

**MINUTES**  
**Legislative Education Study Committee**  
**New Mexico State Capitol, Room 322**  
**Santa Fe, New Mexico**  
**May 29 and 30, 2019**

May 29, 2019

The following voting and advisory members were present: Voting: Chair Christine Trujillo, Vice Chair Mimi Stewart, Senators Craig W. Brandt, Candace Gould, and William P. Soules, and Representatives Rebecca Dow, Sheryl Williams Stapleton, and Linda M. Trujillo; Advisory: Senators Carlos Cisneros, Gay G. Kernan, Linda M. Lopez, and Michael Padilla, and Representatives Kelly K. Fajardo, Joanne J. Ferrary, David M. Gallegos, Joy Garratt, Susan K. Herrera, Raymundo Lara, Tim D. Lewis, Willie D. Madrid, Gabriel Ramos, Patricia Roybal Caballero, Tomás E. Salazar, Debra M. Sariñana, and Elizabeth "Liz" Thomson.

The following voting and advisory members were not present: Voting: Representatives Alonzo Baldonado and G. Andrés Romero; Advisory: Senator Daniel A. Ivey-Soto and Representatives Natalie Figueroa and D. Wonda Johnson.

On a motion by Representative Dow and a second by Senator Stewart, the agenda for the May 2019 LESC meeting was approved with no opposition. On a motion by Senator Brandt and a second by Representative Linda Trujillo, the minutes from the January 2019 LESC meeting were approved with no opposition.

**LESC 2019 Post-Session Review.** Joseph Simon and Marit Rogne, senior fiscal analysts, LESC, presented the LESC post-session review to the committee. Mr. Simon reviewed the public education appropriation included in the General Appropriation Act of 2019, as well as reforms to the public school funding formula included in Laws 2019, Chapter 206 (Senate Bill 1) and Laws 2019, Chapter 207 (House Bill 5). He reported increases to public education appropriations were much higher than increases allocated to other areas of government, saying recurring general fund appropriations for public education totaled \$3.249 billion, an increase of \$448 million, or 16 percent, from FY19. Mr. Simon said much of the new money for public education was related to SB1 and HB5, which were enacted in response to the district court decision in the consolidated *Martinez* and *Yazzie* lawsuit. He said the bill increased the amount of funding to the at-risk index, a component of the funding formula designed to allocate additional funding to school districts and charter schools based on the number of low income students, English learners, and students with high mobility; moved the grant-based K-3 Plus program into the public school funding formula as K-5 Plus; created a new extended learning time program in the funding formula; and increased the statutory minimum salary level for teachers, level 3 counselors, assistant principals, and principals. Mr. Simon said in addition to the funding formula reforms enacted by SB1 and HB5, the Legislature appropriated additional funding to increase public school employee pay and benefits and to expand bilingual and multicultural education programs.

Mr. Simon said that although appropriation increased significantly, some funds appropriated by the Legislature would not be allocated to school districts and charter schools in FY20. He said that not all school districts and charter schools were able to take advantage of the programs because of the quick turnaround time between the end of the legislative session and the FY20 school budget process, as well as limited demand due to a lack of teachers willing to participate and parents wishing to send their children to school for longer periods. Mr. Simon summarized public school legislation relating to culturally and linguistically responsive instruction; the repeal of the A-B-C-D-F Schools Rating Act and enactment of the School Support and Accountability Act; teacher recruitment programs, including the College of Education Affordability Act and the Grow Your Own Teachers Act; a newly enacted pilot program for career technical education; and school safety legislation.

Ms. Rogne, provided an overview of efforts aimed at early childhood education, noting appropriations for early childhood programs totaled \$439.5 million for FY20, an overall increase of 40 percent from FY19. Then Ms. Rogne provided an overview of early childhood education action during the 2019 legislative session, including the enactment of Laws 2019, Chapter 48 (Senate Bill 22), which created the new Early Childhood Education and Care Department to oversee and administer all early childhood programs.

Ms. Rogne summarized legislative action related to public school capital outlay. She said much of the discussion was triggered by some of the school districts that are plaintiffs in the 20-year-old Zuni lawsuit, which are arguing the system remains unfair because they are unable to raise sufficient local revenue to build outside the statewide adequacy standards. Laws 2019, Chapter 277 (Senate Bill 280) included \$34 million for school districts that receive federal Impact Aid for tribal lands. Other public school capital outlay laws enacted include Laws 2019, Chapter 179 (Senate Bill 230), which provides for a process to fund public prekindergarten facilities, and Laws 2019, Chapter 180 (Senate Bill 231), which made technical changes to the calculation of the state and local match to address drafting errors enacted in Laws 2018, Chapter 66 (Senate Bill 30).

Representative Dow noted many rural school districts will not participate in the K-5 Plus program or the new extended learning time program because they were unable to meet program requirements; some school districts that participated in K-3 Plus could not guarantee students would remain with the same teacher. In response to Representative Dow, Mr. Simon said the requirements for K-5 Plus and the extended learning time programs were taken from findings of the Utah State University evaluation of K-3 Plus and the recommendations of the Legislative Finance Committee's evaluation of the impact of instructional time on student achievement. Mr. Simon noted the importance of evidence-based interventions to improve student achievement to comply with the court's decision in the consolidated *Martinez* and *Yazzie* lawsuit. Representative Dow stated she hoped that students in rural communities would not receive fewer needed interventions as a result of the changes.

Representative Dow asked if educational assistants will have to be full time students to be eligible for scholarships under the new Grow Your Own Teachers Act, noting this is not included in the law. Mr. Simon stated he was unsure of program requirements but that staff would contact the Higher Education Department to clarify who would be eligible.

**Children, Youth, and Families Department (CYFD) 2019 Interim Priorities.** Brian Blalock, Secretary, CYFD, introduced the committee to his department's strategic plan for the upcoming year. Mr. Blalock explained CYFD's strategic plan is divided into four areas: more appropriate placements for children; prevention of institutionalization, homelessness, and trauma; optimization of data, accountability, and funding; and workforce development. Mr. Blalock said CYFD is focused on increasing the number of foster children in kinship care – living with relatives – to improve outcomes. Research has shown foster children in kinship care have fewer prior placements, more frequent and consistent contact with birth parents and siblings, fewer negative emotions, and decreased likelihood of running away. Community-based mental health services is an integral part of CYFD's plan to prevent institutionalization, homelessness, and trauma. Mr. Blalock explained that mental health disorders typically present themselves between the ages of 11 to 19, and intervention is vital. This is especially important for foster children, as 30 percent of former foster children suffer from post-traumatic stress disorder (PTSD) as adults, compared with approximately 15 percent of U.S. combat veterans who suffer from PTSD. Next, Mr. Blalock talked about optimization of data, accountability, and funding. CYFD plans to further data-driven decision making through the use of assessments and data management systems such as the Medicaid Management Information System (MMIS). Regarding workforce development, CYFD plans to revamp staff training, increase hiring, and focus on retention through communication,

secondary trauma services, and promoting CYFD success stories and a clear vision for the department.

Senator Padilla asked how CYFD is planning to increase the number of foster children in kinship care. Senator Blalock said it starts with a culture shift, so that CYFD employees understand the importance of placing foster children with relatives whenever possible. This includes finding families, supporting kinship care providers however possible, and streamlining financial supports. Senator Padilla referenced legislation he sponsored, Laws 2019, Chapter 149 (Senate Bill 23), which provides services for youth leaving foster care, and asked if CYFD is leveraging federal funding. Mr. Blalock said Chapter 149 will allow CYFD to leverage foster care dollars to get a federal match for housing subsidies for youth leaving foster care.

Senator Gould said she works with foster children who have aged out of the system and asked what CYFD is doing to ensure these youth have support. Mr. Blalock said CYFD is focused on preventing the “cliff effect” by focusing on supports, such as ensuring all foster youth have a high school diploma and employment opportunities exist for youth in extended foster care.

Senator Kernan said she is concerned about a lack of mental health providers that accept Medicaid in rural areas, and Senator Soules asked how to build mental health services for communities that lack them. Mr. Blalock said increasing community-based health services in coordination with the Department of Health is a priority for CYFD. Senator Soules asked about efforts to increase the number of students going into social service fields. Mr. Blalock said he is working with the Higher Education and Workforce Solutions departments to create a pipeline of social service providers who are being trained at New Mexico State and Highlands universities. Senator Soules mentioned reports of children who have died in New Mexico under the care of Immigration and Customs Enforcement and wants CYFD to be notified immediately if children are detained. Mr. Blalock said he was working with other local and state agencies in Deming recently to determine how CYFD can best help with the influx of refugees; he said he planned on rolling out policies this week on screening and working with refugees.

Representative Herrera asked how many children CYFD is currently serving. Mr. Blalock said there are around 2,500 children in protective services, 137 in juvenile justice facilities, and about 1,000 in juvenile community probation programs. Representative Herrera asked how much the state pays families for kinship care. Mr. Blalock said it is about \$500 for kinship care. Representative Herrera asked about the average case load for a social worker. Mr. Blalock said it varies based on their experience from about 12 to 30.

Representative Linda Trujillo sponsored Laws 2019, Chapter 196 (House Bill 447) that ensures school districts and CYFD share data so students do not fall through the cracks, and wants to know how this will be implemented. Mr. Blalock said he has talked with the Public Education Department (PED) about how to move forward, but they are still in beginning stages.

Representative Fajardo asked when the state will see benchmarks for CYFD, specifically for foster care. Mr. Blalock said CYFD has work plans for implementing benchmarks, including foster care, to hold themselves accountable and is happy to share this work.

**Public Education Department (PED) 2019 Interim Priorities.** Dr. Karen Trujillo, Secretary, PED, noted PED’s mission and vision is based on equity, excellence, and relevance to ensure all students are healthy, secure in their identity, and are holistically prepared for college, careers, and life. PED values a student-centered, responsive, collaborative, transformative, innovative, and reflective approach to education.

Adán Delgado, Deputy Secretary of Finance and Operations, PED, began by noting changes to the funding formula are resulting in unforeseen challenges. Funding is being distributed differently

with the elimination of size adjustment funding and creation of rural population units. Additionally, the teacher cost index, which will replace the teacher training and experience index, is changing how funding is allocated. PED has started analyzing FY20 budgets and found some school districts will not benefit from the increased funding and statutory changes. For example, enrollment is increasing at one school district, but the district will see a decrease in operational funding. Some school districts are saying they are having trouble funding the salary increases. Senator Kernan noted those school districts may already have high administrative spending compared with classroom spending.

Senator Kernan noted concerns about how enrollment growth was funded during the session. Mr. Delgado noted the unit value and enrollment growth multipliers in the formula are designed to account for enrollment growth, but Senator Kernan thought the Legislature may not have put enough funding into the SEG for that purpose.

Kara Bobroff, Deputy Secretary for Identity, Equity, and Transformation, PED, noted PED has been engaging statewide with stakeholders, including superintendents, charter school leaders, and tribal partners, to work on implementing remedies to the *Martinez* and *Yazzie* consolidated lawsuit. She explained PED is building capacity to deliver strong, relevant, student-centered bilingual and multicultural education programs. PED will ask school districts to report how they are using at-risk funding to support at-risk students, students with disabilities, and uphold the Hispanic Education, Indian Education, and Bilingual Multicultural Education Acts. She indicated the department will hold charter schools accountable for both positive, innovative programs and programs that are not showing results.

Katarina Sandoval, Deputy Secretary for Academic Engagement, noted her priorities for the 2019 interim include comprehensive school supports, community schools, school transformation, and extended learning time programs. PED is developing a multi-layered system of supports, which will be a renovation of the department's response to intervention framework, which will be rolled-out statewide in the 2019-2020 school year. The system is a web-based manual designed by teachers for teachers to provide specific supports to implement innovative programs and practices. She gave the example of a teacher struggling with classroom management being able to watch a video showing strong classroom management skills. This interim, the department plans to perform an intensive assessment of how the state is providing services to special education students with the goal of holding a statewide needs assessment summit in the summer of 2020. Priority schools will continue to participate in the principals pursuing excellence and teachers pursuing excellence programs; however, teachers pursuing excellence will now be offered to early-career teachers and alternatively licensed teachers, rather than low-performing teachers, in an attempt to improve teacher retention. Extended learning time programs are being offered to 100 thousand students statewide in 25 large and small school districts and 25 charter schools. Within those school districts, 131 elementary schools are implementing both K-5 Plus and extended learning time programs. Ms. Sandoval offered examples of school districts implementing extended learning time programs to provide project-based learning or targeted interventions with struggling students.

Dr. Timothy Hand, Deputy Secretary for Policy, Research, and Accountability, stated the department plans to engage networks of local and national education experts to provide research-based answers to statewide challenges. The department plans to use the statewide accountability system to identify strong programs and build a long-term strategic plan for education statewide. The school support and accountability system will report the following: academic achievement data; per-pupil expenditures for every school in the state, disaggregated by instructional and non-instructional spending and the source of the revenue; teacher qualifications and licensure levels; the number of counselors at each school; and innovative programs the school uses to promote student learning.

Dr. Gwen Perea Warniment, Deputy Secretary of Teaching, Learning, and Assessment, explained her work is split into five priorities. The first is a dynamic educator ecosystem, focused on improving educator preparation programs and improving teaching as a profession. The department plans to engage teachers and stakeholders statewide in a teacher evaluation task force this year. The second priority, a balanced assessment system, is guided by an assessment taskforce convened by the department. PED is issuing a request for proposals (RFP) for formative assessments and a new summative assessment in third through eighth grade and once in high school. The department's third priority is universal public prekindergarten for all students. Dr. Warniment noted the challenges to implementing the program statewide; the department is \$7.3 million short of funding the approximately 1,000 prekindergarten students in FY20, and it is unclear whether rural areas of the state have classroom space and high-quality educators. The fourth priority is to improve career technical education and science, technology, engineering, art, and mathematics (STEAM) programming. The final priority is building professional learning structures that build a culture of deeper learning, which will include a proposal to ensure school districts adopt high-quality instructional materials, a proposal PED plans to bring to LESC for potential committee endorsement.

Representative Garratt asked how PED will track at-risk funding at the student level. Representative Thomson added it was important to track special education funding at the student level. Secretary Trujillo stated the 2019-2020 school year will be a baseline year to test school districts' capability to do this and identify those school districts that need technical support. Currently, some school districts already track at-risk and special education funding at this level of detail.

Senator Stewart asked whether teachers in the K-5 Plus program will be required to use the iStation assessment daily. Dr. Warniment stated teachers would not be required to use iStation daily, as the assessment was not designed to be used every day. PED's assessment RFP requests a program that can improve the state's assessment literacy; teachers and administrators need to understand the purpose of iStation as a benchmarking assessment and understand how to use other formative assessments to improve student learning.

Senator Gould asked how the department plans to address students' social and emotional learning. Ms. Sandoval noted the department's multi-layered system of success will contain supports for teachers to promote social and emotional learning, especially for teachers that are unfamiliar with the concepts and struggle with social and emotional learning.

Representative Thomson stated she believes all educators should be built into the three-tier licensure system, not just teachers. Secretary Trujillo noted this is the reason the department is abandoning the term "teacher pipeline" for the term "educator ecosystem." She stated all educators are important, and the pathway to becoming a teacher is not linear; the licensure system should reflect that.

Representative Ferrary asked how the department will address the Department of Vocational Rehabilitation (DVR) in the coming months. Secretary Trujillo stated Daniel Manzano, Chief of Staff at PED, is working with the Department of Workforce Solutions to transfer DVR to that department.

**LESC 2019 Interim Meeting Schedule and Work Plan.** Rachel S. Gudgel, Director, LESC, discussed the meeting schedule and work plan for the 2019 interim.

Ms. Gudgel reviewed the proposed 2019 interim meeting schedule for LESC. The proposed schedule has LESC traveling to Gadsden Independent School District in June, Dulce Independent School District in August, and Silver Consolidated Schools in September. LESC may be going to Española for a day in October. The committee approved the meeting schedule.

Ms. Gudgel reviewed the following elements of the work plan:

- School personnel, which includes a focus on teacher recruitment, quality, induction, mentorship, and compensation; teacher and educational leader preparation; and return-to-work issues;
- Culturally and linguistically responsive education, with a focus on supporting English learners, providing adequate supports for bilingual multicultural education, teaching English to speakers of other languages, and Indian Education;
- Instruction, including the New Mexico science, technology, engineering, and mathematics (STEM) ready science standards and the assessment of science readiness. Additionally, staff will be working on special education issues and learning time in schools, specifically learning how schools can maximize instructional time;
- Education finance, including performance-based budgeting for school districts and issues in public school transportation;
- Early literacy and early childhood education, which encompasses prekindergarten educator development, eliminating the achievement gap through early education, and the Early Childhood Education and Care Department. Supports for students and school climate covers community schools, interventions and supports for at-risk students, and attendance and discipline;
- School choice, including charter school authorization, accountability, and governance, and virtual charter schools;
- Capital outlay, including access to capital funding, prekindergarten facilities, public school facility conditions and maintenance, and charter school facilities;
- College- and career-readiness, which focuses on high school curricula and graduation requirements, dual credit, and college affordability; and
- Career and technical education, including professional development, and adult education.

Ms. Gudgel noted there are also secondary issues in the work plan that LESC staff will keep an eye on, including monitoring existing and ongoing lawsuits.

Senator Kernan said she would like to look at how much money is given to schools by legislator as part of the discussion on equitable access to capital funding.

Senator Brandt asked if the committee will be looking at alternative licenses and their requirements. Ms. Gudgel said that would fall under the teacher preparation item of the work plan. Senator Brandt asked if there will be a discussion about Impact Aid. Ms. Gudgel said she thinks the conversation is broader than Impact Aid and should be focused on equitable access to capital outlay funds. Senator Brandt also noted the committee should focus on certification and license requirements for career and technical education teachers.

#### May 30, 2019

The following voting and advisory members were present: Voting: Chair Christine Trujillo, Vice Chair Mimi Stewart, Senators Craig W. Brandt, Candace Gould, and William P. Soules, and Representatives Rebecca Dow, Sheryl Williams Stapleton, and Linda M. Trujillo; Advisory: Senator Carlos Cisneros, and Representatives Joanne J. Ferrary, David M. Gallegos, Joy Garratt, Susan K. Herrera, Raymundo Lara, Tim D. Lewis, Willie D. Madrid, Gabriel Ramos, Patricia Roybal Caballero, Tomás E. Salazar, Debra M. Sariñana.

The following voting and advisory members were not present: Voting: Representatives Alonzo Baldonado and G. Andrés Romero; Advisory: Senators Daniel A. Ivey-Soto, Gay G. Kernan, Linda M. Lopez, and Michael Padilla, and Representatives Kelly K. Fajardo, Natalie Figueroa, D. Wonda Johnson, and Elizabeth "Liz" Thomson.

**Higher Education Department (HED) 2019 Interim Priorities.** Dr. Kate O'Neill, Secretary, HED, presented HED's 2019 interim priorities to the committee, including financial aid and college access and affordability; workforce development; coordination with the Early Childhood Education and Care Department and tribal colleges; teacher recruitment and training; and interim taskforces on issues like funding, economic development, dual credit, student outreach, and strategic planning. Dr. O'Neil discussed declining enrollment in higher education in the state, noting that lower unemployment leads to enrollment declines, which lead to increased completion and awards.

Dr. O'Neill noted FY20 general fund appropriations for higher education institutions included \$824 million in recurring appropriations and \$37 million in nonrecurring appropriations, which resulted in a decline in the share of general fund revenue higher education institutions receive from 15.5 percent in FY19 to 12.2 percent in FY20. She supported statutory increases to award amounts under the College Affordability Act, from \$1,000 to \$1,500 per semester. She indicated HED is looking at the teacher loan repayment program, directing \$10 million to teaching positions in bilingual, early childhood, and science, technology, engineering, and mathematics education, and to schools with economically disadvantaged students. Tribal college students are now eligible for the Legislative Lottery Scholarship, and Dr. O'Neill noted tuition support for FY20 would be \$2,291 each semester for research colleges, \$1,558 for comprehensive colleges, and \$580 for community colleges. Finally, regarding the Wartime Veterans Scholarship, she noted awards had increased without additional appropriations.

Representative Gallegos asked about engaging with private colleges regarding the teacher pipeline, to which replied they will work with the Maddox Foundation on that issue.

Representative Linda Trujillo asked about how changes in enrollment affect course offerings, specifically wondering if the reduction in full-time student enrollment was leading to more flexible course schedules for older students. The secretary replied the department is working to remove barriers for students and graduates to both higher education and workforce. The representative suggested adding a fifth center of excellence for public education to the four noted in the secretary's presentation.

Senator Brandt asked about progress on reflecting a veteran's time in service with some college credit that would count toward a degree, noting his legislation on this issue had passed several years earlier. Secretary O'Neill said that service credit for veterans was next on the department's list of priorities.

Senator Cisneros spoke of Texas A&M University's relationship with Los Alamos National Laboratories (LANL), and its commitment to help supply the labs with employees, noting that LANL will soon require at least 4,000 new employees. Dr. O'Neill suggested New Mexico needs to establish a pipeline for those positions with graduates from New Mexico institutions, as currently, of the 12 thousand persons employed at LANL, 59 percent of them come from out of state. The secretary noted she and Dr. Karen Trujillo, Secretary of Public Education, had asked schools to begin establishing concentrations in STEM study to help establish such a pipeline. She noted the need for about 100 radiology technicians per year, and indicated several postsecondary institutions in the state have committed to helping produce them, including Northern New Mexico College and the University of New Mexico-Taos.

Representative Garratt asked if there was a robust, user-friendly website for people who are interested in the teacher loan repayment program. Dr. O'Neill noted a new website will be rolled out in late June, and a mobile device application is being developed to include information on all postsecondary institutions in the state.

Senator Soules noted the difficulty of getting instructors in fields such as nursing, when nurses can get higher paying jobs in the private sector. Dr. O'Neill noted she serves on a taskforce with the Department of Workforce Solutions (DWS) that is considering allowing nurses with bachelor's degrees and five years of experience to teach lower level courses. Senator Soules also brought up the issue of young people leaving the state after graduation, prompting the secretary to mention a fall higher education summit which will focus on students and participants from New Mexico, rather than those from out of state.

In response to Representative Ferrary, the secretary acknowledged there are gaps in financial aid that can be particularly difficult for homeless students. For example, few scholarships include money for living expenses.

Chair Trujillo asked about HED's collaboration with tribal colleges. Secretary O'Neill noted one of HED's deputy secretaries is serving as a tribal liaison, though she would like funding to hire a permanent liaison position. She also noted close work with Navajo Technical Institution and other tribal schools. The Chair then asked about attracting Native students to postsecondary institutions and addressing requirements of the consolidated *Martinez* and *Yazzie* lawsuit, to which the secretary responded HED is aware of their responsibilities under the lawsuit, particularly the recruitment of native teachers.

**Administrative Rulemaking.** Tim Bedeaux, Fiscal Analyst, LESC, presented the Public Education Department's adopted changes to Part 7 of 6.10 NMAC, Standardized Testing Procedures and Requirements. The adopted rule contained only a minor change to the ratio of standardized testing administrators to students, fixed a technical issue, and added one additional prohibition during standardized testing. Representative Garratt noted she was a test coordinator and the adopted rule seems to contain strong changes.

Mr. Bedeaux also presented PED's adopted changes to Part 17 of 6.29 NMAC, New Mexico Computer Science Standards. The rule was adopted as initially proposed. Mr. Bedeaux noted public comment on the proposed rule was generally positive, but some school districts noted concerns with how the new computer science standards would be implemented in general education classrooms. Representative Sariñana commented the computer science standards are rigorous and are based on national best practices.

Dr. Michelle Croasdell, Acting Deputy Director, LESC, presented PED's adopted changes to Part 6 of 6.10 NMAC, Mentorship Programs for Teachers. Changes from the rule as proposed included amending the definition of "designated mentor". "Designated mentors" will be required to have earned a highly effective or exemplary NMTEACH rating for at least one of the two most recent years or be nationally board certified and have earned a rating of effective or higher on their NMTEACH summative report for at least one of the two most recent years. The proposed definition required "designated mentors" to have earned a highly effective or exemplary NMTEACH rating for the previous two years. The proposed definition did not include a provision specific to nationally board certified teachers. Representative Garratt noted some schools may not have sufficient teachers ranked as highly effective or exemplary to provide school-based mentoring, which has proven to be the most successful beginning teacher mentorship model.

Kevin Force, Senior Research Analyst, LESC, presented PED's adopted rule, Part 4 of 6.65 NMAC, Teacher Leader Development Framework. Multiple members of the committee were concerned with the statutory overreach. Mr. Force also presented PED's adopted changes to Part 4 of 6.80 NMAC, Charter School Application and Appeal Requirements. The adopted rule added a requirement that a charter applicant intending to appeal a chartering authority's negative chartering decision to the PED secretary must include in their notice of appeal their argument in support of the appeal. However, a technical issue present in the proposed rule was not corrected in the adopted version.