Timothy M. Keller State Auditor



Sanjay Bhakta, CPA, CGFM, CFE, CGMA Deputy State Auditor

Via Email and U.S. Mail

July 19, 2016

Paul Aguilar Deputy Secretary, Finance & Operations New Mexico Public Education Department 300 Don Gaspar Santa Fe, NM 87501

Danny Baca Governing Council President La Promesa Early Learning Center 5201 Central NW Albuquerque, NM 87105

Re: Risk Review – La Promesa Charter School Reimbursement to Executive Director for Cleaning Services

Dear Deputy Secretary Aguilar and President Baca:

On February 26, 2016, the Office of the State Auditor ("OSA") became aware, through media reports rather than the notification required by the Audit Act, of an investigation being conducted by the Public Education Department ("PED") regarding a receipt submitted for reimbursement by a school administrator that appeared to be altered. The OSA promptly requested copies of all relevant documents, and on March 10, 2016, PED ultimately provided documents specifically related to this single reimbursement. The OSA then commenced fact-finding procedures to evaluate the transaction as part of a Risk Review. The purpose of this letter is to notify you of the results of the Risk Review. This letter details the analysis of our Risk Review because our conclusions differ from our understanding of the results of the La Promesa Early Learning Center's Governing Council review.

### I. Executive Summary

A receipt, dated July 31, 2015, was sent to PED from the La Promesa Early Learning Center ("School"), a state-chartered charter school established in accordance with the Charter Schools Act (Chapter 22, Article 8B NMSA 1978), on November 16, 2015. The receipt was previously submitted for reimbursement to the School by the Executive Director of La Promesa and the Executive Director had been reimbursed for the entire amount on August 14, 2015. PED was sent a copy of the receipt as part of a broader packet of supporting documentation regarding K-3 Plus program expenses. Upon PED's review of the receipt, questions arose regarding whether the receipt was altered to reimburse the Executive Director for personal home cleaning services rather than services provided to the School.

As explained in detail below, the OSA's review revealed:

- (A) The receipt for cleaning services submitted to PED from the School was altered, changing the address from the Executive Director's home address to the address of the School, as well as changing the type of service provided. The alterations to the receipt appear deliberate and suggest an intent to improperly gain reimbursement from the School for personal air duct cleaning services, which may, if proven, entail multiple criminal violations (Falsifying Records, Making or Permitting False Public Voucher, Paying Public Money for Services Not Rendered, Ethical Principles of Public Service). Penalties for these violations range from misdemeanors to felonies and may include forfeiture of public office or employment.
- (B) Weaknesses in, and likely violations of, the internal controls over the procurement process in the business office of the School cast further doubt on the legitimacy of the invoice. These weaknesses include a failure to segregate duties and a lack of oversight by the Business Manager.

### II. Factual Background

La Promesa Early Learning Center is part of the K-3 Plus program, which offers extended hours to boost academics. This program starts during the summer, and the first day of school for the current school year under this program was July 9, 2015.

The Executive Director paid \$320.00 plus tax, for a total of \$342.40, to the carpet cleaners for cleaning services. The character and location of the services provided by the carpet cleaners are in dispute. The Executive Director received a receipt from the carpet cleaners, dated July 31, 2015, and submitted it to the School for reimbursement as an official expense. The purchase requisition for the reimbursement was approved solely by the Executive Director.

The School reimbursed the Executive Director in the amount of \$342.40 on August 14, 2015. Subsequently, the School submitted the receipt to PED as part of a packet requesting

<sup>&</sup>lt;sup>1</sup> Clean Carpet Care and Elite Carpet Cleaning are owned by the same person. The companies were going through a merger at the time of the service in question. Employees and equipment were utilized by both companies interchangeably. For the purposes of this report, we will refer to both companies as "the carpet cleaners."

reimbursement for the K-3 Plus program. Not all of the receipts in the submitted packet were reimbursable expenses, and the receipt in question was included in the packet as a supporting document but was not specifically submitted for reimbursement. The Assistant Business Manager at La Promesa, who is also the daughter of the Executive Director, prepares the documentation to submit to PED for reimbursement. Under normal procedures the documentation is supposed to be reviewed by the School's contracted Business Manager, who would then send it on to PED. The Assistant Business Manager prepared the documentation and sent it to the Business Manager. The Business Manager in this instance forwarded the documentation on to PED without reviewing it and was unaware of the carpet cleaning receipt until PED inquired about the apparent alterations to the receipt.

Upon review of the packet, PED noted that the carpet cleaning receipt submitted for reimbursement by the Executive Director to the School appeared to have been altered by someone writing the name and address of the School over the name of the Executive Director and her home address. OSA requested copies of the receipt held by the School and by the Executive Director. Both copies were identical to the copy submitted by the School to PED. The Executive Director stated that she submitted the invoice as it was presented to her by the carpet cleaners.

The owner of the carpet cleaning companies ("Owner") informed OSA that the services related to the invoice in question were provided on July 31, 2015, at the Executive Director's personal residence. According to the Owner, the Executive Director called the carpet cleaners to make an appointment for dryer vent cleaning at her home. This service was performed on July 25, 2015. At that time, the technicians provided the Executive Director a quote for the cleaning of 16 air ducts in the amount of \$320.00 plus tax and four rooms of carpet cleaning in the amount of \$100.00 plus tax. An appointment was made for July 31, 2015 for the carpet cleaners to perform the air duct cleaning; however, the Owner stated that the Executive Director decided not to have any carpets cleaned and no such carpet services were provided. On July 25, 2015, after the dryer vent was cleaned, the Executive Director paid for the services with a personal check in the amount of \$112.35. The technicians returned to the Executive Director's home on July 31, 2015 and cleaned 16 air ducts. At the end of this appointment, the Executive Director paid for the services with a personal check in the amount of \$342.40.

The Owner provided his original receipts for the two services provided to the Executive Director (dryer vent cleaning and air duct cleaning). The Owner indicated that these were the only two services his companies have ever provided to the Executive Director. He further stated, after a thorough examination of his files and records of both companies, that his companies have never performed any services for La Promesa.

Comparing the original receipts received from the Owner with the receipt submitted to PED, the following is noted:

• PED's copy of the receipt shows carpet cleaners cleaned 16 vents and carpets on July 31, 2015. In the customer information box, the address for La Promesa Charter School appears to be written in pen over another address that is in a different handwriting in a light carbon-copy print. In addition, there are checkmarks indicating carpet cleaning that are also written in pen on the carbon copy. Executive Director's signature is at the bottom on both copies. The cost of \$320.00 plus tax for a total amount of \$342.40, the word "Repeat," and the check number written by the cleaning technicians are identical on both copies.

- The Owner's original receipt dated July 31, 2015, only lists the air duct cleaning and has the Executive Director's name and home address under customer information. There are no checkmarks for carpet cleaning evident on the original receipt.
- The Owner's original receipt dated July 25, 2015, was for the cleaning of a dryer vent and lists the address as the Executive Director's home. On the left hand side of that receipt, there is a quote for the cleaning of 16 air ducts and four rooms of carpet. There is also a notation of a new appointment made for Friday, July 31 from 10:00 12:00. The address and phone number on this receipt are the same as on the July 31, 2015 receipt provided by the Owner.

Consistent with the information provided by the Owner, the Executive Director stated that the carpet cleaners had cleaned the dryer vent and air ducts at her house on two separate occasions during the month of July. She provided the OSA with copies of checks for payment of the dryer vent cleaning (\$112.35) and air duct cleaning (\$342.40). The Executive Director also stated that no carpet cleaning work was performed at her house, which is consistent with the Owner's statement. However, the Executive Director insisted that the receipt in question, in the amount of \$342.40, was from carpet cleaning services performed by the company at the School, whereas the Owner stated that neither of his companies had ever performed work at La Promesa.

The Executive Director stated that she had surgery in the summer of 2015 and was working from her residence because she was unable to drive after the surgery. She presented OSA with pictures of several rooms in her home that were not carpeted, but when questioned about additional rooms she acknowledged that some rooms are indeed carpeted. The Executive Director stated further that although she was not at the School at the time of the carpet cleaning, the cleaning was supervised by the Office Manager. According to the Executive Director, the Office Manager called her when the cleaning was completed, and the technicians drove to the Executive Director's home, which is approximately 20 miles from the school, to collect payment. The Executive Director states that she paid \$342.40 for the carpet cleaning services at the School in cash, and that she did not have access to School checks because the Business Manager and Assistant Business Manager were out of state at the National Alliance for Public Charter Schools conference. However, OSA later determined that this conference was held on June 21-24, 2015, not on July 31, 2015.

Discussions with other School personnel contradicted the Executive Director's account of the carpet cleaning and payment. For example, the Office Manager stated that she did not recall how or when the carpet cleaning company received payment.

According to personnel at the School, the School carpets were very dirty and needed to be cleaned. In our discussions with various personnel, they stated that carpets had been cleaned at the School but the date of the cleaning was not clear, with some stating that it took place in June and others stating it was July. The School did not have any records of carpet cleaning services

performed in the summer of 2015 other than the receipt submitted by the Executive Director. Staff also could not recall which company had cleaned the carpet and there were no notations in the front sign-in sheet indicating the visitation of carpet cleaning staff. It was also determined that the carpets in question were completely replaced by Carpet Source on August 26, 2015, a purchase approved by the Executive Director. OSA confirmed with Carpet Source that they do not provide carpet cleaning services.

The La Promesa Governing Council conducted its own internal investigation regarding the matter, including interviewing all of the School personnel who were onsite and could verify that carpet cleaning had been completed at the School, but did not interview the carpet cleaners. The Council also toured the facility, the rooms in question, and reviewed pictures provided by Executive Director of the uncarpeted areas of her personal residence. A memo from the Council President, dated May 2, 2016, states that the opinion of the Council is that no carpet cleaning occurred at the Executive Director's residence because the home does not contain carpet. Additionally the memo states the Council agreed to accept reimbursement from the Executive Director without her admitting guilt or wrongdoing. The Executive Director subsequently repaid the School \$342.40. As a result of the investigation, new procedures were implemented which require Council approval for all reimbursements to school administrators.

### III. Analysis

(A) The receipt for cleaning services submitted to PED from the School was altered, changing the address from the Executive Director's home address to the address of the School, as well as changing the type of service provided. The alterations to the receipt appear deliberate and suggest an intent to improperly gain reimbursement from the School for personal air duct cleaning services, which, if proven, may entail multiple criminal violations.

The receipt for cleaning services submitted to the School, which was also subsequently sent to PED, was altered. The alterations to the receipt appear deliberate and made with the intent to fraudulently gain reimbursement from the School. It is unclear whether carpet cleaning services were performed at the School at some point, but carpet cleaning services do not appear to have occurred on the date stated on the receipt or by the specific carpet cleaning company in question. The documentation obtained and interviews with the carpet cleaners and various school personnel provided conflicting details and a lack of information as to which company performed the cleaning and when any such service may have occurred. Specific contradictions include the conflicting stories of the carpet cleaners and the Executive Director and the lack of other documentation to support the Executive Director's recollection of events. Even assuming that the company did clean both the carpets at the School and the air ducts at the Executive Director's personal residence on July 31, 2015, which the company denies, it is highly unlikely that the amounts billed would be identical, and that one would be paid in cash and one paid by check.

It is also noteworthy that the copy of the receipt that the Executive Director provided to the OSA is identical to the version she submitted to the School and what was subsequently sent to PED, indicating that the receipt was not altered after the Executive Director submitted it for

processing. The Executive Director was the sole approver of the reimbursement request and the payment was processed by her daughter, the Assistant Business Manager.

The investigation memo from the La Promesa Governing Council focuses solely on whether carpet cleaning occurred at the School or the Executive Director's home and does not address the fact that the reimbursement amount in question is exactly the same as the air duct cleaning services performed at her home on July 31, 2015. However, the key issue is not whether carpets were cleaned at the School during the month of July, but rather whether the receipt submitted for reimbursement was in fact for services provided at the School on July 31, 2015 or for personal cleaning (i.e. air duct cleaning services) performed at her home on that same date. The memo is also inconsistent with statements made by the Executive Director to the OSA indicating that she does indeed have carpet in parts in her home.

Altering an invoice for personal services and submitting it for reimbursement of public funds raises the possibility of various criminal violations. These include:

- Government Conduct Act. Public officers or employees must use their positions as a public trust and not to obtain personal benefits (Section 10-16-3(A) NMSA 1978). Any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year or both.
- Public School Finance Act. Any person falsifying any record, account or report required to be kept or filed pursuant to the Public School Finance Act or knowingly using any money budgeted or appropriated for public school use or for any other purposes than that provided in the appropriation or budget is guilty of a petty misdemeanor and shall, in addition to all other civil or criminal penalties, forfeit his office or employment (Section 22-8-42(D) NMSA 1978). The penalty for a petty misdemeanor is imprisonment in the county jail for a term not to exceed six months and/or the payment of a fine not more than \$500.
- Paying or Receiving Public Money for Services Not Rendered. Paying or receiving public money for services not rendered consists of knowingly making or receiving payment or causing payment to be made from public funds where such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered (Section 30-23-2 NMSA 1978). The penalty for violating this provision is a fourth degree felony (up to eighteen months imprisonment).
- Making or Permitting False Public Voucher. Making or permitting false public voucher consists of knowingly, intentionally or willfully making, causing to be made or permitting to be made, a false material statement or forged signature upon any public voucher, or invoice supporting a public voucher, with intent that the voucher or invoice shall be relied upon for the expenditure of public money (Section 30-23-3 NMSA 1978). The penalty for violating this provision is a fourth degree felony (up to eighteen months imprisonment).

(B) Weaknesses in the procurement process and internal controls in the business office of the School cast further doubt on the legitimacy of the invoice. These weaknesses include a lack of segregation of duties and lack of oversight by the Business Manager.

The Business Manager is a contractor for the School. She has been working with the School since the fall of 2014. The Business Manager stated that she is responsible for audits, reconciliations, accounts receivable, accounts payable and payroll. At other schools she contracts with, she would hire an Assistant Business Manager to work on premises on a daily basis. The Assistant Business Manager would then discuss expenditures and other transactions with the Business Manager to ensure that they are recorded properly. La Promesa, however, already had an Assistant Business Manager in place. The daughter of the Executive Director is the Assistant Business Manager at the School, and has been for several years. The Assistant Business Manager is responsible for the daily management of payroll, accounts receivable, and accounts payable, with the accounts being reconciled by the Business Manager on a regular basis. The Assistant Business Manager is familiar with the financial system and does not always discuss transactions with the Business Manager prior to entering them.

La Promesa has a Policy Handbook, last updated November 2, 2014. It states that all purchases must follow procurement code regulations as updated by the New Mexico General Services Department. Per discussion with the Business Manager and through review of the Policy Handbook, the OSA concluded that the School violated its own policies in this transaction. The Executive Director approved the purchase requisition despite the Handbook's requirement that it should have been approved by the Principal. No purchase order was issued. Other concerns with the process are that, because this transaction was on a reimbursement basis rather than paying the vendor directly from the School, the carpet cleaner was not created as a vendor in the School's accounting system. This increases the confusion about the receipt in question, as it cannot be verified which company performed the cleaning services. Additionally, having the same person receiving the reimbursement also approve the reimbursement request is poor segregation of duties.

Because the Assistant Business Manager at the School is the daughter of the Executive Director, and because both the Assistant Business Manager and the Executive Director were involved in the transaction in question, OSA reviewed the School's nepotism policy. The School's Policy Handbook states the following in section C.1 related to nepotism:

La Promesa Early Learning Center shall comply with all applicable state and federal statutes regarding nepotism. The Governing Council, Executive Director and all employees of La Promesa Early Learning Center shall not engage in nepotism in any of their operations or hiring practices. La Promesa Early Learning Center shall not initially employ or approve initial employment in any capacity a person who is a family member of a Governing Council member, the Executive Director, or the individual responsible for the hiring and/or supervision of that family member. The Governance Council may waive this policy for family members of the Executive Director.

Per the Council President, the School is aware of the familial relationship between the Executive Director and the Assistant Business Manager and includes it as a discussion point on an annual basis. It appears that this policy has not been violated. However, because of the working relationship in effect in the business office at the School, OSA has concerns that this familial relationship may negate the benefits provided by proper segregation of duties. Based on our discussions with various school personnel and our review of the documentation provided by the School and PED, it appears that there is inadequate segregation of duties within the Business Office. The Executive Director creates and/or approves purchase requisitions. The Assistant Business Manager records the transaction and writes the check. The check is signed by the Executive Director and the Principal. Accounts are reconciled by the Business Manager, but it appears she does not supervise the Assistant Business Manager in any other manner. In effect, the Assistant Business Manager (daughter) reports to the Executive Director (mother). At a minimum, this creates appearance of impropriety.

### IV. Scope / Methodology

Our Risk Review consisted of fact-finding procedures conducted pursuant to the Audit Act and the Audit Rule, specifically Section 2.2.2.15(A)(1) NMAC. Among our procedures, the OSA conducted interviews of key school personnel and carpet cleaners, and requested and evaluated documentation related to the cleaning services at both the School and at the home of the Executive Director. The OSA also reviewed relevant laws, regulations, policies and procedures.

This Risk Review is separate from any investigation or audit currently being conducted by the Public Education Department or the La Promesa Governing Council. This Risk Review focused solely on the issue reported to OSA by PED, which is the carpet cleaning receipt in question, and the related policies and procedures that relate to that transaction. Our consideration of internal control was limited to this specific transaction and was not designed to identify all deficiencies in internal control that might increase the risk of fraud, waste, or abuse occurring and going undetected. Therefore, instances of fraud, waste, and abuse may exist that were not identified. This risk assessment is explicitly limited to the single transaction in question and does not constitute an accounting or legal opinion or assurances on the effectiveness of the School's internal control or on compliance.

We are aware that PED is conducting an independent investigation that may have a broader scope than this Risk Review. Other matters of concern may arise from that investigation. OSA requested but did not receive documents related to the PED investigation of other matters. In addition, OSA will be requiring that the independent auditors contracted to perform the annual financial audit of PED and the state charter schools include testing of administrative reimbursements at La Promesa in their audit procedures.

### V. Conclusion

This Risk Review highlights the importance of internal controls and financial oversight in protecting public money, public entities, and public employees. Adherence to controls over reimbursement requests and a review process for supporting documents could have identified the altered invoice prior to processing the reimbursement.

The OSA is also providing these findings to the District Attorney's Office for further investigation regarding whether the Executive Director's actions amount to criminal violations.

La Promesa must take prompt corrective action to implement appropriate internal controls. As part of the annual audit process, the OSA will be tracking the School's efforts in this regard. Our office stands ready to assist you, and please do not hesitate to contact our office should you have any questions.

Sincerely,

Sanjay Bhakta, CPA, CGFM, CGMA, CFE

Deputy State Auditor

cc: Kari E. Brandenburg, District Attorney, Second Judicial District Attorney's Office

### Timeline

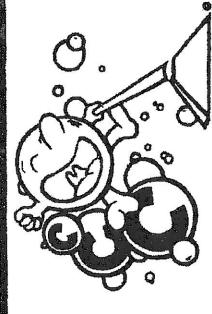
4/5/16	• Executive Director reimbursed school \$342.40 via cashiers check without admitting guilt or wrongdoing
11/16/15	• K-3 Plus reimbursement request sent from school to PED
8/14/15	• Executive Director reimbursed by school \$342.40
7/31/15	• Air ducts cleaned at Executive Director's residence (pd \$342.40 check) • Executive Director claims carpets were cleaned at school (pd \$342.40 cash)
7/25/15	• Dryer vent cleaned at Executive Director's residence (pd \$112.35 check) • Executive Director received quote for residential air duct cleaning (\$320 + tax) and carpet cleaning (\$100 + tax)
6/21-24/15	• National Alliance for Public Charter Schools conference attended by Business Manager and Assistant Business Manager

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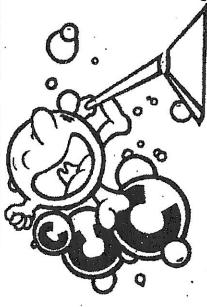
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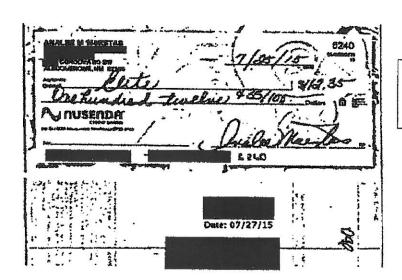
Personal check number 6312 for air duct cleaning on July 31, 2015.

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2/25/2016

### Nusenda Credit Union

Page 3 of 5



Personal check number 6240 for dryer vent cleaning on July 25, 2015.