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January 20, 2014

MEMORANDUM

TO: Mr. David Abbey, Director, Legislative Finance Committee

FROM: Hanna Skandera, Secretary, Public Education Department *HS*

RE: Instructional Materials in Public Schools Evaluation

Thank you for the opportunity to respond to the draft evaluation report on Oversight and Spending of Instructional Materials in Public Schools. Please accept my compliments to your staff for their professionalism and collaborative approach throughout the evaluation process. As always, the Public Education Department (PED) is committed to continuous quality improvement, best practices, and positively impacting outcomes for all of our students in New Mexico. Ensuring that all New Mexico students have access to high quality instructional materials, aligned to the New Mexico Standards of Excellence and to the Common Core State Standards, as the schools' transition to full implementation is a primary focus of the PED. Providing high quality textbooks and supplementary instructional materials that reflect the New Mexico's academic standards are essential elements in the construction of an effective educational program that supports opportunities for students to learn and for teachers to have the resources necessary to teach the content. We look forward to continuing this effort in providing these essential tools to improve student learning and effective teaching.

The exit conference between LFC and PED was held Friday, January 10, 2014, and the draft report was discussed. Following is the PED response to the evaluation report.

The PED is concerned with many of the findings and recommendations contained in the report that amend existing statute to force certain changes with regard to fund management, expenditure of funds, and the implementation of an undefined level of adequacy. As policy makers, we should be careful not to rely on a limited, short-term evaluation to drive legislative change without examining the long-term implications. Although we are unable to provide a response to each recommendation, there are ten that are of primary importance to the PED.

The instructional materials process suffers from a lack of oversight, and school districts and charter schools sometimes expend funds in ways inconsistent with state law.

The evaluation notes that “all positions in the Instructional Materials Bureau have been vacant since April 2013, and ongoing vacancies have affected the duties of the bureau”. The Instructional Material Bureau (IMB) has in fact suffered from a high vacancy rate for a number of years. The PED has actively recruited staff for these positions, but the quality of the applicant pool has been very weak with no candidates strong enough to provide effective support for the bureau. In order to ensure our schools are served effectively, the PED does have a contractor in place to oversee the operations of the bureau under the oversight of the Director of Educator Quality. The PED has hired fiscal support for the bureau and has interviewed for the IMB bureau chief position. Because of work to improve bureau conditions over the last months, the PED anticipates that the bureau will be fully staffed by the end of the third quarter of FY14.

Additionally, the PED recently reorganized its audit bureau, reclassifying vacant positions from other bureaus to add five additional auditors. This new team will be responsible to conduct oversight and compliance audits for the program bureaus within the PED, including the IMB. The Executive budget recommendation requests an expansion position for FY15 that adds an additional auditor to the group, The LFC budget recommendation did not include this position.

School districts do not comply with statutory requirements on the spending of instructional materials funding. Available data suggest that many districts spend more than 50 percent of their funds on non-adopted material, violating statutory limits on instructional material expenditures.

The PED has concerns regarding these findings. The LFC staff clearly stated in discussions during the writing of the report that they used data from the PED stat books as the basis for this finding. The stat books track expenditures made for the purchase of instructional materials in a given year, but these expenditures include carryover funding that may skew the noted percentages.

The evaluation also states that the PED does not have a mechanism to track the percentage of expenditures of carryover funding year-over-year. This is true. However, Section 22-15-9(F) NMSA 1978 provides that “A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a private school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years”. It is not clear from the above language that the expenditure of these carry over funds should be conducted in the same manner as the annual appropriation or as carry over. These funds could be used to meet additional district needs for instructional materials. In discussions with superintendents, they have made the case that the reason funds are retained year-over-year is to pay for the cost of expensive (e.g., math, science) materials, rather than to skirt the expenditure guidelines.

Without staffing, the bureau has not been able to identify school districts violating statutory spending requirements or conduct audits since 2011.

The response above addresses concerns that the IMB is understaffed, and audits have not been conducted. Appendix E of the evaluation report lists the FY14 initial allocation for private schools. Of the more than 200 schools listed, 29, or about 14% are noted to be ineligible for funding. This finding is a result of significant review and audits by PED of these schools, their applications, their spending plans, and the provision of technical assistance to ensure compliance with data reporting. These PED initiatives were not included in the report.

School district carry-over amounts are sometimes lower than they should be, and in at least one instance this is due to a school district transferring instructional materials money to their operational fund.

With over 200 entities receiving instructional materials funding, the PED relies on district and school audits to identify problems of this nature. The appropriate expenditure of funds is one of the test items conducted during an entity's annual audit. In cases where specific items of concern are brought to the attention of the PED, we instruct the auditors for the districts and charter schools to include specific testing. The appropriate expenditure of funds will again be included as a specific test item for the FY14 audits.

Though 92 percent of school districts report that funding for instructional materials is insufficient, school districts, charter schools, private schools, and the Public Education Department consistently carry-over instructional material funds.

As has been noted repeatedly, the cost of purchasing instructional materials differs depending on the adoption cycle and needs of a district. Many times, these two conditions are not aligned and the expectation that all instructional material funds be expended annually is not reasonable. Just as each of us puts money away to replace expensive items in our homes (e.g., appliances, cars), districts need to put some money away to replace expensive textbooks when the need arises. Districts, charter schools, and non-public schools best understand their cycle of need for instructional materials and plan accordingly.

\$5.2 million appropriated by the legislature in FY13 for PARCC was not entirely allocated according to statute.

PED disagrees with this statement. Laws 2013, Chapter 227 appropriated funding "to purchase computers for administration of the next generation assessment developed by the partnership for assessment of readiness for college and careers to students in grades three through eleven". The means by which funds were to be allocated was not included in the appropriation language, and the PED developed a methodology to distribute these funds. All funding will be used in accordance with the appropriation.

Instructional materials fund distributions are potentially problematic.

The evaluation report states that "A forthcoming Legislative Education Study Committee report indicates that PED may not be including additional funding for new pupils in allocation adjustments as required by statute and are potentially miscalculating prior year adjustments". Not having read the LESC report, it is difficult to know how to address this issue. But at face value, PED disagrees with this finding. Many stakeholders seem to be under the impression that new pupils need to be funded at six times the per pupil rate. This is **not** what the instructional materials statute lays out as the procedure. Section 22-15-9(A) NMSA 1978 is very clear that, when developing the 90% estimated allocation, additional pupils be counted as six pupils. Since this initial allocation is based on the estimated forty-day membership for the next school year, it is important that allowances are included in the event these estimates fall short, thus the six pupil requirement. Section 22-15-9(B) however is very clear that when re-computing the final entitlement, the department shall use the forty-day membership for that year and readjust the initial allocation accordingly. The current process aligns with statute.

Without sufficient staffing, PED is also unable to actively verify that New Mexico is receiving the best price for instructional materials.

The evaluation report states that, with adequate staff, the department can "actively verify" that the state is receiving the best price for instructional materials. New Mexico has approximately 30,000 items on the multiple list and has virtually no way to ascertain what prices are being offered in other jurisdictions, even with significant staff increases.

Agreements, that have been entered into with publishers, provide that, if an item on the multiple list is offered at a lower price elsewhere, that price will be made available to New Mexico. One of the reasons New Mexico's adoption cycle was crafted in its current form was to ensure that it aligned with the adoption cycles of Texas, California, and New York to take advantage of large-scale pricing. To ensure that the state is receiving equitable pricing, the PED looks to the state's book depository to review pricing as publications change to ensure the best price available.

PED requested \$30 million for instructional materials adoption this year when the actual cost of these materials in this year's adoption will be approximately \$8.6 million.

There are multiple considerations when determining how to fund a statewide instructional materials program. To take into account only the actual attendance from the prior year, while disregarding other components, will cause difficulty for our districts and schools by significantly underfunding the statewide needs for instructional materials. The arithmetic is correct but the outcome is wrong. The Executive budget recommendation for instructional materials includes the cost of materials for all 9th through 12th grade students; the adult basic education set-aside; costs associated with new pupils, teacher materials, classroom resource materials; and the cost of off-cycle consumables. The complexity of funding a statewide program entails looking beyond the isolated elements of a previous year's enrollment.

New Mexico is unprepared for a transition to a personalized digital learning environment.

The transition to a personalized, digital learning environment is a significant issue with numerous components: hardware needs, infrastructure, bandwidth, and instructional materials. The PED is working closely with the Department of Information Technology (DoIT), Public School Facilities Authority (PSFA), school districts, state agencies, institutions of higher education, and private companies to address this issue. Their focus is to address statewide education technology issues relating to networking, broadband, and educational support. While these issues will have an effect on the instructional material process, this digital transition is broader in focus and requires considerably more analysis and planning to develop a long-term strategy. The PED will continue to work with the LFC and this broad-based group to collaborate on quality and accountability standards for all digital content, e-reader devices, electronic courses, and other technologies used for instruction.

Evaluation Recommendations.

The LFC evaluation report contains a number of final recommendations that may have unintended consequences if not considered in the context of the entire instructional materials program. In particular, those calling for statutory changes affecting the adoption process should be well thought out, with attention given to the impact on school districts and schools, as these changes will ultimately impact students.

Calls to make the Instructional Materials Fund a reverting fund based on a short-term evaluation are premature. Disallowing carry-over expenditures becomes punitive for those districts and schools that are making prudent decisions to maximize the effect of their purchases. Removing the ability for districts and schools to carry over balances will result in a "spend it all on anything before we lose it" approach that is counterintuitive to responsible, need-based planning. Further, the evaluation recommends tying carryover to sufficiency or the lack thereof. The extent and amount of carryover is not necessarily a function of "enough" or "not -enough" but rather, what instructional materials do districts and schools need at a given time and how do they put funding together to be available when they need them.

The LFC recommends that PED "seek out the review of open education resources and digital content during the summer review institute and list approved items on the state's multiple list". However, open

education resources, by definition, would not be submitted for review by a publisher or vendor. The amount of material that may be available could be unlimited, and determining what material would be of interest to teachers and districts would be difficult to determine. A second concern is that covering the cost of what could be a large adoption without the funding to pay reviewer expenses and all of the other costs involved in reviewing materials, may be difficult to accomplish.

Many of the recommendations, particularly statutory changes — those that eliminate the possibility of carrying funds over year-to-year and removing flexibility to purchase materials outside of the multiple list, do not take into account the fact that many of the issues the LFC evaluation report proposes to be fixed are legal and will actually interfere with the local school boards' and the superintendents' ability to make decisions that work best for their schools. The evaluation report states that the IMB is understaffed and so does not meet its obligations. Incompatibly, it is recommended that the vacant full time employee (FTE) position in the IMB is deleted. Other recommendations conflict with the PED's ability to operate effectively such as, removing FTE from IMB and developing costly new IT systems to track multi-year expenditures when much of this work should be conducted by the district's or charter school's independent auditor.

The PED finds value in some of the issues raised in the evaluation report, such as an increased number of audits and working with districts and charter schools to report sufficient instructional materials are available to students, and will work through the IMB and the office of the Director of Educator Quality to address those issues. PED is willing to work with our legislative partners and our stakeholders to develop strategies to improve the services of the IMB and ensure New Mexico's citizens will realize the best return on their investment.

Again, thank you for the opportunity to address your concerns.

HS/PA

cc: Governor Susana Martinez
Representative Luciano "Lucky" Varela, Chairman, Legislative Finance Committee
Senator John Arthur Smith, Vice Chairman, Legislative Finance Committee
Paul Aguilar, Deputy Secretary, Public Education Department
Leighann Lenti, Deputy Secretary, Public Education Department
Mr. Matt Montaña, Director, Educator Quality Division