MINUTES
LESC MEETING
OCTOBER 19, 2005

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) meeting to order on October 19, 2005, at 9:20 a.m., Explora Science Center & Children's Museum, Albuquerque, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, and Gay G. Kernan; and Representatives Rick Miera, Vice Chair, Joni Marie Gutierrez, Mimi Stewart, and W. C. "Dub" Williams.

The following LESC advisory members were present:

Senator Vernon D. Asbill, Mark Boitano, Dianna J. Duran, Mary Jane M. Garcia, and Leonard Tsosie; and Representatives Kandy Cordova, and Jimmie C. Hall.

<> **Approval of Agenda**

Upon a motion by Representative Gutierrez, seconded by Representative Stewart, the committee unanimously approved the agenda as presented.

CAPITAL OUTLAY

a. PSCOC and the Standards-based Awards Process

Ms. Frances Maestas, LESC staff, introduced Mr. James Jimenez, Chair, Public School Capital Outlay Council (PSCOC), and Mr. Bob Gorrell, Director, Public School Facilities Authority (PSFA), for a report outlining the PSCOC FY 06 grant awards for public school capital outlay.

Ms. Maestas explained that the *Public School Capital Outlay Act* authorizes the PSCOC to determine grant awards for school districts through a standards-based process. The PSCOC standards-based process, she stated, incorporates provisions in the act that require the PSCOC to establish and adopt criteria that allow all districts to be eligible for grant assistance regardless of bonded indebtedness; bases need on acceptable standards for the physical condition and capacity of a building, its educational suitability, and need for technological infrastructure; and provides priority consideration to the public school districts with the greatest need throughout the state.

Referring to a committee handout, *New Mexico Public School Capital Outlay Progress Report*, Mr. Jimenez emphasized the Legislature's commitment in providing funds for public school capital outlay. He stated that, prior to FY 02, the major requirements for applying to the PSCOC for funds included district bonded indebtedness of at least 75 percent of capacity and having in place the two-mill levy as provided by the *Public School Capital Improvements Act* (also called SB 9). For FY 02 and FY 04, he added, the major requirements, as amended by the 2001 and 2002 Legislatures, were that the school district: (1) be bonded to 65 percent of its bonding capacity or have a project in need of completion that was funded by the PSCOC in the last three years; (2) have the two-mill levy in place; (3) address the needs of charter schools and facilities needed to implement full-day kindergarten in its application for critical capital outlay; and (4) include in its five-year facilities master plan a current preventive maintenance plan that each school in the school district must follow.

In 2005, Mr. Jimenez continued, the Legislature amended several statutes to continue the development and implementation of the structure and goals of the state's public school capital outlay program. These amendments, he noted, include establishing a three-year averaging process to smooth year-to-year changes in the determination of the ratio between the state share and the local share for project grant awards from the PSCOC and eliminating the offset to the Educational Technology Fund distribution for direct legislative appropriations; however, these direct appropriations will still apply against PSCOC grant awards. Other provisions, Mr. Jimenez reported, increase the SB 9 state guarantee amount from $50 to $60 per mill per unit beginning with FY 06; complete the deficiencies correction program begun in 2001; establish a roof repair and replacement program to be administered by the PSCOC through the PSFA; require the PSCOC to develop a facility information management system (FIMS) that will provide a centralized database of maintenance activities and comprehensive maintenance request and expenditure information of public school facilities statewide; and increase the amount of funding available to districts and charter schools for facility lease payments from a maximum of $300 per student to $600 per student beginning in school year 2005-2006.

Mr. Jimenez indicated that the components of the PSCOC standards-based process include the use of the New Mexico Condition Index (NMCI) which ranks every public school facility in terms of relative need, from greatest to least; a formula for funding school district capital outlay expenditures, based upon district wealth and local effort, that provides for an average 50 percent share for all districts and a minimum state share of 10 percent; and an offset methodology for dealing with the disequalizing effects of direct appropriations based on a district's state share of PSCOC-approved capital outlay funding.

For school year 2005-2006, Mr. Jimenez emphasized, the PSCOC awarded a record $229.4 million in state funding for 27 public school capital outlay projects statewide, including $220.5 million for standards-based projects and $8.7 million for five continuation projects. The PSCOC, he noted, targeted the top 100 needs on the NMCI ranked list and funded those needs through number 98 of the rankings. The FY 06 awards, he added, include $44.7 million for roofs and general deficiencies. Mr. Jimenez said that, since the program's inception in 2001, a total of $275.0 million has been allocated to school districts statewide for the deficiency correction program. Other FY 06 allocations, he continued, include $29.7 million to fund the roof repair and replacement program and $4.0 million in lease payment assistance for districts and charter schools.

In summing up his report, Secretary Jimenez outlined some of the challenges the state and PSCOC need to consider. He reported that current law requires, as a condition of application, that a school district have a current five-year facilities master plan, which includes a current preventive maintenance plan, for each public school in the school district. According to PSFA,

he added, this requirement has affected school districts in applying for PSCOC capital outlay grant awards. To date, Mr. Jimenez reported, PSFA has provided training to 54 school districts in master planning. Other challenges, he stated, include meeting the facility needs of rapidly growing school districts and integrating charter schools into public buildings by 2010.

Continuing with the points made by Secretary Jimenez, Mr. Gorrell stated that, in 2005, the Legislature appropriated approximately $1.6 million to PSFA for FY 05 through FY 07 to implement a FIMS. FIMS, he noted, will provide school districts with web-based software to execute more effectively their facility maintenance and utility management programs, and it will also provide a means for the state to maintain uniform, statewide maintenance and utility data. Mr. Gorrell reported that a pilot study of FIMS began in January 2005 with 18 schools; however, some districts did not begin implementation until March 2005. With regard to the facility needs of rapidly growing school districts, he indicated that a student population forecasting model, as recommended by the 2004 Public School Capital Outlay Task Force, would greatly assist the PSCOC in determining facility needs based on statistically reliable growth projections

Committee Discussion:

In response to a committee member's question relating to the completion of the deficiencies correction program in FY 06, Mr. Jimenez responded that, since the program's inception in 2001, approximately $275.0 million has been allocated by the PSCOC to address statewide facility deficiencies. The results of the program, he noted, include a decline in the state's Facility Condition Index (FCI) from 40 percent to 36.95 percent. Mr. Gorrell explained that the FCI, which is a calculation that measures the quality of schools statewide, is not to be confused with the NMCI which, based on nine weighted categories, ranks every public school facility in terms of relative need from greatest to least. He explained that the FCI calculation is based on the total required improvement cost divided by the current required replacement cost. A lower FCI, he added, supports the state's commitment to providing quality schools for New Mexico's children.

In response to a committee member's question relating to a desirable FCI, Mr. Gorrell indicated that PSFA would like to see an FCI of 20 or lower for New Mexico; however, the FCI level for school districts around the country is currently around 26.

In response to a committee member's question why funding has been limited to those schools ranked in the top 100 projects on the NMCI, Secretary Jimenez explained that the council recognizes that it must make more efficient use of funds by distributing available dollars to those school districts with the greatest needs. The NMCI rankings, he noted, provided the PSCOC with one measure of those needs; however, the PSCOC also considers other criteria in making its final award decisions, including a review of applications; site visits by staff of the PSFA, Legislative Finance Committee, LESC, and the Public Education Department (PED); districts' formal presentations before the PSCOC; measuring applications against state adequacy standards; and recommendations of the PSCOC Awards Subcommittee.

In response to a committee member's question whether the $229.4 million for FY 06 includes direct appropriations by individual legislators, Mr. Antonio Ortiz, Capital Outlay Manager, PED, responded that direct appropriations are included in legislation passed by the Legislature and are, therefore, distributed by PED as separate awards. He reported that approximately $30.0 million was provided by the 2005 Legislature in direct appropriations and that a school district's PSCOC award is offset if the school district accepts the direct appropriation.

In response to a committee member's question whether a school district can refuse a direct appropriation provided by an individual legislator, Secretary Jimenez stated that a school district does have a right to refuse a direct appropriation; however, to date, no district has rejected such an appropriation.

Senator Nava stated that the PSFA and the PSCOC should consider amending current law to include public schools among those entities that are allowed to implement a 40-year water plan and increasing the state guarantee amount under the *Public School Capital Improvements Act* from $60 to possibly $80 or $90 per mill per unit to provide additional state funding for the maintenance of public school facilities and public school grounds statewide. Other initiatives that the PSCOC and the Public School Funding Formula Task Force might consider, she emphasized, are providing start-up operational funding for opening a new school in a district and the implementation of a Tools for Schools initiative in New Mexico's public schools to ensure a safe and healthy learning environment for public school students and staff statewide.

b. District and Charter School Grant Awards for Lease Payments and Other Costs

Ms. Maestas introduced Mr. Gorrell, Director, PSFA. She also introduced Mr. Tim Berry, Deputy Director, PSFA, noting that Mr. Gorrell and Mr. Berry would discuss the FY 06 lease payment assistance process and awards of the PSCOC for school districts and charter schools statewide. She called attention to the committee notebooks, which contained a brief on lease payments and other costs of charter schools and a table on the PSCOC's FY 06 lease payment assistance awards for districts and charter schools.

Mr. Gorrell explained that the *Public School Capital Outlay Act* allows an annual authorization for up to $4.0 million to provide funding for lease payments for both charter schools and districts beginning in FY 05 through FY 09. He said that lease payments must be based on the actual lease amount or up to $600 per membership (MEM) of students enrolled, whichever is less. However, if the total grant awards would exceed the total annual amount available, the rate per MEM will be reduced proportionately. Mr. Gorrell stated that, because the applications for school year 2005-2006 amounted to approximately $5.0 million, the awards were adjusted to meet the $4.0 million maximum in law by reducing the lease assistance amount to $477.54 instead of $600 per student. Referring to the table in the members' notebooks, Mr. Gorrell said that the PSCOC received 51 applications from 46 charter schools and five regular public schools.

Mr. Gorrell said that the 2005 amendments to the *1999 Charter Schools Act* include provisions that may cause a financial impact to the school district. For example, he said the law requires that, after July 1, 2010, with certain exceptions, charter schools cannot be renewed unless the school is housed in a public building that meets the PSCOC adequacy standards. This requirement applies to the 52 charter schools in operation for school year 2005-2006. He said the law allows all charter schools to be eligible for state and local capital outlay funds and requires that they be included in a district's master facilities plan. These requirements, Mr. Gorrell said, not only increase the school district's cost of producing a facilities master plan, but also require the school district to provide the local match for capital outlay projects necessary for a charter school. Mr. Gorrell concluded his presentation by stating that the PSFA cannot determine the costs until a district's facilities master plan has been completed.

Although not a scheduled presenter, Mr. Kizito Wijenje, Master Planner, Albuquerque Public Schools (APS), was in attendance to provide information about APS, which, he said, has had a master plan for at least 15 years.

Mr. Wijenje reported that Albuquerque has 34 charter schools, which constitute 65 percent of the 52 charters statewide. He said that Albuquerque has 33 percent of the student population statewide, with 6.0 percent of the students in charter schools and 21 percent of the schools being charter schools. He explained that, to design the master plan, APS must meet with personnel and educational providers at each school about their plan and then determine how the space will be utilized. He said that the master plan is a work in progress because educational costs change all of the time.

In developing its master plan for the next five years, Mr. Wijenje continued, APS must determine where the growth is occurring and then determine how and when the needed space can be provided. He said that charter schools have had a positive impact on APS, explaining that before 1999, APS was losing 3.0 to 4.0 percent of its students each year; however, the first 15 charter schools brought in about 4,000 students, and the remaining 19 have brought in about 2,000, which indicates that charter schools have reached market saturation. Mr. Wijenje stated that APS is trying to address the integration of charter schools into its master plan through multi-pronged strategy, perhaps by clustering charter schools in existing APS facilities or designing buildings that two or three similar charter schools might share. Given that strategy, there is still the problem of needing additional resources to bring the charters into the facilities master plan. Other issues to be resolved by 2010, when charter schools must be in public buildings, are issues of maintenance, growth, and bonding to provide for the local match. He said his evaluation shows a total recurring cost of $1.5 billion. Mr. Wijenje thanked the committee and said the handouts would be forthcoming.

Committee Discussion:

In response to a committee member's question about student enrollment for charter schools, Mr. Wijenje said that approximately 6,500 students are enrolled in charter schools in APS.

In response to a committee member's question as to who approves the charter schools and whether or not a good reason to deny approval of a proposed charter school is the cost to bring it up to standards, Mr. Alan Armijo, Legislative Liaison, APS, said that the local board approves charter schools as specified in the law. He explained that APS is not advocating doing away with any charter school, but the district is trying to determine how to accommodate charter schools so that all students in the school district are treated equitably.

In response to a committee member's remark that there must be equity in the process of building a school, Mr. Wijenje said that there would be a comprehensive report released in the next couple of weeks.

Addressing the comments of Mr. Wijenje and Mr. Armijo, Dr. Lisa S. Grover, Executive Director, New Mexico Coalition for Charter Schools, said that it has been brought to her attention that many of the charter school classrooms have not been reviewed because they are in private buildings. She suggested that the school district take the number of charter schools into account, and that more input from charter schools is necessary to incorporate charter schools into the school district master plan.

In response to a committee member's question regarding the number of Native American students enrolled in APS, Mr. Wijenje said that about 5.0 percent of the 92,000 total student population is Native American. Addressing the same question, Dr. Grover responded that three charter schools serve Native American students primarily and that there will soon be another

one, with the number of Native American students to be about 100, excluding APS. Mr. Wijenje added that this new charter school will focus on Native American issues but that, given the enrollment provisions in law it may not serve Native American students exclusively.

In response to a committee member's question about the locations of charter schools within Albuquerque, Mr. Wijenje explained that vacant commercial facilities tend to account for the clustering of charter schools, and that the greatest concentration of charter schools is in the Northeast Heights, with others in the South Valley and Westside.

In response to a committee member's question about how well the charter school students are doing academically in comparison to students in traditional public schools, Dr. Grover said that the data are just coming in on charter schools. She explained that results on standardized tests are slightly higher in some cases, but she added that a few more years of data are needed to determine whether the charter school experiment has been successful. Dr. Grover also said that the charter schools are looking for ways to alert middle school students about their programs, since the pool of high school students come from the middle schools, and the majority of charter schools in Albuquerque are high schools.

Senator Tsosie requested that APS provide data on the clustering of Native American students in charter schools in Albuquerque and on the number of disabled students in APS charter schools.

Senator Tsosie requested that PED provide the number and percentage of Native American students in charter schools statewide compared to total student population in charter schools.

SCHOOLS IN NEED OF IMPROVEMENT: LFC AUDIT

Dr. David Harrell, LESC staff, reported that in January 2005, at the request of the Legislative Finance Committee (LFC) and pursuant to that committee's statutory authority, LFC staff began an audit of the school improvement framework developed by Public Education Department (PED) and the effectiveness of this framework in raising student performance and closing the achievement gap.

Dr. Harrell introduced Dr. Robert Behrendt, Performance Auditor, LFC, to report the findings and recommendations of the audit; Dr. Veronica C. García, Secretary of Public Education, and Ms. Geri Romero-Roybal, Assistant Secretary for Quality Assurance and Systems Integration, PED, to discuss the department's response to the audit and further explain how PED is assisting schools in need of improvement; Ms. Karen White, Superintendent, Gallup-McKinley County Public Schools, to explain the district's efforts to improve its low-performing schools and to describe the nature and extent of PED's assistance in the school improvement efforts; and Ms. Christiana Sisneros, Principal, Tony E. Quintana Sombrillo Elementary School, Española Public Schools, to explain the school's efforts to improve its performance and to describe the nature and extent of PED's assistance in the school improvement efforts.

Dr. Harrell said that both state law and the federal *No Child Left Behind Act of 2001* (NCLB) provide a series of consequences, or sanctions, for schools that fail to make "adequate yearly progress" (AYP), which, as the committee knows, is a prescribed degree of improvement, primarily in student achievement, that schools are expected to make each year – not only for their entire student population but also for certain subgroups of students: economically disadvantaged students, major racial or ethnic groups, students with disabilities, and English language learners (ELL).

Dr. Harrell directed the committee to Attachment 1 in their notebooks, which illustrated the schedule of events for schools that do not make AYP. Briefly, a school enters the school improvement cycle after two consecutive years of not making AYP. At that point, the school receives the designation School Improvement I, and it must develop an improvement plan and provide transportation for any students wishing to transfer to a higher ranked school. If the school continues not to make AYP through consecutive years, the following designations and additional activities apply:

- After three consecutive years of not making AYP (School Improvement II), a school must provide its students with supplemental educational services, including after-school programs, tutoring, and summer services, within available funds.
- Under both state and federal law, after the fourth consecutive year of not meeting AYP (Corrective Action), the school must take one or more of the following corrective actions, in addition to the preceding measures: replace school staff, implement a new curriculum, decrease management authority at the school level, appoint an outside expert to advise the school, extend the school day or year, or change the school's internal organizational structure.
- Under both state and federal law, after the fifth consecutive year of not meeting AYP, the school enters the restructuring phase, either by planning to restructure (Restructuring I) or implementing the planned restructuring (Restructuring II) through one of the following actions: reopening as a charter school, replacing all or most of the school staff, conducting a major restructuring of the school's governance, or submitting to state takeover. For restructuring, NCLB contains two provisions not found in state law: an additional year for planning (which state law accommodates) and the additional option of having a school contract with a private management firm (which state law prohibits).

Dr. Harrell said that on August 1, 2005 PED released the school rankings derived from student and school data during school year 2004-2005. He said a total of 429 public schools in New Mexico failed to make AYP; of that total, 237 received designations as schools in the school improvement cycle. Dr. Harrell said that, among those 237 schools with NCLB designations, PED has identified 80 priority schools that are in the greatest need for academic improvement, either because they did not meet AYP in the "All Students" category in reading and/or math or because they are in Restructuring II. For each of these 80 schools, PED has assigned a staff member to be the Educational Plan for Student Success (EPSS) Coordinator. Dr. Harrell said that, during the fall of 2005, these EPSS coordinators have been visiting their assigned schools and providing technical assistance in helping the schools pursue their improvement plans.

The LFC audit, Dr. Harrell continued, contains a variety of findings related to such matters as student health, collaboration among stage agencies, district and PED interventions, school leadership, teacher quality, staff turnover (district and PED), school and district size, the role of local school board members, and funding for low-performing schools and at-risk students.

Finally, Dr. Harrell noted that the PED plan in the school improvement framework seems to incorporate a variation upon state and federal requirements. Whereas state and federal law both require that a school in Restructuring II be restructured that school year, PED intends to implement a one-year moratorium on restructuring, during which PED will initiate corrective action and decrease the authority of certain schools in Restructuring II. In addition, the PED plan limits the required restructuring to those schools whose total student populations have not made AYP, regardless of the performance of any subgroups, again despite the requirements of state and federal law. According to PED, Dr. Harrell added, this plan "does not necessarily

deviate from NCLB as the implementation of alternative governance may include any number of interventions." Therefore, PED has not requested a waiver from the US Department of Education.

Dr. Behrendt began his report by stating that the LFC audit includes the following five components:

1. a description of the achievement gap and the movement of schools not making AYP;
2. a review of the research on poverty, low-performing schools, and state interventions;
3. an assessment of the PED school improvement framework strategy;
4. an analysis of the best practices of New Mexico school districts and schools; and
5. an evaluation of the adequacy of funding the low-performing schools.

In explaining his findings, Dr. Behrendt compared New Mexico and West Virginia because both are high-poverty states. He said that it appears that the percentage of per capita income spent on education makes a difference in student outcomes.

Dr. Behrendt added that West Viginia's education effort gives it a higher industrial expansion rating than New Mexico's. In addition, comparisons within New Mexico show that high achieving school districts are smaller and that they spend more per student due to larger training and experience (T&E) factors and size adjustment dollars generated in the Public School Funding Formula. Continuing with the student outcomes and resources allocation pattern comparisons, Dr. Behrendt said that New Mexico's high-poverty/high-achieving districts have fewer students and lower percentages of Native American and ELL than high-poverty/low-achieving districts. He added that New Mexico's high-poverty/high-achieving districts are smaller than high-poverty/low-achieving districts, spend more on direct instruction and instructional support per pupil, and have a higher percentage of teachers with master's degrees and a higher T&E factor.

In concluding his list of findings, Dr. Behrendt said that data presented in his audit report indicate that the state equalization guarantee computations for at-risk unit values need to generate more funding for larger high-poverty school districts with higher populations of Native American and ELL students. To close the achievement gap, these districts need the funding capacity to lower student teacher ratios, recruit and retain highly qualified teachers and principals, and increase the amount of direct expenditures on instruction.

Dr. Behrendt proceeded with his list of recommendations. The audit report contains 24 specific recommendations that call for such measures as:

- setting health and mental health standards for high-poverty schools in conjunction with other state agencies (the Department of Health, for example);
- working with school districts to redistribute high-quality principals and teachers to high-poverty, low-achieving schools and to enhance working conditions to reduce the turnover rates;
- adopting proven intervention strategies used in other states, like Arizona; and
- addressing the PED organizational issues of frequent changes in the school improvement strategies, internal reorganization, and staff turnover.

Before she began her presentation, Secretary García announced that Mr. Ron Christopherson, math teacher at Carlsbad High School, Carlsbad Municipal Schools, is the 2005 Teacher of the Year.

In responding to the recommendations of the LFC audit, Secretary García said that PED concurs with all but one of the 24 recommendations, and that exception is the recommendation to re-examine the governance and operating structures of the 48 school districts with total enrollment of fewer than 900 students. She continued that PED does concur with another recommendation regarding the governance of schools and school districts: that additional oversight management training be provided to local school boards that interfere with school site management and staffing and district office management.

Secretary García stated that PED's approach in addressing the majority of the recommendations is based on Project Excel, the School Improvement Framework, the EPSS and the statewide accreditation process, which are all aligned. She said that, while she appreciates the comparison made by Dr. Behrendt with West Virginia, New Mexico's student population is very diffuse with a high percentage of ELL. She said that in order for PED to provide adequate intervention, additional resources are needed.

Secretary García added that the community conversations she has been conducting have contributed to the gathering of critical information needed to address the educational needs in the state. Conducting these conversations across the state, Secretary García continued, has allowed her to see firsthand, the conditions in the rural areas and the challenges faced by school districts in general. She added that it is vital to build capacity at the district level in order for districts to address the needs of each school and to strengthen cooperation among partners.

In addressing the LFC recommendation to provide targeted schools with expert change agents who can provide a variety of tools and strategies to transform the school's operations and culture, Ms. Romero-Roybal said that the strategies have changed and a more integrated approach is being implemented. She explained that PED is engaging partnerships with educational associates in order to bring all of the groups together to leverage resources and fill in the gaps. The PED's vision, she continued, is for a world-class educational system in which all New Mexico students are prepared to succeed in a diverse and increasingly complex world, and the department's mission is to provide leadership, technical assistance, and quality assurance to improve performance for all students and close the achievement gap.

Ms. Romero-Roybal identified several features at PED's school improvement framework, which is aligned with Project Excel, and which includes the Secretary of Education's Advisory Council for Excellence and Equity in Education. According to Ms. Romero-Roybal, the framework provides improved support to districts and schools; develops aggressive action plans with measurable goals and objectives for PED; provides personalized support for superintendents; focuses on targeted districts and the school planning process through the EPSS; aligns with state standards for excellence and criterion-referenced assessments (CRTs); redefines and increases parent and community involvement; focuses on language acquisition and literacy; implements higher expectations and supports to achieve higher levels of academic achievement; and provides a coordinated and targeted statewide professional development plan for educators.

Ms. Romero-Roybal continued to explain that the school improvement framework has a three-pronged approach: (1) identification: effective use of data; (2) diagnosis/ prescription: alignment with EPSS and accreditation; and (3) technical assistance: quality tools and continuous improvement. This approach, she said, supports the New Mexico schools in need of improvement.

In discussing the need for additional resources, Secretary García referred to the recommendation to provide incentives to redistribute high-quality principals and teachers to schools with the highest poverty and lowest achievement levels. Although PED concurs with this recommendation, full implementation of PED's intervention is not possible at this time due to lack of funding: implementing this recommendation would cost PED $5.3 million to pay $3,000 to each teacher in a school that is in Restructuring I and II.

Another incentive that Secretary García explained was PED's plan to implement in school year 2005-2006 a "ranking" of schools beyond the NCLB designations to recognize schools that make significant student performance gains but that may not make AYP. Ultimately, the percentage of student gains would be based on a three-year growth pattern per school. This action, she said, would level the playing field for the minority and lower socio-economic schools. She further explained that schools would be identified in the following categories: (1) performing school: makes or exceeds target gain percent; (2) improving school: made gain, but not its target gain; and (3) probationary school: no gain made.

Secretary García mentioned that, in recognition of achievement and as an incentive and message to all schools to do what it takes to succeed, the schools designated as "Performing" will receive additional monetary rewards for staff and programs as the PED budget permits, in addition to annual Certificates of Recognition from the PED. The cost of this incentive is $1,000 per school.

Referring to the LFC findings on PED organizational issues, Ms. Romero-Roybal agreed that the department has been subject to reorganization. She also explained that, through Strengthening Quality in Schools (SQS), two regional centers were provided in Gallup-McKinley County Public Schools and Albuquerque Public Schools (APS). The PED plan is to implement five regional centers within the next five years, contingent upon sufficient funding.

In describing the assistance her school district has received from PED, Ms. White explained that her district had seven schools in Restructuring II–Phase II and that their journey has been a complete turnaround, putting substantial energy and resources into professional development. She said teachers are becoming re-engaged, there is more time dedicated to students, and the district is employing a variety of strategies to recruit teachers. Ms. White said that students are also taking responsibility for their learning, setting their own goals, monitoring their progress, and checking their own attendance.

In the spring of school year 2004-2005, Ms. White continued, PED began training six to eight of the district's teachers in the Baldrige systems approach. When school year 2005-2006 began, 1,400 staff members had been trained, including cooks and bus drivers. Ms. White said the systems approach recommended and implemented by PED has helped the district focus on student and school data and then use the results to address the needs of students. It has also helped in accommodating students transferring from Bureau of Indian Affairs schools to Crownpoint High School.

Ms. White also attributed some of her district's success to the Kindergarten Plus Pilot Project, which has allocated $100,000 to her school district each year since school year 2003-2004, with another $40,000 targeted for busing. She said that this program extends the kindergarten year by 40 instructional days for participating students and measures the effect of additional time on literacy, numeracy, and social skills development.

Although not a scheduled presenter, Dr. Diego Gallegos, Assistant Superintendent, APS, shared information from his school district. Former superintendent Brad Allison had identified the corrective action schools and, to support them, extended the school contracts by 20 days, increased teachers' salaries, and lowered class sizes in those schools. However, the district learned that, without adequate professional development, the 20 additional days did not help the teachers become more effective. Dr. Gallegos reported that APS, in collaboration with PED, is currently training teams in 90 schools in the systems approach and also using this approach at the district level. A "convert" of Baldrige, Dr. Gallegos said that he welcomes the challenge of integrating what the schools are doing with what the school district and the state are doing. The next step, he said, is to integrate the concept of incentives as part of the three-tiered licensure system.

Ms. Sisneros said that she will complete two years of her principalship in November, and she has either terminated or administratively transferred eight staff members at the school. She explained that this school has an NCLB designation of Restructuring II and has been identified by a team from PED as a New Mexico Priority School, Phase II, for school year 2005-2006. She said that by using the capacity areas and organizational best practices of the New Mexico Diagnostic Systems Criteria, the PED team gathered and studied information provided by school personnel in the school year 2004-2005 diagnostic assessment report visit. The purpose of that visit was to determine critical aspects of student and school performance and to make required recommendations for improvement.

Prior to the assessment visit, school leadership received the following documents: AYP Data Summary; New Mexico School Diagnostic Assessment Rubric; New Mexico School Diagnostic Assessment Progress Report template; and meeting agenda and overview of the process. PED's diagnostic team organized the interview based on the seven capacity areas and 11 organizational best practices. The principal and team leaders were participants throughout the interview and diagnostic assessment report process. The report that resulted was based on student achievement and demographic data, budgetary information, survey responses, and observations made at the school, as well as information gathered in the interview with school leaders. The report was a collaborative effort by both teams; however, it was not intended to represent the perspective of all school administrators, faculty, staff, students, or parents.

In conclusion, Ms. Sisneros said that the district has used one of PED's consultants, Jim Shipley & Associates, as the outside contractor, and that the school has implemented the Baldrige system. Like Dr. Gallegos, she is a Baldrige convert, too. Ms. Sisneros said that every classroom has a mission and goals, and students keep track of their own progress, adding that, now that PED has identified the goals, it is up to the school to meet them.

Committee Discussion:

In response to a committee member's question whether PED is as interested in class size reduction as others seem to be, Secretary García said that research shows that the quality of the teacher is what matters in students' learning, not the class size, and that, given the choice between the two, she would always go for training competent and qualified teachers.

In response to a committee member's question about student achievement increasing in high-poverty school districts, Dr. Behrendt said that 19 out of 30 of New Mexico's high- poverty school districts managed to score above the state average in achievement; however, the lower performing high-poverty districts have a distinct disadvantage with respect to resources. He

explained that the 11 lowest achieving high-poverty districts in New Mexico receive less local and state revenue per pupil and consequently spend a lower percentage of these revenues on instruction. Also in response, Secretary García cautioned the committee not to jump to conclusions about achievement. She explained that, in small communities, everyone knows all of the students and that there are too many factors for a simplistic conclusion.

In response to a committee member's question why the audit report recommends consolidating small districts when it also reports that smaller districts tend to produce higher levels of student achievement, Dr. Behrendt explained that, among other advantages, consolidating small districts would provide more opportunities for students. Also in response, Secretary García said that PED is considering other options than consolidating, such as distance education. Small communities, she added, depend upon their school districts for community vitality.

In response to a committee member's question about the comparability of data that he had used to compare New Mexico with West Virginia, Dr. Behrendt said that in each case he had used data from the National Center for Education Statistics (NCES). On that point, Mr. Tom Sullivan, Executive Director, New Mexico Coalition of School Administrators, pointed out that the data used in the LFC audit are from school year 2002-2003, whereas more recent NCES data are available now.

In response to a committee member's question about the use of Regional Education Cooperatives (RECs) to create more efficiency for small school districts, Dr. García said that the Assistant Secretary for Rural Education, Dr. Jim Holloway, has been exploring the possibility of working with the RECs and partnering with these cooperatives to find alternative methods for providing administrative services. Senator Nava added that a report on rural schools would be on the December LESC meeting agenda.

One committee member cautioned that, as PED seeks more employees with school experience, the state cannot afford to lose good teachers from the classroom. In response, Secretary García said that the return-to-work provision had helped the department recruit experienced people and that PED is looking toward more regionalization of its efforts, in collaboration with the RECs.

In response to a committee member's question whether New Mexico's low numbers of highly qualified teachers indicate a low grade for the state's universities, Secretary García said it is a complex question without a simple answer; however, one good sign is that in the most recent Quality Counts rating of the state's system for preparing qualified teachers, New Mexico advanced from a grade of "C" to a "B-."

In response to a committee member's question whether Dr. García had visited all of the schools that are in need of improvement, Secretary García said that she tries to visit as many as she can but that when she cannot, she sends PED staff.

In response to a committee member's concern that the school improvement cycle seems to take too long to provide relief to the schools in need of improvement, Dr. Harrell said that this series of designations and sanctions required under state and federal law is not the only means of assisting schools. Rather, even after a single year of not making AYP a school and its leaders are likely to engage in improvement efforts ahead of the NCLB-based schedule. Ms. Sisneros added that her school must deal with a number of other issues – drugs, for example – but that the requirements of NCLB do demand attention.

In response to a committee member's question about the shifting of responsibility for accreditation from PED to the North Central Association, Secretary García said that the North Central Association is aligned to the requirements of NCLB and that the association, unlike PED, has the staff to do accreditation well. Secretary García said that it is her goal to move to a North Central Association framework for all schools.

As the discussion progressed, committee members raised a number of other points, among them: that the unit value must be increased to a level that supports the districts' instructional programs; that public schools and colleges of education must focus more intently on the teaching of reading; that, contrary to its performance, New Mexico should be a national leader in the education of Native American students; that the credit the state takes for Impact Aid money should be re-examined; that there should be less attention focused on systems alignment and more on parental and community involvement; and that education is the responsibility of everyone in the community, not just the schools.

Senator Asbill asked PED to provide the number of schools that did not make AYP strictly because of: (1) the test scores of special education students and (2) the participation rate of special education students.

Senator Nava asked Secretary García whether the definition of the use of money in the Incentives for School Improvement Fund should be broadened. Secretary García agreed that it was a good idea and said she would send the committee some recommendations.

There being no further questions, Senator Nava thanked the presenters.

DEVELOPING TEACHER LEADERS AT ALBUQUERQUE PUBLIC SCHOOLS

Senator Nava recognized Ms. Janet Dunham, Coordinator, Instructional Coaches Program, Albuquerque Public Schools (APS), who made a presentation on how instructional coaching supports quality teaching and teacher leadership. She referred to research done by Mr. Robert Marzano in 2003, titled *What Works in Schools*, on the effect of individual teachers. She said that all researchers agree that the impact of decisions made by individual teachers is far greater than the impact of decisions made at the school level. She said that research has identified the teacher as the variable that schools can impact. Schools cannot control poverty, but they can impact quality teachers. Ms. Dunham cited several statistics to illustrate the point: The most effective teachers produced gains of 53 percentage points in student achievement over one year; the least effective teachers produced gains of about 14 percentage points; students will typically gain about 34 percentage points in one academic year; and some researchers have estimated that students gain about 6.0 percentage points simply from growing a year older.

Ms. Dunham added that with the most effective teacher, over three years, the cumulative effects on students produce an 83 percentile point gain and a 29 percentile point gain with the least effective teacher. Ms. Dunham warned that those years with ineffective teachers are cumulative and that students do not recover for a long time.

Ms. Dunham reported that APS has designed a model of district professional development. On-site instructional coaches are available to support staff with school improvement goals as well as with implementing district initiatives. She said that this initiative has been guided by the recent research pointing to the need for professional development to be on-going, instead of an event; to

be job-embedded, capacity-building, and systemic; and to involve collaboration with peers and coaching. She stressed the fact that teachers do not get better at teaching by being told; rather, they improve by working side by side with someone providing a high-quality professional development. APS is producing quality teaching through the use of best practices.

In explaining the effects of the Instructional Coaching (IC) Program, Ms. Dunham said that, as a result of the IC model, teachers at all experience levels, report doing a better job applying new skills in the classroom and expanding the number of teaching techniques they use. She noted that the essential functions of the instructional coach are to support the continuous improvement of teaching and learning and to support a culture of collaboration.

Finally, Representative Stewart joined Ms. Dunham in a short demonstration of the program in action: a discussion of strategies to increase the unit value in the Public School Funding Formula.

Senator Nava thanked Ms. Dunham for the presentation, adding that $1.0 million will increase the unit value by $1.60 per student.

AREA SUPERINTENDENTS AND COMMUNITY INPUT

Mr. Omar Durant, Manager, Library Media Services/Instructional Materials, Albuquerque Public Schools (APS), placed a request before the committee, explaining that it is a joint legislative effort of New Mexico librarians and the New Mexico Library Association to improve public, school, and academic libraries. He said that the Library Bond Task Force is a group of public, school, and academic librarians working together to request legislative and executive support for placing a $53.5 million bond package on the 2006 ballot for the purpose of purchasing books and other materials, such as periodicals and electronic databases. In giving the breakdown of the 2006 bond, Mr. Durant said that $18.0 million would be for New Mexico public libraries, $18.0 million would be for publicly funded school libraries, $15.0 million for academic libraries, and $2.5 million for state libraries and statewide services.

Also on the bond issue, Ms. Eileen B. Longsworth, Director, Rio Grande Valley Library System, expressed appreciation for the past support of the Legislature, saying that the number one attraction in communities is the public library; it has the most public visits and the dollars will support all of the people. Like Mr. Durant, she asked for the committee's support of the library bond package.

Senator Nava recognized Dr. Alice Byrne, retired English Teacher, Corrales, who addressed the committee praising and speaking about the Advancement Via Individual Determination (AVID) Program, which, in her opinion, should be utilized in every school district in the state.

Senator Nava thanked the presenters and, with the consensus of the committee, recessed the LESC meeting at 5:35 p.m.

MINUTES
LESC MEETING
OCTOBER 20, 2005

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) meeting to order on October 20, 2005, at 9:15 a.m., Explora Science Center & Children's Museum, Albuquerque, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, Gay G. Kernan, and Mary Kay Papen; and Representatives Rick Miera, Vice Chair, Joni Marie Gutierrez, Mimi Stewart, and W.C. "Dub" Williams.

The following LESC advisory members were present:

Senators Vernon D. Asbill, Dianna J. Duran, Mary Jane M. Garcia, and Leonard Tsosie; and Representatives Ray Begaye, Kandy Cordova, Jimmie C. Hall, Harriet I. Ruiz, Sheryl M. Williams Stapleton, Richard D. Vigil, and Teresa A. Zanetti.

STUDY CERTAIN 2005 SESSION EDUCATION BILLS, HM 52

Dr. Kathleen Forrer, LESC staff, explained that HM 52, *Study Certain 2005 Session Education Bills*, requests the LESC to study the issues raised in HB 914 and HB 937 and their proposed substitutes and to report the committee's findings and recommendations regarding the *School Personnel Act*, local governance, and the respective roles of local superintendents and local school boards, before January 1, 2006. Dr. Forrer called the committee's attention to Attachment 1, a table titled "Termination and Discharge of School Employees, Comparison of the Roles of the Local School Board and the Local Superintendent in Current Statute, in HB 914 and HB 937, and Their Proposed Substitutes," which provided a comparison of all four bills with current statute.

Dr. Forrer provided a brief overview of the issues that had precipitated the passage of HM 52. She said that the public school reforms enacted by the 2003 Legislature incorporated the recommendations of the Education Initiatives and Accountability Task Force and the LESC Ad Hoc Subcommittee for Education Reform regarding the role of the local school board and the local superintendent concerning school district personnel. Dr. Forrer stated that both of the entities recommended the following provisions:

- relieve local school boards from direct personnel and student disciplinary responsibilities to "enable them to redirect their focus on educational policy"; and
- assign superintendents the role of Chief Executive Officer (CEO) in their school districts, to include personnel responsibilities.

Dr. Forrer explained that, as a result of these recommendations, the law was amended to provide that the local superintendent shall "employ, fix the salaries of, assign, terminate or discharge all employees of the school districts." However, Dr. Forrer said, the *School Personnel Act* provides for the local school board to serve notice of termination or discharge and to serve as the first level of appeal in the due process afforded an employee who has been terminated or discharged.

In an effort to resolve this potential conflict, Dr. Forrer stated, during the 2005 legislative session, five bills were introduced, three in the House and two in the Senate, of which none passed. She said all three House bills would have left the authority to hire and fire with the superintendent, but would have amended the procedures for termination and discharge hearings in different ways.

Dr. Forrer introduced the following presenters who would present the views of their respective organizations regarding HB 914 and HB 937 and their proposed committee substitutes: Ms. Vicki Smith, President, New Mexico School Boards Association (NMSBA); Mr. Charles Bowyer, Government Relations, National Education Association-New Mexico (NEA-NM); Ms. Christine V. Trujillo, President, American Federation of Teachers of New Mexico (AFT-NM); Mr. Tom Sullivan, Executive Director, New Mexico Coalition of School Administrators; and Ms. Terri Cole, President and CEO, Greater Albuquerque Chamber of Commerce.

Ms. Smith began her remarks by saying that New Mexico statute recognizes the importance of local boards of education and the necessity that members of the boards be elected from the areas that they represent. She said that, if the board is removed from the appeals process, it places the superintendent in the role of reviewing his or her own decisions. This situation, she said, will lead to more appeals from staff members questioning their rights to a fair and impartial due process hearing. She emphasized that the districts across this state do not have the funds to pay for attorneys and arbitrators, which would take precious dollars that can be put to a better use for the children in the classrooms. She added that removing school boards from the appeals process is not in the best interest of the employees.

During the 2005 legislative session, Ms. Smith continued, all the educational communities supported HB 937. She said that a community that loses trust in its elected board members and disapproves of the board's decisions, or even a single member's representation, has a recourse in the law through the recall process. She emphasized that, if the statute were changed as proposed, the community and staff would have no recourse by which to appeal or to express their concerns.

Ms. Smith reported that a recent survey that the NMSBA conducted (with 70 districts responding) found that during the past three years, 35 personal hearings involving the board of education were held with only two decisions of the local superintendent being overturned. Such findings, she said, contradict the myth that only the superintendent of a district is capable of making personnel decisions. She added that, because the superintendent is not elected, he or she is not accountable to the voters.

Another issue that Ms. Smith mentioned is the importance of trust. She said that, when the board and superintendent cannot communicate, schools stand little chance of improving. Still, another area of concern to school board members is the idea that the local superintendent is the CEO of the school district, which has led to misunderstandings between boards and superintendents. She suggested that the best description for a superintendent would be "manager," one who conducts the business or affairs of the district, a person who directs a team, the supervisor. She proposed that school districts have a manager to carry out the directions or policies of the board, as school districts are not run for profit.

Ms. Trujillo stated that the major issues are to protect New Mexico administrators and New Mexico school board members, to make sure all employees are served, and, most essentially, to preserve due process rights for all employees.

Mr. Bowyer said his beliefs are essentially the same as Ms. Trujillo's, reiterating that when NEA-NM entered into the process and supported the 2003 public school reforms, they also believed that they had an agreement with legislators that nothing would happen to diminish the due process rights of employees and that permanent school employees could be terminated only for just cause. He cautioned the committee in their deliberations as legislators, to ensure that school employees have an impartial hearing officer with due process rights for the employees.

Mr. Sullivan said that the New Mexico School Superintendents Association supports the continued involvement of local boards of education, or their designee, in termination and discharge appeals. He said his association is of the belief that it is an appropriate role for boards to afford an employee another review of his or her due process rights before entering into the legal system via arbitration or a lawsuit. He further said that his association understands why a large district with thousands of employees, and thus with the potential for frequent appeals, may have a board that chooses to delegate the authority to conduct appeals to a different entity or designee. Mr. Sullivan added that it is important to note that only tenured employees are affected because non-tenured employees have not been afforded the same rights of due process.

Representing the business community regarding this issue, Ms. Cole acknowledged that school board members contribute a great deal to the education system. She explained that her position has nothing to do with judging ability of board members or the earnestness with which they do their job; however, she continued, the Board of Directors of the Greater Albuquerque Chamber of Commerce strongly opposes any effort to strike or modify the provisions in current law, or to return personnel decisions to local school boards. She said that the supporters she represents have indicated concern over potential conflict between language in current law that gives authority over personnel matters to the superintendent and language in the *School Personnel Act* that vests that authority in local school boards. The association, she said, supports legislation to bring the *School Personnel Act* into compliance with the education reform language that gives authority over personnel matters to the superintendent. Since 1999, Ms. Cole concluded, the chamber has believed that it is critical to clarify and strengthen education governance at the local level.

In addition to the scheduled presenters, the following school board officers and members spoke in favor of continued involvement of local boards in the appeals process: Ms. Mary Ellen A. Gonzales, Santa Fe Public Schools Board Member; Ms. Lilliemae Ortiz, Pojoaque Valley Public Schools Board President; Mr. Randy J. Manning, Central Consolidated Schools Board Member; Ms. Rhonda Watson, Jal Public Schools Board President; Ms. Lacy Daniel, Estancia Municipal Schools Board President; Ms. Lisa Cour, Rio Rancho Public Schools Board President; Mr. Marvin Estes, Melrose Public Schools Board President; Mr. Chuck Davis, Las Cruces Public Schools Board President; Ms. Donna Archuleta, Cimarron Municipal Schools Board President; Ms. Paula C. Maes, Albuquerque Public Schools (APS) Board President, who supported the position of the other school board members but explained that the APS board would like to retain the flexibility to appoint an appeals committee; Mr. Michael Torrez, Taos Municipal Schools Board Vice President; Mr. Richard Abalos, Cobre Consolidated Schools Board Member; and Mr. Ralph Sepulveda, Cobre Consolidated Schools Board President.

In addition to the local board members throughout the state speaking in support of HB 937, *School Board Termination and Discharge Hearings*, which would have amended the powers and duties of local school boards as enumerated in the *Public School Code* to allow local school boards or their designee to hear appeals from the decision of the local superintendent to terminate or discharge a licensed school employee or to terminate an unlicensed school

employee, the following individuals voiced various points of view: Dr. Moises Venegas, Executive Director, The Albuquerque Partnership, said boards should not participate in hiring and firing procedures; Ms. Karen White, Superintendent, Gallup-McKinley County Public Schools; Mr. Mack Mitchell, Executive Director, NMSBA; and Ms. Charlotte Heatherington, Attorney, speaking for Dr. Sue Cleveland, Superintendent, Rio Rancho Public Schools, spoke in support of HB 937.

Mr. Joe Guillen, Española Public Schools Board President, said his board had a bad experience with a former superintendent but remains in favor of maintaining the governance structure that gives superintendents authority over personnel issues, adding that the board also believes it should conduct appeals.

Dr. Jackie Riggs, former President and CEO, New Mexico Business Round Table for Educational Excellence, supported the Greater Albuquerque Chamber of Commerce's position to maintain the governance structure that gives superintendents authority over personnel issues. She explained that the power struggle between the superintendent and the board is the issue that needs to be addressed.

Committee Discussion:

In response to a committee member's question whether there are uniform statewide evaluation criteria for district superintendents, Ms. Smith said "No" and agreed that this evaluation should be done more uniformly.

In response to a committee member's question whether there have been significant changes in how school districts pay for attorneys and court costs since this change of authority, Ms. Smith said that her district has seen an increase in arbitration fees. Also in response, Mr. Sullivan directed the committee to a piece of correspondence in their notebooks, which includes a table provided by PED that has expenditures budgeted by school districts and charter schools in object code 3213 in the administrative function, which is reserved for contract legal services. He explained that amounts budgeted for school year 2005-2006 range from $0 (Amistad Charter School, Fort Sumner Municipal Schools, Middle College Charter School, Rio Gallinas Charter School, Roots and Wings Charter School, and Cottonwood Valley Charter School) to $650,000 in APS. Mr. Sullivan stated that the amount budgeted for contract legal services is at the discretion of the district or charter school.

Some committee members voiced concern over the financial impact that the legislation has had on school districts and the conflict between the superintendent and local boards, that the legislation has promoted.

In response to a committee member's question where APS stands on this issue, Ms. Maes said that APS supports the rest of the school board members in the state in wanting continued involvement of local boards of education, or their designee, in the personnel termination appeals process; but the district also wants the option to continue with its eight-person disciplinary board that was named when HB 212 passed. She explained that the disciplinary board takes care of the many appeals made in this large school district, saying that 52 cases have been heard, with five going to the superintendent and with one arbitration that cost $30,000. Ms. Smith said that the NMSBA supports a designee, but stated that the board would have to make the decision in each school district.

Representative Begaye asked the PED to provide a by-district, by charter school comparison of legal expenditures related to termination, discharge, and arbitration proceedings prior to the enactment of HB 212, with costs incurred since the enactment of this bill.

DIRECTOR'S REPORT

a. Approval of LESC Minutes for September 2005

Upon a motion by Senator Kernan, seconded by Representative Miera, the LESC minutes for September 2005 were unanimously approved.

b. Approval of LESC Financial Reports for August 2005 and September 2005

Upon a motion by Representative Stewart, seconded by Senator Papen, the LESC financial reports for August 2005 and September 2005 were unanimously approved.

c. Approval of LESC Operating Budget Request for FY 07

Dr. Rindone stated that, with approval of the Chair and Vice Chair, the FY 07 operating budget includes an increase of $167,800 in the Personal Services and Benefits category for two new LESC staff analyst positions, primarily on higher education issues. The budget increase reflects an annual salary of approximately $60,000 plus benefits for each employee based on the current Legislative Compensation Plan. These new positions are needed, Dr. Rindone said, because the committee has been considering higher education issues more frequently and in greater depth during the past two interims. With the creation of the cabinet level Higher Education Department, the LESC is planning to take on a greater role in the study of higher education, which will expand the workload of the present staff. On that point, Dr. Rindone emphasized that, with its current statutory authority for public education policy and oversight of the nearly 50 percent of the state budget devoted to public education, the LESC operates with the smallest staff (five analysts) of any of the permanent interim committees of the Legislature.

Senator Papen made a motion, seconded by Representative Miera, to approve the budget to include the two extra FTEs. The motion was unanimously approved.

d. Correspondence

Dr. Rindone reviewed several items of correspondence included in the committee members' notebooks, adding that these items are also included in the permanent file in the LESC office.

Finally, Dr. Rindone reminded the committee of its prior request to go online and have paperless meetings. She announced that in November the staff would be ready to begin implementing the process and reminded the committee members to bring their laptops to the meeting.

STATUS OF IMPACT AID LAWSUIT

Ms. Frances Maestas, LESC staff, introduced Mr. Don Moya, Deputy Secretary, Finance and Operations, Public Education Department (PED); Mr. Willie Brown, General Counsel, PED; and Ms. Arlene Strumor, Deputy General Counsel, PED, who discussed the issues surrounding the Impact Aid lawsuit and the subsequent appeal to the US Tenth Circuit Court of Appeals. Ms. Maestas also introduced Mr. Steve Burrell, Director, School Budget and Finance Analysis Bureau, PED, who was present to answer questions.

In response to a committee member's question why representatives from the plaintiff districts were not included as presenters for this topic, Dr. Rindone explained that this issue had been placed on the agenda to apprise the committee of the Tenth Circuit Court proceedings held in Denver on September 13 and not as an item for debate.

Senator Nava recognized Mr. Ron VanAmberg, attorney for the Zuni Public Schools, and Mr. Wally Feldman, Superintendent, Zuni Public Schools, and indicated they would be afforded an opportunity to address the committee during the presentation if they desired.

Ms. Maestas explained that the Impact Aid law provides assistance to school districts that experience an adverse financial impact due to federal activity or presence. He said that Impact Aid provides a payment to school districts in lieu of lost taxes, primarily because of the federal ownership of nontaxable land or the presence of federally connected students, including children residing on Indian lands and military children.

Ms. Maestas further explained that, in October 1999, Zuni Public Schools filed an objection to a certification made by the US Department of Education (USDE) allowing New Mexico to take credit for federal Impact Aid revenues in determining the distribution for the State Equalization Guarantee (SEG) for school year 1999-2000. In November 1999, she added, the Gallup-McKinley County Public Schools filed a similar objection with USDE alleging that New Mexico took credit for an inappropriate proportion of Impact Aid funds. The objections of the school districts, she noted, were consolidated for the purposes of administrative adjudication.

Mr. Brown added that an administrative judge subsequently issued a decision sustaining USDE's certification and rejecting the arguments presented by the Zuni Public Schools and Gallup-McKinley County Public Schools. Both school districts subsequently appealed the administrative judge's decision to the USDE Secretary, who affirmed the judge's decision.

Ms. Strumor stated that both districts then filed an appeal to the US Tenth Circuit Court of Appeals, and in December 2004, a three-judge panel of the court, on a two to one vote, rejected the challenges of the Zuni Public Schools and Gallup-McKinley County Public Schools districts. She said that both districts appealed the decision of the three-judge panel and asked for a review of the issues by the full court. This hearing was held on September 13, 2005 by the US Tenth Circuit Court of Appeals *en banc* (full court) in Denver, Colorado. Ms. Strumor concluded by saying that a decision to this appeal is pending.

That the US Tenth Circuit Court of Appeals granted an *en banc* hearing, is very significant because such an action is so unusual. He stated that the law allows the state to take credit for federal Impact Aid revenues received by a school district if the state can prove that it is an equalized state. The equalized determination, he explained, is based on a disparity computation that allows the state to rank school districts within the state on the basis of current expenditures

or revenue per pupil and disregards school districts at or above the 95th or below the 5th percentiles in either expenditures or revenues in the state. If the disparity is not more than 25 percent, the state is considered equalized and is allowed to take credit for federal Impact Aid revenues in the state's calculation of the distribution from the funding formula.

Mr. VanAmberg noted that the state calculates the 95th and 5th percentiles based on the total number of pupils enrolled; however, he feels that the calculation should be based on the number of school districts. Under this scenario, he emphasized, New Mexico would not qualify as an equalized state and would not be allowed to take credit for federal Impact Aid revenues of eligible school districts.

In conclusion, Mr. VanAmberg suggested that the state would be better served if this lawsuit were settled at the state level. Therefore, he urged that the Legislature consider entering into discussions with the plaintiff districts to resolve this issue legislatively and out of the court system.

Committee Discussion:

In response to a committee member's question whether New Mexico's method of calculating disparity was based on federal rule, Ms. Strumor explained that PED computes the disparity on the basis of revenue per pupil and on USDE's regulation and the methodology outlined in the appendix to the regulation. The appendix, she noted, allows the 95th and 5th percentiles to be calculated based on the total number of pupils enrolled in the school districts. As a result, the disparity for school year 1999-2000 was calculated to be 14.43 percent, which is 10 points below the disparity requirement of 25 percent.

Several committee members expressed concern about the way in which Impact Aid revenues are used in New Mexico. Noting that state-of-the-art school facilities have been built with Impact Aid dollars on the Navajo Nation in Arizona, one committee member observed that it appears that New Mexico has supplanted property tax revenues with Impact Aid revenue in order to fund school districts statewide. Another committee member emphasized that the purpose of the federal Impact Aid law is to provide school districts that have no tax base with funds "to remain above water." Referring to Mr. VanAmberg's comments to the committee, this committee member expressed the hope that the Legislature would discuss a possible resolution to the lawsuit with representatives of the plaintiff school districts.

Senator Tsosie informed the committee that he has asked the Legislative Council Service to draft legislation to require that, as a matter of state policy, disparity be calculated on the basis of the number of school districts rather than the number of pupils enrolled.

In response to a committee member's question whether the state would not be equalized if the 95th or 5th percentiles calculation were based on the methodology proposed by Mr. VanAmberg, Mr. Burrell said that the state meets the disparity test using the methodology in current federal regulation; however, Mr. VanAmberg's methodology would result in the state not meeting the disparity test.

Senator Nava thanked the presenters.

INDIAN EDUCATION

a. Indian Education Act/Advanced School Curriculum, SB 215

Ms. Pamela Herman, LESC staff, introduced Dr. Catherine Cross Maple, Deputy Secretary of Learning and Accountability, (Public Education Department (PED), and Ms. C. Penny Bird, Assistant Secretary, Indian Education, PED, who provided a report on the progress of PED in fulfilling the mandates of the *Indian Education Act* and the *American Indian Advanced School Curriculum*. Ms. Herman also introduced Dr. Larry W. Emerson, Chair, New Mexico Indian Education Advisory Council, who described the perspective, priorities, and activities of the council in its statutory role of advising PED regarding the education of American Indian students.

Ms. Herman stated that, in 2003, the Legislature passed the *Indian Education Act* as a means to address the unique cultural and educational needs of American Indian students statewide. She said that, the act created the non-reverting Indian Education Fund to be administered by PED to make awards to implement its provisions. Providing a brief history of legislative appropriations to the fund and PED expenditures, Ms. Herman said that the Legislature has appropriated a total of $7.0 million to the Indian Education Fund as follows:

- $2.0 million for FY 04; according to reports from the Department of Finance and Administration (DFA), for FY 04, PED budgeted a total of $2.5 million for the fund and expended approximately $147,000. According to PED, this included $100,000 in federal fiscal relief money for the Smith Lake Elementary School, a school in the Gallup-McKinley County Public Schools that closed in school year 2003-2004, "to partner to expand educational services through a regional education center";
- $2.5 million for FY 05; according to DFA, for FY 05 PED budgeted a total of approximately $2.85 million for the fund and expended approximately $456,400; and
- $2.5 million in FY 06; in September 2005, PED made a budget adjustment request (BAR) to increase the FY 06 Indian Education Fund budget by approximately $4.0 million; however, DFA approved an increase of approximately $2.0 million, for a total FY 06 budget of approximately $4.5 million, of which PED had expended approximately $49,500.

In addition, Ms. Herman said that for FY 05, the Legislature provided $113,600 in a special, nonrecurring appropriation to support a full-time equivalent position in Indian education at PED. She said that for FY 06, PED has added this position to the department budget as a recurring cost.

Senator Nava asked Ms. Pachella Reynolds-Forte, on contract with the Indian Education Division, PED, if the reported cash balances as enumerated by Ms. Herman were correct as of August 2005. Ms. Reynolds-Forte called the committee's attention to page 7 of her handout, and stated that, of the total $7.0 million of Indian Education Act Funds, $4,937.2 million has been committed and $2,062.8 million is uncommitted and will be used for emerging Indian Education initiatives. Ms. Reynolds-Forte stated that the total cash balance including encumbered unexpended funds was approximately $6.0 million.

In 2005, Ms. Herman stated, the LESC endorsed and the Legislature passed SB 215, *American Indian Advanced School Curriculum*, amending the *Indian Education Act* to require the Indian Education Division of PED to develop or select for implementation, a challenging, sequential,

culturally relevant curriculum for American Indian students in grades K through 6 to prepare them for Pre-Advanced Placement (AP) and AP coursework in grades 7 through 12. She stated that the FY 06 draft expenditure plan for Indian Education funds provided by PED includes $20,000 for a study of advanced placement curricula programs.

Dr. Cross Maple began her presentation by introducing the Indian Education Division (IED) staff, Ms. Barbara J. Alvarez and Mr. Patrick Werito, Education Administrators, PED. She said that she and Assistant Secretary Bird had attended a conference whose participants were pleased with the foundation that New Mexico had laid, and the direction the state was taking to implement the *Indian Education Act*. She admitted that PED had a rocky start in creating the Deputy Secretary position, in getting budgeting authority, and in development of programs; however, PED is finally moving forward from a strong foundation.

Referring to a PED handout provided to the committee, Dr. Cross Maple said that the percentage of Native American students statewide was approximately 11.1 percent, with a total of 35,756 Native American students in school year 2003-2004 and 36,033 in school year 2004-2005. She said that New Mexico is making progress in the number of Native American teachers in the state; in school year 2003-2004, there were 593 Native American teachers; and in school year 2004-2005, there were 598. Dr. Cross Maple said that 23 of the 89 school districts in the state serve 97 percent of the Native American population and employ 93 percent of the Native American teachers.

In addressing the initiatives of the *Indian Education Act*, Assistant Secretary Bird summarized the status report that PED provided to the committee, which listed 16 initiatives and the amount of *Indian Education Act* funds committed to each one. Ms. Bird said that the act creates a 14-member Indian Education Advisory council that is required to meet semiannually with other appropriate state and tribal representatives, the Legislature, and PED to assist in evaluating, consolidating, and coordinating all activities relating to the education of American Indian students. The act also prescribes the contents of American Indian education status reports to be submitted annually to tribes by the Indian Education Division (IED), in collaboration with the Bureau of Indian Affairs (BIA) and other entities, and by school districts that include tribal lands within their boundaries.

Dr. Emerson began his presentation by introducing members of the Indian Education Advisory Council who were present in the audience: Mr. Wilfred Eriacho, Sr., Southern Pueblos representative; Dr. Kalvin White, Navajo representative; Ms. Albenita Arquero, Southern Pueblos representative; Ms. Zelda Yazza, Mescalero Apache representative; Dr. Benjamin Atencio, BIA representative; and Ms. Sarah Adeky, Navajo representative.

Dr. Emerson said that the Indian Education Advisory Council views Native Americans not only from a tribal point of view, but also sequentially in terms of their history as aboriginal people in the state of New Mexico. Noting that Indian education is a complex issue, Dr. Emerson said that he has recently seen a convergence of the federal *No Child Left Behind Act of 2001,* (NCLB) the *Indian Education* Act, and tribal laws, particularly in their common message that culture and language must be preserved. He also emphasized local control as a critical component in the *Indian Education* Act; and he cited a correlation between increased funding and higher student achievement.

In conclusion, Dr. Emerson said that the IED has to examine policy, in particular the Secretary of Education's philosophy of educating the "whole child." He said it is necessary to include the whole community in assessing the various changes happening in Indian education and in addressing the achievement gap.

Committee Discussion:

In response to a committee member's question whether institutions of higher education besides the University of New Mexico (UNM), had been given an opportunity to apply for contracts, Ms. Bird said that the major contracts were with UNM and the Center for the Education and Study of Diverse Populations (CESDP) at New Mexico Highlands University. She added that the responses to the request for proposals that PED issued had been reviewed and rated by professionals and volunteers from the school districts.

In response to a committee member's question regarding which school districts have been helped in developing native language and history, Ms. Bird said that PED has worked with a number of school districts, both at a broad level and through language symposiums.

In response to a committee member's question whether the IED has developed any curricula or instructional materials for native languages, Ms. Bird said, "No"; but that some school districts and tribes have developed curricula in native languages, and it is her hope to disseminate and share specific projects in this area.

In response to a committee member's question whether the IED had compiled a catalog of existing curricula and materials related to native language, culture and history, Ms. Bird stated that the IED had started to do so. A committee member commented that the IED needed to assess what is available and identify the gaps to make effective use of the monies.

Dr. Cross Maple enumerated initiatives number 5 through 10 in the PED handout to develop the following: culturally relevant Native American history curriculum; an exemplary program to provide for a study of an educational system(s) that positively affects the educational success of Native American students; an urban initiative program; a School Improvement award program; coordination of a statewide conference for school administrators and teachers from schools identified as in need of improvement; and collaboration to develop joint powers agreements with tribes and pueblos to ensure maintenance of native language.

A lengthy discussion ensured regarding holding PED and the IED accountable for responding to the mandates of the act, and working with experts in the field to identify best practices to increase the achievement of Indian children. One committee member questioned the effectiveness of awarding large contracts to universities to study issues rather than distributing funds in the field – to tribes, districts, and tribal colleges to make an impact at a grassroots level. A committee member also expressed the need of partnering with the Department of Health to address the high suicide rate among Native Americans, and the need to help Native American teachers who may be having difficulty advancing in the three-tiered licensure system.

Finally, a committee member expressed concern that, by not expending most of the funds appropriated, the IED at PED gave credence to the argument that Indian education does not need this money.

Representative Begaye requested that LESC staff work with PED to provide a plan for implementing the requirements of the *Indian Education Act*, containing the following information: requirements of the act; activity or project; targeted outcomes; evaluation; contractor or responsible entity; completion date; and funding amounts.

b. Collaboration Among BIA, Tribal Governments, and Public Schools in Improving Student Achievement and Meeting NCLB Requirements

Ms. Sonja Halsey, LESC staff, introduced Dr. David Beaulieu, immediate Past President, National Indian Education Association and currently Director, Center for Indian Education, College of Education, Arizona State University, to highlight key aspects of NCLB that affect Native Americans; Dr. Catherine Cross Maple, Deputy Secretary of Learning and Accountability, PED, to outline progress being made in expanding the PED accountability data system and in coordinating with the BIA to assess progress of Native American students; Dr. Benjamin Atencio, Education Line Officer, Southern Pueblos Agency, BIA, to discuss the impact of the final resolution of the negotiated rule-making concerning NCLB, government-to-government collaboration, and the Memorandum of Understanding (MOU) between the BIA and PED; and Mr. Kalvin White to report on the educational initiatives of the Navajo Nation (standing in for Mr. Leland Leonard, Executive Director, Department of Diné Education).

Ms. Halsey said that the *Indian Education Act*, signed into law in 2003, supports a formal government-to-government relationship between PED and Indian tribes in New Mexico, including the development of relationships with the education division of the BIA, tribal governments, and other entities that serve American Indian students.

Dr. Atencio reviewed his handouts, which included: a copy of the final resolution dated April 28, 2005 of the NCLB negotiated rule-making contained in the Federal Register, and the Memorandum of Agreement among the boards of education of various entities; a chart of the BIA New Mexico schools with their contact information, types, grades involved, Adequate Yearly Progress (AYP), public school district, and the public school AYP designation; and a power point presentation, *Indian Education: Collaboration of BIA and Public Schools in Improving Student Achievement and Meeting NCLB Requirements*.

Dr. Atencio called the committee's attention to the definition of AYP provided by the US Secretary of Education, which reflects the final resolution of the NCLB negotiated rule-making in that, effective in school year 2005-2006, the academic content and student achievement standards, assessments, and the definition of AYP are those of the state where the school is located, unless an alternative definition of AYP is proposed by the tribal governing body or school board and approved by the Secretary. He said that this section does not mean that the school is under the jurisdiction of the state for any purpose; rather, the reference to the state is solely for the purpose of using the state's assessment, academic content, and student achievement standards and definition of AYP.

In explaining what is required for the BIA to meet the reporting responsibilities, Dr. Atencio said that, in order to provide information about the annual process, the bureau must obtain from all bureau-funded schools the results of assessments administered for all tested students, special education students, and students with limited English proficiency, and it must disseminate such results in an annual report.

Dr. Atencio said that the Office of Indian Education Programs (OIEP), BIA, has schools in 23 states, with 184 schools and programs (39 schools in New Mexico, four residential programs). He explained that OIEP is considered a state with regards to NCLB and has its own State Education Reform Plan.

In speaking of the collaboration efforts with local public school districts, Dr. Atencio cited a newly signed a Memorandum of Agreement (MOA) between OIEP and PED, which will assure agreement regarding transportation, transition activities, and meetings, and also a unique MOA among boards of education for Grants-Cibola County Schools, the Pueblo of Laguna Department of Education, Sky City Community School, Pueblo of Acoma Commission on Education, and St. Joseph Mission School.

In addition to the MOA just mentioned, Dr. Atencio listed his recommendations: continuing with support of the *Indian Education Act* to improve collection of data, accurate assessments of students, and training of staff to use the information to improve instruction. He also recommended that resources be included in the act to help tribes develop tribal departments of education and local tribal education master plans as well as tribal education policies. He explained that this support will improve communications among all partners to better support the needs of students.

Referring the committee to a preliminary report titled, "No Child Left Behind in Indian Country," Dr. Beaulieu said that the National Indian Education Association (NIEA) held 11 hearings on NCLB in the following locations: Washington, DC; Honolulu, Hawaii; Helena, Montana; Window Rock, Arizona; Albuquerque, New Mexico; Tacoma, Washington; Green Bay, Wisconsin; Oklahoma City, Oklahoma; Pine Ridge, South Dakota; San Diego, California; and again in Green Bay, Wisconsin. Dr. Beaulieu said the hearings began because the NIEA became concerned that Native Americans were not being heard. Native Americans, Dr. Beaulieu continued, support the concept of accountability, but they are concerned that, despite its title, NCLB has left Native American children behind. During the hearings, witnesses identified many areas of the federal law that do not fit or respond to the unique situations of Native American communities and schools, particularly those communities and schools located in rural areas of the country.

Continuing his explanation of the concerns expressed at the hearings, Dr. Beaulieu said that 35 years have been invested in Indian education to introduce culturally appropriate pedagogy and curriculum that is connected to the social, cultural, and linguistic heritage of the children and to enhance the role of tribal governments and native communities and parents in determining the educational purposes of schools and the role of teachers, parents and community members in the education lives of native students. However, many witnesses identified what could generally be labeled "the unintended consequences" of the statute that have resulted in major disruptions to the education systems that may fundamentally alter the education potential of schools while significantly and coincidentally narrowing the broad public purposes of schools.

Moving to the concern of the teacher turnover rate, Dr. Beaulieu said that witnesses speaking either on behalf of teachers and educators or on their own behalf felt that NCLB was driving teachers and educators out of the field, increasing the teacher turnover rates. He said that this effect was particularly harmful for schools with high percentages of Native American students, as they already have significantly high teacher turnover rates.

Noting that the accountability system is flawed by focusing on year-to-year school results on standardized tests rather than focusing on the continuous progress of individual students and measuring schools accordingly, Dr. Beaulieu said that a number of witnesses expressed dismay at the "one size fits all" approach and system that is not flexible and does not invest in improvement.

Funding was another concern that Dr. Beaulieu mentioned. He said that appropriations are not sufficient to accomplish the objectives of the statute and that insufficient funding is causing a reallocation of resources within schools. This reallocation of funding is detrimental to the quality of the overall educational program, and it reduces support for remedial efforts necessary to focus on learners that are truly in need. Further, he said that the funding issues uniquely impact the uses of Title VII formula grants, which focus on the language and cultural needs of American Indians, Alaska Natives, and Native Hawaiians. He explained that witnesses noted that Title VII focuses on groups that have unique relationships with the federal government, and that education is an aspect of the trust relationship of the federal government to American Indian tribes. Several witnesses contended that NCLB has clearly shifted the uses of Title VII to focus on remedial programs, which had typically been supported by Title I.

In conclusion, Dr. Beaulieu said that the testimony cited in his preliminary report only skims the surface of the views expressed by individuals at the hearings of NIEA on the NCLB statute and Native American Education. A final report containing the complete analysis of the testimony will be published and used to develop very specific policy recommendations. NIEA, with the assistance of the Center for Indian Education, will convene representatives of National Indian Education and representatives of tribal governments and native communities to develop recommendations for action. The final report, including recommendations, will be sent to the membership of NIEA for review and comment.

Dr. Cross Maple explained the MOU between PED, the Department of Interior, BIA, and OIEP. She said that the purposes of this MOU are to ensure that the OIEP, acting as the State Education Agency for all BIA-funded schools has access to the total assessment systems of the 23 states that have BIA-funded schools within their borders; to ensure that all BIA-funded schools' assessment data are scored in the same manner as publicly funded schools in their respective states; and to ensure that all BIA-funded schools' assessment data are sent to the OIEP to be utilized in determining AYP status for BIA-funded schools. She said that this permanent multi-year agreement shall remain in effect until it is terminated by either the state of New Mexico or by the OIEP.

Mr. White explained that the *Navajo Nation Sovereignty in Education Act of 2005* was passed on July 19, 2005 by the Navajo Nation Council. He explained that the Navajo Nation Education Code Title 10 was amended on this date to enhance the authority of the Navajo Nation, saying that the Navajo Nation has the authority and inherent right to exercise responsibility for the Navajo people; has authority to prescribe and implement education laws and policies; recognizes the legitimate authority of the actual education provider; and will work cooperatively with all education providers. Also, he continued, the Navajo Nation Board of Education has the authority to oversee schools under its jurisdiction and, through agreements, to oversee schools not under its jurisdiction. The board consists of 11 members – five elected agency representatives to be elected in the Navajo Nation 2006 General Election and six members appointed by the President, confirmed by the Education Committee, and seated by October 2005.

Mr. White reviewed the qualifications for the appointed board members, elected board members, and the general qualifications for all of the members, as well as the powers and duties of the board and the responsibilities of the Department of Diné Education. He also enumerated tasks relating to establishment of the administration, development of standards and accreditation, licensing administrators, licensing for Navajo language and culture, enforcement of attendance laws, research on education achievement, and grant and contract handbook.

In conclusion, Mr. White expressed his hope for cooperation between the Navajo Nation and New Mexico to ensure that the Navajo students get the best education available.

Committee Discussion:

In response to a committee member's question whether assessments had been done in BIA schools, Dr. Don E. Watson, Assistant Secretary, Assessment and Accountability, PED, said that PED provided assessments to BIA schools, and after the assessment, they scored and provided the information, completed the data on AYP, and then trained BIA staff on the complete process.

In response to a committee member's question on how the *Navajo Nation Sovereignty in Education Act* would correspond with the *Indian Education Act* in New Mexico, Mr. White said that an MOU would be used with the public schools.

In response to a committee member's question why Arizona is more effective than New Mexico in reaching Native American children, Mr. White said that Arizona seems to be focusing on curriculum, cultural infusion and materials, and the Navajo people have been introducing materials for an integrated curriculum. In responding to these same questions, Dr. Beaulieu said that there are a number of Native American teacher training programs in Arizona.

In response to a committee member's question how "English only" is incorporated into the curriculum, Mr. White responded that the impact of English only has been negative, while the impact on using Navajo has been positive. He added that the Navajo Nation received a grant to close the achievement gap, using the standardized positive language.

Senator Papen asked PED to provide a comparison of 2005 National Assessment of Educational Progress (NAEP) scores for Native American students in New Mexico with those in Arizona and also with the national average. Also, she asked that PED indicate areas in which Arizona is demonstrating higher performance than New Mexico and to provide information about programs that are working in Arizona.

STUDY SCHOOL NURSE DELIVERY OF HEALTH CARE, SJM 9 (2004)

Ms. Pamela Herman, LESC staff, introduced Dr. Kristine M. Meurer, Director, School and Family Support Bureau, Public Education Department (PED), and Ms. Patsy Nelson, Deputy Director, Public Health Division, Department of Health (DOH), to present the findings and recommendations of the task force formed in response to SJM 9, *Study School Nurse Delivery of Health Care*.

Ms. Herman stated that in 2004 the Legislature passed SJM 9 requesting the DOH and PED to create a task force to study the appropriate use and staffing of nurses in the public schools and to report its findings to the LESC and the Legislative Health and Human Services Committee by October 2005. Ms. Herman indicated that a copy of the memorial and the task force report were attached to the staff brief in committee notebooks. She said that SJM 9 charges the task force to answer the following questions:

- What constitutes adequate nursing supervision of ancillary staff?
- What is the appropriate level of nursing presence in New Mexico schools?
- How do the health and educational systems become better integrated across all New Mexico school systems? and
- How do school nurses interface with other health care providers and services within the school system?

Ms. Herman said that the memorial requires the task force to look at these issues in the context of different geographical needs, economic disparity, cultural differences, acuity of health needs and funding, and to include in the study representatives of DOH, PED, the Human Services Department (HSD), the Indian Health Service, school districts, an education-health assistant organization, the New Mexico Pediatric Society, parents' groups, the Navajo and Albuquerque Area Indian Health Services, and other appropriate advocacy groups.

As background, Ms. Herman explained that, in 2003, the LESC endorsed and the Legislature passed HJM 3, *School Health Care Provider Services Study*. Based on the recommendations in the HJM 3 report, in 2003 the LESC endorsed and the Legislature passed legislation to create a pilot study of a medication aide project to study the feasibility of certifying school health assistants to administer routine medications under the supervision of a licensed school nurse. Based on the success of that project, in 2005 the LESC endorsed and the Legislature passed an amendment to the *Nursing Practice Act* to create a statewide medication aide training and certification program under the Board of Nursing, available to public schools as well as other entities. However, according to Ms. Herman, the 2002 report on HJM 3 identified "several broader systems-level issues that cannot be answered without further study," and those questions were posed by the Legislature in SJM 9.

Ms. Nelson said that, during the 2004 interim DOH and PED empanelled a 27-member task force that included representatives from PED, DOH, HSD, the Alamo Navajo Reservation, the New Mexico Coalition of School Administrators, the National Education Association-New Mexico, the New Mexico Pediatric Society, the New Mexico Board of Nursing, the New Mexico School Nurses' Association, the National Association of School Nurses, New Mexico Voices for Children, New Mexico Parents Reaching Out, two parent teacher associations, a rural school administrator, and school nurses from 10 school districts distributed across New Mexico. The task force states that it also had assistance from three consultants: two professors from higher education schools of nursing, and one with expertise regarding the Public School Funding Formula.

Ms. Nelson introduced members of the task force in the audience: Ms. Linda Hummingbird, President, NM School Nurses' Association – Santa Fe; Ms. Cindy Greenberg, RN, National Association of School Nurses – Albuquerque; Ms. Laura Mandabach, School Health Advocate, DOH – Las Cruces; Ms. Nancy Broach, RN, School Nurse – Grants; Ms. Judy Creegan, RN, School Nurse – Gadsden; Ms. Ronda Sparks, RN, School Nurse – Clovis; and Ms. Georgia Glasgow, School Health Consultant, PED.

Ms. Nelson reported the major findings of the task force report:

- the primary objective of New Mexico school health programs is to support instruction and to help students become successful learners. The school nurse is often the primary health care provider for the school community;
- the role of the school nurse has grown beyond providing immunizations and screenings and basic health care of students; therefore, adequate supervision by the school nurse of ancillary staff is needed in order to ensure safe and adequate delivery of expanded health service requirements in the schools;
- nursing presence in schools is inconsistent since there is currently no provision in state statute or state regulation regarding appropriate school nurse staffing levels;
- school nurses are not part of the State Equalization Guarantee (SEG) funding formula; and
- the professional school nurse can serve an important role in helping to integrate the coordinated school health approach into the educational system.

Ms. Nelson also reported the two primary recommendations of the task force: First, to request the Funding Formula Study Task Force, as set forth in SB 125, to include school nurses as part of the equity and efficacy of the Public School Funding Formula as a whole; and second, to revise current school reform legislation to include school nurses in the three-tiered licensure system.

Dr. Meurer reported the answers developed by the task force to the questions posed by SJM 9. She said that the task force considered community data on the appropriate level of nursing presence in New Mexico schools and on what constitutes adequate nursing supervision of ancillary staff. Dr. Meurer reported that these data were analyzed with the input from a statistical consultant and three simplified criteria were developed to determine the need for a full-time school nurse.

1. Does the school building have more than 400 students?
2. Does the school have fewer than 250 students? and
3. Are 50 percent or more of the students in the school economically disadvantaged?

Based on a review of numerous statistical models, Dr. Meurer said that this approach was the most efficient to ensure adequate school nurse staffing to address the health needs of the school-age child in New Mexico.

Dr. Meurer said that the task force reviewed these points in considering what constitutes adequate nursing supervision of ancillary staff:

- the level of health services needed for children in New Mexico school communities;
- the role, functions and responsibilities of professional nurses as defined by the *Nursing Practice Act* and the PED; and
- the role, functions and responsibilities of ancillary personnel, which were defined as certified medication aids, health assistants, and unlicensed assistive personnel.

Dr. Meurer said that appropriate delegation to and supervision of ancillary personnel is best determined at the local level by professional school nurses, who must have a clear understanding of what constitutes the scope of practice to ensure that the New Mexico state *Nursing Practice Act* is not violated and that the health and safety of the students are not compromised. She said that the use of assistive personnel may be appropriate to supplement professional school nursing

services in certain situations, but they should never supplant school nurses nor be permitted to practice nursing without a license. Dr. Meurer emphasized that, while specific services may be delegated to ancillary staff, the registered nurse retains professional accountability for delegated acts.

Regarding the two remaining questions in SJM 9 - how the health and educational systems can become better integrated across all New Mexico school systems and how school nurses interface with other health care providers and services within the school systems - Dr. Meurer said the task force concluded that the answer to both was the same: a coordinated school health approach. She said that if schools do not deal with children's health by design, they will deal with it by default. She said the role of the school nurse, in a coordinated school health approach, is to provide leadership or play a supporting role in any of the eight components as listed and illustrated by the yucca plant graphic attached to the SJM 9 report. Dr. Meurer explained that the leaves of the yucca plant represent the components of coordinated school health and symbolize the daily opportunities schools have to interact with children on their numerous health-related issues. She stated that the Healthier Schools New Mexico coordinated school health approach illustrated by the yucca plant provides a programmatic framework for student learning. She explained that the focus is on the blossom, the healthy and successful student. The tap root is the family, without which children cannot thrive and grow. The other roots represent the responsibilities that culture, education, public services, media, community, and businesses have in producing healthier students. She said that the root system is the nurturing network that supplies the resources and energy for the yucca to grow.

In summary, Dr. Meurer indicated that the criteria suggested in the SJM 9 report, used, with the help of a consultant, the task force to determine that school districts statewide need approximately an additional 250 school nurses, at a cost of approximately $11.0 million. Dr. Meurer said that PED would forward a recommendation to the Funding Formula Task Force regarding the task force's first recommendation concerning the inclusion of school nursing in the Public School Funding Formula. She said that PED has not yet determined its position on the second recommendation.

Committee Discussion:

In response to a committee member's question regarding the actual need for school nurses in terms of students per nurse, Ms. Creegan stated that the task force tried to look at adequacy based on community need, not on a formula. For example, if a school has over 400 students, it is likely to have a certain number of students with a high level of individual need, as well as cumulative needs of all types. If it has fewer than 250 students, the school is most likely in an isolated, rural community with fewer resources, and further from outside health facilities. In particular, low-income schools are likely to have many uninsured or underinsured families and health problems related to poverty.

Ms. Hall added that a nurse in every rural school was important to meet the need. Ms. Sparks said she wished it were possible to propose a formula that would guarantee adequate care, but that each district must look at the needs of each of its schools–there is no magic number. However, she stated that by adding 250 to 275 nurses to the current supply, there can be a nurse at least parttime in every school, although this would not necessarily be adequate to meet the full need for school nurse services.

In response to a committee member's question how the three-tiered licensure system would apply to school nurses, Dr. Meurer said that HB 83, an unsuccessful bill from the 2005 session, would have provided for a process to establish a system consistent across the state that would govern movement of professionals such as nurses from level to level, with compensation based on appropriate qualifications. A committee member commented that sometimes a statewide scale can be detrimental to rural districts.

In response to a committee member's question regarding the part of the state with the greatest need for school nurses, Dr. Meurer responded that the need exists everywhere, but that four districts reporting no nurse at all probably had the greatest need: Chama, Quemado, Carrizozo, and Elida. The committee member indicated that one of those districts actually had a part-time nurse. Otherwise, Dr. Meurer stated that she would look at the data regarding the prevalence of diabetes and other health problems across the state that needed targeted services.

In response to a committee member's question whether there was an adequate supply of nurses to fill the new positions if they were created, a representative of Albuquerque Public Schools (APS) indicated that APS did not have a problem recruiting and retaining school nurses, because, although the work is stressful, the schedule is more accommodating for family life than other types of nursing. Regarding the shortage of nurses statewide, Dr. Meurer stated that a report from the New Mexico Health Policy Commission to the Legislative Health and Human Services Committee on SJM 37, *Study Nurse Staffing and Retention Issues*, indicates that the state will need an additional 4,520 registered nurses and 680 licensed practical nurses by 2012.

A member of the committee commented that, while the SJM 9 report might seem confusing because it does not appear to offer a simple answer to the question of the number of nurses needed, it focused appropriately on the question of how best to address the health mission of the public schools and to provide a health safety net for students. Since currently there is no funding in the Public School Funding Formula for school nurses, if the formula provided some minimum amount, school districts could continue to supplement that amount from other sources, including Medicaid in the Schools.

Senator Nava thanked the presenters and the task force members for their presentation, and with the consensus of the committee, recessed the LESC meeting at 6:07 pm.

MINUTES
LESC MEETING
OCTOBER 21, 2005

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) meeting to order on October 21, 2005, at 9:20 a.m., at the Rio Grande Nature Center State Park, Albuquerque, New Mexico.

<u>The following LESC members were present:</u>

Senators Cynthia Nava, Chair, and Gay G. Kernan; and Representatives Rick Miera, Vice Chair, Joni Marie Gutierrez, Mimi Stewart, and W.C. "Dub" Williams.

The following LESC advisory members were present:

Senators Vernon D. Asbill, Dianna J. Duran, and Mary Jane M. Garcia; and Representatives Kandy Cordova, Jimmie C. Hall, Harriet I. Ruiz,
Sheryl M. Williams Stapleton, Richard D. Vigil, and Teresa A. Zanetti.

THE NEW MEXICO OUTDOOR EDUCATION INITIATIVE

a. Improve Education and State Parks Relationship, SJM 24

Ms. Sonja Halsey, LESC staff, introduced Mr. David J. Simon, Director, New Mexico State Parks Division, Department of Energy, Minerals and Natural Resources; and Dr. Patricia E. Parkinson, Assistant Secretary, Instructional Support, Public Education Department (PED), who presented a joint report on their efforts to increase partnerships between schools and state parks. Ms. Halsey also introduced Ms. Carye Angell, a science teacher at P.R. Leyva Middle School, Carlsbad Municipal Schools, to report on her school's partnership with the Living Desert Zoo and Gardens State Park; Mr. Curt Tarter, Principal, Berrendo Elementary School, Roswell Independent Schools, to discuss his school's partnership with Bottomless Lakes State Park, and Ms. Cindy Huffstodt, a teacher at Eisenhower Middle School, Albuquerque Public Schools (APS), to report on her school's partnership with the Rio Grande Nature Center State Park.

As introduction, Ms. Halsey said that SJM 24, which passed during the 2005 legislative session, requested that the New Mexico State Parks Division and PED explore opportunities for collaboration and increased partnerships between the programs and to report to the LESC by November 1, 2005.

Mr. Simon said that, as Director of the New Mexico State Parks Division, he has made education a top priority, stating that New Mexico's state parks, driven by the demands of the visiting public, provide to students the settings, resources, and many learning experiences. He called attention to the January 2005 Report of the Blue Ribbon Panel on Parks Education, titled "Teaching Our Children in New Mexico State Parks," which contains recommendations, among them:

- elevate education in the agency hierarchy;
- place educators in each park;
- seek additional sources of funding;
- correlate park programs to education curricula and benchmarks; and
- bring park programs to the schools and find ways to bring students to the parks.

Mr. Simon said that outdoor education provides benefits to students and teachers, giving students increased opportunities to experience natural and cultural resources of the state. Other benefits of outdoor education, Mr. Simon said, include increased academic achievement, reduced disciplinary problems, and increased teacher job satisfaction. He said that State Parks and PED will partner to bring students to state parks, bring park educators to schools, and provide hands-on interactive, resource-based programs.

Explaining the Outdoor Classroom Initiative, Mr. Simon said it would give students increased opportunities to experience the natural and cultural resources of the state. In addition, a partnership between the State Parks Division and PED has the potential to connect 326,000 public school students to 33 existing outdoor classrooms. He said some of the points made in the report are:

- approximately 80 percent of students in New Mexico are within 30 miles of a State Parks Division facility;
- 60 of the 89 school districts in the state could be served by a state park; and
- in FY 05, a total of 16,832, or approximately 5.0 percent, of public school children in grades K-12 visited state parks and a total of 5,672, or approximately 2.0 percent, of children in public schools were visited by staff from the state parks; however, many of the park-based interactions were not tied to curriculum.

Mr. Simon reported that the "schools-to-parks and parks-to-schools" study recommends:

- increasing school visits to parks and park visits to schools;
- tying State Parks Division programming to public school curriculum;
- augmenting training for teachers and state parks staff;
- augmenting outdoor supplies and teaching materials;
- evaluating programming to ensure increases in academic achievement; and
- cultivating outdoor education partnerships with other agencies such as the Department of Cultural Affairs, the New Mexico Department of Game and Fish, the National Park Service, the US Forest Service, and the Bureau of Land Management.

Mr. Simon reported that the State Parks Division and PED are requesting $250,000 for several pilot projects to launch the Outdoor Classroom Initiative:

- $60,000 for the Outdoor Education Institutes to provide teacher training institutes, building curriculum-based programming and partnerships between parks and teachers (includes a total of 40 teachers and 10 outdoor educators);
- $100,000 for the Teacher Resource Program to provide online resources and field trips, hands-on teaching materials, augment staffing, and identify educational resources at parks;
- $40,000 for the Kids to Parks Grant Program, which would allow teachers to apply for transportation funding for outdoor education initiatives; and
- $50,000 for the Service Learning Program to provide funding for students to complete resource-related projects at parks.

Mr. Simon introduced Ms. Christy Tafoya, Program Director, State Parks Division, who reported on the case study New Mexico State Parks Bosque Education Guide at the Rio Grande Nature Center State Park. She said that the Bosque Education Guide provides existing curriculum-based programs utilized at the Rio Grande Nature Center and that it has the highest school participation in the state park system. She added that, in FY 05, the Rio Grande Nature Center offered six teacher workshops, training 136 of 5,935 educators in APS. She also reported on the case studies of North Carolina, Michigan, and Texas saying that other states are ahead of New Mexico in terms of utilizing their state parks for educating students; however, she said that the New Mexico Outdoor Classroom, which is hands-on, will challenge and change the lives of New Mexico's children. She added that the Outdoor Classroom will develop a strong citizenry for the future, making schools work in the outdoors.

Dr. Parkinson reported that the lessons they will be working on will be aligned to standards and benchmarks. She said that the collaboration between PED and the State Parks Division will improve academic achievement and encourage resource stewardship by engaging school children in heritage education.

Dr. Parkinson said that PED is excited about the opportunity to work with State Parks to build upon the important findings that current research addresses in reviewing students' engagement and active learning. She said that making learning relevant and tying students to the real world not only helps to diversify the learning experience, it also appeals to different learning styles and builds citizenship.

In conclusion, Dr. Parkinson said that she carries a strong message from Secretary García that she supports the program because she believes that it will change the lives of New Mexico's children and will develop a strong citizenry.

Ms. Angell reported on her school's partnership with the Living Desert Zoo and Gardens State Park, praising the partnership as a revitalization of teaching and re-motivation for teachers. She emphasized that students need a focus for education, saying that the Living Desert Zoo is willing to host one of their meetings every year. These meetings include people from the Department of Game and Fish, State Parks, the National Park Service, and the historical museum. She said that teachers must include standards and benchmarks in the field trip but that some also include math lessons as well, all targeted at seventh graders. Ms. Angell also expressed her concern that travel costs and the small transportation budget may limit students' participation in this program and adversely affect their scores on science tests.

Mr. Tarter discussed his school's partnership with the Bottomless Lakes State Park and the alignment of the school's curriculum with the outdoor areas in the school's vicinity. Like Ms. Angell, Mr. Tarter expressed his concern that the costs of field trips, particularly the transportation costs, may limit students' participation in these programs.

Ms. Huffstodt reported on her school's partnership with the Rio Grande Nature Center State Park. She said that last year was her first time to the nature center, when she took the Bosque training. Over four days, Ms. Huffstodt brought 320 seventh graders to the center, where they were given independent learning contracts to participate in 25 activities, among them wetlands, water in New Mexico, New Mexico history, wildlife, and geology. The learning contracts also integrated language, mathematics, and art.

Committee Discussion:

In response to a committee member's question about the average number of teachers trained through the New Mexico State Parks Bosque Education Guide Program, Ms. Beth Dillingham, Superintendent, Rio Grande Nature Center State Park, said that the teacher workshops are always full. She added that in FY 05, six teacher workshops were offered, training 136 teachers from APS.

In response to a committee member's question whether the use of "box tops" for transportation funds has been researched, Mr. Simon said "No," adding that individual teachers make their own choice how to spend the funds derived from box tops, and they may not be feasible as a permanent transportation fund for field trips. He added that every possible approach to alleviate this problem will be used. A lengthy discussion ensued on the topic of transportation funds for students to attend field trips to state parks, with various committee members voicing their own experiences with this problem as well as Mr. Simon.

In response to a committee member's question regarding the funding requested and whether the appropriation, if made, should be directed to PED or the State Parks Division, both Mr. Simon and Dr. Parkinson agreed that it should be appropriated to the State Parks Division for administering the program.

Senator Nava asked Mr. Simon to consider promoting this program by attending the New Mexico Town Hall meeting scheduled for November 17-29 in Glorieta, New Mexico. She also suggested that the State Parks Division solicit funds from established vendors like Coca Cola.

In response to a committee member's question whether other outdoor education partnerships will be cultivated with the Department of Cultural Affairs and the New Mexico Department of Game and Fish, Mr. Simon said that the draft report provides more information about partnerships with other agencies, such as the Department of Cultural Affairs, New Mexico Department of Game and Fish, the National Park Service, the US Forest Service, and the Bureau of Land Management. He said the New Mexico Department of Game and Fish conducts three or four Natural History Weekends each year, attracting between 15 and 25 teachers per weekend. Mr. Simon stated that these weekends are founded on curriculum-based programming and are tied to game and fish issues, such as fish, elk, or other wildlife resources. Even though teachers pay their own costs, the weekends have been proven popular among a pool of teachers statewide.

b. Tour-Outdoor Education Stations

After the discussion, Mr. Simon and staff from the Rio Grande Nature Center State Park guided committee members on a tour of the park, which included observation of children working at the following outdoor education stations: Discovery Pond, Bosque Loop Trail, and Babes in the Bosque. The committee observed firsthand some of the educational activities that students were experiencing at these outdoor stations around the Nature Center.

There being no further business, Senator Nava thanked the Rio Grande Nature Center State Park staff and the Friends of the Rio Grande Nature Center, and with the consensus of the committee, adjourned the LESC meeting at 12:30 pm.

_____ Chairperson

_____ Date