

**January 17, 2018 Advisory Letter — Opinion Request - Charter School Students
Participating in Extracurricular Activities**

Dennis J. Roch
State Representative
P.O. Box 477
Logan, NM 88426

Re: Opinion Request - Charter School Students Participating in Extracurricular Activities

Dear Representative Roch:

You requested our advice regarding the interpretation of two statutes, NMSA 1978, Section 22-8C-8 (2005), and NMSA 1978, Section 22-8-23.6 (2006), both of which relate to charter school student activities and which you believe are contradictory. As discussed in more detail below, we conclude that the two statutes may be read harmoniously and, in accordance with their legislative intent, these statutes authorize charter school students to participate in extracurricular activities in either the public school in their attendance zone or at another public school within the school district in which their charter school is located.

As a preliminary matter, New Mexico courts have established rules of statutory interpretation for situations where two statutes could be read as conflicting, redundant, or outright contradictory. The most basic of these, of course, is the plain meaning rule, which requires that courts defer to a statute's plain meaning when it can be clearly gleaned from the text. See NMSA 1978, § 12-2A-19 (1997) (providing that the "text of a statute or rule is the primary, essential source of its meaning") and *State v. Jonathan M.*, 1990-NMSC-046, ¶ 4, 109 N.M. 789, 790, 791 P.2d 64, 65 (noting that, "[w]hen a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation"). However, the interpretation of a statute does not necessarily end with its text, as the plain meaning rule is simply a means to determine legislative intent. See, e.g., *State v. Johnson*, 2001-NMSC-001, ¶ 6, 130 N.M. 6, 130, 15 P.3d 1233, 1235 (observing that the plain meaning rule is "a guideline for determining the legislative intent"), *holding limited on other grounds by State v. Sims*, 2010-NMSC-027, ¶¶ 31-32, 148 N.M. 330, 236 P.2d 642, and *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 353, 871 P.2d 1352, 1359 (observing that "courts must exercise caution in applying the plain meaning rule," and that "it is part of the essence of judicial responsibility to search for and effectuate the legislative intent"). In order to determine legislative intent, courts will go beyond statutory language when necessary. See *Inv. Co. of the Sw. v. Reese*, 1994-NMSC-051, ¶ 13, 117 N.M. 655, 658, 875 P.2d 1086, 1089 (noting that courts "must look beyond the four corners of the statute" when a literal interpretation would lead to an absurd or nonsensical result). Courts will reject "a wooden literal interpretation" in order to interpret a statute in line with legislative intent. *Sims v. Sims*, 1996-NMSC-078, ¶ 21, 122 N.M. 618, 622, 930 P.2d 153, 157. Finally,

where statutes appear to be in conflict, "they must be construed, if possible, to give effect to each." NMSA 1978, § 12-2A-10 (1997).

First, we examine NMSA 1978, Section 22-8C-8, titled "Charter school student participation in public school extracurricular activities." The statute reads as follows:

A. The New Mexico activities association and the local school board in the school district in which a charter school is located shall allow charter school students in grades seven through twelve to participate in school district extracurricular activities sanctioned by the New Mexico activities association if they meet eligibility requirements other than enrollment in a particular public school and if the charter school does not offer such activities sanctioned by the New Mexico activities association or any other association.

B. A charter school student otherwise eligible to participate in an extracurricular activity shall participate in the public school in the attendance zone in which the student lives, provided, however, that the student may choose only one public school in which to participate.

Id. Subsection A of the statute clearly imposes an obligation on "the local school board in the school district in which a charter school is located" to authorize students to participate in extracurricular activities. See § 22-8C-8(A); see also NMSA 1978, § 12-2A-4 (providing that the word "shall" expresses "a duty, obligation, requirement or condition precedent"). Then, in its main clause, subsection B seemingly provides that charter school students are eligible to participate in extracurricular activities only at schools "in the attendance zone in which the student lives," that is, until we reach the proviso. For its part, the proviso implies that students have multiple schools from which to "choose" where to participate in extracurricular activities. Section 22-8C-8(B). Simultaneously, this statute seems to suggest that students can choose to participate at one of a number of different schools and also that they can only participate at the public school within their attendance zone.

Next, we examine NMSA 1978, Section 22-8-23.6, which also addresses the issue of charter school students participating in extracurricular activities outside of their school. This statute says:

The charter school student activities program unit for a school district is determined by multiplying the number of charter school students who are participating in school district activities governed by the New Mexico activities association by the cost differential factor of 0.1. The student activities program unit shall be paid to the school district in which it is generated. A charter school student is eligible to participate in school district activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. If the student chooses to participate at a public school other than the one in the attendance zone in which the student resides,

the student shall be subject to New Mexico activities association transfer guidelines.

Id. Two observations are worth noting about this statute. First, it and the article in which it is found pertain primarily to school funding. Second, its language implies that charter school students have the choice to participate in extracurricular activities outside of their attendance zone. This would appear to conflict with some, but not all, of the language found in Section 22-8C-8(B).

Given the ambiguities created by the statutory language, we turn to legislative history to provide guidance as to legislative intent. See *State v. Smith*, 2004-NMSC-032, ¶ 24, 136 N.M. 372, 379, 98 P.3d 1022, 1029 (relying on legislative history to resolve ambiguities created by three statutes and emphasizing the need to "make legislative intent paramount"). The legislative history of Section 22-8C-8 suggests an intent on the part of the legislature to provide charter school students with a choice as to where they may participate in extracurricular activities. Passed by the legislature in 2005 as Senate Bill 789, the Fiscal Impact Report ("FIR") for the legislation that became Section 22-8C-8 indicated that "[c]harters school students will be permitted to participate in either the public school in the attendance zone in which the student lives or in which the student's charter school is located; the student may chose only one public school" (sic). Fiscal Impact Report for SB789, Program Units for Extracurricular Activities, p. 2 (March 17, 2005). This language strongly suggests that the legislature intended Section 22-8C-8 to provide charter school students the choice later alluded to in Section 22-8-23.6. Rather than restricting them to extracurricular activities exclusively at the public school within their attendance zone, the Fiscal Impact Report suggests that the legislature also intended to allow students to participate at public schools within the school district of their charter school. Notably, this is consistent with the language of Section 22-8C-8(A) as well as the latter portion of Section 22-8C-8(B).

Similarly, the legislative history of Section 22-8-23.6 shows that the legislature intended to provide charter school students with a choice, as alluded to by the statute's language. The language referring to student choice appears to have been an intentional insertion on the part of the legislature. The legislation was introduced and passed into law in 2006 as Senate Bill 600, but the legislation's original draft omitted all of the relevant language relating to student choice as to extracurricular activities. See Senate Bill 600 (January 27, 2006). The Senate Floor Substitute Bill added the critical language:

A charter school student is eligible to participate in school district activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. *If the student chooses to participate* at a public school other than the one in the attendance zone in which the student resides, the student shall be subject to New Mexico activities association transfer guidelines.

Senate Floor Substitute Bill 600, p. 20 (February 13, 2006) (emphasis added). The fact that this language was altered and added to the legislation while it was under

consideration would seemingly point towards a legislative intent to allow a student to "choose" where to participate in extracurricular activities. Although this issue was not addressed in any way by the bill's Fiscal Impact Report, see Fiscal Impact Report for SB600, Education Department Charter Schools Division (February 14, 2006), the added language in the final draft provides evidence of a legislative intent to provide charter school students with more choice beyond the public school in their attendance zone.

Therefore, when read in conjunction with their legislative histories, we believe a New Mexico court reasonably may conclude that Section 22-SC-8 and Section 22-8-23.6 provide charter school students with a choice as to where to participate in extracurricular activities. Either the student must participate at the public school in their attendance area or at another public school within the school district in which their charter school is located. This would seem to be the only interpretation consistent with the text of both statutes and the legislature's intent (as demonstrated by the history of both statutes).

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's opinion on the matters discussed above. Such an opinion would be a public document, available to the general public. Although we are providing our legal advice in the form of a letter rather than an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide this letter to the public.

Sincerely,

John Kreienkamp
Assistant Attorney General