

**MINUTES  
of the  
FORTY-SIXTH MEETING  
of the  
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 20, 2014  
Room 307, State Capitol  
Santa Fe**

The first meeting of the 2014 interim of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on Friday, June 20, 2014, in Room 307 of the State Capitol in Santa Fe, New Mexico.

**Present**

Rep. Mimi Stewart, Chair  
Paul Aguilar  
Rep. Eliseo Lee Alcon  
Tom Clifford, Secretary, Department of  
Finance and Administration  
Dr. Carl Foster  
Cecilia Grimes  
Kirk Hartom  
Rep. Larry A. Larrañaga  
Rep. James Roger Madalena  
Rep. W. Ken Martinez  
T.J. Parks  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Benny Shendo, Jr.  
Rep. James E. Smith

**Advisory Members**

Rep. Sharon Clahchischilliage  
Rep. Roberto "Bobby" J. Gonzales  
Rep. Sandra D. Jeff  
Rep. Patricia Roybal Caballero  
Sen. William P. Soules

**Absent**

Sen. John M. Sapien, Vice Chair  
Dr. Lisa Grover  
Leonard Haskie  
Robbie Heyman  
Sen. Mary Kay Papen  
Mike Phipps  
Judy Rabon  
Rep. Henry Kiki Saavedra  
Sen. John Arthur Smith  
Allan Tapia

Sen. Howie C. Morales  
Sen. John C. Ryan  
Sen. William E. Sharer  
Sen. Pat Woods

**Staff**

Raúl E. Burciaga, Director, Legislative Council Service (LCS)  
Sharon S. Ball, Senior Researcher, LCS  
Michelle M. Jaschke, Researcher, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Friday, June 20****Welcome and Introductions**

The chair welcomed members, staff and guests and thanked everyone for their participation. Task force members and staff introduced themselves at the request of the chair.

**2014 Legislative Highlights**

Ms. Ball presented an overview of public school capital outlay-related bills from the 2014 legislative session. Task force members received a handout with a summary and copies of the 2014 legislation, including House Bills 68 and 280, House Appropriations and Finance Committee Substitute for House Bill (HB) 146, Senate Bills 159 and 6 and Senate Joint Memorial 4. The handout includes information regarding the 2014 Work New Mexico Act as well.

HB 68 amends the Public School Capital Outlay Act to allow funding to school districts to address building system needs, Ms. Ball reported. The bill would allow the Public School Capital Outlay Council (PSCOC) to provide funding from the Public School Capital Outlay Fund (PSCOF) for a public school repair, renovation and replacement initiative. In addition, the bill provides a definition of "building system" for the program. Ms. Ball noted that the bill, sponsored by Representative Stewart, and endorsed by both the PSCOOTF and the Legislative Education Study Committee (LESC), did not get a hearing in the Senate Finance Committee. Task force members discussed various provisions of the bill and noted that perhaps the legislation should be introduced in the senate during the 2015 session to allow it more opportunity for progress.

Ms. Ball proceeded to review HB 280, also sponsored by Representative Stewart, which provides for a return to statutory individual class size and teaching load requirements over a three-year period. The bill, passed and signed into law, also allows school districts to continue to apply to the Public Education Department (PED) for a class size or teaching load waiver. Questions arose among the membership about who is applying for waivers and how they are proceeding. The chair noted that some school districts are experiencing difficulties in developing a plan to return to class size limits as required by the statute and may still apply for waivers. She

further explained a provision of the bill that provides an initial \$6 million appropriation to hire new teachers in fiscal year 2015 to support the first year phase-in of the return to statutory teaching loads. In addition, she deemed it appropriate for the task force to think about future funding for the phase-in. Although funding has been provided for the first year to hire additional teachers, the chair pointed out that some school districts have empty teaching positions now and lack qualified personnel to fill those existing positions.

Task force members asked if there would be any interim updates regarding the new provisions of HB 280. Ms. Ball said that the task force will be coordinating with the LESC and will hear a report on this issue from the PED. The chair also noted that the issue will come before a joint meeting of the Legislative Finance Committee (LFC) and the LESC in the interim.

Ms. Ball reviewed major provisions of Senate Bill (SB) 159 for education technology infrastructure funding. Although the PSCOOTF declined to endorse the legislation, the bill was endorsed by the LESC and subsequently passed and signed into law. The bill provides for allocations from the PSCOF for education technology infrastructure and establishes an education technology infrastructure deficiency corrections initiative, similar to previously funded deficiency corrections programs for the public schools.

A number of important education-related appropriations were made from the PSCOF in provisions of the 2014 Work New Mexico Act, according to Ms. Ball. Appropriations included over \$7 million for the Cartwright Hall renovation at the New Mexico School for the Deaf and roughly \$14 million to the PED for pre-kindergarten classrooms, school bus replacement and education technology infrastructure. The New Mexico School for the Blind and Visually Impaired received appropriations in excess of \$9 million for various renovation and construction projects.

Ms. Ball also presented information regarding SB 6, a measure that would make charter schools eligible to receive a prorated share of education technology equipment purchased through issuance of education technology notes. Task force members discussed whether charter schools are now eligible to receive a fair share of funds coming into a school district and how the property tax mill levies affect charter schools and schools on Native American lands where property taxes are not assessed.

The chair noted that the members are discussing a bill that did not pass and suggested that individual school boards can move forward on education technology on their own so that all schools receive a fair portion of such funding. At present, the chair pointed out, charter schools are not included in statute to be eligible to receive this type of funding. Ms. Ball stated that a number of school boards are concerned about raising taxes without voter approval.

Continued discussion focused on school building maintenance and equipment repair and replacement needs. The chair noted that school districts are facing a situation wherein a school's exterior structure may be sound but the heating, ventilating and air conditioning or other building

systems may be compromised and existing capital outlay sources are insufficient or unavailable to address such needs. The task force was asked to delay further discussion of maintenance needs until after the planned presentation on the status of school conditions by Robert Gorrell, director of the Public School Facilities Authority (PSFA).

Ms. Ball went over the contents of the resource binder for task force members. The chair noted that all of the information included in the binder is available electronically on the New Mexico Legislature web site. Ms. Ball explained that Mr. Burciaga would be presenting an update on the status of the *Zuni* lawsuit, which was the impetus for the establishment of the PSCOOTF to oversee the standards-based process. Speaker Martinez thanked staff for including legal information related to the *Zuni* lawsuit and the report of the special master appointed as a result of the lawsuit in the resources. He noted that he had provided testimony in the original lawsuit, and he lauded the state's efforts over the past 15 years to fairly distribute public school capital improvement resources in the state. Representative Larrañaga was recognized as one of the original members of the task force that established the standards-based process now used for funding distribution.

### **Status of School Conditions and Public School Capital Outlay Standards-Based Funding Capacity**

David Abbey, director, LFC, who also serves as the chair of the PSCOC, and Mr. Gorrell presented a progress report to the task force on the status of school conditions and public school capital outlay standards-based funding capacity. They provided a handout with a variety of sources of information on the progress of improving school facilities conditions, funding allocations and pressures and efforts to sustain appropriate facilities conditions.

Mr. Gorrell discussed with the task force the formula used to weight the Facility Condition Index (FCI) for public school buildings. Beyond a simple assessment of a facility's physical condition, the formula weighs curriculum needs, space requirements, life, health and safety priorities and related factors. Thus, the PSFA arrives at a weighted New Mexico Condition Index (wNMCI), which ranks facilities in order to prioritize funding needs. Mr. Gorrell asserted that the condition of facilities has a tremendous impact on students' ability to learn. He cited studies that show a correlation of poor facility conditions with higher truancy and suspension rates, behavioral problems and lower test scores. Further, Mr. Gorrell reported on the progress that has been made toward improving the statewide average facility condition over the past 15 years.

Noting a direct correlation between the amount of money spent and a better FCI, as well as a better wNMCI, Mr. Gorrell presented charts demonstrating how the increase in PSCOC awards subsequent to the directives of the special master in the *Zuni* lawsuit have resulted in improved facility conditions statewide. Members noted that certain areas or "outliers" continue to lag behind in the FCI and wNMCI as a result of smaller property tax bases or limited representation in the various funding processes. Mr. Gorrell agreed that the complicated problem of funding inequities can result in poorer facilities conditions in some areas. He asserted,

however, that over time the condition indices have reached more of an equilibrium. In some instances, he noted, communities may choose not to support school improvements or participate in the required processes.

Task force members raised questions regarding the efficacy of maintaining buildings that may need to be replaced. Mr. Abbey explained to the members that the PSCOC "rule of thumb" is to replace a facility with a wNMCI higher than 60 percent. He noted that the common denominator in all of these calculations is the replacement cost of the facility. While the FCI can never exceed 100 percent, he pointed out, the wNMCI could exceed 100 percent when factors of space or health and safety weigh heavily.

As Mr. Gorrell reported, the statewide average wNMCI is currently around 22 percent. Resource limitations require that those facilities with the worst conditions be prioritized for funding. Mr. Abbey related that the standards-based funding formula has now stabilized the differential between the best and worst facilities conditions. He noted the tremendous progress made since the turn of the century in moving toward the constitutionally mandated uniform system.

Mr. Gorrell reported that projections on the life of facilities and systems assume optimal maintenance efforts. He and Mr. Abbey indicated that if long-range planning and maintenance efforts could be significantly improved, funding for school systems could possibly be "peeled back" by 2019-2020, and more funding could remain in the Severance Tax Permanent Fund corpus. While good planning is a key to this whole process, Mr. Gorrell advised, so much variability enters into the equation during the full planning cycle that many times plans will change completely. He reported that a lot of plans are already in the works for repairs and replacements as far out as 2019-2020. The process begins with bonding and continues through extensive phases of architectural modifications and community involvement to culminate in the bidding and construction phases. Mr. Gorrell strongly advocated a focus on proper maintenance procedures as a means to avoid costly facilities replacement.

One task force member related the case of a new elementary school that upon completion required an immediate 50 percent expansion to accommodate additional students and new staffing needs. Mr. Gorrell acknowledged that it is extremely difficult to predict space and curriculum-mandated needs accurately given the lengthy planning processes involved, particularly in areas such as Carlsbad and Hobbs, which are currently undergoing a construction boom. Mr. Abbey noted again that the result of the standards-based program has been to lower the variance in school facilities conditions in the indices from over 70 percent to 35 percent.

Task force members asked what could be done for school districts that are still struggling and are not well served by the existing formula. Mr. Abbey responded that there is a need to revisit the formulas periodically, particularly for those school districts with an extremely high local matching share. He also acknowledged that some school districts with a high average wNMCI do seem to be receiving fewer dollars. Discussion ensued about the reasons for such

discrepancies and whether or not changes in the standards-based formula would require court approval, particularly changes that affect impact aid districts. The chair asked that members hold their questions in this regard until the lawsuit status update could be presented in the afternoon.

Some members noted that in the wake of nearly \$2 billion in capital improvement expenditures since the *Zuni* lawsuit was initiated, no facilities maintenance requirements or commitments have been negotiated with the school districts. Mr. Gorrell responded that conditions have been placed on PSCOC awards with regard to maintenance efforts but that the council has no other power to ensure that funding for maintenance is properly spent. Members discussed the difference between building maintenance and janitorial services and the difficulties in finding qualified maintenance staff. Determining how money is actually spent in the maintenance category at the local level is also a challenge, according to task force and panel members. Mr. Abbey noted that including maintenance "scores" as a condition of awards in the funding process is a huge step in the right direction.

Other concerns were expressed by members regarding erosion of the corpus of the Severance Tax Permanent Fund, with money being "intercepted" for other purposes before going into the fund. Mr. Gorrell and Mr. Abbey presented a summary of spending, state share funding and sources and uses of funds. Members further discussed the availability of maintenance "scores" for the use of the task force, the need for broadband expansion and the impact of school conditions and facilities on student success. Mr. Gorrell affirmed that school districts continue to be weak on facilities maintenance but noted that if the system could arrive at a model of predictive replacement, return-on-investment decisions would be facilitated. He also stated that the wNMCI is a dynamic measure, with assessment data continually being fed into the system, although a fixed result is published only once a year. None of the models can predict crisis or emergency response needs, Mr. Gorrell confirmed.

Mr. Abbey announced that the PSCOC would be hearing funding requests from various school districts in Albuquerque on June 25. He invited members to attend the hearing and noted that he would provide an agenda for the meeting during the afternoon session.

In response to task force questions regarding the scalability of the standards-based process to other areas of capital outlay, Mr. Abbey outlined the importance of "just in time" funding as a means to move the statewide process toward project readiness to eliminate tying up too much money for too long and to avoid overfunding of projects. Mr. Gorrell noted that increased data collection for scalability studies as suggested by some task force members would require additional staff.

Mr. Gorrell also responded to task force questions about how other states fund school capital improvements and about job creation. States have a variety of funding mechanisms, he reported, and no other state that he is aware of uses New Mexico's equalization formula. Discussion ensued regarding funding mechanisms. Mr. Gorrell stated that he could provide

information regarding the number of jobs created through school facilities development at a later date. A request was made to hold the September meeting at the Santa Fe Indian School.

Representative Gonzales pointed out that maintenance needs and building longevity can vary greatly between large and small schools. He lamented the fact that the State Investment Council has failed to propose an increase in the gasoline tax for the past 20 years, noting the serious infrastructure failures in roads and other areas that those taxes could and should address. These needs siphon funding from the Severance Tax Permanent Fund. Further, he asserted that in smaller areas, charter schools drain funding from existing buildings and school programs to the detriment of the entire system.

Secretary Clifford expressed concern with the percentages presented by the panel with regard to state share funding. He asserted that what is available to the legislature for appropriation each year is roughly equal to the public school capital outlay amount. Further, he stated that what is missing from the reports and presentations is the amount of money "in the pipeline" — millions of dollars according to Secretary Clifford — and information that could be useful to the task force about whether or not the money is moving through the pipeline.

Discussion ensued regarding provisions for charter schools on tribal lands. Members had questions about how that process would start, and without a tax base, what the funding process would be. Questions also arose regarding how to address conflicting views on the establishment of charter schools in these areas and whether or not charter schools have access to existing school buildings.

Mr. Abbey addressed the issue of charter school facilities, noting that some charter school facilities are being developed in school districts that have empty or excess facilities capacity. Charter schools have legal authority to build new facilities, resulting in funding conflicts for school districts. One member was under the impression that the Charter Schools Act requires charter schools to use existing facilities. Mr. Gorrell clarified that the school district must offer existing available facilities but that the charter school does not have to accept a district offer. Mr. Abbey suggested that the task force look at making use of existing facilities mandatory for charter schools. Members agreed that charter schools should be held to stricter requirements, and the chair noted that the task force would be looking at these issues during the interim. She indicated that she also apparently mistakenly believed that the mandate was clear for charter schools to use existing available buildings. Mr. Abbey indicated that the PSCOC is approaching this on a case-by-case basis at present and that perhaps a stronger legal mandate is required.

Discussion followed regarding how square footage reductions would benefit school districts and the changing capacity needs of districts, particularly in rural areas. Members questioned whether planning was adequate to avoid overbuilding in some areas. Mr. Gorrell responded that facilities funding generally follows students, and he noted the difficulties inherent in monitoring population size. Many members expressed concerns regarding maintenance needs and monitoring funding for building maintenance. It was noted that the way cost codes are set up

limits the PED's ability to verify maintenance versus operating expenditures, and that issues of local control are also at stake. Members asked that a discussion of how the task force can assist with maintenance issues be placed on a future agenda. The chair pointed out that existing funding sources do not allow for necessary maintenance salary expenses and that the task force needs to explore how to establish a funding mechanism for maintenance operating expenses.

Additional questions arose regarding the difference between school district and state-chartered schools, and the chartering process. Mr. Gorrell stated that ideally, school districts include charter schools in their master plans. The school district pays the local match for those schools, whereas state-chartered schools are their own districts with no bonding capacity. The PSCOC looks at those on a case-by-case basis. It was noted that the application process includes establishment of a founding board and public hearings and that no single individual or public official can charter a school without going through this process. Additionally, the application must identify where the school will be located, and authorization to move forward with the charter requires that eligible facilities be identified. Charter schools are not eligible for standards-based funding until they are reauthorized five years after having been established. The chair noted again that the task force would review the issue of charter schools during the interim.

One member addressed Secretary Clifford's assertion regarding funds tied up in "the pipeline" with a query about whether arbitrage fees apply to these millions of dollars. Secretary Clifford replied that fees generally do not apply to these dollars, only to long-term bonds. The member clarified that since these are taxable notes, arbitrage fees do not apply.

### **Adoption of Work Plan and Strategies Moving Forward**

The chair asked members to review the proposed interim work plan. She verified with Ms. Ball that all of the items and issues raised by members were included in the proposed plan, and the chair clarified for members that agenda items could be added as the interim progresses. Senator Shendo moved that the work plan be adopted as proposed. Mr. Hartom seconded the motion, and the work plan was adopted unanimously.

### **Status of *Zuni* Lawsuit and Litigant Districts**

Mr. Burciaga presented background information and a brief update on the status of the *Zuni* lawsuits and two new lawsuits that have been filed under similar premises that may relate to capital outlay issues coming before the task force.

Article 12, Section 1 of the Constitution of New Mexico provides that "a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained". Mr. Burciaga observed that New Mexico courts have yet to specifically construe the meaning of "uniform" or "sufficient" in this constitutional provision.

In 1974, the New Mexico Legislature was one of the first in the nation to adopt a school financing system for *operational* expenses that provided funding for public education on an equalized funding formula, rather than local property taxes. The formula produced a total program cost that determined the amount of the state equalization guarantee to a given school district. However, Mr. Burciaga noted, capital expenses, which remained largely dependent on property wealth, were not addressed at that time.

Mr. Burciaga further reported that because the state could take credit for 95 percent of federal impact aid — funds provided to school districts in lieu of local property taxes for children residing on federal lands or children having parents working on federal property — the affected districts were left with only five percent of impact aid funds for capital expenses. That formula was later modified to a 75 percent/25 percent allocation. Thus, the equalization of operating funds had resulted in an unequal effect on capital funding for school districts with little taxable property.

In 1998, Mr. Burciaga stated, the Zuni Public School District, which had been unsuccessful in obtaining direct legislative appropriations for capital expenditures, raised the question of whether the capital system, based on local property wealth, violated the state constitution's promise for a "uniform system". The Zuni Public School District filed a lawsuit on the premise that the state's financing of public schools violated those rights under the New Mexico and United States constitutions. The Gallup-McKinley County and Grants-Cibola County school districts subsequently joined the Zuni Public School District as plaintiffs in the lawsuit.

Subsequently, the district court ruled that the public school capital outlay funding system in use at that time was unconstitutional. Millions of dollars were allocated by the state beginning in 1999 to begin to correct school facilities deficiencies, and the PSCOOTF was established to oversee public school capital expenditures in 2000. In 2001, a school capital outlay system based on adequacy standards was implemented, and in 2002, a special master was appointed to review the state's progress in developing a "uniform system". At that time, the special master found that the state "is in good faith and with substantial resources attempting to comply with the requirements" of the court. Mr. Burciaga also pointed out that the special master called the legislature's response "one of the most dramatic actions ever taken by the state to remedy disparities of capital funding".

In the constitutional debate over adequacy versus equity as the proper approach to achieve a "uniform system", New Mexico chose adequacy, which was defined as the minimum acceptable level for the physical condition and capacity of school buildings, the educational suitability of educational facilities and the need for technological infrastructure. Mr. Burciaga explained that the special master had endorsed nearly all of the task force's views with regard to "adequacy".

A status hearing on the *Zuni* lawsuit was held in 2006, and Mr. Burciaga reported that another status hearing is scheduled for this year. A subsequent presenter clarified that the status hearing would probably occur in mid-to-late 2015. Mr. Burciaga also reported that the separate *Zuni* impact aid lawsuit involving the same school districts had been settled. He noted that federal law provides for four different kinds of impact aid, and though New Mexico qualifies for all four, it takes credit only for the basic "non-categorical" payment.

New Mexico is one of the few, and possibly the only, state that qualifies as a federal "equalized expenditures state" because the state relies on the tax wealth of the state as a whole rather than that of individual districts, Mr. Burciaga explained. The *Zuni* impact aid lawsuit took issue with the wording of the federal law determining whether or not the state meets the criteria to be designated an equalized expenditure state. After lengthy hearings and multiple appeals processes, the United States Supreme Court found that the federal Department of Education is correct in permitting New Mexico to pursue its equalization formula and retain its status as an equalized expenditures state.

Mr. Burciaga proceeded to address another lawsuit brought by the Mexican American Legal Defense and Educational Fund (MALDEF) seeking to establish education as a fundamental right and to ensure that New Mexico's at-risk children, later amended to include students with disabilities, are provided a sufficient education as required under the Constitution of New Mexico. The suit is separate from one filed by the New Mexico Center on Law and Poverty (NMCLP), he noted. The plaintiffs in the MALDEF suit claim denial of three rights in the Constitution of New Mexico:

- Article 12, Section 1, which requires a "uniform system";
- Article 2, Section 18, which requires equal protection under the laws; and
- Article 2, Section 18, which guarantees the right of due process.

The NMCLP suit is primarily based on funding, and violations of Article 12, Section 1 of the Constitution of New Mexico, specifically:

- violation of the sufficiency requirement;
- modification of the funding formula for public education; and
- below-the-line funding of education.

Mr. Burciaga reported that the impact of these suits on future capital outlay funding is unknown, but that they may help define "uniform" and "sufficient" in the long run.

A discussion surrounding the issue of "outliers", school districts with very limited student enrollment and/or funding means, ensued. Mr. Burciaga informed the task force members in response to their questions that the plaintiffs in the new lawsuits are the parents of the children in those districts and that the defendants are Secretary-Designate of Public Education Hanna Skandera and the PED. Further discussion was held about whether or not individual legislators

can or will be held liable in these cases. It was noted that while members cannot be forced by the courts to vote a certain way, the courts do recognize that the states have the ability to tax and spend and may be held accountable in that regard. The chair noted that the order in the original lawsuit was for the legislature to fund schools appropriately.

The chair updated task force members who arrived late regarding passage of the work plan and noted that Scott Fuqua, Esq., who was scheduled to give an update on the 2014 *Zuni* status conference, was reportedly en route to the meeting, and she asked for the members' patience in awaiting his arrival. Johnty Cresto, facilities director, Gallup-McKinley County School District, was introduced by the chair and invited to comment on the facilities maintenance needs of the school system.

Mr. Cresto first related that task force member Mr. Haskie had asked him to express Mr. Haskie's deep regret to the members that he could not be present to say goodbye to his many friends and colleagues on the task force in person.

Speaker Martinez asked Mr. Cresto to please return the task force's regrets to Mr. Haskie and to thank him for his invaluable service to the state. Speaker Martinez lauded Mr. Haskie as both a good friend and an exceptionally skilled and knowledgeable member of the task force and observed that his expertise would be sorely missed.

Mr. Cresto proceeded to explain the important and frequently forgotten distinctions between custodial staff and maintenance workers. He pointed out that skilled personnel able to maintain the schools are also highly in demand in the private sector and that they require considerably more training and education than in the past to deal with today's complex building systems. He observed that there is a nationwide shortage of people with the skill level the schools are trying to attract, and he expressed his hope that the laws of supply and demand will again send people to train in these fields.

Frequently, the easiest place for school districts to make budget cuts is in the maintenance department, Mr. Cresto asserted, even though maintenance personnel are such an integral part of the public school process and how children experience their schools. Similarly, he reported, SB 9 funding cannot be used for operational expenses to support maintenance personnel salaries. He also commented that in his many years of experience in the maintenance field, school district leadership has made a huge difference in how maintenance issues are approached.

Members noted that with the shortage of skilled workers and concomitant high unemployment rates, there may be a failure among the two- and four-year institutions in identifying and meeting training needs. Mr. Cresto suggested that there is some general misinformation surrounding the trades. He noted that skilled tradespeople serve lengthy apprenticeships, but can then easily make upwards of \$70,000 a year. He lamented the fact that opportunities to try the skilled trades are no longer available in high school. Discussion ensued regarding the importance of providing job training opportunities as well as college readiness

programs for young people. The chair and other task force members noted that failure to provide career readiness programs undermines educational capacity and limits job opportunities.

One member promoted "thinking out of the box", and tightening school district requirements for charter school facilities. He noted that with the money currently draining the system at two undercapacity high schools (including one charter school) in Taos, the school district could have a state-of-the-art vocational program. Another member put forward the idea of allowing children to decide at age 16 to leave school and pursue a trade. Another noted that the federal No Child Left Behind Act directives had led the system away from work study programs, but that perhaps funding could now be redirected to job readiness programs and existing but unused job training facilities. Mr. Cresto noted that there need be no mutual exclusions in the high schools between career and college readiness programs. Discussion followed on how to fund such programs, including possible legislative solutions, and school partnering.

### **March 2014 *Zuni* Lawsuit Status Conference**

After considerable delay and numerous updates regarding Mr. Fuqua's whereabouts as he proceeded toward the meeting, Mr. Fuqua arrived to present an update on the upcoming *Zuni* lawsuit status conference.

Mr. Fuqua, director, Litigation Division, Office of the Attorney General, reported that there is not much to report with regard to the status conference. In response to member questions, he noted that trial dates for the two additional lawsuits would likely be set in mid-to-late 2015. He also stated that there is less to be resolved now than previously with regard to the new *Zuni* lawsuit. The chair requested additional details, and Mr. Fuqua offered that the new lawsuit is making the same claims as the original suit, with the same litigants, addressing the same issues for the same reasons.

Members questioned how this was narrowing the previous litigation and if capital outlay issues and the funding practices of the legislature would be addressed in the suit. Mr. Fuqua responded that the narrowing has to do with the manner in which things were resolved in the first lawsuit. The court has retained jurisdiction for the purpose of allowing the parties to come back and explain how they are doing. He also indicated that it was possible that legislative practices would be addressed. In response to further questions, Mr. Fuqua acknowledged that the manner in which the standards-based formula is being applied is at issue in the lawsuit. Members helped Mr. Fuqua determine which judge would likely preside over the case.

One member clarified that the Zuni Public School District had essentially reopened the lawsuit to force the issue of adequacy versus equity in the question of what is uniform. He described the two lines of case law previously argued in the case and explained that the deficiency correction approach only works to a certain point with a school district such as Zuni, with no tax base to address capital needs in the traditional ways. Most other school districts have

means to move their systems beyond "adequate"; however, the Zuni Public School District is now saying that the district is frozen at "adequate".

This member further described the discrepancies in the amount of impact aid awarded to Los Alamos, for example, and the Pueblo of Zuni. Los Alamos is completely federally enclosed and receives significant amounts of federal Department of Energy funding. He raised the question of whether there should be additional impact aid for completely federally enclosed Pueblo of Zuni as well. He identified two remaining problems from the initial lawsuit: what the state should do to get litigant districts to a status beyond adequate; and what should be done to assist the very small school districts such as Corona and other "outliers" with no capacity to move beyond adequate by virtue of their status on federal lands or their very small tax base. It was felt that the legislature's continued exploration of means to resolve these issues should please the judge at the status conference.

The chair reported that the task force had not been aware of any of the developments in the new lawsuits. She asserted that because the legislature may be so directly affected by these cases, she would like the task force to be updated regularly with regard to all pleadings in the cases. Mr. Fuqua was asked to forward all relevant information to Mr. Burciaga, and members agreed that a formal written request for information should be submitted to the Attorney General's Office.

Another suggestion was made to invite the litigants in the lawsuits to come before the task force to express their concerns and to hear what the members are working on in this regard. At a minimum, it would indicate to the judge that establishment of a uniform system is an ongoing enterprise, members noted, and the litigants might decide that their funds are better spent on school buildings than on attorneys. The chair agreed that this was an excellent suggestion, and the membership quickly concurred.

Further questions arose regarding the use of gross receipts taxes to address the needs of "outliers" and those on Native American lands. A discussion ensued about various legislative measures that had been proposed over the years to enable the state to appropriately compensate school districts that lack local matching funds. It was noted that political considerations had killed most of those attempts. The discussion returned to the need to articulate again to the court that efforts are ongoing in all areas to meet local needs throughout the state. One member complained that while everybody understands the problem of inequity, there still has been no resolution.

Mr. Cresto again joined the discussion to further elucidate the issues that concern the litigants. He characterized the litigation as a revival of the old lawsuit that would hopefully move things beyond the regular reviews. Mr. Cresto extolled the changes that have been implemented as a result of the standards-based program. He argued, however, that many issues remain surrounding the adequacy approach, particularly the high cost to local school districts of maintenance. Mr. Cresto welcomed the task force's invitation to bring the litigants before the

task force and mentioned his hope that positive action coming out of the next legislative session could forestall legal action. There are solutions, he stated, if the state can recognize and address the stalled issues surrounding "adequacy" and reach out to those at the ends of the system.

The chair reminded Mr. Fuqua to convey the task force's request for information to the Attorney General's Office and the invitation to appear before the task force to the litigants. Mr. Gorrell was asked to provide a summary of what public school capital outlay funding has accomplished over the last three years for review by the task force in the near future.

**Adjournment**

There being no further business, the task force adjourned at 3:15 p.m.