Program. For each school year during the Term, K12 will provide a license for and access to proprietary and licensed: (i) curriculum (in English) and a learning management system for grades K through 8 for those core subject areas required by the State (Language Arts, Math, Science, History) as well as other courses offered or required for these grades which may include Art, Music and foreign language; (ii) curriculum (in English) and a learning management system for grades 9 through 12, in each case in Language Arts, Math, Science and History in addition to electives per the K12 course catalogue; and (iii) third party curricula K12 generally offers similar virtual schools, in each case for such courses required by Applicable Law.

B. Instructional Tools and Materials. Instructional tools and supplies, including without limitation textbooks and multi-media teaching tools. K12 shall identify which materials are durable and must be reclaimed and such materials must be returned as set forth in Section 13.2. K12 will provide instructions and pre-paid shipping materials and labels to facilitate the return of these materials.

C. Instructional Support. K12 will make available the necessary instructional support as mutually agreed upon as the Program may require for the Educational Products and related offerings. Such support will require that K12 pay all costs and fees (if possible, through direct billing to K12) for available Internet service for any student enrolled in the Program who meets the federal requirements for a free or reduced lunch or who meet other criteria as agreed upon between the District and K12, with such criteria intended to include families that cannot afford Internet access with special attention paid to those who live in rural areas of the state without easy access to the Internet. families that cannot afford Internet access. Paid Internet service is not required to be provided to any student not then-enrolled in the Program or during periods (such as summers) in which the student is not taking at least one class in the Program.

D. Computers. K12 may provide or cause to be provided computers, monitors, software and other hardware, as K12 determines in its discretion, to be necessary to deliver the curriculum and as agreed to in writing by K12. In the event a student is having technical trouble with a K12-provided device and notifies K12 Tech Support, K12 shall triage and troubleshoot the issue remotely. If remote triage and troubleshooting does not resolve the problem and the problem is due to the K12-provided device, K12 shall replace the device. Upon notification to K12 Tech Support, no student shall be left without access to the Program and curriculum for more than three (3) school days. K12 shall assume the sole risk and responsibility for any and all lost or damaged computers, monitors, software and other hardware provided and used during the Term of this Agreement. K12 shall maintain an continuous and accurate inventory of all computers, monitors, software and other hardware provided and used in the Program. All such equipment shall be promptly returned to K12 upon a Student's withdrawal or upon expiration or termination of this Agreement as set forth in Section 13.2. K12 will provide instructions and pre-paid shipping materials and labels to facilitate the return of these materials.

Exhibit A

E. Testing Support. During the Term, as agreed upon by the Parties, K12 may provide, or cause to be provided to the Program included as part of the Final Adjusted Fee, equipment, logistics and technical support and related services to assist with State required online testing of Students (“**State Testing**”) as reasonably necessary. State Testing may include:

1. Site Surveys: K12 will physically validate facilities for testing sites and will notify the District if proposed facilities are found unsuitable. In all rooms where assessments will be administered mobile lab technology will be simulated and tested to include ISP signal quality measurements; optimal placement of network devices will be documented and primary and secondary networks will be identified and deployed as needed.
2. Technical Point of Contact: K12 will provide a technical point of contact to support the Program with the State Testing.
3. Onsite Support: Onsite support including set up and tear down of equipment provided as reasonably required by technicians (with national criminal records background check), however, Program teachers must be present when onsite tech is in proximity of Students.
4. Troubleshooting. Site monitoring and PC troubleshooting to be provided onsite and/or remote as reasonably required.

II. Administrative Services. During the Term, K12 and its Affiliates will solely provide or cause to be provided to the Program the Administrative Services, including the Academic Excellence Framework (or successor), which shall serve as the instructional program for the Program. Notwithstanding the forgoing, no Services shall be provided for the purpose of benefiting the District, the Program or any personnel or students for any school year beyond the Term. The Administrative Services to be provided in accordance with the Agreement, as K12 determines in its reasonable discretion are as follows.

A. Educational School Consulting. Propose and implement educational goals, methods of pupil assessment, Program policies, Program calendar, school day schedule, and age and grade range of pupils to be enrolled in the Program. K12’s recommendations for the Program will be consistent with the Agreement and Applicable Law.

B. Contracted Personnel and Support Services. If any Program employees are District employees, supervision of all personnel providing Educational Products and Services. Provide support services to include administration of Program employees including recruiting assistance and hiring recommendations; provided, however the District’s staff shall be responsible for performing all reference, certification and background checks and other related services on its personnel and for performing payroll functions or securing of payroll services; negotiation, securing and administration of health, retirement and other benefits all of which shall be the District’s or its PEO’s responsibility. K12 will work with the District’s staff and its applicable PEO to recommend human resources policies, bonus plans, and strategic plans for staffing, development, and growth. K12 will also provide teacher performance evaluation models to District for its employees and recommend and, if approved, carry out effective ways to measure teacher performance in a virtual setting.

C. Pupil Recruitment-Related Services:

1. Pupil Recruitment. Recruitment of students in K12’s and its Affiliates discretion, including creation, design and preparation of recruitment materials and advertisements; assist with information sessions and other events via mail, e-mail, print, radio, television, and outdoor advertising. Other recruitment activities include designing Program recruitment materials, letterhead, business cards, and logos to create Program identity and developing, designing, and maintaining the Program website. Recruiting campaigns

Exhibit A

undertaken may vary in nature, but shall be designed to inform potential students about the Program and/or K12 and its Affiliate's programs (including K12 partner schools and programs) in the local area. Information that K12 obtains with respect to leads generated including, but not limited to, statistics, trends and contact information shall be owned by K12 (and its Affiliates).

2. Admissions. Implementation of the Program's admissions policies in accordance with this Agreement, including administering of the application and the Student enrollment process. Communicating with potential students and their families and conducting a random lottery if required.

3. Family Services. Plan and arrange Program orientation sessions. Assist with the design and implementation of parent orientation sessions. Field and respond to incoming calls, letters, faxes, and e-mails received by K12 about the Program, its curriculum, the application/enrollment process, instructional materials, etc. Conduct exit interviews with select Students and their parents who withdraw in order to learn more about how to improve the program for Students.

4. Program Feedback. Obtain feedback on how to improve the Program and curriculum, as appropriate. Create methods for Students, their parents, and teachers to submit comments and suggestions; implement improvements where K12 deems them to be valuable.

5. Student Clubs and Contests. Access to virtual social clubs for Students. Clubs are formed based on Student feedback and interests. K12 also provides access to participation opportunities in nationwide contests which may focus on such areas as art, poetry and craft contests. Access to both Student clubs and contests is voluntary and is open to all Program Students.

6. High School Services: As requested and as available, K12 may offer counseling tools for high school Students.

D. Special Education Students: K12 may assist the School with the provision of services for Special Education Students. K12's assistance as provided may include, approving enrollments in accordance with related policies and Applicable Law, providing general education curriculum, recruiting teachers and providing procurement support for related service providers. Where a School-based K12 employee is the representative attending meetings related to Special Education Students, including IEP meetings, at a minimum K12 may complete an annual IDEA audit. All policies defining the services and support to Special Education Students must be approved by the School's Board.

E. ELL and 504 Students: K12 may assist with its obligations by providing translation assistance during enrollment for ELL Students (and their guardians), recruiting ELL-licensed teachers, providing general education curriculum and providing procurement support for services to ELL and 504 Students consistent with this Agreement. K12 may conduct an annual review of the School's 504 and ELL services. All policies defining the services and support to ELL Students and for the 504 population of Students must be approved by the School's Board.

F. Facility Management. As may be applicable, help identify location of the District's initial or supplemental office Facility(ies) for the Program. Together with District's attorney and designees, assist with negotiating and approving leases, leasehold improvements and lease amendments in accordance with provided leases and related documents require District approval.

G. Business Administration. Administration of business aspects and day-to-day administration of Program operations to include the following:

Exhibit A

1. Consultation, and services as liaison for the District, and other governmental offices and agencies.
2. Consultation and recommendations regarding special programs, processes, support services and reimbursements.
3. Consistent with other provisions of the Agreement, provide Program administrative staff as appropriate.
4. Work with District's counsel, if any, on legal matters affecting the Program, provided, however, K12 shall not provide legal advice and any such collaboration shall not be deemed as K12 providing legal advice.
5. Preparation of forms, operations manuals or guides, and policies and procedures as necessary or required for the District's review and approval.
6. Consultation with respect to, and monitoring and oversight of, State reporting systems.
7. Assist District in identifying and applying for grants and other funding opportunities.
8. Arrange contracts with school districts, education services centers, and professional service providers for special education and testing on Program's behalf.
9. Establish and implement policies and procedures to maintain proper internal controls for K12.
10. Provision of operational regulatory compliance services to assist Programs in understanding and complying with applicable regulatory and legal requirements as well as preparing for and responding to audits.
11. Obtaining forms, as required, from Students' district of residency to participate in the Program.

H. Reporting. Subject to any confidentiality obligations imposed on K12 by third parties, provide to the such other information required by the Board within a reasonable time following a written request thereof, and in all cases consistent with Applicable Law.

I. Management Assistance. Assistance with management to include assisting with and helping coordinate third-party audit(s) of the Program.

J. Maintenance of Student Records

1. K12 will maintain and keep the educational records of the Program at the Facility or elsewhere, unless prohibited by Applicable Law. The District recognizes and agrees that for purposes of the Family Educational Rights and Privacy Act and the State open records act, K12 has a legitimate educational interest for purposes of the District disclosing to K12 the Program student's educational records.
2. K12 will maintain student educational records pertaining to students enrolled in the Program in the manner required by Applicable Law, and retain such records on behalf of District until this Agreement is terminated, at which time such records will be retained by and become the sole responsibility of District.
3. Ensure accessibility of Program educational records to the District, its independent auditor and the State for completion of audits required by Applicable Law. The Parties understand that all Program-related Student educational records are the property of the District.

K. Student Discipline. Provide necessary information and cooperate with District on the handling of student disciplinary matters, including without limitation attendance and truancy matters where applicable pursuant to Applicable Law, this Agreement and District policies. K12 will recommend policy and procedures for District adoption consistent with Applicable Law and the body of this Agreement.

Exhibit A

- L. Teacher Training and Development. Develop and offer new Teacher training and professional development for Teachers consistent with what K12 offers similarly situated programs. Host Teacher professional development sessions throughout the school year for new and returning Teachers. Recommend enhancements to the Program’s Teacher Handbook for review and approval by the District.
- M. Instructional Property Assistance. Prepare and submit to the District (or its designees) proposed policies and procedures regarding the responsible use of equipment and other instructional property. Arrange for the distribution and re-shipment or return (as necessary) of equipment for families, administrators, and teachers, to the extent provided by or on behalf of K12 as agreed in writing.
- N. Grants and Donations. On behalf of the District, K12 may solicit and receive grants and donations for the Program from public funds through competitive or non-competitive processes, and private sources consistent with the Program’s objectives; provided, however, that any solicitation of such grants and donations by K12 will be subject to the approval of the Program and such fund shall be used as designated.
- O. Additional Administrative Services. Any other services as agreed to in writing by the Parties from time to time.
- III. Technology Services. During the Term, K12 and its Affiliates will provide or cause to be provided to the District for the Program the technology services (the “**Technology Services**”) described below. Notwithstanding the forgoing, none of the Technology Services shall be provided for the purpose of benefiting the Program or any personnel or students for any school year beyond the expiration or earlier termination of this Agreement.
- A. 24-7 monitoring of production services, i.e., SAMS and the on-line learning management system;
 - B. Monitor and analyze system data to fix production issues as they may arise;
 - C. Generate reports on pupil academic performance, attendance and progress;
 - D. Seek and secure competitive pricing and centralized purchase discounts for computers, monitors, printers, software and other peripherals for the Program;
 - E. Train Program staff, as deemed appropriate and necessary, on technology systems;
 - F. Develop, design, publish, and maintain the Program’s interactive website;
 - G. Install and maintain the Program’s computer network;
 - H. Generate reports;
 - I. Develop community tools on the Program’s website and K12 platform (including password protected threaded discussion and message boards, moderation functionality, directories, etc.);
 - J. Determine hardware configurations (including software and operating systems) for the Program’s technology needs;
 - K. Provide onsite and telephone support for the Program administration in troubleshooting system errors, and telephone support for students;
 - L. Propose for the Program adoption policies and procedures regarding the responsible use of computer equipment and other Program property;
 - M. Support teachers and Program care associates in answering technology-related questions from students, parents, teachers, and administrators;
 - N. Install software to generate master image of computer configurations for teachers, administrators, and students in order to standardize the user experience and lower costs and turn-around time for implementation and troubleshooting;
 - O. Ensure electronic security of student records (through the use of encryption, firewalls, etc.);

Exhibit A

- P. Provide a Web-filtering device to ensure that students do not have access to inappropriate materials on the Internet;
- Q. Prepare for, supervise, and implement system roll-overs at the end of the academic year;
- R. Design and implement inventory management systems with the Program's distribution and hardware vendors, as well as reclamation programs, as needed;
- S. Provide online enrollment, registration and placement services;
- T. Provide Program email accounts for Program employees;
- U. Provide Program care and technology support services on the learning management system, computer and software issues;
- V. Oversee changes to the Program website to maintain quality assurance and make sure that there are not "version control" problems;
- W. Along with our K12 Marketing department, coordinate security, creative, and content issues pertaining to the website;
- X. Coordinate Web hosting contracts and relationships with vendors across the State as needed;
- Y. Handle troubleshooting issues for the Program's website and send issues to the appropriate person or district for resolution; and
- Z. Additional Technology Services in K12's discretion and any other services as agreed to in writing by the Parties from time to time.

Exhibit A

EXHIBIT B

K12 Proprietary Marks

Trademark Quality Control – Restricted Content: The Company shall not use the K12 Proprietary Marks in connection with harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, hateful or otherwise offensive material, or in any manner that would be likely to tarnish or adversely impact the reputation, quality, value and goodwill associated with K12 and/or the K12 Proprietary Marks.



POWERED BY K12



Personalized Education. Limitless Learning

Exhibit A

EXHIBIT C

Form Notice of Intent

As set forth in Section 20, this form notice (or a substantially similar version) is required if a Party desires to invoke its rights under Section 7.2(a).

* * * * *

Date: _____

To: *[Party's addressee in Section 20]*

Re: Educational Products and Services Agreement (“Agreement”) - Notice of Intent

To Whom It May Concern:

The _____ [Board of Education (“Board”) of the Gallup-McKinley School District – *or* – K12 Virtual Schools LLC (“K12”)] is providing this notice in accordance with Section 20 of the Agreement between the Board and K12. This notice is provided solely to preserve our right to discuss renewal terms in consideration of a contract extension, before the Agreement automatically renews as set forth in Section 7.2(a).

Until any amendment to the Agreement is fully executed by the Parties’ authorized signatories, the terms of the Agreement shall remain unchanged. If we desire to memorialize proposed edits to the Agreement, if any, we will contact your authorized designee within two (2) weeks from the date of this notice. At such time we agree to undertake good faith discussions to renew the Agreement under similar or substantially similar terms to avoid disruption to the Program’s staff, families and Teachers.

Sincerely,

[Applicable Party's Representative]

cc: *[As applicable]*

Exhibit A

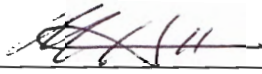
25.8. No Third-Party Rights. This Agreement is made for the sole benefit of the District and K12 and their respective successors and permitted assigns. Except as set forth in Sections 14 and 16 and except for each Affiliate of K12, which shall be a third party beneficiary of this Agreement, nothing in this Agreement will create or be deemed to create a relationship between the Parties to this Agreement, or any of them, and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

25.9. Survival of Termination. All representations, warranties, and indemnities expressly made in this Agreement will survive termination of this Agreement.

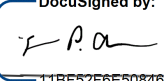
25.10. Headings and Captions. The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the date set forth below.

**For and on behalf of
GALLUP-MCKINLEY SCHOOL DISTRICT**

Signed: 
Name: Mike Hatt
Position: Superintendent
Date: 6-15-20

**For and on behalf of
K12 VIRTUAL SCHOOLS LLC**

Signed: 
DocuSigned by:
11BF52F6E508463...
Name: Kevin Chavous
Position: President, Academics, Policy & Schools
Date: 6/16/2020



Mike Hyatt, Superintendent
mhyatt@gmcs.org

Deputy Superintendent
Jvanna Hanks II
Assistant Superintendent
Wade Bell
K'Dawn Montano

April 1, 2025

VIA ELECTRONIC MAIL
AND BY U.S. MAIL

kchavous@k12.com

K12 Virtual Schools LLC
% Kevin P. Chavous
President of Academics, Policy and Schools
2300 Corporate Park Drive, Suite 200
Herndon, Virginia 20171

Re: TERMINATION FOR CAUSE AND NOTICE OF NONRENEWAL

Dear Mr. Chavous,

Pursuant to Paragraph 12.1 of the Educational Products and Services Agreement between the Gallup-McKinley County Schools and K12 Virtual Schools LLC (“Agreement”), the Board of Education for the Gallup-McKinley Schools is terminating the Agreement for cause. The material breaches of the terms of the Agreement are as follows:

1. K12 knew or should have known it was violating the applicable law and local policy in exceeding the required teacher-student ratio under N.M. Stat. Ann. § 22-10A-20 (2003) and the Board of Education’s Policy I-4550/IIB on the same in approximately 117 instances of exceeding allowable thresholds of K12’s teachers contrary to Paragraphs 1.2 and 3.5.1 of the Agreement;
2. K12 knew or should have known it was violating the applicable law and local policy in not having appropriately licensed teachers under N.M. Stat. Ann. § 22-10A-6 through § 22-10A-6 (2003) and the Board of Education’s Policy G-3550 GCGC as there were 47 instances in which appropriate licensure was not documented or did not align with the assigned role of K12’s teachers contrary to Paragraphs 1.2 and 3.5.1 of the Agreement;
3. The lack of sufficient staffing has resulted in the reduction of academic progress for students and of student services done intentionally by K12 to increase K12’s profits and lower its costs contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement;
4. K12 knew or should have known it was violating the applicable law and local policy in exceeding the required teacher-student ratio under N.M. Stat. Ann. § 22-8-21 (1997)

Exhibit B

- and N.M. Stat. Ann. § 22-10A-20 (2003) and Board of Education's Policy I-4550/IIB on the same for approximately 117 instances of exceeding allowable thresholds of K12's teachers contrary to Paragraphs 1.2; 3.5.1 and 3.5.6 of the Agreement;
5. The lack of sufficient staffing has resulted in the reduction of academic progress for students in the program done intentionally by K12 to increase K12's profits and lower its costs contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement;
 6. K12's unlawful reductions in staffing has adversely effected the graduation rate for the Destinations Career Academy in potential violation of N.M. Stat. Ann. § 22-13-1.1 (2024) and demonstrating the adverse effect of K12's profiteering in reducing staff;
 7. K12 issued Hotspots that K12 knew or should have known would not work in the areas serviced by K12 in violation of Exhibit A of the Agreement on the required Curriculum and Services contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement;
 8. K12 failed to achieve standardized testing rate of 95% as required by the Public Education Department and the applicable law contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement; and
 9. K12 failed to timely conduct standardized testing and failed to submit accurate reporting of testing contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement.

The appropriate remedy pursuant to Paragraph 12.1 for compliance with the Agreement is the immediate staffing by K12 to comply with law and policy and for students who have been adversely effected by K12's staffing shortages, K12 must provide at its own costs compensatory academic services to students subject to K12's illegal teacher-student ratio classes. The School District shall determine the specific services and the extent of these compensatory services to be provided for students K through current seniors outside of their current requirements for instruction during the school day. For those former students who have graduated or failed to graduate, K12 shall provide at its expense compensatory services, including vocational services and precollege services to assist these individuals used for K12's profiteering.

The termination of the Agreement is effective on June 30, 2025. In addition, pursuant to Paragraph 7.2, this letter gives Notice by the Board of Education that the Agreement will not be renewed.


Mike Hyatt



GALLUP-McKINLEY
COUNTY SCHOOLS

Gallup-McKinley County Schools
Procurement Office
P.O. Box 1318
Gallup, New Mexico 87305-1318

REQUEST FOR PROPOSAL

**Virtual (Online) School, Grades K-12
Multi-Year Agreement**

No. RFP-2025-15KC

Commodity Code(s): 92420, 92474, 92478, 92488

GMCS Website: www.gmcs.org

Mailing Address:	Physical Address:	Contact:
P.O. Box 1318 Gallup, NM 87305	640 S. Boardman Dr. Gallup, NM 87301	Katherine Crisler Procurement Director (505) 721-1088 kcrisler@gmcs.org

Notes:

Closing Date: April 28, 2025

F.O.B. Point: DESTINATION

Closing Time: 2:00 PM (Local-MT)

Terms: Net 30 unless otherwise stated

Issue Date: April 4, 2025

[MS Teams Online Meeting](#)

**Pre-Proposal Conference April 18, 2025,
2:00 PM (Local-MT)**

**VIRTUAL SCHOOL
RFP-2025-15KC**

SPECIAL CONDITIONS

1. **Term:** The intent of this solicitation is to provide services for two years to commence Date of Award and end two calendar years following. The District reserves the right to renew this agreement annually for a period of one year following the initial two year period.
 - A. Total term of this contract shall be no more than ten (10) years, except in the event that a temporary extension may be needed for coverage during the competitive solicitation and/or negotiation phase of a new RFP.
2. **Work To Be Done:** The work to be performed under this contract and in accordance with these specifications consists of furnishing curriculum, testing, equipment, labor and materials for a Virtual School.
3. **Appropriations:** The terms of this Agreement are contingent upon sufficient monies being made available by GMCS for the performance of this Agreement. If sufficient appropriations and authorizations are not made by GMCS, this Agreement shall terminate upon written notice being given by GMCS to the Contractor. The school district's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
4. **Cancellation for Convenience:** GMCS reserves the right to cancel any contract resulting from this request for convenience by giving thirty (30) days written notice to the vendor. The District shall be liable to the vendor for any services provided or material ordered and accepted prior to termination.

**VIRTUAL SCHOOL
RFP-2025-15KC**

SCOPE OF WORK

I. INTRODUCTION

- A. Gallup-McKinley County Schools (GMCS) is soliciting proposals to provide an online Virtual Public School. The intent is to provide a rigorous on-line Kindergarten through 12th Grade (K-12) learning environment focused on student achievement as an option for students in New Mexico who might otherwise not be able to attend the traditional school environment.
- B. The Gallup-McKinley County School District covers an area of approximately 4,957 square miles (see attached map, Appendix "C"), and is one of the 89 public school districts in New Mexico. The District currently has 32 schools: 9 high schools, including 1 alternative high school; 7 middle schools, and 16 elementary schools. It also has three programs including an early college high school, career technical program and online virtual program. Enrollment for the District is approximately 12,587 students (K-12) in all schools and programs.
- C. The current GMCS virtual school has over 3,800 students enrolled. No minimum or maximum enrollment numbers are guaranteed.
- D. Offeror is not required to meet current enrollment levels and is cautioned against enrolling more students than the Offeror has the capacity and capability to fully support with quality staff. The successful Contractor must be fully committed to students and educational outcomes.
- E. Questions/Clarifications
 - 1. All questions concerning this Request for Proposals (RFP) shall be submitted to the Procurement Manager, through the GMCS online eBidding platform utilizing the public question and answer forum.
 - 2. Only written questions submitted via the GMCS Bonfire portal will be accepted. Responses to written questions received prior to a Question and Answer deadline will be publicly posted on the GMCS Bonfire portal.
 - 3. Offerors are hereby advised and cautioned that all communication and information shall be obtained ONLY through the Procurement Manager through the Bonfire platform. Communication with other District employees, officials, or Board Members in connection with this solicitation are not to be relied upon and may result in Offeror's proposal being disqualified.

II. SCOPE OF SERVICES

- A. Scope of Work
 - 1. Contractor to provide an academically-focused educational option for New Mexico

**VIRTUAL SCHOOL
RFP-2025-15KC**

students who are considered able to successfully participate in a virtual school environment to attain their High School Diploma.

2. Curriculum to comply with the standards as issued by the New Mexico Public Education Department (PED) standards. Current standard is "Common Core.
3. The intent is for a student to be able to "attend" classes with synchronous instruction maximized.
4. The District intends for the Virtual School to be 100% virtual to begin the contract.
 - a. The District and Contractor may mutually agree to provide the learning environment through a "blend" of live and virtual.
5. **The preferred "start" date for the Virtual School to begin is Fall of 2025.**

B. CONTRACTOR RESPONSIBILITIES The Contractor shall be responsible for the following, but not limited to:

1. On-Line Curriculum
2. Additional curricular offerings to include: Career Technical Education (CTE) | Project Based Learning (PBL) / Dual Credit/Credit Recovery Options/Additional Ala Carte Class Options
3. Recruiting and hiring qualified teachers
 - a. The Contractor shall remove a teacher immediately upon request of the District and provide a replacement for the class to ensure no interruption of services.
4. Providing professional development for teachers
5. Curriculum materials for instruction.
6. Providing students with functioning computer equipment including a means for internet access complete with CIPA-compliant web content filter.
7. Providing full services for Special Education students as determined by Individual Education Plan.
8. Complying with Student Assistance Team requirements
9. Complying with all applicable laws, statutes, and regulations (Federal, State, Local and Tribal) including but not limited to: class load limits, staff waiver requirements, parental reporting requirements, collection of required student data, and daily attendance information.

**VIRTUAL SCHOOL
RFP-2025-15KC**

10. Providing an educationally-focused program
 11. Demonstrating integrity in delivering program requirements and administration
 12. Recruiting students
 13. Providing counseling services (Academic) for students
 14. Providing technical support for students.
 15. NMPED testing in a proctored environment consistent with NMPED test administration guidelines.
- C. DISTRICT RESPONSIBILITIES The District will be responsible for the following:
1. Recruiting and hiring a Principal for the Virtual School.
 2. Developing an application process for current District students or students in the GMCS attendance areas to apply in order to attend Virtual School.
 3. NM PED Student Reporting requirements.
- D. REVIEW
1. The District and Successful Contractor shall mutually agree upon a review schedule (monthly, quarterly, semi-annually, or annually). The review is intended to provide both parties the opportunity to ensure the delivery of the instruction is adequate, student progress is sufficient, and discuss/negotiate potential changes to the existing contract.

TECHNICAL RESPONSE

III. GENERAL REQUIREMENTS:

- A. Describe the virtual school's governance structure and the capacity.
- B. Describe the virtual school's capacity to implement the proposal and provide high quality instruction.
- C. Describe the virtual school's proposed school year.
- D. Provide a narrative staffing plan and include a draft staffing chart.
- E. Describe the virtual school's plan for recruitment of students outside the District's attendance area. Include the procedure for application components including proof of guardianship and residency, and releases for general and special education records. Include how this data would be communicated with the District.
- F. Describe in detail the process and forms that the virtual school will use to notify the District

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of the number and grade level of students attending the virtual school or who have transferred to another school (GMCS or other district).

- G. Describe where the students will access the virtual school's courses, including whether it is in the home or at a location provided and overseen by the Virtual School.
- H. Describe how the virtual school will provide adequate initial and ongoing training and support for students to enable them to successfully participate in online learning. Include any orientation course for students new to online learning, how their ability to learn will be assessed, and what remedial help is available to ensure students are going to be successful learners.
- I. Describe how the virtual school will establish personalized learning plans that are standards based for every student. Describe how the learning plan will be developed for new students and available to receiving districts for students who transfer out of the virtual school
- J. Describe how virtual school's strategies for supporting all students at different ages and grade levels so that they complete courses and achieve their academic and career goals. Include a description of the settings in which these support services will be provided and qualifications of individuals who will provide the support services.
- K. In the absence of time and learning requirements, describe how the virtual school will ensure that all enrolled students will be fully engaged in teaching and learning and will have opportunities to thrive in the virtual learning environment.
- L. Describe how the virtual school will monitor student progress in order to identify areas of difficulty and assist students who need additional support.
- M. Identify how the virtual school will administer state required assessment tests.
- N. Describe how communication takes place with students and parents (or guardians), how it is monitored, and how do you address any concerns if they arise.
- O. Describe how the virtual school will involve parents and guardians as partners in the education of students, include goals for parental and family engagement.
- P. Identify proposed partner entities and describe how they were vetted and selected over other potential partners.

IV. CURRICULUM

- A. Describe the curriculum and instruction resources that is intended to be utilized and how the virtual school's curriculum is aligned to the New Mexico Common Core Standards in all subject areas.
- B. All courses are under the direction of certified NM teachers. Any individual needed to provide the provision of FAEP under NM state and federal guidelines.

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- C. Provide the curriculum scope and sequence for each content area at each proposed grade level to confirm alignment with New Mexico standards.
 - D. The virtual school must provide a complete list of course offerings which include core, elective, world language, health, PE, CTE, STEM, dual credit and AP offerings. They must also include any career pathways that are available. How do these courses fulfill the NM graduation requirements?
 - E. Describe your assessment philosophy (formative, interim).
 - F. Identify any third-party curriculum or assessment vendors with whom the virtual school will contract.
 - G. The contractor shall not charge any public school for the use or replication of any part of their curriculum.
 - H. Describe how the virtual school will ensure that all students have access to necessary technology and materials.
 - I. Describe how students and staffs are scheduled, including but not limited to:
 - 1. Mobile application
 - 2. On-line portal
 - J. Describe how course requests for/by students are handled, including but not limited to:
 - 1. Student request a particular course;
 - 2. Guidance/Scheduler can use that information to build schedules;
 - 3. Automatic system can build/load based on this information.
 - K. Describe how the virtual school will capture and report on State of NM specific Career and Technical Education (CTE) data at both enrollment and program levels.
- V. TECHNOLOGY
- A. Educational courses and teaching services, including management software, learning materials, computer printers (if necessary), internet access, internet equipment and technical support services will be provided by the virtual school provider to each individual student free of charge.
 - B. Describe the provisions for cyber security and reference any regulations/processes the Virtual School will follow.
 - C. The equipment provided is to support the latest technology including but not limited to: operating system, web browsers

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- D. Describe the technical support available to students, including but not limited to types and hours.
- E. Describe how the virtual school will provide for an uptime availability of 99.9 % or better.
- F. Describe the capacity to support and store all critical student, program, and staff data for expedient retrieval and analysis. State where the student information system is NMPED compliant. Specify how the school will meet all NMPED reporting requirements. Specify what Student Information System (SIS) will be used.
- G. Describe how data will be shared with the District.
 - 1. What methods are used to automate data transfers, and how frequently do these updates occur?
 - 2. How do you ensure data alignment and accuracy between your system and a district SIS throughout the school year?

VI. SPECIAL EDUCATION

- A. Describe the standards, processes and procedures that the proposed school will employ to identify, assess, teach and support students who need customized learning plans to include, but not limited to: English language learners, 504, or students in need of special education services.
- B. Describe how services are provided for students on IEP's, English Language Learners, 504 customized accommodations for student learning.
- C. Describe how the virtual school will capture and report on State of NM required special education student data elements.

VII. FINANCES

- A. Summarize the entity's experience and a description of where and how it has implemented its services. Provide evidence that the entity has demonstrated positive academic results and responsible fiscal management.
- B. Explain the structure and process for managing the virtual school's finances. Who is responsible and what are his/her qualifications?

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VIII. SEQUENCE OF EVENTS – **Schedule is subject to change.**

	Action	Responsibility	Date/Time (Local Mountain Time)
1.	Issue RFP	District	4/4/2025
2.	Pre-Proposal Conference (Optional) Microsoft TEAMS Meeting Meeting ID: 265 317 928 474 Passcode: cV3xK3QW	District	4/18/2025 at 2:00 PM
3.	Deadline to Submit Written Questions	Potential Offerors	04/21/2025
4.	Response(s) to written questions, via email	Procurement Manager	04/23/2025
	Deadline to Submit Proposals	Offerors	04/28/2025 at 2:00pm
	Proposal Evaluation	Evaluation Committee	4/28/2025 – 4/30/2025
	Interviews (if held)	Evaluation Committee	TBD
	Recommendation for Award to Governing Body	Procurement Manager	05/12/2025
	Contract Negotiations	District	TBD
	Notice of Award	District	TBD
	Protest Deadline	Offerors	TBD

IX. LIABILITY INSURANCE

- A. Contractor shall obtain and maintain throughout the life of this contract, insurance at contractor's expense. Contractor shall name GMCS as additional insured (Certificate Holder) in regard to General Liability coverage and include an endorsement by the insurer that the policy may not be cancelled nor allowed to lapse without ten (10) days' notice thereof first being given to GMCS. All policies shall be endorsed to provide GMCS with ten (10) days' notice prior to any cancellation or lapse in coverage.
- B. Worker's Compensation: The Contractor shall maintain adequate Workman's Compensation Insurance with agencies licensed to do business in the State of New Mexico, for all employees.

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C. Other required coverage: The Contractor shall maintain Public Liability and Property Damage Insurance as shall protect the Contractor and the school district for all claims for damages, personal injury, wrongful death as well as claims for property damages which may arise from work covered under this contract, as such work be performed by anyone directly or indirectly employed the Contractor.

D. Coverage Required: The kinds and amounts of insurance required are as follows:

1. Commercial General Liability Insurance with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$2,000,000	Policy Aggregate
\$1,000,000	Products liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal (Damage Rented Premises)
\$ 5,000	Medical Payments

Said Policy of insurance must include coverage for contractual liability and all operations performed for the school district by the Contractor.

2. The District shall accept coverage in excess of those limits stated above if successful Contractor carries larger limits.

E. Increased Limits: During the life of the Contract (agreement) the school district may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

F. Certificates, renewals, and notice of cancellation shall be sent to:

Gallup-McKinley County Schools, Procurement & Business Services Director
P.O. Box 1318, Gallup, New Mexico 87305-1318

X. RESPONSE FORMAT AND ORGANIZATION

A. Number of Responses – Only one (1) proposal may be submitted by each individual entity in response to this solicitation.

B. Required Forms or Input Information – Offerors shall upload forms in Portable Document File (pdf) format and input information which are stated to be required on the GMCS Bonfire eBidding portal.

C. Optional Forms or Input Information – Offerors may upload forms in Portable Document File (pdf) format or input information which are optional, but applicable to the Offeror.

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- D. Proposal Format – Proposals must be printed and **limited to FIFTY (50)** of text and/or graphic material. If there is any question as to format requirements they shall be directed to the Procurement Manager for clarification, prior to submittal of documents.
1. Cost Proposal - only **one (1) cost proposal** is to be submitted. This must be uploaded separately from the Technical Proposal.
 - a. **Offerors are cautioned** that **disclosing cost information in other parts of their proposal, other than where requested** to be input/submitted, may result in **declaring the proposal as Non-Responsive, and will not be evaluated or considered for award.**
 2. Exclusions from Page Limitation—the Cost Proposal and required or optional forms are excluded from the maximum page count.
 3. Non-Conforming Proposal – Any proposal deemed **non-conforming** by the Procurement Manager and/or Evaluation Committee Chairperson in regard to format will be considered non-responsive. Offerors shall contact the Procurement Manager to clarify questions concerning format prior to submission.

XI. EVALUATION

- A. Process. The purpose of the evaluation of proposals is to assess the relative merits of the proposals submitted and to make an award to the responsible Offeror(s) whose proposal(s) is/are determined to be the most advantageous to the District, taking into consideration the evaluation factors as set forth below.

1. **Point Calculations** - All calculations of point standings, including any addition or deduction of points to Offeror submittals shall occur at a meeting of the Evaluation Committee, with all members in attendance. The Committee's points for each Offeror shall be totaled and averaged, and the average translated into a rank score. The highest rank(ed) Offerors shall be considered for interviews in-person or via an online meeting platform. **The District reserves the right to award a contract without holding interviews.**

B. EVALUATION CRITERIA

1. **Experience/Qualifications: Corporate & Key Personnel**
 - a. Identify the specific individual(s) who will be responsible for work performed as presented in the technical proposal. Provide information that documents key personnel's qualifications, background, experience, and availability to perform all aspects of the work.
 - b. Provide evidence and discussion of prior, proven experience as a provider for the scope of work and technical requirements.

30 Points

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2. Technical Approach/Methodology: Extent to which the goods/services offered meet the district's requirements and preferences.
- a. Provide a response to all required services and technical response sections with a description of the approach and variety of methods used to meet District needs. **See Sections on pages 6-8**

35 Points

3. Other Value-Added Services: Offerors are encouraged to thoroughly describe any other value-added services and resources they feel may contribute to the success of the program. These should be identified and listed separate from the response to the Technical Approach.

10 Points

4. Cost Proposal: Costs proposed shall be in direct relationship to the services offered in relation to the Scope of Work. **This must be submitted SEPARATE from the Technical Proposal.** The following formula will be used to evaluate

25 Points

$$\text{Offeror's Points} = \frac{\text{Lowest Responsive Offer Cost}}{\text{This Offeror's Cost}} \times \text{Maximum Points}$$

The Lowest Responsive Offeror's Cost will be divided by the Offeror's cost, and then multiplied by the number of available points in the evaluation process to arrive at the final ranking of Offerors.

1. Interview/Product Demonstration: If the Evaluation Committee determines that there are sufficient responsive, responsible Offerors submitted for a geographical area, notice will be given to those Offerors to participate in the Interview/Demonstration Process. A portion of the interview will include time for a live demonstration of the proposed solution.

100 Points

GRAND TOTAL POTENTIAL OF 200 POINTS

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C. Cost Proposal

1. The Cost Proposal shall provide a clear explanation of how prices will be charged for in-scope services.
 - a. For comparison purposes, the price proposal **MUST** total any proposed costs for deliverables in a total price per student.
 - b. If rates will differ per grade levels, this must be clearly stated.
 - c. For comparison purposes, the total price per student shall assume student is a general education student and does not qualify for Special Education or intervention services.
2. Upload (pdf format) a complete schedule of fees that itemize all proposed costs for deliverables in direct relation to the Technical Approach and Scope of Work.
Price per student shall be clearly identified on this Schedule of Fees.

D. Optional Costs and Alternate Pricing Proposals

1. Optional (Add-on) and Alternate pricing structures may be submitted for consideration, but **CLEARLY LABELED AS ALTERNATE PRICE PROPOSAL**. These Optional or Alternate proposals shall not be used for evaluation and scoring purposes.

E. Final Pricing will be negotiated and included in the Final Contract.



Katherine Crisler, Director of
Procurement and Business Services

Senior Procurement Buyer
Hugo Cano

Buyers
Rebecca Bertinetti
Gregory Hudson
Breana Kesner

REQUEST FOR PROPOSALS

GENERAL CONDITIONS

INSTRUCTIONS TO OFFERORS: The purchase of any and all supplies, equipment, or services by the Gallup-McKinley County Schools (GMCS), pursuant to any advertisement or request for proposals is subject to the following terms and conditions:

1. **Sealed Proposals:** All proposals must be submitted via the GMCS Bonfire eBidding portal prior to the time specified as the “closing” of the solicitation on the portals and in the Advertisement for Proposals. All proposals must be submitted as instructed on the portal. All proposals must be signed by a responsible and authorized person for the bidding firm; failure to do so may result in disqualification of their respective proposal. **NOTE: FAX TRANSMITTAL, ELECTRONIC MAIL (EMAIL) TRANSMITTAL, AND HARDCOPY PROPOSALS WILL NOT BE ACCEPTED.** The portal will not allow for submission of proposals after the “closing” date and time.
2. **Modifications or Withdrawal:** Proposals may be modified or withdrawn prior to the “closing” date and time for the solicitation, by the Offeror on the GMCS Bonfire portal. Withdrawal of a proposal after the closing date and time is governed by applicable procurement regulations.
3. **Proposal Closing and Unsealing of Contents:** The “unsealing” of the proposals shall be conducted in private to maintain the confidentiality of the contents of all proposals. The District may release ONLY the names of the Vendors submitting offers at the time of the unsealing.
4. **Note:** These documents constitute a "Request for Proposal" or RFP. It is a request for an offer. As such, it allows alternate offers or proposals to be considered and the terms and conditions may be subject to negotiations to reach best and final offers. All information requested for submittal should be included with the offer, and exceptions or alternates clearly noted.
5. **Proposal Offer Firm:** Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

6. **Amendments:** If any questions or responses require revision to the solicitation as originally published, such revisions will be by formal Amendment only. If the solicitation includes a contact person for technical information, Offerors are cautioned that any oral or written representations made by this or any person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written Amendment to this solicitation issued by the Procurement Office. For a determination as to whether any representation made requires that an amendment be issued, contact the Procurement Office.
7. **Disclosure of Proposal Contents:**
- a. Proposals will be kept confidential until negotiations and the award are completed by the District. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential offeror has stamped or imprinted “proprietary” or “confidential” subject to the following requirements:
 - b. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
 - c. Confidential data is restricted to:
 - i. Confidential financial information concerning the Offeror’s organization;
 - ii. Data that qualifies as trade secret in accordance with the Uniform Trade Act, §57-3A-1 to 57-3A-7, NMSA 1978
 - iii. PLEASE NOTE: The price of products offered or cost of services proposed **shall not be designated** as proprietary or confidential information.
 - d. If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the District shall examine the Offeror’s request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.
8. **Competency of Offeror:** Proposals will be considered only from firms which are regularly engaged in providing the type of materials or service described in the solicitation documents, and who can provide evidence that they have established a satisfactory record of performance to insure they can execute the requirements as stated herein. Any determination as to competency shall be made by appropriate GMCS staff.

9. **Offeror Qualifications:** The Evaluation Committee may, via the Procurement Manager, make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.
10. **Prime Contractor Responsibility:** Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the District which may derive from this RFP. The District entering into a contractual agreement with a vendor will make payments to only the prime contractor.
11. **Subcontractors/Consent:** Use of subcontractors **shall** be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the District awarding any resultant contract before any subcontractor is used during the term of this agreement.
12. **Notice to Offerors:** Unnecessarily elaborate responses beyond that sufficient to present a complete and effective response to the solicitation are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Unless specifically requested in the solicitation, elaborate artwork, corporate brochures, lengthy narratives, expensive paper, specialized binding, and other extraneous presentation materials are neither necessary nor desired.
13. **Evaluation of Proposals:** Proposals shall be evaluated based on demonstrated competence and qualification for the type of service required and based on the criteria set forth in the Request For Proposals (RFP). For purposes of conducting discussions, proposals may initially be classified as:
 - a. Acceptable
 - b. Potentially Acceptable, that is reasonably likely of being made acceptable or;
 - c. Unacceptable
14. **No Obligation:** This RFP in no manner obligates the District to eventual rental, lease, purchase, etc. of any equipment, software, or services as offered until a valid written contract is awarded and approved by appropriate authorities.
15. **Termination:** This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the District determines such action to be in the best interest of the District.
16. **Discussions with Individual Offerors:** The Board is under no obligation to conduct discussions with any or all Offerors. The Board specifically reserves the right to award the contract with no discussions with Offerors and based only on the written proposals received by the due date and time. Discussions may be conducted with any or all responsible Offerors who submit proposals found to be reasonably likely to be

selected for award. Offerors submitting proposals may be afforded an opportunity for discussion and revision after submission and prior to award for the purpose of obtaining best and final offers. After obtaining best and final offers, the award shall be made to the responsible Offeror(s) whose proposals are most advantageous to Gallup-McKinley County Schools.

17. **Purpose of Discussions:** Discussions may be held to:
 - a. Promote understanding of District's requirement(s) and the Offeror's proposal.
 - b. Obtaining best and final offers
 - c. Facilitate arrival at a contract that will be most advantageous to the Board taking into consideration the evaluation factors set forth in the Request for Proposals.

18. **Conduct of Discussions:** If the Board exercises its option to conduct discussions, the procurement officer will establish procedures and schedules for conducting these discussions. If during discussions there is a need to any substantial clarification of or change in the Request for Proposals, the request shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the Offeror.

19. **Negotiations:** The Board's designee shall negotiate, if needed, a contract with the Highest Qualified Offeror at compensation determined in writing to be fair and reasonable, taking into account the estimated value of the services and the scope, complexity and nature of the services. Should the designee be unable to negotiate a satisfactory contract with the Offerors considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be terminated. Negotiations shall be undertaken with the second most qualified business. This process shall continue until a satisfactory contract is negotiated with a qualified business or the procurement process is terminated and a new Request for Proposals is initiated.

20. **Taxes:** The proposal total shall exclude all applicable taxes. GMCS will pay any taxes due on the contract based upon billing submitted by the Contractor, at the applicable tax rate. Taxes shall be shown as a separate amount on any billing or request for payment.

21. **Payment Terms:** Payment for tangible goods or services shall be in accordance with §13-1-158, NMSA 1978 as amended. Payment will be issued for undisputed invoices after goods have been received or services have been rendered, thirty (30) days after receipt of goods or rendering of services.

22. **Mandatory Requirements:** Mandatory requirements may be waived by the Board if all of the otherwise responsive Offeror's failed to comply with the same mandatory requirement and the failure to do so does not otherwise materially affect the procurement. The Board shall have the right to request subsequent information from the otherwise responsive Offerors.

23. **Award:** The award, if made, shall be made to the responsible and responsive Offeror or Offerors whose proposal is most advantageous to GMCS, taking into consideration the evaluation factors set forth in the Request For Proposals.
24. **Contract Terms and Conditions:** The contract resulting from this RFP will follow the format specified by GMCS and contain the terms and conditions set forth herein. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into the contract. Should an Offeror object to any of the Board's terms and conditions, that Offer must propose specific alternative language that would be acceptable to the Board. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. **General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Board and will result in disqualification of the Offeror's proposal.**
25. **Offeror's Terms and Conditions:** Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the District. The Evaluation Committee or Procurement Manager may, in its sole discretion, evaluate or consider any additional terms and conditions submitted with an Offeror's response. This applies to any language appearing in or attached to the document as part of the Offeror's response. **By execution and delivery of this Request for Proposals and response(s), the Offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect unless expressly accepted by the District.**
26. **Contract Deviations:** Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the District and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.
27. **Incurring Cost:** Any cost incurred by the Offeror in preparation, transmittal, cancellation, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.
28. **Right to Protest:** Any bidder, offeror or contractor who is aggrieved in connection with a procurement may protest to the Chief Procurement Officer (CPO) for the District. The protest shall be submitted in writing within 15 calendar days after the facts of the occurrences giving rise thereto §13-1-172, NMSA 1978 as amended.
29. **Protest Bond and Filing of Protest:**
 - a. A Protest Bond in the amount of **Eight Hundred (\$800.00) Dollars** from a surety company authorized to do business in this state, or in the form of a cashier's check made payable to Gallup McKinley County Schools, or cash shall be included with the timely protest to cover the District's administrative costs incurred to administer the protest. In the event that the protest is upheld the Protest bond shall be returned to the protesting bidder. If the protest is disallowed, then the protesting bidder will forfeit the bond to the District.

- b. Protest must be written: Protests must be in writing and addressed to the Chief Procurement Officer.
 - c. Contents: The protest shall:
 - i. include the name and address of the protestant;
 - ii. include the solicitation number;
 - iii. contain a statement of the grounds for protest;
 - iv. include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; and
 - v. specify the ruling requested from the Chief Procurement Officer.
 - d. Pleadings: No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.
 - e. Time limit: Protests shall be submitted within 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence. Posting on the District's website or eBidding portal (Bonfire) is considered public notice in this regard as well.
30. **Contract Renewal:** Except when either party shall provide written notice of termination or that the contract shall expire on the anniversary date, multi-term contracts shall **automatically renew** for an additional term, up to the maximum number of terms stated in any Special Terms and Conditions.
31. **Month to Month Continuation:** After completion of the initial contract term, an agreement may be continued on a month-to-month basis, upon mutual consent of both parties. This agreement may be extended after all renewal terms have expired for a duration, not to exceed six (6) calendar months, for the District to competitively solicit and award same services.
32. **Cancellation for Convenience:** GMCS reserves the right to cancel any contract resulting from this request for convenience by giving thirty (30) days written notice to the vendor. The District shall be liable to the vendor for any services provided or material ordered and accepted prior to termination.
33. **Cancellation for Cause:** If the vendor fails to fulfill any obligation resulting from this contract in a timely and responsive manner, or if the vendor violates any of the terms of this contract, GMCS shall have the right to cancel the contract by giving written notice of cancellation to the vendor. Cancellation of contracts in excess of \$3,000.00 on an annual basis, may be cause for debarment of a person or vendor to receive invitation for bids or to be awarded a contract for a period of one year.
34. **Cooperative Procurement Agreement:** This procurement is under a Cooperative Procurement Agreement which includes, Gallup-McKinley County Schools, the City of Gallup and McKinley County which may purchase the same item(s)/service(s) listed

in this bid. Further, other school districts, state agencies or others allowed by law may utilize this solicitation as provided by §13-1-129, NMSA 1978 as amended. GMCS is not responsible for any misuse or misrepresentation of these contracts by contractor or other procurement agencies.

35. **Equal Opportunity Compliance:** All firms, their employees and agents, agree to comply with the Gallup-McKinley County Schools “policy for Prohibition of Harassment, Discrimination, or Violence based on Race, Religion, Sex, Disability, or Age.” The Contractor agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.
36. **Appropriations:** The terms of this Agreement are contingent upon sufficient monies being made available by GMCS for the performance of this Agreement. If sufficient appropriations and authorizations are not made by GMCS, this Agreement shall terminate upon written notice being given by GMCS to the Contractor. The school district's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
37. **Procurement Code:** The State of New Mexico Procurement Code and Regulations shall apply.
38. **Procurement Code Violations:** The Procurement Code imposes civil and criminal penalties for its violation. In addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities, and kick-backs.
39. **Information:** If clarification is needed on any part of the solicitation documents as published, please provide question(s) in the Messages Tab, “Vendor Discussions” on the GMCS Bonfire portal. Failure to do so may result in question(s) not being addressed.
40. THE GALLUP-McKINLEY COUNTY SCHOOL BOARD OF EDUCATION RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS IN WHOLE OR IN PART, TO WAIVE TECHNICALITIES AND TO ACCEPT THE PROPOSAL IT DEEMS TO BE IN THE BEST INTEREST OF THE SCHOOL DISTRICT.

Exhibit C

**GALLUP-MCKINLEY COUNTY SCHOOLS
Virtual (Online) School, Grades K-12
Multi-Year Agreement
No. RFP-2025-15KC**


Amendment No. One (1)

THE FOLLOWING REVISIONS, ADDITIONS AND/OR CLARIFICATIONS SHALL FORM A PART OF THE CONTRACT DOCUMENTS AND EACH OFFEROR SHALL INDICATE IN THEIR PROPOSAL, THE RECEIPT OF THIS NUMBERED AMENDMENT. REVISIONS, ADDITIONS, AND/OR CLARIFICATIONS ARE AS FOLLOWS:

This Amendment consists of a total of 18 pages including this cover page. Attached are responses to questions received to date and the District's responses.

The Proposal Receiving Date and Time remains **UNCHANGED**.

DATE: April 23, 2025

BY/S/ 
Katherine Crisler, Procurement Director

1. Sample Personalized Learning Plan

Is it possible to provide a sample of the plan format currently used?

ANSWER: See attached example of the District's Next Step Plan for grades 8-12. All student services should meet the standards established in [NMAC 6 Chapter 29 Part 1](#).

2. Pertaining to Questions I and J of General Requirements

Is this section intended to address part-time/single course student situations as opposed to those enrolled full time? What is the expectation for live instruction in those scenarios?

ANSWER: No. The intent of this solicitation is for an online school for full-time students. A personalized "Next Step Plan" is required for grades 8-12. A successful Offeror will also provide a response on its plans to support academic success and exposure to career options for younger students. All student services should meet the standards established in NMAC 6 Chapter 29 Part 1.

Part-time or credit recovery options may be considered as part of the response to Value Added Services, Evaluation Criteria Item B.3 on page 12 of the RFP document.

3. SIS

What is the SIS the district uses?

ANSWER: Synergy by Edupoint

4. Special Education

What system does the district use as their Special Education/IEP creation tool?

ANSWER: Synergy Edupoint is the system of record, and all IEPs must be compliant with all District Policies, State and Federal Requirements and Laws.

5. State Funding Available

What is the estimated eligible funding per student that each full-time online student generates? If 2025-26 not available, then what was total eligible funding per student for 24-25?

ANSWER: The funding is based upon the demography of the student. Please refer to [NMSA 22-8-18 to NMSA 22-8-25.1](#). Also see the revenue calculator provided by NM PED at this link: [Student Revenue Calculator](#).

6. Committee Makeup

Can you provide the titles of the people chosen for the selection committee?

ANSWER: The committee has not been finalized at this time.

7. Student examinations

Are vendors required to also arrange for students to sit their exams?

ANSWER: Yes. See [NMAC 6 Chapter 29 Part 7](#).

8. Cost proposal

Is there any guidance (or limitations) that GMCS can provide on how to structure our cost proposal?

ANSWER: As listed in the RFP document, Offerors are required to itemize or explain the methods your company will use to invoice for all costs. This is based on your company's pricing methodology. Please refer to responses provided to questions on funding for any potential limitations.

For evaluation only, Offerors may assume there are an equal number of students in all grade levels and that all students are general education with no adjustments based on demographics that may provide additional funding.

For example: 100 Elementary students (K-5), 100 Middle School students (6-8), and 100 High School students (9-12) enrolled, for a total of 300 students.

In the space provided in Bonfire, and if you use the student numbers in this example, divide the total proposed costs by 300, to obtain an average price per student. Enter this \$ amount as a number in the space provided.

Upload an itemized cost proposal that will fully support and explain how your firm decided on the average cost per student number.

It is understood that this is a threshold number, but it must include calculations of any fixed fees or percentages your company plans to charge for administrative and overhead costs.

Final pricing will be negotiated with the awarded company as part of the final contract and shall be based on actual student enrollment and applicable demographics.

9. Certified Teachers Requirement

Is the requirement for NM Certified teachers compulsory or preferred? Can the GMCS accept teachers qualified in other states?

ANSWER: A NM teaching license is mandatory. NM PED publishes requirements including information on reciprocity and alternative licensure on their website:
<https://web.ped.nm.gov/licensure/>

10. Curriculum for core subjects

What curriculum is currently used at GMCS schools for core subjects?

ANSWER: GMCS follows the NM Instructional Scope of State Standards
<https://web.ped.nm.gov/educators/instructional-resources/new-mexico-instructional-scope-nmis/>
and GMCS is willing to provide eligible offeror our scope and sequence. We do follow the Highly Qualified Instructional Material (HQIM) guidance from New Mexico Public Education Department for curricular resources and material adoption.

11. Venue

The RFP states : "Describe where the students will access the virtual school's courses, including whether it is in the home or at a location provided and overseen by the Virtual School."

Is it acceptable for vendors to arrange with parents or GMCS to have the lessons in the home or community venue under parental supervision?

ANSWER: Yes.

12. List of courses

"The virtual school must provide a complete list of course offerings which include core, elective, world language, health, PE, CTE, STEM, dual credit and AP offerings. They must also include any career pathways that are available. How do these courses fulfill the NM graduation requirements?"

Are vendors required to provide all the courses listed above?

ANSWER: No. Your company's response will be evaluated and scored based on a variety that best meets the needs of the District. Please see Evaluation Criteria for potential point values.

Public Q&A

13. Course Titles from 24/25 School Year

Do you have a course list of what students did last year? Not the number of students but the course titles in which students earned credits or promotion to the next grade level.

ANSWER:

See attached Course List.

14. Principal Selection

Will the awarded contractor be allowed to help with selecting the principal?

ANSWER: No. GMCS will select.

15. Enrollment by Grade Level

Could you please provide the current enrollment of the online school by grade level. We do understand there is no guarantee this will move forward into next year.

ANSWER: These totals include statewide enrollment. A new provider is not required to absorb all students in the 25-26 school year.

Grade Level	Student Count
KG	196
01	172
02	221
03	211
04	193
05	227
06	291
07	381
08	501
09	515
10	462
11	442
12	287
Grand Total	4,099

16. Number of Students Enrolled

How many students are enrolled in your virtual school? How many per grade-levels (K-5, 6-8, 9-12)?

ANSWER: See response to question 15.

Public Q&A

17. Cost per pupil

Based upon the current contract with your current provider, what was the per pupil funding amount provided the vendor for the 23-24 school year? If 24-25 is available, then that is preferred.

ANSWER: The funding is complex and based upon the demography of the student. Please refer to [NMSA 22-8-18 to NMSA 22-8-25.1](#). GMCS is not able to provide an itemized per pupil amount at this time. However, the District can advise that the total calculation for SY23-24 was \$30,710,592.16. SY24-25 is determined after the year is complete.

18. School model

Would the District consider a model where the vendor provides the platform, curriculum, and instruction, but GMCS maintains responsibility for school administration (i.e., recruitment, providing equipment, finances, school operations, etc.)?

ANSWER: No. This solicitation is exclusively for a K-12 Online School that will be administered by the provider, in accordance with the published Scope of Work.

19. Statewide

Do you anticipate having students statewide participating in the virtual school, or only from Gallup-McKinley School district?

ANSWER: Enrollment is statewide.

20. Number of students

How many in-district students by grade level do you expect to serve? Statewide by grade level?

ANSWER: See response to Question 15. The District does not have a minimum enrollment expectation by grade level. However, the provider should ensure space is available for students who require alternative placement to complete a high school education.

The Successful Offeror will closely monitor enrollment per grade based on the capacity and capabilities to successfully educate all students who apply for SY25-26, and while meeting all requirements set forth in [NMAC 6 Chapter 29 Part 1](#).

21. Growth

Does the district expect the program go grow over time? If yes, by how much?

ANSWER: See responses to Questions 15, 19, and 20.

Public Q&A

22. Existing Program?

Is there already a program in place? Or will this be a new school in the district?

ANSWER: Yes. The district is currently seeking alternative online solutions that would replace the current program.

23. Existing provider

If there is an existing program already in place, who is the current provider?

ANSWER: Yes. K12 (Stride Learning).

24. Current funding

What is your average weighted per pupil funding for the existing program for 2024?

ANSWER: GMCS is unable to provide this information at this time. We invite you to use the revenue calculator located at think link which is based on 2023-2024 SY data: [Student Revenue Calculator](#).

Next Step Plan Template

STUDENT INFORMATION				(HS)
Student Name:	<input type="text"/>	High School Entry Date:	<input type="text"/>	
Student State ID Number:	<input type="text"/>	Target Graduation Date:	<input type="text"/>	
Student Email Address:	<input type="text"/>	Course of Study:	<input type="text"/>	
Birthdate	<input type="text"/>	Age	<input type="text"/>	
Check those that apply:	504 Plan <input type="checkbox"/>	IEP <input type="checkbox"/>	ELL <input type="checkbox"/>	SAT <input type="checkbox"/>
School Designee:	<input type="text"/>	Grade Level:	9 th Grade <input checked="" type="checkbox"/>	10 th Grade <input type="checkbox"/>
			11 th Grade <input type="checkbox"/>	12 th Grade <input type="checkbox"/>
		Date Initiated:	<input type="text"/>	<input type="text"/>

CAREER GOAL
Career Cluster: <input type="text"/>
Occupation: <input type="text"/>
Occupation Skill Sets: <input type="text"/>
Wage Info: <input type="text"/>
Occupation Demand: <input type="text"/>

PERSONAL GOAL
<input type="text"/>
ACADEMIC GOAL
<input type="text"/>
FAMILY AND COMMUNITY SUPPORT SYSTEMS
<input type="text"/>

POST-GRADUATION GOAL
Work Full-Time: Yes <input type="checkbox"/> No <input type="checkbox"/>
Work Part-Time: Yes <input type="checkbox"/> No <input type="checkbox"/>
Enter the Military: Yes <input type="checkbox"/> No <input type="checkbox"/>
Apprenticeship: Yes <input type="checkbox"/> No <input type="checkbox"/>
2-Year Training: Yes <input type="checkbox"/> No <input type="checkbox"/>
2-Year Degree: Yes <input type="checkbox"/> No <input type="checkbox"/>
4-Year Degree: Yes <input type="checkbox"/> No <input type="checkbox"/>
Undecided: Yes <input type="checkbox"/>
Notes: <input type="text"/>

EXTRA HELP STRATEGIES (Extra Assistance)
<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>

ACADEMIC ENHANCEMENT OPTIONS/Scholarship Requirements
<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>

EXTRA/CO-CURRICULAR ACTIVITIES
<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>

POSTSECONDARY/CAREER ENHANCEMENT OPTIONS
<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>

INDUSTRY CERTIFICATION GOAL What industry certification will be pursued <input type="text"/> Target Date for Completion: <input type="text"/>	ATTACHMENTS <input type="checkbox"/> Interest Inventory <input type="checkbox"/> Transcript <input type="checkbox"/> Degree Requirements <input type="checkbox"/> Assessment Results <input type="checkbox"/> Semester Schedule <input type="checkbox"/> Course Credit Check
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Next Step Plan Template

Certification Completed: Yes No Met Standard Yes No Transition Assessment (required for students receiving special education services) Other:

(INSERT CAREER CLUSTER LOGO) PROGRAM OF STUDY: (INSERT PATHWAY) ()

Diploma Options (Students with Disabilities):

Standard Diploma Career Readiness Ability (INSERT DEPARTMENT NAME) (INSERT SCHOOL LOGO)

	9 TH GRADE		10 TH GRADE		11 TH GRADE		12 TH GRADE	
	Course Name	Code	Course name	Code	Course Name	Code	Course Name	Code
State of New Mexico Graduation Requirements								
Mathematics								
English Language Arts								
Social Studies								
Science								
Physical Education								
Cluster/Workplace/Language								
Health Education								
School District Graduation Requirements								
Career Pathway Requirements/Elective								
General Electives								
Courses Required to be Repeated								
Mandatory Assessments								
Optional Assessments								

Next Step Plan Template

Exhibit C

Codes:	Advanced Placement = AP	Distance Learning = DL	International Baccalaureate = IB	Other:
	Dual Credit = DC	Honors Course = HC	Online Line Class = OL	Other:

()

This Postsecondary Program of Study should be completed for students in grades 11–12, and is optional for students in grades 9–10.

2 year – College or Program Name:	Degree Name /Training Program:
4 year University Name:	Degree Name:

Year 1			Year 2		
Summer	Fall	Spring	Summer	Fall	Spring
General Education Requirements for the POS/Degree/Training Plan					
Degree/Training Emphasis Courses (Major)					
Electives					

Of the courses listed above, highlight those that are transferable to any other NM public higher education institution.

State law at Section 21-1B-1 to 6 NMSA 1978, directs the New Mexico Higher Education Department to establish policies designed to allow core courses successfully completed by students at New Mexico public higher education institutions to guarantee transfer to any other New Mexico public higher education institutions. The listing of transferable courses can be found at <http://hed.state.nm.us>.

Next Step Plan Template

We have reviewed and approved this Next Step Plan (Legal Guardian may be substituted for Parent where applicable)

Parent Name: Phone Number: Email Address:

Entering 9 th Grade		Entering 10 th Grade		Entering 11 th Grade		Entering 12 th Grade	
Student Signature	Date	Student Signature	Date	Student Signature	Date	Student Signature	Date
Parent Signature	Date	Parent Signature	Date	Parent Signature	Date	Parent Signature	Date
Print Parent Name		Print Parent Name		Print Parent Name		Print Parent Name	
Parent Signature	Date	Parent Signature	Date	Parent Signature	Date	Parent Signature	Date
Print Parent Name		Print Parent Name		Print Parent Name		Print Parent Name	
School Official Signature	Date	School Official Signature	Date	School Official Signature	Date	School Official Signature	Date

Comments (Entering 9th Grade):

Comments (Entering 10th Grade):

Comments (Entering 11th Grade):

Note: Review the attached Final Next Step Plan at this time in preparation for the senior year).

Comments (Entering 12th Grade):

Select the option(s) you plan to pursue after graduation.

Note: Use additional pages to address plans of action and follow-up.

Program Options	Provide information about your selections under Program Options.
Bachelor Degree Program:	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/> If no, include a plan of action. Student Admitted Yes <input type="checkbox"/> No <input type="checkbox"/>
Name of Degree Plan ➡	
Name Public College/University ➡	
Name Private College/University ➡	
Associate Degree Program:	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/> If no, include a plan of action. Student Admitted Yes <input type="checkbox"/> No <input type="checkbox"/>
Name of Degree Plan ➡	
Name Postsecondary institution ➡	
Trade Certification Program :	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/> If no, include a plan of action. Student Admitted Yes <input type="checkbox"/> No <input type="checkbox"/>
Name of Certificate program ➡	
Name of Training Institution ➡	
Military Service:	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/> If no, include a plan of action. Student Admitted Yes <input type="checkbox"/> No <input type="checkbox"/>
Branch ➡	
Work Study/Apprenticeship Program:	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/> If no, include a plan of action. Student Admitted Yes <input type="checkbox"/> No <input type="checkbox"/>
Career Area of Focus ➡	
Employment:	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/> If no, include a plan of action. Student Hired Yes <input type="checkbox"/> No <input type="checkbox"/>
Career Area of Focus ➡	

Signatures below confirm review and approval of this Final Next Step Plan.

_____ Student Signature	_____ Date
_____ Parent Signature	_____ Date
_____ School Designee	_____ Date

Notes:

Has the student applied for financial aid/scholarships?	Yes <input type="checkbox"/> No <input type="checkbox"/> Include a plan for necessary follow-up:
Has the student applied for campus (or other) housing?	Yes <input type="checkbox"/> No <input type="checkbox"/> Include a plan for necessary follow-up:
Has the student arranged transportation?	Yes <input type="checkbox"/> No <input type="checkbox"/> Include a plan for necessary follow-up:

Exhibit C

CURRENT PROGRAM COURSE LIST

TERM_CODE	COURSE_TITLE
S1	Algebra I (A)
S2	Algebra I (B)
S1	Algebra II (A)
S2	Algebra II (B)
S1	Algebra II (B)
S2	Allied Health Occupations
S1	American History (A)
S1	American History (B)
S2	American History (B)
S2	Anatomy (B)
S1	Anatomy/Physiology I
S1	Applied Math (A)
S2	Applied Math (A)
S1	Applied Math (B)
S2	Applied Math (B)
S2	Art 7
S2	Art 8
S1	Art I
S1	Art I (A)
S2	Art I (B)
S1	Art II (A)
S1	Biology (A)
S2	Biology (B)
S2	Business Management
S1	Career Exploration: Business
S2	Career Exploration: Health Careers
S1	Career Exploration: Health Careers
S1	Career Exploration: Technology
S1	Careers
S2	Careers
S1	CB-Computer Literacy
S1	CB-Flash Animation
S2	CB-Flash Animation
S1	Chemistry (A)
S2	Chemistry (B)
S1	Chemistry (B)
S1	College/Career Readiness (A)
S2	College/Career Readiness (B)
S1	Composition I
S2	Computer Science
S1	Computer Science/Programming
S2	Computer Science/Programming
S2	CR - Algebra I (SEM 2)
S1	CR - Algebra I (SEM 2)
S2	CR - Algebra II (SEM 2)
S1	CR - Algebra II (SEM 2)
S1	CR - American History (SEM 1)
S2	CR - American History (SEM 1)
S2	CR - American History (SEM 2)

Exhibit C

CURRENT PROGRAM COURSE LIST

S1	CR - American History (SEM 2)
S2	CR - Biology (SEM 2)
S1	CR - Biology (SEM 2)
S1	CR - Chemistry (SEM 2)
S2	CR - Chemistry (SEM 2)
S2	CR - English I (SEM 2)
S1	CR - English I (SEM 2)
S2	CR - English II (SEM 2)
S1	CR - English II (SEM 2)
S2	CR - English III (SEM 2)
S1	CR - English III (SEM 2)
S2	CR - English IV (SEM 2)
S1	CR - English IV (SEM 2)
S2	CR - Geometry (SEM 2)
S1	CR - Geometry (SEM 2)
S2	CR - World History (SEM 2)
S1	CR - World History (SEM 2)
S1	CR-Algebra I (SEM 1)
S2	CR-Algebra I (SEM 1)
S1	CR-Algebra II (SEM 1)
S2	CR-Algebra II (SEM 1)
S1	CR-Biology (SEM 1)
S2	CR-Biology (SEM 1)
S1	CR-Chemistry (SEM 1)
S2	CR-Chemistry (SEM 1)
S2	CR-Earth Science (SEM 1)
S1	CR-Earth Science (SEM 1)
S1	CR-Economics (SEM 1)
S2	CR-Economics (SEM 1)
S1	CR-English I (SEM 1)
S2	CR-English I (SEM 1)
S1	CR-English II (SEM 1)
S2	CR-English II (SEM 1)
S1	CR-English III (SEM 1)
S2	CR-English III (SEM 1)
S1	CR-English IV (SEM 1)
S2	CR-English IV (SEM 1)
S1	CR-Geometry (SEM 1)
S2	CR-Geometry (SEM 1)
S2	CR-Government (SEM 1)
S1	CR-Government (SEM 1)
S1	CR-Physical Science (SEM 1)
S2	CR-Physical Science (SEM 1)
S2	CR-Physical Science (SEM 2)
S1	CR-World History (SEM 1)
S2	CR-World History (SEM 1)
S1	Database Design & Programming
S2	Database Design & Programming
S1	Digital Media
S1	Earth Science (Lab)

Exhibit C

CURRENT PROGRAM COURSE LIST

S2	Earth Science (Lab)
S1	Economics (B)
S2	Economics (B)
S2	Electronic Health Records
YR	Elementary Art 1
YR	Elementary Art 2
YR	Elementary Art 3
YR	Elementary Art 4
YR	Elementary Art 5
YR	Elementary Art K
YR	Elementary PE 4
S1	Employability Skills (HS)
S2	Employability Skills (HS)
YR	Employability Skills (HS)
S1	Employability Skills 10 (A)
S2	Employability Skills 10 (B)
S1	Employability Skills 11 (A)
S2	Employability Skills 11 (B)
S1	Employability Skills 12 (A)
S2	Employability Skills 12 (B)
S1	Employability Skills 9 (A)
S2	Employability Skills 9 (B)
S1	English I (A)
S2	English I (B)
S1	English II (A)
S2	English II (B)
S1	English III (A)
S2	English III (B)
S1	English III (B)
S1	English IV (A)
S2	English IV (A)
S1	English IV (B)
S2	English IV (B)
S1	Entrepreneurship
S2	Entrepreneurship II
S1	Explore & Prob Solving
S2	Explore & Prob Solving
S2	Family & Consumer Science
YR	Fifth Grade
S2	Film & Digital Media I
S1	Film & Digital Media I
S2	Film & Digital Media II
S2	Film & Digital Media II (B)
S1	Financial Literacy (A)
YR	First Grade
S1	Fitness/Conditioning (A)
S2	Fitness/Conditioning (B)
YR	Fourth Grade
S2	Game Design
S1	Game Design

Exhibit C

CURRENT PROGRAM COURSE LIST

S1	Geography
S2	Geography
S1	Geometry (A)
S2	Geometry (B)
S2	Government
S1	Government
S2	GUILD Internship
S2	Health
S1	Health
S1	HS-Physical Education (A)
S2	HS-Physical Education (A)
S2	HS-Physical Education (B)
S1	Insurance Billing & Coding Essls
S2	Intro to Programming
S2	Introductory Finance
YR	Kindergarten
S1	Lang & Comm
S2	Lang & Comm
S2	Language & Communications 108 (B)
YR	Language Arts 1
YR	Language Arts 2
YR	Language Arts 3
YR	Language Arts 4
YR	Language Arts 5
S1	Language Arts 6 (A)
S2	Language Arts 6 (B)
S1	Language Arts 7 (A)
S2	Language Arts 7 (B)
S1	Language Arts 8 (A)
S2	Language Arts 8 (B)
YR	Language Arts K
S1	Marching Band
S1	Market Research (A)
S2	Marketing I
YR	Math 1
YR	Math 2
YR	Math 3
YR	Math 4
YR	Math 5
S1	Math 6 (A)
S2	Math 6 (B)
S1	Math 7 (A)
S2	Math 7 (B)
YR	Math K
S1	Measure/Comp/Analysis
S2	Measure/Comp/Analysis
S2	Measure/Comp/Analysis 108
S1	Medical Office Procedures & Admin
S1	Medical Terminology (A)
S2	Medical Terminology (B)

Exhibit C

CURRENT PROGRAM COURSE LIST

S2	MS Career Exploration Business
S1	MS Career Exploration -General (A)
S2	MS Career Exploration -General (B)
S2	MS Health & Development
S1	MS Health & Development
S2	MS MUSIC
S1	MS MUSIC
S1	MS-Careers
S2	MS-Careers
S1	MS-Computers (A)
S2	MS-Computers (B)
S2	MS-Computers I
S2	MS-Intro to Internet
S1	MS-Intro to Internet
S1	MS-Spanish Language/Culture (A)
S2	MS-Spanish Language/Culture (A)
S1	Music Appreciation
S2	Music Appreciation
S1	New Mexico History
S2	New Mexico History
S2	New Mexico History 7 (B)
S1	Nursing Assistant
S2	Nursing Assistant
S2	PE 6
S1	PE 6
S1	Percussion Instruments
S1	Physical Science (Lab)
S2	Physical Science (Lab) B
S1	Pre Algebra (A)
S2	Pre Algebra (B)
S1	Pre Calculus (A)
S2	Pre Calculus (B)
S2	Psychology
S1	Psychology
S1	Public Speaking
S2	Public Speaking
YR	Reading 1
YR	Reading K
YR	Science 1
YR	Science 2
YR	Science 3
YR	Science 4
YR	Science 5
S1	Science 6 (A)
S2	Science 6 (B)
S1	Science 7 (A)
S2	Science 7 (B)
S1	Science 8 (A)
S2	Science 8 (B)
YR	Science K

Exhibit C

CURRENT PROGRAM COURSE LIST

YR	Second Grade
YR	Social Studies 1
YR	Social Studies 2
YR	Social Studies 3
YR	Social Studies 4
YR	Social Studies 5
YR	Social Studies K
S1	Society
S2	Society
S1	Spanish Language I (A)
S2	Spanish Language I (B)
S1	Spanish Language II (A)
S2	Spanish Language II (B)
S1	Study Skills
S2	Study Skills
YR	Third Grade
S1	United States History 8 (A)
S2	United States History 8 (B)
S1	Web Design
S2	Web Design
S1	WEB Publishing
S2	WEB Publishing
S1	Work Experience (A)
S2	Work Experience (B)
S1	Work Study
S2	Work Study
S1	World History (A)
S2	World History (B)
S1	World History 6 (A)
S2	World History 6 (B)



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June 30, 2025

VIA ELECTRONIC MAIL ONLY

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Santa Fe, New Mexico 87501-15508

**Re: Board of Education for the Gallup-McKinley County Schools
IPRA Request for Public Records**

Dear Mr. Moffatt:

As you are aware, this law firm represents the Board of Education for the Gallup-McKinley County Schools in this matter, and we are responding to your letter dated June 17, 2025. Concerns were immediately raised when your issues, authorities and arguments match directly with that of the contractor who was subject to the termination of its contract with the School District at the duly called and open meeting of the Board of Education on May 16, 2025. Although no reference is made directly to any form of a complaint being lodged with your Bureau, the subject line of your e-mail containing your letter is revealing that your letter is in reference to “complaints” received by the Department.

It appears to us that you are acting pursuant to a complaint or complaints lodged by Stride/K12 Inc., a billion dollar corporation, or its agents, and your letter is premised entirely on its allegations and its subjective interpretation of the facts. It is clear that your Bureau did not proceed with any form of formal investigation or even with an *ad hoc* process in seeking the School District’s side of the story or for any clarification of the facts, issues and authorities being utilized based on the “findings” presented in the initial letter. Most troubling is the appearance alone of your Bureau coordinating with complainant to presumably undermine fairness and due process. *See Bieber v. Dep’t of Army*, 287 F.3d 1358, 1361 (Fed. Cir. 2002) (“The requirements of due process, of course, apply to administrative proceedings[,]” and agency actions), *quoting Utica Packing Co. v. Block*, 781 F.2d 71, 77 (6th Cir. 1986); *see also Pirtle v. Legislative Council Comm. of New Mexico Legislature*, 2021-NMSC-026, ¶ 41, 492 P.3d 586, 599 (N.M. 2021) (agency adjudicative decisions are subject to the notice and hearing requirements of due process).

Letter to Blaine N. Moffatt
June 30, 2025
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The overriding principles of law that should be governing the actions of the New Mexico Department of Justice here are the standards of due process and fairness. The courts have been clear that “[t]he essential guarantee of the due process clause is that of fairness.” *Bd. of Educ. of Carlsbad Mun. Sch. v. Harrell*, 1994-NMSC-096, ¶ 23, 118 N.M. 470, 478, 882 P.2d 511, 519 (N.M. 1994) (quoting 2 Donald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law: Substance and Procedure* § 17.8, at 656 (2nd ed. 1992)). The Department’s “power to make [and enforce] rules that affect substantial individual rights and obligations carries with it the responsibility not only to remain consistent with the governing legislation, but also to employ procedures that conform to the law.” *Morton v. Ruiz*, 415 U.S. 199, 232 (1974) (internal citations omitted). “Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals [or entities], it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process [of honoring due process and fairness].” *Amos Treat & Co. v. SEC*, 306 F.2d 260, 263 (D.C. Cir. 1962).

This results in requiring your Bureau to have started with the initial presumption that that the Board of Education acted lawfully and in accordance with the Open Meetings Act, N.M. Stat. Ann. §§ 10-15-1 to -4 (2013) (“OMA”) in its May 16th meeting until proven otherwise after affording the School District an opportunity to be heard on the allegations. It has been clearly established in the law for centuries that a party charging another with a culpable decision or breach of duty, the person who claims the damage, is bound to prove it, and there is no presumption that a person has acted illegally until the contrary is proved. *Hicks v. Martin*, 9 Mart.(o.s.) 47, 48 (La. 1820); see *VFS Leasing Co. v. G.F. Kelly, Inc.*, 2007 WL 2069842, at *7 (M.D. Ala. July 13, 2007) (it makes no sense to impose the burden on a party to prove a negative as an affirmative defense); *Cook Composites, Inc. v. Westlake Styrene Corp.*, 15 S.W.3d 124, 138 (Tex. App. 2000) (same); *Cornish v. State*, 65 Md. App. 213, 216, 500 A.2d 295, 297 (Md. 1985) (same); *Sawtelle v. Sawtelle*, 34 Me. 228, 230 (Me. 1852) (same). Here, your Bureau is making the allegations and also determining the culpability of the School District all in one step. This is certainly not the makings of a fair process or a fair determination, and raises the question of potential bias in openly supporting the position of a contractor in its litigation against a political subdivision of the State.

There was no discussion in your letter or any attempt to apply the applicable standard that the Bureau is required to apply in its reviewing of the actions of the Board of Education under the OMA in calling and conducting the May 16th meeting of substantial compliance with OMA. See *Parkview Cmty. Ditch Ass’n v. Peper*, 2014-NMCA-049, ¶ 13, 323 P.3d 939, 943 (N.M. Ct. App. 2014). “Under the substantial compliance standard, when the OMA has been sufficiently followed so as to carry out the intent for which it was adopted and serve the purpose of the statute, no violation has occurred.” *Id.*, quoting *Gutierrez v. City of Albuquerque*, 1981-NMSC-061, ¶ 14, 631 P.2d 304, 307, 96 N.M. 398, 401 (N.M. 1981). “The purpose of the OMA is to provide that governing bodies be required to make decisions in the open where the interested public can observe the action.” *Peper*, 2014-NMCA-049 at ¶ 13, 323 P.3d at 943 (citing cases). The OMA should be construed broadly to effectuate its purposes, and courts should avoid narrow definitions that

Letter to Blaine N. Moffatt
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would defeat the intent of the Legislature. *See New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 73, 382 P.3d 923, 942 (N.M. Ct. App. 2016) (OMA identical to IPRA standard). Here, there are no allegations from your Bureau or from the complainant corporation that any action was ever taken by the Board of Education in executive session or outside of a duly called and open meeting of the Board, and all actions of the Board of Education were listed on its agendas and observable by the public both in-person and virtually. *See Attorney General’s Open Meetings Act Compliance Guide*, p. 17 (N.M.A.G. 8th ed. 2015); *see also* N.M. Atty. Gen. OMA Determination, *Open Meetings Act Complaint – Doña Ana County Board of Commissioners* (June 20, 2019). Thus, where all the actions taken by the Board of Education could be observed by the public, the Board of Education is in substantial compliance with the OMA. *See id.*

It is clear that the Court of Appeals in *Bd. of Cty. Comm’rs, Luna Cty. v. Ogden*, 1994-NMCA-010, 117 N.M. 181 870 P.2d 143 (N.M. Ct. App. 1994) has already determined the standard for the application of the OMA when it held that “[o]ur central concern is to construe the statute so as to determine and give effect to the legislature’s intent.” *Ogden*, 1994-NMCA-010, ¶ 14, 117 N.M. at 184, 870 P.2d at 146, *citing State ex rel. Klineline v. Blackhurst*, 1988-NMSC-015, ¶ 12, 106 N.M. 732, 735, 749 P.2d 1111, 1114 (N.M. 1988). “In enacting the Open Meetings Act, the legislature did not intend to impair or impede the effective workings of the various political subdivisions of the state.” *Id.*, *citing Gutierrez v. City of Albuquerque*, 1981-NMSC-061, ¶ 12, 96 N.M. 398, 401, 631 P.2d 304, 307 (N.M. 1981) (“These provisions make clear that the Legislature did not intend to unduly burden the appropriate exercise of governmental decision-making and ability to act.”). “‘To rule otherwise would improperly elevate form over substance’ and wreak havoc on a process already fraught with complexity.” *Weinstein*, 2016-NMCA-069, ¶ 86, 382 P.3d 923, 946, *quoting Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 31, 107 N.M. 38, 44, 751 P.2d 722, 728 (N.M. Ct. App. 1988). As such, it begs the question of why your Bureau made legal determinations with regard to unilaterally seeking to void actions of the Board of Education affecting ongoing litigation that the Bureau is not even involved in to presumably favor the alleged complainant and having not afforded the Board of Education an opportunity to be heard.

Moreover, without further investigation into the truth or falsity of the allegations, the complainant’s allegations appear to have been simply accepted at face value, at least to the Bureau’s main concern. There simply is no evidence of anyone at your Bureau who had tested the purported facts with regard to the requirements of the contract termination terms between Stride/K12, Inc. and of the material breaches perpetrated by the contractor described in the Meeting of May 16th or any of the legal implications of the allegations attempting to thwart the Board of Education from acting in the best interests of students and to prepare for the upcoming school year with a new contractor. *See* Video of May 16th Meeting of the Board of Education to Terminate Contract https://www.youtube.com/watch?v=VHKdzqqN_SM; *see also* Public Information on Termination of Contract at <https://www.gmcs.org/page/stride-inc>.

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Unfortunately, the Bureau's actions in appearing to be coordinating with a third party, or, if not doing so, self-effectuating an OMA complaint so it can "investigate" and immediately make legal determinations without notice or an opportunity to be heard by the governmental entity subject to the OMA is in complete disregard of its duty and responsibilities to fairly and objectively investigate the allegations and enforce the OMA. *See Stainback v. Mabus*, 671 F. Supp. 2d 126, 138 (D.D.C. 2009) ("a fair and impartial process is essential to the due process rights" of the parties); *see also In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process."). Moreover, your letter has found its way to the media, which raises even more questions as to the bias of your Bureau since the letter was only addressed to this law firm and the School District Board President with carbon copies to the remaining School District Board Members. We can affirm that none of the addressees of your letter released it to the media. If there was request for public records at your Bureau, the issue remains as to how anyone knew about your letter to request it. As such, **this letter is also a request to inspect public records at NMDOJ pursuant to the New Mexico Inspection of Public Records Act ("IPRA"), N.M. Stat. Ann. § 14-2-1 et. seq. (2023) as follows:**

1. **Produce for inspection any and all e-mails, letters, texts, on-line forms or any other forms communications internally within the Department and between Stride/K12 Inc., its employees and representatives, and the law firm of Rodey, Dickason, Sloan, Akin & Robb, P.A. and the New Mexico Department of Justice, including all of its employees and representatives, related to or pertaining to the Gallup-McKinley County Schools, the Board of Education for the Gallup-McKinley County Schools and Mike Hyatt from the March 1, 2025 to the present;**
2. **Produce for inspection any and all public records relating to complaints, demands, referrals or reports received by the NMDOJ pertaining to the Gallup-McKinley County Schools, the Board of Education for the Gallup-McKinley County Schools and Mike Hyatt from the March 1, 2025 to the present. This includes, but is not limited to, investigative reports, referrals, evaluations, memoranda, internal forms and investigative materials and attachments;**
3. **Produce for inspection any and all IPRA requests received by the Department from June 17, 2025 to the present, including all e-mails, letters, memoranda, texts, on-line forms or any other forms communications internally within the Department regarding your letter of June 17, 2025; and**
4. **Produce for inspection any and all communications of any type or form with any member of the media, public advocacy group or individuals related or pertaining to your letter of June 17, 2025 or the Gallup-McKinley County Schools, the Board of Education for the Gallup-McKinley County Schools and Mike Hyatt.**

The School District will pay any and all reasonable fees for production of the public records electronically to my e-mail address provided hereto.

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As background and as an example of the factual issues surrounding the Board meeting on May 16th where your letter is silent, the Superintendent of Schools and his staff discovered in late February and early March of 2025 that Stride/K12 Inc. failed to check with the past employers for their staff employees to ensure those adults did not have past sexual misconduct with minors as required by Section 22-10A-5.2 of the School Personnel Act that requires all applicants for licensure and those who would have unsupervised access to children to have an approved background check on file with the New Mexico Public Education Department prior to having unsupervised access to students. Per State legislation contained in House Bill 128, a HB128 form must also be completed for anyone that will have unsupervised access to students, and that was not the case for any employees of Stride/K12 Inc. The Superintendent further discovered that Stride/K12 Inc. CEO James Rue admitted that his company purposefully did not follow the law by creating inordinately large class sizes and teacher loads in order to lower his company's overhead costs and maximize profits. This strategy harmed students and did not allow for the student to have the quality of instruction they deserved. See <https://www.gmcs.org/page/stride-inc> (which includes a Q&A of most asked questions).

Millions of public dollars were likely defrauded by Stride/K12 Inc. by not hiring the appropriate numbers of teachers, including for special education students as required under the provisions of N.M. Stat. Ann. § 22-8-21 (1997) and N.M. Stat. Ann. § 22-10A-20 (2003) and the Board of Education's Policy I-4550/IIB and hiding it from the School District, which appears to be of lesser concern to the Department. This was a material breach of the Contract in exceeding the allowable thresholds of Stride/K12 Inc.'s teachers to student ratios which, in addition to being contrary to law, is also contrary to Paragraphs 1.2 and 3.5.1 of the Contract. The Superintendent found that Stride/K12 Inc. had 117 separate violations of law with regard to student-to-teacher ratios as of April 1, 2025. It was also revealed that Stride also had only 3 academic counselors overseeing several thousand students, including those attempting to attend college, which also boosted their revenue and profits at the expense of the School District's students. There were also other findings of material breaches, including but not limited to substandard graduation rates, excessive turnover of students, failing to track student absences, and failure to meet statutory requirements for testing of students. Unfortunately, the Superintendent has now become a target of the former vendor in order to distract from the real legal issues of Stride/K12 Inc.'s material breaches of its contract and illegal activities, and it appears that your Bureau has followed its lead.

With regard to the issue of ratification at the May 16th meeting, which your letter stated was of the most concern to you, Stride/K12 Inc. incorrectly asserted that the Superintendent formally terminated the Contract between the Board and the company on April 1, 2025 under some unidentified authority. However, the Contract itself was not formally terminated until the Board of Education did so on May 16, 2025 at the open meeting as per its agenda following the end of the cure period. This should not have been an issue at all to the Bureau if it had simply inquired what was transpiring under the contract terms leading to the ratification, rather than just relying

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upon the complainant who clearly wished to continue with the contract at any cost. *See* Purchase order for K12/Stride, Inc. for FY25 of \$30,710,592.16.

To explain further, pursuant to Paragraph 12.1 of the Educational Products and Services Agreement between the Gallup-McKinley County Schools and K12 Virtual Schools LLC, the April 1, 2025 letter was not any form of final action to terminate as asserted by Stride/K12 Inc., rather, the letter was the fulfillment of a contractual requirement to initiate the 45-day cure period under the Contract. *See* School District Letter of April 1, 2025, to Stride/K12 Inc., attached as Exhibit 1. The cure period provided under the contract terms allows Stride/K12 Inc. an opportunity to remedy the material breaches of the contract associated with the notice of the breaches contained and provided within the letter to Stride/K12, Inc. Under the terms of the contract, this cure period must be completed before the contract can be terminated. It is important to note here that the letter specifically sets forth the School District's expectations and requirements for the remedies of the material breaches to prevent the termination following the cure period. *See* Exhibit 1. A more detailed letter was sent to Stride/K12 Inc. on April 22, 2025, addressing the company's request for more specific detail and information of the breaches, and the School District refined and detailed the remedies expected and made demands for more information and student data from the company, which it summarily ignored. *See* School District Letter of April 22, 2025, to Stride/K12 Inc., attached as Exhibit 2. Unfortunately, for Stride/K12 Inc., it failed to cure any of the material breaches on or before May 15, 2025, compelling the Board of Education to terminate the Contract in a formal and final action of the governing body at its meeting on May 16, 2025 with a vote at a duly called and open meeting with the action on the agenda.

Under no circumstances can or should the letter of April 1, 2025 be construed as an action requiring a final action or vote by the Board of Education at an open meeting under the OMA, as it was merely a ministerial act associated with the contract terms that could be initiated and completed by the School District's Administration as to the procurement of services and supervision of a contract by a chief procurement officer under the Procurement Code *See* N.M. Stat. Ann. § 13-1-95.2 (2013) and N.M. Stat. Ann. § 13-1-37 (2013). The courts have been clear that "[w]e decline to view the [OMA] so as to require an open meeting to perform a perfunctory or purely ministerial act." *Kleinberg*, 1988-NMCA-014 at ¶ 22, 107 N.M. at 43, 751 P.2d at 727. The term "final action" should be defined to mean "the final **vote** required to carry out the board's authority on a matter." *Kanahele v. Maui Cnty. Council*, 130 Haw. 228, 259, 307 P.3d 1174, 1205 (Haw. 2013), *as corrected* (Aug. 30, 2013) (emphasis in original), *citing Kleinberg*, 1988-NMCA-014 at ¶ 22, 107 N.M. at 43, 751 P.2d at 727. Thus, there was no need for an open meeting and vote of the Board of Education to merely send the contractual requirement notice that triggered the 45-day cure period. Only after the cure period expired need the Board meet at an open meeting to take final action to terminate the contract. Therefore, the Bureau's analysis in your letter is premised on incorrect and incomplete facts and a misinterpretation of the applicable law.

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Initially, Stride/K12 Inc. asserted that the Superintendent was acting unilaterally without the knowledge and concurrence of the Board of Education for some undefined personal gain (a frivolous claim). That claim caused the Board of Education to include a ratification of the April 1, 2025 letter at its meeting on May 16th to ensure to all, including the public and to Stride/K12 Inc. that any and all decisions regarding the performance of the contract and the ultimate decision on termination of the Contract would be that of the Board of Education alone. As the courts have clearly stated, “[r]atification is the adoption or confirmation by a principal of an unauthorized act performed on its behalf by an agent.” *Bd. of Cnty. Comm’rs of Cnty. of Bernalillo v. Chavez*, 2008-NMCA-028, ¶ 15, 143 N.M. 543, 547, 178 P.3d 828, 832 (N.M. Ct. App. 2008), quoting *Johnson & Johnson v. Tax’n & Revenue Dep’t of State of N.M.*, 1997-NMCA-030, ¶ 16, 123 N.M. 190, 194, 936 P.2d 872, 876 (N.M. Ct. App. 1997). While maintaining that the April 1, 2025 letter was authorized and legal in all regards, the Board of Education took the additional step to ratify the letter as its own for the purpose of rendering Stride/K12 Inc.’s argument against the Superintendent moot. See *La Mesa Racetrack & Casino v. State Gaming Control Bd.*, 2012-NMCA-076, ¶ 24, 283 P.3d 886, 89 (N.M. Ct. App. 2012) (“Moreover, the issue pertaining to the authority of the director to send the letter to La Mesa has been rendered moot. It is undisputed that after the director sent La Mesa the letter, the Board approved and ratified the director’s action”); see also *Chavez*, 2008-NMCA-028, ¶¶ 1, 21-22, 143 N.M. at 543 and 549, 547, 178 P.3d at 828 and 834 (concluding that summary judgment was properly granted on a claim alleging that the mayor took unauthorized unilateral action because it was undisputed that the city council subsequently ratified the mayor’s action).

This action to ratify ensured that a public record of the vote was created. The Board members, in full public view, had to vote on their position concerning the sufficiency of notice and the opportunity for the contractor to remedy the breaches of the contract during the cure period, as required under the contract terms. While the Board’s ratification is effective on May 16th, having been acted upon at that particular duly called and open meeting announced on the agenda (see *Weinstein*, 2016-NMCA-069 at ¶ 88, 382 P.3d at 946), the letter is otherwise and remains effective as notice under the contract terms, as a matter of law, on April 1, 2025. See *Kleinberg*, 1988-NMCA-014 at ¶ 30, 107 N.M. at 44, 751 P.2d at 728. However, the Bureau’s letter now proclaims that the ratification action is void and that, because of the ratification action, the subsequent termination of the Contract was also void without ever addressing and applying the above-referenced law and facts. The Bureau’s letter now gives Stride/K12 Inc. yet another suspect reason to challenge the actions of the Board acting clearly within its purview and authority. The Bureau’s letter will now logically increase the costs to the School District of the ongoing litigation to now have to address the references to the Bureau’s ill-conceived, unsupported and unilateral determination letter. Therefore and simply put, the Board’s vote to ratify the notice letter of April 1, 2025 and then to formally take final action to terminate the contract with Stride/K12 Inc. at the May 16th meeting was lawful, consistent with applicable contract law and the terms of the Contract and was in taken substantial compliance with the OMA.

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In your letter, you assert that the ability of the public to watch the meeting of the Board of Education was otherwise limited or denied on May 16th and then assert that there are no instructions on how to virtually attend the meetings of the Board. Unfortunately, your Bureau has again relied upon misinformation to make its determinations. First, the screenshot you provided in your letter as proof of limited or denied on-line access to the meeting was actually a temporary disruption of the broadcast of the meeting when profanity was being used by members of the public. More importantly, if you had watched the video of the meeting in its entirety, you would have seen that the Board had recessed the meeting at the time when some members of the public in attendance began to disrupt the meeting. The video further shows that only two members of the Board were present on the dais at the time the broadcast was interrupted, and they were, at that time, being inundated with profanity-laden comments from some members of the public which were audible on YouTubeTM, and which violate the School District's license to broadcast the meeting on YouTubeTM. Thus, the public is, in fact, entitled to attend and listen to the Board conduct its business (*see* N.M. Stat. Ann. § 10-15-1(A) (2013)), but at the time of the disruption of the broadcast, there was no business being transacted by the Board as the meeting was not in session. The broadcast on YouTubeTM resumed upon the Board returning from recess to complete its agenda in open session.

Lastly, the "Watch it here" button or link pertaining to the meeting on the School District's website is there for the public to watch the Board meeting and does not need any instructions. A click on the link redirects the user's web browser to the YouTubeTM channel/page where the meeting is broadcast by the School District to that URL on YouTubeTM. There is literally nothing for anyone who wants to view the meeting to do other than click/tap the button/link to immediately access the meeting. Thus, there has been no violation of the OMA, in fact or in theory, and the concerns of the Bureau are unwarranted and unsupported.

Your Letter also raises the Bureau's concern regarding public comment at the Board's meeting despite the fact that there was no public comment on the agenda at the May 16th Meeting. The procedure utilized by the School District is that any member of the public can submit a public comment form electronically or in-person. *See* Board Policy B-2150/BRDH at subparagraph (f) located at <https://go.boarddocs.com/nm/gmcs/Board.nsf/goto?open&id=BTVRDU6D8B4D>. Once received by the School District, the individual is sent an individual link to participate in and observe and listen to the meeting outside of the YouTubeTM streaming so that he or she can be seen and heard at the meeting for the purpose of providing public comment. Your contention that the OMA requires that all virtual attendees of the meeting must be provided with immediate means of virtual access to the meeting to speak is contrary to law. There is no reason why a virtual attendee of a Board meeting can or should be able to participate in the meeting electronically while the individual's in-person counterpart cannot speak without submitting a public comment form. This would violate equal protection under both the U.S. and New Mexico Constitutions. Moreover, since public comment is not required under the OMA, reasonable limitations on time and place for public comment is allowed under law, including the use of a public comment form. The School

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District has established a limited public forum in which public comment can only be taken on matters on the agenda. *See* Board Policy B-2150/BRDH, as such, a public comment form facilitates the limited public forum.

There are two items in which the Bureau is on point that the School District must improve upon in its compliance with the OMA. However, these issues are relatively minor and remain in substantial compliance with the OMA. 1) The Notice of Meeting should contain the access language from the Board's annual OMA resolution since the Board purports to follow those provisions as well as the OMA, and 2) that the Board did deviate from its normal practice of reading the agenda item upon entering the executive session, justifying its entry into executive session at the May 16th meeting. However, the agenda was specific as to the topic and justification for the executive session and was published 72 hours prior to the meeting. These two notes had no effect on the progress of the meeting nor deprived the public of observing and hearing the meeting as the Board conducted its business on May 16th.

If you have any questions, please feel free to call or e-mail me. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Andrew M. Sanchez".

ANDREW M. SANCHEZ

cc: Board of Education
Superintendent of Schools



Mike Hyatt, Superintendent
mhyatt@gmcs.org

Deputy Superintendent
Jvanna Hanks II
Assistant Superintendent
Wade Bell
K'Dawn Montano

April 1, 2025

VIA ELECTRONIC MAIL
AND BY U.S. MAIL

kchavous@k12.com

K12 Virtual Schools LLC
% Kevin P. Chavous
President of Academics, Policy and Schools
2300 Corporate Park Drive, Suite 200
Herndon, Virginia 20171

Re: TERMINATION FOR CAUSE AND NOTICE OF NONRENEWAL

Dear Mr. Chavous,

Pursuant to Paragraph 12.1 of the Educational Products and Services Agreement between the Gallup-McKinley County Schools and K12 Virtual Schools LLC (“Agreement”), the Board of Education for the Gallup-McKinley Schools is terminating the Agreement for cause. The material breaches of the terms of the Agreement are as follows:

1. K12 knew or should have known it was violating the applicable law and local policy in exceeding the required teacher-student ratio under N.M. Stat. Ann. § 22-10A-20 (2003) and the Board of Education’s Policy I-4550/IIB on the same in approximately 117 instances of exceeding allowable thresholds of K12’s teachers contrary to Paragraphs 1.2 and 3.5.1 of the Agreement;
2. K12 knew or should have known it was violating the applicable law and local policy in not having appropriately licensed teachers under N.M. Stat. Ann. § 22-10A-6 through § 22-10A-6 (2003) and the Board of Education’s Policy G-3550 GCGC as there were 47 instances in which appropriate licensure was not documented or did not align with the assigned role of K12’s teachers contrary to Paragraphs 1.2 and 3.5.1 of the Agreement;
3. The lack of sufficient staffing has resulted in the reduction of academic progress for students and of student services done intentionally by K12 to increase K12’s profits and lower its costs contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement;
4. K12 knew or should have known it was violating the applicable law and local policy in exceeding the required teacher-student ratio under N.M. Stat. Ann. § 22-8-21 (1997)

EXHIBIT

1

Exhibit D

- and N.M. Stat. Ann. § 22-10A-20 (2003) and Board of Education's Policy I-4550/IIB on the same for approximately 117 instances of exceeding allowable thresholds of K12's teachers contrary to Paragraphs 1.2; 3.5.1 and 3.5.6 of the Agreement;
5. The lack of sufficient staffing has resulted in the reduction of academic progress for students in the program done intentionally by K12 to increase K12's profits and lower its costs contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement;
 6. K12's unlawful reductions in staffing has adversely effected the graduation rate for the Destinations Career Academy in potential violation of N.M. Stat. Ann. § 22-13-1.1 (2024) and demonstrating the adverse effect of K12's profiteering in reducing staff;
 7. K12 issued Hotspots that K12 knew or should have known would not work in the areas serviced by K12 in violation of Exhibit A of the Agreement on the required Curriculum and Services contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement;
 8. K12 failed to achieve standardized testing rate of 95% as required by the Public Education Department and the applicable law contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement; and
 9. K12 failed to timely conduct standardized testing and failed to submit accurate reporting of testing contrary to Paragraphs 1.2; 3.5.1; 3.5.6; and 9.2 of the Agreement.

The appropriate remedy pursuant to Paragraph 12.1 for compliance with the Agreement is the immediate staffing by K12 to comply with law and policy and for students who have been adversely effected by K12's staffing shortages, K12 must provide at its own costs compensatory academic services to students subject to K12's illegal teacher-student ratio classes. The School District shall determine the specific services and the extent of these compensatory services to be provided for students K through current seniors outside of their current requirements for instruction during the school day. For those former students who have graduated or failed to graduate, K12 shall provide at its expense compensatory services, including vocational services and precollege services to assist these individuals used for K12's profiteering.

The termination of the Agreement is effective on June 30, 2025. In addition, pursuant to Paragraph 7.2, this letter gives Notice by the Board of Education that the Agreement will not be renewed.


Mike Hyatt



April 22, 2025

VIA ELECTRONIC MAIL
AND BY U.S. MAIL

ahawf@k12.com

K12 Virtual Schools LLC
% Adam C. Hawf
Senior Vice President, Schools
2300 Corporate Park Drive, Suite 200
Herndon, Virginia 20171

Re: DATA IN SUPPORT OF TERMINATION FOR CAUSE

Dear Mr. Hawf,

In response to your letter dated April 8, 2025, in which Stride feigns being unable to identify the numerous material breaches of the Agreement to which it knew or should have known. The following are additional facts for your clarification, but the material breaches are not limited to the following and all details are not included in the need for brevity to address the termination of the Agreement.

1. In reviewing percentage point comparisons, the School Day Participation Rate for K12 for the Spring 2023 was 17.4 percentage points lower than the students engaged in in-person instruction. The deficit in ELA students in K12 is 17 percentage points for ELA students; the Math and Science Participation Rates are 18.4 percentage points lower than for in-person students and standardized testing participation rates are 43.6 percentage points lower for English Language Arts and Mathematics and 50 percentage points lower for Science compared to in-person students;
2. The numbers for Spring 2024 are still well below the required 95% participation mandated by State law and the PED despite e-mails to K12 regarding the need to meet testing requirements. There are multiple e-mail chains dated April 2, 2022; May 19, 2022; August 28, 2023; May 6, 2024, and May 9, 2024, in which the School District gave notice to K12 of its testing deficits and failure to comply with State law,

EXHIBIT

2

Exhibit D

regulations and Board of Education Policies. The School District has determined that K12's current testing rate for this school year as of April 14, 2025 is only 37%;

3. On December 17, 2024, and on December 24, 2024, K12 submitted withdrawal reports for students who have been inactive for extended periods of the school year, including one student who is listed as withdrawn from K12 on September 3, 2024, but who was not included in a withdrawal report from K12 until December 24, 2024. There are 21 students who were withdrawn from K12 long before being included in a withdrawal report submitted to the School District. K12's withdrawal criteria, as seen in the **Next Placement** column of the attached table, include **Absences for 10 consecutive days and Student Never Started with K12 constituting ghost students to the enrollment at K12**. The School District was not made aware of student withdrawal dates until the students appeared on the reports that were submitted by K12 often long after these students should have been removed from the enrollment rolls. This delay results in non-compliant inclusion of these students in the 80 Day reporting window and, for one student, in the 40-Day reporting window starting 10/9/2024. Despite previous multi-year efforts to work with K12 on improving timeliness of withdrawing students, and letting us know about it, these issues continue to persist.

STRIDE STUDENT ID	GRADE	WITHDRAW DATE	EXIT CODE	NEXT PLACEMENT
5488396	12th Grade	11/21/2024	W2	Absent for 10 consecutive days
6033255	9th Grade	11/18/2024	W1	Tohatchi High School
6051393	11th Grade	10/30/2024	W1	Student Never Started with K12
5986146	9th Grade	11/21/2024		Not Provided
6042734	11th Grade	10/13/2024	W2	Absent for 10 consecutive days
5010468	10th Grade	11/20/2024	W2	Absent for 10 consecutive days
5959931	11th Grade	11/1/2024	W1	Student Never Started with K12
6068214	11th Grade	11/16/2024	W2	Absent for 10 consecutive days
6072819	12th Grade	11/21/2024	W1	Student Never Started with K12
5003505	7th Grade	11/18/2024	W2	Absent for 10 consecutive days
6062452	2nd Grade	12/2/2024		Not Provided

Exhibit D

2088897	7th Grade	11/14/2024	W2	Absent for 10 consecutive days
6087146	10th Grade	10/26/2024	W4	CNM GED Program
5795829	11th Grade	10/10/2024	W2	Absent for 10 consecutive days
4572599	9th Grade	10/28/2024	W2	Absent for 10 consecutive days
6035778	11th Grade	11/8/2024	W1	Las Montanas Charter High School
5968888	11th Grade	11/8/2024	W2	Absent for 10 consecutive days
5955139	7th Grade	11/26/2024	W10	Moved out of state
6003519	11th Grade	9/3/2024	W1	Student Never Started with K12
6023708	5th Grade	12/2/2024	W2	Absent for 10 consecutive days
6098256	10th Grade	11/21/2024	W4	CNM GED Program

4. K12 has failed to consistently provide timely updates regarding student withdrawals, new enrollments, scheduling information, or required documentation such as guardianship papers and age verification forms. These delays adversely affect the School District’s ability to meet State reporting requirements and disrupts established workflows, as the School District relies on K12 reporting for its reporting to the PED.

5. The graduation rate as calculated for K12 clearly demonstrates deficiency in the following areas: program of instruction, resources provided, student and parent communication, teachers, counselors, computers and access, etc...that is also lacking in substance and supervision leading to a horrific graduation rate for this last school year that is anticipated to be matched this school year as follows -

- | | |
|----------------|---------------|
| a. 2024 | 27.67% |
| b. 2023 | 54.29% |
| c. 2022 | 55.79% |
| d. 2021 | 47.88% |

K12 has been repeatedly notified that the graduation rate for K12 had to improve.

6. To increase profits by reducing staff levels and employing specialized staff, K12 has failed to appropriately identify students for special education services. The result is significant harm to the School District to identify and address student need for services at level 3 and level 4 as required by Federal and State law. More importantly, as of the 120th day reporting, K12 has 11 teachers over their permitted case load for SPED students.

Exhibit D

K12 for the current school year had 40 annual IEPs that were late and has 44 late IQ Evaluations. An audit of all IEPs associated with K12 will be conducted immediately. During the 2023-2024 school year the School District's SPED Director told K12/Stride to ensure DCA was doing IEP meetings for transfer students within 30 days of enrollment. While K12 indicated it would do so utilizing the School District's process, it failed to do so. As a result, students were not getting appropriate services, and some students were taking the wrong State test this Spring (2025) and potentially the incorrect curriculum. Additionally, the School District is again not getting timely notification of changes in services for students which also causes inappropriate testing issues.

This failure is contrary to law to which K12 knew or should have known. In one instance, a student with a significant exceptionality is unable to participate in on-line instruction yet K12 kept the student enrolled when the appropriate services for the student was in-person homebound services. K12's actions in this matter are reprehensible and clearly contrary to the student in the name profiteering.

	Level 1	Level 2	Level 3	Level 4
K12	52.23%	43.30%	2.4%	2.1%
GMCS	31.71%	47.94%	6.8%	13.5%

7. There are 66 teachers exclusively employed by K12 that are not sufficiently licensed to teach at DCA and are listed in the attached Excel Sheet. The duty of providing qualified teachers is solely on K12;
8. The proficiency rates of K12 are substantively substandard for any substantive program of instruction and K12 numbers have been declining each school year as follows –
 - a. **Math Proficiency** – For the 2022-2023 school year K12 is 12.9 percentage points lower than in-person students and 17.6 percentage points lower than the State proficiency rate, and for the 2023-2024 school year K12 is 12.4 percentage points lower than in-person students and 17.5 percentage points lower than the State proficiency rate, demonstrating no progress by K12;
 - b. **Reading Proficiency** – For the 2022-2023 school year K12 is 1.2 percentage points lower than in-person students and 11 percentage points lower than the State proficiency rate, and for the 2023-2024 school year K12 is 7.4 percentage points lower than in-person students and 16.3 percentage points lower than the State proficiency rate, demonstrating no progress by K12; and
 - c. **Science Proficiency** – For the 2022-2023 school year K12 is 10.8 percentage points lower than in-person students and 17.7 percentage points lower than the State proficiency rate, and for the 2023-2024 school year K12 is 11.3 percentage points lower than in-person students and 20.1 percentage points lower than the State proficiency rate, demonstrating no progress by K12

Exhibit D

- d. K12 failed to develop any remediation plan or sought School District input from for substandard proficiency by students at DCA following more than two consecutive years of bad performance contract to Paragraph 3.4.6 of the Agreement;
- 9. K12 teachers have only completed 83.2% of all required occupational and professional trainings under State law;
- 10. K12 has suffered at least one data breach during the term of the Agreement and failed to appropriately notify the New Mexico Department of Justice or Gallup McKinley County schools as required by the Data Breach Notification Act NMSA (2017) Chapter 57 Article 12C;
- 11. K12 knew or should have known it was violating the applicable law and local policy in exceeding the required teacher-student ratio under N.M. Stat. Ann. § 22-10A-20 (2003) and the Board of Education’s Policy I-4550/IIB in exceeding the allowable thresholds of K12’s teachers contrary to Paragraphs 1.2 and 3.5.1 of the Agreement as follows –

Section 22-10A-20(A) -

1. Duran, Libby	25
2. Finlay, Magnolia	23
3. Gibbons, Cherrea	23
4. Hatley, Klanese	24
5. Hunter, Joanna	22
6. Jumper, Ashley	22
7. Madoni, Brenda	24

Section 22-10A-20(B) –

1. Grades 1-3 Average	23.04
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Section 22-10A-20(C) –

1. Grades 4-5 Average	33.00
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Section 22-10A-20(D) –

1. Angell, Ryan	226
2. Bartley, Elizabeth	188
3. Benson, Nathaniel	174
4. Britt, Julie	207
5. Canary, Robert	225
6. Coleman, Jessica	205
7. Cook, Chas	189
8. Davis, Tanya	178

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9.	Dukes, Lance	224
10.	Felder, Jessica	220
11.	Gifford, Bonnie	167
12.	Greene-Wall, Mary	182
13.	Hohenthauer, Crystal	185
14.	Jaramillo, Gabriel	218
15.	Kast, Nancy	174
16.	Loe, Lacey	222
17.	Martinez, Oclides	164
18.	Preciado, Megan	176
19.	Vaughan, McKenzie	182
20.	Cook, Chas - ELA	189
21.	Bartly, Elizabeth - ELA	188
22.	Britt, Julie - ELA	207
23.	Greene-Wall, Mary - ELA	182
24.	Hohenthauer, Crystal	185
25.	Vaughn, McKenzie	182
26.	Bartley, Elizabeth, D-ENG-06BE3-KN-60162-M3	40
27.	Bartley, Elizabeth, D-ENG-06BE3-KN-60162-M4	47
28.	Bartley, Elizabeth, D-ENG-07BE3-KN-60162-M2	48
29.	Bartley, Elizabeth, D-ENG-07BE3-KN-60162-M5	53
30.	Britt, Julie, D-ENG-07BE3-KN-57159-M2	51
31.	Britt, Julie, D-ENG-07BE3-KN-57159-M3	56
32.	Britt, Julie, D-ENG-07BE3-KN-57159-M4	53
33.	Britt, Julie, D-ENG-07BE3-KN-57159-M5	47
34.	Cook, Chas, D-ENG-06BE3-KN-57234-M2	51
35.	Cook, Chas, D-ENG-06BE3-KN-57234-M3	44
36.	Cook, Chas, D-ENG-06BE3-KN-57234-M4	48
37.	Cook, Chas, D-ENG-06BE3-KN-57234-M5	46
38.	Greene-Wall, Mary, D-ENG-07BE3-KN-60739-M3	46
39.	Greene-Wall, Mary, D-ENG-08BE3-KN-60739-M2	49
40.	Greene-Wall, Mary, D-ENG-08BE3-KN-60739-M4	43
41.	Greene-Wall, Mary, D-ENG-08BE3-KN-60739-M5	44
42.	Hohenthauer, Crystal, D-ENG-08BE3-KN-58958-M2	46
43.	Hohenthauer, Crystal, D-ENG-08BE3-KN-58958-M3	58
44.	Hohenthauer, Crystal, D-ENG-08BE3-KN-58958-M4	39
45.	Hohenthauer, Crystal, D-ENG-08BE3-KN-58958-M5	42
46.	Vaughan, McKenzie, D-ENG-08BE3-KN-59587-M2	46
47.	Vaughan, McKenzie, D-ENG-08BE3-KN-59587-M3	62
48.	Vaughan, McKenzie, D-ENG-08BE3-KN-59587-M4	33
49.	Vaughan, McKenzie, D-ENG-08BE3-KN-59587-M5	41
50.	Alfiky, Sophia	216
51.	Bhattacharyya, Aunup	198
52.	Booth, Lynne	170
53.	Border, Julia	182
54.	Chiri, Stacy	175

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55.	Davis, Mark	193
56.	Doak, Kaylin	181
57.	Giovannini, Sandra	210
58.	Holderfield, Tamara	197
59.	Johnson, Timothy	190
60.	Justice, Leigh	204
61.	Kleczka, Jenny	174
62.	Knable, Alicia	169
63.	Maldonado, Shelley	162
64.	Mendoza, Ismael	184
65.	Nelson, Caroline	178
66.	Powell, Justine	170
67.	Ragland, Randall	177
68.	Stanzione, Carolyn	197
69.	Tomlinson, Rebecca	202
70.	Wall, Jonathan	165
71.	Whitt, Alice	163
72.	Williams, Kaila	182
73.	Williams, Sabrina	209
74.	Williams, Zachary	186
75.	Border, Julia - ELA	182
76.	Chiri, Stacy - ELA	175
77.	Kleczka, Jenny - ELA	174
78.	Knable, Alicia - ELA	169
79.	Maldonado, Shelley - ELA	162
80.	Powell, Justine - ELA	170
81.	Wall, Jonathan - ELA	165
82.	Border, Julia, D-ENG-108BE2-KN-57544-HS1	38
83.	Border, Julia, D-ENG-108BE2-KN-57544-HS2	39
84.	Border, Julia, D-ENG-108BE2-KN-57544-HS4	41
85.	Border, Julia, D-ENG-108BE2-KN-57544-HS6	64
86.	Wall, Jonathan, D-ENG-108BE2-KN-60738-HS2	38
87.	Wall, Jonathan, D-ENG-108BE2-KN-60738-HS3	33
88.	Wall, Jonathan, D-ENG-108BE2-KN-60738-HS4	41
89.	Wall, Jonathan, D-ENG-108BE2-KN-60738-HS5	53
90.	Dillard-Mandigo, Joni, D-ENG-208BE2-KN-57593-HS5	38
91.	Dillard-Mandigo, Joni, D-ENG-208BE2-KN-57593-HS6	42
92.	Dillard-Mandigo, Joni, D-ENG-208BE2-KN-57593-HS7	49
93.	Knable, Alicia, D-ENG-208BE2-KN-59039-HS1	42
94.	Knable, Alicia, D-ENG-208BE2-KN-59039-HS3	47
95.	Knable, Alicia, D-ENG-208BE2-KN-59039-HS4	45
96.	Knable, Alicia, D-ENG-208BE2-KN-59039-HS6	35
97.	Powell, Justine, D-ENG-208BE2-KN-62392-HS1	38
98.	Powell, Justine, D-ENG-208BE2-KN-62392-HS2	59
99.	Powell, Justine, D-ENG-208BE2-KN-62392-HS5	43
100.	Chiri, Stacy, D-ENG-303BE3-KN-57782-HS2	70

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101. Chiri, Stacy, D-ENG-303BE3-KN-57782-HS4	55
102. Kleczka, Jenny, D-ENG-303BE3-KN-61817-HS1	63
103. Kleczka, Jenny, D-ENG-303BE3-KN-61817-HS7	55
104. Maldonado, Shelley, D-ENG-403BV2-K-60619-HS1	44
105. Maldonado, Shelley, D-ENG-403BV2-K-60619-HS2	33
106. Maldonado, Shelley, D-ENG-403BV2-K-60619-HS3	40
107. Maldonado, Shelley, D-ENG-403BV2-K-60619-HS6	44
108. Kleczka, Jenny, D-ENG-403BV2-K-61817-HS5	34

K12 leadership has been placed on notice as far back as two (2) years that it was not in compliance with the student-to-teacher ratios, and only under termination has K12 made any effort to resolve this particular breach of the Agreement.

12. K12 has counselor-to-student ratios that the School District believes are approximately 1366 students per counselor, depriving students of sufficient services and guidance. The American School Counselor Association recommends a ratio of 250 to one. This lack of services is reflected in your inadequate services to students and deficient reporting compliance. This needs to be remedied.
13. The student turnover rate for FY25 is currently 29.82%. K12 deficiencies in the following areas: program of instruction, resources provided, student and parent communication, teachers, counselors, computers and access, etc....is leading to an excessive number of students who do not remain with the program.
14. The School District demands the following data from Stride within seven (7) calendar days regarding this requirement of law that K12 knew or should have known –
 - a. All keystroke and all other attendance data for all students at DCA for the current school year regarding the amount of instructional time provided by each teacher with written verification of the data provided;
 - b. All keystroke and other attendance data for all students at DCA from the 2020-2021 school year to the present; and
 - c. All on-line data regarding the amount of time each teacher is face-to-face online providing direct instruction to students excluding all other contacts such as e-mail or portal access without class-wide instruction or tutoring/support.
15. The School District demands all Next Step Plans documentation for Grades 8th through 12th for the 2020-2021 school year to the present within seven (7) calendar days regarding this requirement of law that K12 knew or should have known;
16. The School District demands all technology complaints K12 has received with the date and time stamps of the received complaints and dates when remedied for the 2020-2021 school year to the present within seven (7) calendar days regarding this requirement of Agreement that K12 knew or should have known;

Exhibit D

17. The School District demands all technology documentation from K12 with student identification numbers denoting when each student received his or her computer and how many days each student waited for said computer or any replacement computer for the 2020-2021 school year to the present within seven (7) calendar days regarding this requirement of Agreement that K12 knew or should have known;
18. The School District demands all documentation K12 reflecting the number of grades entered per week for each student this current school year within seven (7) calendar days regarding this requirement of Board Policy that K12 knew or should have known that two (2) grades per week are required for each student;
19. The School District demands all documentation from 2020-2021 to present regarding or relating to action by K12 to employ teachers and copies of all employment contracts, on-boarding documents on status of licensure and qualifications and documentation regarding such teachers relating to seeking and securing licensure by the PED, completion of the required trainings as set forth by the PED and School District, training on applicable curriculum and instruction and on the policies for DCA within seven (7) calendar days regarding this requirement of Agreement that K12 knew or should have known;
20. The School District demands all documentation regarding or relating to turnover rate for teachers for each school year under the Agreement within seven (7) calendar days regarding this requirement of Agreement that K12 knew or should have known;
21. The School District demands all documentation regarding or relating to the action of K12 on addressing truancy for students absent 10 school days or more within seven (7) calendar days regarding this requirement of Agreement that K12 knew or should have known
22. The School District demands all documentation, including notice and approval regarding or relating to “flex” students who may or may not be subject to asynchronous learning by K12 within seven (7) calendar days regarding this requirement of law that K12 knew or should have known;

It is clear to the School District that additional services and compensatory services need to be provided for students K through current seniors outside of their current requirements for instruction during the school day. As such, the termination of the Agreement remains effective on June 30, 2025.

Mike Hyatt



GALLUP-McKINLEY
COUNTY SCHOOLS

Friday, May 16, 2025 Special Meeting

9:45 AM
Board Room, Student Support Center

NOTE: Items do not have to be taken in the order shown on this meeting notice.

1. Opening Items

- A. Call to Order
- B. Pledge of Allegiance/NM Pledge
- C. Roll Call
- D. Approval of Agenda

2. Reports

- A. Stride Inc./K12 regarding performance on the contract for virtual education services.

3. New Business

- A. Ratify the actions of the Administration to provide notice to Stride Inc./K12 of material breaches of the contract and to demand a remedy - ACTION
- B. Discussion and potential action on continuance or termination of the contract with Stride Inc./K12 under the terms of the contract - ACTION
- C. Discussion and potential action to direct the Administration to begin termination processes under the Procurement Code to terminate the contract in the best interests of the students and to be responsible stewards of public funds - ACTION
- D. Direct Administration to cease all payments to Stride Inc./ K12 until proof of compliance with services required and delivered as required and outlined in the contract - ACTION
- E. If necessary, direct the School District's attorney to invoke the arbitration provision under the contract related to Stride Inc./K12 to recover damages caused by the material breaches of the contract by vendor - ACTION
- F. If necessary, direct action of the School District's attorney to work with Administration to file complaints to the appropriate State and Federal agencies regarding Stride Inc./K12's actions and omissions under the contract and its uses of public funds - ACTION
- G. If necessary, action to direct the Administration to begin debarment process under the Procurement Code and make report of such action to State and Federal procurement agencies - ACTION
- H. Action to delegate to the Board President the authority to release a press release regarding the actions taken by the Board at this meeting and to speak on behalf of the Board to the media - ACTION

4. Executive Session

- A. Discussion with the School District's attorney to discuss and advise on legal options regarding contract for virtual instruction by vendor K12/Stride, as Pending or Threatened Litigation pursuant to Section 10-15-1(H)(7) of the Open Meetings Act and under the Attorney-Client Privilege in anticipation of and to prevent further litigation. The

discussion shall also include identifiable student information on students connected to vendor pursuant to Section 10-15-1(H)(4) of the Open Meetings Act. No action will be taken and only the items listed herein will be discussed.

5. Closing Items

A. Adjournment

**Minutes of Special Meeting
The Board of Education
Gallup McKinley County Schools
May 16, 2025**

A Special meeting of the Board of Education of Gallup McKinley County Schools was held May 16, 2025, beginning at 9:45 AM in the board room of Student Support Center, 640 S. Boardman, Gallup, NM 87301 or via [You-Tube@GMCS.ORG](https://www.youtube.com/watch?v=...)

BOARD MEMBERS PRESENT:

Christopher Mortensen, President
Charles Long, Vice President - absent
Michael W. Schaaf, Secretary
Priscilla Benally, Member
Kevin Mitchell, Member

GUESTS

Roberta Elkins	Dana Martinez
JoAnn Benenati	Esther Rodriguez
Diana Galindo	Rocky Joe

STAFF MEMBERS PRESENT:

Jvanna Hanks, Deputy Superintendent
Joan Nez, Recording Secretary

CALL TO ORDER – PLEDGE OF ALLEGIANCE - ROLL CALL

Chris Mortensen called the Board of Education meeting to order at 9:45 a.m. on Friday, May 16, 2025, in the boardroom of the Student Support Center, 640 Boardman, Gallup, New Mexico. (Four board members were present for roll call: Chris Mortensen, Michael Schaaf, Priscilla Benally, and Kevin Mitchell)

APPROVAL OF AGENDA

Michael Schaaf moves, and Priscilla Benally seconded to approve the agenda as presented and move the executive session after the approval of the agenda. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)

NEW BUSINESS

- A. Ratify the actions of the Administration to provide notice to Stride Inc/K12 of material breaches of the contract and to demand a remedy – ACTION
Michael Schaaf moves, and Priscilla Benally seconded to approve Ratify the actions of the Administration to provide notice to Stride Inc/K12 of material breaches of the contract and to demand a remedy. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)
- B. Discussion and potential action on continuance or termination of the contract with Stride Inc./K12 under the terms of the contract – ACTION
Priscilla Benally moves, and Michael Schaaf seconded to approve the potential action on termination of the contract with Stride Inc./K12 under the terms of the contract. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)
- C. Discussion and potential action to direct the Administration to begin termination processes under the Procurement Code to terminate the contract in the best interests of the students and to be responsible stewards of public funds – ACTION
Kevin Mitchell moves, and Michael Schaaf seconded the potential action to direct the Administration to begin termination processes under the Procurement Code to terminate the contract in the best interests of the students and to be responsible stewards of public funds. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)
- D. Direct Administration to cease all payments to Stride Inc./ K12 until proof of compliance with services required and delivered as required and outlined in the contract – ACTION

Exhibit F

Board of Education Minutes

May 16, 2025

Michael Schaaf moves, and Kevin Mitchell seconds to Direct Administration to cease all payments to Stride Inc./ K12 until proof of compliance with services required and delivered as required and outlined in the contract. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)

- E. If necessary, direct the School District's attorney to invoke the arbitration provision under the contract related to Stride Inc./K12 to recover damages caused by the material breaches of the contract by vendor – ACTION

Priscilla Benally moves, and Michael Schaaf seconds to direct the School District's attorney to invoke the arbitration provision under the contract related to Stride Inc./K12 to recover damages caused by the material breaches of the contract by vendor. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)

- F. If necessary, direct action of the School District's attorney to work with Administration to file complaints to the appropriate State and Federal agencies regarding Stride Inc./K12's actions and omissions under the contract and its uses of public funds – ACTION

Kevin Mitchell moves, Priscilla Benally seconds to direct action of the School District's attorney to work with Administration to file complaints to the appropriate State and Federal agencies regarding Stride Inc./K12's actions and omissions under the contract and its uses of public funds. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)

Recess at 12:05 pm – return at 12:10 pm

- G. If necessary, action to direct the Administration to begin debarment process under the Procurement Code and make report of such action to State and Federal procurement agencies – ACTION

Michael Schaaf moves, Kevin Mitchell seconds to direct the Administration to begin debarment process under the Procurement Code and make report of such action to State and Federal procurement agencies. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)

- H. Action to delegate to the Board President the authority to release a press release regarding the actions taken by the Board at this meeting and to speak on behalf of the Board to the media – ACTION

Priscilla Benally moves, Michael Schaaf seconds to delegate to the Board President the authority to release a press release regarding the actions taken by the Board at this meeting and to speak on behalf of the Board to the media. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)

EXECUTIVE SESSION - Discussion with the School District's attorney to discuss and advise on legal options regarding contract for virtual instruction by vendor K12/Stride, as Pending or Threatened Litigation pursuant to Section 10-15-1(H)(7) of the Open Meetings Act and under the Attorney-Client Privilege in anticipation of and to prevent further litigation. The discussion shall also include identifiable student information on students connected to vendor pursuant to Section 10-15-1(H)(4) of the Open Meetings Act. No action will be taken and only the items listed herein will be discussed.

ADJOURN

There being no further business Michael Schaaf move and Priscilla Benally seconded the meeting be adjourn. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes) Meeting adjourned on Monday, May 16, 2025, at 12:15 p.m.

Chris Mortensen, President

Michael Schaaf, Secretary

Recorded by
Joan Nez
May 16, 2025

GALLUP-McKINLEY COUNTY PUBLIC SCHOOLS

BOARD OF EDUCATION

RESOLUTION 2025-2026

WHEREAS, the Board of Education for the Gallup-McKinley County Schools met in a regular meeting at the Board Room of Student Support Center, 640 Boardman, Gallup, New Mexico on May 12, 2025, at 1:00 p.m. in accordance with the New Mexico Open Meetings Act; and;

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (N.M. Stat. Ann. Sections 10-15-1 to 4 (2013)) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission or other policy-making body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act required the Board of Education for the Gallup-McKinley County Schools to determine annually what constitutes reasonable notice of its public meetings;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education for the Gallup-McKinley County Schools that:

1. Unless otherwise indicated on the meeting notice, regular meetings of the Board of Education for the Gallup-McKinley County Schools shall be held at the Gallup-McKinley County Schools Student Support Center, located at 640 Boardman, Gallup, New Mexico, at 1 p.m. Any county meeting will be announced.

So long as regular meetings are held pursuant to this schedule, no further notice to the public shall be required. However, if a regular meeting is to be held at a different date, location or time, a written notice of such meeting shall be given in advance of the meeting date in accordance with the Open Meetings Act by posting on the School District's website (www.gmcs.org) and with the posting of physical notices in the Gallup-McKinley County Schools Student Support Center in Gallup, New Mexico. In addition, to supplement notice, but not required for meeting the notice requirement of the Open Meetings Act, the School District shall mail copies of the written notice of the revised meeting date, time or location to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation, which have made a written request for notice of public meetings. A final agenda for all regular meetings will be available at least seventy-two (72) hours prior to the meeting at the Office the Superintendent, located at the Gallup-McKinley County Schools Student Support Center, located at 640 Boardman, Gallup, New Mexico and on the School District's website at www.gmcs.org.

2. Regular meetings shall be held every third Monday intervals throughout the year. When the third Monday is a legal holiday or school holiday, the meeting will be held on Tuesday. A proposed agenda will be available at least seventy-two (72) hours before the meeting from the Superintendent's Office located in the Student Support Center, 640 Boardman, Gallup, New Mexico and on the School District's website www.gmcs.org. Notice of any other regular meetings will be given in advance of the meeting date in accordance with the Open Meetings Act. So long as regular meetings are held pursuant to this schedule, no further notice to the public shall be required. However, if a regular meeting is to be held at a different date, location or time, a written notice of such meeting shall be given in advance of the meeting date in accordance with the Open Meetings Act by posting on the School District's website (www.gmcs.org) and with the posting of physical notices in the Gallup-McKinley County Schools Student Support Center in Gallup, New Mexico. In addition, to supplement notice, but not required for meeting the notice requirement of the Open Meetings Act, the School District shall mail copies of the written notice of the revised meeting date, time or location to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation, which have made a written request for notice of public meetings. A final agenda for all regular meetings will be available at least seventy-two (72) hours prior to the meeting at the Office the Superintendent, located at the Gallup-McKinley County Schools Student Support Center, located at 640 Boardman, Gallup, New Mexico and on the School District's website at www.gmcs.org.

Special meetings may be called by the Board President or a majority of the members of the Board upon at least seventy-two (72) hours written notice to the members of the Board and to the public. For the purposes of giving public notice of special meetings, notice requirements shall be met by posting notice of the date, time, place and agenda on the School District's website (www.gmcs.org) and with the posting of the notice at the Student Support Center, located at 640 Boardman, Gallup, New Mexico. The public notice shall include a final agenda for the meeting or inform the public that a copy of the final agenda may be obtained at the Office the Superintendent, the Gallup-McKinley County Schools Student Support Center, located at 640 Boardman, Gallup, New Mexico at least seventy-two (72) hours before a special meeting. The agenda will also be available seventy-two (72) hours before the meeting on the School District's website at www.gmcs.org. To supplement notice, but not required for meeting the notice requirement of the Open Meetings Act, the School District will also provide a copy of the meeting notice to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

3. Emergency meetings will be called only under circumstances which demand immediate action to protect the health, safety and property of citizens or substantial financial loss to the School District. The Board of Education for the Gallup-McKinley County Schools will avoid emergency meetings whenever possible. The Board President or a majority of the members upon twenty-four (24) hours' notice may call emergency meetings, unless threat of personal injury or property damage require less notice. The notice for all emergency meetings shall include a final agenda for the meeting or information on how the public may obtain a copy of the agenda. Within ten days of taking action on an emergency matter, the public body shall report to the Attorney General's office the action taken and the circumstances creating the emergency.
4. For the purpose of regular, special, and emergency meetings; notice requirements for regular and special meetings are met when notice of the date, time, place and general subject matter to be discussed is posted on the School District's website (www.gmcs.org) and with the posting of notices at the Office the Superintendent, the Gallup-McKinley County Schools Student Support Center, located at 640 Boardman, Gallup, New Mexico. To supplement notice, but not required for meeting the notice requirement of the Open Meetings Act, the School District shall mail and/or e-mail and/or fax copies of the written notice of the meeting. to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation, which have made a written request for notice of public meetings. The notice shall indicate that a copy of the final agenda may be obtained at the Office the Superintendent, the Gallup-McKinley County Schools Student Support Center, located at 640 Boardman, Gallup, New Mexico at least seventy-two (72) hours before a meeting and on the School District's website (www.gmcs.org).
5. In addition to the information specified above, all notices shall include the following language: "If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Superintendent's Office at (505) 721-1000 extension 11189 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Superintendent's Office at (505) 721-1000 extension 11189 if a summary or type of accessible format is needed."
6. Copies of Board Meeting Notices, Meeting agendas and approve Minutes of meetings shall be available from the Superintendent's Office located in the Student Support Center, 640 Boardman, Gallup, New Mexico. Additionally, approved minutes will be posted on the School District's website, www.gmcs.org, when practicable in reasonable amount-of-time. Copies of draft minutes already prepared and available for the Board's review and approval may be obtained through a request under the Inspection of Public Records Act ("IPR"A), N.M. Stat. Ann. 14-2-1 to -12 (1947, as amended through 2023).
7. The Board of Education of the Gallup-McKinley County Schools desires to allow Board members to participate by means of telephone conference call or other similar communications equipment, including by virtual means when it is otherwise difficult or impossible for the member to attend the meeting in person. As such, in accordance with Section 10-15-1(C) of the Open Meetings Act, a member of the Board may participate in a meeting of the Board of Education by means of telephone conference call or other similar communications equipment, including by virtual means when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone or virtually can be identified when speaking, all participants are able

to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting, so long as this practice is allowed by law or rule of the Board.

8. The Board of Education for the Gallup-McKinley County Schools may close a meeting to the public only if the subject matter of such discussion or action is exempted from the open meeting requirement under Section 10-15-1 (H) of the Open Meetings Act.
- (a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the Board of Education taken during the open meeting. The authority for the closure and the subjects to be discussed shall be stated in the motion for closure and the vote on closure of each individual member shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in a closed meeting; and
 - (b) If the decision to hold a closed meeting is made when the Board of Education is not in open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances and stating the specific provision of law authorizing the closed meeting and the subjects to be discussed, is given to the members and to the general public; and
 - (c) Except as provided in Section 10-15-1 (H), any action taken as a result of discussions in a closed meeting shall be made by vote of the Board of Education in an open public meeting.
 - (d) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

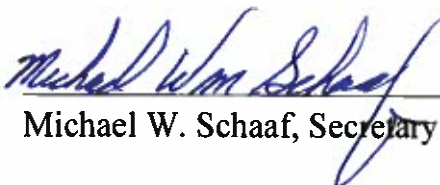
PASSED BY THE BOARD OF EDUCATION FOR THE GALLUP-McKINLEY COUNTY SCHOOLS THIS 12th DAY OF MAY 2025.



Christopher Mortensen, President

(Seal)

ATTEST



Michael W. Schaaf, Secretary

PUBLISH ONE TIME:

May 13, 2025



Mike Hyatt, Superintendent
mhyatt@gmcs.org
Deputy Superintendent
Jvanna Hanks II
Assistant Superintendent
K'Dawn Montano
Wade Bell

LEGAL NOTICE

**A SPECIAL MEETING
OF THE BOARD OF EDUCATION
FRIDAY, MAY 16, 2025**

**GALLUP-McKINLEY COUNTY SCHOOL DISTRICT #1
GALLUP, NEW MEXICO**

The President of the Gallup McKinley County School District #1 Board of Education announces a special meeting on Friday, May 16, 2025, at 9:45 a.m. The meeting will be held in the board room at the Student Support Center, 640 Boardman, Gallup, New Mexico. Action may be taken.

Mike Hyatt
Mike Hyatt
Superintendent

POST – May 13, 2025

Exhibit I

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.

JOHN P. SALAZAR
CATHERINE T. GOLDBERG
EDWARD RICCO
CHARLES K. PURCELL
NELSON FRANSE
PAUL R. KOLLER
CHARLES J. VIGIL
JEFFREY M. CROASDELL
SUNNY J. NIXON
R. TRACY SPROULS
SETH L. SPARKS
JOCELYN C. DRENNAN
JUSTIN A. HORWITZ
VALERIE REIGHARD DENTON
CHARLES R. HUGHSON
JOSE R. BLANTON
KRYSTLE A. THOMAS
GLENN A. BEARD
CRISTINA ADAMS
TYLER M. CUFF
MELANIE B. STAMBAUGH

DEBORA E. RAMIREZ
LUIS G. CARRASCO
JUAN M. MARQUEZ
JENICA L. JACOBI
RANDY TAYLOR
SAMANTHA M. HULTS
NELSE T. MILLER
HOLLY E. ARMSTRONG
MINAL P. UNRUH
PETER M. KELTON
LAUREN T. WINSTON
MEGHAN M. O'NEIL
B.W. STONE
BENJAMIN E. THOMAS
JONATHAN E. DOMINGUEZ
MARK D. BLOSSER
DENISSE ENRIQUEZ
JESSICA WILDER
MELANIE E. COFFING
LISA G. ZAMMIELO
LAUREN T. CHAVEZ

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DAVID P. BUCHHOLTZ
CYNTHIA A. LOEHR
LINDA M. VANZI
MELISSA M. KOUNTZ
WILLIAM G. GILCHRIST
MARTHA L. CARPENTER
DANIEL J. GRUNOW
MEGHAN D. STANFORD
LAURA E. SANCHEZ
KARA B. MURPHY
JACK BRANT

BERNARD S. RODEY (1856-1927)
PEARCE C. RODEY (1889-1958)
DON L. DICKASON (1906-1999)
WILLIAM A. SLOAN (1910-1993)
JACKSON G. AKIN (1919-2010)
JOHN D. ROBB (1924-2014)

SANTA FE OFFICE
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SANTA FE, NEW MEXICO 87501-2046
P.O. BOX 1357
SANTA FE, NEW MEXICO 87504-1357
TELEPHONE (505) 954-3900
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WRITER'S DIRECT NUMBER
(505) 768-7249

LSanchez@rodey.com

May 30, 2025

Submitted by FEDEX and email to: kcrisler@gmcs.org

Katherine Crisler
Procurement Director
Gallup-McKinley County Schools
P.O. Box 1318
Gallup, NM 87305

RE: Protest of Issuance and Retroactive Ratification of RFP-2025-15KC for Virtual (Online) School, Grades K-12, Multi-Year Agreement¹

Dear Ms. Crisler:

This law firm represents Stride, Inc., and its subsidiary K12 Virtual Schools, L.L.C. (together, "Stride"), and hereby submits this protest concerning the above-referenced Request for Proposals on Stride's behalf. Stride specifically protests the Gallup-McKinley County Schools' ("District") issuance of the its Request for Proposals dated April 4, 2025, entitled as indicated above (the "RFP") and the District's Board of Education's ("Board") attempt to ratify the issuance of the RFP retroactively. Pursuant to NMSA 1978, Section 13-1-172 (1987), this protest is submitted in writing within fifteen (15) calendar days after Stride's knowledge of the facts or occurrences giving rise to this protest, which occurred at the Board's May 16, 2025, Special Meeting. Therefore, this protest is timely. *See James Hamilton Construction Co. v. State ex rel. N.M. State Hwy. & Transportation. Dep't*, 2003-NMCA-067, ¶ 14, 133 N.M. 627, 68 P.3d 173 ("However, once the Department makes its preliminary award, any protest that arises from facts or occurrences that an unsuccessful bidder knows or should know at the time of the preliminary award should be filed

¹ Record is hereby made of the unusual requirement to post a surety bond or make a payment to the District in the amount of \$800 to file a protest. This is a highly unusual requirement that has the effect of dissuading any interest of potential protestors to file such a protest and, to our knowledge, no authority exists that would permit the District to impose such a requirement. Nevertheless, Stride, Inc. has complied with this requirement, under reservation of all rights.

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within fifteen days of the preliminary award.”). In addition to the other relief sought below, Stride requests that the District refrain from proceeding further with this procurement pursuant to NMSA 1978, Section 13-1-173 (1984) and 1.4.1.83 NMAC.

A. Standard of Review.

The standard of review for challenging the actions of the District and Board has been well established by New Mexico courts. By challenging the District’s issuance of the RFP, and the Board’s ratification of such issuance retroactively, Stride bears the burden of establishing that, in rendering these actions, the District acted not in accordance with law, without the support of substantial evidence, or fraudulently, arbitrarily or capriciously. *See* NMSA 1978, § 39-3-1.1(D) (1999); *see also* NMSA 1978, § 13-1-183 (1999) (“All actions authorized by the Procurement Code for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.”); NMSA 1978, § 39-3-1.1(C) (authorizing the district court to set aside, reverse or remand the final decision on the protest if it determines that: (1) the agency acted fraudulently, arbitrarily or capriciously; (2) the final decision was not supported by substantial evidence; or (3) the agency did not act in accordance with law.). “This court has consistently held that on appeals from administrative bodies, the questions to be answered . . . are restricted to whether [it] acted fraudulently, arbitrarily or capriciously, [or] whether the order was supported by substantial evidence and, generally, whether the action of the administrative body was within the scope of its authority.” *McDaniel v. N.M. Bd. of Medical Exmrs.*, 1974-NMSC-062, ¶ 8, 86 N.M. 447, 525 P.2d 374 (quoting *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646). “Arbitrary and capricious action by an administrative agency consists of a ruling or conduct which, when viewed in the light of the whole record, is unreasonable or does not have a rational basis, and ‘is the result of an unconsidered, willful and irrational choice of conduct and not the result of the ‘winnowing and sifting process.’” *Perkins v. Dep’t of Human Servs.*, 1987-NMCA-148, ¶ 19, 106 N.M. 651, 748 P.2d 24 (quoting *Garcia v. N.M. Human Servs. Dep’t*, 1979-NMCA-071, 94 N.M. 178, 608 P.2d 154).

More recently, the New Mexico Supreme Court has instructed that:

An arbitrary and capricious act is a “willful and unreasonable action, without consideration and in disregard of facts or circumstances[,]” . . . it is one “lacking a standard or norm,” . . . “not governed by any fixed rules, . . . [or where the administrative agency] acted without an adequate determining principle.”

Planning & Design Solutions v. City of Santa Fe, 1994-NMSC-112, ¶ 23, 118 N.M. 707, 885 P.2d 628 (citations omitted). By issuing the RFP without proper authorization from the Board, and the Board’s improper attempt to ratify its issuance retroactively, the District and the Board have ignored the rules fixed for the authorization and issuance of an RFP, and the rules barring retroactive ratification of prior actions, thereby making the District’s and the Board’s actions described herein not only contrary to law, but arbitrary and capricious, as described in *Planning & Design Solutions*. “. . . [w]hen[, as here,] statutes and regulations define the rules of competitive

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bidding, these statutes and regulations will be strictly construed against the government entity that solicited the bids.” *Id.* ¶ 6 (citing *K.L. Conwell Corp. v. City of Albuquerque*, 1990-NMSC-104, 111 N.M. 125, 802 P.2d 634). Rather than substituting its judgment for that of the District/Board, the reviewer should instead focus its inquiry on whether the agency’s “findings are supported by substantial evidence on the record as a whole.” *Perkins*, 1987-NMCA-148, ¶ 16 (citing *Garcia and Duke City Lumber Co. v. N.M. Env’tl. Improvement Bd.*, 1984-NMSC-042, 101 N.M. 291, 681 P.2d 717). Whole record review requires that the reviewer “consider not only the evidence in support of one party’s contention, but also to look at evidence which is contrary to the administrative finding; [it] must then decide whether, on balance, the agency’s decision was supported by substantial evidence[.]”” *Id.*; see also *Att’y Gen. of N.M. v. N.M. Pub. Serv. Comm’n*, 1984-NMSC-081, ¶ 11, 101 N.M. 549, 685 P.2d 957.

Upon review of the RFP, for which the Procurement Code and the regulations promulgated thereunder define the rules for this type of competitive solicitation, it is clear on its face that it did not comply with the Procurement Code with regard to several requirements that should have been included in the RFP upon issuance. See NMSA 1978, § 13-1-13 (2005) (“Except as otherwise provided in the Procurement Code, that code shall apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction.”); see also NMSA 1978, § 13-1-67 (2003) “‘Local public body’ means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including, . . . *school districts and local school boards*” (emphasis added).

Moreover, there is no evidence whatsoever that the Board ever acted to authorize the issuance of the RFP prior to its date. Additionally, the purported ratification by the Board at a special meeting held on May 16, 2025, of the Superintendent’s April 1, 2025 action and the issuance of the RFP on April 4, 2025, was contrary to established New Mexico law, as discussed in Section D below. Importantly, the Board’s May 16, 2025 Special Meeting, at which it attempted to ratify Superintendent Hyatt’s and the District’s prior actions, did not comport with the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013) (the “OMA”), which rendered the actions taken by the Board at that meeting invalid. For these reasons, the District and the Board clearly did not follow established procurement rules, acted contrary to law, acted arbitrarily and capriciously, and their actions were willful and unreasonable, without consideration and in disregard of facts or circumstances, and lacked a standard or norm. As a result, Stride respectfully requests that the District cancel the RFP, take all legal and proper actions to conduct the RFP appropriately, and reissue it in compliance with state law.

B. The RFP Issued by the District Does Not Comply with State Law.

The Procurement Code requires certain provisions to be included in any RFP. NMSA 1978, Section 13-1-112(A)(2), (3), (5) (2011) requires inclusion of: (i) contractual terms and conditions applicable to the procurement; (ii) a form of disclosure of campaign contributions given by prospective contractors to applicable public officials; and (iii) the requirements for complying with any applicable in-state preference provisions as provided by law. The RFP that the District issued

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fails to comport with these basic requirements of the Procurement Code. See the issued RFP attached as Exhibit A. The RFP is a total of 13 pages, and clearly does not include a sample contract or other instrument proposing the terms or conditions applicable to a contract to be issued pursuant to the RFP. It also wholly fails to include the required campaign contribution disclosure form, an example of which is typically used in state procurements is attached to this Protest as Exhibit B. Finally, the RFP fails to include even a reference to the applicable in-state preference provisions as provided by law. *See* NMSA 1978, § 13-1-21(E) (2022) (requiring that when the District makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the District shall award additional points to a resident business, a Native American resident business, or certain resident veteran businesses and Native American resident veteran businesses.). Therefore, the RFP, as issued by the District on April 4, 2025, does not and cannot comply with applicable state law.

C. There Is No Evidence that the Board Took Action to Authorize the Issuance of the RFP Prior to May 16, 2025.

NMSA 1978, Section 22-5-4(J) (2005) establishes that except for expenditures of salaries, local school boards have the power and duty to contract for the expenditure of money, according to the provisions of the Procurement Code. The provisions of this section require school boards to contract according to all but two sections of the entire Procurement Code, meaning all bidding and solicitation requirements of the Procurement Code apply to school district contracts. *Morningstar Water Users Ass'n v. Farmington Mun. Sch. Dist. No. 5*, 1995-NMSC-052, ¶ 50, 120 N.M. 307, 901 P.2d 725. Similarly, the OMA requires the Board to take action in an open meeting in order to authorize the issuance of the RFP. NMSA 1978, § 10-15-3(A) (“No . . . action of any board . . . or other policy-making body shall be valid unless taken or made at a meeting held in accordance with the requirements of [the OMA].”). There is no evidence here that the Board took any official action at a Board meeting, held in accordance with the OMA, to authorize the issuance of the RFP that is the subject of this Protest prior to May 16, 2025. Indeed, this RFP was issued by Katherine Crisler on April 4, 2025, without any indication from the Board that an official action had been taken directing her or directing the Superintendent to direct her to issue this RFP.

To the contrary, there exists ample evidence that the Board acted no earlier than May 16, 2025, concerning the District’s issuance of the RFP, as reflected in the minutes and agendas for all Board meetings prior to this date. The Board’s action to ratify the issuance of the RFP is a further clear indication that the Superintendent and/or Ms. Crisler acted outside the scope of their authority, or, in other words, were acting without the Board’s authority when they initially issued the RFP. As such, the District lacked any authority to issue the RFP prior to May 16, 2025, the date upon which the Board first took any action related to the RFP.

D. The Board Cannot Retroactively Approve the District’s Actions, Including those of the Superintendent or Procurement Director.

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New Mexico courts have established binding precedent that where a local government's governing body ratifies actions it took in terminating the mayor's employment taken outside of an open meeting and in violation of the OMA, the ratification is not effective retroactively, but, rather, effective only as of the date the ratification occurred. *Palenick v. City of Rio Rancho*, 2012-NMCA-018, 270 P.3d 1281, *rev'd on other grounds*, 2013-NMSC-029, 306 P.3d 447. Thus, the Board's vote to ratify the Superintendent's and the District's actions at the May 16, 2025 special meeting cannot be given retroactive effect. Thus, under *Palenick*, the purported effective date of the issuance of the RFP (and the Superintendent's termination of the contract with Stride) must be the date that the Board ratified these actions, here, May 16, 2025.

E. The Issuance of the RFP is in Violation of the District's Contract with Stride.

Additionally, even if the RFP had been issued correctly – that is, in accordance with the requirements outlined above as specified by the Procurement Code, and with clear direction from the Board at an open meeting – it still would not be valid as the underlying contract that the RFP is attempting to replace was still in effect and that contract includes an exclusivity clause that the Board entered into knowingly in June 2020. *See City of Santa Fe v. Travelers Casualty & Surety Co.*, No. 28,944, mem. op. (N.M. Ct. App. Jan. 14, 2009) (nonprecedential) (citing *State ex rel. Udall v. Colonial Penn Ins. Co.*, 1991-NMSC-048, 112 N.M. 123, 812 P.2d 777) (observing that in *Colonial Penn Ins. Co.*, the New Mexico Supreme Court had rejected the State's argument that a statutory three-year time-to-sue provision should be given effect, rather than a shorter two-year time-to-sue provision contained in the performance bond, because it would be against the public policy requiring the protection of the public fisc to enforce the shorter opportunity to sue, and affirming summary judgment determining that the shorter time-to-sue provision should govern “because the parties are free to contract, and having clearly expressed a [shorter] time-to-sue provision, will be bound by it.”). Thus, in disregarding the exclusivity clause in the contract between the District and Stride that Superintendent Hyatt purported to terminate as of April 1, 2025, it is evident that the District and the Board acted in an arbitrary and capricious manner, without the support of substantial evidence, and contrary to the law applicable to the Parties, as set forth in such contract. *Castillo v. Arrieta*, 2016-NMCA-040, ¶ 16, 368 P.3d 1249 (“Each party to a contract has a duty to read and familiarize himself with its contents . . . , and if the contract is plain and unequivocal in its terms, each is ordinarily bound thereby.”) (quoting *Smith v. Price's Creameries, Div of Creamland Daires, Inc.*, 1982-NMSC-102, ¶ 13, 98 N.M. 541, 650 P.2d 825).

F. The Board Violated the Open Meetings Act at its May 16, 2025 Special Meeting, Rendered the Actions it took on that Date Invalid.

The OMA applies to “[a]ll meetings of a quorum of members of any board . . . of any district or political subdivision, held for the purpose of formulating public policy, . . . discussing public business *or taking any action within the authority of . . . any board . . .*”, including the District. NMSA 1978, § 10-15-1(B) (2013) (emphasis added); *see also State v. Hernandez*, 1976-NMSC-081, ¶ 3, 89 N.M. 698, 556 P.2d 1174 (concluding that the Santa Fe City Board of Education “is a policy-making body covered by the [OMA].”). “No resolution, rule, regulation, ordinance *or*

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action of any board . . . or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.” NMSA 1978, § 10-15-3(A) (1993) (emphasis added). Thus, if the Board’s May 16, 2025 Special Meeting did not conform with all provisions of NMSA 1978, Section 10-15-1, the actions it took at such meeting are of no legal effect. *Id.*

NMSA 1978, Section 10-15-1(I) (2013) mandates that when the Board closes an otherwise open meeting, such as its May 16, 2025 Special Meeting, it can do so only where closure is “approved by a majority vote of a quorum of the policymaking body; *the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting*; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes.” *Id.* (emphasis added). As reflected in the video recording of the Board’s May 16, 2025, Special Meeting, the motion to close the meeting in order for the Board to enter into executive session did not state the authority for the closure, nor did it state with reasonable specificity the subject to be discussed in such executive session, contrary to Section 10-15-1(1).² Therefore, because the Board’s May 16, 2025 Special Meeting failed to comport with the requirements of Section 10-15-1, the actions it took at such meeting, namely, the attempt to ratify the District’s issuance of the RFP and the Superintendent’s termination of the District’s contract with Stride, are invalid as a matter of law. § 10-15-3(A).

E. Conclusion and Request for Relief

The District’s and the Board’s actions, or failure to act, in issuing this RFP are in violation of law, and were arbitrary and capricious, and made without substantial evidence. For all the reasons listed in this Protest, Stride respectfully requests that the District cancel this RFP and re-issue it in accordance with appropriate procedures and in full compliance with the New Mexico Procurement Code. NMSA 1978, § 13-1-131 (1987) (“ . . . [A] request for proposals or any other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state of a local public body. A determination containing the reasons for cancellation shall be made part of the procurement file.”); *see also* 1.4.1.88 NMAC (describing when and how a solicitation can be cancelled and a contract awarded in violation of law can be terminated). In addition, Stride requests that the District determine that the proposed award of a contract to Graduation Alliance as a result of the RFP be cancelled or terminated because the RFP was issued, and the proposed award of a contract to Graduation Alliance, is in violation of law. NMSA 1978, § 13-1-181 (2002); NMSA 1978, § 13-1-182(B) (2002). Pursuant to 1.4.1.86 NMAC, Stride hereby requests a hearing on these matters and to be afforded the opportunity to make discovery requests prior to such a hearing (to include, but not necessarily be limited to, communications to, from, or between District officials and employees concerning the RFP, and documents relating to the decision by the District to exclude certain required elements from the RFP) as authorized by 1.4.1.85 NMAC. As previously stated, Stride hereby also requests that the District refrain from proceeding further with this procurement until a resolution of this Protest is reached, pursuant to the provisions of NMSA 1978, Section 13-1-173 (1984) and 1.4.1.83 NMAC.

² The Board similarly did not comply with the OMA at its regular meeting on May 12, 2025.

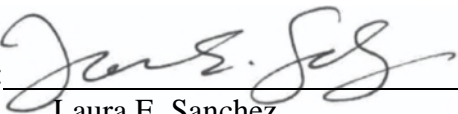
Exhibit I

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

Katherine Crisler
May 30, 2025
Page 7

Respectfully submitted this 30th day of May, 2025,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 

Laura E. Sanchez

Luis Carrasco

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Post Office Box 1888
Albuquerque, New Mexico 87103
(505) 765-5900

LSanchez@rodey.com

LCarrasco@rodey.com

cc: Andrew M. Sanchez, asanchez@edlawyer.com



GALLUP-McKINLEY
COUNTY SCHOOLS

Gallup-McKinley County Schools
Procurement Office
P.O. Box 1318
Gallup, New Mexico 87305-1318

REQUEST FOR PROPOSAL

Virtual (Online) School, Grades K-12
Multi-Year Agreement

No. RFP-2025-15KC

Commodity Code(s): 92420, 92474, 92478, 92488

GMCS Website: www.gmcs.org

Mailing Address:	Physical Address:	Contact:
P.O. Box 1318 Gallup, NM 87305	640 S. Boardman Dr. Gallup, NM 87301	Katherine Crisler Procurement Director (505) 721-1088 kcrisler@gmcs.org

Notes:

Closing Date: April 28, 2025

F.O.B. Point: DESTINATION

Closing Time: 2:00 PM (Local-MT)

Terms: Net 30 unless otherwise stated

Issue Date: April 4, 2025

[MS Teams Online Meeting](#)

**Pre-Proposal Conference April 18, 2025,
2:00 PM (Local-MT)**

**VIRTUAL SCHOOL
RFP-2025-15KC**

SPECIAL CONDITIONS

1. **Term:** The intent of this solicitation is to provide services for two years to commence Date of Award and end two calendar years following. The District reserves the right to renew this agreement annually for a period of one year following the initial two year period.
 - A. Total term of this contract shall be no more than ten (10) years, except in the event that a temporary extension may be needed for coverage during the competitive solicitation and/or negotiation phase of a new RFP.
2. **Work To Be Done:** The work to be performed under this contract and in accordance with these specifications consists of furnishing curriculum, testing, equipment, labor and materials for a Virtual School.
3. **Appropriations:** The terms of this Agreement are contingent upon sufficient monies being made available by GMCS for the performance of this Agreement. If sufficient appropriations and authorizations are not made by GMCS, this Agreement shall terminate upon written notice being given by GMCS to the Contractor. The school district's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
4. **Cancellation for Convenience:** GMCS reserves the right to cancel any contract resulting from this request for convenience by giving thirty (30) days written notice to the vendor. The District shall be liable to the vendor for any services provided or material ordered and accepted prior to termination.

**VIRTUAL SCHOOL
RFP-2025-15KC**

SCOPE OF WORK

I. INTRODUCTION

- A. Gallup-McKinley County Schools (GMCS) is soliciting proposals to provide an online Virtual Public School. The intent is to provide a rigorous on-line Kindergarten through 12th Grade (K-12) learning environment focused on student achievement as an option for students in New Mexico who might otherwise not be able to attend the traditional school environment.
- B. The Gallup-McKinley County School District covers an area of approximately 4,957 square miles (see attached map, Appendix "C"), and is one of the 89 public school districts in New Mexico. The District currently has 32 schools: 9 high schools, including 1 alternative high school; 7 middle schools, and 16 elementary schools. It also has three programs including an early college high school, career technical program and online virtual program. Enrollment for the District is approximately 12,587 students (K-12) in all schools and programs.
- C. The current GMCS virtual school has over 3,800 students enrolled. No minimum or maximum enrollment numbers are guaranteed.
- D. Offeror is not required to meet current enrollment levels and is cautioned against enrolling more students than the Offeror has the capacity and capability to fully support with quality staff. The successful Contractor must be fully committed to students and educational outcomes.
- E. Questions/Clarifications
 - 1. All questions concerning this Request for Proposals (RFP) shall be submitted to the Procurement Manager, through the GMCS online eBidding platform utilizing the public question and answer forum.
 - 2. Only written questions submitted via the GMCS Bonfire portal will be accepted. Responses to written questions received prior to a Question and Answer deadline will be publicly posted on the GMCS Bonfire portal.
 - 3. Offerors are hereby advised and cautioned that all communication and information shall be obtained ONLY through the Procurement Manager through the Bonfire platform. Communication with other District employees, officials, or Board Members in connection with this solicitation are not to be relied upon and may result in Offeror's proposal being disqualified.

II. SCOPE OF SERVICES

- A. Scope of Work
 - 1. Contractor to provide an academically-focused educational option for New Mexico

**VIRTUAL SCHOOL
RFP-2025-15KC**

students who are considered able to successfully participate in a virtual school environment to attain their High School Diploma.

2. Curriculum to comply with the standards as issued by the New Mexico Public Education Department (PED) standards. Current standard is "Common Core.
3. The intent is for a student to be able to "attend" classes with synchronous instruction maximized.
4. The District intends for the Virtual School to be 100% virtual to begin the contract.
 - a. The District and Contractor may mutually agree to provide the learning environment through a "blend" of live and virtual.
5. **The preferred "start" date for the Virtual School to begin is Fall of 2025.**

B. CONTRACTOR RESPONSIBILITIES The Contractor shall be responsible for the following, but not limited to:

1. On-Line Curriculum
2. Additional curricular offerings to include: Career Technical Education (CTE) | Project Based Learning (PBL) / Dual Credit/Credit Recovery Options/Additional Ala Carte Class Options
3. Recruiting and hiring qualified teachers
 - a. The Contractor shall remove a teacher immediately upon request of the District and provide a replacement for the class to ensure no interruption of services.
4. Providing professional development for teachers
5. Curriculum materials for instruction.
6. Providing students with functioning computer equipment including a means for internet access complete with CIPA-compliant web content filter.
7. Providing full services for Special Education students as determined by Individual Education Plan.
8. Complying with Student Assistance Team requirements
9. Complying with all applicable laws, statutes, and regulations (Federal, State, Local and Tribal) including but not limited to: class load limits, staff waiver requirements, parental reporting requirements, collection of required student data, and daily attendance information.

**VIRTUAL SCHOOL
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10. Providing an educationally-focused program
 11. Demonstrating integrity in delivering program requirements and administration
 12. Recruiting students
 13. Providing counseling services (Academic) for students
 14. Providing technical support for students.
 15. NMPED testing in a proctored environment consistent with NMPED test administration guidelines.
- C. DISTRICT RESPONSIBILITIES The District will be responsible for the following:
1. Recruiting and hiring a Principal for the Virtual School.
 2. Developing an application process for current District students or students in the GMCS attendance areas to apply in order to attend Virtual School.
 3. NM PED Student Reporting requirements.
- D. REVIEW
1. The District and Successful Contractor shall mutually agree upon a review schedule (monthly, quarterly, semi-annually, or annually). The review is intended to provide both parties the opportunity to ensure the delivery of the instruction is adequate, student progress is sufficient, and discuss/negotiate potential changes to the existing contract.

TECHNICAL RESPONSE

III. GENERAL REQUIREMENTS:

- A. Describe the virtual school's governance structure and the capacity.
- B. Describe the virtual school's capacity to implement the proposal and provide high quality instruction.
- C. Describe the virtual school's proposed school year.
- D. Provide a narrative staffing plan and include a draft staffing chart.
- E. Describe the virtual school's plan for recruitment of students outside the District's attendance area. Include the procedure for application components including proof of guardianship and residency, and releases for general and special education records. Include how this data would be communicated with the District.
- F. Describe in detail the process and forms that the virtual school will use to notify the District

**VIRTUAL SCHOOL
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of the number and grade level of students attending the virtual school or who have transferred to another school (GMCS or other district).

- G. Describe where the students will access the virtual school's courses, including whether it is in the home or at a location provided and overseen by the Virtual School.
- H. Describe how the virtual school will provide adequate initial and ongoing training and support for students to enable them to successfully participate in online learning. Include any orientation course for students new to online learning, how their ability to learn will be assessed, and what remedial help is available to ensure students are going to be successful learners.
- I. Describe how the virtual school will establish personalized learning plans that are standards based for every student. Describe how the learning plan will be developed for new students and available to receiving districts for students who transfer out of the virtual school
- J. Describe how virtual school's strategies for supporting all students at different ages and grade levels so that they complete courses and achieve their academic and career goals. Include a description of the settings in which these support services will be provided and qualifications of individuals who will provide the support services.
- K. In the absence of time and learning requirements, describe how the virtual school will ensure that all enrolled students will be fully engaged in teaching and learning and will have opportunities to thrive in the virtual learning environment.
- L. Describe how the virtual school will monitor student progress in order to identify areas of difficulty and assist students who need additional support.
- M. Identify how the virtual school will administer state required assessment tests.
- N. Describe how communication takes place with students and parents (or guardians), how it is monitored, and how do you address any concerns if they arise.
- O. Describe how the virtual school will involve parents and guardians as partners in the education of students, include goals for parental and family engagement.
- P. Identify proposed partner entities and describe how they were vetted and selected over other potential partners.

IV. CURRICULUM

- A. Describe the curriculum and instruction resources that is intended to be utilized and how the virtual school's curriculum is aligned to the New Mexico Common Core Standards in all subject areas.
- B. All courses are under the direction of certified NM teachers. Any individual needed to provide the provision of FAEP under NM state and federal guidelines.

**VIRTUAL SCHOOL
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- C. Provide the curriculum scope and sequence for each content area at each proposed grade level to confirm alignment with New Mexico standards.
 - D. The virtual school must provide a complete list of course offerings which include core, elective, world language, health, PE, CTE, STEM, dual credit and AP offerings. They must also include any career pathways that are available. How do these courses fulfill the NM graduation requirements?
 - E. Describe your assessment philosophy (formative, interim).
 - F. Identify any third-party curriculum or assessment vendors with whom the virtual school will contract.
 - G. The contractor shall not charge any public school for the use or replication of any part of their curriculum.
 - H. Describe how the virtual school will ensure that all students have access to necessary technology and materials.
 - I. Describe how students and staffs are scheduled, including but not limited to:
 - 1. Mobile application
 - 2. On-line portal
 - J. Describe how course requests for/by students are handled, including but not limited to:
 - 1. Student request a particular course;
 - 2. Guidance/Scheduler can use that information to build schedules;
 - 3. Automatic system can build/load based on this information.
 - K. Describe how the virtual school will capture and report on State of NM specific Career and Technical Education (CTE) data at both enrollment and program levels.
- V. TECHNOLOGY
- A. Educational courses and teaching services, including management software, learning materials, computer printers (if necessary), internet access, internet equipment and technical support services will be provided by the virtual school provider to each individual student free of charge.
 - B. Describe the provisions for cyber security and reference any regulations/processes the Virtual School will follow.
 - C. The equipment provided is to support the latest technology including but not limited to: operating system, web browsers

**VIRTUAL SCHOOL
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- D. Describe the technical support available to students, including but not limited to types and hours.
- E. Describe how the virtual school will provide for an uptime availability of 99.9 % or better.
- F. Describe the capacity to support and store all critical student, program, and staff data for expedient retrieval and analysis. State where the student information system is NMPED compliant. Specify how the school will meet all NMPED reporting requirements. Specify what Student Information System (SIS) will be used.
- G. Describe how data will be shared with the District.
 - 1. What methods are used to automate data transfers, and how frequently do these updates occur?
 - 2. How do you ensure data alignment and accuracy between your system and a district SIS throughout the school year?

VI. SPECIAL EDUCATION

- A. Describe the standards, processes and procedures that the proposed school will employ to identify, assess, teach and support students who need customized learning plans to include, but not limited to: English language learners, 504, or students in need of special education services.
- B. Describe how services are provided for students on IEP's, English Language Learners, 504 customized accommodations for student learning.
- C. Describe how the virtual school will capture and report on State of NM required special education student data elements.

VII. FINANCES

- A. Summarize the entity's experience and a description of where and how it has implemented its services. Provide evidence that the entity has demonstrated positive academic results and responsible fiscal management.
- B. Explain the structure and process for managing the virtual school's finances. Who is responsible and what are his/her qualifications?

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VIII. SEQUENCE OF EVENTS – **Schedule is subject to change.**

	Action	Responsibility	Date/Time (Local Mountain Time)
1.	Issue RFP	District	4/4/2025
2.	Pre-Proposal Conference (Optional) Microsoft TEAMS Meeting Meeting ID: 265 317 928 474 Passcode: cV3xK3QW	District	4/18/2025 at 2:00 PM
3.	Deadline to Submit Written Questions	Potential Offerors	04/21/2025
4.	Response(s) to written questions, via email	Procurement Manager	04/23/2025
	Deadline to Submit Proposals	Offerors	04/28/2025 at 2:00pm
	Proposal Evaluation	Evaluation Committee	4/28/2025 – 4/30/2025
	Interviews (if held)	Evaluation Committee	TBD
	Recommendation for Award to Governing Body	Procurement Manager	05/12/2025
	Contract Negotiations	District	TBD
	Notice of Award	District	TBD
	Protest Deadline	Offerors	TBD

IX. LIABILITY INSURANCE

- A. Contractor shall obtain and maintain throughout the life of this contract, insurance at contractor's expense. Contractor shall name GMCS as additional insured (Certificate Holder) in regard to General Liability coverage and include an endorsement by the insurer that the policy may not be cancelled nor allowed to lapse without ten (10) days' notice thereof first being given to GMCS. All policies shall be endorsed to provide GMCS with ten (10) days' notice prior to any cancellation or lapse in coverage.
- B. Worker's Compensation: The Contractor shall maintain adequate Workman's Compensation Insurance with agencies licensed to do business in the State of New Mexico, for all employees.

**VIRTUAL SCHOOL
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C. Other required coverage: The Contractor shall maintain Public Liability and Property Damage Insurance as shall protect the Contractor and the school district for all claims for damages, personal injury, wrongful death as well as claims for property damages which may arise from work covered under this contract, as such work be performed by anyone directly or indirectly employed the Contractor.

D. Coverage Required: The kinds and amounts of insurance required are as follows:

1. Commercial General Liability Insurance with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$2,000,000	Policy Aggregate
\$1,000,000	Products liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal (Damage Rented Premises)
\$ 5,000	Medical Payments

Said Policy of insurance must include coverage for contractual liability and all operations performed for the school district by the Contractor.

2. The District shall accept coverage in excess of those limits stated above if successful Contractor carries larger limits.

E. Increased Limits: During the life of the Contract (agreement) the school district may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

F. Certificates, renewals, and notice of cancellation shall be sent to:

Gallup-McKinley County Schools, Procurement & Business Services Director
P.O. Box 1318, Gallup, New Mexico 87305-1318

X. RESPONSE FORMAT AND ORGANIZATION

A. Number of Responses – Only one (1) proposal may be submitted by each individual entity in response to this solicitation.

B. Required Forms or Input Information – Offerors shall upload forms in Portable Document File (pdf) format and input information which are stated to be required on the GMCS Bonfire eBidding portal.

C. Optional Forms or Input Information – Offerors may upload forms in Portable Document File (pdf) format or input information which are optional, but applicable to the Offeror.

**VIRTUAL SCHOOL
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- D. Proposal Format – Proposals must be printed and **limited to FIFTY (50)** of text and/or graphic material. If there is any question as to format requirements they shall be directed to the Procurement Manager for clarification, prior to submittal of documents.
1. Cost Proposal - only **one (1) cost proposal** is to be submitted. This must be uploaded separately from the Technical Proposal.
 - a. **Offerors are cautioned** that **disclosing cost information in other parts of their proposal, other than where requested** to be input/submitted, may result in **declaring the proposal as Non-Responsive, and will not be evaluated or considered for award.**
 2. Exclusions from Page Limitation—the Cost Proposal and required or optional forms are excluded from the maximum page count.
 3. Non-Conforming Proposal – Any proposal deemed **non-conforming** by the Procurement Manager and/or Evaluation Committee Chairperson in regard to format will be considered non-responsive. Offerors shall contact the Procurement Manager to clarify questions concerning format prior to submission.

XI. EVALUATION

- A. Process. The purpose of the evaluation of proposals is to assess the relative merits of the proposals submitted and to make an award to the responsible Offeror(s) whose proposal(s) is/are determined to be the most advantageous to the District, taking into consideration the evaluation factors as set forth below.
1. **Point Calculations** - All calculations of point standings, including any addition or deduction of points to Offeror submittals shall occur at a meeting of the Evaluation Committee, with all members in attendance. The Committee's points for each Offeror shall be totaled and averaged, and the average translated into a rank score. The highest rank(ed) Offerors shall be considered for interviews in-person or via an online meeting platform. **The District reserves the right to award a contract without holding interviews.**

B. EVALUATION CRITERIA

1. **Experience/Qualifications: Corporate & Key Personnel**
 - a. Identify the specific individual(s) who will be responsible for work performed as presented in the technical proposal. Provide information that documents key personnel's qualifications, background, experience, and availability to perform all aspects of the work.
 - b. Provide evidence and discussion of prior, proven experience as a provider for the scope of work and technical requirements.

30 Points

**VIRTUAL SCHOOL
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2. Technical Approach/Methodology: Extent to which the goods/services offered meet the district's requirements and preferences.
- a. Provide a response to all required services and technical response sections with a description of the approach and variety of methods used to meet District needs. **See Sections on pages 6-8**

35 Points

3. Other Value-Added Services: Offerors are encouraged to thoroughly describe any other value-added services and resources they feel may contribute to the success of the program. These should be identified and listed separate from the response to the Technical Approach.

10 Points

4. Cost Proposal: Costs proposed shall be in direct relationship to the services offered in relation to the Scope of Work. **This must be submitted SEPARATE from the Technical Proposal.** The following formula will be used to evaluate

25 Points

$$\text{Offeror's Points} = \frac{\text{Lowest Responsive Offer Cost}}{\text{This Offeror's Cost}} \times \text{Maximum Points}$$

The Lowest Responsive Offeror's Cost will be divided by the Offeror's cost, and then multiplied by the number of available points in the evaluation process to arrive at the final ranking of Offerors.

1. Interview/Product Demonstration: If the Evaluation Committee determines that there are sufficient responsive, responsible Offerors submitted for a geographical area, notice will be given to those Offerors to participate in the Interview/Demonstration Process. A portion of the interview will include time for a live demonstration of the proposed solution.

100 Points

GRAND TOTAL POTENTIAL OF 200 POINTS

**VIRTUAL SCHOOL
RFP-2025-15KC**

C. Cost Proposal

1. The Cost Proposal shall provide a clear explanation of how prices will be charged for in-scope services.
 - a. For comparison purposes, the price proposal **MUST** total any proposed costs for deliverables in a total price per student.
 - b. If rates will differ per grade levels, this must be clearly stated.
 - c. For comparison purposes, the total price per student shall assume student is a general education student and does not qualify for Special Education or intervention services.
2. Upload (pdf format) a complete schedule of fees that itemize all proposed costs for deliverables in direct relation to the Technical Approach and Scope of Work. **Price per student shall be clearly identified on this Schedule of Fees.**

D. Optional Costs and Alternate Pricing Proposals

1. Optional (Add-on) and Alternate pricing structures may be submitted for consideration, but **CLEARLY LABELED AS ALTERNATE PRICE PROPOSAL**. These Optional or Alternate proposals shall not be used for evaluation and scoring purposes.

E. Final Pricing will be negotiated and included in the Final Contract.



Katherine Crisler, Director of
Procurement and Business Services

Senior Procurement Buyer
Hugo Cano

Buyers
Rebecca Bertinetti
Gregory Hudson
Breana Kesner

REQUEST FOR PROPOSALS

GENERAL CONDITIONS

INSTRUCTIONS TO OFFERORS: The purchase of any and all supplies, equipment, or services by the Gallup-McKinley County Schools (GMCS), pursuant to any advertisement or request for proposals is subject to the following terms and conditions:

1. **Sealed Proposals:** All proposals must be submitted via the GMCS Bonfire eBidding portal prior to the time specified as the “closing” of the solicitation on the portals and in the Advertisement for Proposals. All proposals must be submitted as instructed on the portal. All proposals must be signed by a responsible and authorized person for the bidding firm; failure to do so may result in disqualification of their respective proposal. **NOTE: FAX TRANSMITTAL, ELECTRONIC MAIL (EMAIL) TRANSMITTAL, AND HARDCOPY PROPOSALS WILL NOT BE ACCEPTED.** The portal will not allow for submission of proposals after the “closing” date and time.
2. **Modifications or Withdrawal:** Proposals may be modified or withdrawn prior to the “closing” date and time for the solicitation, by the Offeror on the GMCS Bonfire portal. Withdrawal of a proposal after the closing date and time is governed by applicable procurement regulations.
3. **Proposal Closing and Unsealing of Contents:** The “unsealing” of the proposals shall be conducted in private to maintain the confidentiality of the contents of all proposals. The District may release ONLY the names of the Vendors submitting offers at the time of the unsealing.
4. **Note:** These documents constitute a "Request for Proposal" or RFP. It is a request for an offer. As such, it allows alternate offers or proposals to be considered and the terms and conditions may be subject to negotiations to reach best and final offers. All information requested for submittal should be included with the offer, and exceptions or alternates clearly noted.
5. **Proposal Offer Firm:** Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

6. **Amendments:** If any questions or responses require revision to the solicitation as originally published, such revisions will be by formal Amendment only. If the solicitation includes a contact person for technical information, Offerors are cautioned that any oral or written representations made by this or any person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written Amendment to this solicitation issued by the Procurement Office. For a determination as to whether any representation made requires that an amendment be issued, contact the Procurement Office.
7. **Disclosure of Proposal Contents:**
- a. Proposals will be kept confidential until negotiations and the award are completed by the District. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
 - b. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
 - c. Confidential data is restricted to:
 - i. Confidential financial information concerning the Offeror's organization;
 - ii. Data that qualifies as trade secret in accordance with the Uniform Trade Act, §57-3A-1 to 57-3A-7, NMSA 1978
 - iii. PLEASE NOTE: The price of products offered or cost of services proposed **shall not be designated** as proprietary or confidential information.
 - d. If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the District shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.
8. **Competency of Offeror:** Proposals will be considered only from firms which are regularly engaged in providing the type of materials or service described in the solicitation documents, and who can provide evidence that they have established a satisfactory record of performance to insure they can execute the requirements as stated herein. Any determination as to competency shall be made by appropriate GMCS staff.

9. **Offeror Qualifications:** The Evaluation Committee may, via the Procurement Manager, make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.
10. **Prime Contractor Responsibility:** Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the District which may derive from this RFP. The District entering into a contractual agreement with a vendor will make payments to only the prime contractor.
11. **Subcontractors/Consent:** Use of subcontractors **shall** be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the District awarding any resultant contract before any subcontractor is used during the term of this agreement.
12. **Notice to Offerors:** Unnecessarily elaborate responses beyond that sufficient to present a complete and effective response to the solicitation are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Unless specifically requested in the solicitation, elaborate artwork, corporate brochures, lengthy narratives, expensive paper, specialized binding, and other extraneous presentation materials are neither necessary nor desired.
13. **Evaluation of Proposals:** Proposals shall be evaluated based on demonstrated competence and qualification for the type of service required and based on the criteria set forth in the Request For Proposals (RFP). For purposes of conducting discussions, proposals may initially be classified as:
 - a. Acceptable
 - b. Potentially Acceptable, that is reasonably likely of being made acceptable or;
 - c. Unacceptable
14. **No Obligation:** This RFP in no manner obligates the District to eventual rental, lease, purchase, etc. of any equipment, software, or services as offered until a valid written contract is awarded and approved by appropriate authorities.
15. **Termination:** This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the District determines such action to be in the best interest of the District.
16. **Discussions with Individual Offerors:** The Board is under no obligation to conduct discussions with any or all Offerors. The Board specifically reserves the right to award the contract with no discussions with Offerors and based only on the written proposals received by the due date and time. Discussions may be conducted with any or all responsible Offerors who submit proposals found to be reasonably likely to be

selected for award. Offerors submitting proposals may be afforded an opportunity for discussion and revision after submission and prior to award for the purpose of obtaining best and final offers. After obtaining best and final offers, the award shall be made to the responsible Offeror(s) whose proposals are most advantageous to Gallup-McKinley County Schools.

17. **Purpose of Discussions:** Discussions may be held to:
 - a. Promote understanding of District's requirement(s) and the Offeror's proposal.
 - b. Obtaining best and final offers
 - c. Facilitate arrival at a contract that will be most advantageous to the Board taking into consideration the evaluation factors set forth in the Request for Proposals.

18. **Conduct of Discussions:** If the Board exercises its option to conduct discussions, the procurement officer will establish procedures and schedules for conducting these discussions. If during discussions there is a need to any substantial clarification of or change in the Request for Proposals, the request shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the Offeror.

19. **Negotiations:** The Board's designee shall negotiate, if needed, a contract with the Highest Qualified Offeror at compensation determined in writing to be fair and reasonable, taking into account the estimated value of the services and the scope, complexity and nature of the services. Should the designee be unable to negotiate a satisfactory contract with the Offerors considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be terminated. Negotiations shall be undertaken with the second most qualified business. This process shall continue until a satisfactory contract is negotiated with a qualified business or the procurement process is terminated and a new Request for Proposals is initiated.

20. **Taxes:** The proposal total shall exclude all applicable taxes. GMCS will pay any taxes due on the contract based upon billing submitted by the Contractor, at the applicable tax rate. Taxes shall be shown as a separate amount on any billing or request for payment.

21. **Payment Terms:** Payment for tangible goods or services shall be in accordance with §13-1-158, NMSA 1978 as amended. Payment will be issued for undisputed invoices after goods have been received or services have been rendered, thirty (30) days after receipt of goods or rendering of services.

22. **Mandatory Requirements:** Mandatory requirements may be waived by the Board if all of the otherwise responsive Offeror's failed to comply with the same mandatory requirement and the failure to do so does not otherwise materially affect the procurement. The Board shall have the right to request subsequent information from the otherwise responsive Offerors.

23. **Award:** The award, if made, shall be made to the responsible and responsive Offeror or Offerors whose proposal is most advantageous to GMCS, taking into consideration the evaluation factors set forth in the Request For Proposals.
24. **Contract Terms and Conditions:** The contract resulting from this RFP will follow the format specified by GMCS and contain the terms and conditions set forth herein. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into the contract. Should an Offeror object to any of the Board's terms and conditions, that Offer must propose specific alternative language that would be acceptable to the Board. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. **General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Board and will result in disqualification of the Offeror's proposal.**
25. **Offeror's Terms and Conditions:** Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the District. The Evaluation Committee or Procurement Manager may, in its sole discretion, evaluate or consider any additional terms and conditions submitted with an Offeror's response. This applies to any language appearing in or attached to the document as part of the Offeror's response. **By execution and delivery of this Request for Proposals and response(s), the Offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect unless expressly accepted by the District.**
26. **Contract Deviations:** Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the District and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.
27. **Incurring Cost:** Any cost incurred by the Offeror in preparation, transmittal, cancellation, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.
28. **Right to Protest:** Any bidder, offeror or contractor who is aggrieved in connection with a procurement may protest to the Chief Procurement Officer (CPO) for the District. The protest shall be submitted in writing within 15 calendar days after the facts of the occurrences giving rise thereto §13-1-172, NMSA 1978 as amended.
29. **Protest Bond and Filing of Protest:**
 - a. A Protest Bond in the amount of **Eight Hundred (\$800.00) Dollars** from a surety company authorized to do business in this state, or in the form of a cashier's check made payable to Gallup McKinley County Schools, or cash shall be included with the timely protest to cover the District's administrative costs incurred to administer the protest. In the event that the protest is upheld the Protest bond shall be returned to the protesting bidder. If the protest is disallowed, then the protesting bidder will forfeit the bond to the District.

- b. Protest must be written: Protests must be in writing and addressed to the Chief Procurement Officer.
 - c. Contents: The protest shall:
 - i. include the name and address of the protestant;
 - ii. include the solicitation number;
 - iii. contain a statement of the grounds for protest;
 - iv. include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; and
 - v. specify the ruling requested from the Chief Procurement Officer.
 - d. Pleadings: No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.
 - e. Time limit: Protests shall be submitted within 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence. Posting on the District's website or eBidding portal (Bonfire) is considered public notice in this regard as well.
30. **Contract Renewal:** Except when either party shall provide written notice of termination or that the contract shall expire on the anniversary date, multi-term contracts shall **automatically renew** for an additional term, up to the maximum number of terms stated in any Special Terms and Conditions.
31. **Month to Month Continuation:** After completion of the initial contract term, an agreement may be continued on a month-to-month basis, upon mutual consent of both parties. This agreement may be extended after all renewal terms have expired for a duration, not to exceed six (6) calendar months, for the District to competitively solicit and award same services.
32. **Cancellation for Convenience:** GMCS reserves the right to cancel any contract resulting from this request for convenience by giving thirty (30) days written notice to the vendor. The District shall be liable to the vendor for any services provided or material ordered and accepted prior to termination.
33. **Cancellation for Cause:** If the vendor fails to fulfill any obligation resulting from this contract in a timely and responsive manner, or if the vendor violates any of the terms of this contract, GMCS shall have the right to cancel the contract by giving written notice of cancellation to the vendor. Cancellation of contracts in excess of \$3,000.00 on an annual basis, may be cause for debarment of a person or vendor to receive invitation for bids or to be awarded a contract for a period of one year.
34. **Cooperative Procurement Agreement:** This procurement is under a Cooperative Procurement Agreement which includes, Gallup-McKinley County Schools, the City of Gallup and McKinley County which may purchase the same item(s)/service(s) listed

in this bid. Further, other school districts, state agencies or others allowed by law may utilize this solicitation as provided by §13-1-129, NMSA 1978 as amended. GMCS is not responsible for any misuse or misrepresentation of these contracts by contractor or other procurement agencies.

35. **Equal Opportunity Compliance:** All firms, their employees and agents, agree to comply with the Gallup-McKinley County Schools “policy for Prohibition of Harassment, Discrimination, or Violence based on Race, Religion, Sex, Disability, or Age.” The Contractor agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.
36. **Appropriations:** The terms of this Agreement are contingent upon sufficient monies being made available by GMCS for the performance of this Agreement. If sufficient appropriations and authorizations are not made by GMCS, this Agreement shall terminate upon written notice being given by GMCS to the Contractor. The school district's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
37. **Procurement Code:** The State of New Mexico Procurement Code and Regulations shall apply.
38. **Procurement Code Violations:** The Procurement Code imposes civil and criminal penalties for its violation. In addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities, and kick-backs.
39. **Information:** If clarification is needed on any part of the solicitation documents as published, please provide question(s) in the Messages Tab, “Vendor Discussions” on the GMCS Bonfire portal. Failure to do so may result in question(s) not being addressed.
40. THE GALLUP-McKINLEY COUNTY SCHOOL BOARD OF EDUCATION RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS IN WHOLE OR IN PART, TO WAIVE TECHNICALITIES AND TO ACCEPT THE PROPOSAL IT DEEMS TO BE IN THE BEST INTEREST OF THE SCHOOL DISTRICT.

Exhibit I

**GALLUP-MCKINLEY COUNTY SCHOOLS
Virtual (Online) School, Grades K-12
Multi-Year Agreement
No. RFP-2025-15KC**


Amendment No. One (1)

THE FOLLOWING REVISIONS, ADDITIONS AND/OR CLARIFICATIONS SHALL FORM A PART OF THE CONTRACT DOCUMENTS AND EACH OFFEROR SHALL INDICATE IN THEIR PROPOSAL, THE RECEIPT OF THIS NUMBERED AMENDMENT. REVISIONS, ADDITIONS, AND/OR CLARIFICATIONS ARE AS FOLLOWS:

This Amendment consists of a total of 18 pages including this cover page. Attached are responses to questions received to date and the District's responses.

The Proposal Receiving Date and Time remains **UNCHANGED**.

DATE: April 23, 2025

BY/S/ 
Katherine Crisler, Procurement Director

Public Q&A

1. Sample Personalized Learning Plan

Is it possible to provide a sample of the plan format currently used?

ANSWER: See attached example of the District's Next Step Plan for grades 8-12. All student services should meet the standards established in [NMAC 6 Chapter 29 Part 1](#).

2. Pertaining to Questions I and J of General Requirements

Is this section intended to address part-time/single course student situations as opposed to those enrolled full time? What is the expectation for live instruction in those scenarios?

ANSWER: No. The intent of this solicitation is for an online school for full-time students. A personalized "Next Step Plan" is required for grades 8-12. A successful Offeror will also provide a response on its plans to support academic success and exposure to career options for younger students. All student services should meet the standards established in NMAC 6 Chapter 29 Part 1.

Part-time or credit recovery options may be considered as part of the response to Value Added Services, Evaluation Criteria Item B.3 on page 12 of the RFP document.

3. SIS

What is the SIS the district uses?

ANSWER: Synergy by Edupoint

4. Special Education

What system does the district use as their Special Education/IEP creation tool?

ANSWER: Synergy Edupoint is the system of record, and all IEPs must be compliant with all District Policies, State and Federal Requirements and Laws.

5. State Funding Available

What is the estimated eligible funding per student that each full-time online student generates? If 2025-26 not available, then what was total eligible funding per student for 24-25?

ANSWER: The funding is based upon the demography of the student. Please refer to [NMSA 22-8-18 to NMSA 22-8-25.1](#). Also see the revenue calculator provided by NM PED at this link: [Student Revenue Calculator](#).



Public Q&A

6. Committee Makeup

Can you provide the titles of the people chosen for the selection committee?

ANSWER: The committee has not been finalized at this time.

7. Student examinations

Are vendors required to also arrange for students to sit their exams?

ANSWER: Yes. See [NMAC 6 Chapter 29 Part 7](#).

8. Cost proposal

Is there any guidance (or limitations) that GMCS can provide on how to structure our cost proposal?

ANSWER: As listed in the RFP document, Offerors are required to itemize or explain the methods your company will use to invoice for all costs. This is based on your company's pricing methodology. Please refer to responses provided to questions on funding for any potential limitations.

For evaluation only, Offerors may assume there are an equal number of students in all grade levels and that all students are general education with no adjustments based on demographics that may provide additional funding.

For example: 100 Elementary students (K-5), 100 Middle School students (6-8), and 100 High School students (9-12) enrolled, for a total of 300 students.

In the space provided in Bonfire, and if you use the student numbers in this example, divide the total proposed costs by 300, to obtain an average price per student. Enter this \$ amount as a number in the space provided.

Upload an itemized cost proposal that will fully support and explain how your firm decided on the average cost per student number.

It is understood that this is a threshold number, but it must include calculations of any fixed fees or percentages your company plans to charge for administrative and overhead costs.

Final pricing will be negotiated with the awarded company as part of the final contract and shall be based on actual student enrollment and applicable demographics.

9. Certified Teachers Requirement

Is the requirement for NM Certified teachers compulsory or preferred? Can the GMCS accept teachers qualified in other states?

ANSWER: A NM teaching license is mandatory. NM PED publishes requirements including information on reciprocity and alternative licensure on their website:
<https://web.ped.nm.gov/licensure/>

10. Curriculum for core subjects

What curriculum is currently used at GMCS schools for core subjects?

ANSWER: GMCS follows the NM Instructional Scope of State Standards <https://web.ped.nm.gov/educators/instructional-resources/new-mexico-instructional-scope-nmis/> and GMCS is willing to provide eligible offeror our scope and sequence. We do follow the Highly Qualified Instructional Material (HQIM) guidance from New Mexico Public Education Department for curricular resources and material adoption.

11. Venue

The RFP states : "Describe where the students will access the virtual school's courses, including whether it is in the home or at a location provided and overseen by the Virtual School."

Is it acceptable for vendors to arrange with parents or GMCS to have the lessons in the home or community venue under parental supervision?

ANSWER: Yes.

12. List of courses

"The virtual school must provide a complete list of course offerings which include core, elective, world language, health, PE, CTE, STEM, dual credit and AP offerings. They must also include any career pathways that are available. How do these courses fulfill the NM graduation requirements?"

Are vendors required to provide all the courses listed above?

ANSWER: No. Your company's response will be evaluated and scored based on a variety that best meets the needs of the District. Please see Evaluation Criteria for potential point values.

Public Q&A

13. Course Titles from 24/25 School Year

Do you have a course list of what students did last year? Not the number of students but the course titles in which students earned credits or promotion to the next grade level.

ANSWER:

See attached Course List.

14. Principal Selection

Will the awarded contractor be allowed to help with selecting the principal?

ANSWER: No. GMCS will select.

15. Enrollment by Grade Level

Could you please provide the current enrollment of the online school by grade level. We do understand there is no guarantee this will move forward into next year.

ANSWER: These totals include statewide enrollment. A new provider is not required to absorb all students in the 25-26 school year.

Grade Level	Student Count
KG	196
01	172
02	221
03	211
04	193
05	227
06	291
07	381
08	501
09	515
10	462
11	442
12	287
Grand Total	4,099

16. Number of Students Enrolled

How many students are enrolled in your virtual school? How many per grade-levels (K-5, 6-8, 9-12)?

ANSWER: See response to question 15.

Public Q&A**17. Cost per pupil**

Based upon the current contract with your current provider, what was the per pupil funding amount provided the vendor for the 23-24 school year? If 24-25 is available, then that is preferred.

ANSWER: The funding is complex and based upon the demography of the student. Please refer to [NMSA 22-8-18 to NMSA 22-8-25.1](#). GMCS is not able to provide an itemized per pupil amount at this time. However, the District can advise that the total calculation for SY23-24 was \$30,710,592.16. SY24-25 is determined after the year is complete.

18. School model

Would the District consider a model where the vendor provides the platform, curriculum, and instruction, but GMCS maintains responsibility for school administration (i.e., recruitment, providing equipment, finances, school operations, etc.)?

ANSWER: No. This solicitation is exclusively for a K-12 Online School that will be administered by the provider, in accordance with the published Scope of Work.

19. Statewide

Do you anticipate having students statewide participating in the virtual school, or only from Gallup-McKinley School district?

ANSWER: Enrollment is statewide.

20. Number of students

How many in-district students by grade level do you expect to serve? Statewide by grade level?

ANSWER: See response to Question 15. The District does not have a minimum enrollment expectation by grade level. However, the provider should ensure space is available for students who require alternative placement to complete a high school education.

The Successful Offeror will closely monitor enrollment per grade based on the capacity and capabilities to successfully educate all students who apply for SY25-26, and while meeting all requirements set forth in [NMAC 6 Chapter 29 Part 1](#).

21. Growth

Does the district expect the program go grow over time? If yes, by how much?

ANSWER: See responses to Questions 15, 19, and 20.



Public Q&A

22. Existing Program?

Is there already a program in place? Or will this be a new school in the district?

ANSWER: Yes. The district is currently seeking alternative online solutions that would replace the current program.

23. Existing provider

If there is an existing program already in place, who is the current provider?

ANSWER: Yes. K12 (Stride Learning).

24. Current funding

What is your average weighted per pupil funding for the existing program for 2024?

ANSWER: GMCS is unable to provide this information at this time. We invite you to use the revenue calculator located at think link which is based on 2023-2024 SY data: [Student Revenue Calculator](#).

Next Step Plan Template

STUDENT INFORMATION

(HS)

Student Name:			High School Entry Date:		
Student State ID Number:			Target Graduation Date:		
Student Email Address:			Course of Study:		
Birthdate:			Age:		
Check those that apply:	504 Plan <input type="checkbox"/>	IEP <input type="checkbox"/>	Grade Level:	9 th Grade <input checked="" type="checkbox"/>	10 th Grade <input type="checkbox"/>
	SAT <input type="checkbox"/>	ELL <input type="checkbox"/>		11 th Grade <input type="checkbox"/>	12 th Grade <input type="checkbox"/>
School Designee:			Date Initiated:		

CAREER GOAL	
Career Cluster:	
Occupation:	
Occupation Skill Sets:	
Wage Info:	
Occupation Demand:	

PERSONAL GOAL	
ACADEMIC GOAL	
FAMILY AND COMMUNITY SUPPORT SYSTEMS	

POST-GRADUATION GOAL	
Work Full-Time:	Yes <input type="checkbox"/> No <input type="checkbox"/>
Work Part-Time:	Yes <input type="checkbox"/> No <input type="checkbox"/>
Enter the Military:	Yes <input type="checkbox"/> No <input type="checkbox"/>
Apprenticeship:	Yes <input type="checkbox"/> No <input type="checkbox"/>
2-Year Training:	Yes <input type="checkbox"/> No <input type="checkbox"/>
2-Year Degree:	Yes <input type="checkbox"/> No <input type="checkbox"/>
4-Year Degree:	Yes <input type="checkbox"/> No <input type="checkbox"/>
Undecided:	Yes <input type="checkbox"/>
Notes:	

EXTRA HELP STRATEGIES (Extra Assistance)	

ACADEMIC ENHANCEMENT OPTIONS/Scholarship Requirements	

EXTRA/CO-CURRICULAR ACTIVITIES	

POSTSECONDARY/CAREER ENHANCEMENT OPTIONS	

INDUSTRY CERTIFICATION GOAL	
What industry certification will be pursued	
Target Date for Completion:	
ATTACHMENTS <input type="checkbox"/> Interest Inventory <input type="checkbox"/> Transcript <input type="checkbox"/> Assessment Results <input type="checkbox"/> Semester Schedule <input type="checkbox"/> Degree Requirements <input type="checkbox"/> Course Credit Check	

Next Step Plan Template

Certification Completed:

Yes No

Met Standard

Yes No

Transition Assessment (required for students receiving special education services)

Other:

(INSERT CAREER CLUSTER LOGO)

PROGRAM OF STUDY: (INSERT PATHWAY) ()

Diploma Options (Students with Disabilities):

Standard Diploma Career Readiness Ability

(INSERT DEPARTMENT NAME)

(INSERT SCHOOL LOGO)

	9 TH GRADE	10 TH GRADE	11 TH GRADE	12 TH GRADE
	Course Name	Course name	Course Name	Course Name
	Code	Code	Code	Code
	State of New Mexico Graduation Requirements			
Mathematics				
English Language Arts				
Social Studies				
Science				
Physical Education				
Cluster/Workplace/Language				
Health Education				
	School District Graduation Requirements			
	Career Pathway Requirements/Elective			
	General Electives			
	Courses Required to be Repeated			
	Mandatory Assessments			
	Optional Assessments			

Next Step Plan Template

Codes:	Advanced Placement = AP	Distance Learning = DL	International Baccalaureate = IB	Other:
	Dual Credit = DC	Honors Course = HC	Online Line Class = OL	Other:

0

This Postsecondary Program of Study should be completed for students in grades 11—12, and is optional for students in grades 9—10.

2 year – College or Program Name:	Degree Name /Training Program:
4 year University Name:	Degree Name:

Year 1					Year 2						
Summer	Fall	Spring	Summer	Fall	Spring	Summer	Fall	Spring	Summer	Fall	Spring
General Education Requirements for the POS/Degree/Training Plan											
Degree/Training Emphasis Courses (Major)											
Electives											

Of the courses listed above, highlight those that are transferable to any other NM public higher education institution.

State law at Section 21-1B-1 to 6 NMSA 1978, directs the New Mexico Higher Education Department to establish policies designed to allow core courses successfully completed by students at New Mexico public higher education institutions to guarantee transfer to any other New Mexico public higher education institutions. The listing of transferable courses can be found at <http://hed.state.nm.us>.

Next Step Plan Template

Next Step Plan Signature Page

()

We have reviewed and approved this Next Step Plan (Legal Guardian may be substituted for Parent where applicable)

Parent Name: _____

Phone Number: _____

Email Address: _____

Entering 9th Grade

Student Signature _____

Date _____

Parent Signature _____

Date _____

Print Parent Name _____

Parent Signature _____

Date _____

Print Parent Name _____

School Official
Signature _____

Date _____

Entering 10th Grade

Student Signature _____

Date _____

Parent Signature _____

Date _____

Print Parent Name _____

Parent Signature _____

Date _____

Print Parent Name _____

School Official
Signature _____

Date _____

Entering 11th Grade

Student Signature _____

Date _____

Parent Signature _____

Date _____

Print Parent Name _____

Parent Signature _____

Date _____

Print Parent Name _____

School Official
Signature _____

Date _____

Entering 12th Grade

Student Signature _____

Date _____

Parent Signature _____

Date _____

Print Parent Name _____

Parent Signature _____

Date _____

Print Parent Name _____

School Official
Signature _____

Date _____

Comments (Entering 9th Grade):

Comments (Entering 10th Grade):

Comments (Entering 11th Grade):

Note: Review the attached Final Next Step Plan at this time in preparation for the senior year.

Comments (Entering 12th Grade):

Select the option(s) you plan to pursue after graduation.

Note: Use additional pages to address plans of action and follow-up.

Program Options		Provide information about your selections under Program Options.	
Bachelor Degree Program:	Name of Degree Plan ↻	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/>	If no, include a plan of action. Yes <input type="checkbox"/> No <input type="checkbox"/>
	Name Public College/University ↻	Student Admitted Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Name Private College/University ↻		
Associate Degree Program:	Name of Degree Plan ↻	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/>	If no, include a plan of action. Yes <input type="checkbox"/> No <input type="checkbox"/>
	Name Postsecondary institution ↻	Student Admitted Yes <input type="checkbox"/> No <input type="checkbox"/>	
Trade Certification Program :	Name of Certificate program ↻	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/>	If no, include a plan of action. Yes <input type="checkbox"/> No <input type="checkbox"/>
	Name of Training Institution ↻	Student Admitted Yes <input type="checkbox"/> No <input type="checkbox"/>	
Military Service:	Branch ↻	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/>	If no, include a plan of action. Yes <input type="checkbox"/> No <input type="checkbox"/>
Work Study/Apprenticeship Program:	Career Area of Focus ↻	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/>	If no, include a plan of action. Yes <input type="checkbox"/> No <input type="checkbox"/>
Employment:	Career Area of Focus ↻	Student Applied Yes <input type="checkbox"/> No <input type="checkbox"/>	If no, include a plan of action. Yes <input type="checkbox"/> No <input type="checkbox"/>
	Student Hired Yes <input type="checkbox"/> No <input type="checkbox"/>		

Has the student applied for financial aid/scholarships? Yes No Include a plan for necessary follow-up:

Has the student applied for campus (or other) housing? Yes No Include a plan for necessary follow-up:

Has the student arranged transportation? Yes No Include a plan for necessary follow-up:

Student Signature	Date
Parent Signature	Date
School Designee	Date

Notes:

Exhibit I

CURRENT PROGRAM COURSE LIST

TERM_CODE	COURSE_TITLE
S1	Algebra I (A)
S2	Algebra I (B)
S1	Algebra II (A)
S2	Algebra II (B)
S1	Algebra II (B)
S2	Allied Health Occupations
S1	American History (A)
S1	American History (B)
S2	American History (B)
S2	Anatomy (B)
S1	Anatomy/Physiology I
S1	Applied Math (A)
S2	Applied Math (A)
S1	Applied Math (B)
S2	Applied Math (B)
S2	Art 7
S2	Art 8
S1	Art I
S1	Art I (A)
S2	Art I (B)
S1	Art II (A)
S1	Biology (A)
S2	Biology (B)
S2	Business Management
S1	Career Exploration: Business
S2	Career Exploration: Health Careers
S1	Career Exploration: Health Careers
S1	Career Exploration: Technology
S1	Careers
S2	Careers
S1	CB-Computer Literacy
S1	CB-Flash Animation
S2	CB-Flash Animation
S1	Chemistry (A)
S2	Chemistry (B)
S1	Chemistry (B)
S1	College/Career Readiness (A)
S2	College/Career Readiness (B)
S1	Composition I
S2	Computer Science
S1	Computer Science/Programming
S2	Computer Science/Programming
S2	CR - Algebra I (SEM 2)
S1	CR - Algebra I (SEM 2)
S2	CR - Algebra II (SEM 2)
S1	CR - Algebra II (SEM 2)
S1	CR - American History (SEM 1)
S2	CR - American History (SEM 1)
S2	CR - American History (SEM 2)

Exhibit I

CURRENT PROGRAM COURSE LIST

S1	CR - American History (SEM 2)
S2	CR - Biology (SEM 2)
S1	CR - Biology (SEM 2)
S1	CR - Chemistry (SEM 2)
S2	CR - Chemistry (SEM 2)
S2	CR - English I (SEM 2)
S1	CR - English I (SEM 2)
S2	CR - English II (SEM 2)
S1	CR - English II (SEM 2)
S2	CR - English III (SEM 2)
S1	CR - English III (SEM 2)
S2	CR - English IV (SEM 2)
S1	CR - English IV (SEM 2)
S2	CR - Geometry (SEM 2)
S1	CR - Geometry (SEM 2)
S2	CR - World History (SEM 2)
S1	CR - World History (SEM 2)
S1	CR-Algebra I (SEM 1)
S2	CR-Algebra I (SEM 1)
S1	CR-Algebra II (SEM 1)
S2	CR-Algebra II (SEM 1)
S1	CR-Biology (SEM 1)
S2	CR-Biology (SEM 1)
S1	CR-Chemistry (SEM 1)
S2	CR-Chemistry (SEM 1)
S2	CR-Earth Science (SEM 1)
S1	CR-Earth Science (SEM 1)
S1	CR-Economics (SEM 1)
S2	CR-Economics (SEM 1)
S1	CR-English I (SEM 1)
S2	CR-English I (SEM 1)
S1	CR-English II (SEM 1)
S2	CR-English II (SEM 1)
S1	CR-English III (SEM 1)
S2	CR-English III (SEM 1)
S1	CR-English IV (SEM 1)
S2	CR-English IV (SEM 1)
S1	CR-Geometry (SEM 1)
S2	CR-Geometry (SEM 1)
S2	CR-Government (SEM 1)
S1	CR-Government (SEM 1)
S1	CR-Physical Science (SEM 1)
S2	CR-Physical Science (SEM 1)
S2	CR-Physical Science (SEM 2)
S1	CR-World History (SEM 1)
S2	CR-World History (SEM 1)
S1	Database Design & Programming
S2	Database Design & Programming
S1	Digital Media
S1	Earth Science (Lab)

Exhibit I

CURRENT PROGRAM COURSE LIST

S2	Earth Science (Lab)
S1	Economics (B)
S2	Economics (B)
S2	Electronic Health Records
YR	Elementary Art 1
YR	Elementary Art 2
YR	Elementary Art 3
YR	Elementary Art 4
YR	Elementary Art 5
YR	Elementary Art K
YR	Elementary PE 4
S1	Employability Skills (HS)
S2	Employability Skills (HS)
YR	Employability Skills (HS)
S1	Employability Skills 10 (A)
S2	Employability Skills 10 (B)
S1	Employability Skills 11 (A)
S2	Employability Skills 11 (B)
S1	Employability Skills 12 (A)
S2	Employability Skills 12 (B)
S1	Employability Skills 9 (A)
S2	Employability Skills 9 (B)
S1	English I (A)
S2	English I (B)
S1	English II (A)
S2	English II (B)
S1	English III (A)
S2	English III (B)
S1	English III (B)
S1	English IV (A)
S2	English IV (A)
S1	English IV (B)
S2	English IV (B)
S1	Entrepreneurship
S2	Entrepreneurship II
S1	Explore & Prob Solving
S2	Explore & Prob Solving
S2	Family & Consumer Science
YR	Fifth Grade
S2	Film & Digital Media I
S1	Film & Digital Media I
S2	Film & Digital Media II
S2	Film & Digital Media II (B)
S1	Financial Literacy (A)
YR	First Grade
S1	Fitness/Conditioning (A)
S2	Fitness/Conditioning (B)
YR	Fourth Grade
S2	Game Design
S1	Game Design

Exhibit I

CURRENT PROGRAM COURSE LIST

S1	Geography
S2	Geography
S1	Geometry (A)
S2	Geometry (B)
S2	Government
S1	Government
S2	GUILD Internship
S2	Health
S1	Health
S1	HS-Physical Education (A)
S2	HS-Physical Education (A)
S2	HS-Physical Education (B)
S1	Insurance Billing & Coding Essls
S2	Intro to Programming
S2	Introductory Finance
YR	Kindergarten
S1	Lang & Comm
S2	Lang & Comm
S2	Language & Communications 108 (B)
YR	Language Arts 1
YR	Language Arts 2
YR	Language Arts 3
YR	Language Arts 4
YR	Language Arts 5
S1	Language Arts 6 (A)
S2	Language Arts 6 (B)
S1	Language Arts 7 (A)
S2	Language Arts 7 (B)
S1	Language Arts 8 (A)
S2	Language Arts 8 (B)
YR	Language Arts K
S1	Marching Band
S1	Market Research (A)
S2	Marketing I
YR	Math 1
YR	Math 2
YR	Math 3
YR	Math 4
YR	Math 5
S1	Math 6 (A)
S2	Math 6 (B)
S1	Math 7 (A)
S2	Math 7 (B)
YR	Math K
S1	Measure/Comp/Analysis
S2	Measure/Comp/Analysis
S2	Measure/Comp/Analysis 108
S1	Medical Office Procedures & Admin
S1	Medical Terminology (A)
S2	Medical Terminology (B)

Exhibit I

CURRENT PROGRAM COURSE LIST

S2	MS Career Exploration Business
S1	MS Career Exploration -General (A)
S2	MS Career Exploration -General (B)
S2	MS Health & Development
S1	MS Health & Development
S2	MS MUSIC
S1	MS MUSIC
S1	MS-Careers
S2	MS-Careers
S1	MS-Computers (A)
S2	MS-Computers (B)
S2	MS-Computers I
S2	MS-Intro to Internet
S1	MS-Intro to Internet
S1	MS-Spanish Language/Culture (A)
S2	MS-Spanish Language/Culture (A)
S1	Music Appreciation
S2	Music Appreciation
S1	New Mexico History
S2	New Mexico History
S2	New Mexico History 7 (B)
S1	Nursing Assistant
S2	Nursing Assistant
S2	PE 6
S1	PE 6
S1	Percussion Instruments
S1	Physical Science (Lab)
S2	Physical Science (Lab) B
S1	Pre Algebra (A)
S2	Pre Algebra (B)
S1	Pre Calculus (A)
S2	Pre Calculus (B)
S2	Psychology
S1	Psychology
S1	Public Speaking
S2	Public Speaking
YR	Reading 1
YR	Reading K
YR	Science 1
YR	Science 2
YR	Science 3
YR	Science 4
YR	Science 5
S1	Science 6 (A)
S2	Science 6 (B)
S1	Science 7 (A)
S2	Science 7 (B)
S1	Science 8 (A)
S2	Science 8 (B)
YR	Science K

Exhibit I

CURRENT PROGRAM COURSE LIST

YR	Second Grade
YR	Social Studies 1
YR	Social Studies 2
YR	Social Studies 3
YR	Social Studies 4
YR	Social Studies 5
YR	Social Studies K
S1	Society
S2	Society
S1	Spanish Language I (A)
S2	Spanish Language I (B)
S1	Spanish Language II (A)
S2	Spanish Language II (B)
S1	Study Skills
S2	Study Skills
YR	Third Grade
S1	United States History 8 (A)
S2	United States History 8 (B)
S1	Web Design
S2	Web Design
S1	WEB Publishing
S2	WEB Publishing
S1	Work Experience (A)
S2	Work Experience (B)
S1	Work Study
S2	Work Study
S1	World History (A)
S2	World History (B)
S1	World History 6 (A)
S2	World History 6 (B)

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq. NMSA 1978 and § 13-1-191.1 NMSA 1978 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the

Exhibit I

authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor;

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: _____
(This field must be completed by the issuing State Agency. In most cases, the official identified will be the current Governor of New Mexico and Lieutenant Governor. If a local public body is using this template for their RFPs, it must complete this field with the applicable elected official(s).)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Exhibit I

Nature of Contribution(s)

Purpose of Contribution(s)

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

Exhibit I

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD TO LIGHT TO VIEW

Notice To Customer

The purchase of an indemnity bond may be required before any cashier's check of this bank will be replaced in the event it is lost, misplaced, or stolen.



239002482

DATE: May 30, 2025

82-719
1070

Remitter(s): RODEY DICKASON
SLOAN AKIN & ROBB PA

PAY TO THE ***GALLUP-MCKINLEY COUNTY SCHOOLS***
ORDER OF MEMO: PROTEST FEE ON ISSUANCE
RFP-2025-15KC

\$800.00

Eight Hundred Dollars and No Cents

CASHIER'S CHECK



AUTHORIZED SIGNATURE

Details on Back. Security Features Included.

⑈ 239002482 ⑈

⑆ 107005953⑆

072184⑈

Exhibit I

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.

JOHN P. SALAZAR
CATHERINE T. GOLDBERG
EDWARD RICCO
CHARLES K. PURCELL
NELSON FRANSE
PAUL R. KOLLER
CHARLES J. VIGIL
JEFFREY M. CROASDELL
SUNNY J. NIXON
R. TRACY SPROULS
SETH L. SPARKS
JOCELYN C. DRENNAN
JUSTIN A. HORWITZ
VALERIE REIGHARD DENTON
CHARLES R. HUGHSON
JOSE R. BLANTON
KRYSTLE A. THOMAS
GLENN A. BEARD
CRISTINA ADAMS
TYLER M. CUFF
MELANIE B. STAMBAUGH

DEBORA E. RAMIREZ
LUIS G. CARRASCO
JUAN M. MARQUEZ
JENICA L. JACOBI
RANDY TAYLOR
SAMANTHA M. HULTS
NELSE T. MILLER
HOLLY E. ARMSTRONG
MINAL P. UNRUH
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LAUREN T. WINSTON
MEGHAN M. O'NEIL
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LAURA E. SANCHEZ
KARA B. MURPHY
JACK BRANT

BERNARD S. RODEY (1856-1927)
PEARCE C. RODEY (1889-1958)
DON L. DICKASON (1906-1999)
WILLIAM A. SLOAN (1910-1993)
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WRITER'S DIRECT NUMBER
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June 11, 2025

Submitted by FEDEX and email to: kcrisler@gmcs.org

Katherine Crisler
Procurement Director
Gallup-McKinley County Schools
P.O. Box 1318
Gallup, NM 87305

RE: **Protest of Award of RFP-2025-15KC for Virtual (Online) School, Grades K-12, Multi-Year Agreement¹**

Dear Ms. Crisler:

This law firm represents Stride, Inc., and its subsidiary K12 Virtual Schools, L.L.C. (together, "Stride"), and hereby submits this protest concerning the above-referenced Request for Proposals ("RFP") on Stride's behalf. Stride protests the Gallup-McKinley County Schools' ("District") award of the above RFP on May 27, 2025. Pursuant to NMSA 1978, Section 13-1-172 (1987), this protest is submitted in writing within fifteen (15) calendar days after Stride's knowledge of the facts or occurrences giving rise to this protest, which was the Notice of the selected bidder for award sent by you to my client on May 28, 2025, set the Protest deadline as June 12, 2025. Therefore, this protest is timely. *See James Hamilton Construction Co. v. State ex rel. N.M. State Hwy. & Transportation. Dep't*, 2003-NMCA-067, ¶ 14, 133 N.M. 627, 68 P.3d 173 ("However, once the Department makes its preliminary award, any protest that arises from facts or occurrences that an unsuccessful bidder knows or should know at the time of the preliminary award should be filed within fifteen days of the preliminary award.").

¹ Record is hereby made of the unusual requirement to post a surety bond or make a payment to the District in the amount of \$800 to file a protest. This is a highly unusual requirement that has the effect of dissuading any interest of potential protestors to file such a protest and, to our knowledge, no authority exists that would permit the District to impose such a requirement. Nevertheless, Stride, Inc. has complied with this requirement, under reservation of all rights.

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For the reasons discussed herein, Stride requests that the proposed contract approved on May 27, 2025 not be executed, or, if such contract has been executed, that it be canceled effective immediately; and in addition, that the RFP be canceled in its entirety and re-issued in compliance with state law.

A. Standard of Review.

The standard of review for challenging the actions of the District and Board has been well established by New Mexico courts. By challenging the District's preliminary award of a contract to Graduation Alliance ("GA"), Stride bears the burden of establishing that, in making such a preliminary award, the District acted not in accordance with law, without the support of substantial evidence, or fraudulently, arbitrarily or capriciously. *See* NMSA 1978, § 39-3-1.1(D) (1999); *see also* NMSA 1978, § 13-1-183 (1999) ("All actions authorized by the Procurement Code for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."); NMSA 1978, § 39-3-1.1(C) (authorizing the district court to set aside, reverse or remand the final decision on the protest if it determines that: (1) the agency acted fraudulently, arbitrarily or capriciously; (2) the final decision was not supported by substantial evidence; or (3) the agency did not act in accordance with law.). "This court has consistently held that on appeals from administrative bodies, the questions to be answered . . . are restricted to whether [it] acted fraudulently, arbitrarily or capriciously, [or] whether the order was supported by substantial evidence and, generally, whether the action of the administrative body was within the scope of its authority." *McDaniel v. N.M. Bd. of Medical Exmrs.*, 1974-NMSC-062, ¶ 8, 86 N.M. 447, 525 P.2d 374 (quoting *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646). "Arbitrary and capricious action by an administrative agency consists of a ruling or conduct which, when viewed in the light of the whole record, is unreasonable or does not have a rational basis, and 'is the result of an unconsidered, willful and irrational choice of conduct and not the result of the 'winnowing and sifting process.'" *Perkins v. Dep't of Human Servs.*, 1987-NMCA-148, ¶ 19, 106 N.M. 651, 748 P.2d 24 (quoting *Garcia v. N.M. Human Servs. Dep't*, 1979-NMCA-071, 94 N.M. 178, 608 P.2d 154).

More recently, the New Mexico Supreme Court has instructed that:

An arbitrary and capricious act is a "willful and unreasonable action, without consideration and in disregard of facts or circumstances[.]" . . . it is one "lacking a standard or norm," . . . "not governed by any fixed rules, . . . [or where the administrative agency] acted without an adequate determining principle."

Planning & Design Solutions v. City of Santa Fe, 1994-NMSC-112, ¶ 23, 118 N.M. 707, 885 P.2d 628 (citations omitted).

By preliminarily awarding a contract to GA as a result of an improperly conducted procurement, the District and the Board have ignored the rules fixed for the authorization and issuance of an

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RFP, and the rules barring retroactive ratification of prior actions, thereby making the District's and the Board's actions to issue an award on May 27, 2025 not only contrary to law, but arbitrary and capricious, as described in *Planning & Design Solutions*. “. . . [w]hen[, as here,] statutes and regulations define the rules of competitive bidding, these statutes and regulations will be strictly construed against the government entity that solicited the bids.” *Id.* ¶ 6 (citing *K.L. Conwell Corp. v. City of Albuquerque*, 1990-NMSC-104, 111 N.M. 125, 802 P.2d 634). Rather than substituting its judgment for that of the District/Board, the reviewer should instead focus its inquiry on whether the agency's “findings are supported by substantial evidence on the record as a whole.” *Perkins*, 1987-NMCA-148, ¶ 16 (citing *Garcia and Duke City Lumber Co. v. N.M. Envtl. Improvement Bd.*, 1984-NMSC-042, 101 N.M. 291, 681 P.2d 717). Whole record review requires that the reviewer “consider not only the evidence in support of one party's contention, but also to look at evidence which is contrary to the administrative finding; [it] must then decide whether, on balance, the agency's decision was supported by substantial evidence[.]” *Id.*; see also *Att'y Gen. of N.M. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, ¶ 11, 101 N.M. 549, 685 P.2d 957.

The District and the Board clearly did not follow established procurement rules, acted contrary to law, acted arbitrarily and capriciously, and their actions were willful and unreasonable, without consideration and in disregard of facts or circumstances, and lacked a standard or norm. As a result, Stride respectfully requests that the District rescind its preliminary award of a contract to GA as a result of the improperly conducted procurement, take all legal and proper actions to conduct the RFP appropriately, and reissue it in compliance with state law.

B. There Is No Evidence that the Board Took Action to Authorize the Issuance of the RFP Prior to May 16, 2025.

NMSA 1978, Section 22-5-4(J) (2005) establishes that except for expenditures of salaries, local school boards have the power and duty to contract for the expenditure of money, according to the provisions of the Procurement Code. The provisions of this section require school boards to contract according to all but two sections of the entire Procurement Code, meaning all bidding and solicitation requirements of the Procurement Code apply to school district contracts. *Morningstar Water Users Ass'n v. Farmington Mun. Sch. Dist. No. 5*, 1995-NMSC-052, ¶ 50, 120 N.M. 307, 901 P.2d 725. Similarly, the Open Meetings Act, NMSA 1978, § 10-15-1 to -4 (1974, as amended through 2013) (the “OMA”), requires the Board to take action in an open meeting in order to authorize the issuance of the RFP. NMSA 1978, § 10-15-3(A) (“No . . . action of any board . . . or other policy-making body shall be valid unless taken or made at a meeting held in accordance with the requirements of [the OMA].”).

There is no evidence here that the Board took any official action at a Board meeting, held in accordance with the OMA, to authorize the issuance of the RFP that is the subject of this Protest prior to May 16, 2025. Indeed, this RFP was issued by Katherine Crisler on April 4, 2025, without any indication from the Board that an official action had been taken directing her or directing the Superintendent to direct her to issue this RFP.

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To the contrary, there exists ample evidence that the Board never authorized the issuance of this RFP and did not properly act to ratify the actions that presumably prompted this RFP (the termination letter from Superintendent Hyatt) until May 16, 2025. As such, Superintendent and/or Ms. Crisler acted outside the scope of their authority, or, in other words, were acting without the Board's authority when they initially issued the RFP on April 4, 2025. Without Board action to terminate Stride's contract, the District lacked any authority to issue the RFP prior to May 16, 2025, the date upon which the Board first took any action.

B. The Board Cannot Retroactively Approve the District's Actions, Including those of the Superintendent or Procurement Director.

New Mexico courts have established binding precedent that where a local government's governing body ratifies actions it took in terminating the mayor's employment taken outside of an open meeting and in violation of the OMA, the ratification is not effective retroactively, but, rather, effective only as of the date the ratification occurred. *Palenick v. City of Rio Rancho*, 2012-NMCA-018, 270 P.3d 1281, *rev'd on other grounds*, 2013-NMSC-029, 306 P.3d 447. Thus, the Board's vote to ratify the Superintendent's and the District's actions at the May 16, 2025 special meeting cannot be given retroactive effect. Thus, under *Palenick*, the purported effective date of the issuance of the RFP (and the Superintendent's termination of the contract with Stride) cannot be earlier than the date that the Board ratified the Superintendent's actions, here, May 16, 2025. Further, the District did not attempt to ratify the Superintendent's or the Procurement Director's actions with regard to issuing an RFP on May 16, 2025. To date, the Board has not had a proper vote to issue the RFP for this contract, as required by New Mexico law. *See Board of Educ. v. Sullivan*, 1987-NMSC-062, 106 N.M. 125, 740 P.2d 119 (providing that where the original termination proceedings against a teacher were reversed based on a procedural defect (failure to comply with the OMA), the school board was entitled to reinstate terminational proceedings, correct the procedural defect, and rely upon the same alleged acts of misconduct that had been relied upon in the original proceedings.) Thus, the Board must, in this instance, terminate the proceedings related to the RFP, correct the procedural defect (non-conformance with OMA) by properly initiating the issuance of the RFP in a meeting that fully complies with OMA. Thereafter, the Board and the District are free to rely on the facts and circumstances initially cited to justify the issuance of an RFP, to the extent it was not contrary to law, arbitrary or capricious, or a decision made without substantial evidence.

C. The Issuance of the RFP is in Violation of the District's Contract with Stride.

Additionally, even if the RFP had been issued correctly – that is, with clear authorization from the Board at an open meeting – it still would not be valid as the underlying contract that the RFP is attempting to replace was still in effect and that contract includes an exclusivity clause that the Board entered into knowingly in June 2020. *See City of Santa Fe v. Travelers Casualty & Surety Co.*, No. 28,944, mem. op. (N.M. Ct. App. Jan. 14, 2009) (nonprecedential) (citing *State ex rel. Udall v. Colonial Penn Ins. Co.*, 1991-NMSC-048, 112 N.M. 123, 812 P.2d 777) (observing that in *Colonial Penn Ins. Co.*, the New Mexico Supreme Court had rejected the State's argument that

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a statutory three-year time-to-sue provision should be given effect, rather than a shorter two-year time-to-sue provision contained in the performance bond, because it would be against the public policy requiring the protection of the public fisc to enforce the shorter opportunity to sue, and affirming summary judgment determining that the shorter time-to-sue provision should govern “because the parties are free to contract, and having clearly expressed a [shorter] time-to-sue provision, will be bound by it.”). Thus, in disregarding the exclusivity clause in the contract between the District and Stride that Superintendent Hyatt purported to terminate as of April 1, 2025, it is evident that the District and the Board acted in an arbitrary and capricious manner, without the support of substantial evidence, and contrary to the law applicable to the Parties, as set forth in such contract. *Castillo v. Arrieta*, 2016-NMCA-040, ¶ 16, 368 P.3d 1249 (“Each party to a contract has a duty to read and familiarize himself with its contents . . . , and if the contract is plain and unequivocal in its terms, each is ordinarily bound thereby.”) (quoting *Smith v. Price’s Creameries, Div of Creamland Daires, Inc.*, 1982-NMSC-102, ¶ 13, 98 N.M. 541, 650 P.2d 825).

D. The Board Violated the Open Meetings Act at its May 16, 2025 Special Meeting, Rendering the Actions it took on that Date Invalid.

The OMA applies to “[a]ll meetings of a quorum of members of any board . . . of any district or political subdivision, held for the purpose of formulating public policy, . . . discussing public business **or taking any action within the authority of . . . any board . . .**”, including the District. NMSA 1978, § 10-15-1(B) (2013) (emphasis added); *see also State v. Hernandez*, 1976-NMSC-081, ¶ 3, 89 N.M. 698, 556 P.2d 1174 (concluding that the Santa Fe City Board of Education “is a policy-making body covered by the [OMA].”). “No resolution, rule, regulation, ordinance **or action of any board . . .** or other policymaking body **shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.**” NMSA 1978, § 10-15-3(A) (1993) (emphasis added). Thus, if the Board’s May 16, 2025 Special Meeting did not conform with all provisions of NMSA 1978, Section 10-15-1, the actions it took at such meeting are of no legal effect. *Id.*

NMSA 1978, Section 10-15-1(I) (2013) mandates that when the Board closes an otherwise open meeting, such as its May 16, 2025 Special Meeting, it can do so only where closure is “approved by a majority vote of a quorum of the policymaking body; **the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting**; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes.” *Id.* (emphasis added). As reflected in the video recording of the Board’s May 16, 2025, Special Meeting, the motion to close the meeting in order for the Board to enter into executive session did not state the authority for the closure, nor did it state with reasonable specificity the subject to be discussed in such executive session, contrary to Section 10-15-1(1).² Therefore, because the Board’s May 16, 2025 Special Meeting failed to comport with the requirements of Section 10-15-1, the actions it took at such meeting, namely, the attempt to ratify the District’s issuance of the RFP and the Superintendent’s

² The Board similarly did not comply with the OMA at its regular meeting on May 12, 2025.

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termination of the District's contract with Stride, failed to ratify such actions, which are, as of this date, invalid as a matter of law. § 10-15-3(A).

Additionally, NMSA 1978, Section 10-15-1(A) (2013) requires that “[T]he formation of public policy or the conduct of business by vote **shall not** be conducted in closed meeting. All 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.*” (emphasis added) Despite clear language in the Board's OMA Resolution for 2024-2025, adopted on May 20, 2024, stating that meetings may be closed to the public only if the subject matter of such discussion or action is exempted from the open meeting requirement under Section 10-15-1(H) of the OMA, the Board nevertheless limited the public's access to the video link to the Board meeting on May 16, 2025, thereby not permitting all persons to attend and listen to the Board's deliberations and proceedings. The District required registration for the May 16, 2025 Board meeting, and asked registrants to confirm why they wanted access, allowing the District to then determine who would be permitted to watch and listen to the proceedings of that meeting. This policing of access by the District, which constitutes a departure of its prior practices, violates the spirit and the letter of the law regarding OMA. This is yet another reason why the actions of the Board on May 16, 2025 are contrary to law, and remain invalid. *See Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999) (explaining that while the OMA does not explicitly require a public body to allow members of the public to speak at its meetings, where the public body had an intentional practice and tradition of allowing public comments at its meetings, and it failed to identify a significant government interest justifying the prohibition of speech at a public meeting, such failure justified reversal of a district court's order of summary judgment in favor of the public body.); see also N.M. Att'y Gen., No. 90-26 (Dec. 20, 1990) (opining that a local school board president has authority to deny citizens the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously.). The Board also violated NMSA 1978, Section 22-5-4.16 (2024) by failing to make the school board meeting of May 16, 2025 accessible to the public through its webcast.

Here, the District has cited no rules authorizing the Board chair to deny the right to address the Board that it has historically permitted, and has provided no explanation whatsoever justifying the denial of such right. As such, the Board's decision to disallow public comment at its May 16, 2025 meeting made the meeting one that was not truly open to the public. Because the Board's action to disallow public comment had no basis in rules applicable to the Board, and it provided no explanation as to why the exclusion of public comment was necessary at such meeting, the Board acted contrary to law, and its decision to proceed in such manner was arbitrary and capricious. Thus, the Board's decision to act on the items on May 16, 2025 and to proceed with the issuance of this RFP cannot stand.

E. The Board's Actions on May 16, 2025 are Invalid, And There Is No Evidence that an RFP was Ever Properly Considered and Voted Upon by the Board of Education. Therefore, the Award of the RFP on May 27, 2025 is Invalid.

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To date, the Board has not properly voted to issue this RFP, and in any event, could not do so until it voted to terminate Stride's contract in an open meeting and provide an adequate opportunity to cure under the contract. Only upon a legal termination pursuant to the EPSA with Stride, could the Board then have voted to issue an RFP for a new virtual online provider. Further, these actions could not be delegated to the Superintendent. The Board's own action on May 16, 2025, to ratify the Superintendent's action on April 1, 2025, is evidence the District understood the Superintendent's action of April 1, 2025 was not valid. The Board is responsible for contracting for the expenditure of moneys, which is an established part of the Public School Code: "a local school board has the power and duty to...except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code, 13-1-28 to 13-1-299, NMSA 1978." NMSA 1978, § 22-5-4(J) (2005) The Superintendent's or Procurement Director's actions in issuing the RFP three days later, on April 4, 2025, are also invalid and could not be delegated by the Board. "Any attempt by the Board to enter into a contract or promulgate a termination policy giving employee rights in conflict with the School Personnel Act would be ultra vires and void." *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, ¶ 9, 117 N.M. 492, 873 P.2d 238.

F. Conclusion and Request for Relief

The Board's actions, or failure to act, in issuing this RFP and preliminarily awarding a contract to GA are in violation of law, were arbitrary and capricious, and made without substantial evidence. For all the reasons listed in this Protest, Stride respectfully requests that the District cancel this RFP and re-issue it in accordance with appropriate procedures and in full compliance with the New Mexico Procurement Code. NMSA 1978, § 13-1-131 (1987) ("... [A] request for proposals or any other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state or a local public body. A determination containing the reasons for cancellation shall be made part of the procurement file."); *see also* 1.4.1.88 NMAC (describing when and how a solicitation can be cancelled and a contract awarded in violation of law can be terminated).

In addition, Stride requests that the District determine that the proposed award of a contract to Graduation Alliance with Open Ed (together "Graduation Alliance") as a result of the RFP be cancelled or terminated because the RFP was issued, and the proposed award of a contract to Graduation Alliance, is in violation of law. NMSA 1978, § 13-1-181 (2002); NMSA 1978, § 13-1-182(B) (2002).

Stride further requests that the proposed contract to Graduation Alliance approved on May 27, 2025 not be executed, or, if such contract has been executed, that it be canceled effective immediately.

Pursuant to 1.4.1.86 NMAC, Stride hereby requests a hearing on these matters and to be afforded the opportunity to make discovery requests prior to such a hearing (to include, but not necessarily be limited to, communications to, from, or between District officials and employees concerning

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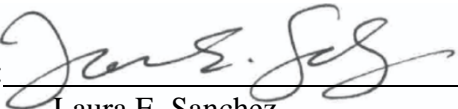
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the RFP, bid submissions, scores and evaluations, and documents relating to the decision by the District to award the RFP to Graduation Alliance) as authorized by 1.4.1.85 NMAC.

Respectfully submitted this 11th day of June, 2025,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 

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July 17, 2025

Christopher Mortenson
Board President
Board of Education
Gallup-McKinley County Schools
via electronic mail: cmortens@gmcs.org

RE: Notice of OMA violations

Dear President Mortenson:

I write in my capacity as legal director for the New Mexico Foundation for Open Government (“NMFOG”), to provide notice, pursuant to the New Mexico Open Meetings Act (“OMA”), Section 10-15-2-3(B), of the Gallup-McKinley School District’s (“District”) failure to comply with the OMA at the Gallup-McKinley School Board (“Board”) meetings held May 16, 2025, May 27, 2025, and July 11, 2025.

I. Violations of OMA, §§ 10-15-1(B) and (D)(1)

On May 16, 2025, in violation of OMA, Section 10-15-1(D)(1), the Board voted to go into closed session without affording the public specific notice of the topics of the closed session and without providing legal authority for the closure. Specifically, the District held a meeting to “[r]atify the actions of the Administration to provide notice to Stride Inc./K12 of material breaches of the contract and to demand a remedy.” At the meeting, the Board voted to close the meeting to the public by entering into executive session but failed to adhere to OMA’s requirements. Board member Michael W. Schaaf moved to enter into executive session but failed to state the legal authority for closing the meeting and failed to state with reasonable specificity the matters to be discussed in the closed, executive session, in violation of OMA. NMSA 1978, § 10-15-1(D)(1) (2013).

In further violation of OMA, Section 10-15-1(B), the District’s Superintendent – with the Board’s after-the-fact approval – privately provided notice to K12 (a subsidiary of Stride Learning Company and private provider of online education that entered into an Educational Products and Services Agreement (“EPSA”) with the District on June 16, 2020) of alleged material breaches of the EPSA, purported to terminate the EPSA, and issued an RFP for the same services that K12 is exclusively authorized to provide. The Board violated OMA by attempting to “ratify” those actions and to take additional actions dependent on those actions, including demanding a remedy for K12’s alleged material breaches of the EPSA, initiating formal proceedings under the Procurement Code to terminate the EPSA, ceasing all payments to K12 under the EPSA, filing complaints about K12 with state and federal agencies, and launching formal debarment proceedings against K12 under the Procurement Code. Pursuant to OMA, no action of the Board shall be valid unless taken or

Exhibit J

made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1. NMSA 1978, § 10-15-3. The Board's actions to ratify the Administration's decision to terminate the EPSA are invalidated due to its violations of OMA.

II. Violation of OMA, § 10-15-1(D), deficient meeting notices

Also, in violation of OMA, Section 10-15-1(D), the Board's meeting notices omitted language required by the Board's own 2025-2026 OMA resolution, for the May 16, 2025, and May 27, 2025, meetings. The Board enacted its "OMA Resolution," pursuant to NMSA 1978, § 10-15-1(D), which requires a public body to determine what constitutes reasonable notice for a meeting and then provide such reasonable notice to the public. The Board's OMA resolution requires all meeting notices to contain language regarding ADA accommodations; yet, the May 16, 2025, and May 27, 2025, meeting notices failed to include this language, in violation of OMA's requirement that the board provide reasonable notice to the public.

The meeting notice for the May 16, 2025, meeting was also deficient in that it did not contain information about how the public could attend the meeting virtually. Although the board created barriers to virtual access at this meeting, virtual access was nonetheless an option for members of the public wishing to attend and listen to the Board proceedings at the May 16, 2025, meeting. The Board's failure to provide information on virtual access in its notice to the public is a violation of OMA's requirement that the Board provide reasonable notice to the public of its meetings, including when and where the meetings will be held and how the public may attend, as required by Section 10-15-1(D).

As the notice for the special meeting on May 27, 2025, did not comply with the OMA by failing to include the required language in the Board's 2025-2026 OMA Resolution, the actions taken by the board at the May 27, 2025, meeting, including the Board's vote to award a contract to Graduation Alliance and Open Ed Alliance, are invalidated.

III. Violation of OMA, §§ 10-15-1(A), failure to allow members of the public to attend and listen

OMA requires that all persons so desiring shall be permitted to attend and listen to the proceedings. NMSA 1978, § 10-15-1(A). In violation of this requirement, the Board restricted virtual access to the May 16, 2025, special meeting. Members of the public who attempted to attend the live webcast were directed to a message indicating that the video is private and that sign in was required for those who had been granted access and were unable to attend the meeting. When a public body offers virtual access to its meetings, the public body must ensure that virtual access is provided in a manner equivalent to in-person attendance and not arbitrarily restrict access to members of the public who have not been granted special permission.

IV. Violations of OMA, § 10-15-1(G), failure to post minutes

OMA requires public bodies to make minutes of meetings available and open to public inspection. NMSA 1978, § 10-15-1(G). The District makes Board meeting minutes available on its website, <https://www.gmcs.org/page/board-meetings-agendas>. Pursuant to OMA, draft minutes of the meetings on May 16, 2025, and May 27, 2025 should have been prepared within ten working days after the meetings occurred, and either approved, amended or disapproved at the next meeting where a quorum was present. A quorum of the Board has met since the May 16, 2025, and May 27, 2025, meetings, yet it appears no

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minutes for either meeting have been approved and made available to the public on the District's website, in violation of NMSA 1978, § 10-15-1(G).

V. Violations of OMA, § 10-15-1(A) and (F), failure to openly deliberate and list the specific item of business on agenda

Last, the Board's actions at its recent July 11, 2025, special meeting held for the purported purpose of "Approval of Open Meetings Act" are also invalid due to the Board's failure to comply with OMA requirements. Specifically, Section 10-15-1(F) requires that meeting notices shall include an agenda containing "a list of specific items of business to be discussed or transacted at the meeting." NMSA 1978, § 10-15-1(F). The Board's notice for the July 11, 2025, special meeting indicates that the meeting was held for the purpose of addressing the sole item of business, "Approval of Open Meetings Act for SY 2025-2026 – ACTION." What the board in fact approved at this three-minute-long meeting was a resolution aimed at curing the violations of OMA as they relate to the May 16, 2025, meeting and declare as "moot" all contentions and claims by the New Mexico Department of Justice and Stride/K12 Inc. The Board's notice did not list the "specific item of business" or even contain an agenda in its meeting notice as required by OMA, and the Board failed to openly deliberate or discuss the true nature of the Board's actions, in violation of OMA's public policy that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." NMSA 1978, § 10-15-1(A). Any person attending this special meeting on July 11, 2025, was deprived of the opportunity to "listen to the deliberations" of the Board, as the Board utterly failed to deliberate on the resolution, in what appears to be an attempt to obfuscate the true nature of the meeting and keep secret the actions of the Board. The Board's actions at the July 11, 2025, meeting violate the spirit of openness and transparency that underscores OMA.

Thank you for your attention to these matters. Please contact me with questions or concerns at (505) 289-0573, or amandalavin@nmfog.org.

Sincerely,



Amanda Lavin
NMFOG Legal Director



June 17, 2025

Gallup-McKinley County Public Schools Board of Education
Christopher Mortensen, President (cmortens@gmcs.org)
Andrew M. Sanchez (asanchez@edlawyer.com)
640 S. Boardman
Gallup, NM 87301

President Mortensen and Mr. Sanchez:

The Government Counsel and Accountability Bureau (“GCA”) of the New Mexico Department of Justice (the “NMDOJ”) is aware of a special meeting held by the Gallup-McKinley County School District Board of Education (the “Board”) on May 16, 2025. This office has concerns regarding compliance with the Open Meetings Act (the “OMA”), NMSA 1978, §§ 10-15-1 to –4 (1953, as amended through 2013). After a review of the May 16, 2025, special meeting agenda, videorecording, and information available on the Board’s website, our office notes several concerns of the Board’s compliance with OMA and Public School Code, NMSA 1978, §§ 22-1-1 to 22-35-5 (1953, as amended through 2024) that require your immediate attention.

I. ANALYSIS

The OMA is one of our state’s transparency laws, which establishes the basic public policy of our state that public business be conducted in full public view, that the actions of public bodies be taken openly, and that the deliberations of public bodies be open to the public. The Attorney General has statutory authority to enforce OMA, *see* NMSA 1978, § 10-15-3(b), and our office relies on concerns brought forward by the public to help identify and resolve issues of noncompliance.

The NMDOJ has identified concerns with the Board’s compliance with OMA during its May 16, 2025, special meeting. Particularly, the NMDOJ finds concern in the Board’s compliance with meeting notice and agenda requirements, restricting or limiting access to its meetings, procedural requirements to enter into closed session, and taking invalid actions at its May 16, 2025, special meeting. While a majority of this letter concerns the Board’s May 16, 2025, special meeting, our office also has concerns regarding the public body’s compliance with virtual access to its meetings, public comment, and maintaining meeting minutes, as required by § 22-5-4.16 of the Public School Code. Each of these concerns will be individually addressed below.

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a. The Board's May 16, 2025, meeting notice does not comply with the Board's 2025-2026 OMA Resolution.

Pursuant to NMSA 1978, § 10-15-1(D), a public body must determine its notice procedures at least once a year in a public meeting. This is commonly referred to as an "OMA Resolution", in which a public body annually reviews and adopts reasonable notice procedures during a regularly scheduled open meeting. It is our office's interpretation of OMA that when a public body adopts notice requirements in its OMA Resolution, the public body must comply with it.

According to the Board's 2025-2026 OMA Resolution, all notices shall include:

If you are an individual with a disability or other needs requiring a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact the Superintendent's Office at (505) 721-1000 extension 11189 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Superintendent's Office at (505) 721-1000 extension 11189 if a summary or type of accessible format is needed.

After a review of the May 16, 2025, meeting notice, the following language regarding ADA accommodations is not included. Our office finds that the Board's May 16, 2025, meeting notice does not comply with the Board's established notice procedures, set forth in its OMA Resolution.

b. The Board denying virtual access to its May 16, 2025, special meeting violates NMSA 1978, § 22-5-4.16 and goes against the spirit and intent of OMA.

According to OMA, all persons desiring to attend a public body's meetings shall be permitted to attend and listen to the proceedings. NMSA 1978, § 10-15-1(A). While OMA is silent on providing members of the public virtual access to its meetings, when a public body offers that its meetings will be accessible by virtual means, the public body must ensure that virtual access is provided in a manner equivalent to in-person attendance. Thus, to advertise virtual access and then restrict or limit members of the public virtual access to a meeting would run contrary to the spirit and intent of OMA, which is grounded in the basic public policy of openness, accessibility, and transparency in government.

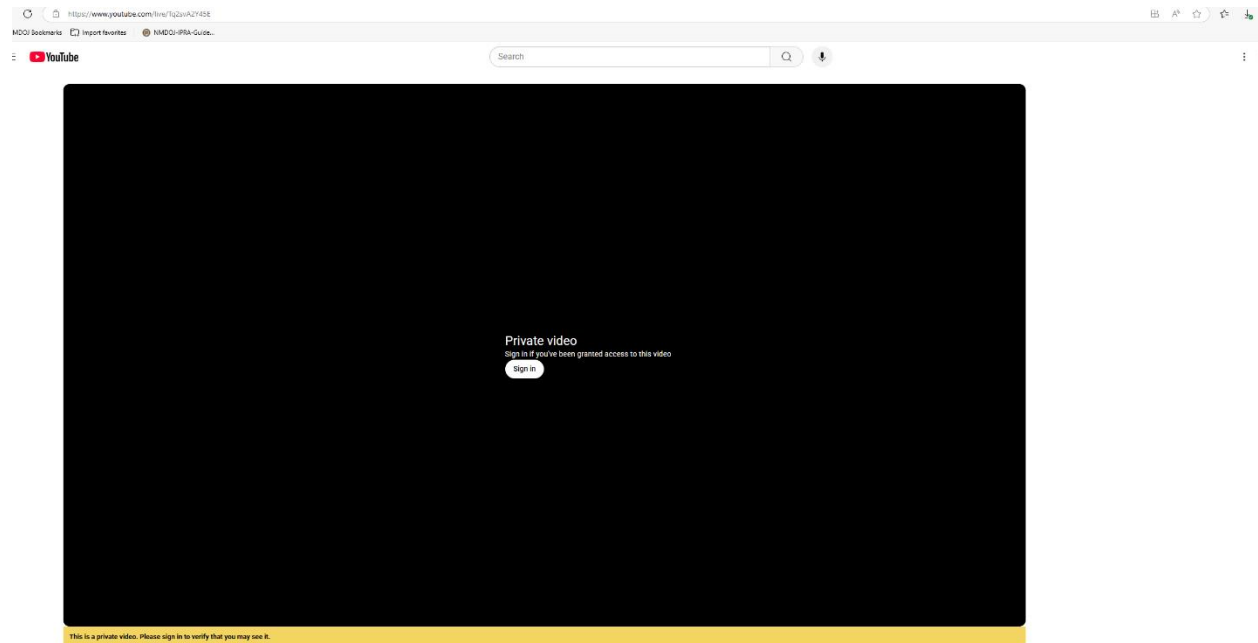
Our office has become aware that virtual access to the May 16, 2025, special meeting was limited or restricted for members of the public without special permission. Members of the public who attempted to attend the live webcast instead were directed to the following message indicating that the video is private and that sign in was required for those who had been granted access:

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This is concerning given that the public body’s own website, under “Board Meetings & Agendas”, includes a link labeled “Watch it LIVE” beneath the May 6, 2025, special meeting listing. This link, and its language, reasonably lead members of the public to believe that the meeting would be accessible in real time through virtual means. Further, NMSA 1978, § 22-5-4.16 (2024), mandates “live audio and video webcasts of local school board meetings shall be accessible through the school district’s website and shall include a user interface that allows members of the public to submit written or verbal comments.” However, neither the May 16, 2025, meeting notice nor agenda contain any language advising the public that the public body provides virtual access to its meetings, nor any instructions on how to attend and listen to the meeting remotely.

As stated, when a public body offers virtual public access to its meetings, it assumes the responsibility to ensure that virtual access is not restricted or limited. The Board’s restriction or limitation of the public’s virtual access to the meeting after advertising its availability is contrary to the spirit and intent of OMA, particularly and violates the express mandates of § 22-5-4.16.

Additionally, the failure to include information about virtual access in the Board’s May 16, 2025, meeting notice and agenda, regardless of whether access was provided, further compounds our office’s concern. Meeting notices and agendas are the public’s primary source of information on how to attend and participate in government deliberations and proceedings. When a public body offers virtual access to its meetings, the public should be informed of its opportunity to attend and listen to the meeting virtually in the meeting notice and agenda. Omitting these details from the meeting notice and agenda goes against the ethos of transparency and accountability that OMA is designed to uphold and violates the access required by law.

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c. The Board’s motion to enter into closed session at its May 16, 2025, special meeting did not comply with OMA.

Pursuant to NMSA 1978, § 10-15-1(I)(1), a public body must follow specific procedures to enter into closed session. When an agenda item is presented for discussion that may be considered in closed session, a motion for closure must be made by a member of the public body stating the authority for closure and the subject to be discussed with reasonable specificity. *Id.*

According to the Board’s May 16, 2025, meeting videorecording¹, the following statements were made by the Board to enter into closed session:

President: Okay. So, the first item on our agenda is the executive session. So, I’ll hear a motion to go into executive session.

Member 1: Motion to enter executive session.

President: Okay. Second down there.

Member 2: Second.

Videorecording, at 1:50. As required by NMSA 1978, § 10-15-1(I)(1), the motion to enter into closed session must contain the authority for closure and the subject to be discussed stated with reasonable specificity. The Board’s motion contained neither the authority for closure nor the subject to be discussed stated with reasonable specificity. As such, the NMDOJ finds the Board’s procedures to enter into closed session at it May 16, 2025, special meeting is in violation of § 10-15-1(I)(1).

d. The Board’s action to ratify agenda item no. 3(A) is improper, and as a result the Board’s following actions for agenda item no. 3(B)-(H) is invalid.

Pursuant to NMSA 1978, § 10-15-1(B), any discussion of public business or any final action taken within the delegated authority of a public body *must* take place in an open meeting. The OMA makes this requirement unambiguous, by stating: “[n]o resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, § 10-15-1.” § 10-15-3(A).

The Board’s May 16, 2025, meeting agenda has the following listed for agenda item no. 3(A): “[r]atify the actions of the Administration to provide notice to Stride Inc./K12 of material breaches of the contract and to demand a remedy.” This language indicates that the Administration—not

¹ Gallup-McKinley County Public Schools Board of Education, *Gallup McKinley County Schools Board of Education 05-16-2025*, YouTube (May 15, 2025), https://www.youtube.com/watch?v=VHKdzqqN_SM.

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the Board—unilaterally issued a formal notice and demand to Stride Inc./K12. What the Board then voted on was a post hoc ratification of an action taken by the Administration.

To be clear, this letter's intention is not to address any matters related to the Board's contractual relationship with Stride Inc./K12 or the New Mexico Procurement Act. Rather, our office's concern lies strictly with compliance with OMA and the validity of the Board's action.

As stated above, the agenda item reveals that the Administration sent the notice to Stride Inc./K12. However, if the Board is the entity in a contractual relationship with Stride Inc./K12, which our office presumes to be the case given the context of the additional agenda items, then the authority to issue formal notice of a contract breach and demand for a remedy rests solely with the Board. Under OMA, such final action, such as issuing notice, must take place in an open meeting, as required by § 10-15-1(B). Without evidence to the contrary, the Board never took action to issue the notice to Stride Inc./K12, during an open meeting. Rather, this was a unilateral action by the Administration that the Board was trying to ratify.

This leads directly to our office's main concern: *a public body cannot ratify a decision it never made*. Ratification, also known as corrective action, is generally an action taken by a public body to affirm or adopt a prior action that was deemed invalid under § 10-15-3(A). Here, there is insufficient evidence to find that the Board sent the notice and demand to Stride Inc./K12, prior to its ratification. Absent such an action, there was nothing for the Board to lawfully ratify. Accordingly, the ratification vote itself is likely invalid. If the Board has any evidence to contrary, please inform the NMDNJ immediately. Otherwise, an agenda item that announces an improper final action on public business, coupled with an indication that the public body intends to ratify that improper final action through a sham "vote" in open session, can only be understood as an OMA violation.

Since the Board's effort to "ratify" the Administration unilateral issuance of a notice of breaches of contract and demand for a remedy appear to be invalid, a reasoned result is that the actions the Board took on agenda items no. 3(B)-(H) are also invalid. Agenda items no. 3(B)-(H) appear to rely on the presumption that proper notice of breach and demand had been already properly issued to Stride Inc./K12. Since our office finds that the ratification of agenda item no. 3(A) is likely invalid and notice and demand was never lawfully voted on during an open meeting by the Board, then any subsequent actions taken in reliance on the notice and demand, such as agenda items no. 3(B)-(H), are also invalid.

Even if the ratification of the Administration's unilateral decision was valid, it does not operate retroactively. A ratified decision takes effect on the date of the ratification. In this case, the action of sending Stride Inc./K12 the notice and demand would be effective May 19, 2025, due to ratification, not the date the Administration sent the notice and demand. Presuming that agenda items no. 3(B)-(H) appear to rely on that proper notice of breach and demand had been issued to Stride Inc./K12, then any Board action on these agenda items may be invalid.

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e. GCA's concern with the Board's procedures for public comment

While OMA is silent on public comment, according to NMSA 1978, § 22-5-4.16 (2024), “live audio and video webcasts of local school board meetings shall be accessible through the school district's website and *shall include a user interface that allows members of the public to submit written or verbal comments.*” (emphasis added).

The Gallup McKinley County Schools Policy Manual, Section B, School Board Governance and Operations, outlines the policy and procedures of public participation at Board meetings. According to the Policy Manual, “[t]he open meetings of the Board of Education for the Gallup McKinley County Schools are traditionally a closed forum with regard to public comment,” and therefore, “the Board of Education creates only a limited open forum for its meetings in which the Board will only accept public comment when it is placed on its agenda and public comment shall be limited to the subject matter of its agenda items only.” The Board has the current policies and procedures for public comment:

- Pursuant to Subsection C, “...the Board shall not permit comment on any other matters not listed by the Board on the [a]genda, and the Board and/or Board President may limit repetitious questions and comments not related to an agenda topic.”
- Pursuant to Subsection D, “Public comment on limited subject matter at open Board meetings shall be permitted only if the Board's agenda has a section entitled Public Comment and the Board's agenda lists the subject matter open for public comment. There is no obligation or requirement for the Board of Education to have a public comment section on its agenda for every open meeting of the Board of Education. The Board of Education may or may not, at its discretion, place the Public Comment section on its agenda for any or all open Board meetings.” (internal quotations omitted).
- Pursuant to Subsection E, “The Board of Education welcomes public comment during the Public Comment section of the Board meeting limited to the subject matter open for public comment listed on the [a]genda for the meeting. Individuals wishing to make public comment shall complete a Public Comment form and submit it to the Board President prior to the Public Comment section of the open meeting...”
- Pursuant to Subsection F, “At the Board meeting, each person who has timely submitted a Public Comment Form shall wait to be recognized by the Board President to present his or her comments to the Board of Education. Upon recognition by the Board President to address the Board, the individual will state his or her name, and address, and identify the general topic of his or her remarks.”

Our office notes several concerns with the Board's policies and procedures governing public participation at its meetings. First, while this letter has already addressed virtual access to Board meetings, the Board's current practices for public participation further conflict with § 22-5-4.16. According to § 22-5-4.16, the live stream of the Board's meeting must contain “a user interface that allows members of the public to submit written or verbal comments.” Here, it is evident the Board is not meeting this requirement. The Board's Policy Manual states the Board “may or may not, at its discretion, place the Public Comment section on its agenda for any or all open Board meetings.” Furthermore, even when public comment is placed on the agenda, an individual must

Exhibit K

Gallup-McKinley County Public Schools Board of Education

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fill out a “Public Comment Form” prior to the meeting in order to provide public comment at the Board’s meeting. These policies directly violate § 22-5-4.16, to the extent that they improperly restrict public comment entirely or deny individuals the opportunity to comment upon a meeting solely because they did not complete a form in advance.

The fact that Board's meetings are likely considered a limited public forum does not give the public body the unlimited authority to restrict speech. When OMA is read in conjunction with NMSA §§ 22-5-1 to -18 of the Public Education Act, it reflects a clear legislative intent to ensure that the public has both in-person and virtual access to observe and comment upon the decision-making processes of local school boards. If local school board meetings are a limited public forum from the standpoint of First Amendment rights a school board may, but is not required to, impose content-based or viewpoint restrictions on speech. However, failing to provide a “user interface that allows members of the public to submit written or verbal comments” directly conflicts with § 22-5-4.16 which provides a higher standard for public participation than OMA.

f. GCA’s concern with the Board’s compliance with meeting minutes.

According to OMA, all public bodies subject to OMA are required to keep written minutes of all open meetings and meeting minutes shall be available for public inspection. NMSA 1978, § 10-15-1(G). While OMA only requires meeting minutes to be available for public inspection, § 22-5-4.16 requires that “[r]ecordings of the webcasts and an electronic copy of any minutes approved at the meeting shall be posted on the school district's website within one week of the meeting's conclusion and shall be publicly available for at least three years following the date of the meeting unless the state records retention schedule provides otherwise.”

After a review of the Board’s website, the Board has uploaded copies of prior meeting notices and agendas but does not have copies of its meeting minutes uploaded on its website. While this is not a violation of OMA, the public body not having its minutes posted on its website is in violation of § 22-5-4.16.

II. CONCLUSION

As outlined in this letter, the NMDOJ has identified key violations and concerns with the Board’s compliance with OMA and § 22-5-4.16 of the Public School Code. To address the concerns raised above the public body shall ensure compliance with OMA moving forward and take corrective action to remedy the OMA violations identified in this letter. Our office advises the public body to do the following:

a. Advisory Action

To ensure future compliance with OMA, the Board should take the following advisory action:

1. As discussed in Section I(a), *see supra*, for Board’s meeting notices, the public body will ensure that its meeting notices are meeting the notice requirements set forth in § 10-15-1(D) and notice procedures outlined in its OMA Resolution that is adopted annually.

Exhibit K

Gallup-McKinley County Public Schools Board of Education

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2. As discussed in Section I(b), *see supra*, for virtual access to its meetings, the Board must allow the public to have virtual access to its meetings, and that information on how to access the meeting virtually is included in meeting notices and agenda, as required by § 22-5-4.16.
3. As discussed in Section I(d), *see supra*, ensure the public body is only ratifying, or taking corrective action, on decisions it made that are invalid.
4. As discussed in Section I(e), *see supra*, for public comment at its meetings, the Board must ensure it is allowing members of the public to provide written or oral public comment at its meetings and placing public comment as an agenda item on its meeting agendas. Additionally, the Board should not restrict members of the public ability to engage in public comment by making them fill out a form prior to the meeting and not limit their speech to what is only listed on the agenda.
5. As discussed in Section I(f), *see supra*, for meeting minutes, the Board must ensure that copies of its meeting minutes for the past three years be uploaded to its website, as required by § 22-5-4.16.

b. Corrective Action

As outlined in Section I(c) of this letter, *see supra*, the NMDOJ finds that the Board's motion to enter into closed session at its May 16, 2025, special meeting was in violation of the OMA. Also, the Board's announcement that they planned to ratify the Administration's past action was in violation of OMA.

To remedy these OMA violations, the public body shall take prompt corrective action. "[P]rocedural defects in [compliance with the OMA] may be cured by taking prompt corrective action." *N.M. State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 86 (quoting *Kleinberg v. Bd. of Educ.*, 1988-NMCA-014, ¶ 30, 107 N.M. 38) (alteration in original). Accordingly, at its next properly noticed public meeting, the public body should include an agenda item that will allow the public body to provide a corrective statement to cure the OMA violations. The corrective statement should include, at a minimum: (1) a summary of the OMA violations, (2) a restatement of the May 16, 2025, motion that complies with § 10-15-1(I)(1), which must include the authority for closure and the subject to discussed with reasonable specificity, and (3) an open, final action by the Board regarding whether to issue notice and demand, delegate the authority to the Superintendent to engage in that action on behalf of the Board, or take some other official action.

The NMDOJ has authority to enforce OMA through injunction, mandamus, or other appropriate order. Therefore, while this letter has outlined advisory action for the Board to take and corrective action to cure the OMA violation, our office reserves the right to pursue any further enforcement necessary to ensure compliance with OMA. More importantly, please note that this review is limited solely to the Board's compliance with OMA. This letter does not address or make any findings regarding the legality of other Board actions that may fall under separate statutes, such as the Governmental Conduct Act or the New Mexico Procurement Code.

Exhibit K

Gallup-McKinley County Public Schools Board of Education

June 17, 2025

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Based on our analysis provided here, we will consider the matter closed pending acceptance of corrective action. **Please provide our office with documentation of the corrective action, including but not limited to, the meeting agenda, meeting minutes, and link to the meeting videorecording.** Please send all documentation to: oma-ipracomplaint@nmdoj.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Blaine Moffatt', with a long horizontal flourish extending to the right.

Blaine Moffatt

Director of Government Counsel & Accountability

Government Counsel & Accountability Bureau

cc: Charles Long, Vice President (chase4long@yahoo.com)
Kevin Mitchell, Member (kmitchel@gmcs.org)
Priscilla Benally, Member (pbenally@gmcs.org)
Michael W. Schaaf, Secretary (mschaaf@gallupnm.gov)
Rose Bryan, (rbryan@nmdoj.gov)



Exhibit L

**Katherine Crisler, Lead Director
Procurement & Facilities**
kcrisler@gmcs.org

Senior Procurement Buyer
Hugo Cano

Buyers
Rebecca Bertinetti
Breana Kesner
Gregory Hudson

June 16, 2025

**VIA ELECTRONIC MAIL
AND BY US MAIL**

kchavous@k12.com
K12 Virtual Schools LLC
c/o Kevin P. Chavous
President of Academics, Policy and Schools
2300 Corporate Park Drive, Suite 200
Herndon, Virginia 20171

RE: Written Determination of Suspension and for material breach under Contract number RFP-394-20MA and failure to submit audit documentation.

Dear Mr. Chavous,

This letter serves as formal notification that K12 Virtual Schools LLC (K12) is hereby suspended from consideration for any new contracts with Gallup McKinley County Schools (GMCS) for the maximum period allowed under Section 13-1-177 NMSA 1978.

This suspension is based on a preliminary investigation indicating that K12 has materially breached its obligations under Contract No. RFP-394-20MA with GMCS as notified in the District's letter dated April 1, 2025. Further, K12 has failed to provide the required audit documentation outlined in the District's letter dated April 22, 2025. Failure to respond to an audit requirement is a violation of Section 13-1-161 NMSA 1978.

This suspension may lead to further action. Pending legal review, GMCS may initiate debarment proceedings to exclude K12 from public contracts for a period of up to three (3) years, in accordance with Section 13-1-178 NMSA 1978. If such proceedings are initiated, K12 will receive formal notice and be entitled to a hearing.

Exhibit L

All parties are reminded of their right to seek judicial review of this determination under §§13-1-175 and 13-1-183.11 NMSA 1978.

GALLUP-McKINLEY COUNTY SCHOOLS

By:



Katherine Crisler

Procurement Director / Chief Procurement Officer

P.O. Box 1318

Gallup, New Mexico 87305-1318

(505) 721-1000

cc: Jvanna Hanks, Deputy Superintendent
Andrew Sanchez, Himes, Petrarca, & Fester
Procurement File

**Minutes of Special Meeting
The Board of Education
Gallup McKinley County Schools
May 27, 2025**

A Special meeting of the Board of Education of Gallup McKinley County Schools was held May 27, 2025, beginning at 8:00 AM in the board room of Student Support Center, 640 S. Boardman, Gallup, NM 87301 or via [You-Tube@GMCS.ORG](#)

BOARD MEMBERS PRESENT:

Christopher Mortensen, President
Charles Long, Vice President - absent
Michael W. Schaaf, Secretary
Priscilla Benally, Member
Kevin Mitchell, Member

GUESTS

Avery Kesner
Andrew Clark
Kathy Polich
Katherine Crisler

STAFF MEMBERS PRESENT:

Mike Hyatt, Superintendent
Jvanna Hanks, Deputy Superintendent
K'Dawn Montano, Assistant Superintendent of Personnel Services
Joan Nez, Recording Secretary

CALL TO ORDER – PLEDGE OF ALLEGIANCE - ROLL CALL

Chris Mortensen called the Board of Education meeting to order at 8:00 a.m. on Tuesday, May 27, 2025, in the boardroom of the Student Support Center, 640 Boardman, Gallup, New Mexico. (Four board members were present for roll call: Chris Mortensen, Michael Schaaf, Priscilla Benally, and Kevin Mitchell)

APPROVAL OF AGENDA

Michael Schaaf moves, and Kevin Mitchell seconded to approve the agenda as presented. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)

NEW BUSINESS

A. Approval of Virtual Public-School K-12 Graduation Alliance Inc - ACTION
Michael Schaaf moves, and Kevin Mitchell seconded to Approve of Virtual Public-School K-12 Graduation Alliance Inc. as presented. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes)

ADJOURN

There being no further business Priscilla Benally move, and Michael Schaaf seconded the meeting be adjourn. Upon roll call vote, motion carried unanimously. (Four board members present and voting: Kevin Mitchell-yes, Priscilla Benally-yes, Michael Schaaf-yes, and Chris Mortensen-yes) Meeting adjourned on Tuesday, May 27, 2025, at 8:24 a.m.

Chris Mortensen, President

Michael Schaaf, Secretary

Recorded by
Joan Nez
May 27, 2025



Exhibit N

Mike Hyatt, Superintendent
mhyatt@gmcs.org
Deputy Superintendent
Jvanna Hanks II
Assistant Superintendent
K'Dawn Montano
Wade Bell

LEGAL NOTICE

**A SPECIAL MEETING
OF THE BOARD OF EDUCATION
TUESDAY, MAY 27, 2025
GALLUP-McKINLEY COUNTY SCHOOL DISTRICT #1
GALLUP, NEW MEXICO**

The President of the Gallup McKinley County School District #1 Board of Education announces a special meeting on Tuesday, May 27, 2025, at 8:00 a.m. The meeting will be to approve Virtual Public School K-12 of April 4, 2025, it will be held in the board room at the Student Support Center, 640 Boardman, Gallup, New Mexico. There will be a quorum and action will be taken.

Mike Hyatt
Mike Hyatt
Superintendent

POST – May 24, 2025

Exhibit O

**Agenda of a Special Meeting
The Board of Education
Gallup McKinley County Schools
July 11, 2025 @ 3:30 PM**

The subjects to be discussed or considered or upon which any formal action may be taken are as listed below. Items do not have to be taken in the order shown on this meeting notice.

Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

1. Call to Order – Pledge of Allegiance/NM Pledge – Roll Call
2. Approval of Agenda
3. New Business
 - A. Approval of Open Meetings Act for SY 2025-2026 – ACTION
4. Adjourn

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Superintendent's Office at (505) 721-1000 extension 11189 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Superintendent's Office at (505) 721-1000 extension 11189 if a summary or type of accessible format is needed.

Si usted es una persona con alguna discapacidad y necesita un lector, amplificador, intérprete calificado de lenguaje de señas u otro tipo de asistencia o servicio auxiliar para asistir o participar en la audiencia o reunión, por favor comuníquese con la Oficina del Superintendente al (505) 721-1000, extensión 11189, al menos con una semana de anticipación a la reunión o lo antes posible. Los documentos públicos, incluyendo la agenda y las actas, pueden proporcionarse en varios formatos accesibles. Por favor comuníquese con la Oficina del Superintendente al (505) 721-1000, extensión 11189, si necesita un resumen o un formato accesible específico.

**BOARD OF EDUCATION
FOR THE GALLUP-McKINLEY COUNTY SCHOOLS**

RESOLUTION

This Resolution was adopted at the duly-called and open special meeting of the Board of Education for the Gallup-McKinley County Schools after public notice in compliance with the New Mexico Open Meetings Act on July 11, 2025.

WHEREAS, the Board of Education is the governing body of the Gallup-McKinley County Schools, a policy-making body as contemplated by the New Mexico Open Meetings Act, N.M. Stat. Ann. §§ 10-15-1 through 10-15-4 (2013); and

WHEREAS, notice of an issue of compliance with the Open Meetings Act has been raised by the New Mexico Department of Justice related to the Board of Education’s meeting of Friday, May 16, 2025; and

WHEREAS, it is the intent of the Board of Education to comply with all requirements of the New Mexico Open Meetings Act in publishing notice, distributing and implementing agendas, and conducting business at its School Board meetings; and

WHEREAS, the Board of Education believes that at all times, including during its Meeting on May 16, 2025, that it was in substantial compliance with the Open Meetings Act; and

WHEREAS, substantial compliance is the legal standard to be applied by the courts as to compliance with Open Meetings Act under the case of *Parkview Cmty. Ditch Ass’n v. Peper*, 2014-NMCA-049, ¶ 13, 323 P.3d 939, 943 (N.M. Ct. App. 2014). “Under the substantial compliance standard, when the OMA has been sufficiently followed so as to carry out the intent for which it was adopted and serve the purpose of the statute, no violation has occurred.” *Id.*, quoting *Gutierrez v. City of Albuquerque*, 1981-NMSC-061, ¶ 14, 631 P.2d 304, 307, 96 N.M. 398, 401 (N.M. 1981).

Exhibit P

“The purpose of the OMA is to provide that governing bodies be required to make decisions in the open where the interested public can observe the action.” *Peper*, 2014-NMCA-049 at ¶ 13, 323 P.3d at 943 (citing cases); and

WHEREAS, the issues raised by the Director of the Government Counsel & Accountably for the NMDOJ to the Board of Education contained no allegations that any action of the Board of Education was ever taken in executive session or outside of a duly called and open meeting of the Board, which is the purpose of the Open Meetings Act, and all actions of the Board of Education were listed on its agendas and observable by the public in-person and virtually, and as such, the Board of Education has been in substantial compliance with the Open Meetings Act. *See* Attorney General’s *Open Meetings Act Compliance Guide*, p. 17 (N.M.A.G. 8th ed. 2015); *see also* N.M. Atty. Gen. OMA Determination, *Open Meetings Act Complaint – Doña Ana County Board of Commissioners* (June 20, 2019); and

WHEREAS, it is clear from the New Mexico Court of Appeals in *Bd. of Cty. Comm’rs, Luna Cty. v. Ogden*, 1994-NMCA-010, 117 N.M. 181 870 P.2d 143 (N.M. Ct. App. 1994) when it determined the standard for the application of the Open Meetings Act when it held that “[o]ur central concern is to construe the statute so as to determine and give effect to the legislature’s intent.” *Ogden*, 1994-NMCA-010, ¶ 14, 117 N.M. at 184, 870 P.2d at 146, *citing State ex rel. Klineline v. Blackhurst*, 1988-NMSC-015, ¶ 12, 106 N.M. 732, 735, 749 P.2d 1111, 1114 (N.M. 1988). “In enacting the Open Meetings Act, the legislature did not intend to impair or impede the effective workings of the various political subdivisions of the state.” *Id.*, *citing Gutierrez v. City of Albuquerque*, 1981-NMSC-061, ¶ 12, 96 N.M. 398, 401, 631 P.2d 304, 307 (N.M. 1981) (“These provisions make clear that the Legislature did not intend to unduly burden the appropriate

Exhibit P

exercise of governmental decision-making and ability to act.”). “‘To rule otherwise would improperly elevate form over substance’ and wreak havoc on a process already fraught with complexity.” *New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 86, 382 P.3d 923, 946 (N.M. Ct. App. 2016), quoting *Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 31, 107 N.M. 38, 44, 751 P.2d 722, 728 (N.M. Ct. App. 1988); and

WHEREAS, the courts have been clear that “[w]e decline to view the [Open Meetings Act] so as to require an open meeting to perform a perfunctory or purely ministerial act.” *Kleinberg*, 1988-NMCA-014 at ¶ 22, 107 N.M. at 43, 751 P.2d at 727. The term “final action” should be defined to mean “the final vote required to carry out the board’s authority on a matter.” *Kanahele v. Maui Cnty. Council*, 130 Haw. 228, 259, 307 P.3d 1174, 1205 (Haw. 2013), as corrected (Aug. 30, 2013) (emphasis in original), citing *Kleinberg*, 1988-NMCA-014 at ¶ 22, 107 N.M. at 43, 751 P.2d at 727; and

WHEREAS, the letter of April 1, 2025, to Stride/K12 Inc. did not require a final action or vote by the Board of Education at an open meeting under the Open Meetings Act, as it was merely an ministerial act associated with the contract terms between the Parties that could be initiated and completed by the School District’s Administration as to the procurement of services and supervision of a contract by a Chief Procurement Officer under the Procurement Code as set forth under N.M. Stat. Ann. § 13-1-95.2 (2013) and N.M. Stat. Ann. § 13-1-37 (2013).

WHEREAS, the opinion of the Director of the Government Counsel & Accountably for the NMDOJ in his letter as to the Board of Education’s compliance with the Open Meetings Act on May 16th is just that a subjective opinion of one subordinate of the Department, which cannot, as matter of law, be binding on the Board of Education or on the courts pursuant to *United States v. Reese*, 2014-NMSC-013, ¶ 36, 326 P.3d 454, 462 (N.M. 2014) (“We recognize that Attorney

Exhibit P

General opinions and advisory letters do not have the force of law); *Bd. of Cnty. Comm'rs, Luna Cnty. v. Ogden*, 1994-NMCA-010, ¶ 15, 117 N.M. 181, 184, 870 P.2d 143, 146 (N.M. Ct. App. 1994) (“statements and opinions of the New Mexico Attorney General are not binding law”); and there are times, as with this instance, the Attorney General’s Department has been wrong about the law as set forth in *Montano v. Gabaldon*, 1989-NMSC-001, ¶ 9, 108 N.M. 94, 96, 766 P.2d 1328, 1330 (N.M. 1989) (“Attorney General’s Opinion [] misconstrued the language of our decisions”); *Loc. 2238 of the Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v. Stratton*, 1989-NMSC-003, ¶ 19, 108 N.M. 163, 169, 769 P.2d 76, 82 (“We do not agree with [the Attorney General’s] opinion.”); *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, ¶ 13, 85 N.M. 747, 750, 517 P.2d 69, 72 (N.M. 1973) (“In the case now before us, we indeed decline to feel ourselves bound and we reject the aforementioned Attorney General opinions.”); and

WHEREAS, the courts will ultimately determine a governmental entity’s compliance with the Open Meetings Act and not NMDOJ as set forth in *Atencio v. Bd. of Educ. of Penasco Indep. Sch. Dist. No. 4*, 1982-NMSC-140, ¶ 6, 99 N.M. 168, 170, 655 P.2d 1012, 1014 (N.M. 1982) (we will “proceed to our independent analysis and results.”); and

WHEREAS, public entities can cure actual or perceived violations of the Open Meetings Act. *See Palenick v. City of Rio Rancho*, 2012-NMCA-018, ¶ 9, 270 P.3d 1281, 1284, *rev’d on other grounds*, 2013-NMSC-029, ¶ 9, 306 P.3d 447 (N.M. 2013); *see also Bd. of Educ. of Santa Fe Pub. Sch. v. Sullivan*, 106 N.M. 125, 125, 740 P.2d 119, 119–20 (1987) (stating that the board was entitled to correct the procedural defect of failing to comply with the Act); *Kleinberg*, 1988-NMCA-014 at ¶ 31, 107 N.M. at 44, 751 P.2d at 728 (recognizing that “the procedural defect could be corrected through a reinstatement of the termination proceedings”).

Exhibit P

WHEREAS, to avoid the inordinate costs associated with time-consuming litigation in which both NMDOJ and the Board of Education are spending public monies to resolve a nonconsequential issue and hyper-technical compliance issues and without any form of admission of a violation of the Open Meetings Act by the Board of Education and pursuant to the actual legal standards applied by the courts of having all Board of Education business be observable by the public and that technical compliance is not required to be within the law; and

WHEREAS, to render any and all contentions and claims by the NMDOJ and by Stride/K12 Inc. moot in the future pursuant to *La Mesa Racetrack & Casino v. State Gaming Control Bd.*, 2012-NMCA-076, ¶ 24, 283 P.3d 886, 89 (N.M. Ct. App. 2012) (“Moreover, the issue pertaining to the authority of the director to send the letter to La Mesa has been rendered moot. It is undisputed that after the director sent La Mesa the letter, the Board approved and ratified the director’s action”); *see also Bd. of Cnty. Comm’rs of Cnty. of Bernalillo v. Chavez*, 2008-NMCA-028, ¶¶ 1, 21-22, 143 N.M. 543, 543 and 549, 547, 178 P.3d 828, 828 and 834 (concluding that summary judgment was properly granted on a claim alleging that the mayor took unauthorized unilateral action because it was undisputed that the city council subsequently ratified the mayor’s action) the Board of Education hereby adopts this Resolution.

NOW THEREFORE, in order to assure that the Board of Education complies with the provisions of the Open Meetings Act, even though ministerial acts of official business do not require a final action of the Board of Education, it desires transparency for the Gallup-McKinley County Schools. As such, the Board of Education adopts this Resolution to correct and provide a summary of the contents and corrective actions for its Meeting held on May 16, 2025, as follows:

Exhibit P

1. The letter of April 1, 2025, to Stride/K12 Inc. pursuant to the contract terms between the Parties completed by the School District's Superintendent and Chief Procurement Officer pursuant to the Procurement Code at N.M. Stat. Ann. § 13-1-95.2 (2013) and N.M. Stat. Ann. § 13-1-37 (2013) is purportedly insufficient and requires a final official action of the Board. As such, to cure the revised agenda for the Board of Education's action on May 16, 2025 School Board meeting is hereby amended, reformed and ratified by this Resolution to include as follows:

3. New Business

A. Take action to issue a notice of termination and demand for a remedy from Stride/K12 Inc. pursuant to the contract between the Parties for cure within 45-days of notice under the contract and delegating the authority of the Board to the Superintendent or his or her designee to do so by the Board of Education and to ratify any and all previous notices issued to Stride/K12 Inc. under the contract.

2. Do to a one-time oversight at the meeting by the Board member making the motion, the Board did not verbally recite the reasons and justification for recessing into executive session that were set forth on the published and public agenda to purportedly comply with Section 10-15-1(I)(1) of the Act. The following is an amended motion by Board Vice President Schaaf moving for a closed session to be held at the Board of Education's meeting of May 16, 2025:

I move that the Board of Education recess into closed session for a discussion with the School District's attorney to discuss and advise on legal options regarding contract for virtual instruction by vendor K12/Stride, as pending or threatened litigation pursuant to Section 10-15-1(H)(7) of the Open Meetings Act and under the Attorney-Client Privilege in anticipation of and to prevent further litigation. The discussion shall also include identifiable student information on students connected to vendor pursuant to Section 10-15-1(H)(4) of the Open Meetings Act. No action will be taken and only the items listed herein will be discussed.

The record of the vote by the Board of Education on the Motion shall remain the same.

Members voting in favor of the Resolution:

Members voting against the Resolution:

Members abstaining:

**BOARD OF EDUCATION FOR THE
GALLUP-MCKINLEY COUNTY SCHOOLS**

By: _____
Its President and authorized representative

Date: _____

ATTEST: _____

By Board Secretary: _____

Date: _____

Exhibit Q

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.

ATTORNEYS AT LAW

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DANIEL J. GRUNOW
MEGHAN D. STANFORD
LAURA E. SANCHEZ
KARA B. MURPHY
JACK BRANT
ANDREW C. EFRAW

BERNARD S. RODEY (1856-1927)
PEARCE C. RODEY (1889-1958)
DON L. DICKASON (1906-1999)
WILLIAM A. SLOAN (1910-1993)
JACKSON G. AKIN (1919-2010)
JOHN D. ROBB (1924-2014)

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July 16, 2025

Andrew M. Sanchez, Sr.
Himes, Petrarca & Fester
5051 Journal Center Blvd. NE, Suite 320
Albuquerque, NM 87109

By email to asanchez@edlawyer.com

RE: Notice of Violations of the Open Meetings Act at July 11, 2025 Special Meeting

Dear Mr. Sanchez:

This letter is to provide your client, the Board of Education (the "Board") for the Gallup-McKinley County Schools (the "District"), with notice of recent violations of the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4, (1974, as amended through 2013) ("OMA"). Pursuant to NMSA 1978, Section 10-15-3(B) (1997) of the OMA, we hereby notify the Board that its July 11, 2025 Special Meeting violated the OMA in several ways, each of which is described below.

I. Notice of the July 11, 2025 Special Meeting was Inadequate.

The OMA requires that:

Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body.

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NMSA 1978, Section 10-15-1(D) (2013). In accordance with this provision of OMA, on May 12, 2025, the Board adopted Gallup-McKinley County Public Schools Board of Education Resolution 2025-2026 (the “OMA Resolution”). The Board’s OMA Resolution specifies that:

Special meetings may be called by the Board President or a majority of the members of the Board upon at least seventy-two (72) hours written notice to the members of the Board and to the public. For the purposes of giving public notice of special meetings, notice requirements shall be met by posting notice of the date, time, place and agenda on the School District’s website (www.gmcs.org) and with the posting of the notice at the Student Support Center, located at 640 Boardman, Gallup, New Mexico. The public notice shall include a final agenda for the meeting or inform the public that a copy of the final agenda may be obtained at the Office of the Superintendent, the Gallup-McKinley County Schools Student Support Center, located at 640 Boardman, Gallup, New Mexico at least seventy-two (72) hours before a special meeting.

OMA Resolution, § 2; *see also* NMSA 1978, § 10-15-1(F) (“Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda.”). The notice that the Board gave for its July 11, 2025 Special Meeting does not meet the requirements of the OMA Resolution, and therefore violates OMA, in the following ways:

1. The meeting notice was not provided to the public at least seventy-two (72) hours in advance. As indicated in the meeting notice that was posted on the District’s website, the notice was posted on July 11, 2025, the day of the meeting. *See* Legal Notice for Board’s July 11, 2025 Special Meeting, https://core-docs.s3.us-east-1.amazonaws.com/documents/asset/uploaded_file/5125/GMCS/5855427/Legal_Notice.pdf. Posting the meeting notice on July 11, 2025, for a meeting to occur on the same date, does not meet the OMA’s and the OMA Resolution’s requirement for posting notices of special meetings at least 72 hours in advance of such meetings.
2. The Legal Notice posted on the District’s website does not include a final agenda for the July 11, 2025 Special Meeting, nor does it inform the public that a copy of the final agenda for the meeting may be obtained at the Office of the Superintendent at least 72 hours prior to the meeting, contrary to the OMA Resolution’s requirements for special meetings, and contrary to Section 10-15-1(F).

II. The Agenda for the Board’s July 11, 2025 Special Meeting was Inadequate.

The OMA further requires that:

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Except in the case of an emergency or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two hours prior to the meeting, the agenda shall be available to the public and posted on the public body's website, if one is maintained.

§ 10-15-1(F). As previously discussed, the agenda for any special meeting, in addition to being made available to the public no later than 72 hours prior to the meeting, must also contain “a list of specific items of business to be discussed or transacted at the meeting” *Id.* According to the Attorney General's Open Meetings Act Compliance Guide, “[a] public body should avoid describing agenda items in general, broad or vague terms, which might be interpreted as an attempt to mislead the public about the business the public body intends to transact. This is an especially important consideration when a public body intends to act on an agenda item.” *See* NMAG OMA Compliance Guide, 8th Edition (2015), p. 17, item 3, Specific Agenda Items.¹ We believe that the agenda for the Board's July 11, 2025 Special Meeting fails to comport with the OMA and OMA Resolution's requirements, and the Attorney General's advice, in the following ways:

3. Unlike the legal notice for this meeting, the agenda for the July 11, 2025 Special Meeting does not indicate the date on which it was posted on the District's website. *See* https://core-docs.s3.us-east-1.amazonaws.com/documents/asset/uploaded_file/5125/GMCS/5855430/Agneda.pdf. Thus, there is no evidence that the Board or the District made the agenda for the meeting available to the public at least 72 hours prior to the meeting. Absent evidence to the contrary, we must assume that the agenda, like the meeting notice, was posted on July 11, 2025, the date the special meeting was held, contrary to both OMA and the Board's OMA Resolution.
4. The agenda for the Board's July 11, 2025 Special Meeting fails to contain a list of specific items of business to be discussed or transacted at the meeting, contrary to § 10-15-1(F). While the agenda does indicate that the Board intended to take action towards the “Approval of Open Meetings Act for SY2025-2026,” it is not clear from this language what the Board intended to achieve, because the Board lacks any authority to approve, amend, rescind, or otherwise modify the OMA. Rather, such efforts are within the exclusive purview of the legislature. A member of the public might assume that this agenda item meant that the Board anticipated taking action to adopt or revise its OMA Resolution to clarify or alter the requirements for noticing its meetings going forward, as required by § 10-15-1(D). But review of the document that the Board ultimately adopted at the July 11, 2025 meeting, as described below, disproves that assumption. At best, the agenda item lacks the specificity required to allow the public to determine what action might result from it, as required by OMA. At worst, the agenda item was intentionally drafted to be vague and/or misleading,

¹ <https://nm DOJ.gov/wp-content/uploads/Open-Meetings-Act-Compliance-Guide.pdf>

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with the intent of dissuading members of the public from attending and listening to the proceedings of the meeting. In either event, the item that appears on the agenda for the Board's July 11, 2025 Special Meeting does not provide the specificity required by OMA.

III. The Manner in Which the Board Deliberated on and Adopted the Resolution at its July 11, 2025 Special Meeting was Contrary to the OMA.

The OMA limits both what actions the Board can take at its meetings and how it is permitted to arrive at decisions about taking action. "Except for emergency matters, a public body shall take action only on items appearing on the agenda." § 10-15-1(F). The final agenda for any meeting must be available to the public at least 72 hours in advance of any Board meeting. *See id.* With limited exceptions not pertinent here, the Board may discuss District business and policy, and determine the actions to be taken as a result of such discussions, only in a properly-noticed open meeting. "The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body . . . shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." NMSA 1978, § 10-15-1(A) (2013). "All meetings of a quorum of members of any board . . . or other policymaking body of any . . . agency or authority of any . . . district or political subdivision, held for the purpose of formulating public policy, . . . discussing public business or taking any action within the authority of . . . any board . . . or other policymaking body are declared to be public meetings open to the public at all times" NMSA 1978, § 10-15-1(B) (2013). In other words, members of the Board must refrain from taking action on any matter that did not appear on the agenda for any public meeting at least 72 hours in advance, and from discussing matters of public business amongst a quorum of the members except when in a properly-noticed open meeting.

These restrictions prohibit the Board from engaging in what is known as a "rolling quorum." The Attorney General has previously explained that:

The [OMA]'s requirement for open, public meetings applies to any discussion of public business among a quorum of a public body's members. Usually, a quorum of a public body's members meets together to discuss public business or take action. However, a quorum may exist for the purposes of the [OMA] even when the members are not physically present together at the same time and place. For example, if three members of a five member board discuss public business in a series of telephone or email conversations, the discussion is a meeting of a quorum. This is sometimes referred to as a "rolling" or "walking" quorum. The use of a rolling quorum to discuss public business or take action violates the [OMA] because it constitutes a meeting of a quorum of the public body's members outside of a properly noticed, public meeting.

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NMAG OMA Compliance Guide, 8th Edition (2015), pp. 7-8, item 1, Rolling Quorums. In light of the provisions of the OMA described and explained above, it appears that the Board violated the OMA at its July 11, 2025 Special Meeting in the following ways:

5. As previously discussed, the agenda for the Board's July 11, 2025 Special Meeting suggested that the Board would take action to adopt, amend, revise, restate or otherwise modify its OMA Resolution. The resolution that the Board *actually* considered and voted upon is attached hereto as Exhibit A. Review of this resolution makes clear that the Board did not intend to take any action relating to its OMA Resolution nor did it affect the OMA Resolution in any way. While it is not entirely clear what the resolution that the Board approved actually accomplishes, the description contained in the agenda item that purports to relate to this resolution is not sufficiently specific to give any reasonable indication about the action the Board would ultimately take. Thus, because there was no item on the agenda for the July 11, 2025 Special Meeting that describes the content or effect of the resolution that was actually approved, the Board lacked authority to take action on the resolution. *See* § 10-15-1(F) (“ . . . a public body shall take action only on items appearing on the agenda.”). The Board's adoption of this resolution, then, was contrary to the OMA.
6. The Board's adoption of the resolution described above at its July 11, 2025 Special Meeting was recorded and is available on the District's website via link to YouTube. District Board Special Meeting, July 11, 2025, <https://www.youtube.com/watch?v=hdeBsQxPW4g>, 1:54-2:03. This recording, which contains the entirety of the meeting, consists of just three minutes and fifteen seconds of footage. The only action taken at the meeting, the adoption of the resolution described as the “Open Meetings Act for School Year 2025-2026,” was unanimously approved by the Board, immediately following Board Member Michael W. Schaaf's motion “to approve the Open Meetings Act for 2025-2026,” which was seconded by Board Member Kevin Mitchell. The Board's vote to approve the resolution was taken without any discussion whatsoever by the members of the Board. The complete lack of discussion concerning the resolution indicates that the Board almost certainly engaged in a rolling quorum by discussing and coming to an agreement to adopt the resolution prior to the meeting and outside of public view. Because a quorum of the Board may not discuss or make decisions relating to the District outside of a properly-noticed public meeting, the Board violated the OMA by engaging in a rolling quorum whereby it unanimously decided to approve the resolution prior to the meeting and outside of a public meeting.

For the reasons described above, the Board violated the OMA relative to its July 11, 2025 Special Meeting in a multitude of ways. These violations include: (i) failing to provide timely and adequate notice of the Board's July 11, 2025 Special Meeting; (ii) failing to provide a timely and reasonably-specific agenda for the Board's July 11, 2025 Special Meeting; (iii) taking action

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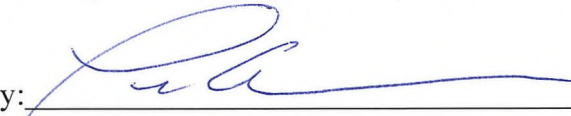
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on an item that was not specifically identified on the agenda for the Board's July 11, 2025 Special Meeting; and (iv) discussing and determining the approval of the resolution adopted at the July 11, 2025 Special Meeting outside of a properly-noticed open meeting, including by engaging in "rolling quorum," which is prohibited by OMA. As such, the resolution adopted by the Board on July 11, 2025 is invalid and of no effect. *See* NMSA 1978, § 10-15-3(A) (2013) ("No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of [the OMA]."). To the extent that the resolution adopted at the Board's July 11, 2025 Special Meeting was intended to cure any prior OMA violation, its invalidity due to non-compliance with OMA negates any cure and is otherwise inconsistent with OMA's requirements. *See* NMSA 1978, § 10-15-3(B) (1997).

Respectfully,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 

Luis G. Carrasco

**BOARD OF EDUCATION
FOR THE GALLUP-MCKINLEY COUNTY SCHOOLS**

RESOLUTION

This Resolution was adopted at the duly-called and open special meeting of the Board of Education for the Gallup-McKinley County Schools after public notice in compliance with the New Mexico Open Meetings Act on July 11, 2025.

WHEREAS, the Board of Education is the governing body of the Gallup-McKinley County Schools, a policy-making body as contemplated by the New Mexico Open Meetings Act, N.M. Stat. Ann. §§ 10-15-1 through 10-15-4 (2013); and

WHEREAS, notice of an issue of compliance with the Open Meetings Act has been raised by the New Mexico Department of Justice related to the Board of Education's meeting of Friday, May 16, 2025; and

WHEREAS, it is the intent of the Board of Education to comply with all requirements of the New Mexico Open Meetings Act in publishing notice, distributing and implementing agendas, and conducting business at its School Board meetings; and

WHEREAS, the Board of Education believes that at all times, including during its Meeting on May 16, 2025, that it was in substantial compliance with the Open Meetings Act; and

WHEREAS, substantial compliance is the legal standard to be applied by the courts as to compliance with Open Meetings Act under the case of *Parkview Cmty. Ditch Ass'n v. Peper*, 2014-NMCA-049, ¶ 13, 323 P.3d 939, 943 (N.M. Ct. App. 2014). "Under the substantial compliance standard, when the OMA has been sufficiently followed so as to carry out the intent for which it was adopted and serve the purpose of the statute, no violation has occurred." *Id.*, quoting *Gutierrez v. City of Albuquerque*, 1981-NMSC-061, ¶ 14, 631 P.2d 304, 307, 96 N.M. 398, 401 (N.M. 1981).

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“The purpose of the OMA is to provide that governing bodies be required to make decisions in the open where the interested public can observe the action.” *Peper*, 2014-NMCA-049 at ¶ 13, 323 P.3d at 943 (citing cases); and

WHEREAS, the issues raised by the Director of the Government Counsel & Accountably for the NMDOJ to the Board of Education contained no allegations that any action of the Board of Education was ever taken in executive session or outside of a duly called and open meeting of the Board, which is the purpose of the Open Meetings Act, and all actions of the Board of Education were listed on its agendas and observable by the public in-person and virtually, and as such, the Board of Education has been in substantial compliance with the Open Meetings Act. *See* Attorney General’s *Open Meetings Act Compliance Guide*, p. 17 (N.M.A.G. 8th ed. 2015); *see also* N.M. Atty. Gen. OMA Determination, *Open Meetings Act Complaint – Doña Ana County Board of Commissioners* (June 20, 2019); and

WHEREAS, it is clear from the New Mexico Court of Appeals in *Bd. of Cty. Comm’rs, Luna Cty. v. Ogden*, 1994-NMCA-010, 117 N.M. 181 870 P.2d 143 (N.M. Ct. App. 1994) when it determined the standard for the application of the Open Meetings Act when it held that “[o]ur central concern is to construe the statute so as to determine and give effect to the legislature’s intent.” *Ogden*, 1994-NMCA-010, ¶ 14, 117 N.M. at 184, 870 P.2d at 146, *citing State ex rel. Klineline v. Blackhurst*, 1988-NMSC-015, ¶ 12, 106 N.M. 732, 735, 749 P.2d 1111, 1114 (N.M. 1988). “In enacting the Open Meetings Act, the legislature did not intend to impair or impede the effective workings of the various political subdivisions of the state.” *Id.*, *citing Gutierrez v. City of Albuquerque*, 1981-NMSC-061, ¶ 12, 96 N.M. 398, 401, 631 P.2d 304, 307 (N.M. 1981) (“These provisions make clear that the Legislature did not intend to unduly burden the appropriate

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exercise of governmental decision-making and ability to act.”). “‘To rule otherwise would improperly elevate form over substance’ and wreak havoc on a process already fraught with complexity.” *New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 86, 382 P.3d 923, 946 (N.M. Ct. App. 2016), quoting *Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 31, 107 N.M. 38, 44, 751 P.2d 722, 728 (N.M. Ct. App. 1988); and

WHEREAS, the courts have been clear that “[w]e decline to view the [Open Meetings Act] so as to require an open meeting to perform a perfunctory or purely ministerial act.” *Kleinberg*, 1988-NMCA-014 at ¶ 22, 107 N.M. at 43, 751 P.2d at 727. The term “final action” should be defined to mean “the final vote required to carry out the board’s authority on a matter.” *Kanahele v. Maui Cnty. Council*, 130 Haw. 228, 259, 307 P.3d 1174, 1205 (Haw. 2013), as corrected (Aug. 30, 2013) (emphasis in original), citing *Kleinberg*, 1988-NMCA-014 at ¶ 22, 107 N.M. at 43, 751 P.2d at 727; and

WHEREAS, the letter of April 1, 2025, to Stride/K12 Inc. did not require a final action or vote by the Board of Education at an open meeting under the Open Meetings Act, as it was merely an ministerial act associated with the contract terms between the Parties that could be initiated and completed by the School District’s Administration as to the procurement of services and supervision of a contract by a Chief Procurement Officer under the Procurement Code as set forth under N.M. Stat. Ann. § 13-1-95.2 (2013) and N.M. Stat. Ann. § 13-1-37 (2013).

WHEREAS, the opinion of the Director of the Government Counsel & Accountably for the NMDOJ in his letter as to the Board of Education’s compliance with the Open Meetings Act on May 16th is just that a subjective opinion of one subordinate of the Department, which cannot, as matter of law, be binding on the Board of Education or on the courts pursuant to *United States v. Reese*, 2014-NMSC-013, ¶ 36, 326 P.3d 454, 462 (N.M. 2014) (“We recognize that Attorney

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General opinions and advisory letters do not have the force of law); *Bd. of Cnty. Comm'rs, Luna Cnty. v. Ogden*, 1994-NMCA-010, ¶ 15, 117 N.M. 181, 184, 870 P.2d 143, 146 (N.M. Ct. App. 1994) (“statements and opinions of the New Mexico Attorney General are not binding law”); and there are times, as with this instance, the Attorney General’s Department has been wrong about the law as set forth in *Montano v. Gabaldon*, 1989-NMSC-001, ¶ 9, 108 N.M. 94, 96, 766 P.2d 1328, 1330 (N.M. 1989) (“Attorney General’s Opinion [] misconstrued the language of our decisions”); *Loc. 2238 of the Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v. Stratton*, 1989-NMSC-003, ¶ 19, 108 N.M. 163, 169, 769 P.2d 76, 82 (“We do not agree with [the Attorney General’s] opinion.”); *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, ¶ 13, 85 N.M. 747, 750, 517 P.2d 69, 72 (N.M. 1973) (“In the case now before us, we indeed decline to feel ourselves bound and we reject the aforementioned Attorney General opinions.”); and

WHEREAS, the courts will ultimately determine a governmental entity’s compliance with the Open Meetings Act and not NMDOJ as set forth in *Atencio v. Bd. of Educ. of Penasco Indep. Sch. Dist. No. 4*, 1982-NMSC-140, ¶ 6, 99 N.M. 168, 170, 655 P.2d 1012, 1014 (N.M. 1982) (we will “proceed to our independent analysis and results.”); and

WHEREAS, public entities can cure actual or perceived violations of the Open Meetings Act. See *Palenick v. City of Rio Rancho*, 2012-NMCA-018, ¶ 9, 270 P.3d 1281, 1284, *rev’d on other grounds*, 2013-NMSC-029, ¶ 9, 306 P.3d 447 (N.M. 2013); see also *Bd. of Educ. of Santa Fe Pub. Sch. v. Sullivan*, 106 N.M. 125, 125, 740 P.2d 119, 119–20 (1987) (stating that the board was entitled to correct the procedural defect of failing to comply with the Act); *Kleinberg*, 1988-NMCA-014 at ¶ 31, 107 N.M. at 44, 751 P.2d at 728 (recognizing that “the procedural defect could be corrected through a reinstatement of the termination proceedings”).

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WHEREAS, to avoid the inordinate costs associated with time-consuming litigation in which both NMDOJ and the Board of Education are spending public monies to resolve a nonconsequential issue and hyper-technical compliance issues and without any form of admission of a violation of the Open Meetings Act by the Board of Education and pursuant to the actual legal standards applied by the courts of having all Board of Education business be observable by the public and that technical compliance is not required to be within the law; and

WHEREAS, to render any and all contentions and claims by the NMDOJ and by Stride/K12 Inc. moot in the future pursuant to *La Mesa Racetrack & Casino v. State Gaming Control Bd.*, 2012-NMCA-076, ¶ 24, 283 P.3d 886, 89 (N.M. Ct. App. 2012) (“Moreover, the issue pertaining to the authority of the director to send the letter to La Mesa has been rendered moot. It is undisputed that after the director sent La Mesa the letter, the Board approved and ratified the director’s action”); *see also Bd. of Cnty. Comm’rs of Cnty. of Bernalillo v. Chavez*, 2008-NMCA-028, ¶¶ 1, 21-22, 143 N.M. 543, 543 and 549, 547, 178 P.3d 828, 828 and 834 (concluding that summary judgment was properly granted on a claim alleging that the mayor took unauthorized unilateral action because it was undisputed that the city council subsequently ratified the mayor’s action) the Board of Education hereby adopts this Resolution.

NOW THEREFORE, in order to assure that the Board of Education complies with the provisions of the Open Meetings Act, even though ministerial acts of official business do not require a final action of the Board of Education, it desires transparency for the Gallup-McKinley County Schools. As such, the Board of Education adopts this Resolution to correct and provide a summary of the contents and corrective actions for its Meeting held on May 16, 2025, as follows:

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1. The letter of April 1, 2025, to Stride/K12 Inc. pursuant to the contract terms between the Parties completed by the School District's Superintendent and Chief Procurement Officer pursuant to the Procurement Code at N.M. Stat. Ann. § 13-1-95.2 (2013) and N.M. Stat. Ann. § 13-1-37 (2013) is purportedly insufficient and requires a final official action of the Board. As such, to cure the revised agenda for the Board of Education's action on May 16, 2025 School Board meeting is hereby amended, reformed and ratified by this Resolution to include as follows:

3. New Business

A. Take action to issue a notice of termination and demand for a remedy from Stride/K12 Inc. pursuant to the contract between the Parties for cure within 45-days of notice under the contract and delegating the authority of the Board to the Superintendent or his or her designee to do so by the Board of Education and to ratify any and all previous notices issued to Stride/K12 Inc. under the contract.

2. Do to a one-time oversight at the meeting by the Board member making the motion, the Board did not verbally recite the reasons and justification for recessing into executive session that were set forth on the published and public agenda to purportedly comply with Section 10-15-1(I)(1) of the Act. The following is an amended motion by Board Vice President Schaaf moving for a closed session to be held at the Board of Education's meeting of May 16, 2025:

I move that the Board of Education recess into closed session for a discussion with the School District's attorney to discuss and advise on legal options regarding contract for virtual instruction by vendor K12/Stride, as pending or threatened litigation pursuant to Section 10-15-1(H)(7) of the Open Meetings Act and under the Attorney-Client Privilege in anticipation of and to prevent further litigation. The discussion shall also include identifiable student information on students connected to vendor pursuant to Section 10-15-1(H)(4) of the Open Meetings Act. No action will be taken and only the items listed herein will be discussed.

The record of the vote by the Board of Education on the Motion shall remain the same.

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Members voting in favor of the Resolution:

Members voting against the Resolution:

Members abstaining:

**BOARD OF EDUCATION FOR THE
GALLUP-MCKINLEY COUNTY SCHOOLS**

By: _____
Its President and authorized representative

Date: _____

ATTEST: _____

By Board Secretary: _____

Date: _____