

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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MINUTES
LESC MEETING
JUNE 27-29, 2011

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

Representative Rick Miera, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:10 a.m. on Monday, June 27, in Room 322 of the State Capitol, Santa Fe, New Mexico.

The following LESC members were present:

Representatives Rick Miera, Chair, Nora Espinoza, Jimmie C. Hall, and Mimi Stewart; and Senators Cynthia Nava, Vice Chair, Mary Jane M. García, and Lynda M. Lovejoy.

The following LESC advisory members were present:

Representatives Alonzo Baldonado, Ray Begaye, Eleanor Chávez, George Dodge, Jr., Roberto "Bobby" J. Gonzales, Tim D. Lewis, Sheryl Williams Stapleton, and Shirley A. Tyler; and Senators Vernon D. Asbill, Mark Boitano, Stephen H. Fischmann, Howie C. Morales, John Pinto, and Sander Rue.

In addition, Representative James E. Smith was in attendance.

On a motion by Representative Stewart, seconded by Senator García, the committee approved the agenda for the meeting.

The Chair introduced a new advisory member, Representative Tim D. Lewis, an educator representing southern Rio Rancho.

UPDATES: SECRETARY-DESIGNATE OF PUBLIC EDUCATION

The Chair recognized Ms. Hanna Skandera, Secretary-designate of Public Education, for updates on the Public Education Department reduction-in-force plan and other activities.

Public Education Department (PED) Reduction-in-Force Plan

Referring to a committee handout, the Secretary-designate discussed the Public Education Department (PED) reorganization and identified several challenges, including a 24.5 percent budget cut of approximately \$3.2 million for FY 13. According to Ms. Skandera, PED identified almost \$2.5 million in savings with 74 percent of budget cuts in operations that include:

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

Ms. Skandera acknowledged that despite these efforts to reduce the budget, a reduction-in-force (RIF) of 33 employees was necessary. She also said that PED is working with the State Personnel Office (SPO) to return interested and qualified staff to fill approximately 20 positions in the new reorganization of the agency.

Committee Discussion

Responding to a committee member who asked whether the new PED positions were permanent, Mr. Paul Aguilar, Deputy Secretary, Finance and Operations, PED, replied that there is a limited number of General Fund (GF) and GF/federally funded positions that are permanent. In response to a related question, Ms. Skandera explained that, under the reorganization, many returning workers will have different duties (and probably different pay) depending on the position.

In response to a statement by a committee member that one of the laid-off employees had placed multiple calls to SPO but received no help, Ms. Skandera said that, as of Friday, June 24, PED has been working closely with SPO and all 33 employees have been contacted. She added that some have already applied for other state government positions and 10 have been contacted for interviews.

The Chair expressed concern that the RIF was done before the reorganization. In response, Ms. Skandera stated that PED looked at how to reorganize more effectively before the RIF but concluded that, if the reorganization had been done first, the 33 employees subject to the RIF would not have been served well.

Responding to a committee member's question regarding media reports about professional services contracts, Mr. Aguilar replied that the request for proposals (RFPs) issued by the previous administration would have provided contractors for a variety of services to districts; however, PED has decided to cancel the contracts and provide the services in-house.

A committee member questioned whether the reorganization with fewer employees would result in better services provided by PED. In reply, Ms. Skandera indicated that, since she had come to New Mexico, she had heard many comments about the challenges facing PED, and she accepts the challenge for the agency to do better.

Recalling the Governor's statement during the 2011 session that \$33.0 million could be saved through school district administrative cost savings, a committee member asked whether that amount had been saved. Ms. Skandera replied that final budget approvals are due by July 1 and that she looks forward to reporting budget savings at the July LESC meeting.

In response to a committee member's question why PED had contracted with several people from out of state to form an advisory team, Ms. Skandera noted the intent of creating cost-savings for the state, which she would report in July.

Ms. Skandera responded to two concerns over PED's Educational Technology Bureau (ETB), which the Secretary-designate said had been eliminated because it had no funding source. In one case, she said that the department has a plan in place to review e-rate applications for the districts; and in another she said that she hopes to make Innovative Digital Education and Learning-New Mexico (IDEAL-NM) a more robust program, noting that it is a separate activity from the ETB. On a related point, Ms. Skandera said that PED was committed to continue to serve rural districts, despite the loss of six positions in the Rural Education Bureau, which had been under the ETB.

A committee member requested that PED provide the LESC a written response that specifies who is responsible for the work of each employee subject to the RIF, together with a list of the licenses of these employees and an indication whether their replacements have the same licenses.

The Chair requested that Ms. Skandera provide the deliverables of nine professional services contracts entered into by PED in January 2011; as well as details of cost-savings achieved and the amounts of annual and sick leave paid to employees subject to the RIF, in addition to any leave time lost by those employees.

Common Core Standards

Next, Ms. Skandera gave the committee an update on the Common Core State Standards (CCSS) adopted by New Mexico in 2010, noting that the standards are aligned with college and career expectations for rigorous content and application of knowledge through high-order skills. She also stressed that state standards need to be informed by those of other top performing countries so our students are prepared to succeed in a global economy.

The Secretary-designate referred to data in the most recent report from the Office of Education Accountability regarding remedial course-taking, which show that even some students who demonstrate proficiency on 11th grade standards-based assessments require remediation when they enter college, and she noted the importance of vertical alignment of standards.

Regarding the \$350,000 CCSS planning grant awarded to the Public Education Department (PED) by the Kellogg Foundation, Ms. Skandera stated that PED's goal is to be prepared for statewide implementation of CCSS by 2014. The planning grant objectives include:

- developing a strategic plan for CCSS implementation, including a communications plan;
- identifying and establishing a planning committee, with statewide representation;
- analyzing requirements for curriculum alignment;
- analyzing requirements for teacher preparation and professional development;

- analyzing requirements for assessments aligned to standards; and
- mapping assets that can be leveraged to implement CCSS.

Ms. Pamela Herman, LESC staff, added that a breakdown of the grant budget is provided on page 3 of the LESC staff report.

Committee Discussion

In response to a committee member who asked how the need for remediation is determined, Ms. Skandera stated that the institutions of higher education (IHEs) use American College Testing (ACT) scores as well as Accuplacer and Compass placement tests. She responded that “we have a way to go” when asked if the placement tests are aligned with secondary curriculum. The committee member commented that we do students a disservice if our secondary curriculum is not in alignment with placement tests. Ms. Skandera indicated that one of the purposes of CCSS is alignment; the organizations working on assessment are asking for “healthy communication” between secondary and postsecondary institutions.

In regards to CCSS and instructional materials adoption, a committee member asked whether districts may adopt materials that reflect Native American culture. Ms. Skandera explained that the districts are free to select up to 50 percent of instructional materials of their choice but that they must select the remaining 50 percent from the PED-approved list.

The Vice Chair requested that Ms. Skandera meet with a representative of the Math, Engineering, and Science Achievement (MESA) program.

The Vice Chair also requested that PED and/or the New Mexico Coalition of School Administrators remind each school district of a provision in law that allows high schools and district superintendents to request first-year college outcomes of their recent graduates; and she urged the secondary schools to do so.

A-B-C-D-F Schools Rating System

Ms. Skandera continued her update with a report on the implementation of the A-B-C-D-F schools rating system. Among other points, she noted that:

- elementary and middle school grades would be based on student proficiency and growth;
- high school grades would be based on student proficiency and progress; and
- additional indicators factored into the high school grade may include:
 - graduation rates;
 - graduation rate growth; and
 - growth in enrollment in Advanced Placement, International Baccalaureate, and dual enrollment, as well as ACT and SAT scores.

Ms. Skandera said that she had met four times with the Superintendent’s Advisory Council to receive input and that additional meetings were scheduled. She indicated that the Public Education Department’s (PED) goal was to release a proposed rule and hold two public hearings

in the summer, and then publish a final rule in early fall, with a release of baseline data for all schools.

The Chair recognized Mr. Tom Sullivan, Executive Director of the New Mexico Coalition of School Administrators (NMCSA), who introduced superintendents Mr. Kirk Carpenter from Aztec Municipal Schools and Dr. Cheryl Wilson from Socorro Consolidated Schools.

Mr. Sullivan noted that the coalition had endorsed three pieces of legislation, including SB 427, which created the school rating system, because they believed it would create a system better than adequate yearly progress (AYP) and that it would allow superintendents to communicate more effectively with their communities. The presenters provided the committee with a handout listing issues with the proposed rating system that they said remained to be resolved:

- concerns that the proposed timeline for development and implementation of the system is too short;
- a hope on the part of several superintendents that short-cycle assessments could be used to measure student achievement growth;
- a question how and when additional resources would be provided for students in the lowest quartile;
- a perceived conflict between language in the legislation charging PED to ensure that local school boards of schools rated D or F prioritize their resources for school improvement, and language in the *Public School Finance Act* delegating that responsibility to local boards;
- concern about how student achievement growth will be measured at the high school level, where standards-based assessments are administered only in 11th grade;
- a question whether high school ratings would be based on four-year or five-year graduation rates;
- a question whether, and how, student attendance would be a factor in ratings; and
- a concern whether the cohort sizes in small schools would create problems similar to those that have arisen in the AYP system.

Mr. Sullivan testified that some superintendents had discussed the possibility of providing an alternative, complementary proposal for the design of a school rating system that reflects their concerns.

Superintendent Wilson testified that she will be grateful for a better method of rating schools than AYP. In addition to the concerns raised by Mr. Sullivan, Dr. Wilson cautioned that problems will arise if the schools rating system is not well thought out. Among the issues she identified were:

- disproportionate effects depending on school size;
- annual fluctuations in ratings for rural schools due to their small populations; and
- the possibility that the system could be demoralizing, rather than motivating, for school staff if based on data that are perceived to be inappropriate or inaccurate.

Mr. Carpenter said that the superintendents have urged that the process be seen as a journey rather than as a race. He also observed that:

- circumstances vary throughout the state;
- the system may look simple at a high level, but it will be very complex when implemented;
- ratings reports must be accurate; and
- it might be wiser to proceed in stages, rather than moving too far and too fast.

Committee Discussion

Responding to a committee member who asked when school rating will commence, Ms. Skandera replied that the grades for school year 2011-2012 will be issued in July of 2012. She added that the New Mexico Cyber Academy will be an option for students in failing schools.

Committee members urged that the rating system include subjects other than reading and math as well as parent surveys, student nutrition, and participation in extracurricular activities. Ms. Skandera indicated that the group had considered including vocational education offerings as a factor, but not extracurricular programs. The member urged her to give his suggestion further consideration, since there appears to be a strong correlation between participation in extracurricular activities and student success.

In response to the concern expressed by a committee member that it would be a mistake to delay, Dr. Wilson and Mr. Carpenter said that the superintendents were asking only to adhere to the timeline prescribed in law. They added that publication of inaccurate baseline data would be impossible to remedy.

A committee member observed the potential for problems using short-cycle assessments to measure growth because PED has not mandated the use of a uniform short-cycle assessment statewide. Another member noted that several districts had discontinued using short-cycle assessments in order to save money during lean budget years.

A committee member observed that it appeared that PED and the superintendents were actually close to agreement on many issues. She stated that a lack of data-management capacity at PED, schools and districts due to budget cuts could be a major impediment to implementing the new system effectively. Finally, she said that, while data collection issues should not excuse a delay in moving forward, the process must be done correctly.

Noting that that educational equity is a major concern in New Mexico, the Chair questioned whether all 89 districts have the same capacity to meet the educational needs of their students. He cautioned that lawsuits could result if money is taken from districts based on ratings information, particularly if it turns out to be inaccurate.

A committee member wondered if, in light of the high degree of consensus regarding K-8 grades, it would be possible to implement a rating system for K-8 schools first while continuing to work on a consensus about the high school level ratings. Ms. Skandera responded that 77 students drop out of school each day in New Mexico, a situation too urgent to ignore. The committee member urged the Secretary-designate and the superintendents to continue their efforts to reach agreement on the system.

Among other points, committee members also discussed the need for local control while establishing consistent standards statewide; addressing the challenges involved with lack of uniform K-3 assessments statewide; and the reliability of the standards-based assessments and other assessments.

P-20 Educational Data System and Data System Council

Alluding to her handout, Ms. Skandera testified that the purposes of the P-20 Educational Data System are to:

- collect, integrate, and report longitudinal student level and educator data (PreK-20);
- conduct research and evaluation of federal, state, and local education programs; and
- ensure audit compliance with federal and state requirements.

Ms. Skandera listed the joint accomplishments by the Public Education Department (PED) and the Higher Education Department (HED), which include more extensive use of the unique student ID (identification), meetings and work of the Data System Council, and development of system content and reporting.

As next steps, Ms. Skandera cited:

- completion of the unique student ID pilot;
- assessment of the Children, Youth and Families Department and work force data exchange;
- reconvening the Data System Council;
 - completion of a governance and management plan;
 - implementation of a strategic plan; and
 - development of interagency data sharing agreements;
- evaluation of research capabilities;
- evaluation of audit and compliance requirements;
- devising P-20 system usability, goals, and measures; and
- identifying funding and support resources.

Committee Discussion

When asked to comment on the millions of dollars that have been spent on data systems that do not interact, Ms. Skandera replied that PED can do a better job of partnering with the districts to give and receive clean data; and she noted that a key finding of the district audits was the need for better data.

In response to a committee member's question regarding planning for providing new data for the Sunshine Portal in July 2012, Ms. Skandera replied that PED is thinking about it now and has begun conversations with the Department of Information Technology.

American Recovery and Reinvestment Act of 2009 (ARRA) Government Service Fund Allocation to Support Cyber Academy/Virtual School Program

Referring to a committee handout, Ms. Skandera provided background information on the fund. Among the points she noted were that:

- the Governor authorized the use of \$550,000 from State Fiscal Stabilization funds for the Innovated Digital Education and Learning-New Mexico (IDEAL-NM);
- the Public Education Department (PED) will use \$500,000 to pay for the cost of funding the learning management system for the remainder of FY 11 and for FY 12;
- \$50,000 will be used to continue staffing from July 1 through September 30; and
- FY 12 IDEAL-NM funding contained in HB 2 will cover the cost of staff for the remainder of the year.

Committee Discussion

In response to a question from a committee member, Mr. Aguilar clarified that there was only one allocation of \$50,000 for staffing.

In response to LESC staff concerns that the Higher Education Department (HED) has three vacant IDEAL-NM positions on the department's organization chart, Mr. Aguilar replied that PED had issues with Blackboard Learning Systems, the contractor that runs the operating management system for IDEAL-NM. He added that the Governor allocated \$500,000 to HED on behalf of PED to pay Blackboard through the end of September. In addition, because funding for IDEAL-NM employees ended June 30, the \$50,000 allocation was used to keep IDEAL-NM staffed until the next fiscal year, when the Secretary-designate can address her priorities with regard to the virtual classroom.

Public School Transportation Emergency Fund: Distribution of \$1.2 Million Special Appropriation for Fuel Increases/Other Fund Distributions

The Chair recognized Mr. Peter B. van Moorsel, LESC staff, who distributed to the committee a Public Education Department (PED) memorandum that provided instructions for the submission of a fuel supplement request for increased fuel costs. Dated June 17, 2011, Mr. van Moorsel continued, the memo established an application deadline of June 24. He added that the document was forwarded to the LESC by a superintendent who had received the memo on June 21.

Committee Discussion

Responding to concerns over PED's short time frame and lack of notifying the LESC, Mr. Aguilar explained that PED was working on a tight time frame before the end of the fiscal year. He added that PED had received five responses, with the expectation of more to come. Mr. Aguilar also said that PED is looking at cover letters from the districts that explain their needs and include receipts for fuel purchases.

Regarding concerns from school districts that the short time frame is difficult because some business managers are on vacation, Mr. Aguilar explained that the requests extend until 2012.

He added that, with only \$1.2 million available, PED wanted all requests submitted as soon as possible; and he emphasized that the districts may submit requests at their leisure and that the tight time frame was only for FY 11.

Recalling that the LESC had requested a public transportation cost study three years ago, a committee member asked whether anything like that is forthcoming. In reply, Mr. Aguilar stated that PED had undergone a review by the Legislative Finance Committee that will lead to better practices.

Responding to a committee member's concern that there may be a lack of funding for all district requests, Mr. Aguilar replied that there is never enough money to cover requests and PED will not allocate more than the \$1.2 million appropriation. He asserted that PED wanted to examine all aspects of the requests to ensure that they are valid.

The Chair requested that PED provide a spreadsheet of disbursements, including charter schools, and a breakdown of the Emergency Transportation Distribution Fund.

K-3 Plus Program

The Chair recognized Dr. David Harrell, LESC staff, for a presentation on changes to the K-3 Plus Program. This program, Dr. Harrell said, is a six-year pilot program enacted in 2007 that extends the school year in kindergarten through grade 3 by at least 25 instructional days. He said that the program is intended to demonstrate the academic and social benefits of increased time in kindergarten and the early grades.

For FY 12 (school year 2011-2012), Dr. Harrell stated, the Legislature appropriated \$5.3 million for K-3 Plus; and the Public Education Department (PED) approved 51 programs in 14 school districts and one state-chartered charter school, intending to serve 6,630 students altogether.

Each year, Dr. Harrell continued, the program has had changes in the requirements or conditions placed by PED. Overall, Dr. Harrell observed, the trend has been toward a more prescriptive application, with this year being the most prescriptive of all, particularly with regard to the time spent on literacy, the students that are the focus of the intervention, and the resources and funding provided to support those services.

One requirement instituted with the application for school year 2009-2010 and reinforced now is that schools have been directed to "make every effort to progress the classroom of (K-3 Plus) students with the same teacher in the regular school year." In addition, Dr. Harrell continued, for the first time in the course of the program:

- "districts should put an increased emphasis and time on literacy instruction" in order to align with the Governor's education priorities;
- the program "should be an integral part" of each district's or charter school's program "to insure [sic] that all children read by third grade";
- "it is important to prioritize data-driven literacy instruction and interventions to the lowest 25 percent of students in each grade level";
- the amount of time spent in literacy instruction must vary according to the level of students in the Response to Intervention framework: 30 additional minutes for students

in Tier 2 and 60 additional minutes for students in Tier 3 in the Response to Intervention framework; and

- the amount of awards “may be reduced based on the actual number of students completing at least 20 of the 25 days of the K-3 Plus program.”

Dr. Harrell said that five districts – Bernalillo Public Schools, Carrizozo Municipal Schools, Jemez Mountain Public Schools, Las Cruces Public Schools, and West Las Vegas Public Schools – declined to participate in the program in school year 2010-2011 for various reasons, some of them the new attendance requirement and the teacher assignments.

Finally, Dr. Harrell noted some concerns raised by Dr. Linda Goetze, co-director of a five-year longitudinal study of the K-3 Plus Program, about the effects that the latest changes may have on the study, among them:

- Las Cruces Public Schools, the largest of the study’s four partner districts, may withdraw from the program rather than risk causing the district’s budget to go into the red;
- a focus on the lowest 25 percent of students at each grade level tends to reinforce the false impression among some parents and students that K-3 Plus is a remediation program rather than an enhancement program designed to close the achievement gap; and
- changes in the state-funded program may jeopardize the fidelity of implementation and limit the study’s ability to inform state and national education policy.

Referring to her handout (slide 27), Ms. Skandera noted the difference between the percentage of students funded versus those actually enrolled. In FY 11 funding was provided for 8,011 students but the actual enrollment was only 5,816 students, or 72.6 percent of funded versus actual enrollment. She stated that PED implemented a “per student” funding formula and established attendance requirements to use money more effectively.

Committee Discussion

Responding to committee concerns about the effects of focusing on the bottom 25 percent of students, Ms. Skandera explained that the program is for all students, adding that PED is merely asking for a plan for intervention for the lowest 25 percent. She also emphasized that PED is calling for ideas on how to deal with students struggling the most, not to neglect others.

In response to a suggestion from a committee member that the 90-minute reading block for students in Tier 3 might meet the requirement for addressing the lowest 25 percent, Ms. Skandera said she had not considered that nuance and would hold discussions with any school before denying funding.

A committee member stated that K-3 Plus is one of the state’s best programs but difficult to implement especially if the school has a continuous calendar. The member also suggested that K-3 Plus be made part of the regular school calendar and that its effects be reviewed; especially what this member called the fatigue factor that sometimes affects K-3 Plus teachers. In reply, another committee member noted that the program is a pilot because there is no funding to make it mandatory and that data are not yet available to support making the program mandatory.

A related point of concern among committee members was the detrimental effect that the new requirements for school year 2011-2012 might have on the longitudinal study currently underway, especially in light of the withdrawal from the state-funded program by one of the four partner districts in the study and the reservations expressed by other districts.

In response to a question from a committee member regarding programs for remedial reading, Ms. Skandera alluded to the \$15.0 million federal grant for striving readers and suggested that it should have the same requirements as the K-3 Plus Program.

The Chair requested that Ms. Skandera email the striving readers grant information to him.

Educational Retirement Employer/Employee Contribution Swap

The Chair recognized Ms. Frances Ramírez-Maestas, LESC Director, for a brief overview of the educational retirement swap. Ms. Maestas explained that a 1.75 percent share that had been paid by the employer will now be paid by the employee. Then she alluded to a memo regarding the school districts paying for the swap, which indicated a \$1.9 million disproportionate share of pension costs to the districts. According to Ms. Ramírez-Maestas, the Department of Finance and Administration adjusted the figure to send \$1.16 million back to the school districts for that purpose.

Committee Discussion

A committee member requested that LESC provide a nationwide comparison of employee/employer contributions and a comparison of the Educational Retirement Board and the Public Employees Retirement Association plans.

AUDIT OF SELECTED CHARTER SCHOOLS BY PED

The Chair recognized Mr. Craig J. Johnson, LESC staff, for a briefing on the Public Education Department (PED) audit of selected charter schools.

Mr. Johnson testified that PED began the audits on May 3 and released a memorandum outlining the results of the charter school audits on June 2. According to Mr. Johnson, PED staff provided charter school data outlining changes from March of school year 2009-2010 to March of school year 2010-2011 for the following membership categories:

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

Mr. Johnson stated that, for each of these categories, the documents compared the growth for individual charter schools to the average growth for charter schools statewide. To aid in the

selection of charter schools to be audited, Mr. Johnson explained that PED established a threshold of 200 percent or more of the statewide average growth.

The PED audit criteria, Mr. Johnson continued, prompted LESC staff to question why:

- PED used 80th day data as opposed to the 80th/120th day average, which is more closely aligned to actual funding practices;
- the expedited timeline for the audit was necessary; and
- PED used data reflective of year-over-year growth, but did not conduct an analysis of long-term trend data.

Mr. Johnson testified that concerns regarding the audit – primarily the timeline and the data and methods used to select charter schools – compelled the LESC Director to request that the LESC staff not be included in the PED audit.

With regard to the audit findings, Mr. Johnson said that PED had noted that the minor compliance findings were often due to:

- compliance issues not consistent with state or federal laws;
- poor data quality;
- inaccurate or delayed record-keeping; and
- discrepancies between data submitted to PED and data included in a student's Individualized Education Plan (IEP).

According to Mr. Johnson, PED noted that the major compliance findings were often due to:

- compliance issues not consistent with state or federal laws;
- unusually high rates of ancillary services provided; and
- failure to provide services to children despite receiving dollars for these services from the state.

Mr. Johnson also noted that the 28 charter schools were categorized into four compliance categories for the special education component and for the Training and Experience (T&E) Index component, as follows:

- special education findings:
 - nine charter schools were cleared through the audit;
 - seven charter schools were cited for minor compliance issues;
 - six charter schools were cited for major compliance issues; and
 - one charter school, Nuestros Valores Charter School, in Albuquerque, was selected for additional audit measures based on initial findings;
- for Nuestros Valores:
 - severe data quality issues;
 - inability to verify data reported to PED;
 - inability to validate records and provider service logs;

- inability to verify that students were receiving services; or
 - unusual trends needing additional review; and
- the T&E findings:
 - one charter school, Rio Gallinas School, was cleared through the audit;
 - seven charter schools were cited for minor compliance issues; and
 - five charter schools were cited for major compliance issues.

For charter schools cited for minor or major compliance issues, Mr. Johnson said that PED committed to “follow up with these charter schools within the next two weeks outlining specific remedies and a timeline for coming into compliance.” He added that, according to the memorandum, the review of charter school data not only found errors and inconsistencies, but also raised broader systemic issues regarding the way New Mexico identifies special education students and their needs.

Mr. Johnson stated that, while supportive of efforts to ensure a correct distribution of funds, LESC staff has the following concerns:

- It appears that the audit methodology used by the department was not sufficient to clearly identify formula chasing. The audit procedures and tools focused on an assessment of special education compliance as opposed to an audit to ensure accurate data reporting for funding purposes.
- The selection of charter schools was not always based on the number of times the charter school exceeded statewide growth in the data sets that PED provided to legislative staff.
- Student growth in one special education category was viewed in isolation from a possible decrease in other special education categories. For example, growth in C level students could be explained by a decrease in D level students.

AUDIT RESULTS

The Chair recognized Ms. Hanna Skandera, Secretary-designate of Public Education, for her presentation of the Public Education Department (PED) audit results. She stated that the results are “not dissimilar” to those of the districts; however, no charter school was audited for preschool because none had one. Ms. Skandera also noted that the charter school bar was different because charter schools are individual schools, not districts. Last, she reported that the lessons learned are also “not dissimilar” and that PED staff is working with an outside entity that will conduct an in-depth audit of nine school districts and one charter school.

LESC SURVEY OF AUDITED CHARTER SCHOOLS

The Chair recognized Mr. Craig J. Johnson, LESC staff, who described the LESC survey of the audited charter schools to gain a better understanding of the process and the perspectives of charter schools.

On May 31, Mr. Johnson reported, LESC staff emailed the administrators of the 28 charter schools to request their participation in an online survey, the same online instrument used to solicit district feedback. He noted that the charter school respondents shared many of the same concerns voiced by school districts, particularly the short time frame. Mr. Johnson also commented that both audits used a statewide growth factor of 200 percent above average as a problem indicator. He said that 24 out of 28 administrators replied to the survey by June 22.

According to Mr. Johnson, the charter schools provided mixed reviews that, overall, were more favorable than the district survey results. He also advised that issues involving bad data were persistent in both surveys, and he emphasized the need to identify and correct problems with the data.

CHARTER SCHOOL TESTIMONY

The Chair recognized Mr. Michael Vigil, Chief Executive Officer, New Mexico Coalition for Charter Schools (NMCCS), who testified that he supports accountability and appreciates audits that help schools operate better. However, he also expressed concerns regarding the short time frame and minimal amount of time spent on the audits, noting that several audits took only a few hours. Mr. Vigil also noted that, in some cases, schools were denied the opportunity to clarify things that were misinterpreted and felt the audits suggested a presumption of guilt. He ended his testimony by stating that NMCCS will be working with the National Alliance for Public Charter Schools with regard to SB 446, *Charter School Contracts*.

Next the Chair recognized Mr. Robert Baade, Director, Robert F. Kennedy Charter School, who was accompanied by his Special Education Director, Mr. Pete Ciurczak. Mr. Baade first explained that his charter is approved by Albuquerque Public Schools (APS) and that the school typically responds to district audits. He also defended the school's special education enrollment, which is higher than the district's because the school serves students that no one else serves and the student population is highly mobile, among other factors. Last, Mr. Baade emphasized that his school will work with the Public Education Department (PED) to comply with training and experience findings in the audit. Mr. Ciurczak added that, unlike the PED audit, APS audits have been helpful and noted that three of five PED findings were data entry errors that he made and immediately corrected in the Student Teacher Accountability Reporting System (STARS). He also created an Individualized Education Plan (IEP) corrective action plan two hours after receiving the findings.

The Chair recognized Ms. Christine Lopez, Principal of La Promesa Early Learning Center, who testified that her office had to fax more than 100 sheets of IEPs to PED when the fax machine at PED abruptly stopped at approximately 8:00 p.m. on May 5. She believes that the school did all it could to comply with the audit request, yet it was identified as having major compliance issues. According to Ms. Lopez, her office contacted PED on May 10 and asked whether the department had received all of the information requested, but PED never responded. She learned later that the PED auditor had not read any of the supporting material that had been faxed. The absence of feedback, together with the negative media coverage, caused Principal Lopez to have serious concerns.

The Chair next recognized Dr. Dolly Juarez, one of the founders of Southwest Learning Centers (SLC). She first noted that PED's use of the word "audit" was not accurate; it was more like a compliance check. Dr. Juarez also acknowledged that all charter schools are on a learning curve and that SLC had minor file discrepancies that became "major compliance issues." In addition, she noted that in several cases, having unofficial rather than official transcripts was listed as a major finding. Last, Dr. Juarez testified that SLC has already responded to the findings but also wanted a formal opportunity to be heard.

Committee Discussion

In response to a committee member who asked whether any charters will be suspended or revoked for schools that are not in compliance, Ms. Skandera replied that more in-depth audits have been scheduled and that in the short term she expects more coordination between the affected charter schools and PED.

When a committee member suggested that PED make a clearer distinction between major issues and minor technical glitches, Ms. Skandera replied that PED had tried for consistency between the district audits and the charter school audits. She added that, although the majority of issues may seem small, they are related to compliance with state and federal law.

Noting the question whether PED's audit methodology was sufficient to identify formula-chasing, the Chair asked whether any formula-chasing had been identified. In reply, Ms. Skandera advised that PED must wait for the in-depth audits of one charter school and nine school districts to make that determination.

The Chair also asked about the outside company hired to conduct the audits. In reply, Ms. Skandera said that the company is from New Mexico and is being paid from the savings that resulted from the Office of Education Accountability (OEA) not being staffed.

Speaking of the OEA, Ms. Frances Ramírez-Maestas, LESC Director, said that repeated inquiries to the Department of Finance and Administration to obtain information about the status of OEA had failed to produce any results. Ms. Ramírez-Maestas also alluded to a discussion with attorneys from the Legislative Council Service, who have some concerns about the legal and constitutional issues surrounding the Executive's decision not to fund an office created in statute.

A committee member requested that PED provide a list of the 28 charter schools identified for audits that includes the authorization date of each charter school and the chartering authority, whether the Public Education Commission or a local school board.

The Chair requested that PED provide the deliverables for the outside agency using OEA money.

SUPERINTENDENTS AND COMMUNITY INPUT

The Chair recognized Ms. Ejuvijen Thomas, a teacher from Truman Middle School in Albuquerque, who expressed some concerns about plans for teacher evaluation. For one thing, she thinks that, even though she instills confidence in them, her students will give her negative ratings because she is a strict math teacher. For another thing, as her seventh grade students have

observed, the standards-based assessment is neither formative nor summative; it has meaning only to the state and only as punishment. Ms. Thomas emphasized that her success is based on students' expressing gratitude to her years later, but if her evaluation is tied to standards-based assessments, she will be viewed as a failure, despite putting in extra hours. Last year she wanted to retain seven students but the parents waived them through.

Ms. Thomas also observed that most special education students are summer babies who start school too soon. She explained that Norway has two starting times for students: September and January. Last year, the Public Education Department's (PED) response to the Norway solution was that New Mexico would need twice as many teachers.

The Chair recognized Mr. Ken White, a retired teacher who had written an op-ed piece in the *Albuquerque Journal* protesting the makeup of the Teacher Evaluation Task Force. He observed that the task force is composed of people who either have never been in the classroom or have left the classroom, and he does not believe the task force will be effective unless it includes current teachers.

Next, the Chair recognized Superintendent Jamie Widner from Melrose Public Schools, who expressed concern that only one superintendent was on the task force. Alluding to the audit issue, Mr. Widner added that he does not believe that his district deserves an in-depth audit. He still questions the validity of the PED audits, and he believes that much of the information the department collected is incorrect. Mr. Widner also identified himself as the superintendent who informed the LESC of the PED application for supplemental fuel costs.

The Chair recognized Ms. Alyssa Agranat, a National Board Certified Teacher from Truman Middle School, who wanted the opportunity to directly address Ms. Skandera regarding her concerns about being evaluated by non-teachers. She believes the task force would be more effective with additional teachers from a variety of backgrounds, and she is concerned that much of the research provided to the task force has come from corporate sponsors. She advised that there is a growing body of research questioning Value Added Models (VAM); and she suggested that binary evaluations are just a small portion of the overall evaluation process.

Ms. Agranat further informed the committee that her principal observes her work in the classroom and randomly interviews one of her students; then the principal discusses that student's growth with her. Ms. Agranat warned that it would be rash for the state to completely revise teacher evaluations, favoring instead improving the current three-tiered system, which she believes is a good way to recommend and reward teachers though perhaps the progression through levels could be made more challenging.

The Chair recognized Ms. Lisa Patterson, a special education teacher at a Title I school. She expressed concerns with how VAMs will affect her career and family. For example, if her students start below grade level, they will not be her students once they do reach grade level. Ms. Patterson confided that she has a special needs son and questioned whether it helps to tie his performance to what his teachers are paid. Ms. Patterson stated that, as teachers and parents, we do a disservice to youths when we forget they are children and not data points.

There being no other business, the Chair, with the consensus of the committee, recessed the LESC meeting at 4:57 p.m.

**MINUTES
LESC MEETING
JUNE 28, 2011**

Representative Rick Miera, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:12 a.m. on Tuesday, June 28, in Room 322 of the State Capitol, Santa Fe, New Mexico.

The following LESL members were present:

Representatives Rick Miera, Chair, Nora Espinoza, Jimmie C. Hall, and Mimi Stewart; and Senators Cynthia Nava, Vice Chair, Mary Jane M. García, and Lynda M. Lovejoy.

The following LESL advisory members were present:

Representatives Alonzo Baldonado, Ray Begaye, Eleanor Chávez, George Dodge, Jr., Roberto “Bobby” J. Gonzales, Tim D. Lewis, Sheryl Williams Stapleton, and Shirley A. Tyler; and Senators Vernon D. Asbill, Mark Boitano, Stephen H. Fischmann, Howie C. Morales, John Pinto, and Sander Rue.

**LESL/LEGISLATIVE FINANCE COMMITTEE (LFC) JOINT EVALUATION OF
PUBLIC SCHOOL FUNDING: WORKPLAN AND TIMELINE**

The Chair recognized Mr. Peter B. van Moorsel, LESL staff; Mr. Charles Sallee, LFC staff; and Mr. Matthew Pahl, LFC staff, to discuss the LESL/LFC Joint Evaluation. Mr. van Moorsel began by stating that, prior to the 2011 session, the chairs of the LESL and LFC had discussed a joint evaluation of public school funding, including selected factors in the public school funding formula. At the request of the chairs, the LESL and LFC staffs have developed a proposed workplan and timeline for the evaluation.

Mr. van Moorsel cited three main objectives concerning the funding of New Mexico’s public schools:

1. Allocation: Assess how the funding formula distributes resources among public schools, whether it is aligned with state policy goals, and whether it promotes efficient and effective educational services.
2. Administration: Review the administration of the public school funding formula by the Public Education Department (PED), including the collection, validation, and input of data, as well as any funding formula-related guidance that PED provides to school districts and charter schools.
3. Accountability: Assess PED’s oversight of public schools to ensure proper administration and allocation of resources in a fair, accurate, and equitable manner.

Mr. van Moorsel explained that the evaluation aims to address these objectives by focusing on certain components of the public school funding formula that have been items of discussion for both committees, including:

- 3-and 4-Year Old Developmentally Delayed Eligibility;
- Ancillary Staff Units and Special Education Classification;
- At-risk Units;
- Bilingual Units;
- Charter School Growth Units;
- Size Adjustment Units; and
- the Training and Experience (T&E) Index.

In addition, Mr. van Moorsel emphasized that the evaluation will address data quality.

According to Mr. van Moorsel, the evaluation team has developed a tentative timeline for the project that includes the activities listed below:

- June 20-24: preparation of planning documents;
- July 1: entrance conference with PED;
- August 30: field work scheduled to be completed;
- October 28: exit conference with PED; and
- November LFC and LESC meetings: presentation of the results and recommendations of the review to the respective committees.

Committee Discussion

In response to a committee member's question regarding LFC concerns with unit funding, Mr. Sallee replied that one concern is the proper allocation of resources to at-risk students. When asked to give an example, he noted that the Deming Public Schools, Gadsden Independent Schools, and Hatch Valley Public Schools, had some of the highest at-risk populations yet some of the lowest funding levels.

Another concern of the LFC, Mr. Sallee explained in response to another question, is the definition of the term "member." He cited the recent study of the 12th grade done in collaboration with the University of New Mexico, which found that the current definition allows districts to be reimbursed fully for students who attend school only half-time and that districts define the term "half-time" in a variety of ways.

Committee members expressed some concerns about bilingual education. Regarding bilingual units, a committee member advised staff to look at PED's move during the previous administration to a new test (ACCESS) with cut scores that doubled the number of bilingual units throughout the state. Mr. Sallee confirmed that the team will examine how students qualify to generate additional units and review statutory, regulatory and other guidelines. Another committee member cautioned staff to abide by federal guidelines and recalled that public school funding formula money for bilingual education covers only approximately one-third of the actual cost.

In response to a committee member question regarding the last study of the public school funding formula, Mr. Sallee replied that wholesale adoption of the study's recommendations is not likely; however, the previous study will inform policy analysis and the new study will include prior recommendations, especially with regard to special education.

One committee member commented that it will be difficult to complete the study in three or four months; and another asked whether the study will examine the concept of sufficiency in terms of the state's constitutional obligation to fund a system of public education. In response, Mr. Sallee said that the study will look at the mechanisms for allocation and distribution of funds.

As additional points, the LESC Director expressed support for the collaborative evaluation but suggested that, if complete consensus is not achieved, each committee may draft its own legislation; and the Chair cautioned staff to use new data, not old. In terms of the concept of a school-aged person, the Chair also advised that, while New Mexico law is silent on any age limit, the federal law may specify age. He also said that, while age can be a spending issue for the state, a high school diploma can still be valuable for older people.

A committee member requested that the LESC/LFC staff provide definitions of:

- state policy goals; and
- “efficient” and “effective” – as used in the LFC/LESC program evaluation of public school funding.

PUBLIC SCHOOL TRANSPORTATION: LFC PROGRAM EVALUATION

The Chair recognized Mr. Charles Sallee, Deputy Director for Program Evaluation, Legislative Finance Committee (LFC); and Mr. Paul Aguilar, Deputy Secretary, Finance and Operations, Public Education Department (PED), for a presentation on the LFC evaluation of public school transportation.

Mr. Sallee began by explaining that PED is responsible for the funding and oversight of public school transportation, allocating more than \$100 million for:

- the lease or purchase of school buses;
- local operating expenses; and
- the transportation of approximately 180,000 students.

Mr. Sallee then identified several problems facing the school transportation program:

- a problematic funding formula;
- poor oversight of districts (some districts report transporting more students than are enrolled);
- administrative inefficiencies at PED; and
- issues regarding the purchase of global positioning systems (GPS) for school buses.

On the last point, Mr. Sallee explained that PED spent nearly half of a \$2.0 million appropriation to purchase GPS units and may have violated the law by paying \$500,000 for maintenance costs without Department of Information Technology (DoIT) approval. He added that a former PED staffer went to work for the contractor, Zonar, which is probably a violation of the general contractor's agreement.

Mr. Sallee testified that the evaluation recommends:

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

He also recognized PED staff for beginning to implement some of the recommendations.

Mr. Aguilar noted that the report was clearly unfavorable, highlighting many issues inherited from the prior administration. He also thanked the LFC for a thorough, informative review.

To address the lack of written procedures, Mr. Aguilar stated that he has directed staff to begin preparing a manual immediately, and he expects to submit it for LFC/LESC review. In addition, he said PED could not calculate the formula because it did not have the software. To resolve this issue, Mr. Aguilar contacted New Mexico Tech to provide a computer forensic expert to open and run the allocation software, as well as reconstruct the formula to align with statute. He added that PED has tightened its internal controls.

Regarding the GPS system, Mr. Aguilar testified that, although \$2.0 million was provided, the actual cost was only \$970,000 and that the balance reverted to the Capital Outlay Fund. He also discovered there was a \$670,000 maintenance agreement to provide internet capacity and pay for maintenance even though the units have a 10-year warranty. To avoid the bid process, PED had worked through Deming Public Schools because the district had a contract with Zonar. The contractor, according to Mr. Aguilar, sent Deming a bill for \$500,000, resulting in two procurement violations – a no-bid contract and payment in advance of services.

Noting that the current contract with Zonar expires on June 30, Mr. Aguilar emphasized that PED does not intend to renew the contract. He also disclosed that a 2010 appropriation to purchase Z-pass systems to give every student a card is currently on hold because PED did not make the request. Mr. Aguilar testified that PED is now in compliance with the *Procurement Code* and unwilling to take actions that would violate state law.

When Mr. Aguilar noted that allocations to bus contractors may be insufficient, discussion ensued regarding replacement buses and the Chair recognized Mr. Cory Adair, President of the New Mexico Student Transportation Association.

Mr. Adair distributed handouts and stated that he met with his board members to generate responses and to show interest in helping to resolve issues, noting that the same issues keep coming up and the association wants to be involved in any way it can help.

Mr. Maurice Ross, Executive Director of Student Transportation for Rio Rancho Public Schools (RRPS), expressed concern that districts differ widely in what they report: some, like RRPS, report actual ridership, while others report “eligible” ridership. He noted that RRPS would rather report “eligible” ridership even if the value per student went down. The district has reduced its fleet while increasing ridership due to better routing.

Mr. Adair emphasized that Albuquerque Public Schools leases its buses, and the contractor is losing money.

Committee Discussion

In response to a committee member who asserted that the districts want to know when and how much funding they will receive for supplemental fuel, Mr. Aguilar replied that there is no set dollar amount per district and that PED is evaluating when to distribute the funds. He added that PED wants to allocate the funds in a prudent manner based on need and that 55 districts applied on time for supplemental fuel funds and four districts applied before the end of the fiscal year.

A committee member noted that PED needs to address multiple concerns including:

- safety for students walking to and from school;
- different start times for schools, including charter schools;
- an increased number of routes; and
- difficult terrain that may require four-wheel drive.

In response to a committee member's question regarding the lack of a PED public school transportation manual, Mr. Aguilar replied that PED does have an operations manual but in past years one employee handled transportation operating procedures. He also emphasized PED's need for separation of duties for better internal controls, unlike in the past.

A committee member asked whether concerns are being addressed involving varying mileage calculations and tribal and state taxes on fuel. Mr. Sallee replied that it is unclear why Gallup-McKinley County Public Schools' figures are so low compared to other districts. He added that the overly complex formula works against transparency and that school districts complain about the lack of guidance from PED.

Responding to a committee member who asked whether the \$500,000 related to GPS units is unaccounted for, Mr. Aguilar said that Santa Fe Public Schools (SFPS) had decided to use GPS units in advance of the state and that Zonar had shipped 100 units to the contractor for installation immediately after the state began purchasing units. He noted that PED had no receipt or shipping order for the SFPS units; however, PED can account for all of the units, some of which are in PED's possession. The committee member asked if there were legal consequences and Mr. Aguilar explained that, on behalf of the LFC, Senator John Arthur Smith has requested an Attorney General's investigation, that PED is preparing information for the investigation, and that the incident was reported to the Department of Public Safety.

When asked about PED's next steps, Mr. Aguilar said that the department plans to implement sound business practices and report to the Legislature around session time. He added that the transportation funding formula is not in law; it is merely a list of directions to PED.

Noting that each district receives its own distribution, a committee member suggested it may be a good opportunity to consolidate transportation services to save money. On that point, the Chair asked whether regional education cooperatives (RECs) are allowed to negotiate transportation services. Mr. Aguilar replied that the law allows RECs to provide a variety of services, including cooperative purchasing.

Responding to a committee member who wanted to know the cost of the LFC audit, Mr. Sallee testified that the LFC paid \$20,000 for the audit.

In response to a committee member's question regarding transportation fund reports to local school boards, Mr. Sallee replied that school boards approve and monitor the budget. He added that monitoring procedures vary across the state, adding that both the LFC and the LESC have worked to standardize the procedures.

A committee member requested that PED provide the name of the New Mexico representative for Zonar.

The Chair requested that PED provide updates regarding supplemental fuel allocation via email.

EDUCATIONAL RETIREMENT BOARD: RECOVERY OF OVERPAYMENTS

The Chair recognized Ms. Jan Goodwin, Executive Director, New Mexico Educational Retirement Board (ERB), and Mr. Peter B. van Moorsel, LESC staff, for a presentation covering the recent refund overpayments and ERB's efforts to recover the overpaid amounts.

Mr. van Moorsel informed the committee that on May 25, 2011 the ERB issued a statement relating to errors that ERB had made in calculating interest on refunds of members' contributions in July and August 2010. He added that the ERB reported that on July 1, 2010 the agency implemented a change in the process used to calculate interest on:

- contributions refunded to members who have terminated employment; and
- the contributions that are paid to the beneficiaries of members and retirees.

According to Mr. van Moorsel, within weeks of implementing the new process, ERB staff determined that there was an error in the interest calculation. He noted that refunds were temporarily stopped while staff addressed the error, which was caused by a software problem.

Mr. van Moorsel said the ERB reported that during July and August 2010 interest was overpaid on 693 refunds:

- the total amount overpaid was \$1,690,139.85; and
- overpayments ranged from \$0.66 to \$306,264.29.

ERB also reports that interest was underpaid on 15 refunds:

- the total amount underpaid was \$1,441.96; and
- underpayments ranged from \$96.13 to \$923.77.

Mr. van Moorsel noted that, during the June meeting of the Legislative Finance Committee, ERB reported that the agency had:

- sent preliminary letters to all recipients;
- called all recipients of overpayments greater than \$1,000 to inform them of and apologize for the error; and
- recalculated all July and August checks.

Regarding the current status of the overpayment of funds, Ms. Goodwin reported that 575 of the overpayments were less than \$1,000. She also explained that, during the recalculation in May, ERB staff found that calculation errors had not been completely corrected; therefore, they recalculated the interest on all the checks, and they are now in the process of reaching out to all affected members and beneficiaries. Ms. Goodwin made the following points regarding ERB's current status:

- the software was correctly implemented on May 23, 2011;
- actuaries and auditors agree with the calculations;
- ERB is reaching out to others with mispayments;
- 360 refunds were processed as of May 20, 2011;
- all software changes now have a senior sponsor;
- software documentation is written in plain English;
- the processes for software implementation and testing have been improved;
- the agency has implemented better follow-through on staff concerns; and
- the agency has stressed the importance of "trusting your instincts."

Committee Discussion

In response to several questions regarding people who were greatly overpaid, Ms. Goodwin stated that only one or two people called to question the amount and that ERB is doing its best to negotiate payment plans with people who cannot repay the amount in one lump sum. She also confirmed that ERB is assessing interest at 2.55 percent to follow IRS procedures.

Ms. Goodwin explained that, with the 3.25 percent shift in place, members earning over \$20,000 pay 11.5 percent of their salary and employers pay 9.5 percent. On the Public Employees Retirement Association side, she observed that the employer continues to pay a higher rate than the employee; historically, ERB employees have consistently paid more than the employer. Ms. Goodwin added that she asked actuaries to produce a "solvency matrix," which will project various funding goals from now through 30 years into the future.

Responding to a committee member who asked if the compensation package could be a factor in improving teacher competency, Ms. Goodwin replied that the ERB periodically analyzes retirement benefits as a factor in attracting and retaining educators, but it is hard to determine whether there is an effect.

Ms. Goodwin announced that the ERB will conduct an actuarial workshop on July 15 and invited committee members to attend or watch a video of the workshop at a later date.

The Chair requested a written explanation of how much the employee contributes for every dollar that the employer contributes.

STUDENTS AT THE CROSSROADS: A STUDY OF THE 12TH GRADE IN NEW MEXICO

The Chair recognized Dr. Peter Winograd, Director, University of New Mexico Center for Education Policy Research; and Mr. Charles Sallee, Deputy Director for Program Evaluation,

Legislative Finance Committee (LFC), for a presentation on the study of New Mexico's 12th grade.

Dr. Winograd first asked other members of the research team to introduce themselves: Tinley Ruth, Dawn Kennedy, Vicki Dear, Angelo Gonzales, and Geneva Vicente. He also acknowledged Dr. Viola Florez, who is working with Dr. Winograd on phase two of the study; and he credited the LESC Director for passage of HB 70, *Educational Data System*, in 2010.

Dr. Winograd said that the study included a sample of 4,306 out of 19,000 12th graders, many of whom face serious life challenges, including homelessness and supporting families. He emphasized that significant numbers of seniors are not meeting current graduation requirements and that higher requirements are forthcoming. For example, next year, Dr. Winograd observed, all Albuquerque Public School (APS) high schools will require 24 units to graduate.

In regard to students' readiness for college and careers, Dr. Winograd noted that 28 percent of New Mexico high school graduates did not pass the U.S. Army's Armed Services Vocational Aptitude Battery, compared to 23 percent of graduates nationwide. The battery of tests is regarded as a good indicator of how well students can perform in the civilian workplace.

Currently, Dr. Winograd is working with the Higher Education Department (HED) to gather the data to examine how well the students in this study did in their first year of college.

Dr. Winograd explained that using remediation data from HED will allow the research center to examine the ratio between the number of credits taken in senior year and the remediation rate.

He stressed that it will be a challenge to monitor students to ensure that they meet the new graduation requirements. As his report shows, already 10 to 12 percent of seniors graduate without fulfilling the requirements and only 75 percent of Native American male graduates fulfilled the math requirement.

Addressing other points, Dr. Winograd cited dual credit as an important factor in keeping some students in school, and he reported that educators called for more career paths and opportunities. Dr. Winograd also emphasized that two different groups of students need remediation: the smaller group, being recent graduates, must be addressed; but the larger group is older adults returning to college.

Mr. Sallee reported that the funding weight given to 12th grade seems "reasonable" when compared to other states and the study substantiates the LFC belief that districts receive more money than 12th graders cost them because not all of them attend full-time. Therefore, one question is whether the state should continue to pay full cost for essentially part-time students.

Among other points addressed in the report were:

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

Dr. Winograd noted that a larger report is available on the website with more comments from interviewees, and he suggested thinking about a system that allows students to advance to college when they are ready, whether sooner or later.

Committee Discussion

Noting that most schools and districts in the study are large, a committee member questioned whether the findings are applicable to smaller entities. In reply, Dr. Winograd noted that the researchers may have seen other patterns if they had examined smaller high schools or charter high schools, but use of the large sample size suggested that conclusions could be drawn.

In response to a committee member's question regarding virtual education, Dr. Winograd replied that is clearly a useful tool and observed that Innovative Digital Education and Learning-New Mexico (IDEAL-NM) and other distance learning options could be used more effectively.

The Chair asked what happens if a student meets the state graduation requirement while attending a school in a district that requires more credits than the state does. In reply, Ms. Carrie Menapace, with APS, replied that the high school credit requirement is more of a strong recommendation. In practice, districts follow the Public Education Department guidelines, so a student with 23 credits can still receive a diploma even if the particular high school's requirement exceeds that number.

In response to another question from the Chair whether the data allow for differentiation between students attending on a half-day and full-day basis, Mr. Sallee replied that the LFC does not recommend changing the weight under the current funding formula. He added that the LFC is only asking whether seniors should be required to enroll full-time.

Regarding age limitations, the Chair advised that people should be encouraged to earn a diploma or degree at whatever age. Mr. Sallee pointed out that the main issue is the blurring of the line between Adult Basic Education and high school.

Noting the gaps in data collection, several committee members said that the districts need better tools to track progress, similar to UPS being able to locate a package anywhere in world.

Finally, among other points, committee discussion noted that:

- variety among the districts gives them much needed flexibility;
- districts need better tools to track student progress;
- the full report on the Internet contains good feedback from educators on the value of extracurricular activities;
- principals and counselors asked for more support for students in middle school;
- the original intent of funding senior year at 1.25 units was to fund vocational education;
- the committee should examine the "student warranty" used in Georgia; and
- New Mexico has achieved its policy of "access" and now should focus on "success."

A committee member requested a breakdown of students needing math versus reading remediation.

A committee member requested documentation related to the content in the Armed Services Vocational Aptitude Battery test.

SUPERINTENDENTS AND COMMUNITY INPUT

Mr. Tom Sullivan, New Mexico Coalition of School Administrators (NMCSA), complimented the research team and expressed appreciation that the Legislative Finance Committee has not recommended changing the funding formula weighting of the 12th grade.

Mr. Sullivan also discussed the delay in high school redesign legislation due to accommodating science labs and other matters.

Mr. Sullivan said that it is premature to take a snapshot and draw conclusions regarding senior year and that he would like to see this report done again in 2014 when new legislation should make senior year more rigorous and have more students enrolled full-time.

Regarding the graduation rate improvement in 2010, Mr. Sullivan is confident that students, teachers, and schools will meet the new requirements despite reduced resources.

There being no other business, the Chair, with the consensus of the committee, recessed the LESC meeting at 4:50 p.m.

MINUTES LESC MEETING WEDNESDAY, JUNE 29, 2011

Representative Rick Miera, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:12 a.m. on Wednesday, June 29, in Room 322 of the State Capitol, Santa Fe, New Mexico.

The following LESC members were present:

Representatives Rick Miera, Chair, Nora Espinoza, Jimmie C. Hall, and Mimi Stewart; and Senators Cynthia Nava, Vice Chair, and Lynda M. Lovejoy.

The following LESC advisory members were present:

Representatives Alonzo Baldonado, Ray Begaye, Eleanor Chávez, George Dodge, Jr., Tim D. Lewis, Sheryl Williams Stapleton, and Shirley A. Tyler; and Senators Vernon D. Asbill, Stephen H. Fischmann, John Pinto, and Sander Rue.

UPDATES: HIGHER EDUCATION

The Chair recognized Dr. José Z. Garcia, Secretary of Higher Education, for presentations on the Higher Education Funding Formula Task Force and other department activities. Dr. Garcia introduced Dr. Katharine Winograd, President, Central New Mexico Community College; and Dr. Kate M. O'Neill, Executive Campus Director, University of New Mexico-Taos.

Dr. Garcia testified that, for the first time in New Mexico history, the older generation (45 to 65) is better educated than the younger one (25 to 45). He said that, considering achievement gaps and growth of minorities in the 2010 Census, there is much hard work to do. According to the Western Interstate Commission for Higher Education, New Mexico needs an estimated 7.0 percent growth rate per year in the production of bachelor's degrees just to maintain the status quo. Dr. Garcia added that the state is not producing enough nurses or science, technology, engineering, and math degrees.

Noting that legislators have wanted a new higher education funding formula for several years, Dr. Garcia acknowledged "well-known" deficiencies in the current formula, which is based on square footage and student credit hours. He noted that the Higher Education Department (HED) is well into the process of writing a new formula although there are some disagreements among the stakeholders.

Dr. Garcia said that HED is considering the creation of three formulas: one for two-year colleges, one for research universities, and a third for comprehensive universities. In any case, he stressed the need to focus on outcomes and performance by creating incentives for student completion and closing the achievement gap. Dr. Garcia described the new formula at this stage as a "Model T" version: no bells and whistles, but functional enough to point in the desired direction.

On another topic, Dr. Garcia said that the institutions of higher education (IHEs) came together in March to sign a moratorium on the construction of any new buildings or facilities for two years. Dr. Garcia emphasized that HED is responsible for enforcing the moratorium and for considering exceptions on a case-by-case basis. In addition, his department is working with the Public Education Department on the P-20 data system and transition from secondary to postsecondary to graduate school.

As he concluded, Dr. Garcia noted that HED has been reorganized, and he introduced two new staff members: Mr. Glenn Walters, Deputy Secretary, and Mr. Ricky Serna, P-20 Coordinator. He also introduced Mr. Curtis Porter, Chair of the Higher Education Funding Formula Task Force.

Committee Discussion

In response to a question from the Chair, Dr. Garcia informed the committee that HED has good data regarding freshman status related to the 12th grade study and that the department will make those data available for use.

A committee member commented that the deans of IHEs pledged to work with the LESC to teach the science of reading in Colleges of Education (COE) and Dr. Garcia replied that he is

familiar with the legislation and supports any bill that would tend to improve the outcomes of COEs.

In response to a committee member who asked whether the new higher education funding formula will be proposed in law or regulation, Dr. Garcia replied that he intends to use the higher education funding formula to make recommendations on the distribution of funds to IHEs; it will be up to the Legislature whether to approve the recommendations. On that point, another committee member suggested that the higher education funding formula should be in law to prevent administrative tinkering, particularly if there are three separate formulas. In response, Dr. Garcia questioned whether there are compelling reasons to change the status of the formula.

In response to a committee member's concern that the P-20 Division in HED had been moved, Mr. Walters explained that the "label" P-20 is now within a division of five people and will actually have more resources.

When asked about HED's priorities, Dr. Garcia replied that, because the old formula from the mid-1970s addressed the needs of a growing population of college-age students, it made sense then to create a formula that rewards building. This approach no longer makes sense, however, because funding and demographics are now flat. Dr. Garcia emphasized completion and added that New Mexico is importing chemists, doctors, and nurses.

Responding to a committee member's question regarding ample funding, Dr. Garcia noted that New Mexico has been generous with higher education funding and emphasized that IHEs need incentives to be more cost-effective and efficient in producing a quality work force.

In response to several questions regarding the elimination of seven exempt positions, including the Native American Education Director, Mr. Walters replied that HED needed more workers than exempt employees; and he stressed that HED will move to a stronger relationship and continued dialog with tribal colleges and Native American communities. He added that the Secretary has approached several Native American communities to gain understanding and will appoint a designated liaison to tribal colleges.

When asked about his position regarding mandatory background checks on university employees, Dr. Garcia replied that he has no position but rather believes that matter to be a responsibility of the IHEs. Nonetheless, he offered to review legislation that had been introduced in 2011 and to discuss the matter with the IHEs.

In response to a committee member who asked how the proposed higher education funding formula will interact with the lottery scholarship, Dr. Garcia replied that the scholarship fund is unsustainable, needing legislative action. He also supports a more comprehensive student aid policy.

A committee member asked a question regarding dual credit reimbursement based on course completion. In reply, Dr. Garcia said that a committee in HED is studying the dual credit program in conjunction with the funding formula study. He noted that, although the program is popular, it has raised some concerns among legislators. A committee member encouraged him to review the 12th grade study and to collaborate with the LESC rather than work in isolation.

Higher Education Funding Formula Task Force: Preliminary Report

The Chair recognized Mr. Curtis Porter, Chair, Higher Education Funding Formula Task Force, for a presentation on the work of the task force. He addressed three basic topics:

1. the process;
2. the players; and
3. the progress.

According to Mr. Porter, the task force has members representing all types of institutions of higher education (IHEs), and it is on schedule with its timeline. He noted that the discussion has shifted from performance funding to output funding. Mr. Porter also emphasized that the new higher education funding formula works much like the old formula but is driven primarily by outputs, and it no longer uses factors such as square footage and building and repair.

Mr. Porter asserted that the new formula will be ready in time partly because it reduces the number of inputs used in the old higher education funding formula. He noted that the new formula shifts from 21-day enrollment to completed enrollment, keeping only three or four pieces of the old formula. Mr. Porter indicated that further changes to the formula are expected after October 15 as the task force tries to simplify both the revenue and expenditure sides. He added that the task force is not close to fixing numbers or percentages due to the wide variance of IHE funding sources.

Committee Discussion

In response to a committee member question how the new higher education funding formula will address dual credit, Mr. Porter replied that the new formula will provide a simpler way to calculate dual credit.

In response to a committee member question regarding the two-year lag time for funding under the current higher education funding formula, Mr. Porter emphasized that there will always be a lag in funding because of the data collection timeline. He also said that the lag does not affect IHEs but that they may receive additional money based on completers and less funding for student credit hours.

A committee member asked about the mill levies that two-year institutions use. Mr. Porter replied that the task force is just beginning to examine the issue and that there is no push to do away with them.

Mr. Porter also clarified for a committee member that dual credit will not change, and he believes that the state's share will not require more state money.

The Chair invited representatives of postsecondary institutions to speak. In reply, both, Mr. David A. Lepre, Executive Director, New Mexico Council of University Presidents, and Mr. Mark Saavedra, lobbyist for the University of New Mexico, said that they had been fully engaged in the process; and Mr. Saavedra suggested a statewide tuition plan.

In addition, Mr. Danny K. Earp, Director, New Mexico Independent Community Colleges (NMICC), stated that NMICC is also heavily engaged in the process and had proposed tentative outcome measures. He is pleased that the Higher Education Department has agreed to address the new formula using an incremental approach because a sudden change in higher education funding is not desirable. Mr. Earp noted that all entities are cooperating with the understanding that changes will occur after October.

FY 12 Higher Education Department Operating Budget and Organizational Plan

The Chair recognized Ms. Eilani Gerstner, LESC staff, for a presentation on several aspects of higher education, beginning with the Higher Education Department (HED) budget and organizational plan.

Ms. Gerstner testified that, for FY 12, the Legislature appropriated approximately \$36.3 million for HED (a decrease of approximately \$4.3 million from FY 11), including a total of 58 full-time equivalent staff (FTEs), an increase of seven FTEs from FY 11. For FY 12, 33.5 FTEs are permanent (an increase of one from FY 11) and 24.5 FTEs are temporary (an increase of six from FY 11). She also indicated that there are many notable changes in HED's organization chart.

American Recovery and Reinvestment Act of 2009 (ARRA) Government Service Fund Allocation to Support Cyber Academy/Virtual School Program

Ms. Gerstner stated that, in a June 13, 2011 report, the staff of the Legislative Finance Committee (LFC) reported that the Governor allocated \$500,000 to the Higher Education Department (HED) for data hosting and software maintenance for a New Mexico K-12 and higher education online learning system, and \$50,000 to the Public Education Department (PED) to provide funding to support the "Cyber Academy/Virtual School Program."

Ms. Gerstner also noted that a subsequent LFC report, dated June 22, 2011, stated that the Governor made a \$50,000 allocation to PED from discretionary Government Service Funds. According to Ms. Gerstner, PED indicates that the allocation will be used to support limited Innovative Digital Education and Learning-New Mexico (IDEAL-NM) staff positions until those positions are filled under the departmental reorganization anticipated by the first week of July.

Since 2007, Ms. Gerstner continued, the Legislature has appropriated a total of approximately \$11.6 million for IDEAL-NM to fund the implementation and operation of the program, including:

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

Higher Education Building Moratorium

Ms. Gerstner alluded to a copy of a letter dated March 12, 2011, from the New Mexico Council of University Presidents, the New Mexico Association of Community Colleges, and the New Mexico Independent Community Colleges, agreeing to a voluntary two-year moratorium on

the establishment of new learning sites, learning centers, branches, or campuses, effective April 1, 2011. She added that the letter recognizes four exceptions to the moratorium:

- facility renovation that does not add new state-funded square footage;
- research or similar facilities that receive no state funds for construction or building renewal and replacement;
- facilities requiring no state appropriation or formula funding; and
- projects that received final approval by the Higher Education Department and that were funded prior to January 1, 2011.

According to Ms. Gerstner, the letter also states that exceptions to the terms of the voluntary moratorium may be approved at the discretion of the Secretary of Higher Education on a case-by-case basis.

Statewide Student Tuition Increases/Impact on Lottery Tuition Fund

Mr. Kevin Force, LESC staff, referred committee members to three documents in their notebooks:

1. *FY 11 to FY 12 Tuition and Fees Comparison*, which shows increases in tuition at New Mexico's colleges and universities, both in whole dollar amounts and as percentage increases;
2. *Lottery Sustainability Models*, which presents graphs illustrating the effects of tuition increases on the fund's expenditures, revenues, and balance; and
3. *Legislative Lottery Scholarship Sustainability – NMHED Model 9/09*, which is a table expressing the effects of 5.0, 7.0, and 9.0 percent tuition increases on the fund in dollar amounts, including projections through FY 12.

Mr. Force said that the Chief Executive Officer (CEO) of the New Mexico Lottery has indicated that decreasing lottery revenues are a point of concern. The CEO said that the original FY 11 budget was predicated upon an anticipated \$43.0 million in returns; and the revised FY 11 budget assumes approximately \$40.0 million, primarily because revenue was down 5.0 percent from the previous year, with an additional decrease in sales of "instant" lottery products totaling \$2.5 million. Mr. Force cautioned that projections indicate the fund is likely to become insolvent.

P-20 Educational Data System and Data System Council

Ms. Gerstner alluded to a copy of legislation endorsed by the LESC and enacted in 2010 to codify the requirements for a pre-kindergarten through postsecondary (P-20) education accountability data system in order to:

- collect, integrate, and report longitudinal student-level and educator data required to implement federal or state education performance accountability measures;
- conduct research and evaluation of federal, state, and local education programs; and
- audit program compliance with federal and state requirements.

Ms. Gerstner added that the legislation defines the “data system partners” as the Public Education Department (PED) and the Higher Education Department (HED) and charges the data system partners with convening the Data System Council. The council is charged with overseeing the development and implementation of the data system.

At the time of publication of this update, Ms. Gerstner noted that LESC staff had not received a response to a request to PED regarding plans of the data system partners to convene the next meeting of the Data System Council.

Committee Discussion

In response to a committee member’s question regarding the seven new HED positions, Mr. Walters replied that five of the positions are federally funded. He added that the department expects to hire two employees who had been subject to the reduction in force at PED and additional staff for the data functions.

A committee member cautioned Dr. Garcia to research the issue regarding the elimination of the Native American Education Director. Ms. Frances Ramírez-Maestas, LESC Director, noted that it is unclear whether any agency can eliminate a division required by state law. Mr. Walters assured the committee that HED is well aware of its statutory responsibilities.

STATUS OF OFFICE OF EDUCATION ACCOUNTABILITY

The Chair recognized Ms. Eilani Gerstner, LESC staff, for a presentation on the status of the Office of Education Accountability (OEA). She stated that in 2003 legislation endorsed by the LESC was enacted to establish comprehensive educational reforms, including a new section of the *Department of Finance and Administration Act* establishing the OEA within the Department of Finance and Administration (DFA).

According to Ms. Gerstner, the act also requires that the Public Education Department (PED), school districts, and other agencies of the state cooperate with OEA and provide information as requested by the office. However, she said that recent developments have raised questions about the status of the OEA itself and the performance of that office’s statutory duties. Ms. Gerstner also noted that LESC requests to DFA to provide a report to the committee regarding the status of OEA have not been answered to date.

Ms. Gerstner testified that in FY 11 the OEA was budgeted \$436,300 to support the operations of the office, including 5.0 full-time equivalent (FTE) staff positions. However, she said that a review of the FY 12 budget documents by LESC staff indicates that OEA operations and FTEs have been subsumed within the State Budget Division.

On a related issue, Ms. Gerstner indicated that, at the May 2011 LESC meeting, the Secretary-designate of Public Education reported to the committee that PED was provided with \$50,000 from OEA’s budget to hire a contractor to conduct audits of school districts. At the time the LESC staff report was prepared, Ms. Gerstner added, PED had not provided LESC staff with a response to a request for further details on the transfer of those funds.

In addition, Ms. Gerstner noted that:

- another section in the *Public School Code* assigns the director of the OEA to the Data System Council, which is charged with managing and directing the creation of the P-20 educational data system; and
- for school year 2011-2012, the *General Appropriation Act of 2011* requires PED to collaborate with the OEA to ensure that:
 - all teachers have been evaluated under the tiered licensure evaluation system and have the professional competencies of the appropriate level; and
 - all principals and assistant principals have been evaluated under the highly objective uniform statewide standards of evaluation and have the professional competencies to serve as a principal or assistant principal.

Ms. Gerstner emphasized that in past years the OEA has performed additional work in the form of annual reports, responses to legislative memorials, and other requests.

She also stated that, during the 2011 legislative session, two pieces of legislation were introduced that would have repealed the current section of law for OEA, neither of which passed:

- HB 66, *Transfer Depts. and Services to DFA*, would have created a new Educational Finance and Accountability Division in DFA, which would have superseded OEA and expanded the office's duties, shifting the focus to accounting and auditing; and
- SB 83, *Create State Inspector General Office*, would have created the *State Inspector General Act* and the Office of Government Accountability, which would have included the duties currently assigned to the OEA.

Ms. Gerstner said that LESC staff had consulted with Legislative Council Service (LCS) staff on the apparent “zeroing out” of the OEA operating budget and FTEs by DFA, and the effect of such action with regard to the requirements of OEA in current law. She said the response from the LCS cites points made in three court cases and an opinion of the Attorney General that suggest that the principle of separation of powers may have been compromised. To illustrate:

- the Legislature has been delegated the “sole power of enacting law”;
- because the Legislature created the OEA, the Legislature, not the Governor, has the authority to abolish the office; and
- by zeroing out the budget of a legislatively created executive office, the executive branch may have disregarded its constitutional charge to “[take] care that the laws be faithfully executed.”

On the other hand, Ms. Gerstner said that the LCS response also notes possible arguments to the contrary:

- there are many statutorily created offices that no longer function;
- if some other division or office within DFA can perform the statutory duties of OEA, then the executive branch may not have disregarded its constitutional charge for the faithful execution of law; and

- because OEA was not separately funded, DFA may have some discretion in the use of the agency's appropriation.

Committee Discussion

Ms. Frances Ramírez-Maestas, LESC Director, commented that the LESC staff has concerns regarding the work of the OEA and the failure of the DFA to respond to the LESC request to appear before the committee this month.

In response to several questions regarding constitutional issues and the FTE vacancies at OEA, Ms. Kim Bannerman, LCS staff, explained that there is no clear legal case that addresses this matter and suggested that the committee seek an opinion from the Attorney General.

DIRECTOR'S REPORT

In the absence of a quorum, the Vice Chair decided to carry over the director's report to the next meeting, scheduled for Santa Fe.

ADJOURNMENT

There being no further business, the Vice Chair adjourned the LESC meeting at 11:40 a.m.


_____ Chair

September 15, 2011
_____ Date