

**MINUTES
LESC MEETING
THURSDAY, MAY 13, 2004**

Representative Rick Miera, Chair, called the Legislative Education Study Committee (LESC) meeting to order on May 13, 2004, at 9:15 a.m., Albuquerque Public Schools Central Office, John Milne Board Room, 725 University Blvd., SE, Albuquerque, New Mexico.

The following LESC members were present:

Representatives Rick Miera, Chair, Pauline J. Ponce, Mimi Stewart, Thomas E. Swisstack, and W.C. "Dub" Williams; and Senators Mary Kay Papen and William E. Sharer.

The following LESC advisory members were present:

Representatives Kandy Cordova, Roberto J. "Bobby" Gonzales, Sheryl M. Williams Stapleton, Richard D. Vigil, and Teresa A. Zanetti; and Senators Mark Boitano and Dianna J. Duran.

Also attending the LESC meeting was Representative Danice Picraux.

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

50TH ANNIVERSARY OF BROWN v. BOARD OF EDUCATION

a. Performance by the Working Classroom

To commemorate the 50th anniversary (May 17) of the US Supreme Court's historic school desegregation decision in *Brown v. Board of Education*, the LESC saw a performance by the Working Classroom, a year-round nonprofit arts and education program founded in 1987 that provides tuition-free instruction and experience to hundreds of student artists and actors from the public schools in Albuquerque's "historically ignored communities." Ms. Nan Elsasser, the founder and executive director, explained that the students in the Working Classroom, together with some participating adults, not only produce contemporary theater and public art in low-income communities but also exhibit and sell their art in the Working Classroom's gallery in

downtown Albuquerque. For this performance for the LESC, the students researched the issue, compared the differences between Albuquerque's Eisenhower Middle School and Washington Middle School, and wrote the script.

The Working Classroom's performance for the LESC, *Brown vs Board of Education: 50 Years and Counting*, was a blend of dance and commentary by eight performers ranging in age from 13 to 60. Of the five students in the cast, two attend Washington Middle School, one attends Amy Biehl High School, one attends Valley High School, and one attends West Mesa High School.

The performance developed the theme of the unfulfilled promises of the *Brown* decision, a theme first articulated through the opposing dialog of two actors, one insisting that because of *Brown*, everything has changed and the other insisting that nothing has changed. According to Ms. Elsasser, most of the instances cited in the performance came from the cast members' personal experiences. The presentation also included the following statistics:

- 30 percent of Hispanic students in the United States drop out of school;
- 80 percent of all students in the United States still attend segregated schools; and
- 8th grade TerraNova scores average 79 at Albuquerque's Eisenhower Middle School but only 35 at Washington Middle School.

Committee Discussion:

In response to several questions about the Working Classroom program, Ms. Elsasser, along with some of the performers, described the Working Classroom as a positive and supportive community that offers not only free professional training in visual and performance arts but also support services such as after-school tutoring and assistance in obtaining college scholarships. Rehearsals generally are held in the evenings to accommodate students' schedules. Participating students must make up any missed school work and are required to maintain a certain grade-point average. In 15 years, only four student participants have failed to graduate from high school; 60 percent of the students go to college. In addition, Ms. Elsasser said, several former students have developed successful careers in movies, television, and the theater. The program currently serves approximately 130 students, approximately half of whom form a dedicated core group. Students in the core group spend essentially all of their free time at the Working Classroom.

In response to a committee member's question about media exposure, Ms. Elsasser said that the Working Classroom maintains a complete press book, that the program has received considerable national press, and that the group has performed in such cities as New York, Washington, DC, and Rio de Janeiro.

In response to a committee member's question regarding other issues that the Working Classroom has dramatized, Ms. Elsasser listed domestic violence, predatory lending, school violence, terrorism, and immigration. The performance on predatory lending, Ms. Elsasser added, was commissioned by the New Mexico Mortgage Finance Authority.

In response to a committee member's question concerning what differences student cast members perceived between Washington Middle School and Eisenhower Middle School, the students cited the following: unlike Washington Middle School, Eisenhower Middle School has a large library, a swimming pool, both classroom and take-home sets of textbooks, a standard English dictionary for every student, and, in general, a student population that is ready to learn.

In contrast, Washington Middle School, unlike Eisenhower Middle School, requires its students to wear uniforms, which the student performers found costly and counterproductive. Other cast members noted that the two schools appear to have different expectations of their students: whereas students at Eisenhower Middle School generally are expected to succeed, students at Washington Middle School generally are expected to fail, as evidenced by the accountability card given to each new student outlining the graduated punishments and sanctions for infractions. On this point, Ms. Elsasser added, “Respect and expectations really do work miracles.”

Committee members thanked the participants not only for their fine performance but also for the message that it delivered.

b. 50 Years After and Where We Are

Dr. Rindone introduced Dr. Dewayne Matthews, Senior Advisor to the President of the Education Commission of the States (ECS), to make a presentation entitled *The Brown Decision: 50 Years After and Where We Are*.

Dr. Matthews said that ECS has been evaluating the legacy of the landmark Supreme Court decision, focusing primarily upon its unfinished legacy. Dr. Matthews said that although the *Brown* decision mandated that all children have equal access to high-quality education, that access did not begin until the enactment of the federal *Civil Rights Act* ten years later. Today, some public schools remain segregated, not because of legal restrictions (which *Brown* overturned) but because of social and economic factors.

The main issue, Dr. Matthews continued, is the persistent achievement gaps within racial and economic groups. Family background, he said, has been too closely correlated with educational outcome. Although African-Americans and Hispanics showed improved achievement in reading and mathematics through the 1970s and 1980s, the gap separating these two groups from white students has been widening since the early 1990s. To illustrate the point, Dr. Matthews provided national data showing that, by the end of high school, African-American and Hispanic students’ reading and mathematics skills are roughly the same as those of white students in the 8th grade. Furthermore, although 90 percent of white and 94 percent of Asian-American students have completed high school or earned a General Equivalency Diploma (GED) by age 24, that rate drops to 81 percent for blacks and 63 percent for Hispanics. In addition, black students are only half as likely and Hispanic students only one-third as likely as white students to earn a bachelor’s degree by age 29.

Dr. Matthews noted that there is a persistent and growing gap in New Mexico. Whereas the percent of white students testing at or above the basic level on the 4th grade National Assessment of Educational Progress (NAEP) reading assessment has remained in the high 60s and low 70s from 1992 to 2002, the percent of Hispanics has remained in the low 40s, the percent of blacks has declined from the low 40s to the high 30s, and the percent of Native Americans has declined from the low 40s to the low 30s. Dr. Matthews cited the following factors as contributing to the achievement gap in New Mexico:

- In 1999, New Mexico had the third highest percentage of individuals under age 18 living in poverty in the nation.
- New Mexico’s projected population growth is almost entirely Hispanic.

In comparing New Mexico to the rest of the nation, Dr. Matthews cited the following statistics:

- In 1992, the percent of 4th grade students in New Mexico scoring at or above proficient on the NAEP reading test compared favorably with the scores of students from seven other states: Delaware, North Carolina, Kentucky, Maryland, Texas, Florida, and South Carolina. From 1992 to 2002, however, New Mexico's scores dropped while those in the other states showed substantial improvement, largely because of an aggressively promoted education reform agenda.
- In 1990, the percent of students in New Mexico scoring at or above the basic level on the NAEP 8th grade mathematics test compared favorably to—in fact, was second highest among—the percentages in seven other states: North Carolina, Texas, Kentucky, West Virginia, Hawaii, Alabama, and Louisiana. By 2000, however, only New Mexico's scores had declined, placing the state second from the bottom among the eight states.
- In terms of high school graduation and college enrollment, New Mexico's high school graduation rate ranks 11th from the bottom of the 50 states; the percentage of first-time full-time college freshmen who return to college the following fall is fourth from the bottom, suggesting, according to Dr. Matthews, insufficient preparation for college. New Mexico is third from the bottom in the percentage of 9th graders who graduate from high school on time, go directly to college, return for their second year, and graduate within 150 percent of program time (that is, within six years for a four-year program or three years for a two-year program).

Dr. Matthews cited two examples of successful attempts to close achievement gaps: one in the Aldine, Texas, school district and the other in elementary schools throughout the state of Michigan, including low-income schools. He also cited several characteristics that The Education Trust has found in those schools that “beat the odds,” that is, that showed student performance levels beyond what their student demographics might have predicted. Schools that do better than expected:

- have clear and specific goals for what students should learn in every grade, including the order in which they should learn it;
- provide teachers with common curriculum and assignments;
- assess students every four-eight weeks to measure progress; and
- act immediately on the results of those assessments.

Finally, Dr. Matthews proposed that states follow four specific steps to close the gaps in performance and to fulfill the promise of the *Brown* decision:

1. set high expectations for students, teachers, and schools, including a more challenging college-prep curriculum for all students;
2. create a data system that provides accurate, timely and relevant data; that identifies the best-performing schools in each grade, subject and student group; and that presents the data in a form that can be used to improve student performance (Dr. Matthews noted that New Mexico had already invested significant resources in its data system);

3. create a school improvement infrastructure not only for the schools that need help but also for the schools that are performing well, an infrastructure that will provide more frequent assessments and more timely reporting of results, integration of assessment into the curriculum, and consistent availability of student-level data to guide instruction and allow more efficient use of resources; and
4. provide the professional development and other resources necessary to ensure that every child in every classroom has a highly qualified and effective teacher.

Committee Discussion:

Much of the discussion focused on the factors contributing to school and student success. In response to a committee member's question about what prompted other states to act and to be successful, Dr. Matthews said that Texas was stimulated to action by a demographic study predicting major losses for the state in disposable income and tax revenues unless its education system improved; and he cited a series of governors in North Carolina who all insisted on improving that state's education system. Effective leadership at the state level, Dr. Matthews asserted, is critical. Two other factors that have prompted action, he continued, are crises like imminent restructuring or teacher layoffs and effective leadership at the local level, often from a principal or a superintendent.

In response to a committee member's question whether small schools and districts tend to be more successful than large ones, Dr. Matthews said that the relationship between size and effectiveness is uncertain, citing an uneven record and continuing debate. He added that schools and districts of different sizes can be successful. On a related point, one committee member noted that rural communities tend to be more connected to and supportive of their schools than urban communities and that schools in smaller communities make better use of their school facilities by making them available for community gatherings, meetings of civic organizations, and other community events.

In response to a committee member's question about parental involvement, Dr. Matthews said that schools that get results do have much stronger parental and community involvement and an expectation that their students can and will succeed. But he also suggested that such parental and community involvement may well be the result rather than the cause of a school's turnaround. He further indicated that, as the culture of a school changes, with increasing focus on the success of children, parents are drawn into the process and the school actively seeks their involvement. He said that these schools also become more open to the community and more likely to become community learning centers for all ages.

Another topic of discussion was the importance of research-based reading education for teachers and the difficulty of convincing the teacher education institutions to incorporate research-based reading into their curricula. On this point, one committee member asked for more information on what was being done in Delaware, a state that Dr. Matthews had cited as having implemented a successful reading program. In reply, Dr. Matthews said that Delaware has a scientifically proven statewide reading program with particular emphasis on K-2 and statewide reading summits. In addition, Delaware has taken a dual approach consisting of strong accountability systems and continual emphasis on the importance of reading; in addition, the state has put considerable funding into its reading program.

In response to a committee member's assertion that assessment for its own sake does no good but that the results must instead be made available to teachers, Dr. Matthews said that this important point can be addressed by teaching the standards through component pieces in a series of lessons and by using sophisticated assessments to determine whether students have mastered the standards.

In response to a committee member's question about the role of vocational education, Dr. Matthews said that students need essentially the same preparation whether they attend college, attend a technical-vocational institution, or enter the workforce. There are still some jobs, Dr. Matthews added, that require little education, but they are absolute dead-end, minimum-wage positions with no chance for advancement.

Several committee members noted their frustration with the limited progress that New Mexico has made, highlighted first by the Working Classroom performance and now by the statistics that Dr. Matthews cited. In reply, Dr. Matthews acknowledged that the challenge is large and that there is probably no single solution or answer. He suggested identifying those schools that are doing well and deciding what it would take to produce similar results in other schools; he added that the state must work backward to discover where to intervene to ensure student success. One committee member suggested identifying those districts that are willing to change and making them pilot sites, rather than trying to change the entire system at once. Others noted that, while much remains to be done, the success that schools have had so far is due in large part to numerous legislative initiatives such as the Advanced Placement Framework and full-day kindergarten.

Representative Swisstack asked that Dr. Matthews provide the committee with data regarding the effect of successful schools on reducing the juvenile crime rate along with contact names in the respective districts.

DIRECTOR'S REPORT

a. Approval of LESC Minutes for April 2004

During consideration of the approval of the LESC minutes for April 2004, Representative Ponce requested that a statement be added to the April minutes reflecting her concern that for FY 04 and FY 05 the state has taken credit for approximately \$28.0 million in both operational and instructional material school district cash balances. Upon a motion by Representative Stewart, seconded by Representative Swisstack, the LESC minutes for April 2004 were unanimously approved as amended.

b. Approval of LESC Financial Report for April 2004

Upon a motion by Representative Ponce, seconded by Representative Stewart, the LESC financial report for April 2004 was unanimously approved.

c. Approval of LESC Auditor for FY 04

Dr. Rindone explained that pursuant to the *State Auditor Rule*, bids for a multi-year proposal from three independent public accountants were solicited for the performance of the LESC audit. She added that according to the State Auditor's office, the same independent accountant can

perform an agency's audit for a period of six years. Therefore, Dr. Rindone said that the LESC would be able to renew the audit contract for an additional three-year period based on satisfactory completion of audits for the first three years. Noting that two proposals were received in response to the bid request, Dr. Rindone recommended the selection of Robert J. Rivera, CPA, PC, to conduct the LESC audits for FY 04, FY 05, and FY 06. Upon a motion by Representative Ponce, seconded by Representative "Dub" Williams, the selection of the auditor was unanimously approved.

d. Correspondence

Dr. Rindone reviewed several items of correspondence included in the committee members' notebooks that are included in the permanent file in the LESC office, among them an April 24, 2004, letter from the National Conference of State Legislatures (NCSL) urging opposition to S.1248, the Senate version of the reauthorization of the *Individuals with Disabilities Education Act* (IDEA). She said that NCSL was recommending that states contact their respective U.S. Senators. Dr. Rindone suggested that a letter be sent from the LESC to Senators Bingaman and Domenici expressing the committee's concerns with S.1248, the federal IDEA reauthorization bill, in its current iteration as passed by the Senate. She suggested the letter include the LESC's concerns with the funding requirements associated with implementation of this legislation, with issues related to a workable definition of "highly qualified teachers," and with the preempting of state authority by allowing lawsuits against states in federal court for alleged IDEA violations. By consensus, the committee agreed that a letter should be prepared by LESC staff for the chairman's approval.

**ALIGNMENT OF HIGH SCHOOL CURRICULA AND
POSTSECONDARY PLACEMENT TESTS**

Dr. David Harrell, LESC staff, introduced Ms. Lena Trujillo-Chavez, Program Manager, Vocational Education Division, Public Education Department (PED); Ms. Kathleen Dickerson, Policy Analyst, Commission on Higher Education (CHE); and Dr. Frank Renz, Director, New Mexico Association of Community Colleges (NMACC). Together with Dr. Renz, Ms. Trujillo-Chavez and Ms. Dickerson presented an update on the progress toward the alignment of high school curricula and end-of-course tests with the placement tests administered by public two- and four-year institutions of higher education (IHEs) in New Mexico.

As background to the issue, Dr. Harrell said that, during the 2001 and 2002 interims, the LESC heard testimony on the issue of alignment of K-12 curricula and tests with the admissions requirements of IHEs. In 2002, this review focused on the statewide P-16 initiative, which, among other goals, sought to create a seamless education system that facilitates successful progression of students between K-12 and higher education. Also during the 2002 interim, the LESC recommended legislation to require PED and CHE to align the high school curriculum and end-of-course tests to the placement tests administered by two- and four-year IHEs to ensure that students enter postsecondary education prepared for challenging college-level academic work. This recommendation appeared in two LESC-endorsed bills during the 2003 legislative session (House Bill 186 and Senate Bill 62), which the Legislature enacted as Laws 2003, chapters 71 and 37, respectively. In addition, Dr. Harrell said, the educational reform legislation also enacted in 2003 contains the same requirement.

Work on the alignment, Dr. Harrell continued, began in April 2003, with a workplan drafted by PED. In September 2003, CHE staff joined the effort, with the assistance of the NMACC. Through several meetings during 2003 and 2004, participants agreed to focus initially upon requirements in math and English, the two courses in which IHEs typically offer remedial instruction.

Ms. Trujillo-Chavez said that the current effort toward alignment began with a focus on higher education, assisted in large part by the recently published *Standards for Success*, the report of a study conducted by more than 400 faculty and staff members of the Association of American Universities. This report is divided into two parts: "Understanding University Success," which is designed to answer the question of what students must know and be able to do in order to succeed in entry-level college courses, and "Mixed Messages," a database of the high school assessment policies and practices currently in use in all 50 states. The standards, Ms. Trujillo-Chavez explained, comprise six academic areas: English, mathematics, natural sciences, social sciences, second languages, and the arts. These standards, she added, together with work samples submitted by postsecondary faculty members, give high school students, their parents, and teachers a clear idea of what will be expected of college freshmen.

Ms. Dickerson said that CHE and PED had presented the alignment issue, along with a discussion of the PED content standards and benchmarks, to a panel at the New Mexico Higher Education Assessment and Retention Conference in February. That panel, Ms. Dickerson continued, supported the concept of alignment but suggested that the focus should be less upon tests and more upon curricula. Ms. Dickerson also announced an upcoming meeting (on May 22) with community college mathematics instructors to determine the desired preparation level of entering math students.

Also noting the upcoming meeting of college mathematics instructors, Dr. Renz said that he hoped to arrange a similar meeting with college English instructors. In each case, he explained, the goal is to identify which competencies in the respective fields are remedial and which are part of credit courses. His hope is that the remedial competencies can be addressed at the high school level, although he questioned whether the public schools will be able to align their curricula with college expectations and whether the PED content standards may need to be changed. He also noted that 67 percent of recent high school graduates in New Mexico had been required to take some remedial class and added that, even though colleges use different assessment tools, the curricula can be aligned.

Finally, Ms. Trujillo-Chavez reviewed other steps in the action plan, among them:

- an evaluation of the New Mexico Content Standards, Benchmarks, and Performance Standards for mathematics once recommendations from the two- and four-year IHEs are received;
- a review of standards for English and reading similar to that already underway for mathematics; and
- a survey of the two- and four-year IHEs to determine the types of course placement tests currently in use and to obtain other related information.

Ms. Trujillo-Chavez added that, by August, PED, CHE, and the NMACC hope to have the higher education standards fully defined; and that, by November, they will be prepared to make recommendations to the LESC for any changes needed in statute.

Committee Discussion:

Noting his continuing concern that high school graduates with good grades must take remedial courses in college, Chairman Miera said that he was glad to see progress toward the alignment of high school curricula and end-of-course tests with the IHE placement tests. In reply, Ms. Trujillo-Chavez said that PED had already begun to review the content standards and benchmarks.

In response to a committee member's observation that the high school graduates required to take remedial classes in college were taught by teachers prepared by the state's colleges of education and to another's suggestion that secondary teachers may need clearer direction on what they should teach, Dr. Renz proposed that the LESC consider setting the following goal: that, by 2008, the state will reduce its remedial college population by half.

NM ASSESSMENT PROGRAM

Ms. Sharon S. Ball, LESC staff, introduced Dr. Kurt Steinhaus, Deputy Secretary, Learning and Accountability, Public Education Department (PED); Dr. Don E. Watson, Assistant Secretary, Assessment and Accountability, PED; Dr. Mel Morgan, Director, Data Management, Las Cruces Public Schools (LCPS); and Ms. Barbara Lange, Assistant Superintendent, Los Alamos Public Schools (LAPS).

a. Update on NCLB Testing Requirements

Directing committee members' attention to information in their notebooks, Ms. Ball explained that New Mexico is in the process of aligning its statewide accountability system with the Adequate Yearly Progress (AYP) requirements of the federal *No Child Left Behind Act of 2001* (NCLB). Noting that the state regulation to define AYP is in the process of development and approval at PED, she stated that the proposed regulation must include federal requirements that the definition of AYP must be based primarily on academic indicators (such as tests in reading, science and mathematics), technically rigorous, and applied to school, district, and state levels of progress.

Acknowledging that the US Department of Education (USDE) had approved the basic elements of New Mexico's NCLB accountability plan in May 2003, Ms. Ball explained that, for an entire school to make AYP in a school year, all subgroups (economically disadvantaged students, major racial or ethnic groups, students with disabilities, and English language learners) must meet AYP in all subject areas.

Ms. Ball noted that the 2004 Legislature had made the following appropriations to fund assessment costs for FY 04:

- \$1.8 million for school district costs for criterion-referenced tests (CRTs) to be distributed through the public school funding formula (the 2003 Legislature appropriated \$2.0 million for FY 04, which was included in base funding for FY 05);
- \$385,000 to PED to contract for services to complete CRTs for grades 4 and 8;
- \$350,000 to PED to account for agency costs associated with evaluation of appropriate alignment of CRTs to state standards; and
- \$810,000 in a supplemental and deficiency appropriation to PED for state testing contracts (to be expended in FY 04 and FY 05).

Ms. Ball directed the committee's attention to an August 2003 letter from the National Conference of State Legislatures' (NCSL) president, president-elect, and chair of the NCSL Standing Committee on Education expressing concerns about inconsistencies and costs associated with NCLB, including the following:

- inconsistencies in flexibility granted to some approved state plans and not to others;
- defining a "statistically significant sub-group" as low as five students or as high as 50 students;
- explaining and codifying the flexibility available to states in committing to final proficiency goals;
- determining whether teachers meet the AYP yearly progress in their respective classes rather than a concentration on subject matter; and
- allowing states to include students taking and passing the GED in graduation rates.

Drs. Steinhaus and Watson reviewed a handout illustrating PED's process in developing NCLB testing requirements, including four meetings with PED's Assessment and Accountability Advisory Committee (made up of district superintendents, colleges of education faculty and deans, school district assessment directors, teachers, and data system coordinators); two visits from USDE regarding peer review and proposed changes to the Accountability Workbook; collaboration by Dr. Steinhaus and Mr. Sam Ornelas, Federal Grants program manager, PED, with New Mexico congressional delegation staff; and a meeting with an advisory group of technical experts from throughout the country concerning assessments and accountability.

Dr. Watson said that, in the spring of 2004, PED submitted to USDE the state's proposed changes and additions to the New Mexico NCLB accountability plan, which include the following:

- implementing safe-harbor provisions to avoid over-identifying low-performing schools;
- allowing schools to adjust curriculum to reflect criterion-referenced assessments rather than norm-referenced assessments;
- applying a methodology to ensure that the state is 95 percent certain that a school has not met AYP;
- limiting non-academic rating indicators to attendance in elementary and middle schools and to graduation rates in high school;
- recognizing a school's efforts to move students to higher performance levels; and
- changing the way students are counted for AYP to recognize the contributions a school makes to a student's learning over a full calendar year (rather than school year) of instruction.

Acting on new guidance from USDE, Dr. Watson explained that PED had also made the following changes regarding assessments of English Language Learner (ELL) students:

- allowing the state to exceed 1.0 percent of its ELL and disabled students taking alternate assessments on a case-by-case basis;
- allowing ELL students, in their first year in the US, to be assessed in reading and language arts based on how well they speak, read, and write English; and
- providing for the improved academic performance of ELL students to be counted for two additional years after exiting an ELL program.

Dr. Watson reported that PED has received verbal approval for the changes submitted this spring. He said that USDE approval of PED's accountability plan and the new *Assessment and Accountability Act* within the *Public School Code* provide the framework through which New Mexico will meet the AYP requirements of NCLB over the next ten years.

Chairman Miera asked members of the audience to comment on their concerns with NCLB testing requirements. Dr. Elizabeth Everitt, Superintendent, Albuquerque Public Schools (APS), and Ms. Karen White, Superintendent, Gallup-McKinley County Public Schools, both cited dramatically increased testing costs. Dr. Everitt stated that APS's testing costs have increased by \$2.0 million over the past two years, and Ms. White stated that Gallup's testing costs have increased by \$600,000. Dr. Everitt also stated her concerns that comparisons related to interstate performance on NCLB-required tests will be unrealistic because not all states are held to the same standards. Ms. White pointed out that Gallup-McKinley schools won't know state rankings of their schools until August, a situation made more difficult by the fact that the district currently has 15 of its schools classified in the "corrective action" category.

Dr. Marshall Berman, former State Board of Education member, noted that the ultimate NCLB requirement of 100 percent proficiency is a "statistical impossibility" and expressed concerns about how New Mexico and other states will address that issue as the school year 2013-2014 deadline approaches. Dr. Morgan noted that, if the law is not modified to deal with this "statistical impossibility," 90 to 95 percent of New Mexico schools will be classified in the "in need of improvement" category.

Committee Discussion:

Committee members' expressed concern that, even though some schools will make progress in improving student performance, they will continue to be labeled as "failing" because not all students in all subgroups will reach AYP. In response to a committee member's question about the number of schools to be classified as "in need of improvement" or in "corrective action," Dr. Watson said that currently 15 schools are "on the bubble" for corrective action but that, at this time, he cannot estimate the total number of schools classified as "in need of improvement" or in "corrective action" for the school year 2004-2005. Committee members expressed additional concerns that districts and the public are not aware of the fact that, because of NCLB requirements for all students in all subgroups to meet AYP, some schools with improving test scores will nevertheless continue to be labeled as "failing."

In response to a committee member's question, Dr. Steinhaus said that PED's contract with Harcourt Educational Measurement, developers of the state's criterion-referenced tests (CRTs), requires the company to put together a public information campaign to explain the testing program and that development of this program is currently underway. Dr. Steinhaus also noted that PED Secretary Dr. Veronica C. García shares the LESC's concerns that current requirements do not allow for recognition of a school's improvement in overall scores. He said that Secretary García will work with the LESC in its effort to address these concerns. Chairman Miera noted the importance of working together on this issue especially in dealing deal with the state's congressional delegation and USDE officials.

Representative Miera requested that Dr. Watson provide the committee with information about the flexibility that has been granted to other states in meeting AYP requirements of NCLB.

b. Implementation of Criterion-referenced Tests/Writing Tests/K-2 Diagnostic and Standards-based Assessments

Ms. Ball explained that, as New Mexico continues the process of aligning its statewide accountability system with NCLB, the state is currently examining, modifying, and implementing several types of assessment instruments in an effort to provide as accurate a picture of New Mexico's student progress as possible. She reminded committee members that legislation enacted in 2003, amended various sections of the *Public School Code*, in part, to provide a basis for aligning the New Mexico Accountability System with AYP requirements of NCLB.

By way of background regarding the implementation of criterion-referenced tests (CRTs), Ms. Ball explained that state law, partly in response to NCLB, requires the New Mexico Accountability System to change from the use of norm-referenced tests (NRTs) to CRTs as its primary measure of student achievement. She said that NCLB requires implementation of CRT assessment programs that:

- demonstrate adequate yearly progress over a 12-year period (2002-2014);
- align assessments with academic content and achievement standards;
- ensure that at least 95 percent of all students participate in the CRT assessments;
- report student achievement for the following subgroups: economically disadvantaged students, major racial or ethnic groups, students with disabilities, and English language learners;
- provide for the participation of all students, including students with disabilities or limited English proficiency;
- provide reasonable accommodation for students with disabilities or limited English proficiency, including, if practicable, native-language versions of the assessment; and
- ensure test results in one school year are available to school districts before the beginning of the next school year and provide results in a clear and easily understood manner.

Dr. Watson explained that requirements in NCLB and state law established the following schedule for state development and administration of CRT assessments:

- School year 2005-2006: NCLB requires states to develop and implement annual assessments in reading and math in grades 3 to 8 and at least once in either grades 10, 11, or 12;
- School year 2005-2006: New Mexico state law requires CRTs in mathematics, reading and language arts, and social studies for grades 3 to 9 and 11 provided that the Legislature appropriates funding for test development and implementation for the 9th grade and social studies assessments; and
- School year 2007-2008: NCLB requires states to administer annual science assessments a total of three times, at least once in either grades 3, 4, or 5, once again in either grades 6, 7, 8, or 9, and a final time in either grades 10, 11, or 12.

In May 2003 after an examination of a number of proposals solicited through a comprehensive request for proposals (RFP), Dr. Watson said that PED selected Harcourt Educational Measurement company to be the contractor for the development of these CRTs. He noted that baseline data for 4th and 8th graders were established in the spring of 2003, using existing CRTs.

Dr. Watson reminded committee members that NCLB requires that, by 2014, all students in all subgroups must score in the “proficient” or “advanced” range on these CRTs.

By way of background on the issue of changes to writing assessment requirements, Ms. Ball noted that the 2004 Legislature enacted SB 138, an LESC-endorsed bill, which eliminates the individual writing assessment in grades 4, 6, and 8 and requires that school districts apply writing assessment scoring criteria to the extended response portion of the new language arts CRTs by the school year 2005-2006.

Dr. Watson explained that the change will add to the cost of the Harcourt Educational Measurement contract, but the state will realize some savings through elimination of the costs of individual writing assessments. He said that federal funds can be used to cover the cost and that beginning in FY 04, approximately \$4.4 million in federal NCLB dollars will be provided to New Mexico per year for each of four years of CRT development and implementation.

Regarding the issue of K-2 diagnostic and standards-based assessments, Ms. Ball stated that the state *Assessment and Accountability Act* requires “diagnostic and standards-based tests on reading that include phonemic awareness, phonics and comprehension...” to be implemented by school year 2003-2004. Dr. Watson noted that the state has selected the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) instrument to meet federal requirements to assess the federal Reading First program in grades K-3. He said that DIBELS is also used for assessment in full-day kindergarten and the Kindergarten Plus Pilot program. He reported that the PED Assessment and Accountability Advisory Council is currently in the process of reviewing a variety of assessment instruments to meet the assessment requirement in addition to the DIBELS.

Ms. Lange, who serves as chair of the K-2 Reading Assessment Subcommittee of the PED Assessment and Accountability Advisory Council, presented a report of that committee’s progress in reviewing a variety of assessment instruments.

She noted that the reading assessment tool needs to serve multiple purposes at three levels:

1. As a *screening test*, it must provide brief assessments that focus on critical reading skills that are predictive of future reading growth that can be used to identify children as “at risk” or “not at risk” for reading failure and that can be used to identify children who need additional support.
2. As a *diagnostic test*, it must help teachers plan instruction, with the ability to assess students’ progress frequently during the school year.
3. As an *outcome test*, it must to provide assessment for the purpose of classifying a student, school, or district in meeting accountability standards.

Ms. Lange said that the subcommittee has looked briefly at several assessment tools and has focused on two, DIBELS and the Texas Primary Reading Inventory (TPRI). In terms of next steps, she indicated that the subcommittee will focus on the following activities:

- contacting testing companies for additional information;
- contacting officials in other states for feedback on their experiences with a variety of instruments;

- surveying K-2 teachers and principals in New Mexico school districts who are using some of the assessment tools to see what they find most useful;
- encouraging adoption of an assessment that is useful for teachers and drives instruction; and
- requesting an extension of time since the state's *Assessment and Accountability Act* requires implementation by the school year 2003-2004.

Dr. Watson expressed concerns about the current 11th grade assessment instrument and stated that an improved test is needed, which, he noted, will require additional funding that has not been accounted for or determined at this time. He said that the most significant item on the June 2004 USDE-PED peer review agenda is the status regarding the 11th grade assessment. He also indicated that federal funding for development and implementation of CRTs is included in NCLB until school year 2007-2008. He pointed out that, because the law will continue to require assessments, PED and the Legislature will need to consider the need for additional state-level funding.

Committee Discussion:

In response to a committee member's question about using the 11th grade assessment to replace the current high school proficiency examination, Dr. Morgan indicated that this replacement would be inappropriate until concerns with the 11th grade assessment have been addressed. Dr. Watson added his concerns about the incorrect assumption among teachers, administrators, and other school district staff that the 11th grade test will soon replace the high school competency exam.

Committee members expressed concern that PED has not met the school year 2003-2004 statutory deadline for implementation of diagnostic and standards-based tests on reading that include phonemic awareness, phonics, and comprehension. In response to a committee member's question, Ms. Lange said the K-2 Subcommittee needs at least six months to make a recommendation. At that time, she said, funding will be required for acquisition and implementation of any continuing and/or new assessment.

Committee members also expressed concerns that many teachers are either not aware of or are not conversant with the standards and benchmarks related to the subjects they teach. Dr. Watson said that the standards have been in place for ten years, but until student performance is assessed against them, teachers will not feel compelled to take them into consideration. Ms. Lange noted that the process of becoming a standards-based district has been long and difficult for LAPS.

In response to a committee member's question about the use of the state standards and benchmarks in pre-service teacher preparation at New Mexico's institutions of higher education, Ms. Lange said that, in the past two or three years, she has begun to see evidence that student teachers and recent graduates are aware of the existence and uses of state standards and benchmarks.

In response to a committee member's question, Dr. Watson noted that the contract with Harcourt Educational Measurement company calls for teacher training throughout the state. In response to another committee comment regarding the importance of teachers' learning to assess for standards, Dr. Watson said that models exist for this type of professional development for teachers.

AREA SUPERINTENDENTS AND COMMUNITY INPUT

Chairman Miera recognized Ms. Marybeth Schubert, Associate Director, New Mexico Association of Community Colleges, and Dr. Marshall Berman, retired, Sandia National Laboratories.

Ms. Schubert stated that the answer to helping students succeed in college was not solely in devising a high school graduation test that more accurately reflects the skills students need in college. Although that was an important aspect, she noted, making sure that public school teachers are adequately prepared to teach students those skills is even more important. She commented that at the state's community colleges, approximately 70 percent of incoming freshman are enrolled in remedial courses. She said that she would like to work with the Public Education Department (PED) to address both teacher preparation and the development of a new high school graduation test.

Dr. Berman described the work of the Direct Action for Youth (D.A.Y.) Foundation of New Mexico, a local, nonprofit organization that funds after-school teaching positions to help elementary students with reading skills. He explained that this school year, D.A.Y., which is run by Leon and Jocelyn Allen, had served 1,500 students in the Albuquerque, Rio Rancho, and Bernalillo school districts and that the average increase in reading level for participants was 1.5 grade levels in 18 weeks. Stating that the D.A.Y. approach is simple, inexpensive, and effective, he noted that the organization is funded by private foundations. Adding that the Allens might want to seek government funding, he asked if they might be given the opportunity to testify to the committee. Chairman Miera suggested that he discuss the possibility with Dr. Rindone.

Representative Miera thanked the presenters and, with the consensus of the committee, recessed the LESC meeting at 4:25 p.m.

**MINUTES
LESC MEETING
FRIDAY, MAY 14, 2004**

Representative Rick Miera, Chair, called the Legislative Education Study Committee (LESC) meeting to order on May 14, 2004, at 9:10 a.m., Albuquerque Public Schools Central Office, John Milne Board Room, 725 University Blvd., SE, Albuquerque, New Mexico.

The following LESG members were present:

Representatives Rick Miera, Chair, Pauline J. Ponce, Mimi Stewart, Thomas E. Swisstack, and W.C. "Dub" Williams; and Senator Mary Kay Papen.

The following LESG advisory members were present:

Representatives Kandy Cordova, Roberto J. "Bobby" Gonzales, J. Paul Taylor, and Richard D. Vigil; and Senators Mark Boitano, Dianna J. Duran, Mary Jane M. Garcia, and Leonard Tsosie.

Also attending the LESG meeting was Representative Danice Picraux.

GIFTED EDUCATION

Dr. Kathleen Forrer, LESG staff, introduced Mr. Sam Howarth, Program Manager, Special Education, Public Education Department (PED); Ms. Pam Sutcliffe, Education Administrator for Gifted Education, PED; Ms. Lynn Bryant, Director of Special Education, Las Cruces Public Schools; and Mr. Scott Nicolay, Gifted Program Specialist, Central Consolidated Schools, to discuss the status of gifted education in New Mexico at both the state and local levels.

In addition to the staff brief included in their notebooks, committee members were provided with the following documents by the presenters: "Gifted Education in New Mexico," a copy of the current statute governing gifted education, a copy of the current state regulation, "Las Cruces Public Schools Gifted Education," and "Report on the Progress of Gifted Student Identification in Central Consolidated School District Using the DISCOVER Assessment 10/03-3/04."

Dr. Forrer noted that the presentation before the committee was the result of SJM 58, *Study Services for Gifted Students*, introduced during the 2004 legislative session. She explained that SJM 58 requested the LESG to study educational services being provided for gifted students and that even though SJM 58 did not pass, the LESG included an examination of this issue in its workplan for the 2004 interim.

Dr. Forrer stated that the following concerns were cited in SJM 58:

- there are over 12,000 students in New Mexico identified for gifted services;
- gifted services vary significantly throughout the state;
- there is a disproportionate representation of minorities in gifted education;
- teachers of the gifted are not required to have special training;
- professional development related to gifted education is sporadic; and
- a comprehensive evaluation of gifted programs in New Mexico schools has not been conducted.

Each year, Dr. Forrer continued, the New Mexico Legislature appropriates funding for gifted education through the State Equalization Guarantee. She noted that gifted education is classified as special education and that the amount of program cost attributable to gifted education is based on the level of service provided to each child, using the special education cost differentials. According to PED, she reported, no federal funds are used to support gifted education.

Finally, Dr. Forrer explained that PED has used school year 2003-2004 80th day data to determine which school districts appear to be under-identifying minority students as gifted students (for the purpose of the analysis, PED defines minority as Black, Hispanic, and Native American/Native Alaskan). She noted that PED has divided the districts into four groups based on enrollment:

- Group 1, which consists of the attendance clusters in the Albuquerque Public Schools (APS);
- Group 2, which consists of nine other large school districts;
- Group 3, which consists of 31 medium-sized districts; and
- Group 4, which consists of the remaining 48 smaller districts.

Dr. Forrer explained that data available on the PED website indicate that the identification of minority students as gifted students varies widely among districts within each of the four groups. In each case, the assumption is that the percent of minority students identified as gifted should be similar to the percent of the total student population identified as minority:

- Group 1 – Within APS, the Highland Cluster, which has identified 5.0 percent of its student population as gifted, has the lowest proportion of minority identification. The cluster has a 71 percent minority student population; 34 percent of those identified as gifted are minority members. In contrast, the La Cueva Cluster, which has identified 8.5 percent of its student population as gifted, has the highest proportion of minority identification. The cluster has an 18 percent minority population; 10 percent of those identified as gifted are minority members. (The percent of the total student population in each cluster that has been identified as gifted ranges from a low of 2.7 percent to a high of 8.5 percent.)
- Group 2 – Santa Fe Public Schools, which has identified 3.6 percent of its student population as gifted, has the lowest proportion of minority identification. Santa Fe has a 74 percent minority population; 28 percent of those identified as gifted are minority members. In contrast, Rio Rancho Public Schools, which has identified 3.3 percent of its student population as gifted, has the highest proportion of minority identification. Rio Rancho has a 43 percent minority population; 24 percent of those identified as gifted are minority members. (The percent of the total student population in each district that has been identified as gifted ranges from a low of 0.7 percent to a high of 7.2 percent.)
- Group 3 – Zuni Public Schools has a 100 percent minority population, but has identified none of its student body as gifted. Of those districts in Group 3 that have identified gifted students, Hatch Valley Public Schools, which has identified 0.4 percent of its student population as gifted, has the lowest proportion of minority identification. The district has an 89 percent minority population; none of those identified as gifted are minority members. In contrast, West Las Vegas Public Schools, which has identified 1.3 percent of its student population as gifted, has the highest proportion of minority identification.

West Las Vegas has a 95 percent minority population; 100 percent of those identified as gifted are minority members. (The percent of the total student population in each district that has been identified as gifted ranges from a low of 0.0 percent to a high of 12.1 percent.)

- Group 4 – Among the smaller districts, 12 have not identified any students as gifted: Animas, Elida, Grady, House, Logan, Maxwell, Mosquero, Quemado, San Jon, Tatum, Texico, and Vaughn. Of those districts in Group 4 that have identified gifted students, Jemez Mountain Public Schools, which has identified 0.3 percent of its student population as gifted, has the lowest proportion of minority identification. The district has an 89 percent minority population; none of those identified as gifted are minority members. In contrast, Roy Municipal Schools, which has identified 2.2 percent of its student population as gifted, has the highest proportion of minority identification. Roy has a 30 percent minority population; 100 percent of those identified as gifted are minority members. (The percent of the total student population in each district that has been identified as gifted ranges from a low of 0.0 percent to a high of 5.9 percent.)

Noting that there is no federal funding for gifted programs under the federal *Individuals with Disabilities Education Act* (IDEA), Mr. Howarth explained that New Mexico uses the following 1993 federal definition of giftedness as the basis for state funding of gifted programs:

“Children and youth with outstanding talent perform or show the potential for performing at remarkably high levels of accomplishment when compared with others of their age, experience, or environment. These children and youth exhibit high performance capability in intellectual, creative, and/or artistic areas, possess an unusual leadership capacity, or excel in specific academic fields. They require services or activities not ordinarily provided by the schools.”

Ms. Sutcliffe stated that in New Mexico a gifted child is currently defined in regulation as “a school-age person whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking is so outstanding that a properly constituted Individual Education Plan (IEP) team decides special education services are required to meet the child’s educational needs.” This definition is an enhancement of the current statutory requirement that, in determining whether or not a child is gifted, the IEP team consider diagnostic or other evidence of the child’s creativity or divergent-thinking ability, critical thinking or problem-solving ability, intelligence, and achievement. Ms. Sutcliffe reviewed the following history of gifted education in the state:

1972 – The Legislature enacted legislation establishing special education and directing the department of education, with the approval of the State Board of Education (SBE), to set standards for diagnosis and screening. The department determined that students were to be identified for gifted services on the basis of the following four criteria: intellectual ability, academic achievement, critical thinking, and creativity.

1981 – Teachers providing services for gifted students were required to become certified in gifted education. The SBE established a special education K-12 teaching certificate requiring 15 credit hours of university coursework specifically focused on the education of gifted learners.

- 1982 – The determination of eligibility for gifted programs in New Mexico was broadened so that students only had to meet the criteria in any two of the four areas to be identified as gifted.
- 1986 – The definition of giftedness was narrowed in statute. To qualify, a student had to score two standard deviations above the mean on an intelligence quotient (IQ) test and also evidence outstanding achievement, creativity, or critical thinking. This change resulted in a 25 percent decrease in the overall number of students in gifted programs and in a 40 percent decrease in the number of minority students in gifted programs.
- 1986-1990 – Each year, the Legislature passed memorials requesting studies on issues related to gifted education.
- 1987 – Rural school districts stated that their teachers were unable to obtain the additional academic hours required to obtain certification for gifted education, and the certification requirements were eliminated. Currently, the only requirement that a teacher must meet to teach gifted students is possession of a teaching license in elementary, secondary, or special education.
- 1994 – **Current Statute:** Statute was amended to specify that multidisciplinary teams, commonly known as Individualized Education Program (IEP) teams, must consider four factors in identifying a child as gifted and in determining appropriate services: linguistic differences, cultural differences, socioeconomic status, and disability. In addition, the statute requires that each school offering a gifted education program establish an advisory committee consisting of parents, community members, students, and school staff members. The requirement that a student must achieve a specific score on an IQ test to be considered gifted was removed from statute; state regulation now defines “intellectual ability” as performance in the very superior range as defined by the test author. The statute has not been amended since 1994.

Ms. Sutcliffe noted that during the school year 2003-2004 there were 12,505 students identified as gifted and receiving services in 76 of the 89 school districts. She stated that in school year 2003-2004, the population of New Mexico was 52.45 percent Hispanic, 32.78 percent Anglo, 11.14 percent Native American, 2.44 percent African American, and 1.19 percent Asian American but that the population of students identified as gifted was 29.67 percent Hispanic, 62.27 percent Anglo, 3.19 percent Native American, 1.57 percent African American, and 3.29 percent Asian American.

In order to ensure that districts are properly identifying students as gifted, Ms. Sutcliffe explained that PED has established a focused monitoring system to identify districts that appear to be under-identifying students in the general population and/or under-identifying minority students in the gifted population. She said that in school year 2003-2004, the following entities had been selected for focused monitoring based on under-identification of minority students: the APS Highland High School cluster, Santa Fe Public Schools, Zuni Public Schools, and Vaughn Municipal Schools. She added that the following school districts had been identified for under-identification of gifted students in general: Gadsden Independent Schools, Hatch Valley Public Schools, Texico Municipal Schools, and Zuni Public Schools.

In describing the gifted program in the Las Cruces Public Schools, Ms. Bryant told the committee that services for gifted students are provided by Advanced Education Services (AES), the mission of which is to recognize and address the rights of gifted students to be provided with the direction, time, encouragement, and resources to realize their potential in order to become confident, productive adults. She explained that AES has developed the following five goal statements:

1. AES offers gifted students flexible pacing options and opportunities, including accelerated curriculum, creativity and critical thinking skills and transition planning designed to encourage individual progress;
2. AES develops in gifted students an understanding of individual gifts and talents, which leads to valuing themselves and others, recognizing and accepting personal differences, using positive communication, and strengthening self-efficacy and life resiliency skills;
3. AES provides gifted students with a framework and forum to explore the benefits of developing leadership skills and investing in his/her community;
4. AES facilitators serve as consultants to teachers, providing support that focuses on the needs of gifted students; and
5. AES facilitators collaborate with parents and community to enhance the awareness of academic, social and emotional needs of gifted students and to advocate for gifted education.

To identify gifted students, Ms. Bryant explained, the Las Cruces district does use the traditional methods, i.e., IQ and achievement testing, but it also is piloting two other tests—the Mary Frasier Talent Assessment Portfolio (FTAP) and the DISCOVER (Discovering Intellectual Strengths and Capabilities while Observing Varied Ethnic Responses) Assessment, both of which are designed to eliminate cultural and linguistic biases in the assessment process. During the school year 2003-2004, the district identified and served a total of 1,730 gifted students. Of that number, 955 (55.20 percent) were Anglo; 21 (1.21 percent) were Black; 696 (40.23 percent) were Hispanic; 47 (2.72 percent) were Asian; and 11 (0.64 percent) were Native American.

Ms. Bryant stated that the district had adopted the following continuum of services to meet the needs of its gifted students: general classroom enrichment, curriculum compacting and differentiation, total talent portfolios, small group advisement, acceleration, magnet schools, self-designed courses of study, honors classes, Advanced Placement, special enrichment, and internships/mentorships.

To provide more detail regarding specific aspects of the gifted programs in the Las Cruces Public Schools, Ms. Bryant introduced Ms. Denise Lucht, president of Parents and Advocates of Gifted Education (PAGE), and Ms. Mary Helen Ratje, a coordinator for gifted services at Sierra Middle School:

- Ms. Lucht explained that the role of PAGE is (1) to promote the model for parent support groups developed by a nonprofit organization called Supporting Emotional Needs of the Gifted (SENG); (2) to provide enrichment activities for families and friends of gifted students; and (3) to advocate for gifted education at both the local and state levels.

She provided the committee with a copy of a document, "A Parent Guide: Advanced Education Services," developed by PAGE to educate parents of gifted children about AES.

- Ms. Ratje explained that the special needs of gifted students at the middle school level are intensified by the emotional and social pressures all middle school students face; as a consequence, there is a concerted effort to keep gifted students in the same school for all three years to allow facilitators and teachers to get to know the children's families.

In describing the Central Consolidated Schools, Mr. Nicolay said that of the 7,000 students in the district, 90 percent are Navajo. Noting that the expected rate of gifted identification in a student population is in the range of 5.0 to 10 percent, Mr. Nicolay stated that in school year 2002-2003 only 1.1 percent of the student population in Central had been identified as gifted and that most of those were from Kirtland and Shiprock, where the majority of the non-Navajo population served by the district is located.

Stating that under-identification in any group is a problem, Mr. Nicolay stressed that a higher identification rate is not an end in itself but a measure of how well the district is doing in terms of serving the educational needs of all of its students. He then spoke about the district's efforts to find a way that is compatible with Navajo culture to identify Navajo students as gifted.

Indicating that traditional IQ tests have not proven effective, he told the committee that the district, with permission from PED, is now using the DISCOVER Assessment, which was developed at the University of Arizona for use with students of various ages and ethnic backgrounds, including Navajo students. He explained that while traditional IQ tests tend to under identify Native American students, research done on the reliability and validity of DISCOVER has shown that it identifies minority students at the expected rate, i.e., at the same rate the minority population represents of the entire student population. Mr. Nicolay added that his experience with DISCOVER in Central has been the same as that reported in the research studies.

Mr. Nicolay explained that DISCOVER is used to assess all students in a classroom through a variety of exercises and group activities designed to measure multiple types of problem solving skills associated with giftedness. A trained team of assessors administers the DISCOVER Assessment while the regular classroom teacher remains in attendance. In October 2003, 26 district staff members, including 12 substitute teachers with college degrees, were trained in the use of DISCOVER. Between October 2003 and the April 2004 LESC meeting, team members conducted 45 assessments in ten schools and identified an additional 87 students as gifted. Mr. Nicolay indicated that the team planned to conduct an additional 35 assessments in seven other schools by the end of the school year.

In conclusion, Mr. Nicolay told the committee that the implementation of the DISCOVER Assessment in Central has had an unintended but very positive consequence. Because of the way in which DISCOVER is administered, teachers who had never before thought of any of their students as gifted had the opportunity to observe some of those same students exhibiting gifted behavior. According to Mr. Nicolay, the teachers' new perspective has itself contributed to the increase in identification of gifted students. Now that the district has apparently solved the problem of identifying gifted students, Mr. Nicolay said that the next step would be to ensure that an appropriate array of services is made available for those students.

Committee Discussion:

A committee member expressed concern that the 1986 change in statute tightening the requirements for identifying gifted students had done a disservice to minority students in the name of cost control. Mr. Howarth stated that the subsequent 1994 amendment had helped to correct the situation but that a change in the current PED regulation governing gifted education is also needed. He explained that PED, with input from educators and others with an interest in gifted programs, is in the process of revising the regulation in order to provide more flexibility for districts in the selection of diagnostic tools, including FTAP and DISCOVER. In response to a committee member's question, Mr. Howarth stated that he did not think it would be necessary to amend statute to increase the proportion of minority students identified as gifted. He noted that the current statutory definition is rather general and that the necessary flexibility to incorporate alternate evaluation procedures could be provided through regulation. A committee member noted that gifted minority students will continue to be at high risk of dropping out if the situation does not change.

Several committee members expressed concern that no particular academic training or professional development is required before a teacher can be assigned to teach gifted students. Ms. Sutcliffe explained that because only the University of New Mexico offers courses in teaching the gifted, opportunities for additional training are limited. Ms. Bryant noted that individual districts are responsible for both the content and the provision of professional development. Both Ms. Sutcliffe and Ms. Bryant stated that professional development opportunities are inconsistent across the state.

In response to a committee member's question concerning the role of PED in providing assistance to districts, Ms. Sutcliffe stated that PED is instituting "forward assistance" by training district staff in regard to initial screening, selection of appropriate assessment instruments, and appropriate professional development for teachers.

In response to a committee member's question concerning the age at which a child should be screened for evidence of giftedness, Ms. Sutcliffe stated that it is best to identify students in the 2nd grade. She noted that children who are not challenged academically in the 2nd through 4th grades may end up tuning school out and doing nothing. Explaining that a gifted child does not necessarily exhibit academic excellence, she added that the largest problem in identifying students as gifted is not the choice of assessment instrument but the failure of teachers to refer students for evaluation.

In response to a committee member's question concerning why PED did not consider Asian students as a minority in determining under-identification of minorities as gifted, Ms. Sutcliffe explained that both Asians and Anglos currently are overrepresented in gifted programs.

In response to a committee member's question regarding what services, if any, are provided for gifted school-aged individuals in correctional facilities, Mr. Howarth explained that school districts are not required to identify and provide services for such individuals but that if an incarcerated child already has an IEP in place, both the Department of Corrections and the Children, Youth and Families Department will follow the plan.

Several committee members recounted their experiences with the difficulties besetting and the ultimate accomplishments of children who are gifted.

Senator Garcia requested PED to provide information on the percent of students in general and on the percent of minority students in particular who have been identified as gifted in each of the schools in the Las Cruces Public Schools.

Senator Mark Boitano requested PED to provide information regarding which districts have demonstrated success in identifying minority gifted students.

Senator Papen requested PED to provide information about both the number of students in juvenile correction facilities with IEPs requiring gifted services and the type of services that are available for qualifying individuals.

BILINGUAL EDUCATION AUDIT REPORT

Ms. Frances Maestas, LESC staff, introduced Ms. Christine Chavez, Performance Audit Manager, and Ms. Renada Peery, Performance Auditor, Legislative Finance Committee (LFC), to summarize the findings and recommendations of the 2003 interim audit of the Bilingual Multicultural Education Program. Dr. Kurt Steinhaus, Deputy Director, Learning and Accountability, PED, Ms. Maestas added, would discuss PED's corrective action plan.

Referring to the staff brief, Ms. Maestas explained, the 1973 Legislature enacted the *Bilingual Multicultural Education Act* to encourage the cognitive and effective development of New Mexico students by (1) utilizing the cultural and linguistic backgrounds of the students in the curriculum; (2) providing students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and (3) teaching students to appreciate the value and beauty of different languages and cultures. To be eligible for state funding, Ms. Maestas added, the act requires each school district program to be reviewed and approved by PED to ensure that it:

- provides for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades K-12;
- gives priority to programs for culturally and linguistically different students in grades K-3 for which there is an identifiable need to improve the language capabilities of students before funding programs at higher grade levels;
- uses two languages for instruction for any part or all of the curriculum of the grade levels within the program;
- uses elementary or secondary education teachers who have received special training in bilingual education conducted through the use of two languages; and
- emphasizes the history and cultures associated with a student's mother tongue.

In 2004, Ms. Maestas stated, the Legislature amended the act to provide for more accountability in bilingual multicultural education programs to require:

- a district curriculum to be aligned with the state academic content standards, benchmarks, and performance standards;
- a local school board, rather than PED, to review the district's bilingual multicultural education program plan (approval for program funds, however, remains the responsibility of PED);

- school districts to report academic achievement, language proficiency, and cost and program effectiveness to PED on an annual basis;
- district professional development plans to include activities in the areas of research-based bilingual multicultural education programs, best practices of English as a second language, and classroom assessments that support academic and language development;
- language proficiency in both English and the home language as eligibility criteria for state funding;
- establishment of a parent advisory committee to assist and advise in the development, implementation and evaluation of bilingual multicultural education programs; and
- annual parental notification prior to a student's placement in a bilingual multicultural education program.

The 2004 Legislature, Ms. Maestas noted, also included language in the *General Appropriation Act of 2004* that requires PED to evaluate the program effectiveness and use of bilingual multicultural program funds to ensure that program needs are met and to provide the LESC and LFC with a preliminary report by July 1, 2004, and a final report by December 1, 2004.

Ms. Chavez began the committee presentation by stating that the objectives of the audit were to determine the (1) requirements for program funding; (2) distribution of program funds; (3) use of funds; (4) compliance with state and federal regulations; and (5) program outcomes. She noted that the committee presentation would focus on:

- the funding of bilingual programs;
- PED and school district compliance with state and federal requirements;
- the reliability of bilingual program data in PED's Accountability Data System (ADS); and
- the administration of the bilingual program by the Bilingual Education Multicultural Unit at PED.

Referring to exhibits within the audit report, *Public Education Department Audit of Bilingual Multicultural Education Program, January 19, 2004*, Ms. Chavez provided a synopsis of the findings. Referring to a table on page 11 of the report, she said that from FY 01 to FY 03, state funding for bilingual education increased by 3.0 percent while program-funded membership decreased by 8.75 percent. However, she stated, this information may be misleading because the review revealed that little or no training is provided to school district personnel in submitting membership data to PED, data adjustments are made by PED staff without documentation to validate the changes, and reported expenditures are unreliable, primarily because PED has not established account codes to identify costs by program. She also noted that the *Bilingual Multicultural Education Act* requires PED to provide priority for K-3 students with an identifiable need to improve language capabilities prior to funding programs at higher grade levels. However, a review of FY 03 data revealed that out of 24,904 limited-English proficient (LEP) K-3 students, only 17,000 or 69 percent were participating in bilingual education programs statewide, while approximately 42,000 LEP and 11,000 non-LEP students in grades 4 to 12 were receiving similar services.

Ms. Chavez indicated that recommendations to address these findings include a requirement that PED:

- implement adequate written internal control procedures to ensure a complete audit trail for data submitted by districts;
- require PED's Internal Audit Unit to include bilingual education programs in the performance of school district membership audits; and
- adopt a public school chart of accounts that aligns with the National Center for Education Statistics (NCES) chart of accounts that provides for codes to determine and compare costs by program.

Ms. Peery indicated that to assess the reliability of ADS data relating to bilingual education, LFC auditors performed site visits in 17 schools in eight school districts to evaluate student records. She noted that a review of 372 student records for FY 03 revealed 318 reporting errors that suggest that:

- 10 percent of the students reported as enrolled in bilingual education were consequently not enrolled;
- 5.0 percent of the students reported as not enrolled were enrolled in the program;
- 19 percent of the assessment dates were incorrectly reported;
- 9.0 percent of the students were incorrectly reported as LEP;
- 9.0 percent of the students were incorrectly reported as non-LEP; and
- 16 percent of the students were assessed, but their assessment dates were not reported in ADS.

Using tables within the audit report, Ms. Peery also reported that a review of school districts with the highest percent of bilingual education students to total student body revealed four school districts reporting their entire student body in bilingual education programs. In another table that identified the number of LEP students being served by bilingual education statewide, approximately one-third of LEP-identified students were not being provided bilingual education program services. Finally, in a comparison of students with a home language other than English, the only Native American language listed on the 120th days ADS report was Navajo, even though ADS includes language options for Towa, Mescalero Apache, Tiwa, Keres, Zuni, Tewa, and Jicarilla Apache.

Ms. Peery indicated that recommendations relating to the analysis of ADS data by the LFC auditors include (1) requiring PED to provide school district staff guidance on providing reliable ADS data; (2) providing database analysis training to the staff in the Bilingual Education Multicultural Education Unit at PED; and (3) requiring the unit to analyze data on a regular basis for compliance with federal and state requirements to include such item as the number of LEP students not receiving bilingual education services, past-due assessments of LEP students, non-LEP students receiving bilingual education services, and assessment of students with a home language other than English who are not enrolled in bilingual education programs.

To conclude the presentation, Ms. Peery stated that a review of noncompliance issues in accreditation reports for 74 schools in nine school districts revealed that 45 percent were not delivering an approved bilingual/multicultural program and 55 percent had not developed a scope for delivery of bilingual or English as a second language (ESL) instruction. The primary recommendation to address this issue, Ms. Peery noted, was a requirement that the Bilingual

Education Multicultural Unit at PED develop an accreditation or focused-monitoring process that trains PED teams in identifying key review indicators, establishes timelines for implementation of corrective action plans, and provides sanctions for noncompliance. She reported that recommendations for the Bilingual Education Multicultural Unit at PED included the development of a written policy and procedure manual for the training of new staff, an increase in the unit's employee training budget, and additional funds in the unit's travel budget for focused-monitoring and technical assistance on-site visits in school districts statewide.

Dr. Steinhaus reported that on February 18, 2003, Dr. Veronica C. García, Secretary of Public Education, provided the LFC with a summary of activities, including timelines, that address the recommendations in the LFC audit report. Dr. Steinhaus then referred to Dr. Gladys Herrera-Gurule, Director of Bilingual Education and Title III Programs, PED, for further comments. Dr. Herrera-Gurule added that the Internal Audit Unit and the Bilingual Multicultural Education Unit have instituted a joint effort to respond to language in HB 2, *General Appropriation Act of 2004*, requiring PED to evaluate the program effectiveness and use of bilingual multicultural program funds and to provide a report to the LESC and LFC in the 2004 interim. The two units will also respond to HM 3, *Audit Bilingual Education Programs*, which requests PED to conduct audits of all public schools with bilingual programs. She emphasized that a report outlining the status of corrective action activities relating to the LFC audit and an evaluation of the state's bilingual multicultural education programs statewide would be finalized and available to the committee by December 2004.

Chairman Miera asked for comments from the audience, and the following individuals provided the testimony:

- Professor Rebecca Blum Martinez, University of New Mexico, emphasized the need for administrator training in implementing and evaluating bilingual program outcomes. She expressed doubts about the federal *No Child Left Behind Act of 2001* (NCLB) and its effect on minority students by stating that the act does not emphasize native languages which may influence the elimination of these languages across the country.
- Ms. Lynn Rezen, Director of Bilingual Programs, Albuquerque Public Schools (APS), stated that many districts maintain language proficiency and achievement data, among them APS, that validate that districts are currently meeting bilingual education program goals.
- Ms. Mary Jean Haberman-Lopez, Associate Director, New Mexico Association for Bilingual Education, requested that the committee recognize that one hour of bilingual instruction is insufficient and that five hours of instruction should be required for all eligible students.
- Dr. Mel Morgan, Director, Data Management, Las Cruces Public Schools (LCPS), emphasized the need for quality input of data and reported that LCPS is currently developing a program that audits data input on a day-to-day basis and automatically links data to specific programs, such as the bilingual program. A key element to having any program work, he noted, is providing training to principals, teachers, and support staff in analyzing and understanding how the data can be used to support and evaluate district-level decisions relating to the effectiveness of a specific program.

- Dr. Christine Sims, Chair, Linguistic Institute for Native American Languages, suggested training administrators in school districts implementing Native American language bilingual programs. She emphasized the need to recognize that limited instructional resources are available in the area of native language bilingual curriculum, including a lack of native language speakers to provide instruction and to translate program materials for assessment purposes, especially for those tribes with unwritten languages.
- Ms. Louise Benally, Gallup Bilingual Program, Gallup-McKinley County Public Schools, spoke of the difficulty in locating qualified instructors for native language bilingual programs and expressed her gratitude to the Legislature for allowing a person proficient in the language and culture of a New Mexico tribe or pueblo to become certified as an instructor in New Mexico’s public schools.

Committee Discussion:

In response to a committee member’s question as to the total amount of dollars being provided for bilingual education in New Mexico, Ms. Chavez responded that for FY 01, FY 02, and FY 03, approximately \$36.0 million in state funds through the Public School Funding Formula and \$4.0 million in federal funds have been provided for bilingual education each year.

In response to a committee member’s question as to whether the audit was able to determine if the funds expended on bilingual education are producing results, Ms. Chavez replied that PED would need to require school districts to provide detailed evidence of language proficiency and academic achievement of bilingual education students before a value could be determined for bilingual education in New Mexico.

Representative Ponce requested that Dr. Steinhaus research the issue of whether NCLB requirements supercede New Mexico state constitutional requirements regarding bilingual education.

Representative Ponce requested LFC auditors to provide the committee with a copy of the handout distributed to the LFC at its January 19, 2004, meeting summarizing the findings and recommendations of the bilingual audit.

There being no further business, Representative Miera thanked the presenters and, with the consensus of the committee, adjourned the LESC meeting at 2:00 p.m.

_____ Chairperson

_____ Date