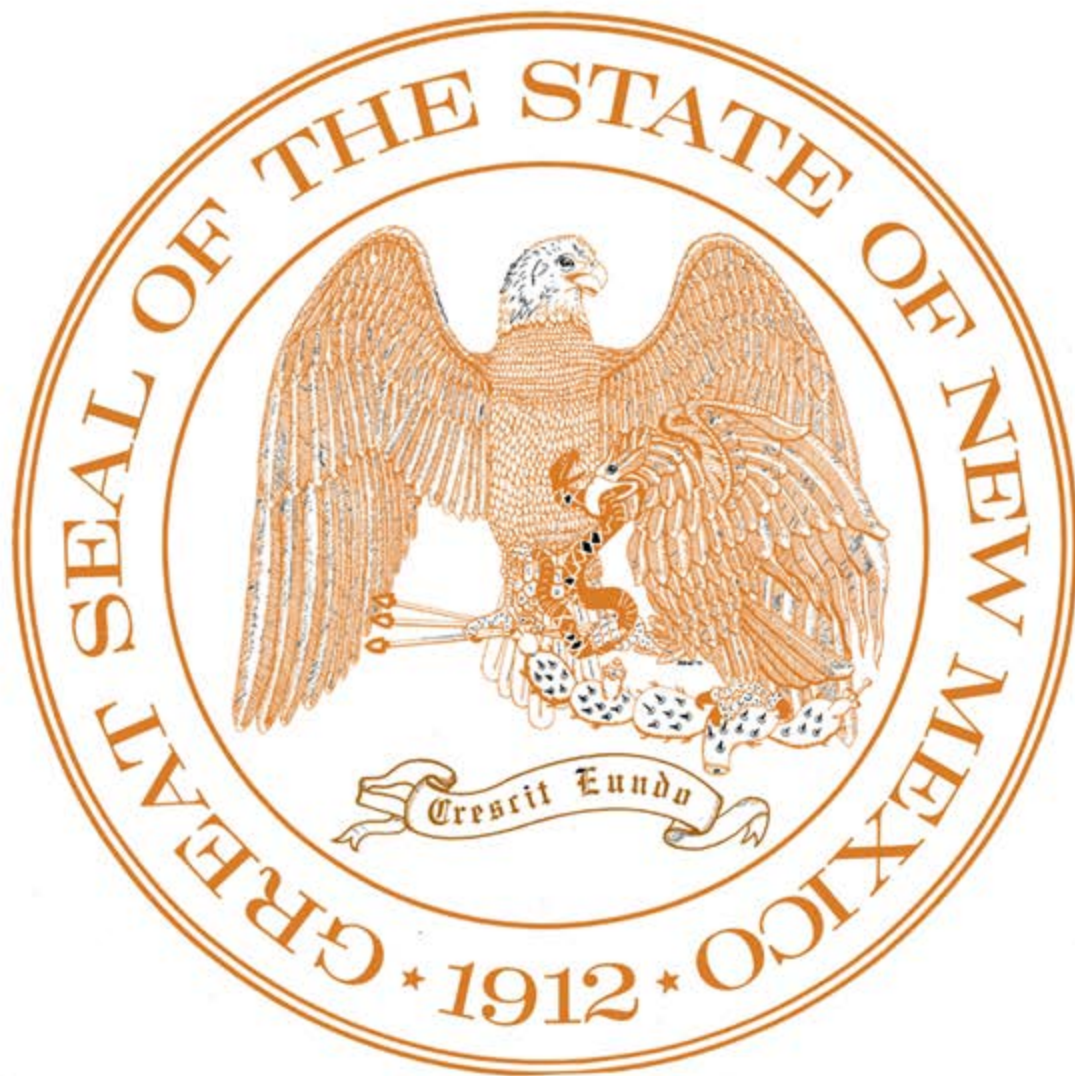


LEGISLATIVE EDUCATION STUDY COMMITTEE



Report to the First Session of the Fifty-Second Legislature

State of New Mexico
JANUARY 2015

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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January 2015

Fifty-second Legislature, First Session, 2015
State Capitol
Santa Fe, New Mexico

Dear Legislators:

This report summarizes the activities of the Legislative Education Study Committee (LESC) during the 2014 legislative interim as well as the committee's recommendations for the 2015 legislative session.

Like the reports of previous interims, this one reviews the research and testimony that the LESC considered in making its recommendations for legislation introduced during the 2015 legislative session. And like previous reports, this one is being presented primarily in electronic format on the LESC website, <http://www.nmlegis.gov/lcs/lesc>. In addition to serving the purposes of economy and efficiency, this format includes hyperlinks that you may use to move quickly and easily from one part of the report to another. Please note, however, that hard copies can still be provided upon request to the LESC office.

On behalf of the committee, it is my pleasure to present this report. I hope that you will find it informative and useful.

Sincerely,

A handwritten signature in blue ink that reads "Frances Ramirez-Maestas".

Frances Ramírez-Maestas

THE LEGISLATIVE EDUCATION STUDY COMMITTEE

As a permanent bipartisan, bicameral committee of the Legislature, the Legislative Education Study Committee (LESC):

- conducts a continuing study of all education in New Mexico, the laws governing such education, and the policies and costs of the New Mexico educational system, including the training of certified teaching personnel in postsecondary institutions;
- recommends funding levels for public education;
- recommends changes in laws relating to education; and
- makes a full report of its findings and recommendations.

The LESC comprises 10 voting members appointed to provide proportionate representation from both chambers and both major political parties, as well as a number of advisory members of the Legislature.

During the 2014 interim, the LESC was supported by 10 full-time staff members and one legislative intern:

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LEGISLATIVE EDUCATION STUDY COMMITTEE

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LEGISLATIVE EDUCATION STUDY COMMITTEE

REPORT OF THE 2014 INTERIM

RECOMMENDATIONS OF THE LESC

LESC CHARTER SCHOOLS SUBCOMMITTEE

1. **Cleanup Bill:** Amend the *Public School Code* to define certain charter school terms and to clarify certain responsibilities of charter school authorizers, charter school governing bodies, and charter schools.
2. **Lease Purchase Act Bill:** Amend the *Public School Lease Purchase Act* to clarify the definition of “governing body”; and to establish the relationship between a governing body and a school district or a charter school in the acquisition of public school facilities pursuant to lease purchase arrangements.
3. **Agency/Component Unit Bill:** Amend the *Audit Act* to include charter schools in the definition of “agency.”
4. **Governance Bill:** Amend, repeal, and enact sections of the *Public School Code* relating to the governance of charter schools.
5. **Transportation Bill:** Amend the *Public School Code* to allow school districts and charter schools to establish transportation agreements to transport charter school students.
6. **PEC Bill:** Amend the *Public Education Department Act* to remove the Public Education Commission’s administrative attachment to the Public Education Department.

CURRICULUM AND INSTRUCTION

7. **Graduation Requirements:** Amend the *Public School Code* to remove the requirement that a student take at least one Advanced Placement, honors, dual credit, or distance learning course for graduation.

OTHER TOPICS

8. **School District Building Systems Needs:** Amend the *Public School Capital Outlay Act* to allow the Public School Capital Outlay Council to provide temporary annual allocations to school districts to address building systems needs in existing buildings; amend and enact sections of NMSA 1978; and make an appropriation. (Endorsed by the Public School Capital Outlay Oversight Task Force)
9. **Breakfast Program:** Amend the *Public School Code* to rename the Breakfast after the Bell Program; and to allow schools the option of providing breakfast before or after the beginning of the instructional day.
10. **Remove School “Adequate Yearly Progress”:** Amend and repeal sections of the *Public School Code* to remove references to “adequate yearly progress.”
11. **No Social Security Numbers in Educational Data System:** Amend the *Public School Code* to exclude the collection and distribution of personally identifiable information in the educational data system.
12. **School District Liens on Certain School Buses:** Reintroduce legislation (from 2014) to amend the *Public School Finance Act* to require school district liens on contractor-owned school buses under contract to the school district.
13. **School Bus Fuel Gross Receipts:** Reintroduce legislation (from 2014) to create a new section of the *Gross Receipts and Compensating Tax Act* to provide for an exemption from the gross receipts tax for receipts for the sale of fuel for school buses; and to provide for an exemption from the compensating tax for fuel used for school or school-related bus transportation of students.
14. **School Bus Global Positioning System (GPS) Devices:** Reintroduce legislation (from 2014) to appropriate \$889,000 from the General Fund to the Public Education Department for expenditure in FY 15 to provide for installation and operation of security and GPS devices for school buses.
15. **School Transportation Reporting Dates:** Reintroduce legislation (from 2014) to amend the *Public School Finance Act* to change the reporting dates for school transportation funding of school districts and state-chartered charter schools to the second reporting date of the prior year, rather than the first reporting date of the current year.

LEGISLATIVE EDUCATION STUDY COMMITTEE REPORT OF THE 2014 INTERIM

INTRODUCTION

Each interim, the Legislative Education Study Committee (LESC) examines a wide range of education issues, both fiscal and programmatic, that affect the achievement and well-being of preschool, elementary, secondary, and postsecondary students in New Mexico. Issues are identified at the initiative of committee members, other legislators, or bills or memorials; and the LESL Interim Workplan establishes the framework for the committee's research, data collection, deliberations, and analysis. This report summarizes the LESL's examination of education issues identified during the 2014 legislative interim, and it includes the committee's recommendations for legislation during the 2015 legislative session.

During the 2014 interim, as it has done in some previous interims, the committee identified certain issues as focus areas – topics that merited additional attention and study. The two focus areas for 2014 were (1) the teacher and principal evaluation system created by rule of the Public Education Department (PED) and (2) charter schools. For the former, the LESL heard testimony from school district and charter school leaders at each meeting from June to October; for the latter, the committee created the LESL Charter Schools Subcommittee, which met each month from June to November to consider a wide range of issues related to charter schools.

In order to see and hear the concerns of constituents, the LESL held three meetings outside of Santa Fe: the July meeting in Farmington; the August meeting in Las Vegas; and the September meeting in Hobbs. The August meeting in Las Vegas was held in conjunction with the Legislative Finance Committee. At that meeting, in addition to topics summarized in this report, the two committees heard testimony about General Fund revenue projections, use of short-cycle student assessment data, class size and teaching loads, and PED's implementation of selected FY 15 recurring initiatives. And at all of its meetings during the 2014 interim, the LESL continued to provide a forum for students, school personnel, members of the public, and other interested parties to express their views on education issues.

In addition to the two focus areas, this report includes summaries of presentations categorized according to certain themes: Early Childhood Education, Curriculum and Instruction, Targeted Student Services, and Educator Quality. Although the report covers all of the issues examined during the 2014 legislative interim, it is intended only as a summary, not a detailed record. Readers interested in more information about these topics are encouraged to consult staff reports, meeting minutes, reports of previous interims, and other material on file in the LESL office or available through the LESL website, <http://www.nmlegis.gov/lcs/lesc>. And readers interested in public school data are encouraged to consult a companion report, *Public School Data Reference Guide, 2015*.

ISSUES STUDIED BY THE LESC

FOCUS AREAS

TEACHER AND PRINCIPAL EVALUATION

SCHOOL DISTRICT AND CHARTER SCHOOL PERSPECTIVES ON THE EVALUATION SYSTEM

To examine one of the focus areas of the workplan for the 2014 interim, the LESC requested testimony during each meeting from June to October from school district and charter school leaders regarding the implementation of the teacher and principal evaluation system in their respective districts and schools.¹ These hearings continued a theme begun during the 2013 interim, when the committee heard a variety of testimony on the provisions and implementation of the system and on other aspects of teacher and principal evaluation, including the voluntary participation of some 68 schools in an evaluation pilot project. At each of the June-to-October meetings during 2014, a panel comprising representatives of school districts and/or charter schools in the area provided testimony to the LESC, testimony that was developed from questions related to the following seven aspects of the evaluation system:

1. school district/charter school implementation timeline of the evaluation system;
2. online system used to implement the evaluation system;
3. number and percentage of teachers in the school district or charter school categorized in Group A, Group B, and Group C (see below), as well as their effectiveness ratings;
4. number and percentage of principals and assistant principals in the school district or charter school categorized in Group A and Group B, as well as their effectiveness ratings;
5. data and results of the summative reports shared with teachers and principals;
6. participation in New Mexico's Teacher and School Leader Evaluation Pilot Project from school year 2012-2013; and
7. additional comments addressing lessons learned in implementing the evaluation system.

Each panel member was also requested to submit written responses to the seven points prior to testifying before the LESC so that the responses could be included in the committee notebooks for review.

¹ The Public Education Department rule governing the evaluation system applies to personnel in the 89 school districts, including those state-chartered charter schools that have not requested a waiver of evaluation standards. The rule does not apply to personnel in private schools, Bureau of Indian Education schools, or state agencies.

BACKGROUND

As background to the district and charter school testimony, LESC staff provided a historical and regulatory review of the teacher and principal evaluation system, including the unsuccessful legislation in 2011 and 2012, the executive order in 2011 that created the New Mexico Teacher Evaluation Council (NMTEACH), and the Governor's directive in 2012 that the Public Education Department (PED) formulate a new evaluation system through rule.

Adopted in August 2012 and amended in September 2013, staff testimony continued, the PED rule, *Teacher and School Leader Effectiveness*, implements an evaluation program for public school teachers and administrators called the Effectiveness Evaluation System (EES), sometimes also called the NMTEACH Effectiveness Evaluation System. Under this system, districts have the option of using the plan developed by PED or submitting a custom plan to PED for department approval.

In general, staff testimony explained, 50 percent of a teacher's evaluation is based on student achievement measures, whether derived from the state standards-based assessments or some other student assessment. Details vary, however, depending upon whether a teacher is a member of Group A, Group B, or Group C:

- Group A teachers teach subjects tested by the standards-based assessments in those grades in which the assessments are administered;
- Group B teachers teach either non-tested subjects or tested subjects in grades in which the standards-based assessments are not administered; and
- Group C teachers teach in grades K-2.

Staff testimony further explained the nature and use of student achievement growth data, one of the numerous components of the EES. Briefly, the rule requires that:

- school districts use a department-adopted student achievement growth measure or, with department permission, use a combination of PED-approved growth measures and, for non-tested subjects or grades, a PED-approved alternative measure;
- whenever possible, the performance rating include three years or more of student achievement growth data; and
- if a school district has not implemented appropriate course assessments or adopted a comparable measure, student achievement growth be measured by:
 - the growth achievement of the classroom teacher's students on state assessments;
 - the school's A through F letter grade for courses in which enrolled students do not take the state assessment, provided that a school district may assign instructional team student achievement growth to classroom teachers in lieu of using the school grade growth calculation; or
 - state-developed end-of-course examinations (EoCs) or other PED-recommended options (see "Graduation Requirements: Update," p. 30).

Upon request by the school district, the rule allows the rating for teachers who are assigned to courses not associated with state assessments to include achievement growth that is demonstrated on state assessments as a percentage of the overall evaluation. In addition, student achievement growth is measured through a value-added model (VAM), which, according to PED, accounts for the individual student's background by using three years' worth of data.² Those years of data produce a teacher's overall value-added score (VAS).

For the remainder of a teacher's evaluation, staff testimony continued:

- 25 percent is based on teaching observations by one of two types of observers – either “approved” or “certified” – using the NMTEACH rubric or protocol; and
- 25 percent is based on “multiple measures,” which vary, again, according to the group to which the teacher belongs.

Turning to the evaluation of administrators, LESC staff testified that the EES requires that every school leader have an annual effectiveness evaluation, which must be conducted by a qualified person approved by PED. For the administrator EES rating itself:

- 50 percent is based on the change in the school's letter grade;
- 25 percent is based on the school's multiple measures; and
- 25 percent is based on “documented fidelity observations of the school leader.”

According to the PED business rules, unlike teachers, administrators are categorized into two groups:

- Group A Principals/School Administrators are those who:
 - hold Level 3-B administrative licenses;
 - serve as principal/director, assistant principal, dean of students, or athletic directors; and
 - supervise and evaluate certified teachers.
- Group B School Administrators are district-level administrators, athletic directors, and deans of students who do not have Level 3-B licenses.

Staff testimony also reviewed the Summative Report form, which summarizes a teacher's progress through the EES to the end of the year. This report provides basic information about the final score a teacher received in each evaluation category – student achievement, observation, and multiple measures – the individual teacher's overall score, and the median score for comparable group and grade-level teachers. Two sections are completed by the evaluator: one to identify strengths and areas needing improvement and another for identifying next steps. The form also allows the application of “graduated considerations,” which are a means of adjusting

² VAM uses statistical models to predict student test performance, controlling for potential variables that could affect performance such as student, teacher, or school characteristics. The difference between the predicted and actual scores, if any, is assumed to be due to the performance of the teacher, rather than to the student's natural ability or socioeconomic circumstances.

the weight of student achievement for those teachers with fewer than three years of student achievement scores.³

LESC staff further testified that, prior to 2012, when the *Teacher and School Leader Effectiveness* rule was first codified by PED, the *Performance Evaluation System Requirements for Teachers* rule primarily governed the requirements for a highly objective uniform statewide standard of evaluation (HOUSSE) for teachers from early childhood through grade 12, which rated teachers as either meeting competency or not meeting competency. On this point, according to PED testimony during the 2013 interim:

- every aspect of the nine teacher competencies in HOUSSE can be found in the four domains in the NMTEACH observation protocol; and
- each effectiveness rating aligns with the *School Personnel Act* because teachers who receive EES ratings of exemplary, highly effective, or effective will meet competency and teachers who receive minimally effective or ineffective EES ratings will not meet competency.

Among other points, staff testimony:

- described Teachscape, the online evaluation software that, among other features, facilitates classroom observations;
- explained the calculation of points from parent and student surveys and records of teacher attendance; and
- reviewed the performance growth plan (PGP), which is required of any licensed school employee rated minimally effective or ineffective and which districts may require after a single observation or any other single component of the EES. During the 90-day term of the PGP, the employee must be observed and evaluated more than four times in writing; and failure to correct performance deficiencies may lead to termination.

Finally, LESL staff reviewed the number and percentage of teachers who received each of the five ratings in the EES during school year 2013-2014. Of the state's 21,800 teachers, 15,910, or 73 percent, were evaluated.⁴ Their ratings are listed below:

1. exemplary: 235 teachers, or 1.5 percent;
2. highly effective: 3,245 teachers, or 20.4 percent;
3. effective: 8,609 teachers, or 54.1 percent;
4. minimally effective: 3,288 teachers, or 20.7 percent; and
5. ineffective: 533 teachers, or 3.4 percent.

³ PED explains that, if a teacher has three years of VAS, then improved student achievement counts for the full 50 percent of the evaluation score; if the teacher has fewer than three years of VAS, then improved student achievement counts to a lesser degree and observations and multiple measures count for more. Depending upon the number of student assessments used and the number of years of a teacher's VAS, any one of nearly 40 calculations may be applied to determine the points for improved student achievement.

⁴ According to a media report, PED indicated that some teachers were not evaluated either because their districts missed a deadline for submitting evaluation materials or because they were librarians or instructional coaches, not classroom teachers.

DISTRICT AND CHARTER SCHOOL TESTIMONY

Altogether over the course of five interim meetings, the LESC heard testimony from 27 school districts, two charter schools, and two special state-supported schools.⁵ Detailed records of these schools' testimony are available in LESC staff reports and meeting minutes. For the sake of this report, however, the testimony can be summarized in broad terms of general perceptions and particular issues and concerns.

General Perceptions

School leaders generally did not dispute the value of reviewing and possibly improving the new teacher and principal evaluation system. For example, one school leader stated that the school board, administration, and staff believe in accountability and support any viable and understandable system of evaluation. On the other hand, however, another school leader questioned whether the EES is a better method than the HOUSSE. Others cautioned that the EES is becoming a high-stakes game in which teachers have little control over the criteria used to evaluate them; that the implementation of the system is being rushed with insufficient stakeholder input; and that teachers, administrators, students, and parents are being overwhelmed by the simultaneous implementation of the EES together with the Common Core State Standards and the Partnership for Assessment of Readiness for College and Careers assessments (see pp. 26 and 27). In addition, one school official cited the EES as the reason for an increase in the number of teachers resigning or retiring.

The observation component of the EES received generally favorable reviews, with several school leaders stating that, despite the time-consuming and sometimes overwhelming nature of the process, this component has provided focus on best practices for both teachers and principals, in part by providing immediate feedback and by making the observations more fair, equitable, evidence-based, and uniform. Given these benefits, several school leaders suggested that the observation portion of the evaluation system be given a heavier weighting.

Particular Issues and Concerns

The particular issues and concerns may be categorized in terms of evaluation contents, implementation, and clarity. Regarding evaluation contents, some school leaders noted such issues as missing student and parent surveys and security issues with the online format of these surveys. Others cited data concerns such as missing end-of-course grades or standards-based assessment scores, incorrect teacher licensure levels, teachers' being scored based on data from classes they did not teach, and teachers' receiving credit for courses they did not teach. Other issues with the contents of the evaluation included:

⁵ As special state-supported schools, the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI) are exempt from the PED evaluation process; therefore, their data were not included in the compilation by LESC staff. Given the unique nature of their respective populations, these two schools have developed their own teacher and principal evaluation systems. According to school officials' testimony, NMSBVI intends to implement a value-added matrix; and staff from the NMSD have attended trainings on the NMTEACH observation rubric and incorporated features of that rubric into the school's evaluation system.

- incorrect coding of teachers in terms of groups A, B, or C;
- administrators' receiving evaluations for teachers no longer employed in their districts;
- PED's not including teacher attendance data in some of the evaluations, creating conflicts with local bargaining agreements; and
- the likelihood of a misalignment between the NMTEACH rubric and the needs of special education teachers who must work through a prescribed curriculum.⁶

In addition to the issues noted above, school officials' testimony identified a number of other concerns with the implementation of the EES, among them:

- administrators received little or no training prior to the implementation of the new system;
- limited Internet capability in some districts made login to Teachscape difficult;
- because districts did not receive the summative reports until late in the year, administrators were unable to validate the data before teachers left for the summer; and
- communication with PED was sometimes neither clear nor timely, particularly with regard to changing deadlines.

Finally, testimony from school districts and charter schools noted a lack of clarity with regard to a number of aspects of the EES, among them:

- understanding and then explaining the concepts of the VAM and the VAS;
- the application of graduated considerations;
- direction for which personnel should be placed on a PGP;
- the misconception of some districts that the first year of the teacher evaluation system was intended to be a hold harmless or baseline year;
- the reassignment of student achievement data points to teachers' students from the previous year;
- districts' lack of access to specific calculations and procedures used to populate data in the summative evaluation reports, limiting their ability to explain and substantiate ratings;
- inconsistent application of the multiple measures component of the evaluation; and
- districts' continuing difficulty utilizing the Teachscape system for its intended purpose.

On the point of clarity, some school officials testified that, when they had the opportunity to meet with PED, certain points were clarified.

PUBLIC EDUCATION DEPARTMENT RESPONSE

During the November meeting, the Secretary-designate of Public Education provided the PED response to the issues and concerns that districts and charter schools had raised. This testimony began with a description of the impact upon students of effective and ineffective teachers. It also explained how the NMTEACH protocol was designed ultimately to improve student outcomes

⁶ According to PED, special education teachers, whether in a self-contained classroom or inclusion classroom, are grouped according to the students they serve, whether Group A or Group B. However, teachers of severely or profoundly disabled students are exempt from year one of the EES.

through certain initiatives targeted at teachers, and it illustrated the differences in teacher ratings under the EES versus the previous evaluation system.

The Secretary-designate then enumerated several areas for improvement in the implementation of the EES that will rely on PED/district partnerships:

- “incomplete” or “inaccurate” data;
- understanding teacher attendance as a component of the system;
- understanding the VAS;
- PGPs and baseline years;
- increased weighting of NMTEACH observations; and
- adapted protocol for special education teachers.

The Secretary-designate proposed a number of solutions to these issues, among them:

- establishing a NMTEACH liaison for each district and charter school, as well as providing ongoing training on roster verification, VAS, and the summative reports;
- clarifying teacher attendance reporting requirements regarding the federal *Family Medical Leave Act*, bereavement leave, and other kinds of leave;
- partnering with Las Cruces Public Schools and Hobbs Municipal Schools on training modules to help school personnel better understand VAS and VAM;
- providing more flexibility regarding PGPs for teachers who were rated as minimally effective; and
- piloting an aligned NMTEACH rubric for teachers teaching in special education programs in Albuquerque Public Schools.

Stating that PED has been working closely with districts and charter schools on ways to improve the NMTEACH process, the Secretary-designate also reported a number of positive comments from the field, among them that:

- the EES is better than the previous system;
- principals are more involved and communicating better with teachers;
- there is additional accountability; and
- the EES improves instruction.

Finally, in response to a number of questions from committee members, the Secretary-designate made the following additional points, among others:

- the components of principal evaluations are based on school growth measures, how well the principal implemented observations in a timely fashion, and the HOUSSE competencies;
- if a teacher has a discrepancy in the observation aspect of the evaluation or in VAM data, there will be a second review of that particular summative report; and
- teachers rated as ineffective are not allowed to submit a professional development dossier for licensure advancement.

REVIEW OF DATA QUALITY AND METHODS FOR SCHOOL GRADES AND TEACHER EVALUATIONS

A different perspective on the evaluation of teachers, as well as the grading of schools, came from testimony by a member of the Coalition for Excellence in Science and Math Education (CESE).⁷ First addressing the *A-B-C-D-F Schools Rating Act*, this testimony noted that the act helps New Mexico schools in two ways: by providing immediate relief from requirements of the federal *No Child Left Behind Act of 2001* that all students be proficient in reading and math content areas by 2014; and by setting new goals for improvement through student growth targets. However, according to this testimony, the methods of grading the schools, which employ value-added modeling (see p. 4), appear to be too complex to show a path to improvement, without which schools are unlikely to show real improvement. As an alternative, the CESE testimony suggested another method that includes (1) mapping which schools significantly exceeded or significantly underperformed relative to their predicted performance; and (2) utilizing observation teams to visit those schools identified for best practices or areas for improvement.

Turning to the state's teacher and principal evaluation system, the CESE testimony identified several issues with the requirement that 50 percent of a teacher's evaluation be based on his or her students' performance growth, among them:

- student growth can be volatile with no distinct trend;
- an average teacher's ranking is determined primarily by the previous two teachers' performance;
- standardized test score data indicate certain trends through grade levels that are likely not attributable to teacher performance, for instance a consistent upward trend between sixth, seventh, and eighth grade; and
- regarding the use of the VAM, the American Statistical Association suggests that, aside from teachers accounting for only between 1.0 percent and 14 percent of the variability in test scores, using VAM scores to rank teachers can have unintended consequences that reduce quality.

The CESE testimony concluded with the statement that the best way to evaluate any professional is through rigorous observation, not, in the case of teachers, through reliance on a VAM measure of student performance growth.

⁷ The CESE describes itself as a nonprofit, non-partisan 501(c)(3) charitable corporation, whose members include national laboratory personnel and retirees, industrial scientists, educators, parents, college professors, and others. CESE has analyzed New Mexico public education data and policy issues for more than 15 years, with a primary focus on helping improve New Mexico schools using data unique to the state.

LESC CHARTER SCHOOLS SUBCOMMITTEE

INTRODUCTION

Since the enactment of the original legislation in 1993, the LESC has maintained an interest in charter schools, with hearings during every interim, frequent participation in work groups, and committee-endorsed legislation in virtually every session. During the 2014 interim, this interest led to the designation of charter schools as a focus area for the 2014 interim and to the creation of a subcommittee on charter schools, which heard extensive testimony on a range of issues and concerns, each of them summarized below. The particular impetus for the creation of this subcommittee was a staff presentation at the first interim meeting, in April.

In response to some legislators' questions regarding charter school boundaries as they pertain to the school's contract and charter, LESC staff reviewed the legal and procedural aspects of charter school expansion. Central to this testimony was a provision in the *Charter Schools Act* that allows a charter school, with the approval of the chartering authority, to "maintain separate facilities at two or more locations *within the same school district. . .*" (emphasis added). Given this provision, staff testimony continued, expansion of charter school facilities appears to be permissible only within the same school district.

Committee discussion of this topic focused not only on the potential of cross-district expansion of charter schools, but also on a potential review of the *Charter Schools Act* as a whole, with an eye toward correcting certain internal and external inconsistencies and toward addressing a number of other issues that had come to the committee's attention in the past. To examine these issues, the committee formed the LESC Charter Schools Subcommittee.

WORK OF THE LESC CHARTER SCHOOLS SUBCOMMITTEE

FUNDAMENTALS

Comprising five senators and six representatives from the full committee, the LESC Charter Schools Subcommittee met each month from June to November, usually after the conclusion of that month's interim LESC meeting. At the organizational meeting in June, the Chair of the LESC appointed a chair and vice chair of the subcommittee, and the members heard background testimony from LESC staff about the *Charter Schools Act* and the *Public School Finance Act*. The major component of staff testimony was a matrix of statutory provisions that may need further clarity or that may involve policy considerations. These provisions relate to:

- definitions of terms;
- audits and component units;
- the appeals process;
- contracts with third parties for management and other services;
- exemptions and waivers from requirements of the *Public School Code*;
- expansion of charter schools;
- governing boards;
- size-adjustment program units;

- transportation funding; and
- virtual charter schools.

To facilitate the subcommittee’s deliberations, staff provided detailed statutory excerpts and citations for each of these topics, together with illustrations of statutory inconsistencies or other drafting issues and ramifications of federal law where applicable.

Also at the June meeting, subcommittee members identified several priorities for review and requested information on particular topics. As the interim progressed, these priorities, requests, and other points of discussion or inquiry determined the issues that the LESC Charter Schools Subcommittee examined.

In general, subcommittee members realized that certain ambiguities or inconsistencies in law result from the inconsistent and sometimes contradictory definitions of terms, whether explicit or implicit. In some cases, the terms are unique to certain contexts, like “management,” “material violation,” “nondiscretionary waiver,” and “minimum educational standards.” In other cases, however, they are basic terms used throughout the *Public School Code*, among them: “chartering authority,” “local school board,” “public education commission,” “charter schools division,” “state-chartered charter school,” “governing body of charter schools,” and “school district.” In some contexts, these terms have distinct meanings; in other contexts, however, some of them seem to be used interchangeably.

Similarly, subcommittee members found that not just the *Charter Schools Act* but also a number of other acts within the *Public School Code* – among them the *Public School Finance Act*, the *Fine Arts Education Act*, and the *Bilingual Multicultural Education Act* – blur the distinction between locally chartered and state-chartered charter schools or between charter schools and school districts when prescribing duties or responsibilities of charter schools. Confusion of terms seems especially problematic in the *Public School Lease Purchase Act*, whose provisions often rely on discreet geographic boundaries – those of school districts, particularly – that do not apply to charter schools, whether locally chartered or state-chartered. LESC staff testimony suggested that most of these problems result from piecemeal amendment to statute and inconsistent application of the terms within programmatic statutes. Resolving these problems became a recurrent theme as the subcommittee members deliberated over the following topics:

- audits;
- governance;
- transportation;
- fiscal issues;
- the role of the Public Education Commission (PEC); and
- virtual charter schools.

ISSUES THAT THE SUBCOMMITTEE EXAMINED

Audits

In response to a specific subcommittee request, the Chief of Staff, Office of the State Auditor (OSA), testified that, pursuant to several statutory, regulatory, and administrative provisions, all charter schools are subject to an annual audit. In addition, the audit rule requires that an independent public accountant evaluate whether a charter school is to be presented as a component unit – that is, a separate, financially accountable legal entity – of its chartering authority. Moreover, the Governmental Accounting Standards Board (GASB) requires that this determination be made on a case-by-case basis, using criteria related to financial accountability and fiscal dependency. GASB standards require that a financial audit cover the entire “financial reporting entity,” which includes the “primary government” (such as a school district) and organizations for which the primary government is financially accountable (such as a charter school). This testimony further explained that component units must be included with the audited financial statements of their authorizers.

In response to this testimony, subcommittee members expressed concern over the lack of uniformity regarding component unit status, discussed the responsibility and authority of the authorizers, and considered separating charter school audits from those of their authorizers.

Later in the interim, in response to another subcommittee request, the OSA surveyed several other states to find examples of charter school oversight and component unit reporting.⁸ In brief, this survey revealed considerable variety in the practices among other states, depending upon such factors as the type of charter school, the statutory provisions for oversight, and the elements of the charter school contract. The OSA further advised the subcommittee to regard such factors as the availability of funding and other resources and provisions for oversight of charter school compliance when considering whether to require stand-alone audit reports for charter schools.

Finally, in related testimony, LESC staff summarized the risk review by the OSA of the Southwest Secondary Learning Center (SSLC) and the Southwest Aeronautics, Mathematics and Science Academy (SAMS), two state-chartered charter schools in Albuquerque. Among other points, as detailed in a letter from the OSA in August 2014, this examination noted:

- apparent violations of the *Procurement Code*;
- conflicts of interest arising from the schools’ head administrator co-owning the company, Southwest Educational Consultants, LLC, that leased both the aircraft and a building to the schools;
- lack of internal controls for the flight programs, including the inability to verify whether costs charged by contractors were reasonable and necessary;
- questionable governance arrangements in which the head administrator influenced the appointment of members of the governing council, who evaluate the head administrator; and
- improper or undocumented reimbursements for travel.

⁸ The OSA posed a number of questions to the following states: Arizona, Hawaii, Michigan, Missouri, Nevada, Ohio, Oklahoma, Oregon, and Utah.

In response to these issues, subcommittee members considered certain policies, such as:

- ensuring that a charter authorizer has access to annual and special audit reports;
- providing the PEC with staff to conduct random internal audits of state-chartered charter schools (see “The Role of the Public Education Commission,” p. 16);
- amending the *Charter Schools Act* to require public disclosure of conflicts of interest as required in the *Procurement Code*; and
- explicitly allowing financial sanctions against charter schools for unsatisfactory performance reviews.

Governance

The subcommittee heard a variety of testimony about the governance of charter schools. Focusing on the role of the authorizer, a representative of the National Association of Charter School Authorizers (NACSA) identified three core principles of charter authorizing:

1. maintain high standards for schools;
2. uphold school autonomy; and
3. protect student and public interests.

The NACSA testimony also emphasized that authorizers are responsible for safeguarding:

- the rights of all students to equal access to the schools of their choice;
- the public interest in ensuring that publicly funded programs are accountable, transparent, well-governed, and effectively administered; and
- the autonomy of charter school operators.

Another dimension to the governance testimony was a review by an assistant Attorney General (AG) and a representative of Albuquerque Public Schools (APS) of the charter school performance frameworks for state-chartered charter schools and locally chartered charter schools, respectively:

- The AG testimony outlined the charter school performance framework that the PEC uses specifically with state-chartered charter schools. The provisions referring to governance council requirements, as well as holding governing boards accountable, allow the PEC to rate the board as meeting the standard, working to meet the standard, or falling below the standard.
- The APS testimony indicated that, while APS and PEC performance frameworks conform to the framework provisions in current law, differences may occur because of the district’s role as an authorizer of locally chartered charter schools. For example, the financial performance framework for APS-authorized charter schools includes certain information relating to audit findings over a four-year period because locally authorized charter schools are component units of the district (see “Audits,” p. 12).

Finally, LESC staff reviewed charter school governance models in other states. According to this testimony, most charter schools today use one of three models of charter school governance boards:

- a school committee or council composed of parents, teachers, administrators, and others;
- a board of directors with officers, by-laws, and delegation of management to a principal, chief administrator/director, or head of a school; and
- owner/operator, either nonprofit foundation or for-profit, with or without a board or committee.

Transportation

The subcommittee's examination of transportation issues with charter schools began with an LESC staff review of statutory provisions in the *Public School Finance Act* and the *Charter Schools Act*, along with provisions in rule of the Public Education Department (PED). Altogether, this testimony explained, provisions in current law and rule require:

- locally chartered charter schools to negotiate with the chartering district for transportation by school bus or per capita feeder agreement, although the routes must stay within the school district's boundaries and although the "walk zones" applicable to traditional schools do not apply to charter schools;
- the district to develop a separate transportation budget and allocation for locally chartered charter schools;
- the district to collect and submit required reporting for the locally chartered charter school's transportation;
- PED to calculate transportation allocations for each state-chartered charter school;
- the allocations to be based on the tentative transportation budget of the state-chartered school for the current fiscal year; and
- periodic installment payments to state-chartered charter schools to be based on the allocations certified by the state transportation director.

Of particular note, staff testimony continued, are the transportation needs and circumstances of state-chartered charter schools. For one thing, an interim subcommittee on public school transportation during the 2012 and 2013 interims heard testimony from PED that state-chartered charter schools were receiving more school transportation funding formula allocations than they needed to provide to-and-from transportation services for students. For another thing, the *Public School Finance Act* does not specify whether state-chartered charter schools are to receive a transportation funding formula distribution or be eligible to receive such funding; and there are no provisions in law that relate to transportation boundaries or distances for state-chartered charter schools. With these points in mind, LESC staff suggested that the subcommittee may wish to consider whether:

- the current mechanism for allocating transportation funding to state-chartered charter schools is adequate;
- the eligibility criteria for charter schools to receive a transportation allocation needs further clarification; and
- geographic boundaries or distances should be established for charter school transportation services.

Staff testimony also suggested that the subcommittee consider including state-chartered charter schools in the negotiation process with local school districts and incorporating into law a provision in PED rule that allows charter schools to elect not to provide transportation services.

Fiscal Issues

Two Percent Administrative Support Offset

The *Charter Schools Act* requires that each charter school receive “not less than ninety-eight percent” of its school-generated program cost. The act further allows the school district (in the case of a locally chartered charter school) and the Charter Schools Division (CSD) in PED (in the case of a state-chartered charter school) to “withhold and use two percent” of the school-generated program cost for administrative support of the charter school. The *Charter Schools Act* also requires that each charter school contract include a detailed description of how the chartering authority will use the withheld 2.0 percent. Staff testimony highlighted two potential conflicts within these provisions:

- whereas the phrase “not less than ninety-eight percent” suggests a flexible amount, the phrase “withhold and use two percent” suggests a fixed, mandatory amount; and
- although the PEC is the chartering authority for state-chartered charter schools, the withholding goes to the CSD, not the chartering authority.⁹

Staff testimony on this topic concluded with a review of the final budgeted administrative withholding from each charter school for school year 2013-2014.

Small School Size Adjustment

The other fiscal issue that the subcommittee examined was charter schools’ use of the small school size adjustment. A long-standing feature of the public school funding formula, the school size adjustment was intended to assist small schools whose membership-generated funding is too limited to cover necessary expenses. Ineligible for this adjustment, as provided in the *Public School Finance Act*, are special programs, including vocational and alternative education. After explaining the application and effects of the small school size adjustment, LESC staff testified that 77 of the 95 charter schools in operation generated:

- approximately 7,383 of the 21,145 total statewide school size adjustment units;
- \$28.1 million in funds through school size adjustment program units, or 34.9 percent of the total \$80.7 million generated under size adjustment program units; and
- after adjusting for other provisions in law that allow for a 2.0 percent reduction in charter school State Equalization Guarantee (SEG) distributions, the \$28.1 million generated represents 16.86 percent of the total \$167.1 million in charter schools’ SEG distributions.

⁹ Another version of this provision appears in the *Public School Finance Act*, which defines the State Equalization Guarantee for state-chartered charter schools as the difference between the school-generated program cost and the withheld 2.0 percent; and it provides that the 2.0 percent go to PED, without reference to the CSD.

Staff testimony also provided a chronology of recent policy discussions by the LESC, the Legislative Finance Committee, and the Government Restructuring Task Force that (1) raised the question whether charter schools should be considered special programs that are ineligible for the small school size adjustment; and (2) suggested alternative means of compensating for small school or district size.

Finally, in related testimony, the Chief Financial Officer, APS, reviewed the services that the district provides its locally chartered schools and summarized a district study related to small school size adjustment funding for charter schools and its FY 14 impact on the district. Among other points, this study found that, with their growth rate of four to five new schools and their enrollment increase of 800 to 900 students per year, Albuquerque-based charter schools receive approximately \$23 million in size and growth adjustments, or approximately \$2,000 more per student than traditional district schools. The APS testimony also outlined several options that the district is considering, among them working to have the small school size adjustment for charter schools changed.

The Role of the Public Education Commission

The Chair of the PEC reported on the commission's work and timeline of its activities, including performance contract negotiations with new schools that have completed the planning year, community input hearings held around the state on new charter applications, and the regular meetings in September of each year to approve or deny new charter applications. The PEC testimony also addressed the commission's proposed budget request based on the 2.0 percent administrative set-aside that PED receives for state-chartered charter schools.

In their discussion of the PEC, subcommittee members expressed renewed interest in HB 392a (2013), *Public Education Commission as Independent*, which the Legislature passed but the Governor vetoed. Among other provisions, the legislation would have:

- removed the PEC's administrative attachment to PED;
- permitted the PEC to employ staff as needed to assist the commission in the execution of its duties, subject to appropriation by the Legislature;
- stipulated that the absence of a ruling on a charter school application constitutes a final denial of the charter, which an applicant may appeal; and
- provided the PEC with rulemaking authority.

Subcommittee members took particular note of the Governor's objections to the bill. As delineated in the veto message, the Governor was concerned that, by creating an independent PEC and removing the Secretary of Public Education from the chartering process, the bill:

- undermined the existing separation of powers and the internal system of checks and balances;
- prohibited the secretary from executing the secretary's managerial and administrative duties pursuant to law; and
- permitted the PEC to abdicate the duty to approve or deny a charter school application by permitting a type of "pocket veto" of applications in which the absence of a ruling constitutes a final decision denying the charter application.

Virtual Charter Schools

Background

Even though New Mexico has been engaged for a number of years in online or Internet-based education, often known as virtual schooling,¹⁰ the full-time virtual school is a recent feature in the charter school landscape.¹¹ To provide some background to the topic, testimony began with a staff review of LESC reports during the 2012 and 2013 interims. Serving as an introduction to the topic for the LESC, the July 2012 staff report noted the recent opening of the New Mexico Virtual Academy (NMVA) in Farmington, using a curriculum and other services provided by the for-profit company K12 Inc. (K12); and the then-imminent opening of New Mexico Connections Academy (NMCA) in Santa Fe.¹² This report, staff testimony continued, also focused on a number of issues fundamental to the consideration of virtual charter schools in the state:

- definitions of virtual schools;
- potential student-populations served by virtual education;
- delivery of the program;
- costs associated with virtual schools;
- recruitment and enrollment;
- assessments, accountability, and determining the authenticity of student work; and
- the role of the chartering authority, including a number of particular areas that chartering bodies should consider in reviewing applications for virtual charter schools.

The 2012 LESC staff report also discussed a number of legal issues, such as:

- the definition of the term “school” in New Mexico law, with its emphasis upon a physical location;
- statutory prohibitions regarding potential parties to a contract for management of charter schools (see “Opinion of the New Mexico Attorney General,” below); and
- class action lawsuits alleging securities violations against K12.¹³

Staff testimony then summarized the July 2013 interim report, which included a presentation by representatives of K12 and the NMVA. Among other points, this testimony noted that 75 percent of the NMVA’s students reside in seven counties, including 28 percent who reside in Bernalillo County. Committee discussion again focused on the management question first raised in 2012, but it also addressed other issues, among them how state funding follows a student from

¹⁰ See, for example, the creation of Innovative Digital Education and Learning (IDEAL-NM) in 2005 and the enactment of the *Statewide Cyber Academy Act* in 2007.

¹¹ Although definitions vary depending upon the source, the National Association of Charter School Authorizers defines a virtual charter school as “an educational organization that offers K-12 courses through Internet-based methods, with time and/or distance separating the teacher and learner. Students enroll to earn credit toward grade-level advancement and/or graduation.”

¹² During the September 11 meeting of the subcommittee, the NMCA presented a report about the school’s offerings, initiatives, and programs, including student demographics, proficiency levels, and graduation rates.

¹³ Early in 2012, a class action lawsuit against K12 alleged that certain of its officers had concealed material information and made false or misleading statements about K12’s business and financial condition, among other allegations. The parties settled the lawsuit in March 2013. The settlement included a payment of \$6.75 million to company investors and an agreement to dismiss the claims about K12’s academics and quality.

his or her original district to a virtual charter school, and vice versa; and how virtual charters are to be included in the teacher and school leader evaluation program, particularly with regard to the observation of teachers (see “Teacher and Principal Evaluation,” p. 2).

Opinion of the Attorney General of New Mexico

Testimony by an assistant AG reviewed an AG opinion relating to the services agreement between the NMVA and K12.¹⁴ In response to this question – does the Educational Products and Services Agreement between NMVA and K12 violate the *Charter Schools Act*, which prohibits the management of a charter school by a for-profit entity? – the answer was, yes, the administrative and managerial involvement by K12, a for-profit entity, constitutes “management” under provisions of the *Charter Schools Act*. In fact, the opinion continues, the purpose of the act’s prohibition against for-profit management in charter schools was to prevent the kind of association created between NMVA and K12 – an affiliation with a for-profit organization that places a school in a position of dependency regarding issues of regular operation and control.

This testimony further explained that the AG staff analysis of this question focused on the issue of whether K12 services to NMVA constitute “management of the charter school” under the act. In the absence of a statutory definition of the phrase “management of the charter school,” the opinion relied on the rules of statutory construction and the “plain language” of the statute.

Cyber/Virtual School Funding

To apprise the subcommittee of funding methods and issues related to virtual charter schools, staff testimony provided an overview of funding practices and provisions in several other states – Arizona, Colorado, Florida, Georgia, Ohio, and Pennsylvania – and reviewed the findings of a recently published report by the Education Commission of the States (ECS), which addresses four primary areas of concern that policymakers should consider when devising such funding plans and which identifies particular circumstances in each case:

1. student enrollment;
2. size of schools;
3. student-counts for funding; and
4. costs of providing educational services.

Regarding the fourth area of concern, the ECS report states that, while many agree that the cost of delivering an education through an entirely online school is less than that of traditional schools, thus far there is little research indicating the exact cost difference between the two. Another issue is that some states are hesitant to fund virtual schools at the same level as traditional public schools partly because of the involvement of private, for-profit management companies in online charter schools.

¹⁴ Dated April 1, 2014, this opinion (No. 14-03), issued at the request of an individual legislator, also addressed two other questions: did NMVA violate certain requirements in the state’s *Procurement Code* when it awarded a sole-source contract to K12?; and did the Secretary-designate of Public Education violate state law or the purpose of the bonds when she did not proportionately distribute \$2.0 million in proceeds for books and instructional materials among all public schools in the state? To each of these questions, the AG answered, no.

Looking at New Mexico in particular, additional staff testimony explained that the two virtual charter schools in the state generate less program cost through the public school funding formula than other charter schools and traditional public schools. The difference in funding levels may be attributable to:

- lower Training & Experience values than the statewide average (see p. 41);
- lower special education rates than other charter schools or the statewide average; or
- below-average add-on units such as size adjustment and enrollment growth.

Recommendations

During the November meeting of the full LESC, the Chair and Vice Chair of the LESC Charter Schools Subcommittee reviewed the subcommittee's work over the course of the interim and presented the subcommittee's recommendations for consideration of the full committee. The Vice Chair noted that:

- as is the case with traditional public schools, there are charter schools that perform well and those that might do better;
- authorizers do possess the power to revoke or decline to renew charters; and
- the law has failed to keep pace with the proliferation of charter schools in New Mexico.

The Chair added that, while the subcommittee did take an interest in virtual charter schools, members did not find a pressing need to propose immediate changes to provisions in law.

After reviewing the subcommittee's recommendations and discussing the issues they raised, the full LESC adopted all of the subcommittee's recommendations except for one: a bill amending the small school size provisions, which had certain unresolved drafting problems.

See recommendations 1-6.

OTHER ISSUES STUDIED BY THE LESC

EARLY CHILDHOOD EDUCATION

K-3 PLUS: UPDATE

Enacted in 2007, K-3 Plus began as a six-year pilot program that extended the school year in kindergarten through grade 3 by at least 25 instructional days. The program is intended to demonstrate the academic and social benefits of increased classroom time in kindergarten and the early grades. In 2012, the K-3 Plus provisions in the *Public School Code* were amended to convert the program from a pilot project to an established Public Education Department (PED) program. Since 2011, the program has been evaluated by the Start Smart K-3 Plus Project at Utah State University (USU), using a randomized, controlled trial in which students are randomly assigned to an intervention group or to a control group in order to eliminate selection bias. Initially, the study had followed 1,700 students in four districts, but the withdrawal of one district in 2011 reduced the number of kindergarten student participants.

During the July 2014 meeting, staff testimony provided:

- an overview of previous Start Smart K-3 Plus Project findings;
- FY 15 legislative appropriations for K-3 Plus; and
- the status of recent proposed rulemaking for K-3 Plus.

LESC staff further summarized USU evaluator testimony from December 2012. With a caveat that some of the data are preliminary, the USU evaluator stated that strong and statistically significant outcome effects of the Start Smart K-3 Plus Project were found in broad reading, broad writing, basic math, and expressive vocabulary. In terms of kindergarten readiness, the evaluator noted that participants in the intervention group had received higher percentile ranks than those in the control group. The USU testimony in 2012 also identified several lessons that the research staff had learned, among them that:

- early notification of families helps because in the second year the sample size was doubled by sending information to families sooner; and
- student participation requires student and family interest and availability, schools that offer the program, and resources to run the program.

Turning to the FY 15 legislative appropriations for K-3 Plus, LESC staff testified that the program is currently funded as an appropriation to the statutorily created K-3 Plus Fund, administered by PED. The *General Appropriations Act of 2014* included:

- \$21.28 million appropriated for the K-3 Plus program; and
- language requiring that PED use the final unit value set for school year 2013-2014 as the basis for funding 2014 K-3 Plus programs in June, July, and August.

Staff testimony emphasized that statute requires K-3 Plus programs to be funded at no less than 30 percent of the unit value per student based on enrollment at each individual school program

on the 15th instructional day of the program. Based on a final unit value for school year 2013-2014 of \$3,817.55, each participating student would generate at least \$1,145.26.

The final topic of staff testimony was the status of proposed rulemaking for K-3 Plus, which the LESC had learned of during the April 2014 meeting. At that time, LESC staff noted a number of potential drafting issues in the rules as proposed by PED – inconsistent references to the length of the school year, a missing section, lack of clarity regarding which assessments are to be administered when, and lack of clarity regarding whether the final funding is to be based on the initial unit value or the final one, among others – and notified PED of these problems.¹⁵

Noting that the results remain preliminary for several reasons, including incomplete attendance data, the USU evaluator testified during the 2014 interim that, in terms of readiness for kindergarten, the K-3 Plus program has shown statistically significant increases for:

- expressive vocabulary by approximately 5.0 percentile points;
- letter-word identification by approximately 11 percentile points;
- applied problems by approximately 4.0 percentile points; and
- basic writing by approximately 12 percentile points.

For beginning-of-first-grade effects, the evaluator noted statistically significant increases for:

- expressive vocabulary by approximately 4.0 percentile points;
- letter-word identification by approximately 12 percentile points;
- applied mathematical problems by approximately 6.0 percentile points; and
- basic writing by approximately 11 percentile points.

The evaluator further testified that the emerging picture is one of evidence that K-3 Plus boosts student achievement in a variety of areas in kindergarten and grade 1 at the beginning of the school year; however, if the study ended now, it would still be unknown whether:

- the program is as effective in grades 2 and 3 as in kindergarten and grade 1;
- end-of-year comparisons show the same effects as these beginning-of-year results;
- the effectiveness of K-3 Plus varies across students of certain types and settings of certain types; and
- complete attendance data would yield different results.

Finally, looking toward the future, the USU evaluator testified that the original funding through a grant from the federal Investing in Innovation Fund did not include funding for the final assessment of the last cohort because it would occur after the end of the grant period. While the program has applied for an extension of the grant funds, the evaluator suggested that state-level funding may be necessary if that application is unsuccessful.

¹⁵ The rule as adopted October 30, 2014 addressed most of these drafting concerns and corrected any problems related to them.

Committee discussion of the Kindergarten Plus program focused on a number of issues, one of them the vacant position of K-3 Plus Coordinator at PED. On this point, the USU evaluator testified that filling the position soon would be useful; and the LESC requested an update from PED regarding the status of that position.¹⁶

RACE TO THE TOP EARLY LEARNING CHALLENGE GRANT: IMPLEMENTATION UPDATE

The federal Race to the Top – Early Learning Challenge (RTT-ELC) Grant is intended to help states improve the quality of early learning and development programs and services and to close the achievement gap for children with high needs. During the 2014 interim, the LESC, in a joint meeting with the Legislative Finance Committee, heard testimony from several state agency officials about the implementation of this grant in New Mexico.

To begin, the Deputy Secretary for Policy and Program, Public Education Department (PED), testified that, in 2012, New Mexico was awarded a \$37.5 million, four-year grant during the second phase of the federal RTT-ELC program, with PED as the lead agency and the Children, Youth and Families Department (CYFD) and the Department of Health as participating agencies. The purpose of the grant, this testimony continued, is to help states focus on early learning and development systems for children ages birth through five and build unified approaches to supporting children and families.

Continuing her testimony, the Deputy Secretary identified the key projects included in the grant:

- develop and implement FOCUS, New Mexico’s newly revised Tiered Quality Rating and Improvement System (TQRIS);
- establish early childhood investment zones by identifying and prioritizing communities where children are at greatest risk;
- support early childhood educators with scholarships and additional training opportunities;
- use the kindergarten rubrics in the New Mexico Early Learning Guidelines as criteria for a Kindergarten Readiness Assessment (KRA) to be used in all New Mexico public schools; and
- build a unified early learning data system.

Addressing the KRA in particular, the Deputy Secretary added that, through a pilot implementation in September 2014 and statewide implementation in the fall of 2015, this assessment will evaluate several essential domains of a child’s school readiness, among them language and literacy development and cognition and general knowledge. The Deputy Secretary also listed the goals of the early learning data system, which include providing educators and families with information to support children’s success and to measure the quality and improvement of New Mexico’s early childhood learning system.

¹⁶ Shortly after the meeting, PED replied that the recruitment had closed on July 11, 2014. According to PED, the position has been filled.

The Director of Early Childhood Services, CYFD, identified the elements of FOCUS and testified that the project comprises 66 percent, or \$24.6 million, of the RTT-ELC grant budget. In the first year of the grant, the Director further testified, CYFD developed and published the elements and program guidelines; however, as FOCUS remains a pilot until 2017, the elements and guidelines are continually being evaluated and revised. Testimony by the Deputy Director of Programs, Early Childhood Services, CYFD, added that the state's early childhood development system is transitioning from workforce support to a care-oriented system focused on early development and education.

The Bureau Chief, Office of Child Development, CYFD, provided testimony explaining how FOCUS will work within CYFD and across other agencies and noted that CYFD is working with PED to produce a single set of developmentally appropriate standards. This testimony further noted that in 2013 CYFD conducted a needs assessment that included socio-economic risks to identify investment zones statewide. By ranking the assessment data, the agency identified the counties with the highest risks and designated them as early childhood investment zones, which include 35 school districts. Currently, this testimony concluded, CYFD has invited five communities to participate in the creation of a plan for an early learning system for these investment zones.

NATIONAL TRENDS IN EARLY LITERACY INTERVENTION

Also in the joint meeting with the Legislative Finance Committee in August, the LESC heard testimony on national trends in early literacy interventions by a professor of education in the Harvard Graduate School of Education and by a policy analyst with the Education Commission of the States (ECS).

Describing her focus on children from minority, multi-lingual, and socio-economically disadvantaged backgrounds, the professor compared New Mexico's demographics with those of the rest of the country:

- 33 percent of children ages birth through five in New Mexico live in poverty, compared to 26 percent of US children among the same age group; and
- 22 percent of children and youth in New Mexico are children of immigrants, compared to 24 percent in the United States.

A majority of these children, this testimony emphasized, are generally not fluent in English, creating an obstacle to their proficiency in literacy.

Continuing her testimony, the professor explained that reading requires two main skills – decoding and word base meaning – even though the two are often misconstrued as one skill. As students progress through each grade, text levels become more challenging; and even though students may be able to decode, they may not have the sufficient meaning-based skills to comprehend a text.

Finally, among other points, this testimony:

- noted that it is equally important to create partnerships with adults to increase their capacity to assess and support children's language and literacy development; and
- emphasized the need to support good teaching with high-quality and comprehensive curricula that promote language development.

Beginning with the value of assessments of reading skills in the early grades, the ECS testimony reported that policies nationwide indicate that:

- 33 states (New Mexico among them) and the District of Columbia assess reading proficiency in at least one grade, between pre-K and grade 3;
- 19 of those states assess in grades K-3;
- three states begin assessing in pre-K;
- nine states do not assess until grade 3, which is considered too late for remediation;
- 30 states and the District of Columbia offer some type of intervention; and
- 16 states and the District of Columbia require third-grade retention.

In New Mexico, this testimony continued:

- all K-3 students are assessed;
- continuous assessments for monitoring student progress are in place;
- an individualized reading plan is created for those students who are not reading on grade level and do not meet reading proficiency standards;
- extra time in the student's day or year is in place for the implementation of reading programs; and
- professional development is provided to teachers.

The ECS testimony also identified the components of a strong reading policy:

- early identification/assessment of pre-K/kindergarten;
- early intervention outside of normal school hours;
- highly qualified reading teachers with pre-service teaching programs to offer certification;
- assignment of highly effective teachers to those students with the greatest need;
- parental involvement;
- ongoing assessment; and
- program evaluation.

Finally, the focal point of the committee discussion of this topic was whether research indicates that retention should be considered for students entering grade 9 but reading below grade-level proficiency. Noting that high school students usually repeat courses rather than an entire grade, the Harvard professor replied that approximately 80 percent of ninth graders who have been retained eventually drop out of school largely because of the psychological damage of being unable to move ahead with their peers. She added, however, that the state must focus not just on

interventions but on improving schools' overall quality of classroom instruction, including professional development that is focused on improving the quality of daily instruction and academic language development.

NEW MEXICO EARLY CHILDCARE AND EARLY EDUCATION TASK FORCE RECOMMENDATIONS

The President and Chief Financial Officer, United Way of Santa Fe County/New Mexico Early Childhood Development Partnership (NMECDP), provided testimony on the interim work of the Child Care and Education Task Force. The mission of the NMECDP, this testimony explained, is to create public awareness and political will for investments in early childhood care and education in New Mexico. Among the goals of early childhood programs are:

- targeting the 6.9 percent of the state's population (approximately 143,764 children) under age five;
- providing a foundation for school readiness; and
- reducing the number of children in New Mexico who enter kindergarten without important pre-literacy skills.

Noting that child-care serves a dual role of supporting working families in need and supporting young children's school readiness, the NMECDP testimony reviewed a number of specific recommendations in several areas, including: support for early education and care professionals, workforce development, reduction of administrative burdens, enhancement of higher education, and stability with regard to the eligibility of children and families for services. To use this last item as an example of the scope of the recommendations, the NMECDP recommends:

- changing the child-care re-certification period from six months to up to 12 months;
- providing child-care assistance during high school and college breaks; and
- setting the entrance eligibility for child-care assistance at 200 percent of the federal poverty level and exit criterion at 250 percent.

This testimony concluded with the focal points of the work of the task force:

- identifying and pursuing incentive options that would encourage child-care subsidy families to select high-quality, evidence-based child-care;
- setting an attainable goal for the percentage of subsidized children who attend high-quality programs within the next five years; and
- providing support to enable registered home-based providers to become licensed.

One point raised during committee discussion was whether the two agencies that authorize early childhood programs, the Children, Youth and Families Department (CYFD) and the Public Education Department (PED), are funded equitably. Contending that they are not, a representative of the New Mexico Child Care Association alluded to a breakdown of collaboration between PED and CYFD.

EDUCATIONAL TELEVISION: INVESTING IN EARLY EDUCATION

New Mexico Public Television comprises three independent Public Broadcasting Service (PBS) affiliates:

- KRWG, Las Cruces – licensed to New Mexico State University;
- KENW, Portales – licensed to Eastern New Mexico University; and
- KNME, Albuquerque/Santa Fe – licensed to the University of New Mexico and Albuquerque Public Schools.

Testimony by executives from these three stations described the educational services that PBS provides:

- the combined coverage area of New Mexico Public Television provides a free service to more than 95 percent of New Mexicans;
- New Mexico Public Television is the only broadcast resource that can reach the entire state within 15 minutes to deliver emergency alerts;
- New Mexico Public Television stations average 97 hours a week of PBS Kids educational children’s programming; and
- PBS Kids programming is the backbone of a myriad of outreach initiatives that extend the educational impact of public television.

The PBS executives further testified that, to ensure the continuation of such services, additional infrastructure funding is needed despite 10 years of careful maintenance and upgrades. Therefore, for the 2015 legislative session, the affiliates asked that the LESC support their request for \$2.25 million in capital outlay funding (\$750,000 per station) to:

- replace broadcast master control infrastructure purchased from a General Obligation Bond request in 2004;
- ensure uninterrupted service for another 12 to 15 years;
- mitigate loss of member donations due to loss of service; and
- maintain services required to qualify for federal funds such as Ready to Learn and American Graduate.

CURRICULUM AND INSTRUCTION

COMMON CORE STATE STANDARDS: UPDATE

The Common Core State Standards (CCSS) are designed to emphasize critical thinking skills in English/language arts (ELA) and mathematics for grades K-12 and to ensure that students leave high school with the necessary skills for college and/or a career. The CCSS initiative began in December 2008, when the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO) formed a collaborative effort and published the document *Benchmarking for Success*. New Mexico joined the effort in 2009, when the Governor signed a memorandum of agreement with the NGA and the CCSSO.

Staff testimony reviewed presentations on the CCSS during previous interims and noted that the CCSS have become a controversial issue, with states such as Indiana, Oklahoma, and South Carolina opting out of the CCSS initiative and with other states, like Florida, rebranding the standards and creating their own standards-based assessments. One concern, this testimony continued, has been that the CCSS could result in a loss of state educational autonomy, unrealistic expectations of students, and/or the overloading of educators as they simultaneously work to implement other educational reforms. These concerns notwithstanding, however, 43 states continue to implement the standards in their public schools, New Mexico among them; and several groups, including over 200 college presidents, have continued to voice support for the CCSS initiative.

The next testimony came from Alamogordo Public Schools, whose Director of Curriculum and Instruction said that the CCSS benefit the mobile military-connected students within the district, whose parents are stationed at nearby Holloman Air Force Base or White Sands Missile Range. This testimony also explained the systems of support used to help teachers within the district to implement the standards, among them the district's strategic plan and strategic planning days, a K-12 instructional coaching framework, and job-embedded professional development. The district testimony concluded with an explanation of the partnerships and programs within the district to implement the CCSS.

Testimony from the Policy Program Manager, Public Education Department (PED), noted that, in addition to the standards for math and ELA, the CCSS also include reading and writing standards for science, social studies, and technical subjects. In reading and writing, the PED testimony continued, the CCSS require students to show that they can:

- read and understand complex passages;
- write persuasively;
- conduct research and present findings; and
- demonstrate speaking and listening skills.

For mathematics, according to PED testimony, students must show their work and demonstrate an understanding of concepts, compute quickly and accurately, and apply mathematical knowledge to solve real-world problems. The PED testimony concluded with an outline of what parents can do to support the implementation of the CCSS.

PARTNERSHIP FOR ASSESSMENT OF READINESS FOR COLLEGE AND CAREERS: UPDATE

Since 2011, New Mexico has been a governing member of the Partnership for Assessment of Readiness for College and Careers (PARCC), which is one of two assessment consortia that receive federal funds to design computer-based tests aligned to the Common Core State Standards (CCSS, see p. 26). During the July 2014 meeting, the Deputy Secretary for Policy, Public Education Department (PED), provided an update on developments with the new PARCC assessments. This testimony focused on what the Deputy Secretary called certain "facts" that New Mexicans need to know about the PARCC assessments, among them:

- in school year 2014-2015, NMPARCC, which is a New Mexico-specific version of the test, will replace the math, reading, and writing portions of the current standards-based assessment (SBA) and the high school graduation assessment;
- the average testing time will not increase from what students have experienced taking the SBA, with the testing time taking less than 1.0 percent of the school year (see “Testing: LESC Statewide Survey,” p. 33);
- New Mexicans are among those building PARCC assessments (reviewed by over 60 educators);
- New Mexico students will take PARCC tests online (see “Broadband Initiative: Identifying Interconnectivity,” p. 29);
- PARCC is designed to be accessible to students with disabilities and English language learners; and
- like the current SBA, PARCC high school scores will be used for multiple purposes such as graduation (see “Graduation Requirements: Update,” p. 30), accountability, and educator effectiveness (see “Teacher and Principal Evaluation,” p. 2).

The Deputy Secretary also outlined the expectations of the PARCC assessments. In reading and writing, students will have to:

- show they can read and understand complex passages;
- write persuasively;
- conduct research and present findings; and
- demonstrate speaking and listening skills.

In math, students will have to:

- show their work and demonstrate that they understand a concept rather than simply memorize a formula;
- compute quickly and accurately; and
- apply their mathematical knowledge to solve real-world problems.

The Deputy Secretary concluded her testimony by noting that a Spanish version of the PARCC assessment is currently under development.¹⁷ In response to a related question from a committee member, however, the Deputy Secretary said that the assessment has not been translated into any Native American dialects.

Additional testimony on PARCC came from the PARCC Liaison for New Mexico, who explained the higher education connection. According to this testimony, the CCSS (see p. 26), which are the standards the PARCC test was designed upon, have implications for higher education as well as for K-12 education; therefore, the PARCC Liaison works with the deans at the various institutions of higher education (IHEs) to aid in the transition to these standards. The liaison further testified that PARCC offers four suggestions for IHEs:

¹⁷ According to testimony later in the interim by the Legislative Finance Committee, only the math portion of the PARCC assessment will be translated into Spanish.

1. integrate the CCSS and PARCC into teacher preparation programs, which may include preparing teachers for the content and pedagogy of the CCSS and preparing future teachers to use PARCC test results to improve teaching and learning;
2. work with high schools to make sure more students are “college ready,” including support for senior-year students who are ready, other high school experiences for students who are not ready, and state-funded dual credit;
3. reconsider first-year college courses based on the impact of the CCSS by assuming that future students will be different in what they know and how they can learn; and
4. use PARCC test results for first-year student course placement.

BROADBAND INITIATIVE: IDENTIFYING CONNECTIVITY

Broadband internet connectivity in the public schools has been an area of interest for the LESC for a number of interims, particularly since the committee learned that, with the transition to the Partnership for Assessment of Readiness for College and Careers (PARCC, described above), computer-based assessments would be replacing pencil-and-paper versions of New Mexico’s standards-based assessments. Most recently, during the 2014 regular legislative session, LESC-endorsed legislation was enacted to allow the Public School Capital Outlay Council (PSCOC) to expend up to \$10.0 million annually from FY 14 to FY 19 for an education technology infrastructure deficiency correction initiative to enhance public schools’ broadband Internet connectivity where needed.

Staff testimony reviewed the creation of the PSCOC-approved Broadband Deficiencies Correction Program (BDCP) and its work group, comprising representatives from:

- LESC staff;
- Legislative Finance Committee staff;
- the Public Education Department (PED);
- the Department of Information Technology (DoIT);
- the Public School Facilities Authority (PSFA);
- the Department of Finance and Administration; and
- the Public School Capital Outlay Oversight Task Force.

The work group has met three times since May 2, 2014 to discuss such topics as methods of measurement, the use of contractors versus volunteers, and the coordination of efforts and resources.

The Secretary of DoIT testified about that agency’s role in the BDCP, noting that the department has become involved in public school broadband projects as a result of a grant through the federal *American Recovery and Reinvestment Act of 2009*, intended to fund the mapping and improvement of Internet connectivity throughout the state.

The next testimony came from the Director of the PSFA, who first explained the use of a range of broadband speeds to measure deficiencies in broadband access, for both the short term and the long term. To support current educational needs, a minimum speed of 100 kilobytes per second (Kbps) per student and staff member is necessary; for future needs (through 2017), the BDCP is

anticipating the need for speeds up to 1,000 Kbps. The PSFA testimony then outlined the next two phases of the BDCP:

1. measurement and data analysis, including the use of geographic information systems; and
2. development of options to correct broadband communication problems that will maintain equity of speed, reliability, and cost.

The timeline for the program, the PSFA testimony concluded, includes the hiring of a broadband manager¹⁸ and a presentation of options for overall deficiencies corrections for the PSCOC to consider by September 2015.

Additional testimony came from the Chief Information Officer, PED, who provided an overview of PED's SpeedTest results from 2013, which revealed that 33 schools in the state have speeds of less than 5 Kbps/student, thus rendering the schools unable to support online assessments or digital learning. Furthermore, another 266 schools have Internet speeds of less than 55 Kbps/student, which allow only limited digital learning capabilities. Finally, the PED testimony outlined the department's action plan for school year 2014-2015, which includes the goal of PARCC testing by April 1, 2015 and which will proceed through three phases:

- data validation in April through June 2015;
- development of a remediation plan in July and August; and
- procurement and implementation in September through December.

GRADUATION REQUIREMENTS: UPDATE

Staff testimony outlined the current high school graduation requirements and reviewed recent legislation affecting these requirements. Graduation requirements in state law comprise two things: (1) completion of a certain number of units; and (2) demonstration of competence. Listed below are the 24 units required:

- four in English;
- four in mathematics;
- three in science;
- three and one-half in social science;
- one in physical education;
- one in a career cluster course, workplace readiness, or language other than English; and
- seven and one-half elective units.

With regard to demonstration of competence, students must achieve certain scores on the New Mexico Standards-based Assessment (SBA) and various end-of-course exams (EoCs).¹⁹ If a student is unable to achieve the requisite scores on the SBAs and EoCs, the student may

¹⁸ A manager was hired in October 2014; however, as of this writing, the position is once again vacant.

¹⁹ As explained elsewhere (see p. 28), the SBA is to be replaced in 2015 by the Partnership for Assessment of Readiness for College and Careers assessment; and the Public Education Department defines an end-of-course exam as an assessment of "the knowledge, skills and abilities *proficient* students should know and be able to do at the end of a course or grade" (emphasis in the original).

demonstrate competence through a portfolio of standards-based indicators, also known as the alternative demonstration of competence (ADC). In addition to Public Education Department (PED) guidance regarding ADCs, staff testimony continued, there may be other avenues through state law that allow students to utilize the ADC option.

Referring to prior testimony to the LESC on this topic, staff highlighted a 2009 PED rule that allows school districts to determine requirements for an ADC. Although PED has expressed its intent to amend the rule so that all ADC requirements would be uniform for all New Mexico students, regardless of the district in which they are enrolled, the rule is still intact. Additionally, a 2014 statute change requires that, “Once a student has entered the ninth grade, the graduation requirements shall not be changed for that student from the graduation requirements specified in law at the time the student entered the ninth grade.” As a result, all current high school students have the option of demonstrating competence through a district-determined ADC, regardless of any changes made to PED rule in the future.

Staff testimony also noted two other statute changes relating to graduation enacted in 2014: one that added language specifying that health education courses must include age-appropriate sexual abuse and sexual assault awareness and prevention training; and the other that added several options for meeting physical education graduation course requirements: marching band, Junior Reserve Officers’ Training Corps, interscholastic sports sanctioned by the New Mexico Activities Association, or any other co-curricular physical activity.

Other testimony on graduation requirements came from officials with Hobbs Municipal Schools (HMS). The Superintendent of HMS testified that the Legislature should reconsider a provision in state law that requires at least one of a student’s high school courses to be Advanced Placement (AP), honors, dual credit, or distance education. Part of the rationale for this request, as confirmed during subsequent committee discussion, is that this requirement was originally enacted because of an apparent correlation between students’ participation in AP or dual credit classes and their subsequent success in college. However, experience has shown that successful college students are likely to have taken AP or dual credit classes on their own, regardless of requirements in law.

The Superintendent’s testimony also relayed some concerns expressed by parents in his district:

- If they are unable to demonstrate competence through an ADC, students will receive a certificate of completion rather than a New Mexico Diploma of Excellence, therefore making them ineligible for federal financial aid.
- A tiered diploma system would acknowledge students who had achieved excellent scores and grades throughout high school, whereas now all students who met the minimum requirements receive the same credential.

Most of the committee discussion focused on the EoCs, raising a number of questions to which the Superintendent and the Assistant Superintendent for Data Analysis of HMS responded with the following points, among others:

- EoCs are developed by teachers across the state;
- the EoCs provided by PED do not cover all subjects;

- in general districts develop their own EoCs only if PED does not have one for a particular subject, and other districts may use such EoCs if they wish;
- teachers are given a “blueprint” for the courses suggesting what the EoCs will cover, but they are not given access to the EoCs themselves;
- in order to graduate from high school, students may be required to take an EoC for a course in which they are not currently enrolled;
- to determine cut-scores for EoCs, one group of teachers develops the test and another group analyzes the scores with a psychometrician; and
- the districts are required to pay for the scoring of the EoCs.

See Recommendation 7.

GENERAL EDUCATIONAL DEVELOPMENT: UPDATE

Since the 2012 interim, the LESC has heard testimony about changes to the General Educational Development (GED) program that had been scheduled to occur in 2014, including:

- the apparent privatization of the GED, through a corporation called GED Testing Service, LLC, formed by the American Council on Education and Pearson PLC;
- mandatory computer-based testing for the new GED; and
- the likelihood of increased cost of the new GED, from approximately \$35 to \$120.

Another point that came to the committee’s attention was that, while the term “general educational development” appears in statute, the term “GED” is a registered trademark. To address this matter, the committee endorsed a bill in 2013 to change statutory references to a more generic term, “high school equivalency diploma.” Although the bill passed, it received a pocket veto from the Governor.

During the 2013 interim, the committee continued to hear testimony on GED issues, including testimony from GED Testing Service, LLC, and two other vendors – Educational Testing Service (ETS) and CTB/McGraw-Hill – offering alternative high school equivalency assessments for \$50 to \$60 per test-taker. Further testimony during the 2013 interim identified other issues to be addressed, among them:

- other costs in addition to the \$120 student testing fee;
- the requirement that students pay by credit or debit card; and
- the ability of students to bypass Adult Basic Education programs and take the test without any preparation.

For the 2014 legislative session, the LESC endorsed legislation similar to that in 2013. Enacted into law, this legislation allows the Public Education Department (PED) to proceed with a fair bidding process. Subsequently, PED issued a request for applications for a new high school

equivalency test vendor in September 2014, and in December 2014 the department selected two vendors: GED Testing Services, LLC, and ETS.²⁰

In July and September 2014, the LESC heard testimony from GED test administrators in Farmington and Hobbs, respectively, each of whom noted a decrease in participation and passing rates among GED test-takers in 2014.

- The Director of Adult Basic Education at San Juan College (SJC) in Farmington testified on the need to broaden testing options in the state and compared SJC's GED test data from the first half of 2013 with test data from the first half of 2014:
 - from January to June 2013, 1,724 people completed a full battery of GED exams at SJC, and 1,254 of them, or 72.7 percent, passed the exams to receive their GED certificates; and
 - from January to June 2014, 347 people completed a full battery of GED exams at SJC, and 139 of them, or 40 percent, passed the exams to receive their GED certificates.
- The dean responsible for GED testing at New Mexico Junior College (NMJC) in Hobbs testified that, since the NMJC program became a Pearson Virtual University Enterprises Certified Testing Center in January 2014, the testing office has experienced a 72 percent decline in the number of students taking the GED and a 92 percent decline in the number of students passing the GED compared with 2013. The dean also noted that other tests that fulfill the same purpose would be welcome in adult education centers.

TESTING: LESC STATEWIDE SURVEY

In developing its workplan for the 2014 interim, the LESC requested information on certain aspects of student testing:

- the difference between formative and summative assessments; and
- the amount of time spent on testing, including test preparation time.

In response to these requests, LESC staff issued a statewide survey of school districts. In preliminary testimony, LESC staff:

- explained the methodology of the statewide survey;
- reviewed the sources of information about testing procedures, which included publicly available test administration manuals of commercial test publishers and school districts' master schedules; and

²⁰ According to PED, an agreement with both vendors became effective January 1, 2015, and testing centers will have the option to administer one or both of the tests in the first year of the agreement; however, all testing centers will be required to administer both tests in 2016 and 2017.

- identified the disaggregated elements of the testing process that are necessary to understanding testing procedures and times: test preparation (instructional time), test-taking (student seat time), and completion of pre- and post-test tasks (administrative time).

Preliminary staff testimony also noted the survey’s two open-ended questions, which were posed to gather school districts’ expectations regarding the transition to the Partnership for Assessment of Readiness for College and Careers (PARCC) and the National Center and State Collaborative (NCSC) assessments. The former is to replace the state standards-based assessment and the high school graduation assessment in school year 2014-2015 (see “Partnership for Assessment of Readiness for College and Careers: Update, p. 27); and the latter is to replace the New Mexico Alternate Performance Assessment (NMAPA), the assessment for students with cognitive disabilities, in school year 2015-2016.²¹ In each case, districts were asked what changes in terms of testing times they foresee due to the implementation of the new assessment.

Preliminary staff testimony concluded with an outline of the differences between formative and summative assessments:

- Formative assessments fall into the broad category of diagnostic testing. Typically administered several times throughout the year, these short-cycle assessments are used by teachers during the learning process in order to modify teaching and learning activities to improve student outcomes. Examples include:
 - assessments required by law or rule of the Public Education Department (PED) – among them Dynamic Indicators of Basic Early Literacy Skills for grades K-3, short-cycle assessments provided by one of four vendors approved by PED, and certain English language learner (ELL) or bilingual assessments; and
 - additional assessments that districts choose to administer, including a variety of identification and intervention assessments, additional ELL assessments, and college and vocational readiness assessments.
- Summative assessments evaluate a student’s development at a particular point in time. Because the focus is on the outcome of a program, each summative assessment is typically administered only one time each year, generally toward the end of the school year. Examples include the New Mexico Standards-based Assessment, PARCC assessments, and end-of-course exams.

During the December meeting, LESC staff presented the results of the statewide testing survey. Reflecting responses from 55 of the state’s 89 school districts (including Albuquerque Public Schools) and considering all state- and district-mandated assessments (formative and summative alike), the survey found that:

²¹ According to the website of the Public Education Department, the NCSC is “a project led by five centers and 24 states . . . including Washington D.C. and the Pacific Assessment Consortium to build an alternate assessment based on alternate achievement standards . . . for students with significant cognitive disabilities.” NCSC is also developing curriculum and instructional resources based on the Common Core State Standards.

- at any of the grade levels, ELL students spend four to five more hours on testing than non-ELL students, partly because ELL students take additional language placement and language proficiency assessments;
- it appears that grades 3, 7, and 8 are the most tested for both ELL and non-ELL students;
- the average testing times per student for these school grades are as follows:
 - in third grade, ELL students average 27.11 hours of testing and non-ELL students 21.64 hours;
 - in seventh grade, ELL students average 27.86 hours of testing and non-ELL students 22.69 hours; and
 - in grade 8, ELL students average 27.37 hours and non-ELL students 22.20 hours;
- in grades K-3, formative assessments represent half of the testing time for a given student;
- in grade 9 the proportion of formative assessments in relation to the total of assessments increases 75 percent; and
- for other grades (grades 3-8 and grades 10 and 11), the proportion of formative assessments drops to 25 percent.

Among other points, staff testimony continued, the survey:

- found that, in general, the range in time that districts spend testing narrows as students move up in grades; and
- suggests the need for further research, perhaps to determine whether the variation in formative assessments across school grades affects the scores on summative assessments.

Addressing the two open-ended questions, staff testified that, in general, school districts regard PARCC optimistically despite some lingering concerns.²² For example, school districts believe that PARCC could decrease the time spent testing but increase the administrative burden of the assessment. The survey found different views of the NCSC assessment, however. For one thing, few districts seemed even to know about it; for another, those that did know about it were concerned that the electronic format in which the test will be administered would not be beneficial to students with cognitive disabilities.

During their discussion of the testimony, committee members noted that the districts' comments indicate logistical and other administrative issues related to student testing; and they expressed concerns about the general lack of awareness of the upcoming NCSC assessment.

²² Districts' responses to these questions are printed verbatim in material presented to the committee.

TARGETED STUDENT SERVICES

INDIAN EDUCATION ACT: UPDATE

Enacted in 2003 as a means to address the unique cultural and educational needs of American Indian students statewide, the *Indian Education Act* has a number of purposes, among them:

- ensuring the maintenance of native languages;
- ensuring that the Public Education Department (PED) partners with tribes to increase tribal involvement and control over schools;
- providing the means for a relationship between the state and urban American Indian community members to participate in initiatives and educational decisions related to American Indian students residing in urban areas; and
- encouraging and fostering parental involvement in the education of American Indian children.

The act also creates the Indian Education Division at PED and the position of Assistant Secretary of Indian Education, whose duties include:

- assisting school districts and New Mexico tribes in planning, development, implementation, and evaluation of curricula in native languages, culture, and history designed for tribal and nontribal students as approved by New Mexico tribes;
- establishing, supporting, and maintaining the Indian Education Advisory Council, a broadly representative 16-member group;
- entering into agreements with each New Mexico tribe or its authorized educational entity to share programmatic information and coordinate technical assistance for public schools that serve tribal students; and
- seeking funds to establish, develop, and implement culturally relevant support services for the purposes of increasing the number of tribal teachers, administrators, and principals.

Staff testimony during the 2014 interim noted that:

- the act further requires the Indian Education Division to submit a statewide tribal education status report by November 15 of each year; and
- to date, the Legislature has appropriated approximately \$26.6 million for the *Indian Education Act*, with a balance of approximately \$3.0 million in the Indian Education Fund as of June 30, 2013.

The Deputy Secretary of Finance and Operations, PED, testified about the current initiatives of PED's Indian Education Division and recognized the work of the former Assistant Secretary of Indian Education, who had resigned earlier in the year. The Deputy Secretary added that, while the department attempts to fill the position, he will be the acting assistant secretary.²³

²³ At the time of this writing, the position remains unfilled and a different PED employee is serving as the interim assistant secretary.

Among other initiatives, the Deputy Secretary testified, the Indian Education Division:

- provided information to tribal leaders regarding school funding, federal Impact Aid, and the State Equalization Guarantee distribution;
- awarded second-year grants, which amounted to \$30,000, to the tribal language programs of all 22 tribes and pueblos;
- awarded 16 of the 23 highly American Indian-populated school districts \$20,000 to provide culturally relevant learning environments and materials; and
- completed the first data-sharing agreement between the state and a tribal government.

Additional testimony came from the superintendents of districts with a high concentration of American Indian students.

- Testimony from the Superintendent of Gallup-McKinley County Schools focused on concerns over funding of the *Indian Education Act*; the need for instructional materials on American Indian government, history, and language; filling a vacant position on the Indian Education Advisory Council; and receiving adequate funding for students who live in Arizona but attend school in his district.
- The Superintendent of Zuni Public Schools testified that, in an attempt to improve the relationship between the schools and the community, the district reports regularly to the tribal council and receives feedback from tribal leaders. The district has also taken steps to address local needs more effectively through several means, among them: developing a community-based teacher training program in collaboration with the Kellogg Foundation and the University of New Mexico; and providing cultural awareness and sensitivity classes to every new teacher in the district.

HISPANIC EDUCATION ACT: UPDATE

Enacted in 2010, the *Hispanic Education Act* (HEA) is intended to:

- provide for the study, development, and implementation of educational systems that affect the educational success of Hispanic students to close the achievement gap and to increase graduation rates;
- encourage parents' involvement in the education of their children; and
- provide mechanisms for a number of parties to collaborate on improving educational opportunities and outcomes for Hispanic students.

Among its other provisions, the act creates the Hispanic Education Advisory Council (HEAC) to advise the Secretary of Public Education and creates the position of Hispanic Education Liaison in the Public Education Department. For an update on the implementation of the HEA, the LESC heard testimony from the Executive Director, Dual Language Education of New Mexico and Chair, HEAC; and from two members of the *Unidos* Project.

The Chair began by identifying HEAC's top three strategic priorities – student success, family engagement, and collaboration – and by reviewing progress since the HEA annual report for school year 2012-2013, including:

- the development of the HEA five-year plan beginning in January 2014;
- a work session called *La Plática Bajo la Resolana* held by HEAC in September 2014 and facilitated by New Mexico First; and
- the Second *Unidos* Legislative Education Summit held in September to identify policy recommendations to support the strategic priorities and to create a collective impact team to focus on student success, family engagement, and collaboration.

Testimony by the *Unidos* Project representatives outlined the activities during the work session and the summit.

- *La Plática Bajo la Resolana* involved 67 strategic partners from school districts, higher education institutions, business and government, and nonprofit organizations who drafted ideas for measuring and monitoring progress toward the three priorities.
- The Second *Unidos* Legislative Education Summit was intended to create clear policy priorities that advocates and legislators can use to foster education reforms that specifically address the unique needs of Hispanic students and their families, specifically identifying policies that will drive an agenda for Hispanic education excellence in early childhood development programs, K-12 schools, and higher education institutions.

Finally, the Chair of HEAC asked the committee to consider supporting the council in its efforts toward:

- communicating and advocating for the HEAC’s findings in the three areas of student success, family engagement, and collaboration;
- research that utilizes local experts and data that are based on children from New Mexico; and
- providing full-time staff to gather and report these data.

EDUCATOR QUALITY

SCHOOL LEADERSHIP PROGRAM INITIATIVE: NMLEAD

Early in the interim, the committee heard testimony by the Associate Chair, Department of Teacher Education, University of New Mexico (UNM), on progress with the Turnaround Leadership for School Success (TLSS) program. This testimony explained that, in response to the Public Education Department’s request for application for the NMLead Program, UNM and the Anderson School of Management — as well as New Mexico State University (NMSU) and its Business School, Las Cruces Public Schools (LCPS), the New Mexico School Leadership Institute, and the Woodrow Wilson National Fellowship Program (WWNFP) – have partnered to create a statewide program to train principals with the skills and competencies to turn around New Mexico’s low-performing schools. Through this program, the testimony continued, three cohorts will be selected, trained, and coached in turnaround leadership; at the end of the TLSS program, candidates who have completed the training will be eligible for New Mexico licensure in school administration.

As described during this initial testimony, the TLSS program will focus on four main goals:

1. improving the recruitment and selection of aspiring principals for turnaround leadership;
2. focusing the preparation for aspiring principals on turnaround leadership;
3. providing systematic support for turnaround leaders; and
4. evaluating, researching, and disseminating data on outcomes of the program.

However, testimony later in the interim indicated a somewhat different direction for the initiative. According to the Superintendent of LCPS, the partners in the TLSS program had decided to use the \$2.5 million grant²⁴ to pursue a two-pronged approach:

- first, a Master's of Business Administration (MBA) in Educational Leadership from NMSU or UNM through a three- to four-year program; and
- second, a New Mexico turnaround innovation program, similar to the Darden-Curry Partnership for Leadership in Education Program at the University of Virginia, although work on this prong has yet to be funded or begun.

Additional testimony came from other partners in the TLSS program:

- An associate dean at NMSU described the good relationship among that university, UNM, and LCPS, adding that the WWNFP has had success with similar programs in other states. The associate dean also noted that the turnaround program would be for those who want to advance beyond the level of principal.
- The Associate Chair of Teacher Education at UNM described the unique opportunities to build capacity for management. The plan, this testimony continued, is to divide New Mexico regionally between north and south. Across both regions, three cohorts of 12 students would be selected, each qualifying for a stipend of \$32,000 to help those school leaders who might otherwise lack the financial resources to participate. The prospective participants would be nominated at the local level by superintendents or other senior school administrators.
- Finally, the Interim Dean of the Anderson School of Management testified that the school was exploring scheduling options that would increase flexibility for participating public school administrators.

Committee discussion focused on the new two-pronged approach, with some members expressing:

- concerns that the Legislature had funded a school turnaround program, not a hybrid MBA program;
- concerns that the turnaround program is already behind schedule; and
- doubts that the turnaround program will help small, rural districts where the roles of principal and superintendent are often performed by the same person.

In reply, the presenters acknowledged that the scope of the program had changed since the initial testimony in June, assured the committee that they would consult with school officials in rural areas, and pledged to keep the LESC informed on the progress of the turnaround program.

²⁴ The legislative appropriation for the turnaround program was almost \$3.0 million.

RECRUITING AND RETAINING HIGH-QUALITY TEACHERS AND ADMINISTRATORS

Educator Salary Comparison, Regional Competitiveness, and Recruitment and Retention of Effective Teachers and Administrators

In a joint meeting with the Legislative Finance Committee, the LESC heard a variety of testimony about the quality, compensation, recruitment, and retention of high-quality educators. The testimony began with a presentation by a representative of the National Conference of State Legislatures (NCSL). Among other points, this testimony identified the various components of effective teaching policies – preparation, licensure, salary, supports, and evaluation – and emphasized the interrelationship among them, in that, for example, salary affects recruitment and retention. The NCSL testimony also provided salary data from the National Education Association for six states in the Southwest, including New Mexico, and noted that those states, together with states in the southeastern United States, have the lowest beginning and average teacher salaries in the country.²⁵

Alluding to the research on salary trends throughout the country, NCSL staff testified that:

- states are gradually looking to increase salaries;
- research does not support dramatically higher salaries or bonuses;
- research does not support salary increases based on inputs, such as National Board Certification or a master’s degree; and
- research suggests mixed results for performance- or market-based pay.

After providing an overview of licensure structures among the states, the NCSL testimony suggested that, in considering teacher licensure policies, states should account for both inputs and outputs to determine whether a teacher should receive initial or continuing licensure:

- inputs include professional development, additional education, or National Board Certification; and
- outputs include demonstration of mastery of teaching techniques and the ability to show student growth and improved outcomes.

Further testimony on this topic came from the Director, Educator Quality Division, Public Education Department (PED), and the Policy Director, PED, who began with a description of PED’s vision for recruiting, retaining, and rewarding effective teachers and a contention that the department has delivered on this vision, citing such activities as the teacher and school leader evaluation system (see “Teacher and Principal Evaluation,” p. 2) and an incentive pay pilot program. The PED testimony also alluded to research indicating a link between highly effective teachers, as rated through a value-added framework, and student performance on standardized metrics.

The PED testimony concluded with an enumeration of issues that the department considers relevant to the discussion of teacher compensation:

²⁵ The six southwestern states, in descending order of average teacher salaries, are Arizona, Utah, Colorado, Texas, New Mexico, and Oklahoma.

- barriers to entry that shrink the state’s teaching pool, including unattractive starting salaries;
- a compensation structure that does not provide an incentive to place the best teachers in high-need areas; and
- salary increases that generally do not distinguish between low-rated and highly rated teachers.

Aligning the Training and Experience Index with the Three-tiered Licensure System, the Index of Staff Qualifications, and Alternative Compensation Systems

Testimony by the Vice Chair of the LESC provided a history of the Training and Experience (T&E) Index within the public school funding formula, with a focus on the need to align the T&E Index with the three-tiered licensure system. The T&E Index, this testimony explained, was a feature of the original funding formula enacted in 1974. Included as a mechanism to encourage districts to hire and retain teachers at a time when many districts had high rates of staff turnover, the T&E Index is calculated using a statutory matrix, which contains cost differential factors based on academic credentials and years of experience. The T&E Index is used as a multiplier in the public school funding formula in that all of the units generated by students in the various grade levels, by students receiving special education services, by students in bilingual and fine arts programs, and by special education ancillary staff are added together and then multiplied by the T&E Index to produce adjusted program units.

This testimony also reviewed two independent studies that had considered potential revisions to the T&E Index:

- one in 2003, which studied the relationship between the T&E Index in the public school funding formula and the implementation of the three-tiered licensure system for teachers; and
- the other in 2008, which, among other findings and recommendations, suggested the replacement of the T&E Index with an Index of Staff Qualifications (another kind of multiplier more directly tied to personnel costs) and recommended increasing the amount of funding in the formula to sufficient levels prior to making any other changes.

Additional testimony on the T&E Index and other compensation systems came from two school district superintendents, the director of a charter school, and the Executive Director of the National Education Association-New Mexico (NEA-NM).

- The Superintendent of Hobbs Municipal Schools testified that school districts have difficulty managing salary schedules because of the continuation of the two unaligned systems, the T&E Index and the three-tiered licensure system.
- The Superintendent of Santa Fe Public Schools, together with another district official, explained the district’s teacher and school leader performance and compensation system. Among other features, this system includes such components as evaluating multiple times per year and allowing for mid-year payments rather than waiting until the end of the year, as well as two incentive pay pilot programs, one for teachers and one for principals.
- Testimony by the Director of the Albuquerque Institute for Mathematics and Science described the school’s teacher evaluation framework and explained how evaluations are tied to pay. The framework comprises growth in student standards-based assessment

scores, observations, a research component completed by each teacher, and student surveys.

- The Executive Director of NEA-NM testified about the compensation methods that his organization supports, including a strong base pay system that results in high starting salaries for teachers, suggesting a minimum of \$40,000 per year; and about those that NEA-NM does not support, including tying teacher pay to student achievement or test scores or to evaluations.

LICENSURE REQUIREMENTS FOR SIGNED LANGUAGE INTERPRETERS

During the June meeting, the LESC heard testimony on licensure requirements for signed language interpreters. This testimony was in response to a request from a committee member who had become concerned over reports that individuals provisionally licensed and currently employed in schools as signed language interpreters would be unable to obtain their full licensure as educational signed language interpreters. Testimony came from LESC staff and from representatives of the Signed Language Interpreting Practices Board (Board), the New Mexico Commission for the Deaf and Hard of Hearing (Commission), and Hobbs Municipal Schools (HMS).

Staff testimony explained that educational signed language interpreters are considered instructional support providers who must be licensed by the Public Education Department (PED) in accordance with the provisions of the *School Personnel Act*. According to those provisions, if an instructional support provider practices a licensed profession, the provider must present evidence to PED of a current, unsuspended license, which, in the case of signed language interpreters, is a license issued under the provisions of the *Signed Language Interpreting Practices Act*.

Staff testimony also reviewed the licensure requirements both in statute and in Board rule, delineating the three types of licensure created in statute – community signed language interpreters, educational signed language interpreters, and provisional licensees – and the requirements to obtain each type of license. This testimony further highlighted a significant difference between the community and educational signed language interpreter license requirements as set forth in statute:

- the community signed language interpreter license requires certification in a nationally recognized signed language interpreters' organization; whereas
- the educational signed language interpreter license requires only evidence of passing a skills assessment exam.

Despite this statutory distinction, staff testimony continued, Board rule requires that an applicant for an educational signed language interpreter license must not only pass the Educational Interpreter Written and Performance Assessment with a score of 4.0 to 5.0, but must also hold active certification recognized at the time of application by the national Registry of Interpreters for the Deaf (RID) and must comply with the RID certification maintenance program. Staff testimony further suggested that these RID requirements may establish additional criteria beyond the scope of the requirements for licensure set forth in statute, raising the question whether the Board may have exceeded its rulemaking authority. Staff testimony concluded with a

description of the additional criteria – college coursework, years of interpreting experience, and continued education units – that the holder of a provisional license must meet in order to take an RID performance evaluation and to qualify for certification.

The Vice Chair of the Board testified that the purpose of the recent increase in licensure requirements was to improve the skill sets of interpreters. This testimony also noted that, as of June 2014, there were 227 current valid interpreter license holders in the state:

- 135 with community licenses;
- two with educational licenses; and
- 90 with provisional licenses, 34 of which were to expire September 30, 2014. Of those 34, approximately 10 were working in K-12 settings but would be required to stop interpreting after September 30 if they failed to meet the minimum standards for an educational license.

In addition, 142 individuals have obtained national certification through the RID.

On this point, the Director of Communication Access and Development for the Commission testified that most interpreters seek the national certification required for the community license because it offers more flexibility in the type of employment available, that New Mexico standards match national standards set forth by the RID, and that legal counsel supports the Board's ability to mandate the same educational requirements as the RID.

As the committee began to discuss the testimony and the issues it raised, one member read into the record a letter written to the LESC by a staff member at HMS. The letter suggested that, because of state regulations, the district faces a shortage of interpreting services, a shortage that other districts are likely to experience as well, thus compromising the provision of services to students. The ensuing discussion then focused on standards for interpreters in other states, national standards for interpreters, and the distinctions between interpreters who are deaf or hard-of-hearing themselves and those who are not.

One question raised during the discussion is whether the “gold standard” represented by RID certification is practical for New Mexico, especially in isolated rural areas. While the Commission representative spoke against lowering standards, the Assistant Attorney General serving as contract legal counsel for the Board suggested that statute also provides for an emergency exemption from licensing if the Board wanted to address the issue immediately.

The committee also heard testimony from two educational signed language interpreters working in HMS, both with 15 or more years of experience. Largely because of their rural location, these interpreters testified, they have been unable to satisfy all of the additional RID requirements for educational license; and they remain concerned about the availability of those services in rural school districts.

As the hearing concluded, the committee approved a motion to draft a letter to the Board requesting that the Board recognize the exemption from the provisions of the *Signed Language Interpreting Practices Act* for individuals from high-need, rural areas where the delay necessary to obtain a licensed interpreter is likely to cause loss for students requiring interpreting services as part of their individualized education plans.

ADDITIONAL PRESENTATIONS AND REPORTS

In addition to the presentations summarized elsewhere in this report, the LESC heard testimony on the following topics: global learning for children in New Mexico; SB 6 (2014), *Charter School Share of Ed. Technology Act*; SB 115 (2014), *Social Workers in High-Poverty Schools*; an overview of educational programs and outcomes at the New Mexico School for the Deaf (NMSD), the New Mexico School for the Blind and Visually Impaired (NMSBVI), and the Albuquerque Sign Language Academy; capital outlay project updates for the NMSD and the NMSBVI; timely completion of degrees at the University of New Mexico (UNM); an overview of educational programs and initiatives at San Juan College; workforce readiness; teachers transforming teaching; a blueprint for state/tribal higher education; effective use of short-cycle assessment data to inform instructional practices; a review of class size and teaching load waivers and implementation of Laws 2014, Chapter 77, *Return to Statutory School Class Loads*; an overview of educational programs and initiatives at New Mexico Junior College (NMJC); teen pregnancy; the Weekend Hunger Initiative Backpack Program; overviews and updates for the Energy, Minerals and Natural Resources Department, Occidental Petroleum Corporation, Navajo Refinery, New Mexico Mathematics, Engineering, Science Achievement, Inc. – Artesia Project, and the NMJC Energy Program; a Legislative Finance Committee (LFC) program evaluation of cost-effective options for increasing high school graduation and improving adult education; the redesign of the College of Education at UNM; the New Mexico-grown produce for school meals program; FY 15 public school budgets; insurance appropriation requests for FY 15 from the New Mexico Public Schools Insurance Authority and Albuquerque Public Schools; a College Board report on Advanced Placement in New Mexico; Public Education Department (PED) statutory reports; New Mexico Business Roundtable 2015 legislative education priorities; Wonder of Learning exhibit; higher education funding formula update; HM 99 (2014), *Adult Education Program Funding Formula*; Northern New Mexico College report on the fiscal impact of dual credit; an LFC program evaluation of performance and improvement trends in elementary schools; English language learners and English as a second language best practices; the New Mexico Collegial Learning Collaborative Proposal; PED implementation of select FY 15 related recurring initiatives; the 2015 Education Partners legislative package; career technical education report; SB 250 (2014), *Incorporate Arts into Classroom Instruction*; and a report from New Mexico Voices for Children.

Finally, the committee also received the following written reports: *Public School Capital Outlay Awards Annual Report*; *New Mexico Math and Science Advisory Council Annual Report, SY 2013-2014*; *Educator Accountability and Reporting System, 2013 Annual Report*; *Bilingual Multicultural Education Annual Report for the School Year 2013-2014, PED, December 2014*; *K-3 Plus Education Annual Report for the School Year 2013-2014, PED, December 2014*; *New Mexico Home Visiting Annual Outcomes Report, Fiscal Year 2014, CYFD, January 1, 2015*; *PreK Annual Report, School Year 2013-2014, PED and CYFD, December 2014*; and *School Athletics Equity Act Summary Report, PED, December 2014*.

See recommendations 8-15.

Readers interested in public school data are encouraged to consult a companion report,
Public School Data Reference Guide, 2015.

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