

**LEGISLATIVE EDUCATION  
STUDY COMMITTEE**

**REPORT TO THE SECOND SESSION  
OF THE  
FIFTIETH LEGISLATURE**

**STATE OF NEW MEXICO**

**FEBRUARY 2012**

**STATE OF NEW MEXICO**  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**

**REPRESENTATIVES**

Rick Miera, Chair  
Nora Espinoza  
Mary Helen Garcia  
Jimmie C. Hall  
Dennis J. Roch  
Mimi Stewart

**ADVISORY**

Alonzo Baldonado  
Ray Begaye  
Eleanor Chávez  
George Dodge, Jr.  
Roberto "Bobby" J. Gonzales  
Tim D. Lewis  
Sheryl M. Williams Stapleton  
Shirley A. Tyler  
Bob Wooley

State Capitol North, 325 Don Gaspar, Suite 200  
Santa Fe, New Mexico 87501  
Phone: (505) 986-4591 Fax: (505) 986-4338  
<http://www.nmlegis.gov/lcs/lesc/lescdefault.aspx>



**SENATORS**

Cynthia Nava, Vice Chair  
Mary Jane M. Garcia  
Gay G. Kernan  
Lynda M. Lovejoy

**ADVISORY**

Vernon D. Asbill  
Mark Boitano  
Stephen H. Fischmann  
Howie C. Morales  
John Pinto  
Sander Rue

Frances Ramírez-Maestas, Director  
David Harrell, PhD, Deputy Director

February 2012

Fiftieth Legislature, Second Session, 2012  
State Capitol  
Santa Fe, New Mexico

Dear Fellow Legislators:

This report summarizes the activities of the Legislative Education Study Committee (LESC) during the 2011 legislative interim as well as the committee's recommendations for the 2012 legislative session.

Like the reports of previous interims, this one reviews the research and testimony that the LESC considered in making its recommendations for public school support and for legislation introduced during the 2012 Regular Session. And like the report of the 2010 interim, 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 will allow 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 black ink, appearing to be "Rick Miera".

Representative Rick Miera, Chair

## **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 houses and both major political parties, as well as a number of advisory members of the Legislature.

The LESC is currently supported by 10 full-time staff members:

Frances Ramírez-Maestas, Director

David Harrell, PhD, Deputy Director

Phil Baca, Senior Research Analyst II

R. Kevin Force, JD, Research Analyst

Travis M. Dulany, Research Analyst

David Craig, Fiscal Analyst

Michael G. Bowers, Editor

Alice S. Madrid, Office Manager

Kate B. Wagner, Secretary

Philip A. Larragoite, Administrative Assistant I

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
REPORT OF THE 2011 INTERIM**

	<b>Page #</b>
<b>RECOMMENDATIONS OF THE LESC .....</b>	<b>i</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>ISSUES STUDIED BY THE LESC .....</b>	<b>2</b>
<b>PUBLIC EDUCATION DEPARTMENT UPDATES .....</b>	<b>2</b>
A-B-C-D-F SCHOOLS RATING SYSTEM .....	2
NEW MEXICO EFFECTIVE TEACHING TASK FORCE .....	4
AUTISM EDUCATION PLAN DEVELOPMENT .....	5
FEDERAL DOLLARS TO PED AND PUBLIC SCHOOLS: <i>AMERICAN RECOVERY AND     REINVESTMENT ACT OF 2009</i> AND THE EDUCATION JOBS FUND .....	5
SUSPENSION OF STUDENT ASSESSMENT REQUIREMENTS .....	6
DISTRIBUTION OF SPECIAL APPROPRIATIONS OF THE 2011 LEGISLATURE .....	6
Emergency Support .....	6
Governor’s Educational Reforms .....	7
Increased Fuel Costs .....	7
PED GUIDELINES FOR FY 12 PUBLIC SCHOOL BUDGETS .....	8
PED Guidance .....	8
Waivers .....	8
Percent to Instruction .....	9
Calculation of Units for Developmentally Delayed Three- and Four-year-olds .....	9
<i>AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009</i> GOVERNMENT SERVICE FUND .....	10
ALLOCATION TO SUPPORT CYBER ACADEMY/VIRTUAL SCHOOL PROGRAM .....	10
PED REDUCTION-IN-FORCE PLAN .....	10
PED ADVISORY TEAM DELIVERABLES .....	11
COMMON CORE STATE STANDARDS .....	11
K-3 PLUS PROGRAM .....	12
P-20 EDUCATIONAL DATA SYSTEM AND DATA SYSTEM COUNCIL .....	14
<b>HIGHER EDUCATION DEPARTMENT UPDATES .....</b>	<b>15</b>
HIGHER EDUCATION FUNDING FORMULA TASK FORCE .....	14
DUAL CREDIT PROGRAM: PARTICIPATION OF TRIBAL COLLEGES AND SECONDARY SCHOOLS .....	15
INNOVATIVE DIGITAL EDUCATION AND LEARNING IN NEW MEXICO .....	16
HIGHER EDUCATION LEARNING CENTER: SANTA FE COMMUNITY COLLEGE .....	16
<b>FISCAL ISSUES .....</b>	<b>17</b>
STATE REVENUE UPDATES .....	17
REVISION OF THE PUBLIC SCHOOL ACCOUNTING AND BUDGETING .....	18
MANUAL OF PROCEDURES .....	18
LESC/LEGISLATIVE FINANCE COMMITTEE JOINT EVALUATION OF PUBLIC SCHOOL FUNDING .....	19
PUBLIC SCHOOL TRANSPORTATION: LFC PROGRAM EVALUATION .....	20
EDUCATOR RETIREMENT .....	21

Educational Retirement Board: Recovery of Overpayments .....	21
ERB Retirement Benefit Plan Design Changes.....	22
Retiree Health Care Authority.....	23
NEW MEXICO LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM AND FUND.....	24
Solvency of Legislative Lottery Scholarship Fund .....	24
Impacts of the Legislative Lottery Scholarship Program on Institutions and on Institutional Outcomes .....	26
FY 12 UNEMPLOYMENT COMPENSATION ASSESSMENTS OF SCHOOL DISTRICTS .....	25
<b>ASSESSMENT AND ACCOUNTABILITY.....</b>	<b>26</b>
AUDITS OF SELECTED SCHOOL DISTRICTS BY THE PUBLIC EDUCATION DEPARTMENT .....	26
Audit Process and Results.....	26
LESC Survey of Audited School Districts .....	28
School District Testimony.....	28
AUDITS OF SELECTED CHARTER SCHOOLS BY THE PUBLIC EDUCATION DEPARTMENT .....	29
Audit Process and Results.....	29
LESC Survey of Audited Charter Schools.....	30
Charter School Testimony.....	30
A DATA-BASED APPROACH FOR SCHOOL EVALUATION AND IMPROVEMENT IN NEW MEXICO.....	30
STUDENTS AT THE CROSSROADS: <i>A STUDY OF THE 12<sup>TH</sup> GRADE IN NEW MEXICO</i> .....	31
EDUCATION COMMISSION OF THE STATES REPORT: <i>WORKING TOGETHER TO BOOST         COLLEGE COMPLETION</i> .....	32
EDUCATOR ACCOUNTABILITY REPORTING SYSTEM .....	33
K-3 PLUS PROGRAM EVALUATION REPORT .....	34
<b>EDUCATOR QUALITY.....</b>	<b>35</b>
READING IN TEACHER PREPARATION PROGRAMS: IMPLEMENTATION OF RECOMMENDATIONS OF HJM 16, <i>STUDY READING CURRICULA IN TEACHER EDUCATION (2010)</i> WORK GROUP .....	35
NEW MEXICO’S EFFORTS TO IMPROVE TEACHER AND PRINCIPAL QUALITY .....	36
CURRENT TEACHER AND PRINCIPAL EVALUATION SYSTEM.....	37
USING DATA TO IMPROVE TEACHER EFFECTIVENESS.....	37
TRENDS AND EARLY LESSONS ON EVALUATION AND EFFECTIVENESS.....	38
<b>MEETING THE NEEDS OF STUDENTS.....</b>	<b>39</b>
EARLY CHILDHOOD EDUCATION .....	39
New Mexico Voices for Children.....	39
<i>Early Childhood Care and Education Act</i> .....	39
TITLE IX: <i>SCHOOL ATHLETICS EQUITY ACT</i> .....	40
NEW MEXICO MATHEMATICS, ENGINEERING, AND SCIENCE ACHIEVEMENT, INC. ....	41
CHARTER SCHOOLS.....	43
VIRTUAL SCHOOLS .....	43
ADULT BASIC EDUCATION .....	43
EDUCATING NEW MEXICO’S MINORITY/MAJORITY CHILDREN .....	44
GENDER ACHIEVEMENT GAP: WHERE ARE THE BOYS?.....	45
<b>OTHER TOPICS .....</b>	<b>46</b>
ADMINISTRATIVE RULEMAKING.....	46
REVIEW OF EXECUTIVE VETOES.....	47
ADDITIONAL PRESENTATIONS AND REPORTS.....	48

## RECOMMENDATIONS OF THE LESC

### PUBLIC EDUCATION DEPARTMENT UPDATES

1. **School Flexibility:** Amend the *Public School Code* (Laws 2011, Chapter 68) to allow the Secretary of Public Education to waive requirements in statute and rule pertaining to individual class loads, teaching loads, length of school day, staffing patterns, subject areas, and purchases of instructional materials for school year 2012-2013.
2. **Definition of “Developmentally Delayed”:** Introduce legislation amending the *Public School Code* to include a definition of “developmentally delayed” in reference to the provision of speech-only services for 3- and 4-year-olds.

### HIGHER EDUCATION DEPARTMENT UPDATES

3. **Joint Memorial Requesting the Creation of an Interim Higher Education Committee:** Introduce a joint memorial requesting that the Legislative Council create a two-year interim legislative Higher Education Committee (1) to examine: ways to coordinate offerings and degrees; the impact of regional and national accreditation and professional standards; education and work force needs; the state’s demographics and institutional statistics; and faculty and staff compensation; (2) to consider funding and revenue issues; and (3) to report to the Legislature by November 30, 2012 and again by November 30, 2013.

### FISCAL ISSUES

4. **Joint Memorial to Study Regionalization of School District Business and Administrative Services:** Introduce a joint memorial requesting the Public Education Department (PED) and the State Auditor to convene a work group (1) to consider the efficacy of having regional education cooperatives or other similar entities provide business and administrative services for public schools on a regional basis; (2) to design a pilot project for legislative consideration; and (3) to report the work group’s findings to the LESC and the Legislative Finance Committee (LFC) by November 1, 2012.

### ASSESSMENT AND ACCOUNTABILITY

5. **K-3 Plus:** Amend the *Public School Code*, with emergency clause, to convert the six-year K-3 Plus pilot program to a continuing program within PED for the purpose of providing funding for additional educational time for disadvantaged students in kindergarten through third grade; create a non-reverting K-3 Plus Fund; and require per-student funding to be based on 30 percent of the unit value.

## MEETING THE NEEDS OF STUDENTS

6. **School Athletics Equity Act:** Amend the *School Athletics Equity Act* to eliminate revenue, expenditure, and benefits and services reporting requirements for seventh and eighth grade athletic programs, and to clarify other reporting requirements.
7. **Charter Schools:** Amend the *Charter Schools Act* to require start-up schools and renewing charter schools to enter into charter contracts with their chartering authorities within 30 days of the approval of the initial or renewal application.
8. **Charter School Audit Monitoring:** Introduce legislation amending the *Public School Finance Act* to require (1) that each charter school submit its annual financial audit not only to the State Auditor but also to the school's authorizer; (2) that the authorizer monitor a charter school whose audit shows internal control deficiencies or material weaknesses until those deficiencies and weaknesses are corrected; and (3) that, in the case of a charter school that receives a qualified opinion on its audit, PED work with the charter school authorizer to assist the charter school to improve its accounting and internal control system and to require monthly status reports.
9. **ABE Instructional Materials:** Introduce legislation to require the Higher Education Department (HED), beginning in FY 13, to match the allocation from the Instructional Material Fund for adult basic education with funding from the appropriation to the Adult Basic Education Fund.

## OTHER PRESENTATIONS AND REPORTS

10. **Constitutional Special Schools:** Amend the definitions in the *Public School Capital Outlay Act* to (1) provide for the facilities at the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf to be eligible for *Public School Capital Outlay Act* funding; (2) remove the schools from HED's capital outlay bill; (3) make them part of the Public School Facilities Authority process; and (4) give the schools a 50 percent local match.
11. **Memorial to Review Reporting Requirements:** Introduce a memorial requesting PED, in collaboration with the New Mexico Coalition of School Administrators and other stakeholders, to conduct a review of all reporting requirements specified in statute and PED rule; to develop recommendations regarding the streamlining of those requirements; and to report the group's findings to the LESC and the LFC by November 1, 2012.
12. **"Erin's Law":** Introduce legislation, with an emergency clause, creating the Child Sexual Abuse Prevention Task Force, specifying the task force membership, and directing the task force to study and make recommendations regarding the prevention and reporting of child sexual abuse. The task force will sunset on December 1, 2012.
13. **General Obligation Bonds:** Endorse a capital outlay request for \$29.6 million in General Obligation Bonds to fund public, academic, tribal, and public school libraries.

## INTRODUCTION

During 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 2011 legislative interim and includes the committee's recommendations for legislation during the 2012 legislative session. For the 2012 session, the LESL chose not to make its own recommendations for public school support but instead to assist the House Education Committee in developing recommendations for HB 3, the *Education Appropriation Act*.

During the 2011 interim, the LESL maintained its focus on the results of existing educational programs, reiterating its desire to hold these programs accountable and its intention not to consider individual requests for funding of new programs. In addition, mindful of the activities of executive agencies, the LESL heard regular updates from the Public Education Department, including the Secretary-designate of Public Education; and occasional updates from the Higher Education Department, including the Secretary of Higher Education.

Also mindful of lingering economic concerns, the LESL held only one meeting outside of Santa Fe: the August meeting in Alamogordo. In this case, the meeting was in large part to honor a commitment since the 2009 interim, which the committee was unable to keep because of the special session that year. At all of its meetings during the 2011 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.

To conclude, this report includes summaries of presentations categorized according to certain themes: Public Education Department Updates, Higher Education Department Updates, Fiscal Issues, Assessment and Accountability, Educator Quality, Meeting the Needs of Students, and Other Topics. Although the report covers all of the issues examined during the 2011 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, 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, 2012*.



# **ISSUES STUDIED BY THE LESC**

## **PUBLIC EDUCATION DEPARTMENT UPDATES**

Throughout the 2011 interim, the Legislative Education Study Committee (LESC) heard periodic updates from the LESC staff, the Secretary-designate of Public Education, and the staff of the Public Education Department (PED) about a variety of department activities. In some cases – the A-B-C-D-F rating system for public schools, for example – there were multiple presentations; in other cases – an educational plan for students with autism, for example – there were single presentations.

### **A-B-C-D-F SCHOOLS RATING SYSTEM**

In 2011, legislation was enacted that, beginning in school year 2011-2012, created a new public school accountability system, to operate in addition to, and separate from, the existing adequate yearly progress (AYP) system created in state and federal law.

Among its provisions, the legislation (Laws 2011, Chapter 10) requires that:

- all public schools be graded annually on an A-F scale;
- the rating scale for elementary and middle schools include factors such as student proficiency and growth, as well as growth of the lowest 25<sup>th</sup> percentile of students;
- the rating scale for high schools include additional academic indicators such as high school graduation rates and growth in those rates;
- parents of a student in a public school rated F for two of the last four years have the right to transfer the student to any public school in the state or continue schooling through the statewide cyber academy; and
- PED ensure that a local school board or charter school governing body is prioritizing the resources of a public school rated D or F until the school earns a grade of C or better for two consecutive years.

During the 2011 interim, the Secretary-designate of Public Education provided a series of updates on the implementation of the A-B-C-D-F schools rating system. Among other points, she noted early in the interim that additional indicators factored into the high school grade may include:

- graduation rates;
- graduation rate growth; and
- growth in enrollment in Advanced Placement, International Baccalaureate, and dual enrollment, as well as ACT and SAT scores.

Several members from the Superintendents Advisory Council testified before the committee, and one noted that the council had endorsed the legislation because members

believed it would create a better system than AYP. However, the members cited a number of issues with the proposed rating system that remained to be resolved, including the short timeline for implementation and the prioritization of resources for school improvement. In addition, several LESC members urged that the rating system include subjects other than reading and math, as well as parent surveys, student nutrition, and participation in extracurricular activities.

Testimony by the Secretary-designate acknowledged a number of states that have already implemented or passed legislation requiring similar grading systems, including Florida, Indiana, Louisiana, Utah, Oklahoma, and Rhode Island. However, LESC staff cautioned that the models used in Florida and other states may not be completely adaptable to New Mexico, because school ratings are based in large part upon student growth, as measured by the standards-based assessment (SBA), which is administered only to students in grades 3 through 8 and grade 11.

On this point, the LESC expressed concern that elementary schools would have no assessment data for kindergarten through second grade, and high schools would have only one year of assessment data, if any at all. A proposal to rate kindergarten to grade 2 schools based on data from the next higher grade in the district appeared to address that issue for those schools, at least partially. However, for high schools, the proportional weight given to “student growth” would be shifted to “school growth,” making assessment data less critical to the calculation.

During the interim meeting in October, LESC staff testified that PED published a notice of proposed rulemaking that would create new rules to implement the requirements of the *A-B-C-D-F Schools Rating Act*. PED staff also testified that the new rules will ensure that local school boards and charter school governing bodies appropriately prioritize their resources for schools receiving a D or an F under the new system. After receiving input from the Superintendents Advisory Council and other stakeholders, PED finalized the rule in December, and it has been codified as NMAC 6.19.8.

As another point in the testimony on this topic, the Secretary-designate explained that PED intends to apply for a waiver from the US Department of Education (USDE), seeking regulatory relief to recognize the progress that schools are making. If the waiver application is approved, she said, the A-F schools rating system would be the singular accountability system for New Mexico.<sup>1</sup>

---

<sup>1</sup> In late December 2011, the Secretary-designate of Public Education received a letter from the USDE identifying a number of components in the initial application “that need further clarification and may need additional development or revision.” In response to a revised application in January 2012, the USDE wrote to the Secretary-designate again, alluding to “a number of outstanding concerns that need additional information or revision.” On February 9, 2012, the White House announced that requests for flexibility waivers under NCLB had been granted to 10 of the 11 states that had applied. The only state not to receive the waiver was New Mexico. According to the announcement, the Obama administration “is continuing to work closely with New Mexico.” Then on February 15, the USDE announced that New Mexico’s request for a waiver had been approved.

Finally, PED staff testified that the department was negotiating with test vendors for an earlier administration of the SBA so that PED can publish school ratings before the end of an academic year.

## **NEW MEXICO EFFECTIVE TEACHING TASK FORCE**

In 2011, the Legislature considered, but did not pass, SB 502, *School Teacher and Principal Evaluation System*. Among its provisions, the bill would have required PED to convene a work group to develop and make recommendations for a highly objective uniform statewide evaluation framework for school district and charter school teacher evaluation models and school principal evaluations, and to propose a performance-based compensation system to provide incentives for effective teachers and school principals.

Through Executive Order 2011-024, the Governor created the New Mexico Effective Teaching Task Force, comprising 15 members (including the directors of the LESC and Legislative Finance Committee) appointed by and serving at the pleasure of the Governor. The task force was charged with providing recommendations to the Governor regarding how best to measure the effectiveness of teachers and school leaders based on specific parameters, including:

- student achievement – representing at least 50 percent of the teacher evaluation;
- demonstrated best practices of effective teachers and teaching;
- the weights assigned to these measures; and
- the transition to a performance-based compensation system acknowledging student growth and progress.

LESC staff testified that the task force heard presentations from education professionals specializing in value-added modeling, student assessment, and teacher quality. Subsequent meetings featured more presenters from organizations that included the Southern Regional Education Board, the New Mexico School Leadership Institute, and the New Mexico Business Roundtable. The Secretary-designate of Public Education also testified that the task force would accept public input prior to completing its report and recommendations to be delivered to the Governor in August 2011.

In August, the Secretary-designate reported that the task force had met 10 times and formed four work groups organized around the following topic areas:

- Teacher and School Leader Evaluation;
- Professional Development;
- Recruitment and Retention; and
- Compensation and Advancement.

Testimony from LESC and PED staff during the October LESC hearing explained that, on August 26, PED presented the Governor with *New Mexico Effective Teaching Task Force: Final Report and Recommendations*. The report made 38 recommendations, all

but two of which (regarding the use and phase-in of a value-added model)." were unanimously approved by the 15-member group. However, LESC members expressed a number of concerns, including the need to continue with the three-tier licensure process and to improve the professional development dossier and professional development plan processes (see "Educator Quality," page 35).

## **AUTISM EDUCATION PLAN DEVELOPMENT**

During the 2011 session, the Legislature passed SB 314, *Autism Education Plan Development*, which would have amended the *Public School Code* to require the use of certain information when schools evaluate a student with autism spectrum disorder or develop an education plan for such a student; however, the bill was vetoed. The executive message stated that the bill could jeopardize New Mexico's eligibility for federal funds because it includes a definition of the term "autism spectrum disorder" that differs from the definition employed by the federal *Individuals with Disabilities Education Act* and the related federal regulations. Nonetheless, the veto message also included a requirement that, by July 2011, through agency rule, school districts and charter schools "use the information . . . outlined in SB 314 when developing an education plan or evaluating a student with autism spectrum disorder."

In August, the LESC reviewed the rule recently adopted by PED regarding children with disabilities and gifted children. Staff testimony confirmed that the rule implemented the provisions of SB 314 and ensured that state law was in compliance with federal law.

## **FEDERAL DOLLARS TO PED AND PUBLIC SCHOOLS: AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AND THE EDUCATION JOBS FUND**

During the 2011 interim, the LESC received two updates on the expenditure of federal *American Recovery and Reinvestment Act* (ARRA) dollars. In addition to ARRA dollars distributed through the public school funding formula in FY 10 and FY 11, in FY 09, the federal government distributed ARRA dollars to states for local educational agencies (LEAs) to supplement regular *Individuals with Disabilities Education Act* Part B (IDEA-B), IDEA-B preschool, and Title I allotments. These ARRA grants, available on a reimbursement basis through PED, were set to expire on September 30, 2011.

Testimony to the LESC in May 2011 indicated that New Mexico LEAs may have difficulty expending the funds on time: over \$56.0 million, or 33 percent, of Title I, IDEA-B, and IDEA-B preschool grant dollars remained to be requested. In October 2011, testimony to the LESC indicated that LEAs had had more success expending the dollars: only \$3.6 million, or 2.0 percent, of funds remained to be requested for reimbursement, and PED indicated that LEAs had until October 28 to submit final requests.

## **SUSPENSION OF STUDENT ASSESSMENT REQUIREMENTS**

As one of several cost-saving measures endorsed by the LESC, legislation enacted in 2011 suspended, for one year, the requirement that local school districts administer certain student assessments mandated by state but not federal law, resulting in an estimated \$3.5 million savings in the FY 12 appropriation to the State Equalization Guarantee (SEG). Under this legislation (Laws 2011, Chapter 161), for school year 2011-2012, PED, school districts, charter schools, and state educational institutions shall not be required to administer the following student assessments:

- in grade 11, a standards-based assessment in social studies;
- in grades 4, 6, 7, and 11, a standards-based writing assessment;
- in grades 9 and 10, short-cycle diagnostic assessments; and
- in grade 11, a college placement assessment or a work"force readiness assessment.

In addition, in school year 2011-2012, a student who has completed the course requirements for high school graduation may graduate without demonstrating competence in required subject areas on the standards-based assessment or assessments or a portfolio of standards-based indicators as established by PED rule.

## **DISTRIBUTION OF SPECIAL APPROPRIATIONS OF THE 2011 LEGISLATURE**

Section 5 of the *General Appropriation Act of 2011* makes three special nonrecurring appropriations to public schools for: (1) emergency support; (2) certain Governor's educational reforms; and (3) increased fuel costs. Language in the same section of the act also reauthorizes a 2010 appropriation for emergency support to school districts and charter schools to extend the time of expenditure.

### **Emergency Support**

Staff testified that, for FY 12, approximately \$7.7 million was available for emergency support to school districts, including:

- \$1.9 million in recurring categorical Public School Support for expenditure in FY 12;
- \$2.0 million in nonrecurring funds for expenditure in FY 11 and FY 12; and
- almost \$3.8 million in nonrecurring funds unexpended in FY 11 and reauthorized for expenditure in FY 12.

The \$2.0 million appropriation for emergency support includes language that requires:

- no money be distributed to any school district or state-chartered charter school having cash and invested reserves equaling 5.0 percent or more of the school's operational budget;
- the appropriation be derived from the "Education Lockbox"; and
- prior to the distribution of any emergency supplemental funds, the Secretary of Public Education provide the Legislative Finance Committee (LFC) and the LESC with a report outlining: (1) the criteria used to qualify for funds; (2) the financial status of recipients; and (3) any cost-saving measures recipients implemented before applying for funds.

Finally, the *General Appropriation Act of 2011* extended through FY 12 the period of time for expending the \$6.0 million appropriation to PED made in the *General Appropriation Act of 2010* for emergency support to school districts experiencing shortfalls. According to PED, approximately \$3.7 million of this appropriation remained unexpended at the end of FY 11, and it will be available for distribution in FY 12.

### **Governor's Educational Reforms**

The \$2.5 million appropriation for the Governor's educational reforms and initiatives includes provisions that the reforms:

- include third-grade retention (this contingency was not met, as no such legislation passed);
- provide technical assistance to low-performing schools;
- improve data systems;
- support Innovative Digital Education and Learning, computer-administered assessments, and common core standards implementation; and
- be contingent on PED providing a detailed report to the LFC and the LESC outlining the expenditure of funds and the results of reforms and initiatives.

One question that arose during committee testimony involved the contingency language for third-grade retention. LESC staff testified that, while the LFC's post-session fiscal review does not include this appropriation because of the failed contingency, PED reported that the department intends to expend the funds according to priorities to be developed. PED testimony indicated that, once it has prioritized the uses of the funds, the department will develop an action plan which includes a specific timeline and implementation plan for these funds.

### **Increased Fuel Costs**

To address the risk of increased fuel costs during school years 2010-2011 and 2011-2012, the 2011 Legislature appropriated \$1.2 million from the Transportation Emergency Fund for distribution to the school districts. LESC staff testified that in June PED issued a memorandum to school districts soliciting requests for fuel supplements that required applicant school districts to submit the following documentation:

- a cover letter with a detailed explanation of the need;
- third and fourth quarter expenditure reports;
- receipts for fuel purchased during the entire school year; and
- anticipated FY 11 transportation and operational cash balances.

Staff also reported that in June the LESC requested a spreadsheet detailing PED's distribution of the transportation emergency funds, including both the \$1.2 million appropriation and any remaining balance in the fund.<sup>2</sup>

## **PED GUIDELINES FOR FY 12 PUBLIC SCHOOL BUDGETS**

During the 2011 interim, the LESC received three reports on PED's guidance for and approval of the FY 12 public school budgets. The presentations covered provisions in law governing the creation and approval of public school budgets, as well as the topics described below.

### **PED Guidance**

PED guidance for school districts and charter schools for the development of their FY 12 budgets specified that PED would analyze budgets in line with the following five principles:

- student achievement drives spending;
- classroom dollars come first;
- transparency and good policy govern budget-making;
- academics inform long-range planning; and
- budgets reflect reasonable allocations for student and teacher services.

PED testified that the department did not send any FY 12 budgets back to school districts or charters for revision but did adjust all of the budgets for various reasons, as is the case every year.

### **Waivers**

Waivers in law for school districts and charter schools allow flexibility in budgeting. Staff testimony explained that provisions in the *Public School Code*:

- allow for a superintendent implementing a collaborative school improvement program to apply for a waiver of provisions relating to length of day, staffing patterns, subject area, or purchase of instructional materials;

---

<sup>2</sup> In late January 2012, PED notified LESC staff that nearly \$600,000 had been distributed, that the department intends to send another notification to school districts by mid-February, and that the department expects to distribute the remaining funds before the end of the fiscal year.

- exempt all charter schools from requirements pertaining to the length of the school day, staffing patterns, subject areas, and instructional materials;
- allow school district superintendents to request waivers of the use of funds for the purchase of instructional material either included or not included on the multiple list; and
- for school year 2009-2010 through school year 2011-2012, allow the Secretary of Public Education to waive certain requirements.

Testimony from PED staff indicated that the only waivers granted for school year 2011-2012 (effective July 1, 2011) were class-load waivers for Texico Municipal Schools to increase two kindergarten classes to 22 students each.

### **Percent to Instruction**

PED testimony included a comparison of total statewide budgeted operational expenditures of school districts and charter schools from FY 11 to FY 12, specifically the changes in the percent of expenditures on instruction:

- schools have budgeted nearly \$8.0 million less, or 0.3 percent, in FY 12; and
- the percentage of funding to instruction increased nearly 0.5 percent in FY 12.

However, a comparison of expenditures on instruction from FY 08 to FY 12 showed a decrease in instruction spending of 1.08 percent over four years.

### **Calculation of Units for Developmentally Delayed Three- and Four-year-olds**

PED testimony to the LESC summarized guidance issued by the department differentiating between the calculation of units for developmentally *delayed* three- and four-year-olds, and for developmentally *disabled* three- and four-year-olds. At issue appeared to be a lack of definition of the term “developmentally delayed students” – and how to fund them – in the public school funding formula, whereas federal provisions do recognize developmentally delayed students.

Relying on the federal provisions, PED guidance directed districts to change the way units for developmentally delayed three- and four-year-olds are calculated. Specifically, PED indicated that developmentally delayed three- and four-year-olds should not be included in the calculation of D-level special education units, but rather in A- and B-level units.

*See recommendations 1 and 2.*



## ***AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 GOVERNMENT SERVICE FUND ALLOCATION TO SUPPORT CYBER ACADEMY/VIRTUAL SCHOOL PROGRAM***

Since 2007, the Legislature has appropriated a total of approximately \$11.6 million for Innovative Digital Education and Learning-New Mexico (IDEAL-NM) to fund the implementation and operation of the cyber academy/virtual school program (see “Virtual Schools,” p. 43), including:

- \$7.9 million to HED; and
- approximately \$3.7 million to PED.

In June 2011, LFC staff reported that the Governor allocated funds from the discretionary ARRA Government Service Fund provided to New Mexico by the US Department of Education, including \$500,000 to HED for data hosting and software maintenance for the statewide K-12 and higher education online learning system (see “Innovative Digital Education and Learning for New Mexico,” p. 16); and \$50,000 to PED to support limited IDEAL-NM staff positions until those positions were filled under departmental reorganization.

### **PED REDUCTION-IN-FORCE PLAN**

Other PED updates addressed personnel issues within the department. In her testimony on the reorganization of PED, the Secretary-designate of Public Education identified several challenges, including a 24.5 percent budget cut of approximately \$3.2 million for FY 13. Subsequently, PED identified almost \$2.5 million in savings that included:

- a new reorganization plan with four fewer exempt positions;
- a 30 percent reduction in the salaries of current exempt positions for a savings of \$548,000;
- the elimination of 27.4 vacant positions for a savings of nearly \$1.6 million;
- a \$209,424 savings by decreasing PED satellite offices to two from five; and
- the reduction of PED vehicles to four from 10 for a savings of \$9,576.

Despite these efforts to reduce the budget, the Secretary-designate testified that a reduction-in-force (RIF) of 33 employees was necessary, and she noted that PED had worked with the State Personnel Office to return interested and qualified staff to fill approximately 20 positions in the new reorganization of the agency. Other testimony by the Secretary-designate came in response to committee concerns about the RIF preceding the departmental reorganization and the department’s ability and commitment to serve rural districts.

## **PED ADVISORY TEAM DELIVERABLES**

In February 2011, PED issued a news release announcing the appointment by the Secretary-designate of Public Education of a nine-member advisory team, comprising “experts from across the country with extensive experience in education policy, management and administrative issues.” According to the news release, the department had contracted with these experts “as an alternative to the immediate hiring of many of the Department’s exempt positions, resulting in a cost-savings to the State of New Mexico . . . .”

Staff testimony identified two issues with the PED Advisory Team. The first was that, even though the news release says that PED “has contracted” with these nine people, a staff search of the Sunshine Portal and a list of current contracts from the Department of Finance and Administration (DFA), together with a search by the DFA Contracts Review Bureau, could find only three contracts. The other issue was that PED had not responded to two LESC staff requests for information about the work and the deliverables of these nine contractors and about the cost-savings to the state.

The Secretary-designate testified that she had used the advisory team to make policy recommendations while she became better acquainted with the state. Citing salary figures from the previous administration, the Secretary-designate said that, rather than pay \$1.2 million by hiring senior managers, she saved the state approximately \$700,000 through the contracting process. She added that one of the team members had provided services for free.

## **COMMON CORE STATE STANDARDS**

During the 2010 interim, the LESC heard a presentation regarding New Mexico’s participation in the Common Core State Standards Initiative of the Center for Best Practices of the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO). At that time, the committee was told that the goal of the initiative was to develop high standards in mathematics and language arts, consistent from state to state, so that all students would be well-prepared to compete with their peers in the United States and with students from around the world. Later in 2010, New Mexico became the 39<sup>th</sup> state to adopt Common Core State Standards (CCSS). Currently, 45 states and the District of Columbia have adopted CCSS.

Testimony from the Secretary-designate during the 2011 interim emphasized that these standards are aligned with college and career expectations for rigorous content and application of knowledge through high-order skills; that state standards need to be informed by those of other top performing countries so New Mexico students are prepared to succeed in a global economy; and that adoption of the CCSS should reduce the need for remediation in college by enhancing the alignment between secondary and postsecondary education.

The Secretary-designate further testified that PED's goal is to be prepared for statewide implementation of the CCSS by 2014, and she outlined the department's objectives under a \$350,000 CCSS planning grant awarded to PED by the Kellogg Foundation.

### **K-3 PLUS PROGRAM**

Enacted in 2007, K-3 Plus is a six-year pilot program that extends 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 time in kindergarten and the early grades.

For FY 12 (school year 2011-2012):

- the Legislature appropriated \$5.3 million for K-3 Plus; and
- PED approved 51 programs in 14 school districts and one state-chartered charter school, intending to serve 6,630 students altogether.

Each year, LESC staff testified, PED has made changes in the requirements or conditions prescribed. Overall, this testimony continued, the application for school year 2011-2012 was the most prescriptive of all, particularly with regard to the time spent on literacy, the students that are the focus of the intervention, minimum daily attendance requirements and the resources and funding provided to support those services. In fact, several school districts cited these changes as a factor in their decision not to participate in the program. Staff testimony also noted some concerns that had been raised about the effects that the latest changes may have on a five-year study of the program (see "K-3 Plus Program Evaluation Report," p. 34).

The Secretary-designate of Public Education testified that PED had implemented a "per-student" basis for funding and had established attendance requirements to use money more effectively; and that, while the program is for all students, PED is asking for an intervention plan for the lowest 25 percent of students at each grade level.

### **P-20 EDUCATIONAL DATA SYSTEM AND DATA SYSTEM COUNCIL**

LESC-endorsed legislation was enacted in 2010 to create the P-20 Educational Data System and Data System Council in order to:

- collect, integrate, and report longitudinal student level and educator data;
- conduct research and evaluation of federal, state, and local education programs; and
- ensure audit compliance with federal and state requirements.

Council membership comprises representatives of:

- PED;
- the Higher Education Department;
- the Children, Youth and Families Department (CYFD);
- the Department of Workforce Solutions;
- the Department of Economic Development;
- the Department of Information Technology;
- the Human Services Department;
- the Department of Health;
- the Office of Education Accountability;
- the Office of the Governor;
- the Public School Facilities Authority;
- public postsecondary educational institutions;
- public school districts;
- charter schools;
- the LESC; and
- the LFC.

In her testimony, the Secretary-designate referred to several activities that had been conducted in 2010 – two meetings of the Data System Council among them – and she identified the next steps to be performed:

- completion of the unique student ID pilot;
- assessment of the CYFD and Department of Workforce Solutions data exchange; and
- reconvening the Data System Council for:
  - completion of a governance and management plan;
  - implementation of a strategic plan; and
  - development of interagency data-sharing agreements.

In response to concerns that millions of dollars have been spent on data systems that do not interact, the Secretary-designate testified that PED must do a better job of partnering with the districts to give and receive clean data. She added that PED is working with the Department of Information Technology to provide new data for the Sunshine Portal in July 2012.

## **HIGHER EDUCATION DEPARTMENT UPDATES**

In addition to the series of updates from PED, the LESC also heard occasional updates from the Higher Education Department (HED), as summarized in this portion of the report.

## HIGHER EDUCATION FUNDING FORMULA TASK FORCE

Developed in the mid-1970s, the original higher education funding formula was created to determine the funding needs of institutions of higher education (IHEs). Unlike the public school funding formula, the higher education funding formula is not codified in law. In 2002, a Blue Ribbon Task Force was created to revise the mechanics of the formula.

Each year, the Legislature appropriates funds to each IHE for “instruction and general purposes,” also known as I&G. Calculated through the higher education funding formula, I&G dollars are based on data from two years prior to the year in which the appropriation is made. During the 2010 interim, HED staff outlined the nine main factors of the higher education funding formula that affect the annual I&G appropriation to each institution:

- instruction and instructional support;
- student services;
- physical plant operations and maintenance/utilities;
- land and permanent fund revenue credit;
- mill levy revenue credit;
- tuition revenue credit;
- 3.0 percent scholarship adjustment;
- building renewal and replacement adjustment; and
- equipment renewal and replacement adjustment.

For FY 12, the *General Appropriation Act of 2011* included language requiring HED to recommend revisions to the higher education funding formula no later than October 15, 2011. During the June interim meeting, the LESC heard a preliminary report from the Secretary of Higher Education and the Chair of the Higher Education Funding Formula Task Force. Among their remarks:

- the Secretary of Higher Education stated that HED was considering the creation of three formulas: one for two-year colleges, one for research universities, and a third for comprehensive universities. The Secretary also stressed the need to focus on outcomes and performance by creating incentives for student completion and closing the achievement gap; and
- the task force chair emphasized that the proposed new higher education funding formula would work much like the old formula but would be driven primarily by outputs; and that it would no longer use factors such as square footage and building and repair. He added that the new formula would shift from 21-day enrollment to completed enrollment, keeping only three or four pieces of the old formula.

At the November LESC meeting, the Secretary of Higher Education outlined the new funding formula, comparing it to the Model T, which, though considered primitive by modern standards, was a transformational vehicle in its time. Similarly, he added, the

new formula represents a fundamental shift in higher education by moving funding away from line items to statewide priorities, such as work force needs. The Secretary further testified that the FY 13 funding formula will use the I&G appropriation from FY 12 as a base. He also emphasized that the department will use three separate funding formulas, and in each instance, the distribution of the new formula will be based on using 95 percent of the FY 12 distribution for each IHE, then allocating the remaining 5.0 percent to funding the new formula's components.

### **DUAL CREDIT PROGRAM: PARTICIPATION OF TRIBAL COLLEGES AND SECONDARY SCHOOLS**

Staff testimony reviewed legislation enacted in 2010 to include Bureau of Indian Education (BIE) high schools and tribal colleges in the state's dual credit program. Among these provisions, BIE high schools and tribal colleges are now subject to the uniform master agreement, which includes:

- a requirement to waive tuition and general fees for high school students participating in the dual credit program;
- a requirement that BIE high schools pay for the cost of textbooks; and
- an appendix that lists:
  - the courses approved for dual credit between the two schools; and
  - the current course code information in the Student Teacher Accountability Reporting System (STARS) at PED.

Staff testimony also identified several issues to be addressed, including student responsibility for transportation to dual credit courses and reimbursement of tribal colleges that waive tuition for dual credit students.

Testimony from HED staff indicated that the department:

- is reviewing the laws and rules that address data collection from BIE schools and tribal colleges;
- has established memoranda of understanding with some tribal colleges; and
- has filled two of five vacant positions in the P-20 data warehouse.

Regarding the STARS course code, several committee members emphasized that students' credits must be protected and the unique ID must be more broadly applied. HED staff agreed. In an effort to address unique student ID numbers and other STARS reporting requirements, HED applied for and received a College Access Challenge Grant of \$1.5 million per year. Among other things, the grant funds will help to integrate databases from PED, BIE, HED, and the Department of Workforce Solutions to track student progress in BIE high schools and throughout the system.

Among other points, testimony from HED staff noted that the dual credit legislation had no appropriation even though estimates indicate it would initially cost \$200,000 per year to reimburse tribal college tuition – and more in the future due to the popularity of dual credit courses. In response to LESC concerns about the transportation burden of some BIE students, HED staff replied that rural schools will have opportunities for distance learning, although technology access issues will have to be addressed.

## **INNOVATIVE DIGITAL EDUCATION AND LEARNING IN NEW MEXICO**

Like PED, HED provided an update on IDEAL-NM during the 2011 interim. Testimony from HED staff confirmed that the agency’s expenditure of funds related to IDEAL-NM centered on paying the \$1.4 million contract with Blackboard Inc. for a Learning Management System, which is able to catalog, register, deliver, and track learners and learning, accessible via a web-portal. HED reported that the contract was paid for in three portions:

- \$500,000 in federal ARRA Government Services Funds;
- \$450,000 from the HED agency budget; and
- the remainder from higher education institutions that used Blackboard through the HED contract.

In addition, HED staff testified that the state agencies that used Blackboard through the state contract will continue to be able to do so in FY 12, albeit without receiving technical assistance.

## **HIGHER EDUCATION LEARNING CENTER: SANTA FE COMMUNITY COLLEGE**

In 2009, the Secretary of Higher Education at that time approved the preliminary plan of Santa Fe Community College (SFCC) to create the Higher Education Learning Center. According to the approved plan and the requirements of the *College District Tax Act*, the SFCC board approved an election resolution that included a question regarding the issuance of up to \$35.0 million in general obligation bonds. In August 2010, the voters approved issuance of the bonds for the construction of the learning center. Completion of the project has been delayed, however, because of a letter from the current Secretary of Higher Education noting “complex legal and policy issues” but citing no specific statutes or regulations. This letter denied final approval for the learning center and requested:

- approval by the Legislature;
- review by the Capital Projects Committee of HED; and
- approval by the New Mexico Board of Finance.

In its response, SFCC countered that the college has already completed the steps necessary to proceed with construction, including compliance with the *Learning Center*

*Act*; that neither law nor rule requires legislative approval of the project; and that the continued lack of specificity from HED regarding perceived barriers to completion of the proposed center has made it difficult for the college to reply to the department's concerns.

These points, and others, were raised in testimony to the LESC late in the 2011 interim – testimony by the president and other officials of SFCC, the Secretary of Higher Education, and other interested parties. The committee encouraged all parties to collaborate toward clear understanding and a resolution of the issues. One factor in the outcome may be an advisory letter that the Attorney General issued on December 30, 2011, which concluded that neither legislative approval nor approval by the State Board of Finance is required for the construction of a learning center facility under the *Learning Center Act* or any other law.

*See Recommendation 3.*

## **FISCAL ISSUES**

### **STATE REVENUE UPDATES**

During the 2011 interim, the LESC received periodic updates on state revenue from LFC and DFA. According to testimony in December from the LFC chief economist, “new money” in FY 13, which is defined as FY 13 projected revenue less FY 12 recurring appropriations, is projected to be \$254 million, or 4.7 percent of FY 12 appropriations. She noted, however, that, after setting aside approximately \$50.0 million to reverse a 1.75 percent employee/employer retirement swap, the FY 13 new money is \$204 million.

Among other revenue highlights, the chief economist reported that:

- State Treasurer's earnings were revised downward in FY 11 due to an expected write-down of \$2.8 million attributable to the remaining balance of the Reserve Primary Fund, a money market fund with New Mexico holdings that experienced a run following the collapse of the financial markets in 2008;
- energy-related revenues were increased due to correction of the model for federal lease revenues earned from mineral royalties other than oil and gas; and
- revenues associated with the permanent funds are expected to decline in FY 13 due to a much lower market value.

With regard to risks to the forecast, the chief economist explained that:

- the failure of Congress to agree to a federal deficit reduction deal could lead to large reductions in Social Security, Medicaid, and military spending, which could have significant effects on the New Mexico economy;
- energy markets are inherently volatile;



- the European Union is headed toward another recession according to leading economists;
- New Mexico is now facing a second legal challenge from those cigarette manufacturers participating in the tobacco master settlement agreement, who claim that the state no longer has a valid qualifying statute as required by the settlement, including a 2006 change that established tax exempt stamps for tribal sales; and
- if the federal payroll tax reduction is extended in calendar year 2012, this action will potentially add revenue to personal income tax and gross receipts tax.

In response to a committee member's question regarding the balances of statewide reserves and the education lockbox, the chief economist testified that statewide reserves are at \$501 million, or 9.2 percent of recurring appropriations in FY 12, and that the ending FY 12 balance in the education lockbox is \$47.1 million.

## **REVISION OF THE PUBLIC SCHOOL ACCOUNTING AND BUDGETING MANUAL OF PROCEDURES**

In 2010, the LESC School Finance Work Group received \$50,000 from the New Mexico Public Schools Insurance Authority to hire expert contractors to update the PED's *Public School Accounting and Budgeting Manual of Procedures*, which had not been updated since the 1990s. According to LESC staff testimony in 2011, the updated manual will serve as a guiding document to help all school districts and charter schools understand and comply with applicable laws and current financial reporting requirements. If the guidance provided for in the new manual is properly followed, the revised manual will:

- increase the likelihood of accurate financial reporting;
- strengthen internal controls;
- reduce waste, fraud, and abuse; and
- help school boards and administrators be more effective stewards of public resources.

In addition, improvements in the new manual include:

- greater detail regarding proper internal controls;
- additional guidance on complying with financial, federal, or special audits;
- common audit findings and tips to avoid them; and
- a more consistent, easy-to-use format.

*See Recommendation 4.*

## **LESC/LEGISLATIVE FINANCE COMMITTEE JOINT EVALUATION OF PUBLIC SCHOOL FUNDING**

Prior to the beginning of the 2011 interim, the chairs of the LFC and the LESC discussed a joint evaluation of public school funding, including selected factors in the public school funding formula. Subsequently, staff from both committees conducted a joint evaluation to assess the funding formula's efficacy in allocating resources and to assess the oversight and administration of the formula by PED to ensure that resources are allocated in a fair, accurate, and equitable manner.

LFC and LESC staff testimony about the evaluation report began with the current funding level and a brief history of the funding formula itself. For FY 12, New Mexico allocated approximately \$2.4 billion through its public school funding formula to 173 school districts and charter schools to serve 330,000 students. The report noted that, since its enactment in 1974, the funding formula has been amended at least 80 times, resulting in administrative complexity, decreased oversight, and a decline in the formula's usefulness – all factors that suggest the need for an evaluation of the formula.

Staff testimony then highlighted the key findings of the evaluation, among them:

- New Mexico needs to update the public school funding formula to ensure efficient allocation of resources aligned with recent education policy;
- unclear statutes and rules and deference to local decisions undermine the fair distribution of \$2.4 billion in funding; and
- the accountability function of PED is insufficient, resulting in unfair, inaccurate, and inequitable distribution of public resources.

To address these findings, staff testimony continued, the evaluation produced a number of recommendations, among them:

- eliminating components that generate few units or that are not funding statewide programs;
- adjusting the at-risk index to pay a cost differential of 0.15 for the percentage of district students identified as eligible for the free and reduced-price lunch program;
- adjusting bilingual funding to direct a cost differential of 0.15 toward English language learner (ELL) students statewide;
- moving to a census-based special education funding model that funds districts for serving 16 percent of the district's students at a cost differential of 2;
- replacing the training and experience (T&E) index with an "effective" teacher index that only multiplies enrollment units with the following values corresponding to licensure: level 1 – 0.75, level 2 – 1, and level 3 – 1.25;
- repealing all current size adjustments and growth units for charter schools and creating a categorical funding program to fund first-year and growth units;
- allowing savings from decreased units from these formula changes to be put back into the unit value;

- using a two-year hold harmless to allow districts to adjust to these changes; and
- amending the *Public School Code* to establish a maximum age limitation.

Other recommendations from the evaluation would require PED to:

- implement a home language survey for use by all districts and charter schools that is valid and reliable and that is developed in accordance with state and federal guidelines;
- develop a written methodology to determine the initial unit value and a succession plan for finance staff currently determining the value; and
- develop a new audit unit that is of sufficient size and skill to meet current administrative requirements for responsibly administering the funding formula.

According to the testimony, these recommendations, if implemented, have the potential to increase the unit value from \$3,586 to \$3,887.

Among their responses to the evaluation report, the Secretary-designate of Public Education and the Deputy Secretary testified that PED has strengthened oversight of school district budgets and has created an audit unit to focus on T&E and enrollment count data.

## **PUBLIC SCHOOL TRANSPORTATION: LFC PROGRAM EVALUATION**

In 1993, the LFC issued a program evaluation report on the oversight and administration of the public school transportation program. An inequitable funding formula, lack of incentives for local efficiency, and weak PED oversight of the program were among the problems identified. That following year, the Legislature appointed a task force to study these issues, which resulted in the repeal or amendment of several laws, adoption of a new funding formula, and the implementation of several operational recommendations.

In May of 2011, a limited scope program evaluation by the LFC assessed the status of key findings and implementation of key recommendations made in the 1993 report, assessed the current processes for administration of the transportation program, and determined the implementation status and use of the newly installed global positioning system (GPS).

In testimony to the LESC, LFC staff identified several findings that were similar to those mentioned in the 1993 report, as well as findings regarding the purchase of GPS units for school buses. According to that testimony, the transportation division in PED did not:

- develop written policies and procedures for administration of the program;
- maintain adequate support for adjustments to data submitted by public school districts and used in the transportation distribution funding formula;
- maintain adequate documentation to support changes to the formula; and
- verify or review information provided by districts.

LFC staff further testified that PED spent nearly half of a \$2.0 million appropriation to purchase GPS units and may have violated the law by paying \$500,000 for maintenance costs without approval from the Department of Information Technology. Staff also noted that a former PED employee went to work for the contractor, Zonar, which is probably a violation of the general contractor's agreement and which prompted a request from the LFC for an Attorney General's investigation. PED staff testified that the department is preparing information for the investigation and that the incident was reported to the Department of Public Safety.

LFC staff testified that the evaluation recommends:

- further study of the transportation funding formula;
- full documentation and validation of changes by PED; and
- the use of internal checks and balances.

During the testimony, PED was recognized for handling issues left from the prior administration and beginning to implement some of the recommendations from the evaluation. The Deputy Secretary of Public Education also testified that the department was taking additional measures, which include:

- the preparation of a public school transportation manual to be submitted for review by the LESC and LFC;
- tightened internal controls; and
- non-renewal of a maintenance agreement with Zonar, which expired on June 30, 2011.

## **EDUCATOR RETIREMENT**

### **Educational Retirement Board: Recovery of Overpayments**

On May 25, 2011, the Educational Retirement Board (ERB) issued a statement relating to errors – most of them overpayments – that ERB had made in calculating interest on refunds of members' contributions in 2010. At the June LESC meeting, the ERB Executive Director explained the extent and cause of the errors and efforts to correct them.

"

The Executive Director testified that on July 1, 2010 the agency implemented a change in the process used to calculate interest on contributions refunded to members who have terminated employment and contributions that are paid to the beneficiaries of members and retirees. Within weeks of implementing the new process, however, ERB staff discovered a software error in the interest calculation, which had resulted in overpayments on 693 refunds totaling \$1,690,139.85 and ranging from \$0.66 to \$306,264.29; and underpayments on 15 refunds totaling \$1,441.96 ranging from \$96.13 to \$923.77. Refunds were temporarily stopped while staff addressed the error, and

according to ERB, members and beneficiaries who received payments after August 2010 received the correct interest amount.

The Executive Director further testified that the agency had taken a number of measures to correct the error, which included:

- proper reinstallation of the software;
- sending preliminary letters to all recipients;
- immediately calling all recipients of overpayments greater than \$1,000 to inform them of the error, to apologize, and to ask for repayment;
- recalculating all July and August checks; and
- implementing better follow-through on staff concerns.

This testimony also noted that, as of December, 220 of the 693 members with overpaid refunds had returned \$580,143.<sup>3</sup>

### **ERB Retirement Benefit Plan Design Changes**

At least since the 2004 interim, the LESC has requested and received updates from the ERB regarding efforts to improve the solvency of the Educational Retirement Fund. Because employer and employee contributions into the ERB plan are less than the pensions and expenses paid out of the plans, the fund depends on investment returns to remain solvent. In 2005, the ERB worked with the Legislature to develop higher contribution rates for members and employers to address long-term funding as actuaries had estimated that the ERB will run out of money by 2039.

During the 2011 interim, the Executive Director of the ERB testified that, in December 2011, the Investments and Pensions Oversight Committee endorsed the ERB-adopted proposal to:

- reduce the cost-of-living adjustment by 12.5 percent for all current and future retirees;
- establish a minimum retirement age of 55 for members who would not be eligible to retire within 10 years of the proposal's adoption; and
- include a grandfather provision that protects all members who meet any of the current retirement eligibility requirements either before or during the 10-year period.

The ERB Executive Director further testified that the organization gathered feedback on its solvency proposal from stakeholders and legislators by conducting a statewide listening tour to present plan design change scenarios and respond to the questions and concerns of ERB members.

---

<sup>3</sup> In early February 2012, the ERB reported to LESC staff that, through repayment agreements with members, the ERB was arranging to recover an additional \$120,000 in overpayments.

## **Retiree Health Care Authority**

In 2007, a report to the Legislature evaluating the long-term trend and actuarial condition of the Retiree Health Care Authority (RHCA) fund projected that the fund would become insolvent by 2014. In response, several solutions were identified and implemented, including:

- increasing employee and employer contributions to the program from 1.95 percent to 3.0 percent over a four-year period;
- removing the sunset clause for a \$3.0 million tax suspense fund distribution;
- increasing employee and employer contributions for employees in “enhanced retirement plans” from 1.95 percent to 3.75 percent over a four-year period;
- requiring that retirees purchase service credit from RHCA equal to the actuarial present value when purchasing service credit from PERA and ERB; and
- requiring that return-to-work employees and their employers contribute to the fund.

The RHCA board also approved several changes to the program beginning January 1, 2010, including:

- consolidating the three-plan design model (gold, silver, and bronze) into a two-plan design model (premium and premium plus);
- increasing premiums charged to retirees in 2010 and 2011; and
- increasing the annual out-of-pocket maximum on the premium plus plan from \$3,000 to \$4,000 effective January 1, 2011.

During the 2011 interim, the Executive Director of the RHCA testified that, for FY 12, employee and employer contributions to the RHCA increased for a second year in a row, from 2.5 percent to 2.75 percent. This increase was part of a four-year phased increase beginning in FY 10 from 1.95 to 3.0 percent in FY 13.

This testimony further explained that the RHCA board is currently evaluating additional plan changes to ensure solvency. According to RHCA staff, solvency could be extended to 2035 and the unfunded liability reduced if the following changes were to be adopted:

- increase pre-Medicare plan deductibles and/or combine plans into one option instead of two;
- increase prescription copayments;
- increase active employer/employee contributions by 1.0 percent over three years beginning in FY 16; and
- reduce subsidies for younger retirees.

While legislative action would be needed to increase the active employer/employee contributions, the RHCA board could make other sustainability plan changes without legislation.

## **NEW MEXICO LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM AND FUND**

The purpose of the *New Mexico Lottery Act* is to provide tuition assistance to resident undergraduates at New Mexico public postsecondary educational institutions. According to the website of the New Mexico Lottery, more than 75,000 students from across the state have attended these institutions with the help of legislative lottery scholarships since 1996.

### **Solvency of Legislative Lottery Scholarship Fund**

In July, LESC staff testified that, with scholarship expenses roughly equal to the fund balance of more than \$50.0 million in FY 11, tuition increases and flat revenues may jeopardize the solvency of the Legislative Lottery Scholarship Fund. LESC staff reported on projections indicating that the scholarship fund balance would fall sharply with a tuition increase of only 5.0 percent; and an increase of 7.0 percent could reduce the balance to zero by FY 14. Unfortunately, tuition increases in New Mexico's colleges and universities for FY 12 average between 6.8 and 11.2 percent, indicating that the fund may reach insolvency prior to FY 14 if all other factors remain unchanged.

The LESC also heard testimony from the Chief Executive Officer (CEO) of the New Mexico Lottery Authority (NMLA), who noted that over the past four years ticket sales have been down, or flat, for a variety of reasons, including:

- the economic recession and prolonged recovery;
- loss of retailers that went out of business; and
- increasing food and gas prices.

Despite these setbacks, the CEO emphasized that net revenues for the scholarship program have increased due to strict fiscal discipline and severe cost-cutting. However, since NMLA cannot continue to cut its way to higher revenues, steps were taken in the past two fiscal years to stabilize sales, including development of a new branding campaign, acquisition of 60 new stores, and launch of a social medial strategy to reach younger players.

The CEO also presented a five-year forecast based on the NMLA's FY 12 budget. He asserted that NMLA anticipates flat gross and net revenues, with an average revenue forecast of \$41.0 million annually.

### **Impacts of the Legislative Lottery Scholarship Program on Institutions and on Institutional Outcomes**

Data compiled by HED show that students attending college on legislative lottery scholarships have an average graduation rate of 60 percent compared to an overall

graduation rate of 42 percent for all New Mexico students completing a bachelor's degree within six years.

Staff from the University of New Mexico (UNM) testified on the lottery's impact on institutions. According to UNM staff, lottery scholarship recipients account for 38 percent of the total undergraduate population at UNM. Of these students, staff noted that:

- their median family income was \$55,133;
- 64 percent of them applied for federal aid; and
- 36 percent of them qualified for the Pell Grant.

UNM staff also reported that lottery scholarships account for 11.1 percent of overall aid to students. Regarding institutional outcomes, staff testified that the six-year graduation rate of lottery scholarship recipients at UNM is 58 percent, compared to an overall graduation rate of 43.6 percent. For high-need (that is, Pell-eligible) students, the graduation rate was 48 percent with the lottery scholarship and only 18 percent without it.

## **FY 12 UNEMPLOYMENT COMPENSATION ASSESSMENTS OF SCHOOL DISTRICTS**

In October, LESC staff testified that school districts had received invoices for FY 12 unemployment compensation assessments from the General Services Department (GSD). Many of these districts indicated that their rates for unemployment compensation had risen substantially as compared to the previous year; however, the unemployment compensation rate assessments did not include an explanation or justification for increases.

Consequently, LESC staff compiled data to assess the impact of the unemployment compensation assessment increases by school district. Through a comparison of the amount each district budgeted for unemployment compensation to the amounts assessed by GSD, the analysis showed that:

- districts budgeted just over \$2.0 million for unemployment compensation in school year 2011-2012;
- GSD assessed school districts for a total of approximately \$4.8 million, for a difference of \$2.8 million.

Based on information provided by PED and GSD, the analysis further indicated that 42 districts did not budget sufficient resources to cover their unemployment compensation assessment and that the shortfall between the amount budgeted for unemployment compensation and the amount assessed ranged from \$587,091 to \$75.

In response, the Director of GSD's Risk Management Division testified that GSD has been looking at a statewide solution; however, the only real solution is employment. He also explained that the unemployment program is a reimbursable, pay-as-you-go program



– not an insurance program. The director further testified that, while the federal unemployment data show that New Mexico’s unemployment rate has decreased, the rate does not count individuals who have quit looking for work.

When a committee member asked whether districts could pay their assessments over a number of months or years, PED staff testified that the assessments are due when received, but noted that districts receive their program cost appropriations in 12 allotments. In response to a question relating to the possible use of emergency supplemental funding to assist districts with high assessments, PED staff indicated that, although the department has considered assisting those districts with little or no cash balance, they must submit an application for emergency supplemental funds.

## **ASSESSMENT AND ACCOUNTABILITY**

### **AUDITS OF SELECTED SCHOOL DISTRICTS BY THE PUBLIC EDUCATION DEPARTMENT**

#### **Audit Process and Results**

During the spring of 2011, PED audited 34 school districts whose unit growth data raised certain questions. According to testimony from the Secretary-designate of Public Education, the department’s evaluation in late March of enrollment data from 2009-2010 80<sup>th</sup> day to 2010-2011 80<sup>th</sup> day revealed a 116 percent increase in unit growth statewide despite only a 1.0 percent increase in student enrollment. Districts were identified for an initial audit based on an examination of data in nine specific categories:

- teacher training and experience;
- A/B membership;
- C Level and C Level gifted;
- D Level and D Level gifted;
- ancillary FTEs;
- ancillary/special education membership;
- 3-year DD membership;
- 4-year DD membership; and
- 3-4 year cohort rates.

The Secretary-designate testified that PED flagged for audit any districts that either exceeded the statewide average growth rate by more than 200 percent in any of the nine categories or had unusually high trends requiring additional review. Despite a 10 percent threshold for reviewing files in general, this testimony continued, in very small districts PED staff reviewed 100 percent of the files; however, in Las Cruces Public Schools, a large district, PED reviewed only 5.0 percent of the files even though the district had flags in five out of nine categories. The Secretary-designate further testified that districts

with more flags required on-site reviews, while districts with fewer flags received desktop reviews. Altogether, PED examined over 10,000 records.

On April 12, PED sent memos to all districts announcing the audit and timelines; and on April 27, the Secretary-designate called superintendents to provide the audit findings, and a memo with the findings was released. According to these initial findings, the Secretary-designate testified:

- eight districts exhibited exemplary data quality, accurate record-keeping, strong accountability, and no compliance infractions;
- thirteen districts had minor compliance issues such as poor data quality, inaccurate or delayed record keeping, discrepancies between data submitted to PED and data included in IEPs (Individualized Education Plans), unintentional technical errors, and potential questions regarding level of services provided;
- four districts had major compliance issues, which include inconsistencies with state or federal laws for special education services; and
- nine districts were cited as needing in-depth audits due to severe data quality issues, inability to validate records and provider service logs, and unusually high ancillary rates, among other findings. An independent auditor, the Secretary-designate added, was selected to conduct the additional in-depth audits.<sup>4</sup>

Testimony by LESC staff provided additional information about the PED audits. According to this testimony, the circumstances surrounding the PED audit began with the setting of the preliminary unit value on April 1. At that time, PED reported a potential increase in statewide program units of 7,900 units. The increase in projected units, staff testified, was largely a result of:

- student enrollment;
- an increase in the reported number of special education units; and
- increases in the teacher training and experience index.

In the April 12 memo, the staff testimony continued, the Secretary-designate wrote, “This enormous increase from last year’s growth suggests potential inconsistencies or errors in the data provided and intentional gaming of the system to receive additional funds.”

Staff further testified that, while supportive of efforts to use quality data to ensure a correct distribution of funds, LESC staff had several concerns about the PED audits:

- relative to a standard audit, allowing just over a week to analyze 10,000 records from 34 school districts seemed questionable;
- the deadline provided too short a time frame not only for PED to examine data sufficiently and to report findings, but also for school districts to respond to the findings;

---

<sup>4</sup> As of late January 2012, this independent auditor had not issued a report of the in-depth audits of those nine school districts. PED notified LESC staff that the department expects the report in March 2012.

- PED’s selection of districts based on only two years of data was less informative and reliable than an analysis of long-term trend data; and
- the suggestion that there had been “intentional gaming of the system” seemed premature.

### **LESC Survey of Audited School Districts**

Staff testified that, to better understand the audit process and school district perspectives, LESG staff sent an online survey to the superintendents of the 34 districts selected for audit, with a response rate of 88 percent (30 of 34). Among other findings, this survey revealed that:

- few districts received an entrance conference or information why they had been selected for audit;
- most districts encountered problems when trying to provide documents, most commonly the short time frame and overloaded fax machines;
- all districts had their IEPs reviewed; and
- district staff time to comply with the audit ranged from as few as five hours to as many as 200 or more hours.

Staff testimony noted that, while one of the stated purposes of the audit was to identify formula-chasing, the survey responses suggested that the audit was focused more on compliance with requirements of special education.

### **School District Testimony**

The LESG also heard testimony from a number of superintendents or other officials from the districts that were audited. While they agreed that school districts and school personnel must be held accountable, these officials identified several concerns with the manner in which this audit was conducted, among them:

- the audits were done very quickly, in some cases in a few minutes over the phone and in others a few hours on site;
- much of the district’s work gathering requested files had to be done over a weekend;
- many of the issues raised could have been resolved through an entrance or exit conference, had either of those been held;
- some learned of the audit through media reports rather than direct contact from PED; and
- there was little if any opportunity to respond to the audit findings.

## **AUDITS OF SELECTED CHARTER SCHOOLS BY THE PUBLIC EDUCATION DEPARTMENT**

### **Audit Process and Results**

In addition to the audits of selected school districts during the spring of 2011 (see “Audits of Selected School Districts by the Public Education Department,” p. 26), PED audited 28 charter schools that met criteria similar to those applied to school districts. According to testimony from the Secretary-designate of Public Education, the process, results, and lessons learned were “not dissimilar” to those from the audits of school districts. The Secretary-designate also testified that the department was working with the same outside entity to conduct an in-depth audit of one charter school that merited further review.

LESC staff testified that the PED audits of charter schools began on May 3, following a press release on April 29, and that the results were released in a memorandum on June 2. The auditors examined data outlining changes from March of school year 2009-2010 to March of school year 2010-2011 for the following membership categories:

- student membership;
- A/B special education students;
- ancillary full-time equivalents (FTEs);
- ratio of ancillary FTEs to special education students;
- ratio of special education students to total membership;
- C-C gifted membership; and
- D-D gifted membership.

As with school districts, this testimony continued, charter schools were flagged for audit if their growth rates exceeded 200 percent of the average growth for charter schools statewide. These aspects of special education comprised one component of the audit of charter schools; the other was teacher training and experience. Regarding the findings under special education:

- nine charter schools were cleared through the audit;
- seven charter schools were cited for minor compliance issues;
- six charter schools were cited for major compliance issues; and
- one charter school was selected for additional audit measures based on initial findings.<sup>5</sup>

Regarding the findings under teacher training and experience:

- one charter school was cleared through the audit;
- seven charter schools were cited for minor compliance issues; and
- five charter schools were cited for major compliance issues.

---

<sup>5</sup> As of late January 2012, this independent auditor had not issued a report of the in-depth audit of that charter school. PED notified LESL staff that the department expects the report in March 2012.

Finally, staff testimony noted that the LESC staff had concerns about the charter school audits similar to those raised with the district audits.

### **LESC Survey of Audited Charter Schools**

Following the approach used with the audited school districts, LESC staff sent an online survey to the administrators of the 28 charter schools selected for audit, with a response rate of 86 percent (24 of 28). Among other findings, this survey revealed that:

- the charter school respondents shared many of the same concerns voiced by school districts, particularly the short time frame; however,
- overall, the charter school responses were more favorable than the district responses.

In both cases, staff testified, bad data were a persistent problem.

### **Charter School Testimony**

The LESC also heard testimony from a number of administrators from the charter schools selected for audit and from the Chief Executive Officer of the New Mexico Coalition for Charter Schools. Like the school district administrators, charter school administrators agreed with the need for accountability; however, they also expressed some concerns with the manner in which this audit was conducted, among them:

- the short time frame and minimal amount of time spent on the audits;
- the lack of an opportunity to respond to the audit or explain findings, together with the negative media coverage;
- the presumption of guilt that the audits implied; and
- the difference between the PED audit, which provided little help, and the regular audits by the school district, which had been helpful.

## **A DATA-BASED APPROACH FOR SCHOOL EVALUATION AND IMPROVEMENT IN NEW MEXICO**

In August, board members from the Coalition for Excellence in Science and Math Education (CESE) provided the committee with a report on a data-based approach for school evaluation and improvement in New Mexico, and “a rational methodology for applying the A-B-C-D-F schools rating system.”

The CESE members testified that, while the A-B-C-D-F ratings method focuses on New Mexico Standards-based Assessment (NMSBA) scores, a more robust system of school measurement would include data on school demographics, current scores, and other outcome measures that can be used to develop “best fit” predicted scores for each school. They indicated that factors such as last year’s test scores and the type of neighborhood a

student lives in most likely have influence over a school's proficiency percentage, but these factors are not under the control of the school. CESE also explained several statistical methods for removing factors that are not directly attributable to school performance, such as poverty and minority status.

Although high growth and high proficiency are both good, CESE noted that they seldom go together since schools with high proficiency have little room for growth, while those with low proficiency have more room for growth. On that point, several LESC members expressed concerns regarding growth in high-performing schools and questioned the fairness of the A-F ratings system.

Finally, CESE testified that the heart of the coalition's proposal is to compare two schools with similar demographics but dissimilar proficiency scores, study both schools, and find out what the successful school is doing that the unsuccessful school is not doing.

### ***STUDENTS AT THE CROSSROADS: A STUDY OF THE 12<sup>TH</sup> GRADE IN NEW MEXICO***

Since 2002, the Legislature has focused on the high rate of remedial coursework taken by college freshmen from New Mexico high schools by passing measures to increase graduation requirements, require course offerings, and change assessments. In 2010, LESC-endorsed legislation was enacted to provide information on the status of students from prekindergarten through post-graduate education, including a number of reports that focus on the transition from high school to higher education (see "P-20 Educational Data System and Data System Council," p. 12).

During the 2011 interim, the LESC heard testimony from the Director of the University of New Mexico Center for Education Policy Research (CEPR) and LFC staff on a study of New Mexico's 12<sup>th</sup> grade, which was based on a sample of 4,306 out of approximately 19,000 seniors in the state. Among other points, the director emphasized that, even though significant numbers of seniors are not meeting current requirements, higher graduation requirements enacted in 2007 are forthcoming.

In addition, the director testified that the CEPR is working with HED to gather data to examine how well the students in this study did in their first year of college. As the study already shows, 10 to 12 percent of seniors graduate without fulfilling the requirements and only 75 percent of Native American male graduates fulfilled the math requirement.

Addressing other points, the director cited dual credit as an important factor in keeping some students in school and emphasized that two different groups of students need remediation: the smaller group, being recent graduates, must be addressed; but the larger group is older adults returning to college.

LFC staff testified that the study substantiated the LFC belief that districts receive more money than 12<sup>th</sup> graders cost them because not all seniors attend full-time. Therefore,

one question is whether the state should continue to pay full cost for essentially part-time students.

Among other points addressed in the report were:

- the importance of counselors;
- the “inordinate amounts of time” spent on cleaning the data;
- the huge challenge in rolling out high school redesign requirements; and
- the means through which high schools will request freshman outcome data of their graduates.

**EDUCATION COMMISSION OF THE STATES REPORT:  
*WORKING TOGETHER TO BOOST COLLEGE COMPLETION***

At the October meeting, the Director of the Postsecondary Education and Workforce Development Institute, Education Commission of the States (ECS), provided the committee with a presentation on college completion in New Mexico and its impact on the state’s work force and economy.

According to this testimony, in New Mexico:

- only 34 percent of adults, ages 25 to 64, hold an associate degree or higher, compared to 39 percent nationally;
- the attainment gap between young adults (ages 25 to 34) and older adults (ages 45 to 64) is the second largest in the nation;
- minority populations are more than twice as likely to have no exposure to postsecondary education as their white counterparts;
- improving degree odds for Latinos is particularly important given future population and economic data; and
- by 2018, approximately 574,000, or 58 percent, of the state’s jobs will require a postsecondary education.

The ECS representative further testified that lower college attainment in New Mexico is due in large part to low rates of college retention and completion; and he identified several strategies for the state to consider, among them:

- developing college and career pathways that lead to employment in high-earning occupational fields that will further attract new business to the state; and
- enhancing student completion odds through new delivery models, degree and certificate articulation agreements, and adult-friendly programs that emphasize flexibility.

A final point in this testimony was the identification of core challenges associated with postsecondary retention:

- evaluating whether current policies increase college attainment in high-demand fields and close equity gaps between whites and Latinos;
- examining how to unlock the educational and work force potential of two adult populations: those with limited English proficiency and those with some college but no credential; and
- structuring the education/work force pipeline to meet economic demands and to improve access to livable-wage jobs.

## **EDUCATOR ACCOUNTABILITY REPORTING SYSTEM**

The Educator Accountability Reporting System (EARS) is a data system that measures how well colleges, schools, and departments of education are performing in the preparation of educators. During the 2011 interim, LESC staff and the deans of colleges of education from New Mexico State University (NMSU) and Eastern New Mexico University (ENMU) provided testimony on the EARS report for 2011.

Staff testimony noted that, although statute assigns the reporting responsibility to PED, the deans and directors of teacher preparation programs have compiled the report each year. Among the data points included are:

- number of hours required for field experience, student teaching, and administrative internship;
- number and types of degrees received by students completing each program;
- number and percentages of students who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;
- number and percentages of students hired by New Mexico school districts; and
- evaluation plan with high performance objectives for increasing student achievement and teacher and administrator retention.

In their testimony the deans from NMSU and ENMU discussed a number of findings from the report, among them:

- educator preparation programs consistently attract academically prepared candidates per cumulative grade point averages and scores on the New Mexico Teacher Assessment (NMTA), the ACT, and the SAT;
- standards for admission to teacher education programs use common factors that enhance transparency and seamless transferability among institutions;
- field and clinical experiences are designed to connect classroom practices to candidate preparation; and
- the 2011 EARS report contains significant improvements in financial data collection and analysis.

On this last point, the deans noted that, despite the improvements, several data limitations and issues remain, one of which is that students' NMTA scores are not always correctly



attributed to the preparing institutions. This testimony concluded with a discussion of such issues and recommendations for addressing them.

### **K-3 PLUS PROGRAM EVALUATION REPORT**

Toward the end of the 2011 interim, the LESC heard testimony from two of the leaders of a five-year longitudinal study of the K-3 Plus Program (see “K-3 Plus Program,” p. 12). Called Start Smart K-3 Plus Project, this study is examining the effect of the program on student achievement and the cost-benefit aspects of the program. Initial results, according to this testimony, show that the program is increasing student achievement in reading, math, and writing and that it has the potential of reducing the need for and cost of remediation in later grades. In brief, the data show that 23.4 percent more third-graders (or 234 of 1,000) achieved reading proficiency because of their participation in K-3 Plus for at least one year.

To address the cost-benefit implications of the K-3 Plus program, this testimony focused on those 234 third-graders, noting that:

- to serve 1,000 students for one year in K-3 Plus costs \$800,000, \$1.6 million for two years, and \$2.4 million for three years;
- one year of third grade retention costs \$6,858 per student, and one year of third grade retention for 234 students costs \$1,604,722;
- the summer school cost savings for 234 third grade students is \$122,148, not including transportation or instructional materials; and
- preventing one year of retention, remediation, and summer school for 234 third grade students saves \$2.2 million.

This testimony also included a number of observations and recommendations:

- the data from the evaluation study clearly support the continuation and expansion of the K-3 Plus program in New Mexico.
- evidence from the evaluation does not support a program change suggested by the Secretary-designate of Public Education to deviate from the model that is working and to allow K-3 Plus funds to be used during the school year;
- the PED changes in application, timeline, and funding for school year 2011-2012 did not benefit the program;
- the allowable 4.0 percent for professional development and administrative costs is apparently being used elsewhere and not for the intended purpose;
- the K-3 Plus program does not have sufficient state level support;
- different per student funding for K-3 Plus in schools and districts where class sizes are small should be considered; and
- there should be state funding for additional K-3 Plus slots to allow more families to participate in the program.

*See Recommendation 5.*

## EDUCATOR QUALITY

### **READING IN TEACHER PREPARATION PROGRAMS: IMPLEMENTATION OF RECOMMENDATIONS OF HJM 16, *STUDY READING CURRICULA IN TEACHER EDUCATION (2010) WORK GROUP***

In 2009 the LESC heard testimony concerning a report by the National Council on Teacher Quality entitled *Preparing Tomorrow's Teachers: Are New Mexico's Education School Graduates Ready to Teach Reading and Mathematics in Elementary Classrooms?* The report claimed that most programs in New Mexico were not preparing candidates to teach the science of reading. In response, the New Mexico Deans and Directors of Colleges of Education presented a rebuttal to the report before the LESC at its December 2009 meeting, contesting the methodology of the study. In addition, the deans volunteered at that time to sponsor a study using in-state reading experts, and they worked with LESC members and staff to formulate HJM 16, *Study Reading Curricula in Teacher Education*, which was endorsed by the LESC and passed by the 2010 Legislature.

During the 2010 interim, LESC staff testified that, among its provisions, the memorial requested the Deans and Directors of New Mexico Colleges of Education, with members of the LESC, to form a work group to:

- examine the curricula and assigned text materials of all required reading courses in programs preparing teachers for state licensure, and determine if those courses met the statutory requirement that they be based on current scientifically based research;
- establish the methodology of the study; and
- report the results of its study, with findings and recommendations, to the appropriate interim legislative committee and the Governor.

Later, during the December 2010 interim LESC meeting, work group representatives presented their recommendations.

At the October 2011 LESC meeting, the Dean of the College of Education at New Mexico State University testified that the teacher preparation programs participated in a meeting with reading faculty from teacher education programs statewide. He also explained that during the 2011 spring semester, a review of the reports found that over 180 educational actions incorporated scientifically based reading research in the curricula and programs. Statements from the programs' reports, the Dean noted, demonstrate that teacher education programs in New Mexico integrate:

- scientifically based research components in reading programs;
- field experiences that include more diagnostic and assessment work with students, including scientifically based research components that can be used in classrooms with children;

- increased English language learner instructional activities and assessments; and
- text additions.

Finally, the Dean testified that next steps include setting up a spring 2012 meeting with reading faculty to discuss program changes and adaptations, and he emphasized that faculty will continue to review programs to meet the requirements of the LESC-endorsed joint memorial.

## **NEW MEXICO’S EFFORTS TO IMPROVE TEACHER AND PRINCIPAL QUALITY**

Testimony from the Director of the University of New Mexico (UNM) Center for Education Policy Research reviewed New Mexico’s experience in recruiting and retaining teachers and principals and offered some recommendations for the committee to consider.

On the first point, the director identified a number of prominent challenges that the state has faced in recent years, such as teachers without the appropriate license or endorsement, high numbers of resignations and vacancies, low teacher salaries, and frequent turnover among school principals. Since 2000, however, this testimony continued, New Mexico has alleviated these conditions through the implementation of multiple teacher quality reform efforts, including mentorship for new teachers, alternative licensure paths, return-to-work programs, the three-tiered teacher licensure system, and support for principals. He also noted that New Mexico’s three-tiered system has received favorable national recognition, including compliments from the US Department of Education (USDE); and he reviewed the state’s examination of the value-added model for teacher and principal evaluation, noting some of the components necessary in the implementation of such a model and the issues that must be addressed.

On the second point, the director offered the following recommendations:

- continue to explore ways to recruit, prepare, and support effective teachers and principals;
- revise and strengthen the three-tiered licensure system, which has proven valuable;
- continue to gather and share data on the status of New Mexico’s teachers and principals;
- explore the use of valid, fair, and feasible student growth measures to evaluate teachers and principals;
- gather objective research regarding value-added models using New Mexico data to determine the “best fit” models for use with our populations; and
- develop a clear set of expectations about the intended effects of using student growth models and monitor the consequences of the evaluation system to help the state and districts achieve their educational goals.

## **CURRENT TEACHER AND PRINCIPAL EVALUATION SYSTEM**

Late in the 2011 interim, the Director of the Educator Quality Bureau, PED, testified on New Mexico's current teacher and principal evaluation system. The goal of the evaluation system, he explained, is to improve student achievement. However, the director noted that the current system does not evaluate teachers based on outcomes in terms of student achievement; rather, it indicates whether a teacher meets the nine competencies for a given licensure level, with little attention to the effect the teacher has on student achievement.

The evaluation system, known as the Highly Objective Uniform Statewide Standard of Evaluation (HOUSSE), comprises two processes: an annual evaluation process conducted at the local level and a licensure advancement process conducted at local and state levels. The annual evaluation process, this testimony continued, is composed of:

- an annual professional development plan (PDP), based on nine teaching competencies;
- a reflection on the PDP;
- a summative evaluation conducted annually for Level 1 teachers and every third year for Level 2 and Level 3 teachers; and
- progressive documentation of teacher performance over a four-year period.

The principal component of the licensure advancement process is the professional development dossier (PDD), which comprises five strands that encompass the nine teacher competencies. The passage rate for initial PDD, according to this testimony, submitters is 75.99 percent.

Finally, the Director of the Educator Quality Bureau testified that over 700 Level 1 licenses expired in each year from 2007 to 2010 and almost 600 in 2011.

## **USING DATA TO IMPROVE TEACHER EFFECTIVENESS**

The importance of data to teacher evaluation was the topic of other testimony on educator quality during the 2011 interim. The Director of State Policy Initiatives, Data Quality Campaign (DQC), discussed how policymakers can use data to improve teacher effectiveness; and emphasized the need for policymakers to invest time and resources into developing a shared vision for addressing teacher quality. Without this approach, this testimony cautioned, policymakers may find their plans constrained by data systems that do not meet policy needs.

This testimony also identified challenges to linking teacher-student data – among them, inconsistencies in the “teacher of record” definition across districts and schedule changes that are often not captured by a district or state, particularly at the elementary level – and

explained the criteria that the DQC uses to determine if a state's data system meets policy needs.

Regarding New Mexico in particular, this testimony reported that, according to self-reported state information in 2010, New Mexico did not have the capability to:

- implement promising practices for linking teachers and students, primarily because the state had not established a statewide definition for “teacher of record”;
- ensure educator access to data, primarily because teachers did not have access to student-level “diagnostic, early warning, and growth” reports; or
- build the capacity of educators to analyze and use data to improve student achievement.

## **TRENDS AND EARLY LESSONS ON EVALUATION AND EFFECTIVENESS**

As another component to the testimony on teacher and principal evaluation, the LESC heard from the Chief of Staff of ECS. One of the points in this testimony was that effective evaluation systems differentiate among teachers, use multiple measures, and should be predictive of future evaluations. Among other points of effective systems:

- any use of student performance to evaluate teachers must address such issues as teachers of non-tested subjects and the possibility of unintended consequences;
- value-added methods of evaluation can reflect good teaching in that teachers with high value-added scores tend to promote a deep conceptual understanding among their students, at least in mathematics;
- evaluation can affect teacher performance, both during the evaluation period and in subsequent years; and
- implementing evaluation systems is costly. California, for example, incurred a cost of \$25.0 to \$30.0 million for the evaluations themselves and additional costs for support.

This testimony also emphasized the necessity of a reliable data system that links teachers to student data.

For evaluations of principals, the ECS testimony described examples from other states, among them Colorado, which rates its principals on achievement and growth, the number and percentage of personnel who are rated effective or highly effective, and the number and percentage of personnel who are rated ineffective but improving. The director also recommended anticipating certain needs, such as quality-assurance in training evaluators and the use of outside evaluators.

## MEETING THE NEEDS OF STUDENTS

### EARLY CHILDHOOD EDUCATION

#### **New Mexico Voices for Children**

In October, the Policy Director for New Mexico Voices for Children (NMVC) and the Advocacy Liaison for St. Joseph Community Health (SJCH) appeared before the LESC to discuss the results of a recent study conducted by SJCH to measure public opinion regarding early childhood education programs in New Mexico.

The Policy Director testified that the results of the study indicated a perceived need for greater state involvement in early childhood programs and support to fund these programs through the state's Land Grant Permanent Fund (LGPF). He further explained that, after being informed of how the LGPF is currently used to fund education, 71 percent of the respondents indicated that they would support allocating an additional 1.5 percent of the distributions from the fund for early childhood programs. Noting that the request is for a distribution of 1.5 percent of the balance of the fund over a 10-year period, NMVC staff calculated that the current distribution would be approximately \$150 million per year based on the LGPF's current value of \$10.1 billion.

In response to concerns raised by committee members, the Policy Director testified that the 1.5 percent distribution would not affect any of the current beneficiaries of the LGPF, including public schools, and he offered to provide evidence that the distribution does not violate the anti-donation clause of the state constitution. Later in the interim, the Policy Director provided a copy of a legal opinion from the American Federation of Teachers; however, the opinion addressed a different issue, not the question that the committee had raised.

#### ***Early Childhood Care and Education Act***

Enacted in 2011, the *Early Childhood Care and Education Act* (ECCEA) has as its purpose "to establish a comprehensive early childhood care and education system through an aligned continuum of state and private programs, including home visitation, early intervention, child-care, early head start, head start, early childhood special education, family support and pre-kindergarten, and to maintain or establish the infrastructure necessary to support quality in the system's programs."

During the 2011 interim, the LESC heard a presentation on the implementation of the ECCEA by committee staff and representatives of several parties involved in the implementation: the Children, Youth and Families Department (CYFD); the New Mexico Early Childhood Development Partnership (NMECDP); the New Mexico Business Roundtable (NMBR); New Mexico First; the Center for Education Policy Research, the University of New Mexico; and the Secretary-designate of Public Education.

This presentation included:

- a review of some of the targeted efforts that led to the legislation;
- an overview of the provisions of the ECCEA, with particular attention to the Early Learning Advisory Council (ELAC);
- an account of an implementation session convened by the NMECDP, CYFD, and the NMBR and organized by New Mexico First in April 2011;
- an account of the work of the four implementation teams formed at the implementation session;
- a description of the Race to the Top Early Learning Challenge Grant for which the state had applied to facilitate the implementation of the ECCEA;<sup>6</sup>
- an account of several community meetings conducted by New Mexico First; and
- a review of data showing the return on investment in early childhood care and education; the locations of existing Head Start, New Mexico PreK, and child-care sites; and the frequent lack of alignment between these locations and the areas of greatest need.

Finally, in response to committee concerns about the seemingly limited involvement of Native Americans, the presenters were asked to provide the LESC with a report on the participation of Native Americans in the implementation of the ECCEA.

### **TITLE IX: *SCHOOL ATHLETICS EQUITY ACT***

In keeping with the federal Title IX, the New Mexico *School Athletics Equity Act* (SAEA) requires that each public school that has an athletics program for grades 7 through 12 “operate its program in a manner that does not discriminate against students or staff on the basis of gender.” The SAEA further requires that each school report certain data regarding enrollment, participation, staffing, funding sources, expenses, and benefits and services to PED each year.

During the October 2011 meeting, the LESC heard testimony from staff and representatives of the New Mexico Activities Association (NMAA) and the Southwest Women’s Law Center (SWLC) about the SAEA’s reporting requirements. In response to this presentation, committee members expressed concerns about the extensive nature of the requirements and the challenges that school officials have faced in complying with those requirements. To address these concerns, the Chair requested that a work group be formed to examine the requirements and suggest amendments to the act, as needed.

The LESC Work Group on the SAEA met in November and its members raised a wide variety of points and concerns, including the need for the bill to be as transparent, sustainable, and simple as possible. In addition, members felt that extensive reporting requirements created the presumption of guilt; and they noted that the SAEA provides

---

<sup>6</sup> In mid-December, state officials learned that New Mexico did not receive this grant.

neither guidance for schools required to report nor enforcement measures for schools not in compliance.

To address issues such as those noted above, the work group produced two kinds of consensus recommendations: (1) a number of specific amendments to the SAEA, and (2) the creation of a smaller work group to draft reporting guidelines for schools. Described somewhat broadly, the amendments eliminate the second phase of reporting requirements – the financial data – for grades 7 and 8; and require data to be reported by program rather than by team. Implementation of the second recommendation has already begun, as the work group to draft reporting guidelines for schools held its first meeting in early January of 2012.

*See Recommendation 6.*

## **NEW MEXICO MATHEMATICS, ENGINEERING, AND SCIENCE ACHIEVEMENT, INC.**

Testimony about the educational attainment of students in the New Mexico Mathematics, Engineering, and Science Achievement, Inc. (NM MESA) came from two parties: the Executive Director of the program and one of the students participating in the program.

The director began his testimony with the mission of NM MESA: to empower and motivate New Mexico’s culturally diverse students with science, technology, engineering, and math (STEM) enrichment. Through seven regional offices statewide, the program served 4,500 students in school year 2009-2010; and, from 1995 to 2005, NM MESA students earned 720 bachelor’s degrees and 500 advanced degrees. In addition, the director cited data from PED showing that NM MESA students’ scores on the standards-based assessments exceeded state averages by roughly 30 percent in mathematics and 20 percent in science.

A current NM MESA student testified about the positive influence that the program has had on her and how it has expanded her possibilities. She also described how the positive, STEM-rich educational atmosphere at the school has motivated her peers.

Later in the interim, in response to a committee request, the director provided more cohort data to compare the postsecondary achievement of MESA graduates with non-MESA graduates, indicating that further research was still in progress.

## **CHARTER SCHOOLS**

At almost every meeting during the 2011 interim, the LESC heard testimony about charter schools, often in the form of an update regarding recent activities (see also “Audits of Selected Charter Schools by the Public Education Department,” p. 29). During the August meeting, this testimony was presented within the context of Options



for Parents, the name that PED has given to the office that oversees not only charter schools but also virtual schools (see “Virtual Schools,” p. 43).

Earlier in the interim, staff testimony noted that 46 letters of intent to start a charter school had been submitted to the Charter Schools Division by the deadline in January; and that the Secretary-designate of Public Education had overturned, on appeal, the decisions of the Public Education Commission (PEC) not to renew the charters of three charter schools that had been authorized by Albuquerque Public Schools (APS), thus making all three state-chartered charter schools.

Staff testimony on this latter point noted that, in making its initial determination, the PEC had acted in accordance with the recommendations of the Charter Schools Division in late 2010, which cited issues with student achievement and audits, among other factors; however, the Secretary-designate found the PEC decisions to be arbitrary and capricious. Staff testimony further described the conflicting roles and responsibilities in the charter appeals process, particularly with regard to state-chartered charter schools. The committee requested that a work group be formed to examine the appeals process and to make recommendations for addressing the issues.

Later in the interim, the committee heard staff testimony about the decisions of chartering authorities on the applications submitted. Altogether, LESC staff reported that there were 24 applications for new charter schools submitted by the deadline of July 1, 2011: 21 to the PEC and one each to APS, Española Public Schools, and Farmington Municipal Schools. Of those 24 applications, 12 were approved, all with conditions (11 by the PEC and one by Farmington Municipal Schools). In addition, one charter school authorized by APS had its charter revoked.

Finally, the LESC Work Group on Charter School Appeals presented the following recommendations:

- encourage the Charter Schools Division in PED and the Secretary-designate of Public Education to collaborate fully with the PEC regarding the criteria for accepting or rejecting initial charter applications, for accepting or rejecting applications for renewal, and for revoking existing charters;
- amend recently enacted charter contract legislation (SB 446, or Laws 2011, Chapter 14) to clarify that the provisions apply to charter renewals as well as to new applications;
- amend SB 446 to accelerate the implementation of all of its provisions, according to a prescribed timeline; and
- amend SB 446 to clarify that, if they both agree, charter schools and their chartering authorities may come under the provisions of SB 446 ahead of the timetable described above.

*See recommendations 7 and 8.*

## **VIRTUAL SCHOOLS**

In 2007, LESC-endorsed legislation, the *Statewide Cyber Academy Act*, was enacted to create a statewide cyber academy, a collaborative of PED, HED, telecommunications networks, and representatives of other state agencies engaged in providing distance education. The legislation calls for the cyber academy to provide distance learning courses for grades 6 through 12 and professional development for teachers, instructional support providers, and school administrators. Also in 2007, the Legislature appropriated funds to implement the distance learning initiative called IDEAL-NM, which incorporates the cyber academy and other similar initiatives (see pp. 10 and 16). During previous interims, testimony about IDEAL-NM and the cyber academy addressed such topics as course development, teacher preparation, enrollment, costs, and funding. During the 2011 interim, the topic was presented within the context of the reorganization of PED.

LESC staff testified that IDEAL-NM will operate under the virtual schooling arm of the newly created area within PED called Options for Parents, which will also house the Charter Schools Division; and that the staff will comprise five full-time employees. Among the issues that Virtual Schools will address, this testimony continued, are the lack of programming for students in grades K-6; individual district distance learning academies and the programs existing within them; and whether it is feasible to use IDEAL-NM as the “hub” of these programs. Staff testimony also reviewed the development of courses and the credentials required of teachers.

Another topic that staff testimony addressed was certain legal questions about virtual schools, particularly with regard to the open enrollment statutes, the State Equalization Guarantee, and the definition of the term “school.”

## **ADULT BASIC EDUCATION**

On two occasions during the 2011 interim, the LESC heard testimony about adult basic education (ABE). At one point, the ABE Director at the New Mexico State University-Grants campus testified that, although census data show that 400,000 New Mexico adults do not have a high school diploma and/or English language skills, only 5.0 percent of the population in need is currently being served by ABE programs.

Other testimony came from committee staff, who reviewed the history of the program, cited federal legislation – the *Workforce Investment Act of 1998* (WIA) in particular – and described the students served by the ABE program as those who:

- have attained 16 years of age;
- are not enrolled or required to be enrolled in secondary school under state law; and who:

- lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
- do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or
- are unable to speak, read, or write the English language.

Also testifying was a representative of HED, who explained that the department has selected six of the 29 ABE centers throughout New Mexico for a pilot program based on the state of Washington's Integrated Basic Education and Skills Training (I-BEST) model. This model guides students toward additional academic achievement beyond the GED, attempts to close the skills gap, and includes completion of one year of college-level coursework, as well as a nationally recognized professional certificate. If the program is successful, this testimony continued, the department hopes to offer it to other ABE students throughout New Mexico.

*See Recommendation 9.*

## **EDUCATING NEW MEXICO'S MINORITY/MAJORITY CHILDREN**

During the December meeting, the LESC heard testimony from representatives of several groups involved in bilingual and multicultural education who expressed their concerns about the administration of bilingual and multicultural education programs in New Mexico: the New Mexico Association for Bilingual Education, the American Indian Language Policy Research Center, and the New Mexico Indian Education Advisory Council. This testimony described the experience and expertise of the members and expressed their concern that the current administration seems to be excluding them from discussions and policy decisions affecting bilingual education, despite their requests to be involved. Another concern that the testimony addressed was that PED seemed to be using incomplete data about English language learners and their participation in bilingual education programs.

Among the specific points that this testimony raised were the continuing vacancy in the position of Assistant Secretary of Indian Education at PED, inconsistencies among the memoranda of understanding between PED and native tribes, the status of the Hispanic Education Advisory Council, the earmarking of Indian education funds for the programs Save the Children and Teach for America, and the delayed completion and posting of reports on Indian and Hispanic education.

After committee discussion, the Vice Chair asked PED to report to the LESC in January on the steps the department has taken to address the concerns and requests of the presenters.

## **GENDER ACHIEVEMENT GAP: WHERE ARE THE BOYS?**

During the 2006 interim, the LESC heard a presentation on the gender gap in education. Included in this presentation were testimony from the College of Education at the University of New Mexico about the “significant impact” of a male teacher in the classroom and a request from certain interest groups that student achievement data posted on the PED website be disaggregated by gender. The gender gap was a topic during the 2011 interim as well.

In August of 2011, LESC staff testified that data from the National Center for Education Statistics suggests that male students are less likely to graduate from high school, they receive fewer degrees from institutions of higher education, and they are more likely to repeat grades and to be suspended or expelled from schools. Data from PED also reveal a gap in achievement between females and males, as well as a gender gap in high school graduation rates.

Staff further testified that causes of the gender gap are subject to debate. Scientific research has identified a number of differences in neurological and cognitive development based on gender that may contribute to gaps in student achievement, with females possessing more advantages than males at certain ages. However, the Education Testing Service and researchers do caution against making assumptions about individual students based on such generalizations, pointing out that individual women and men vary far more than do the two groups.

In addition, LESC staff testified that a number of educators, physicians, social scientists, and journalists point to several factors that may contribute to the achievement gap, including:

- low percentages of male teachers;
- learning differences that favor girls in a traditional classroom setting;
- emotional difficulties experienced by boys growing up without a father figure; and
- a commercial culture that devalues school and book learning – especially for boys;

The committee also heard testimony from the Executive Director of Education Initiatives, Inc., who proposed various changes or additions to classroom activities to help boys overcome the achievement gap, including single-sex schooling; and from a fourth-grade teacher from Albuquerque Public Schools (APS) testified that the boys in his single-sex classroom in school year 2009-2010 achieved higher proficiency levels than APS averages and made significant gains in attitude and confidence. On this latter point, however, a representative from APS testified that the district believes the positive results of the program could be attributed to a low student-teacher ratio.

As a final point, LESC staff testified that one school in New Mexico currently provides single-sex classes and that an additional school had applied for a charter with the PEC.<sup>7</sup>

## OTHER TOPICS

### ADMINISTRATIVE RULEMAKING

In recent interims, the LESC has taken an interest in the number and content of the rules promulgated by PED and HED, often to implement requirements of enacted legislation. That interest continued during the 2011 interim.

New Mexico, unlike most states, lacks a uniform law for administrative rulemaking in general. In some cases, however, as staff testimony explained, an agency will have additional statutory requirements imposed upon it that are particular to that agency and its area of concern. For example the *Public School Code* requires PED to “solicit input from local school boards and school districts in the formulation and implementation of department rules.”

Staff testimony explained that, according to the state’s *Administrative Procedures Act* (APA):

- failure to comply with statutory requirements, such as publication of notice, may result in invalidation of the rulemaking; and
- anyone whose interests may be impaired or damaged by a rulemaking may:
  - petition the agency for a declaratory ruling as to the applicability of the rule (subject to judicial review), unless the agency has good cause to consider the issuance of such a ruling undesirable; and
  - bring an action in the district court of Santa Fe County for declaratory judgment to determine the applicability or validity of a rule.

Early in the interim, the Chair requested that LESC staff prepare a letter requesting that PED and HED apprise the LESC of the proposed rulemaking of each department; and, as the interim progressed, the committee heard testimony on the following proposed rules:

- Amended Rule (NMAC 6.11.2): *Public School Administration – Student Rights and Responsibilities, Rights and Responsibilities of the Public Schools and Public School Students;*
- Amended Rule (NMAC 6.12.2): *Public School Administration – Health and Safety, Health Services;*

---

<sup>7</sup> That school, Coral Community Charter, was one of 11 that the PEC approved, with conditions, in September 2011 (see “Charter Schools,” p. 41).

- Proposed Rule (NMAC 6.12.9): *Elementary School Free Breakfast Program During Instructional Time*;
- Amended Rule (NMAC 6.19.6): *Public School Accountability, Title I Supplemental Education Services*; and
- Amended Rule (NMAC 6.29.1): *Standards for Excellence General Provisions*.

## REVIEW OF EXECUTIVE VETOES

In response to concerns of some legislators that some of the Governor's vetoes of legislation passed in 2011 may impinge on the Legislature's appropriation powers and establish new ground in a Governor's exercise of the veto authority, the Director of the Legislative Council Service (LCS) provided testimony early in the interim about two petitions for writs of mandamus that had been filed with the New Mexico Supreme Court by two separate groups of legislators challenging at least two of the Governor's partial vetoes.

Regarding the first petition, the Director indicated that an unemployment bill passed by the 2011 Legislature designated a specific contribution schedule for employers for calendar year 2012. While the Governor did not veto this bill in its entirety, she did veto a provision that designates the contribution schedule under which employers are to pay into the Unemployment Compensation Fund. According to the Governor, this was purportedly a partial veto, but the Director pointed out that, constitutionally, partial vetoes are permitted only in legislation that makes an appropriation. Furthermore, he reported that the money paid by employers into the unemployment compensation fund is immediately transferred to the treasury of the United States government. Because money in that federal unemployment fund is not state money, the Director testified that the bill in question could not be considered legislation that makes an appropriation. This testimony further indicated that the Supreme Court decided to delay making a decision in case a legislative solution were to emerge in the special session.<sup>8</sup>

The second petition, the LCS Director testified, referred to the reduction of an appropriation to DFA for the New Mexico Mortgage Finance Authority. The Legislature, he explained, had appropriated \$150,000; however, the Governor struck the "1," thus reducing the appropriation to \$50,000. On this matter, the Director noted, the New Mexico constitution does not expressly give the Governor the power to reduce an appropriation. The Director also testified that the New Mexico Supreme Court has, in two cases, cited a report by the *American Law Reports*, which states the general rule that "the governor has generally no power to reduce the amount of an item."<sup>9</sup>

---

<sup>8</sup> No solution emerged; and on December 14, 2011, the court ruled against the Governor's veto, calling it unconstitutional, and ordered that the bill be reinstated into law.

<sup>9</sup> In June 2011, the Supreme Court voted unanimously in favor of the Legislature regarding the second petition.

## **ADDITIONAL PRESENTATIONS AND REPORTS**

In addition to the presentations summarized elsewhere in this report, the LESC heard testimony about the status of the Office of Education Accountability; an update on the Higher Education Department operating budget and organizational plan; the higher education building moratorium; the “Breaking the Silence” Curriculum; Teach for America: *Results, Best Practices, and Statewide Growth Plan*; the New Mexico Art Education Association; waivers granted pursuant to SB 97 (Laws 2010, Chapter 68), *School District Budget Flexibility*; a report from the New Mexico Coalition of School Administrators on the impact of reduced FY 12 funding on school district budgets, programs, and staffing; the 2011 leadership survey conducted by the New Mexico School Boards Association; School Improvement Grants; the Bridge of Southern New Mexico; updates on New Mexico State University-Alamogordo; review of HB 603a (2011), *Child Care Registry*; FY 13 insurance projections for the New Mexico Public School Insurance Authority and Albuquerque Public Schools; the University of New Mexico Lobo Center for Student Athlete Success; the High School Redesign Project for under-represented students; a flexible school district discipline policy (SB 418, 2011, *Define School Disciplinary Risks*); KNME educational media; concerns about New Mexico’s standards-based assessments; parental engagement and employment; New Mexico school libraries; statewide education improvement support; programs offered by the Los Alamos National Laboratory Foundation; grade-level promotion of unprepared students; and the recommendations of the Public School Capital Outlay Oversight Task Force.

Finally, the committee also received the following written reports: *Study Indian Education Impact Aid Money*, SJM 35; *Indian Education Act Effectiveness*, SM 52; *Rural Isolation Units Study*, SM 70; *Northwest Quadrant Public School Access Study*, SM 71; *Preliminary Cohort Graduation Rate Reports: Four-year Rates for 2010 Cohort and Five-year Rates for 2009 Cohort*; *Preliminary Adequate Yearly Progress (AYP) Report for 2011*; and *The Preliminary 11<sup>th</sup> Grade Standards-based Assessment: Spring 2011 Results*.

*See recommendations 10, 11, 12, and 13.*