

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. ZAMMIELLO
LAUREN T. CHAVEZ

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

ATTORNEYS AT LAW
201 THIRD STREET NW, SUITE 2200
ALBUQUERQUE, NEW MEXICO 87102

P.O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103
WWW.RODEY.COM

TELEPHONE (505) 765-5900
FACSIMILE (505) 768-7395

OF COUNSEL
MARK K. ADAMS
JOHN P. BURTON
RICHARD C. MINZNER
LESLIE MCCARTHY APODACA
MICHAEL J. BRESCHIA
RICK BEITLER
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 M. 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
119 EAST MARCY STREET, SUITE 200
SANTA FE, NEW MEXICO 87501-2046
P.O. BOX 1357
SANTA FE, NEW MEXICO 87504-1357
TELEPHONE (505) 954-3900
FACSIMILE (505) 954-3942

WRITER'S DIRECT NUMBER
(505) 768-7249

LSanchez@rodey.com

April 28, 2025

NM State Ethics Commission
New Mexico State Ethics Commission
800 Bradbury Dr. SE, Suite 215
Albuquerque, NM 87106

RE: Ethics Complaint regarding Superintendent Mike Hyatt

Dear State Ethics Representatives:

On behalf of my client, Stride, Inc., the parent company of K12 Virtual Schools L.L.C. (together the "Contractor"), please see below for an informal complaint submitted for your consideration.

Against Who/Where Do They Work

This complaint is being filed with respect to the Superintendent of the Gallup-McKinley County Schools located in Gallup, New Mexico (the "District"). The Superintendent is Mike Hyatt.

Which Laws Have Been Violated

The complaint is related to potential violations of the Government Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1967, as amended through 2023) ("GCA"), and the New Mexico Procurement Code, NMSA 1978 Sections 13-1-28 through 13-1-199 (1984, as amended through 2023) ("Procurement Code").

NM State Ethics Commission
April 28, 2025
Page 2

What is the Complaint About?

- Mr. Hyatt has ostensibly tried to leverage his position as Superintendent to secure a lucrative job with the Contractor, a company over which he has regulatory authority as the provider of virtual educational services to the District's program called Destinations Career Academy of New Mexico ("NMDCA").
- Superintendent Hyatt applied in response to an internet posting for a VP for Academic Innovation with the Contractor and requested an annual salary of \$235,000.
- The Contractor declined to hire Superintendent Hyatt for the position.
- The GCA has specific prohibitions against a public officer or employee seeking employment with a contractor who has a contract with the public officer or employee's employer. NMSA 1978, Sections 10-16-4(A) and 10-16-4(C) (2011).
- The Procurement Code similarly prohibits an employee who is participating directly or indirectly in the procurement process to become, or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed. NMSA 1978, Section 13-1-193 (1984).
- Superintendent Hyatt has evidently put his own interest above ~4,200 students' and their families' interests—by seeking employment contrary to the GCA and the Procurement Code.
- When denied the position with the Contractor, he sought to terminate the District's existing Educational Products and Services Agreement (the "Contract") with the Contractor.

NM State Ethics Commission

April 28, 2025

Page 3

- Further, during the contractual cure period that is specified in the Contract, he presumably caused the District to issue a new Request for Proposals (“RFP”) seeking another vendor for the same service, contrary to the exclusivity provision in the original Contract and potentially violating the GCA and the Procurement Code.
- The RFP that the District has issued fails to comport with the requirements of the Procurement Code.
- Superintendent Hyatt, shortly after not being selected for the position, made allegations against the Contractor for breach of the Contract and has denied the Contractor’s right to cure any breaches, which is specifically called for in the Contract.
- Since he attempted to terminate the Contract, the District, presumably at his direction, has been, for weeks, impeding further actions designed to enhance NMDCA’s ability to serve children – for example, by delaying or refusing to share information about fingerprint clearance for new teachers, refusing to sign off on extensions for teacher licenses, and being unresponsive regarding requests to provide access to the District’s Individualized Education Program (IEP) system for special education students for new teacher(s).
- Superintendent Hyatt is improperly attempting to terminate an existing contract, that has a year left for educational services at the School with ~4,200 students while simultaneously issuing a replacement RFP while the Contract is in force.
- Upon information and belief (as described below), it is possible that Superintendent Hyatt has potentially secured an alternate position with another service provider in exchange for

NM State Ethics Commission
April 28, 2025
Page 4

terminating Contractor's contract and is planning to award a replacement contract to such other service provider as part of the RFP 'process'.

- Superintendent Hyatt's actions raise substantial ethical questions under the GCA and the Procurement Code.

The New Mexico Government Conduct Act

New Mexico's GCA applies to elected officials, *public officers*, and *public employees* (emphasis added), including Mr. Hyatt as the Superintendent of the District. The GCA requires that public employees treat their government position as a public trust. Section 10-16-3(A). The GCA also states that it is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. "Financial interest" in the GCA is defined as an interest held by an individual that is:

- (1) an ownership interest in business or property; or
- (2) any employment or *prospective employment for which negotiations have already begun*;

NMSA 1978, Section 10-16-2(F) (2011) (emphasis added).

Additionally, the GCA prohibits a public officer or employee from becoming the employee of any business that is contracting with the governmental body by whom the officer or employee is employed. Section 10-16-4.3. Certain ethical principles of public service are also codified in the GCA including that a public employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests. Section 10-16-3(A). Employees are also required to conduct themselves in a manner that justifies the

NM State Ethics Commission
April 28, 2025
Page 5

confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service. Section 10-16-3(B). The GCA prohibits employees from requesting or receiving any money or thing of value or promise that is conditioned upon or given in exchange for promised performance of an official act. Section 10-16-3(D). The GCA also prohibits a public employee, during the period of employment, from acquiring a financial interest when the employee believes or *should have reason to believe* the new financial interest will be directly affected by the officer's or employee's official act. Section 10-16-4(C) (emphasis added).

The GCA provides for criminal penalties. NMSA 1978, Section 10-16-17 (1993). Another enforcement mechanism is the use of civil penalties. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the GCA, the state ethics commission may refer the matter to the attorney general or a district attorney for enforcement. Section 10-16-18(A). Moreover, the state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the GCA. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000). Section 10-16-18(B).

Procurement Code

Section 13-1-193 of the New Mexico Procurement Code prohibits contemporaneous employment with a contractor:

NM State Ethics Commission
April 28, 2025
Page 6

It is unlawful for any state agency or local public body employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

Additionally, “it is unlawful for any state agency or local public body employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.” NMSA 1978, Section 13-1-195(1984). And finally, NMSA 1978, Section 13-1-198 (1984) prohibits kickbacks in public contracting, and a promise of employment with a vendor is a form of a kickback.

The Procurement Code also requires certain provisions to be included in an 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) 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 has issued fails to comport with these requirements of the Procurement Code.

Details that May Help Investigate These Matters

1. The Contractor has been providing virtual schooling services to the District since June 2020. Exhibit A – Educational Products & Services Contract signed June 16, 2020 (the “Contract”).
2. The Contractor has been working with the District on the challenges of NMDCA expanding, including staffing ratios and teacher licensing, as it has grown from 1,441 students statewide in the 2020-2021 School Year to ~4,200 students statewide in the current 2024-2025 School Year, including during the challenges posed by the COVID pandemic.

NM State Ethics Commission
April 28, 2025
Page 7

NMDCA's student population is currently, and has always been, majority students of color.

Exhibit B - Student Demographics for NMDCA.

3. Superintendent Hyatt has been a positive reference for the Contractor several times over the last few years, including as recently as February 2025 (with the New Mexico Public Education Department as well as a potential partner school district in Ohio). Exhibit C-1 – Reference to NMPED for the Contractor by Superintendent Hyatt (February 2025); Exhibit C-2 – Superintendent Hyatt's Email Offering to Be a Reference for the Contractor in Ohio (February 2025); and Exhibit C-3 – List of entities the Contractor has referred to Superintendent Hyatt as a reference.
4. Superintendent Hyatt applied through an online posting for the position of Vice President for Academic Innovation with the Contractor on December 11, 2024, in likely violation of the GCA's, and the Procurement Code's, prohibition against a public employee seeking employment with a contractor that has a current active contract with his employer, over which he has oversight authority. Superintendent Hyatt submitted that his salary expectation was \$235,000. Exhibit D-1 Voicemail from Superintendent Hyatt Inquiring About Position; Exhibit D-2 – Evidence that Superintendent Hyatt applied for a position with Stride on December 11, 2024, with salary expectation at page 4.
5. The following question was asked in the application that Superintendent Hyatt completed: "Are you subject to any type of agreement with a current or former employer or entity that would restrict your ability to work for us (e.g., non-compete, confidentiality, non-disclosure)?" Superintendent Hyatt's response was "No" even though he should have

NM State Ethics Commission
April 28, 2025
Page 8

known that he was subject to the GCA's and Procurement Code's prohibition from seeking employment with a contractor to the District. See Exhibit D-2, bottom of page 3.

6. Superintendent Hyatt had an initial interview on January 21, 2025, and stated that he was planning to leave the District in the next few months, notwithstanding having just signed an employment extension with the District. Exhibit E-1 – Thank you note from Superintendent Hyatt for interview. Exhibit E-2 – Screenshots from Superintendent Hyatt interview with Stride, Inc. on January 21, 2025.
7. Superintendent Hyatt appeared to log onto the virtual interview from his District computer using his District e-mail address during the school day. See page 2 of Exhibit E-2.
8. The Contractor's SVP of Schools, Adam Hawf, turned down Superintendent Hyatt for the job in a phone call on February 21, 2025 at 5 pm EST. The Contractor made no offer of employment to Superintendent Hyatt. Mr. Hawf called Superintendent Hyatt, as opposed to issuing him a formal letter, due to the sensitivity of the relationship and a fear that Superintendent Hyatt would adversely affect the District's relationship with the Contractor. Exhibit F-1 – Email setting up a call with Mike Hyatt to turn him down for job; Exhibit F-2 – Phone record of Adam Hawf.
9. The Contractor's employee who participated in routine monthly meetings with Superintendent Hyatt noted that Superintendent Hyatt's demeanor at the monthly meeting on March 10, 2025, was completely different than it has been in past meetings – the meeting was hostile toward the Contractor, instead of amicable and collaborative.

NM State Ethics Commission
April 28, 2025
Page 9

10. Upon information and belief (described below), Superintendent Hyatt may have been seeking employment with at least one other potential vendor that provides virtual school services in competition with the Contractor, which is the subject of a forthcoming IPRA request to the District.¹
11. Superintendent Hyatt sent a breach of contract and termination letter to the Contractor on April 1, 2025, notifying the Contractor that the termination was effective on June 30, 2025. Exhibit G-1 – Letter regarding termination and breach from Superintendent Hyatt and the Contractor’s response. The Contractor responded on April 8, 2025. Exhibit G-2 Response letter from Stride to Superintendent Hyatt.
12. Superintendent Hyatt’s communication of April 1st alleged multiple allegations of breach, but did not provide specifics on the instances cited regarding student-teacher ratios or licensure of teachers, nor specific details about alleged reduction of student achievement of NMDCA students. Previously, the Superintendent had submitted waivers to PED related to ratios for the fast-growing NMDCA program as teacher hiring efforts continued in order to meet program growth. Exhibit H - Class Load Waiver Submitted by the District on February 7, 2023.

¹ Superintendent Hyatt attempted to get hired by Contractor, proposing a February 2025 hire date (see Exhibit D-2, page 4). Therefore, he has demonstrated that a goal of his was to be hired into a remote working education-related role in the near-term. There was a delay between being turned down by the Contractor and his action in sending a termination letter to the Contractor, allowing him the time to explore other similar roles. One competitor has approached the Superintendent in the past in order to secure K12’s business from the District, see Exhibit J-2. This company attended a pre-bid meeting with respect to the RFP, see Exhibit J-1. The RFP appears to be unduly rushed and non-compliant with the Procurement Code. Upon information and belief, this company is bidding in response to the RFP. This company could only have an expectation to submit a winning bid in response to the RFP if the Superintendent ends the Contract early and deprives Contractor of its cure right.

NM State Ethics Commission
April 28, 2025
Page 10

13. On April 4, 2025, the District issued an RFP to replace the Contractor, contrary to the exclusivity clause in its existing contract (clause 6.1.1 of the Contract) and despite the contractual cure period of 45 days (clause 12.1 of the Contract). Exhibit I – RFP Issued by the District.
14. Upon information and belief, Superintendent Hyatt may have spent the time between the end of February 2025 and April 1, 2025 arranging a new position with another ‘Ed Tech’ or ‘education technology’ company, such as Pansophic Learning, Accel Schools or a related entity.
15. These companies are now also responding to the RFP and one has previously encouraged the District to move away from the Contractor. Exhibit J-1 - Screen shots of the pre-proposal conference meeting. Exhibit J-2 – 10.3.23 Email from Scott Anderson at Accel Schools.
16. On April 15, 2025, the District notified the Contractor that it would no longer allow the Contractor to add teachers to its program to lower ratios by permitting it to send fingerprint clearance requests to the District’s vendor on its behalf, despite a long-standing prior practice of doing so. Moreover, the District also cancelled appointments for NMDCA teachers to sign paperwork for routine extensions to maintain their licensing credentials, which would prevent these teachers from teaching in the next school year. Exhibit K – 4.15.25 District Email to the Contractor.
17. Most recently, the District has prevented a new teacher with the Contractor from accessing the IEP system to work with students in special education.

NM State Ethics Commission
April 28, 2025
Page 11

18. Failing to clear fingerprinting has an immediate adverse effect on potentially hundreds of students in the near future by preventing the addition of qualified, licensed teachers to NMDCA. Cancelling appointments has had an adverse effect on teachers that in good faith have made arrangements at their own expense to travel to Gallup, in some cases from out of state, to sign paperwork. And disallowing access to the IEP system is a disservice to the most vulnerable students, those with disabilities.
19. In addition to adversely impacting students, these actions clearly affect the Contractor's ability to exercise its right to cure an alleged breach of the Contract, contrary to the obligation to resolve disputes in good faith (clause 12.1 of the Contract).
20. The District Board noticed for Executive Session at its meeting on April 21, 2025, that it was considering a debarment action against the Contractor, without any indication that there are grounds for debarment pursuant to Section 13-1-178, NMSA 1978 and NMAC Section 1.4.7.1 to 1.4.7.10. Exhibit L – 4.21.25 District Meeting Agenda.
21. Superintendent Hyatt has stated that if the Contractor does not agree to amicably terminate the Contract early, he would publicly attack the reputation of the Contractor, in effect, “burning both houses down”, if necessary.
22. On April 22, 2025, Superintendent Hyatt sent another letter to the Contractor alleging additional breaches of the Contract and making demands regarding data requests.

Summary

Superintendent Hyatt has an obligation, pursuant to the GCA, to treat his Superintendent position as a position of public trust. He is also expected to conduct himself in a manner that

NM State Ethics Commission
April 28, 2025
Page 12

justifies the confidence placed in him by the people, at all times maintaining integrity and discharging ethically the high responsibilities of public service. The GCA and the Procurement Code explicitly prohibit a public employee from becoming an employee of any business that is contracting with the governmental body by whom the employee is employed. Superintendent Hyatt ostensibly attempted to do exactly that when he applied for a position with the Contractor. Additionally, the GCA prohibits a public employee, during the period of employment, from acquiring a financial interest when the employee believes or *should have reason to believe* the new financial interest will be directly affected by the officer's or employee's official act. Superintendent Hyatt's actions in applying for a position with the Contractor means he was attempting to acquire a financial interest, which is defined in the GCA to include *prospective employment for which negotiations have already begun*. Superintendent Hyatt also appears to have utilized his District computer during the school day to interview with Contractor, also in likely violation of the GCA's requirement that a public employee use the resources of public office only to advance the public interest and not to pursue private interests. Section 10-16-3(A) NMSA 1978.

Moreover, Superintendent Hyatt's conduct after he was denied employment by the Contractor shows that he is potentially abusing his authority, and not acting in the public interest. He was aware of the alleged student-teacher ratios and the licensure issues prior to submitting his application for employment with the Contractor. He also served as a positive reference for the Contractor with the New Mexico PED on February 6, 2025 and for Ohio as recently as February 25, 2025, despite knowledge of the concerns he later raised in the letter to the Contractor on April 1, 2025. Clearly, something occurred between February 6 and April 1 to cause him to attempt to

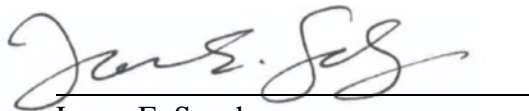
NM State Ethics Commission
April 28, 2025
Page 13

cancel the Contract, and the notification that he did not get the position with the Contractor on February 21, 2025 is likely that event, along with a potential discussion with the Contractor's competitors to identify a new role for himself and issue a new RFP. He apparently is using the excuse of teacher-student ratios, teacher licensure and fingerprint clearance, issues that are not new to NMDCA, to terminate the Contractor's Contract in order to potentially enable him to get a position with another vendor to the District who is likely responding to the pending RFP.

In this way, Superintendent Hyatt is apparently knowingly and willfully abusing his public position, at the expense of ~4,200 New Mexico students. There is also reason to believe that, between February 21 and April 1, he may have actually secured a position with another Ed Tech company (possibly Accel Schools or Pansophic Learning, related entities) before attempting to terminate the Contract and award a replacement contract to such alternate education technology company through the RFP process.

Respectfully submitted,

RODEY DICKASON SLOAN AKIN & ROBB, PA

A handwritten signature in dark ink, appearing to read "Laura E. Sanchez", written over a horizontal line.

Laura E. Sanchez
201 Third St. NW, Suite 2200
Albuquerque, NM 87102
lsanchez@rodey.com
(505) 768-7249