



**NIM**  
**CCS**  
New Mexico  
Coalition for  
Charter Schools

# Facility Acquisition- Beyond Compliance

**Connie Dove, Commercial Broker**  
Dove Property Advisors, LLC

**Patricia Matthews, Attorney**  
Matthews Fox, LLC



**Champion Charter School Excellence**

**2016 Annual Conference**



**WAIT!!!!**

**UPDATE ON  
COMPLIANCE**



# REQUIREMENTS

- Must meet educational occupancy standards (building code requirement)
- New School cannot open, existing school cannot move – unless new building meets wNMCI
- July 1, 2015 – Rolling “deadline date” for all charter school facilities to meet Statewide Adequacy Standards
- SAS are created by PSFA Regulation - 6.27.30 NMAC “*uber* building standards for schools”
- PSCOC may waive some SAS for charter schools

# COMPLIANCE FOR LEASE GRANTS AND RENEWALS & APPROVAL

- “D. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school...”



*... Meets the following requirements*

# “PUBLIC OPTION”

- Housed in a building that is:
  - **Public** building (owned by the charter, school district, state, tribal govt., federal govt., etc.) **or**
  - Subject to a lease-purchase agreement pursuant to the Public School Lease Purchase Act

**Or...**

# “LEASE OPTION”

Demonstrates that:

- Facility meets SAS & “owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state” ... And,
- **Either:**
  - » Demonstrate that no Public Buildings are available or adequate
  - » **Or**, the owner of the facility is a nonprofit entity organized for the purpose of providing a facility for the charter school...

# CONSEQUENCE FOR NONCOMPLIANCE

- Public School Capital Outlay Act
  - Source of \$\$ for Lease reimbursement grants
- Lease reimbursement grants are for:
  - “payments for **classroom** facilities”
- “Fund may be expended for ....lease payments” – discretionary
- PSCOC – responsible to ensure grant fund applied as intended by law
- **STRIKE ONE**..Can deny grant if facility requirements do not meet requirements of 22-8B-4.2(D)

## STRIKE TWO....

## NON-RENEWAL OF YOUR CHARTER

## STRIKE THREE...

- Without renewal and eligibility for the rent reimbursement grants, unlikely the rest of this presentation is of any relevance.





# ANTICIPATE

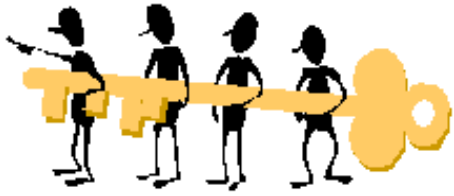
- Know whether your facility circumstances currently meet the legal requirements for grant eligibility and renewal.
- **Complete lease reimbursement grant accurately**
- Do not negotiate renewal of your lease without insuring the language meets the statutory requirements.
- If you do not understand the requirements – seek clarification.



# FACILITY ACQUISITION

*Where do you begin?*

- Establish a CHARTER SCHOOL  
EDUCATION FOUNDATION 509 (a)(3)



# FACILITY ADVISORY TEAM

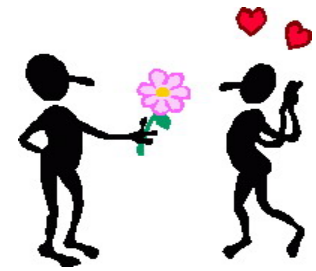
- Administrator & Governing Council Member
  - Gather information, Tour facilities, Report to GC
- Commercial Real Estate Broker
  - Present viable options (buildings, land, financing) based on unique needs of school;  
Draft Real Estate Documents; Advise GC
- Lawyer
  - Draft and/or Review all Legal Documents (leases, purchase agreements); Advise GC
- Business Manager
  - Prepare Financial Documents for landlords, financial institutions, developers, bond underwriters; Advise GC



# Top Ten Reasons to Go It Alone!

10. You negotiate leases or the purchase of commercial properties for schools frequently, so you know the current market and what types of concessions to ask for.
9. You can quickly identify all the properties that are available to meet your needs and are able to supply all the information critical to your decision: location, size, cost, zoning, E-occupancy requirements, District/PEC/PSFA requirements, layout, photos, maps, etc.
8. Your research and critical market information helps level the playing field and leads to a more informed decision by your Governing Council.
7. You have AMPLE TIME to deal with multiple brokers.
6. You are satisfied with just the properties one broker has listed.

# Top Ten Reasons to Go It Alone!



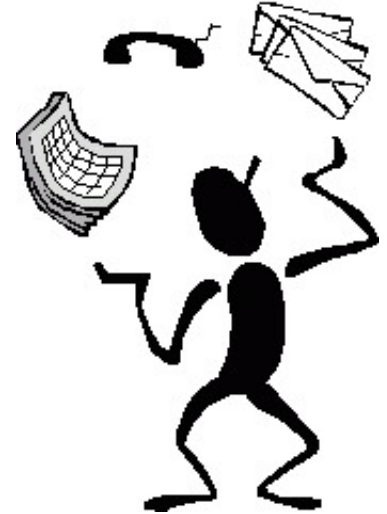
5. It's not necessary to have someone represent YOU, the seller, landlord and THEIR broker will have your best interest at heart.
4. Efficiency in property tours is unimportant because of your aforementioned AMPLE TIME.
3. Members of your school working with your advisors to work a deal that best meets your needs is unimportant, unless legal matters arise.
2. As a tenant or buyer, you do not pay for the services of a broker, but think it's best to pay the owner's broker twice as much for having your matters at heart.
1. YOU will negotiate the best deal at the best price and on your terms!

# WHAT YOU NEED IN PLACE

- **PSFA**

- Facility Master Plan

- PEC Authorized—Must Have Your Own
  - Grants Available or Do-It-Yourself
- District Authorized—Must be Included



# FACILITY DECISIONS

- **Real Estate Broker →**

- Existing Building or Land?
- Zoning?
- Parking?
- ADA Accessibility?
- E-Occupancy?
- NMCI?

## Must meet requirements of:

- **Educational Occupancy →**

- Building Inspectors
- Fire Marshal

- **Adequacy Standards & Charter →**

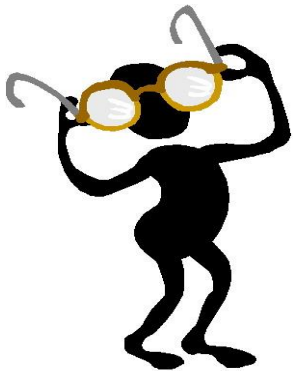
- Public Schools Facility Authority (PSFA) 6.27.30 NMAC
- Variance Chart-Charter Schools



# PUBLIC DOLLARS/PUBLIC INTEREST

- Duty of Governing Council to ensure transaction is in best interest of charter school and the public:
  - Long term facility needs met/relocating or expansion considered
  - Cost analysis of available facilities – good idea to document
  - Complies with charter/not detrimental to educational program





# CHARTER VARIANCE CHART

Charter Alternative School Analysis Variance Report

General Requirements (6.27.30.8)								Site (6.27.30.10)										Site Recreation and Outdoor PE (6.27.30.11)				
Building Structural Soundness (A-1)	Vertical Sight & Motor Elevation (A-2)	Interior Surface Condition (A-3)	Exterior Finish Material Elements (A-4)	Building System Integrity (B-1)	Pumping Type Accessibility (B-2)	Automatic Fire Alarm System (B-3)	Automatic Fire Alarm System (B-4)	Student Drop-Off Pedestrian Pathway	Separate Bus Drop-Off	Bus with/without ramp	Separate Student Drop-Off	Staff Parking (1.5M <sup>2</sup> /TE)	Student Parking (2.0M <sup>2</sup> /TE)	Protection of Existing Structural Integrity	Potential of flooding, ponding, or erosion	Pre-School play area fenced	Special Needs play area fenced	Kindergarten play area fenced	K-6 play area fenced	Playground and Play Area	Multipurpose playing Area	Playing Field w/ Equipment
Repet	Repet	Repet	Repet	Repet	Repet	Repet	Repet	Repet	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Repet	Repet	Repet	Repet	Repet	Repet	Met/Requirement	Met/Requirement	Met/Requirement

Academic Classroom (6.27.30.12)										General Use Classroom (6.27.30.13)				Specialty Classroom (6.27.30.14)														
Classroom Space (A)	Classroom Features/Equipment (B)									Lighting (C)	Temperature Range (D)	Acoustics (E)	Air Quality (ECC, FPM, F)	Kindergarten (1200sf)	Elementary School (1-6) (900sf min)	Middle School (6-8) (900sf min)	High School (9-12) (900sf min)	Science (A) (1200sf min)	Internet Access (B)	Multi-media Computer (B)	Technology Lab (B) (1200sf min)	Art Education			Career Education		Computer Lab (B)	
Appropriate Size	Student work surface and seat(1)	Ceiling mounted projection screen	White boards	Tack/Display	Fixed Material storage (2)	Teacher workspace (3)	Classroom File Storage (4)	Teacher/Student work surface and seat (4)													Band/Orchestra/Ensemble	Chorus Room	Art Room	Cooking, Sewing, Woodshop, etc.	Child Development	Outside Play Area	Computer keyboard Lab	
Repet	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Repet	Repet	Repet	Repet	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement

Physical Education (6.27.30.15)				Libraries/Media Centers (6.27.30.16)		Food Service (6.27.30.17)			Other Facility Areas (6.27.30.18)				General Storage (6.27.30.19)	Mail/Junk/Postal (6.27.30.20)	Teacherage (6.27.30.21)		
General Requirement	Additional Requirements			General Requirements		Fixtures, Equipment and resources	Dining Area	Serving Area	Food Preparation Kitchen	Serving Kitchen	Parent Workspace (A)	Administrative Space (B)	Student Health (C)	Faculty Workspace (D)	Distributed fixed secure storage	Distributed janitorial	General Requirements
Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	Met/Requirement	

Charter & Alternative School Analysis Variance from the New Mexico State Adequacy Standards

Foot Note: PSCOC policy is to assess charter schools that have been in operation for 6 years or more (start date of school receiving SEG Funding) and have been thru one renewal. The assessment will identify needs compared against the school's Charter Agreement 1 and the Statewide Adequacy Standards and re-ranked in the Facility Assessment Database (FAD).



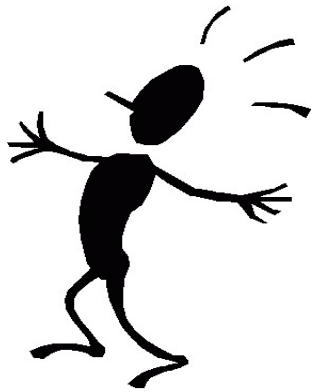
# ONCE YOU LOCATE A FACILITY

- **PSFA**

- Inspection of Proposed Facility—  
Recommendation to PEC or District
- Make recommendations on what is needed to  
meet NMCI
- NMCI Generated after Improvements Completed

- **Amend Charter to Relocate with Authorizer**





# PRIOR TO RENEWAL

- **PSFA--NM Condition Index (NMCI)**
  - Prior to charter renewal, your facility must meet or exceed the average NMCI
  - Average is currently 16.79%
  - If your charter is Ranked 25<sup>th</sup> at 47.23%, you must increase your score over 30% prior to your renewal date
  - Evaluate unweighted repairs and weighted repairs—life, safety & health issues—on your report
  - Consider the replacement cost reported by PSFA in making facilities decisions

# TO LEASE OR PURCHASE?

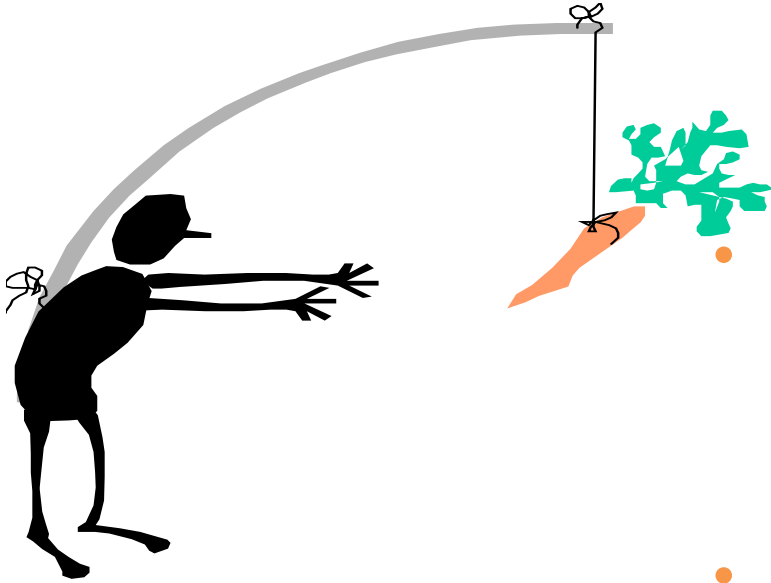


# What planning is involved?

- ✓ Timeframes
- ✓ Negotiations
- ✓ Financing
- ✓ Building or remodeling



# LEASE OPTIONS



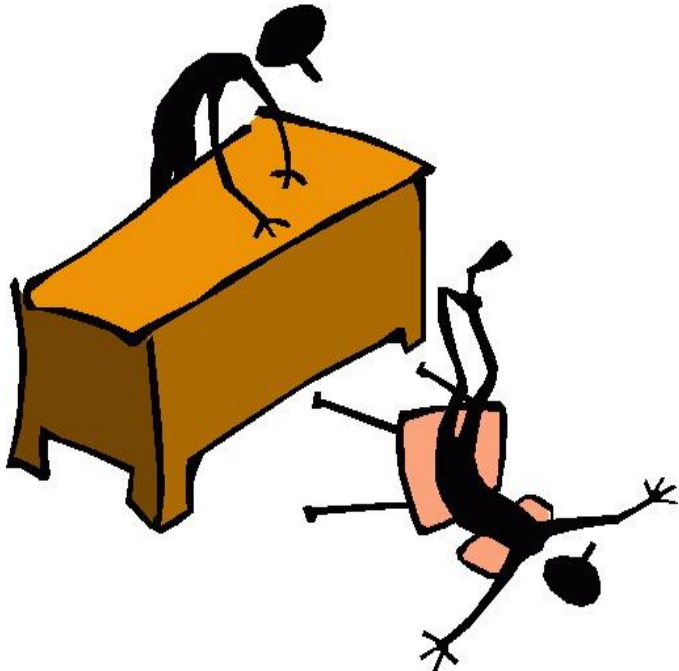
- Lease with Owner or Nonprofit
  - Non Appropriation Clause
  - Owner **Must** Maintain Adequacy at **NO COST** to the Charter School
- Lease with Option to Purchase
  - Secures a fixed price or by appraisal, if the school can find financing and/or enter into a Lease Purchase Agreement
    - Public School Lease Purchase Act
    - PED & PSFA Approval

# Side note...DISTINCTION

- Lease Agreement with Option to Purchase  
Vs.
- Lease Purchase Arrangement a/k/a Lease Agreement with Option to Purchase under the New Mexico Lease Purchase Act

# GUIDE to IMPROVEMENTS

Who will pay for  
Tenant  
Improvements?



Owner must pay for  
improvements ~

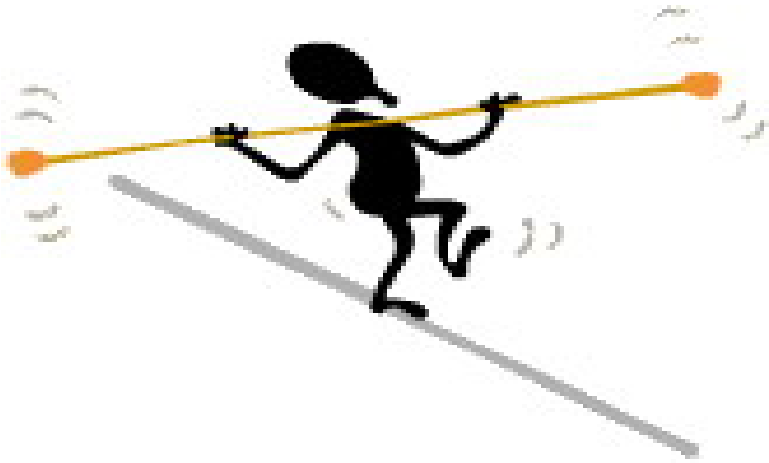
## Lease

- This may or may not increase lease payments
- School may only pay for improvements that are considered removable

## Lease Purchase Agreement

- Improvements considered when setting purchase price
- School may pay for improvements once approved





# CURRENT LEGAL ISSUES

- Lease Purchase Agreements
- Lease Assistance
- Capital Outlay



# PURCHASE OPTIONS

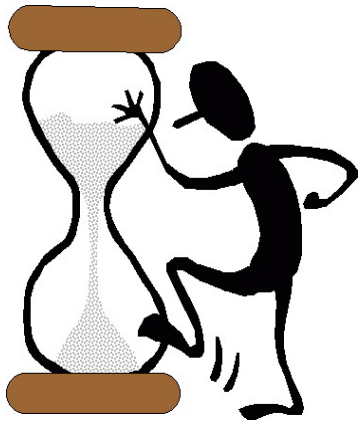
How will we finance  
a purchase?

Who is the  
purchaser?

- ✓ Nonprofit
- ✓ Depends on  
Structure
- ✓ School

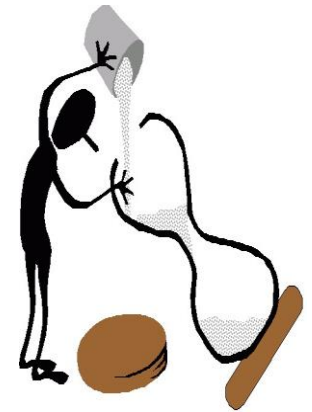
- ✓ Bonds (\$3M+)
- ✓ Conventional Lenders
- ✓ Nonprofits (Bridge Loans)
- ✓ Developers
- ✓ Building/Land Owners
- ✓ NMFA
  - New Market Tax Credits
  - Public Program Revolving Fund
- ✓ USDA Rural Development Loans & Grants
- ✓ PSCOC Standards Based Grants





# TIME & AMOUNT OF FINANCING

- ✓ 30-60 Days, Building/Land Owners—75-80%
- ✓ 30-60 Days, Developers—75-80%
- ✓ 30-60 Days, Conventional Lenders—75-80%
- ✓ 60-90 Days, Nonprofits (Bridge) —Varies
- ✓ 3-6 Months, NMFA—80%
- ✓ 3-9 Months, USDA—80%
- ✓ 3-9 Months, Bonds (\$3M+)—100%



# ONGOING FACILITY FUNDING

- PSFA
  - Lease Reimbursement 6.27.3.16 NMAC
  - Facility Master Plan Grant 6.27.3.12 NMAC
- Local Bond Elections-Capital Improvements
  - HB-33 22-26-3 NMSA
  - SB-9 22-25-3 NMSA
- Capital Outlay Appropriations-Legislature
- GRT Ordinance (Taos) Tax Benefiting Schools
- PSCOC Capital Outlay Grants 22-24-1 NMSA





## RISKS AND POTENTIAL MISTAKES

The **three greatest** commercial real estate mistakes of Charter Schools:

1. Paying too much
2. Not having options in Terms and Conditions
3. Not being in compliance

# Questions? Thank you!

**Constance Dove, Commercial Broker**

Dove Property Advisors, LLC

connie@dovepropertyadvisors.com



**Patricia Mathews, Attorney**

Mathews Fox, LLC

pmathews@matthewsfox.com

