

December 10, 2024

OPINION
OF
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Attorney General

Opinion No. 2024-15

To: Senator George Muñoz, Representative Nathan Small, Legislative Finance Committee

Re: Opinion Request – By what date must the Public Education Department submit its annual budget request for special appropriations?

Question

Under New Mexico law, when must the Public Education Department (PED) submit its annual special appropriations request to the Legislative Finance Committee (LFC) and the Department of Finance and Administration (DFA) for the request to be considered timely?

Answer

Pursuant to NMSA 1978, Section 6-3A-7 (2004), PED’s annual special appropriations request must be submitted to LFC and DFA on or before September 1.

Background

Each budget cycle, PED submits two categories of budget request: the first is a request for funds for the agency itself, and the second is for the operating budgets of local public school districts.

The first of these categories, a request for agency appropriation, is governed by two statutes. General operating budget requests by all state agencies, including PED, are governed by NMSA 1978, Section 6-3-19 (1999), which requires each agency to submit a budget form, including information for all divisions, subdivisions and offices of the agency, no later than September 1 of each year. Further, to the extent that an agency seeks budget requests for “performance-based programs,” or programs that are evaluated using quantitative or qualitative metrics and are subject to approval by the state budget division, an agency is required to submit a “performance-based budget request” to both the state budget division and the Legislative Finance Committee, pursuant

to NMSA 1978, Section 6-3A-7(B), in lieu of a budget request under Section 6-3-19. These forms must be submitted no later than September 1 of each year. Section 6-3A-7(B).

The second category, requests for operating budgets for local school districts and charter schools, is governed by NMSA 1978, Section 22-8-12.1(C)(2) (2006). This section requires that PED “submit annually, on or before November 30, to the secretary of finance and administration the recommendation of the department for:

- (a) amendments to the public school finance formula;
- (b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document; and
- (c) appropriations for the succeeding fiscal year for pupil transportation and instructional materials.”

Id.

The departmental recommendations are based on estimates by local school boards and governing bodies of charter schools regarding the number of students to be enrolled in the basic public school program, the full-time equivalent number of students to be enrolled in early childhood programs, and the number of students to be enrolled in special education programs for the following school year. *See* § 22-8-12.1(C)(2); NMSA 1978, § 22-8-23 (2019). Because these estimates are not due to PED from the districts until October 15 of each year, the November 30 deadline for this budget request is intended to allow time for the PED to make the required analysis and calculations. *See* § 22-8-12.1(C)(2).

This Opinion concerns what is arguably a third category of budget request: those submitted for special “below the line” agency appropriations. From our understanding such requests typically include funding for department initiatives or pilot programs such as teacher professional development programs, school leadership training, advanced placement test waivers, and pregnant teen student support. *See* 2024 N.M. Laws, ch 69, § 4. These programs are itemized as separate appropriations housed under PED’s operating budget in the General Appropriations Act. *Id.* They are eligible programs under the program inventory for evaluation and performance measurement. NMSA 1978, § 6-3A-7 (2019). And they are programs administered by PED; they are not included in annual distributions to local school districts and charter schools. *See id.*

It is the understanding of this Office that PED has historically submitted to LFC and DFA its request for agency appropriation by September 1, like all state agencies. However, PED has not historically included its special appropriations request in its September 1 submission. Instead, PED has separately submitted its requests for special appropriations by November 30, along with its Section 22-8-12.1(C)(2) recommendations due the same day.

We analyze below whether PED’s requests for special appropriations submitted after September 1 are timely under New Mexico law, and we conclude that they are not.

Analysis

To determine, as a matter of law, the annual deadline for PED’s “below the line” special appropriations requests, we must construe Sections 6-3A-7(B) and 22-8-12.1(C)(2). In so doing, we employ the traditional canons of statutory construction also utilized by the New Mexico courts when resolving statutory questions.

First, “statutory construction analysis begins by examining the words chosen by the Legislature and the plain meaning of those words.” *Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147 N.M. 512. Moreover, under the canon of *in pari materia*:

[w]hen construing statutes related to the same subject matter, the provisions of a statute must be read together . . . under the presumption that the legislature acted with full knowledge of relevant statutory and common law. Thus, two statutes covering the same subject matter should be harmonized and construed together when possible, in a way that facilitates their operation and the achievement of their goals.

N.M. Att’y Gen. v. NMPRC, 2011-NMSC-034, ¶ 10, 150 N.M. 174 (citation omitted) (internal quotation omitted).

Applying these canons of construction, Sections 6-3A-7(B) and 22-8-12.1(C)(2) can be read to govern separate and distinct categories of budget request. Under this reading, they do not conflict with each other. The plain language of Section 6-3A-7(B) provides that agencies that operate performance-based programs are required to submit their budgets for these programs no later than September 1. There is no exception in this statutory language for PED. Meanwhile, the plain language of Section 22-8-12.1(C)(2) is limited to amendments to the public school finance formula, appropriations for the succeeding fiscal year to the public school fund, or appropriations for pupil transportation and instructional materials.

From our understanding, PED’s “below the line” special appropriation requests fund initiatives administered by PED itself, such as teacher professional development programs, school leadership training, advanced placement test waivers, and pregnant teen student support. *See* 2024 N.M. Laws, ch 69, § 4. These initiatives are generally the “performance-based programs” governed by Section 6-3A-7(A). And in any event, special appropriations are categorically agency appropriations, which are governed by Section 6-3-19 or, in the alternative, Section 6-3A-7. They are not amendments to the public school finance formula, appropriations for the succeeding fiscal year to the public school fund, or appropriations for pupil transportation and instructional materials. They are therefore not governed by the plain language of Section 22-8-12.1(C)(2).

We do not read Section 6-3A-7(B) to conflict with Section 22-8-12.1(C)(2). The latter section does not contain a blanket extension for PED-related budget requests. Rather, the scope of the provision is limited to amendments to the public school finance formula, appropriations for the succeeding fiscal year to the public school fund, or appropriations for pupil transportation and instructional materials. These categories of request are governed by the plain language of Section 22-8-12.1(C)(2). The public school fund is not an agency appropriation budget request. Instead,

the public school fund is calculated using the public school finance formula, which funds the operation of the school district's teachers, equipment, and transportation. As such, Section 22-8-12.1(C)(2) governs funding allocated to local school districts and charter schools, rather than to PED itself. PED's "below the line" special appropriation requests, on the other hand, are agency appropriations for "performance-based programs" and are therefore governed by Section 6-3A-7(B) and are due by September 1.

Conclusion

In sum, it is the opinion of this Office that Sections 6-3A-7(B) and 22-8-12.1(C)(2) are distinct statutes that govern separate funding categories. Section 6-3A-7(B) provides that agencies that operate performance-based programs are required to submit their budget requests for these programs no later than September 1. Section 22-8-12.1(C)(2), on the other hand, is limited to amendments to the public school finance formula, appropriations for the succeeding fiscal year to the public school fund, or appropriations for pupil transportation and instructional materials. The two sections are not in conflict, and nothing in the language of either provision indicates that the Legislature intended for 22-8-12.1(C)(2) to supersede, qualify, or limit Section 6-3A-7(B). We therefore conclude that the date required for PED to submit its annual agency request for special appropriations is September 1, as set forth in Section 6-3A-7(B).

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