

**MINUTES**  
**Legislative Education Study Committee**  
**State Capitol, Room 322**  
**Santa Fe, New Mexico**  
**June 14-16, 2017**

Senator Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:14 a.m., on Wednesday, June 14, 2017, in Room 322 of the State Capitol in Santa Fe, New Mexico.

**Wednesday, June 14**

The following voting and advisory members were present: Voting: Senators Mimi Stewart, Chair, and William P. Soules; and Representatives Stephanie Garcia Richard, Vice Chair, Alonzo Baldonado, Dennis J. Roch, Tomás E. Salazar, James E. Smith, and Sheryl M. Williams Stapleton; Advisory: Senators Carlos R. Cisneros, Linda M. Lopez, Michael Padilla, and John Pinto; and Representatives Joanne J. Ferrary, Jimmie C. Hall, Timothy D. Lewis, Rick Little, Patricia Roybal Caballero, Debra M. Sariñana, Elizabeth “Liz” Thomson, Christine Trujillo, Jim R. Trujillo, Linda M. Trujillo, and Monica Youngblood.

The following voting and advisory members were not present: Voting: Senators Craig W. Brandt and Candace Gould; Advisory: Senators Daniel A. Ivey-Soto, Gay G. Kernan, and Howie C. Morales; and Representatives David M. Gallegos, D. Wonda Johnson, G. Andrés Romero, Angelica Rubio, and Patricio Ruiloba.

Rachel S. Gudgel, Director, LESC, noted one change to the agenda. The staff presentation in the draft agenda on Thursday afternoon was being moved to Thursday morning with the Every Student Succeeds Act (ESSA) stakeholder engagement presenters. On a motion by Representative Roch, seconded by Representative Salazar, the committee approved the agenda with changes for the June 2017 interim meeting and the minutes for the January 2017 interim meeting.

**LESC 2017 Post-Session Memo.** Joseph Simon, Fiscal Analyst, LESC, discussed budget issues from the 2017 legislative session. Recurring general fund appropriations for public education totaled \$2.694 billion, or 44.3 percent of all recurring general fund appropriations. The public school support appropriation totals \$2.594 billion for FY18, an increase of \$14 million from FY17. Mr. Simon noted that while the increase over FY17 was modest, most other areas of state government faced an overall reduction, reflecting the priority the Legislature placed on public education. For FY18, the Legislature assumed a statewide program cost of \$2.567 billion, an increase of \$17.3 million compared with FY17. The Public Education Department (PED) set the initial FY18 unit value at \$4,053.55, a 1.8 percent increase from the final FY17 unit value, but only a 0.3 percent increase from the preliminary FY17 unit value – the amount school districts and charter schools used to set their FY17 budgets. Transportation funding totals \$96.8 million, including \$82.3 million in general fund revenue and \$14.5 million in public school capital outlay fund revenue. The governor again vetoed language in the General Appropriation Act (GAA) of 2017 creating separate appropriations for school district and state-chartered charter school transportation. Mr. Simon said \$10.5 million in public school capital outlay fund revenue was appropriated for instructional materials.

Mr. Simon said related-recurring “below-the-line” initiative funding was reduced to \$88.2 million for FY18. The Legislature reduced funding for some initiatives, generally reflecting unspent FY16 balances. The Legislature eliminated funding for a number of initiatives, including PED’s pay for performance initiative, the New Mexico cyber academy, the parent portal, and the

New Mexico-grown fruit and vegetables program but authorized PED to use any unspent FY17 appropriations in FY18.

Mr. Simon noted the general fund appropriation for PED's operating budget is flat compared with the FY17 appropriation, but PED increased the amount of initiative funding used for PED staff salaries and benefits to \$1.25 million in FY18.

Representative Christine Trujillo inquired about Regional Education Cooperative (REC) contract information she requested PED provide last interim and Rachel S. Gudgel, Director, LESC, said PED indicated they provided a response to the Representative during session. Ms. Gudgel stated LESC staff would follow up with PED and the RECs to obtain the information.

Representative Trujillo asked about appropriations to PED for lawsuits. Mr. Simon said the Legislature appropriated \$1.25 million to PED for use in FY17 and FY18 and included language in the GAA of 2017 that allows PED to use up to \$750 thousand of select initiative appropriations for legal fees related to the two sufficiency lawsuits. The Representative observed that if PED worked more collaboratively, the state may not need to spend so much money on lawsuits.

Representative Garcia Richard asked if PED was using initiative funding for staff salaries and benefits for staff who are administering these programs. Mr. Simon replied "yes," and noted the Legislature places very few restrictions on how PED can spend most initiative appropriations, leaving broad discretion to PED to budget the funds. Mr. Simon noted the budgeted initiative money is in addition to the department's general fund appropriation. The Vice Chair voiced concern about cuts to direct services at a time when PED is budgeting funds for department staff salaries and benefits. Ms. Gudgel noted initiative funding is included under the PED budget, which effectively gives the department authority to use funds for operating costs. She also noted PED's budget request generally does not include the use of initiative dollars in their operating budget for staff salaries and benefits to administer the programs. The Chair noted the Legislature has not been funding PED at the level the department needs to do their work. PED used to receive about \$18 million in general fund support but now only receives \$11 million.

Representative Salazar asked about a recent report of a PED budget adjustment request (BAR) that included \$63 thousand from the charter school 2 percent set aside and a \$35 thousand private foundation grant that will commission a *New Mexico Story: a Five-Year History of the State's Work in Improving Public Education*. Ms. Gudgel noted the \$63 thousand will be used for a charter school leadership conference at the end of June. She also said the Legislature has very little control over how agencies receive and budget federal and private foundation dollars; it appears it is being spent to highlight what their administration has done over the last six years. Representative Salazar requested more information on the private foundation grant.

Kevin Force, Senior Research Analyst II, LESC, reviewed capital outlay issues. He noted the Legislature attempted to use part of available severance tax capacity to restore the school district and charter school cash balance sweep that was enacted in the beginning of the 2017 legislative session in Senate Bill 462, but noted the governor vetoed the bill. Chapter 133 reauthorized or repurposed \$7.3 million in previous severance tax bond (STB) appropriations that addressed construction and improvements to performing arts centers, multipurpose facilities, early learning centers, playgrounds, school grounds, vehicles, and installation of information technology equipment and infrastructure. Two additional bills related to school capital outlay were signed by the governor: Chapter 73, endorsed by LESC, expands the definition of educational technology that may be purchased with SB9 and HB33 funds; and Chapter 7, which requires the Department of Information Technology to coordinate and develop a statewide broadband network in conjunction with state agencies, educational institutions, and Indian nations, tribes, and pueblos. Mr. Force noted the governor vetoed Senate Bill 64 (SB64), which would have removed the sunset date for educational technology deficiency corrections in the

Public School Capital Outlay Act. The governor's veto message did not include her specific objections, and is one of a number of bills which are the subject of a lawsuit alleging the governor violated Article IV, Section 22 of the New Mexico Constitution.

Mr. Force also reviewed other public-school-related legislation. During the 2017 regular legislative session, 44 bills related to public education were passed and only 18 were signed by the governor. One vetoed measure, House Bill 241 (HB241), which would have permitted teachers to take up to 10 days of sick leave without adversely affecting their annual evaluation, was the subject of a veto override attempt, which succeeded in the Senate, but failed in the House of Representatives. The Legislature considered bills on the following general themes: governance and administration; support for special education, at-risk, and low-performing students; curricula, programs, and accountability; and teachers and other school personnel. Mr. Force highlighted enacted bills and noted none of the bills that addressed the governance and administration of charter schools and school districts were enacted. He noted a table attached to the post-session report outlined all of the public school related legislation and action of the Legislature and governor.

Representative Roch recalled the minimum wage bills and the potential impact on public school employees, suggesting there may be a provision in the Public School Code that says, notwithstanding the minimum wage established in other areas of law, public school employee minimum wage is significantly lower and is only trumped by federal law. The Chair noted that members are aware of the issue; there are school employees and Public Education Department employees who are paid only \$6.00 per hour. Attempts to raise that minimum wage are met with arguments that such an increase would require greater appropriation from the Legislature.

Representative Salazar asked if the \$81.4 million swap of STBs that occurred in the 2017 legislative session had an impact on capital outlay funding for public schools. Ms. Gudgel noted public school capital outlay funding was held harmless, but the source of funding would be STBs rather than supplemental severance tax bonds; however, Ms. Gudgel noted statewide capital outlay capacity is reduced.

**LESC 2017 Interim Meeting Schedule and Workplan.** The Chair proposed LESC visit Gallup July 26 through 28, Taos August 30 through September 1, and Artesia September 27 through 29. She also noted LESC meetings will overlap with the Legislative Finance Committee meetings in October, November, and December in Santa Fe.

On a motion by Representative Roch, seconded by Representative Smith, the committee approved the meeting schedule and locations.

Rachel S. Gudgel, Director, LESC, noted the workplan is not an exhaustive list of everything the committee should focus on but reflects a list of important issues the committee and staff should focus on. The Chair noted she is interested in focusing on the *No Time to Lose* report published by the National Conference of State Legislatures (NCSL). For the last two and a half years, NCSL convened a bipartisan study group that reflected on why some countries are scoring significantly better than others on the Programme for International Student Assessment (PISA). She noted U.S. scores are about average and have been flat for many years. *No Time to Lose* proposes the U.S. study and reflect on what is going on in these other countries. She also noted LESC will focus on Massachusetts because its scores on the PISA are as good as some of the countries that are doing better than the United States. She noted plans to focus on parts of the report at most interim LESC meetings. She noted the intent is to learn from these countries to improve education programs in New Mexico.

Tim Hand, Deputy Director, LESC, highlighted the staff proposal for the committee workplan, which included charter school issues, funding and funding formula issues, governance and

accountability issues, issues related to early learning and closing the achievement gap, capital outlay issues, and educator quality and recruitment and retention issues.

Senator Padilla said alternative funding sources will be available to study an alternative assessment pilot pursuant to Senate Joint Memorial 1. He also noted he would like to see a panel discussion on early education funding.

Representative Christine Trujillo asked the Chair to invite Dr. Linda Ware to speak to the committee on issues of social cognition and all the components that are involved in teaching children, but especially inclusion and diversity.

Representative Roybal Caballero commented that, when discussing targeting the achievement gap, best practices should be shared and recommendations made in addition to assessing how well schools are addressing the needs of impoverished and culturally and linguistically diverse students, English learners (ELs), and highly mobile students. She noted community groups are often working to help close the achievement gap and suggested the committee should hear from these community groups.

Representative Ferrary asked that the Early Learning Caucus be advised when LESC is hearing issues related to early learning.

Representative Sariñana asked that the committee address student absences during the interim.

Senator Lopez noted some schools do not appear to know how to deal with special education students, and she would like the committee to review special education issues because there appears to be a lack of oversight in some areas.

Representative Little noted the statewide graduation rate of 71 percent, which means a number of students are not graduating and going on to college. He said he wants to look at options for students that are not headed to college, such as vocational schools and life skills.

Representative Smith asked to focus on the Legislative Lottery Scholarship, which now only covers 60 percent of tuition.

On a motion by Senator Stewart, seconded by Representative Roch, the committee approved the workplan with additions.

**Directors Report: Administrative Rulemaking.** Mr. Kevin Force, Senior Research Analyst II, presented two proposed rulemakings, published in the May 16, 2017 issue of the *New Mexico Register* by the State Records Administrator, proposing amendments to Part 1.24.10 NMAC, “New Mexico Administrative Code,” and Part 1.24.15, “New Mexico Register.” The rules were proposed to conform to Laws 2017, Chapter 137, effective July 1, 2017, and established procedures for rulemaking, including new definitions, new procedures for the filing and formatting of rules, specific content requirements for Notices of Proposed Rulemaking (NPRMs), public comment and notice requirements, and new provisions for agency records, emergency rules, and conflicts between statute and rule.

Mr. Force noted a new statutory definition, “provide to the public,” expands notice requirements for agency rulemakings, requiring rulemaking information to be published on the agency website and the state sunshine portal, and be available in agency field offices. Notice must be sent by email to any person requesting it, by post to any who provide a physical mailing address, and to the Legislative Council Service for distribution to legislative committees.

Newly required elements of NPRMs under Laws 2017, Chapter 137, include publication at least 30 days prior to a hearing, a summary of the rule's full text, an explanation of the rule's purpose, specific statutory authority for promulgating the rule, information about public comments and the public hearing, a citation to technical information used to develop the rule, and a link to the full text of the rule. A comprehensive record of any proposed rulemaking must be maintained by the agency, and include all publications, and related documents.

The rules proposed by the State Records Administrator for Part 1.24.10 NMAC, "New Mexico Administrative Code," and Part 1.24.15, "New Mexico Register," are intended to bring rules into conformity with Chapter 137.

Representative Salazar asked about the disposition of rulemakings proposed before July 1, 2017, but promulgated later. Mr. Force noted that rules adopted after July 1 would have to conform to the requirements of Chapter 137.

Mr. Force then turned to the April 25, 2017 issue of the *Register*, and a rulemaking establishing new training requirements for members of charter school governing boards, and for approval of training providers; only the New Mexico School Boards Association (NMSBA) and the New Mexico Coalition of Charter Schools (NMCCS) may currently provide such training. All members of both charter school governing bodies and local school boards must attend annual training. The public rule hearing, held on May 30, 2017, was well attended by charter school governing board members and other representatives of charter schools.

The proposed changes amend Section 9 of 29.1.9 NMAC (Section 9), repeal Section 20 of 6.80.4 NMAC (Section 20) and establish new Part 5 of 6.80 NMAC (Part 5). Section 9, "Procedural Requirements," strikes all requirements for training programs for governing body and school board members, while Section 20, "Governing Body Training," strikes specific requirements for governing bodies, all in favor of new requirements in Part 5, "Charter School Governing Body Training Requirements."

Comments on these two rules were generally negative, with many individuals noting inequity created by expanding training requirements for charter school governing body members but not for local school board members. It was also noted that these new requirements will take effect at the end of the fiscal year, after budgets are set, possibly leaving few resources schools may devote to the mandated training.

Proposed Part 5 includes new definitions, mandatory training for governing boards, reporting provisions, and procedures for approving new training providers. Part 5 also establishes reporting requirements, and provides for revocation of provider approval, and imposes progressive sanctions on charter schools for their governing body members' failure to complete training.

Mr. Force noted the definition of "day" is inconsistent with the Uniform Statute and Rule Construction Act, which defines "day" to mean business days only if the relevant period of time is less than 11 days; any longer period of time requires "day" be read as calendar days.

Section 8 of Part 5 would require all new members of governing boards to attend 10 hours of training and continuing members to attend eight hours, increased from five in current rule. Under Section 9, continuing members must complete eight hours, with the possibility of reduced time, based on a school's audits and report cards.

Under Section 10, a charter school's failure to report training completion records for all governing body members for the prior fiscal year to PED result in progressive sanctions, including a corrective action plan and the withholding of funds for failure to comply with the

plan. Commenters indicated sanctions appear to interfere with the relationship between school and authorizer, with one noting the sanctions are not authorized in statute.

Section 13 provides for revocation of training approval for reasons such as failure to report on trainings, suspension of the school's board of finance, and failure to keep accurate training records.

Both Commissioner Patricia Gipson, Chair, Public Education Commission, and Mr. Joe Guillen, Executive Director, NMSBA, indicated that Mr. Force's report was the first they had heard of this rulemaking.

Heidi Macdonald, Senior Fiscal Analyst I, LESC, noted the April 25, 2017 issue of the *New Mexico Register* contained the Public Education Department's (PED) proposed rulemaking focusing on teacher and school leader evaluations, unsatisfactory work performance, and licensure advancement.

Under 6.69.8 NMAC, the proposed amendments to the teacher evaluation system include reducing the student achievement growth component from 50 to 35 percent, increasing the in-class observation component from 25 to 40 percent, and maintaining the multiple measures component at 25 percent. However, the regulations change what the multiple measures are based on, including 15 percent on planning, preparation, and professionalism, 5 percent on teacher attendance, and 5 percent on student and parent surveys. The proposed amendments to the school leader evaluation system include reducing the growth measures in a school's letter grade from 50 percent to 35 percent, increasing the quality criteria of school leaders' classroom observations of teachers from 25 to 40 percent, and requiring an informal walk-through observation using the NMTEACH rubric for each teacher within 45 days of the teacher's first day of instruction beginning in the 2017-2018 school year.

Proposed amendments to 6.69.2 NMAC clarify the process and procedures relating to the supervision and correction of unsatisfactory work performance of licensed school personnel prior to issuing a notice of intent to discharge or requesting the PED secretary to suspend a level 3 teaching license.

Proposed amendments to 6.60.6.9 NMAC include a new requirement that superintendents consider the effectiveness rating from teacher evaluations when determining whether a teacher has a successful evaluation for licensure advancement or renewal, and a person who has an alternative level 1 teaching license has two years to complete the requirements of the license with the option of an extension.

The Chair reminded the committee there is a preliminary injunction prohibiting PED from using the teacher evaluation system against teachers in a punitive way. Representative Roch stated he understood that reemployment decisions are not a PED decision, but a local superintendent decision. He noted a superintendent is not restricted from making a non-renewal decision for a teacher using a teacher's evaluation results as part of the renewal decision. However, he stated, PED cannot use a teacher's evaluation results to deny licensure renewal or advancement.

Ms. Macdonald noted the April 11, 2017 issue of the *New Mexico Register* contained PED's proposed rulemaking to repeal and replace teacher licensure focusing on elementary, middle, secondary, early childhood, special, and secondary vocational education. Each of the proposed rule changes will align these specific teacher licensure requirements with requirements from Laws 2015, Chapter 97 (Senate Bill 329). Additionally, the amendments replace current licensure competencies with the Interstate Teacher Assessment and Support Consortium (InTASC) model core teaching standards. SB329 reduced the number of semester hours required for each license from 54 to 57 hours to 41 hours. During the public hearing for the proposed changes, several

early childhood education professors noted the early childhood license competencies should not be replaced with the InTASC standards, which are not intended for early childhood students.

Representative Roch asked if the secondary license issued under 6.61.4 NMAC included teachers who are teaching students in sixth grade who are in a secondary setting. In prior years, teachers with secondary licenses were able to teach sixth-grade students in a secondary setting pursuant to language in the Student Teacher Accountability Reporting System (STARS) manual. Representative Roch noted this language was deleted from the STARS manual, and PED began flagging school districts where secondary licensed teachers were teaching sixth-grade students in a secondary setting. He noted PED staff mentioned this allowance would be a part of the secondary license under 6.61.4 NMAC. Ms. Macdonald stated PED did not address this concern in the proposed regulations for 6.61.4 NMAC.

**General Fund Revenue Update.** Jon Clark, Chief Economist, Legislative Finance Committee (LFC), discussed general fund revenue collections. He noted collections in March 2017 were up \$62.5 million, or almost 14 percent, compared with revenues collected in March 2016, primarily because of strong gross receipts tax collections and an increase in mineral production taxes, although personal and corporate income taxes were down. Mineral production taxes from the oil and gas industry were up \$41.9 million year to date and 47 rigs were active in March. Mr. Clark said states nationally are seeing reduced personal and corporate income tax collections. He noted the drop in personal income tax was surprising because of growing personal income levels, possibly due to transfer payments from the federal government, which are not taxable, and the loss of high paying jobs in the oil and gas industry, which have been replaced with jobs in lower wage industries, primarily healthcare and hospitality. Also, corporate tax payers were using prior year overpayments to reduce current year liabilities.

Year-to-date revenues are tracking \$97 million above the December 2016 forecast. Mr. Clark said some of this is explained by economic growth but noted some unexplained, perhaps nonrecurring strengths showing in gross receipts taxes.

Mr. Clark noted gross receipts tax revenues have been stronger for the past three months, which is an indicator of how the overall economy is performing. He noted construction, mining, and oil and gas extraction showed significant improvement, though oil prices have fallen since March, which is a concern.

Mr. Clark said private sector employment grew by 1.2 percent in March and 1.4 percent in April, although the government sector continues to drag down job growth. He noted significant improvements in oil and gas industry employment and a slight slowdown of growth in the healthcare sector.

Mr. Clark highlighted the Treasure's general fund balances, showing an upward trajectory with \$1.4 billion in balances. He noted general fund balances are tracking above balances in FY16.

General fund reserve balances are projected to be \$23 million at the end of FY18 which is 0.4 percent of recurring general fund appropriations. Historically, the Legislature has aimed for 10 percent reserves to provide an economic cushion and for rating stability. Recurring spending still exceeds recurring revenues although that gap has shrunk from over \$500 million to \$150 million. Mr. Clark said LFC expects this \$150 million recurring budget gap to persist without some recurring revenue and changes to the budget structure.

Representative Thomson asked Mr. Clark if he had any sense of why the employment in the healthcare field has decreased, and Mr. Clark said employment itself is not decreasing in this field, but employment growth has slowed down. Recent growth was spurred by Medicaid

expansion in the Affordable Care Act and now that the economy has experienced that growth it is returning to normal historical levels.

Representative Roch asked if the financial summary accounts for unexpected events and Mr. Clark replied it accounts for everything known at this point and could be affected by unforeseen events such as disaster declarations. Representative Roch asked if the summary accounted for unresolved discussions with the U.S. Department of Education (USDE) regarding special education maintenance of effort and Mr. Clark replied that it does not. Ms. Gudgel stated LESC staff has still not seen the settlement agreement that was allegedly reached with USDE about 18 months ago. Ms. Gudgel noted the Public Education Department indicated the agreement would have only required an additional \$9 million to be spent in the first year.

Representative Roch asked about other outstanding liabilities, and Mr. Clark answered that any additional liabilities of the state will come out of the general fund and any increases we get will add to reserves. For example, there could be agencies that receive more monies from the federal government that could lead to increased reversions.

The Chair asked if decreases in matched taxable gross receipts for manufacturing were related to tax deductions for manufacturing in the 2013 tax bill. Mr. Clark said the 2013 tax bill affected corporate income taxes rather than matched taxable gross receipts. He said there has been a long-term trend in New Mexico for a consistently shrinking manufacturing sector.

Representative Christine Trujillo asked about decreases in corporate income taxes and Mr. Clark said it could be related to continuing losses in the oil and gas industry or those taxpayers could have net operating losses they could carry forward. He said it is also impacted to some degree by the 2013 tax package but the percentage impact was likely in line with estimates from the fiscal impact report in 2013, but the impact in dollars is probably less because the taxable base is smaller. He noted it was difficult to estimate the exact impact of the 2013 tax package because of the smaller taxable base. In response to the Representative, Mr. Clark noted, if repealed, it would take a while to see the full effect of repealing the tax credits. He noted collections would likely not return to historical levels until any net operating losses for the oil and gas industry were wiped out.

Representative Youngblood asked why personal income tax revenue was flat, and Mr. Clark said that while the state was seeing overall employment growth many people are being employed in lower wage positions and are working fewer average hours per week. He noted the trend of fewer work hours is specific to New Mexico and not part of a national trend. The Representative noted some local policies in New Mexico's large cities that have put mandates on small business could be contributing to these lower hours worked.

Representative Stapleton about projected reserves going into next legislative session, and Mr. Clark said an updated consensus revenue forecast will be presented in August but noted the August forecast would have to increase considerably to eliminate the \$150 million recurring budget gap that exists in FY18. He reiterated that revenue tracking shows revenues are up about \$97 million though he noted declines in gas and oil prices or changes in taxpayer behavior could result in downward pressure.

David Abbey, Director, LFC, noted the state is running about 2 percent ahead of the revenue estimates, or \$120 million. Mr. Abbey said stakeholders have been preoccupied by solvency pressures and avoiding furloughs. While the situation may be better in those areas, recurring revenues are still not high enough to cover recurring expenditures. He said for FY19, the Legislature would need to trim spending, find economies of scale, or find more revenue because reserves will not be sufficient to cover a gap. He also noted risk that oil prices would continue to track below estimates. Next year's forecast is \$48 per barrel, though New Mexico's price is



around \$41 per barrel currently. A \$1.00 change in the price of a barrel of oil sustained over a full year has a \$9 million to \$10 million impact on the general fund. While lower oil prices may drag revenues down next year, it is possible strength in other areas this year will carry into next year. Mr. Abbey also highlighted a potential \$30 million shortfall for Medicaid in FY18 adds to uncertainty.

Representative Stapleton observed the \$30 million Medicaid shortfall is at the state level and does not include federal funding discussions. Mr. Abbey agreed the partial repeal of the Affordable Care Act could reduce support for the Medicaid expansion and much uncertainty currently exists. He said conversation in the U.S. Senate about repealing the Medicaid expansion more slowly is good news for the state in the short run although it could hurt the state between FY20 and FY25. He also noted risk from medical inflation of 4 to 5 percent, even if federal funds do not decrease.

In response to Senator Lopez, Mr. Clark indicated that the Department of Finance & Administration is having discussions with the bond rating agencies now, but the agencies have yet to issue new ratings. Mr. Abbey noted Moody's has previously downgraded the state from AA+ to AA with a negative outlook. He said experts have indicated there is a 50 percent chance of a further downgrade. Mr. Abbey said that while AA-rated states typically do not have projected reserves at zero, New Mexico has a good track record for fiscal management and conservative debt management practices could help the state defend a higher rating.

**Summer 2017 K-3 Plus Program Awards.** Rachel S. Gudgel, Director, LESC, noted K-3 Plus program awards were reduced by 28 percent compared with 2016 summer programs and the number of students funded was reduced by 25 percent and highlighted staff concerns with the Public Education Department's (PED) cuts to awards. She noted some programs span two fiscal years, starting in June of one fiscal year and extend through July and August of the next fiscal year, making funding decisions difficult. PED typically uses K-3 Plus fund balance to fund additional students though summer 2016 was the first school year that more students participated than there were in awards, showing great interest in the program.

Ms. Gudgel outlined the history of the program and noted a number of concerns with PED's decision to cut summer 2017 programs. PED did not advise legislators or legislative staff during the 2017 legislative session that cuts were going to occur to summer 2017 awards. Issues with summer 2017 awards arise from significant participation in summer 2016; in December 2016, legislative staff requested detailed summer 2016 program information from PED that would have flagged potential summer 2017 issues but PED has yet to provide that information. PED withheld approximately \$10 million of the FY18 appropriation to fund 2018 programs, which could have been used to fund 1,200 additional students in summer 2017. PED implemented cuts in a way that was inconsistent and penalized those school districts that reduced their funding request for summer 2017 programs at PED's request because PED calculated cuts from the lower of the summer 2017 request or summer 2016 final award. Additionally, despite PED advising all programs they would see funding cuts, PED actually increased funding for a number of programs, including a 678 percent increase for Clovis Municipal Schools (CMS); if PED had applied the same methodology to CMS as they did to most other school districts, CMS would have been funded for 31 students rather than the 280 students PED awarded them to serve. In conclusion, Ms. Gudgel noted she and David Abbey, Director, Legislative Finance Committee, sent a joint letter to PED highlighting these issues and requesting PED to revisit summer 2017 awards.

Matt Pahl, Director of Policy, PED, said increased demand for K-3 Plus exists at a time when funding for K-3 Plus is limited. Of the schools that participated in K-3 Plus, 71 percent maintained or improved their school grade. Additionally, 66 percent of K-3 Plus students scored at benchmark or above in Dynamic Indicators of Basic Literacy Skills (DIBELS Next) from the

2011-2012 to the 2015-2016 school years. He noted PED is supportive of K-3 Plus because it is targeted to close the achievement gap and prevent the summer learning slide.

Mr. Pahl noted participation in the program has grown and in early years of the program the department had more funding than demand for the program, resulting in accumulation of fund balance. By the end of FY14, the fund balance had grown to \$3.6 million. In recent years this fund balance has been used to fund additional students and in FY16, PED was able to fund more than 2,000 students than the appropriation would support. He acknowledged that PED advised school districts in the past to enroll all students that showed up to participate and the department would reimburse school districts despite initial funding awards. He noted it was this practice that resulted in decreased summer 2017 awards. He also stated the department did not require requests for reimbursement to be submitted until spring 2017, which added to the late notice of funding issues for summer 2017.

Mr. Pahl said PED worked with school districts to fund as many students as possible. PED had limited funding for June start-up programs and worked with school districts to push their start dates back to be able to fund more programs. PED used \$940 thousand of two other appropriations to replace the \$1 million cut PED made to K-3 Plus for solvency. PED also notified school districts that the department would only fund students included in initial award letters, but noted the program was traditionally awarded by school and this year the program was awarded at the school district level to allow greater flexibility. Two school districts leveraged federal Title I funds to support additional student participation, and some school districts consolidated sites to decrease overhead costs.

Mr. Pahl stated PED reduced the lower of last year's enrollment or summer 2017 requests by 15 percent; requests made by school districts with fewer than 30 students were not reduced. PED withheld \$10 million of the FY18 appropriation for June 2018 programs and the department felt this would be reflective of demand based on past requests and participation. He asked the committee to consider providing PED multi-year budget authority for the K-3 Plus appropriation and to provide separate funding for the K-5 Plus pilot. He also said PED is now requiring requests for information to be submitted by December 31.

Dr. Veronica García, Superintendent, Santa Fe Public Schools (SFPS), provided a detailed accounting of their participation in the program and communication with PED about summer 2017 programs. PED awarded 915 students, or a reduction of funding totaling 22.7 percent. She noted PED did not provide the school district with an award letter until May 1, after the statutory deadline. SFPS requested restoration of funding from PED but noted PED never responded to their request so SFPS eliminated four sites that were previously funded. SFPS will use \$40 thousand in Title I funds, and \$20 thousand in grant funds provided by the Santa Fe Community Foundation to supplement state funding.

Raquel M. Reedy, Superintendent, Albuquerque Public Schools (APS), indicated their experience was similar to that of SFPS. She highlighted the importance of the program to APS students. She outlined 2016 events and noted PED actively encouraged the school district to over enroll students, which the school district did, ultimately serving 4,900 students.

APS received their award letter after the statutory deadline, indicating a 19 percent reduction from the initial 2016 award and a 40 percent reduction from final summer 2016 funding. She said PED asked APS to move its June start dates back to fund more students and APS moved it back a day but could not move it back further because of other commitments. PED denied two new schools and eight schools that had first year programs in summer 2016. Additionally, APS eliminated a number of programs based on their school grades and whether the school district was able to keep the student with the same teacher. APS placed an enrollment cap of 20 on each grade in a school and eliminated some programming at each school. She noted PED was

concerned that APS did not use other funding sources to cover summer programs but noted the school district had other planned uses for other funding sources and noted community partners worked to provide students with other options. In conclusion, Ms. Reedy suggested K-3 Plus be moved into the formula to ensure consistency.

Dr. Arsenio Romero, Superintendent, Deming Public Schools (DPS), indicated participation has increased because of community outreach. In previous years, DPS funded a kindergarten through fifth grade program by leveraging Title I dollars; 974 students participated at a total cost of \$1.4 million. He noted a drop in funding and attendance in 2016, though noted DPS used Title I to cover the state funding decrease, though he noted current Title I funding is also being reduced, making it difficult to continue to use Title I for K-3 Plus. Because of a 50 percent reduction in K-3 Plus funding, DPS will only have two school sites this summer; PED eliminated funding for Columbus Elementary School, which had 95 percent participation and positive impacts over time. Dr. Romero suggested the Legislature should consider fully funding K-3 Plus because of positive impacts it has on the community.

Multiple LESC members voiced significant concerns about PED's summer 2017 award decisions, noting inequities in decisions among school districts and concerns with withholding a large sum of money for summer 2018 programs.

Senator Soules voiced concern about the 25 percent reduction in students for summer 2017 programs and the significant increase in Clovis's award. Mr. Pahl noted the reduction the department implemented for individual school districts allowed PED to fund additional students at other school districts. Mr. Pahl stated Clovis requested additional students rather than reduced students and suggested school districts should have done this so their cuts would not have been as significant as they were. Senator Soules expressed concern that school districts were not treated equally and PED is holding money for programs next year at the expense of this summer's programs. The Senator also voiced concerns about PED's decision to cut K-3 Plus awards and leave a reserve of \$500 thousand when the program has demonstrated a positive impact on student achievement. The fund balance would have funded an additional 800 students in June.

In response to the Chair, Mr. Pahl noted a number of programs have been funded to operate 20-day programs for several years. The Chair advised Mr. Pahl statute requires programs to provide 25 additional days, not 20 days.

In response to Representative Stapleton's question about when PED became aware of a funding shortfall for summer 2017 programs, Mr. Pahl acknowledged the K-3 Plus coordinators were aware of the potential shortfall but reimbursement requests were not due until March 31 of this year and PED did not know what the funding would look like during the 2017 legislative session. Representative Stapleton suggested PED should notify school districts of potential shortfalls as soon as the department becomes aware of them to ensure students and families are not negatively affected and have sufficient time to make summer program decisions. The Representative also noted concerns about PED not looking at the demographics of the students in the schools the department did not fund and urged PED to change its methodology in the future should a similar situation arise.

In response to Representative Thomson's question about moving K-3 Plus into the funding formula, the Chair said it is up to the Legislature and discussions to do so have been ongoing. The Chair noted a lot of legislators want to move it above the line and after hearing from PED it gives us reason to consider it.

Representative Roybal Caballero requested data from PED, including a detailed breakdown of the costs of the students served, the operational and administrative costs for PED, school site level data, and Mr. Pahl noted he would check to see if the data was available.

The Chair reiterated member's all have frustrated constituents. K-3 Plus is in its 10th year and this summer's issues are new issues. Mr. Pahl noted new leadership in the Literacy Bureau, and the Chair reminded Mr. Pahl of several years of inconsistent leadership in the K-3 Plus program at the department. She noted concerns that PED no longer notifies LESC of the K-3 Plus Advisory Committee meeting and asked PED to notify staff of those meetings. In addition to concerns already raised, she also reiterated concerns that PED was late to notify schools, had not timely responded to school districts' requests for flexibility, is funding 20-day programs, contrary to statutory requirements, and did not appear to be meeting the statutory funding requirements for all schools.

There being no further business, the Chair recessed the LESC meeting at 5:38 p.m.

Senator Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:01 a.m., on Thursday, June 15, 2017, in Room 322 of the State Capitol in Santa Fe, New Mexico.

#### **Thursday, June 15**

The following voting and advisory members were present: Voting: Senators Mimi Stewart, Chair, and William P. Soules; and Representatives Stephanie Garcia Richard, Vice Chair, Alonzo Baldonado, Dennis J. Roch, Tomás E. Salazar, James E. Smith, and Sheryl M. Williams Stapleton; Advisory: Senators Linda M. Lopez and John Pinto; and Representatives Joanne J. Ferrary, David M. Gallegos, Jimmie C. Hall, Rick Little, Patricia Roybal Caballero, Debra M. Sariñana, Elizabeth "Liz" Thomson, Christine Trujillo, Jim R. Trujillo, Linda M. Trujillo, and Monica Youngblood.

The following voting and advisory members were not present: Voting: Senators Craig W. Brandt and Candace Gould; Advisory: Senators Carlos R. Cisneros, Daniel A. Ivey-Soto, Gay G. Kernan, Howie C. Morales, and Michael Padilla; and Representatives D. Wonda Johnson, Timothy D. Lewis, G. Andrés Romero, Angelica Rubio, and Patricio Ruiloba.

**Every Student Succeeds Act Stakeholder Engagement.** Marit Rogne, Fiscal Analyst, LESC, discussed New Mexico's state plan for the Every Student Succeeds Act (ESSA) and noted that New Mexico submitted its ESSA state plan to the U.S. Department of Education (USDE) on April 3. ESSA explicitly provides for increased state control of education accountability and practice and allows states to set performance goals and accountability standards with more flexibility. However, New Mexico's state plan updates the strategic plan developed by the Public Education Department (PED) in 2011, including student achievement data in annual teacher evaluations as measured by student test scores, school accountability as measured by school grades, higher standards with the adoption of New Mexico common core state standards, and assessments aligned to those standards, as measured by the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment. A peer review of New Mexico's state plan was conducted by a group of teachers, principals, parents, specialized instructional support personnel, state education agencies, local education agencies, and researchers, and PED must respond to USDE feedback within 15 days of the USDE's June 13 letter.

Heidi Macdonald, Senior Fiscal Analyst I, LESC, noted each state is required to meet the statutory consultation requirements of individual programs in the development of its state plan. PED

conducted stakeholder engagement in the fall of 2016 and in early 2017 to develop the state plan, which included public meetings, online surveys, targeted technical working groups, tribal consultation, and teacher and parent meetings. PED partnered with New Mexico First to co-host approximately 20 public meetings over the course of six days in six different communities plus a tribal consultation. At each meeting, PED proposed New Mexico maintain its current school grading system, teacher evaluation system, and use of the PARCC assessment. PED sought input on limited topics, including the English language proficiency indicator, opportunity to learn as an accountability measure, and the development of alternative demonstrations of competency. The majority of stakeholder feedback focused on improving the teacher and school leader evaluation systems, enhancing the standards for teacher preparation programs, exploring new content standards for math and science, providing more support for bilingual education, reducing student testing, recruiting and retaining high-quality teachers; and further developing wraparound services for struggling students.

Pamela Blackwell, Policy Director, New Mexico First, discussed partnering with PED in the fall of 2016 on ESSA stakeholder engagement. New Mexico First co-hosted regional meetings around the state and garnered input about how to implement New Mexico's state plan to support student learning and educators. Additionally, they created an online survey in English and Spanish for those unable to attend meetings in person and produced eight reports based on the community meetings. Ms. Blackwell described the meeting structure of what happened during each of the stakeholder engagement public meetings. Participants were asked three main questions regarding what is working well and what needs improvement in their school or school district as well as suggestions to improve public education in the state. She spoke in depth on the public comments during the meetings, which focused on improving teacher support and evaluation, offering more guidance on school grades, reducing student testing, creating culturally relevant curriculum for tribal communities, improving services for special education and gifted students, recruiting and retaining vocational teachers, and promoting parental and student involvement.

Ian Esquibel, Executive Director, Learning Alliance New Mexico (LANM), noted LANM worked in collaboration with the New Mexico School Superintendents' Association and the New Mexico Coalition for Charter Schools to create a stakeholder engagement toolkit. LANM hosted over 350 focus groups with participations from seven school districts, 15 charter schools, and 17 community organizations. After hearing extensive feedback, LANM created a stakeholder feedback report and distributed it to school districts, schools, community organizations, and PED.

Dr. Meriah Heredia-Griego, Director, University of New Mexico Center for Education Policy Research (CEPR), noted CEPR created a policy brief and data analysis of ESSA feedback gathered by LANM. CEPR and LANM asked stakeholders a variety of questions on challenging academic content, standards, and assessments; teacher and school accountability; family and community relations; and support for low-performing schools. Feedback from stakeholders focused on the need for students to have critical thinking skills, the ability to collaborate and communicate with others, and advanced skills in relation to reading, writing, science, and math; the importance of including hands-on and project-based learning in schools; the significance of in-person classroom observations for teacher evaluations; and the value of investing in teacher quality through adequate compensation.

Carrie Robin Brunder, Director of Government Affairs and Policy, Albuquerque Public Schools (APS), thoroughly went through each section of New Mexico's state ESSA plan. Highlighting certain sections of the plan, she noted the English language proficiency is a new accountability indicator, and PED is attempting to outline the appropriate growth targets for English learners (ELs); PED, New Mexico First, and LANM did a substantial amount of stakeholder engagement and outreach, but she stated there was a disconnect with the plan when it came to social and

emotional learning of students; and a new requirement for tribal consultation will provide school districts with a better understanding of the needs of Native American students. Additionally, section four of the plan includes school accountability measures and requirements school districts must implement for struggling schools, including the extensive details for comprehensive support and improvement and targeted support and improvement schools. Next, Ms. Brunder stated the plan focuses on the well-rounded education and safe learning environments for students.

Betty Patterson, President, National Education Association New Mexico (NEA-NM), stated ESSA gave states the opportunity to look at new teaching and testing ideas and possibly implementing a community school model to assist low-performing schools. NEA-NM hosted several trainings around the state to obtain ideas on the state's ESSA plan. The majority of feedback focused on ways to implement trauma-informed school services, reduced student testing, and more opportunities for professional development.

Representative Hall asked about opportunities for community schools under ESSA. Ms. Brunder noted APS has identified community schools as a strategy they hope to implement if approved by PED. Ms. Blackwell noted wraparound services and a welcoming environment for families and students are vital components of a community school.

Representative Roch said it appears that New Mexico First and LANM have similar outreach processes, and he asked why there were duplicative efforts on stakeholder engagement. Ms. Blackwell stated PED specifically contracted with New Mexico First to conduct outreach to meet the federal requirements for stakeholder outreach. Mr. Esquibel said LANM worked with its community partners to establish a process that was different from PED's approach. He also stated there was talk about how this could work simultaneously to support each organization's interests. The Chair noted she believed the work was not duplicative as each organization focused on high-quality outreach efforts.

Representative Roch asked about input from rural communities, and Ms. Blackwell said the rural voice was prevalent in the state plan, and some of the best ideas came from rural communities. She noted the meetings in rural areas were better attended than Albuquerque and Santa Fe.

Representative Garcia Richard said the state's ESSA plan included possible expansion for school choice in New Mexico, and she asked if the state currently has local voucher programs. Ms. Brunder said the state does not have local voucher programs, but at the national level there is a push to expand school choice options in more states.

Representative Little noted the importance of vocational skills and career technical education (CTE) opportunities. Ms. Brunder stated there is an opportunity for students to take dual credit and CTE classes; however, more partnerships need to be created to incentivize school districts to focus more on CTE opportunities.

**State Title I Plan: Development and Incorporation of Stakeholder Engagement.** Matt Pahl, Director of Policy, Public Education Department (PED), said PED partnered with New Mexico First to engage over 1,800 stakeholders, including tribal leaders, community members, superintendents, charter leaders, Title I and Title II directors, teachers and parents, and LESC members through presentations, working groups, phone calls, an online ESSA inbox and survey.

Ashley Eden, Director of Strategic Initiatives, PED, said New Mexico already has many of the ESSA requirements in place including a school grading system, teacher evaluation, and high-quality standards and assessments. As a result, she noted New Mexico is in a good place to provide continuity and stability to educators.

Ms. Eden highlighted each section of the New Mexico state plan and introduced *New Mexico Rising Together*, a document outlining 50 things PED heard in the community and outlined how feedback was incorporated into the state plan. She noted PED made 50 changes to the draft plan during the 30-day comment period.

The Chair asked for a review of the letter from the U.S. Department of Education (USDE) and commented that ESSA requires the Legislature to be part of the plan but this is the first time the Legislature has seen the plan. Mr. Pahl noted this would be a good time for committee feedback on the changes recommended by USDE.

Ms. Eden went through each of the comments USDE made on the New Mexico state plan, noting she received the letter a few days before the hearing and still needed to do a detailed review of USDE comments. She characterized most of the comments as technical in nature.

The Chair noted she has questions and concerns regarding USDE feedback that our state plan needs more of an emphasis on proficiency. Ms. Eden said she had questions for USDE as well because their feedback does not align with what she believed the federal intent was.

Representative Thomson asked why the School for the Deaf and other schools are not under the purview of the accountability system and Mr. Pahl noted that PED does not have authority over special schools. Representative Thomson asked whether graduation requirements were the same and Mr. Pahl said he would get back to her.

Representative Roch asked why the state is prohibited from counting English learners (EL) academic growth after they have exited EL status toward English learner growth. Dr. Icela Pelayo, Director, Bilingual Multicultural Education Bureau, PED, said PED will report how exited ELs are doing compared to other groups on school grade report cards. In response to a question by Representative Salazar, Dr. Pelayo noted ESSA requires continued reporting on students who have exited EL status. The Chair noted the change in cut scores for the ACCESS exam and asked if PED was familiar with that before writing the plan. Dr. Pelayo said that change was taken into account. The Chair asked about the “n” size for EL students and Ms. Eden said she will check on the “n size and get back to LESC.

Ms. Eden said PED received pushback on how the department was going to structure comprehensive support and improvement (CSI) and targeted support and improvement (TSI) classifications and how a school enters and exits. Representative Roch commented that entrance for CSI based solely on graduation rates ignores extenuating circumstances like the inclusion of nontraditional students in graduation rates. Ms. Eden responded that it is clear in the law that any high school with a graduation rate lower than 67 percent has to be a CSI school. Senator Soules observed that schools get into CSI status by ranking and get out according to performance and Ms. Eden indicated schools exit CSI status when they are no longer in the bottom 5 percent.

The Chair asked how much federal Title IV money was available and Ms. Eden thought it was less than \$2.9 million. Ms. Eden said Title IV is a new block grant program that USDE allowed PED to give out on a competitive basis. The Chair asked Ms. Eden to provide more detailed information to LESC staff on how the funds will be distributed when PED establishes a plan.

Senator Soules expressed concern that the student teaching residency is only for teacher preparation programs when about half of teachers are licensed through an alternative model, though Mr. Paul noted alternatively licensed teachers are not precluded from a teaching residency. The Chair commented that this yearlong residency would be expensive.

Senator Soules cited concerns that career technical education (CTE) support is diminishing in the state. Ms. Eden said PED data shows that CTE programs are a great way to improve graduation rates and PED is thinking about how to get more students enrolled in those programs.

Representative Thomson asked where PED got the information that 81.4 percent of students with disabilities are employed or in postsecondary education when the national average of employment for these students is 17.5 percent. Ms. Eden said she would get more information and get back to her.

Representative Garcia Richard observed that some of the best work she has seen done as a legislator was in the LESC work group and asked about timelines and final determination of the plan. Ms. Eden noted it is about two weeks after the first deadline and there can be amendments after the deadline. The Representative asked whether PED has to rely on USDE feedback or can PED change other things and Ms. Eden said she did not know and will ask USDE.

The Chair asked if PED intends to permit vouchers, and Mr. Pahl replied there are no plans to propose legislation but there may be in the future. The Chair observed that vouchers are not currently legal in New Mexico so there would have to be a statutory change. Representative Roch noted the desire was not to foreclose any school choice options.

The Chair referred to the teacher equity issue in New Mexico's state plan and commented PED would face challenges trying to move highly qualified teachers around as the largest school districts in our state use collective bargaining agreements. In reply, Ms. Eden said it is a requirement under ESSA that we identify our best teachers and struggling teachers and do a breakout of who these teachers are teaching. Mr. Pahl added the collective bargaining agreements do not preclude moving teachers.

Representative Sariñana commented that placing better teachers in Title I schools should make a difference, but asked if it was going to be enough. The Chair noted that we all want to improve teaching but still disagree on what is working and what is not. The Chair attended several ESSA stakeholder meetings and overwhelmingly heard the teacher evaluation system was not working.

The Chair asked about the work group on supplemental accountability model (SAM) schools. Mr. Pahl answered that the intent of the work group is to examine and modify SAM identification criteria. The Chair asked who is in the SAM stakeholder group and Mr. Pahl said PED does not have an invite list yet but noted PED would invite school districts and charter schools and LESC members.

The Chair observed that if you thoroughly read through the stakeholder group reports the ESSA plan fails to address much of the stakeholder feedback. The Chair stated the committee would continue to work with the department on the plan as the department addresses USDE feedback.

There being no further business, the Chair recessed the LESC meeting at 4:05 p.m.



Senator Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:00 a.m., on Friday, June 16, 2017, in Room 322 of the State Capitol in Santa Fe, New Mexico.

**Friday, June 16**

The following voting and advisory members were present: Voting: Senator Mimi Stewart, Chair; and Representatives Stephanie Garcia Richard, Vice Chair, Alonzo Baldonado, Dennis J. Roch, Tomás E. Salazar, James E. Smith, and Sheryl M. Williams Stapleton; Advisory: Senators Carlos R. Cisneros, Michael Padilla, and John Pinto; and Representatives Jimmie C. Hall, Timothy D. Lewis, Rick Little, Patricia Roybal Caballero, Debra M. Sariñana, and Jim R. Trujillo.

The following voting and advisory members were not present: Voting: Senators Craig W. Brandt, Candace Gould, and William P. Soules; Advisory: Senators Daniel A. Ivey-Soto, Gay G. Kernan, Linda M. Lopez, and Howie C. Morales; and Representatives Joanne J. Ferrary, David M. Gallegos, D. Wonda Johnson, G. Andrés Romero, Angelica Rubio, Patricio Ruiloba, Elizabeth “Liz” Thomson, Christine Trujillo, Linda M. Trujillo, and Monica Youngblood.

**Bilingual Multicultural Education Program Rule Changes.** Christina McCorquodale, Senior Research Analyst I, LESC, discussed proposed changes to administrative rules for bilingual multicultural education programs (BMEPs) 6.32.2 NMAC. Ms. McCorquodale outlined the changes the Public Education Department (PED) proposed and noted PED held a hearing on the proposed rule changes on May 2, 2017. Public comment included concerns regarding limited stakeholder engagement, lack of clarification from PED regarding how the changes would impact student eligibility and participation in BMEPs, fiscal implications, and lack of tribal consultation. She noted PED indicated the BMEP guidance document would be updated to reflect the changes after rule changes are made. Much of the stakeholder concern centered on elimination of two models of instruction, and Ms. McCorquodale noted PED staff indicated the department is not attempting to eliminate student participation and they did not believe the changes would have any negative fiscal impacts on participating school districts or charter schools. Students currently participating would be able to transfer into one of the other two models. Because of concerns voiced at the first rulemaking hearing, PED extended the comment period and is soliciting stakeholder input to revise the rulemaking to reflect collaboration.

Dr. Icela Pelayo, Director, Bilingual Multicultural Education Bureau, PED, said statutory goals for BMEPS are for all students participating in BMEPs to become bilingual and bi-literate in English and a second language and to state academic content standards and benchmarks in all areas. The purpose of the rule change is to deliver on that promise and to strengthen the implementation of BMEPs to ensure programs meet the federal Office of Civil Rights expectations for serving ELs and New Mexico is able to address the English language proficiency requirements of ESSA.

Dr. Pelayo noted PED proposed the rule changes to address the following concerns the department has heard from stakeholders: an inconsistent pattern of receiving and seeking community input from tribes or families on the development, implementation and evaluation of bilingual multicultural education programs which is required by statute; ELs in bilingual programs are not receiving the dedicated English language development instruction they need to build proficiency to excel on academic assessments and beyond school; school district confusion about the difference between models; and current program accountability in regulation only accounts for ELs and no other students.

She noted a new requirement to secure tribal consultation during program approval to ensure stronger communication between tribal entities and school districts. Additionally, PED has proposed a new parent advisory committee member signature required on the application to ensure stronger parent engagement.

PED intends to streamline BMEP programs to three models, eliminating the enrichment and maintenance models. She did note the newly proposed definition of transitional models includes some components of the maintenance model. She provided a crosswalk to the committee showing how students would move from an eliminated program into one of the three existing models and highlighted programs have already been moving toward consolidation to the three models PED left in regulation. She noted this should not impact program funding, because programs are funded based on intensity – or the number of program hours offered – rather than program model.

She highlighted proposed program evaluation changes intended to make sure programs are having positive impacts on student achievement. She noted PED proposed a three-year program evaluation timeline, but noted stakeholders' desires to maintain the current four-year evaluation timeline.

She also highlighted PED stakeholder engagement efforts prior to the August 9 public hearing, including engaging with PED's Bilingual Advisory Council, local bilingual directors, the Indian Education Advisory Council, BMEP program directors, educators and parents, and tribal partners.

Mary Jane Haberman Lopez, Co-Chair for the Coalition for the Majority, highlighted three main stakeholder concerns: elimination of program models that will limit school choice; lack of stakeholder consultation; and program renewal changes based on a single compliance report – she noted national standards indicate it takes five years to acquire academic proficiency in English and a three-year evaluation period may be too short. Additionally, Victoria Tafoya, President, New Mexico Association for Bilingual Education (NMABE), voiced concerns about PED's characterization that school districts are trending toward eliminating maintenance and enrichment model programs and noted she felt PED was pushing school districts to eliminate these models. She voiced support for programs that support Native American languages and indigenous communities.

Former Representative Rick Miera echoed concerns of previous presenters and noted the Hispanic Education Council recently sent a letter to the department outlining their concerns, asking for collaboration among all stakeholders, specifically our native tribes and Spanish language communities; a fiscal impact analysis of changes, a rationale for the proposed changes; and a specific timeline for proposed changes.

In response to Representative Garcia Richard, Dr. Pelayo indicated her new role at PED is Deputy Director of the Options for Parents and Families Division and PED is working to hire a director for the Bilingual Multicultural Education Bureau. In response to the Representative's concern about transitioning Native American students into a heritage model, Dr. Pelayo said the current definition for the heritage program says it will support and revitalize the student's native language and culture through oral and written language and instruction. She said PED received feedback about this and is considering aligning the definition of the heritage program to research and respecting the revitalization aspects of this program in the second draft version of the rule. She also noted some of the language the Representative is concerned about is being eliminated from program definition language is already in another part of the rule. The Representative still voiced concern about eliminating models that appear to subvert the value of native languages and cultures in New Mexico and focus on supporting ELs. Dr. Pelayo indicated heritage programs will look different across the state and a school district can retain what is unique about their program to the extent that it works.

Representative Garcia Richard noted Dr. Pelayo said the change would not impact funding and she asked PED to provide a fiscal impact report. She also asked about the Bilingual Advisory Council's role in reviewing the changes and suggested PED should present the changes to the

Indian Affairs Committee. Dr. Pelayo said PED discussed the proposed changes with the Bilingual Advisory Council while developing the rule and they provided feedback.

Representative Salazar noted concerns that stakeholders were not given enough time to respond to the proposed changes and were not aware of the reasons for which PED is proposing the rule changes. Representative Roybal Caballero also noted the importance of stakeholder engagement on this topic in particular since it relates to Hispanic and Native American students in New Mexico and concerns with PED's reasoning for the changes.

In addition to echoing other members' concerns, Representative Stapleton noted she and several other legislators sent a letter to PED on May 30, 2017 requesting additional clarification and had yet to receive a response from PED. The Representative asked PED about the data they gathered from school districts to justify the proposed rule changes, particularly related to the proposal to eliminate two program models. Dr. Pelayo noted PED has gathered data through required reporting, site visits, and department monitoring.

In response to the Representative's question, Mr. Pahl indicated the department intends rule changes to take effect during the 2018-2019 school year. Additionally, Dr. Pelayo noted instructional materials issues would be addressed at the local level and the department believes the proposed changes will improve BMEP implementation and positively impact student achievement. In response, Ms. Tafoya noted RRPS would have to make significant changes to comply with the rule change and may have significant impacts on instructional materials decisions, staffing decisions, and decisions regarding student placement in programs. Ms. Tafoya noted she thought everything the department was seeking to accomplish could be done without eliminating two of the five models.

Representative Stapleton asked about increased funding to hire additional staff or new instructional materials, and Mr. Pahl noted the only increase in funding that could be possible would be if students were placed in programs that provided more hours for students than they are currently taking. In regard to transitioning to the other models, Mr. Pahl added PED is working with Stan Rounds, Executive Director, New Mexico Coalition of Educational Leaders, to get specific feedback from superintendents on potential impacts of proposed changes.

The Chair recognized Teri Fraizer, Chair, Indian Education Advisory Council (IEAC), who said PED presented to IEAC, but members were not clear about the changes and adequate consultation time was not provided to IEAC members to gather constituent feedback. Ms. Frazier recommended PED needed to involve the Pueblo governors.

In conclusion, the Chair noted the Committee worked with PED to try to learn how to appropriately measure language development progress for ESSA and recognized it may be difficult for PED to keep all stakeholders happy. She acknowledged PED committed to slowing the rulemaking process down and engaging in additional stakeholder outreach. She, did however, voice concern about how PED is going to measure English and native language proficiency.

There being no further business, the Chair adjourned the LESC meeting at 12:33 p.m.