

**STATE OF NEW MEXICO**  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**

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**MINUTES**  
**LESC MEETING**  
**DECEMBER 13-16, 2010**

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) to order at 9:15 a.m., Monday, December 13, 2010, in Room 322 of the State Capitol in Santa Fe, New Mexico.

The following LESC members were present:

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

The following LESC advisory members were also present:

Senators Vernon D. Asbill, Stephen H. Fischmann, Howie C. Morales, John Pinto, and Sander Rue; and Representatives Andrew J. Barreras, Ray Begaye, Eleanor Chávez, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Sheryl Williams Stapleton, and Shirley A. Tyler.

**2011 PUBLIC POLICY RECOMMENDATIONS OF  
NEW MEXICO BUSINESS ROUNDTABLE (NMBR)**

The Chair recognized Mr. Larry Langley, President and Chief Executive Officer, New Mexico Business Roundtable (NMBR); Mr. Jeff Parker, Regional President, Manpower Inc.; and Mr. Michael D. DeWitte, Director of Public Relations & Communication, Sandia National Laboratories/Lockheed Martin to make their public policy recommendations for 2011.

Mr. Langley began by describing the recommendations regarding public education:

- retain the current governance structure with a cabinet level Secretary of Public Education;
- dissolve the Public Education Commission;
- support New Mexico's adoption of Common Core Standards;

- build on New Mexico’s three-tier licensure system and develop a complete system to support highly effective teachers, linked to compensation and based on a comprehensive evaluation system;
- support the implementation of the new public school funding formula and hold harmless any district that would receive less than its 2010-2011 funding;
- support charter performance contracts executed by both the governing board and the authorizer that define the roles and power of the school and its authorizer and that define performance expectations by which the school will be measured;
- support no moratorium on charter schools;
- support the development of a statewide higher education plan; and
- support the following principles as a framework in the development of an early childhood education act utilizing the current 2010-2011 funding:
  - learning and development;
  - standards;
  - teachers and providers;
  - parents;
  - accountability;
  - partnerships; and
  - return on investment and evaluation.

### **Committee Discussion**

In response to a committee member’s question, Mr. Langley stated that NMBR is aware that some parents are using programs by both the Public Education Department (PED) and the Children, Youth and Families Department (CYFD) to keep their kids in school all day, adding that this is one of the reasons more comprehensive legislation is needed.

In response to a question from a committee member about the stance of NMBR on combining the Higher Education Department and PED, Mr. Langley said that the NMBR is waiting for recommendations from the Government Restructuring Task Force (GRTF) and the Governor-elect’s new efficiency task force to see how they compare.

In response to a committee member’s question, Mr. Langley reiterated that NMBR would like to see PED remain a cabinet-level department, but that the Secretary of Public Education must be a good administrator who will force positive change in the department.

Responding to a committee member’s question regarding the possibility of the financial audit function of PED moving to the Department of Finance and Administration (DFA), Mr. Langley stated that the NMBR may not be in total agreement on whether that is a good idea, but that if it stays at PED it should be better staffed.

Responding to a committee member’s question regarding highly qualified vs. highly effective teachers, Mr. Langley stated that student achievement has never been included as a means of determining the quality of teachers, and that the three-tiered evaluation system needs improvement to become a fair and rigorous evaluation tool.

In response to a committee question whether NMBR expects high school students to be able to earn credits for financial literacy programs in the future, Mr. DeWitte stated that he would support such an initiative, but that it would require partnerships that currently do not exist.

In response to a committee member's question about charter schools, Mr. Langley stated that NMBR has examined several charter schools; and he added that, while some groups have called for a moratorium on the creation of new charter schools, NMBR feels that a moratorium would hurt educational progress and that a large number of charter school openings is unlikely in any event.

In response to a committee member's question regarding the need for New Mexico to reimburse funds taken from federal education money, Mr. Langley stated that NMBR would like to see an overall increase to public education from the entire budget.

In response to several questions from the Chair, Mr. Langley stated that NMBR is not ready to make formal recommendations about revenue enhancements; that a model for teacher and principal effectiveness could determine continued employment and merit pay; and that, regarding consolidation of school districts, NMBR does not want to close schools, but that the consolidation of administrative functions and/or school boards may warrant examination.

## **HIGHER EDUCATION UPDATE**

### ***a. State Master Plan for Higher Education***

The Chair recognized Dr. Viola Florez, Secretary of Higher Education, to present and discuss the draft of the State Master Plan for Higher Education; and Mr. Tino Pestalozzi, Deputy Cabinet Secretary, Higher Education Department (HED), to discuss the recommendations of the Higher Education Funding Formula Task Force.

Dr. Florez began by reviewing the issues within New Mexico that caused HED to develop the State Master Plan for Higher Education:

- funding – shift the focus to completion and graduation rates and not enrollment as a basis for funding;
- unnecessary duplication of programs – focus on increased funding to quality programs rather than duplication;
- campuses – examine whether New Mexico has an appropriate number of campuses or if too many exist;
- remedial education – examine whether the state should pay for remedial courses in institutions of higher education (IHEs);
- disconnect between K-12 and postsecondary – construct a more robust P-20 data system; and
- work force development and training – work from the premise that higher education is the engine that moves the economy forward.

The master plan addresses a plethora of issues, goals, and ideas that relate to higher education in New Mexico, Dr. Florez said. Recommendations are made on a wide variety of topics, including:

- meeting the educational needs of students by addressing:
  - student preparedness;
  - financial aid;
  - a statewide longitudinal data system;
  - returning and adult students;
  - diversity;
  - use of technology;
  - support services;
  - faculty recruitment and retention; and
  - graduate education;
- meeting educational needs through partnerships and collaborations through:
  - educational partnerships among public, private proprietary, and nonprofit postsecondary institutions;
  - partnerships with employers;
  - entrepreneurship and partnerships with other states; and
  - partnerships with schools; and
- meeting state needs through higher education by focusing on improving HED, accountability and effectiveness, the funding of public postsecondary institutions, delivery of services, and capital outlay.

The master plan also makes recommendations regarding the structure and role of HED:

- revisit the constitutional provisions for postsecondary institutions to review responsibilities and duties pertaining to academic degree programs, duplication of campuses, learning centers, and instructional sites;
- consider a constitutional amendment to expand the role of HED to review all academic undergraduate and graduate degree programs;
- retain HED as a cabinet-level department, with authority and responsibility to include finance;
- create a community college division within HED that identifies opportunities for alignment of academic offerings, collaboration, and cost-savings; and
- improve the department's training of governing board members.

In addition, according to Secretary Florez, recommendations were made to the Legislative Finance Committee concerning how higher education is funded.

***b. Funding Formula Task Force Recommendations***

Dr. Florez then outlined some recommendations of the task force, noting that they are more closely examined in the body of the HED master plan.

In order to increase effectiveness, the funding formula must be revisited to determine its effect on student outcomes, student enrollments, workload, and such measures of student success as graduation rate and completion of studies. Dr. Florez also stated the possibility that two or more formulas may become necessary to ensure that two- and four-year institutions and their differing missions are accommodated. Additional recommendations include:

- identify performance funding opportunities, such as degree completion, increased graduation rates, and academic program excellence;
- involve all institutional decision-makers in formulating recommendations or changes to the official recommendations before their submission;
- conduct a study to improve cost-effectiveness at two- and four-year institutions;
- evaluate New Mexico's public postsecondary institution costs in comparison to similar institutions in other states;
- review the funding of online courses, especially those delivered to nonresidents;
- review the state's policy with regard to the funding of courses taken multiple times, courses taken as "audit/noncredit," and dissertation hours;
- review tuition waivers to reassess cost and benefits;
- encourage institutions to reach out to local business and industry leaders;
- encourage research universities to recognize branch community colleges to ensure seamless transition between the community college coursework and that of four-year institutions. Also, branch campuses should be provided with enough funding to ensure that their students are adequately prepared for higher education; and
- encourage college and university leadership to review consolidation of campus administrative and human resources responsibilities.

### **Committee Discussion**

When a committee member inquired whether anything in HED's draft master plan addresses mill levies, the Secretary responded that, while nothing in the draft speaks to them specifically, it could be part of a higher education funding formula study.

Secretary Florez, responding to a committee member's question, stated that she was comfortable with the current GPA requirements used by IHEs in New Mexico.

In response to a committee member's question whether HED thinks it prudent to shift dual credit funding to serve primarily juniors and seniors, Secretary Florez stated that elements of dual credit funding are being examined but that a shift of that nature would require more than just HED directive.

A committee member asked if the state master plan is the beginning of a process that would result in more power being given to HED or the formation of a statewide "super board" of regents for all IHEs. In reply, Dr. Florez said that the aim of the master plan was to begin an improvement process, with everything on the figurative table.

In response to a committee member's question, Secretary Florez noted that each IHE maintains control over both administrator salaries and tuition, and that HED has very little power when it comes to such items.

When a committee member asked Dr. Florez what she is doing to prepare to hand over control of the master plan to the incoming Secretary and to ensure continuity of the goals outlined in the plan, Secretary Florez stated that HED has met with several people from the incoming administration, but that ultimately it will be up to the new administration to determine the direction of any master plan.

In response to a committee member's question about the economic efficiency of the number of IHE sites in the state, the Secretary responded that the market is student-driven. She added that the cost-savings of closing viable IHE campuses would be minimal.

The Chair commended Secretary Florez and HED for the ambition required to undertake this large and very necessary project. The Chair also thanked HED for cooperation on a number of items that have resulted in more P-20 alignment.

### ***STUDY READING CURRICULA IN TEACHER EDUCATION (HJM 16)*** **WORK GROUP: FINAL REPORT**

The Chair recognized Ms. Pamela Herman, LESC staff; Representative Mimi Stewart, LESC member; Dr. Jerry Harmon, Dean, College of Education and Technology, Eastern New Mexico University; and Dr. Richard Howell, Dean, College of Education, University of New Mexico (UNM), to provide the committee with the final report on the outcome of HJM 16, *Study Reading Curricula in Teacher Education*.

Ms. Herman directed the attention of committee members to the HJM 16 Work Group Final Report, included in their notebooks, along with a CD ROM available for those who wished to review documents of interview notes gathered during the study for each program.

Ms. Herman explained that, in 2009, the LESC heard testimony concerning a report by the National Council on Teacher Quality (NCTQ) entitled *Preparing Tomorrow's Teachers: Are New Mexico's Education School Graduates Ready to Teach Reading and Mathematics in Elementary Classrooms?* The report claimed, based on its own review of New Mexico teacher preparation program reading curricula and syllabi, that most programs in New Mexico were not preparing candidates to teach the science of reading, and that the programs used a wide variety of reading textbooks, most of which did not address the science of reading.

Ms. Herman said that the New Mexico Deans and Directors presented a rebuttal to the report before the LESC at its December 2009 meeting, contesting the methodology of the study. The deans volunteered at that time to sponsor a study using in-state reading experts, and they worked with LESC members and staff to formulate HJM 16, which the LESC endorsed and which was passed by the 2010 Legislature, setting the stage for the six-month-long study that resulted in the attached report.

HJM 16, Ms. Herman explained, was an LESC-endorsed memorial requesting that the New Mexico Deans and Directors of the Colleges of Education form a work group to examine the curricula and assigned text materials of all required reading courses in programs that prepare teachers for state licensure, to determine if those courses meet the statutory requirement that they be based on current scientifically based research; and report findings and

recommendations to the appropriate interim legislative committee and the Governor in the 2010 interim.

Ms. Herman reported that the work group comprised three deans and directors of undergraduate teacher preparation programs and three members of the LESC:

- Representative Jimmie C. Hall, LESC member;
- Dr. Harmon;
- Dr. Howell;
- Senator Cynthia Nava, LESC Chair;
- Representative Stewart; and
- Ms. Erica Volkers, Director of Education Programs, Central New Mexico Community College.

In addition, Ms. Frances Ramírez-Maestas, LESC Director, and Ms. Herman provided support to the work group.

Ms. Herman summarized the contents of the report and appendices, and she explained the methodology for the study developed by the work group. Six reviewers from around the state were selected based on their knowledge of and experience with scientific reading instruction. She noted that the reviewers' stipends were paid by the programs. Based on a matrix designed by the work group, the reviewers examined the syllabi and course materials for the six credits of required reading courses provided by all nine public elementary education and teacher licensure programs, as well as two private programs (Wayland Baptist University and University of the Southwest) that participated. The matrix called for evidence, and findings based on the evidence, for:

- coverage of the science of reading;
- quality of instruction in the science of reading;
- strategies for comprehension as explicit steps to understand fictional and informational text;
- assessment and screening strategies integrated into each component of the course; and
- access to additional, appropriate resources to support students at risk of failure in the least restrictive environment.

The reviewers also conducted telephone interviews with reading faculty from all but one of the programs to provide an opportunity for them to describe their courses in greater detail and answer the reviewers' questions based on the documents submitted. Ms. Herman noted that the results of reviews and interviews were briefly summarized in a table in the report.

Ms. Herman directed committee members' attention to the three key findings of the work group:

1. In general, the reviewers thoroughly reviewed the materials provided by the programs and made the specific findings of the nature called for in the study design.
2. While the reviewers' assessments pointed to wide variance among the participating programs in how well their required reading courses prepared elementary education

candidates in the science of reading instruction, every program showed room for improvement on one or more of the criteria used in the reviews.

3. On the whole, New Mexico teacher education programs “missed the target” in addressing the science of reading instruction to a disappointing degree.

Dr. Howell opened his presentation by acknowledging the “yeoman’s work” of the reviewers, and he observed that the study was a landmark effort. He applauded the spirit of cooperation between the deans and the committee that characterized the work group’s efforts, and he stated that the study provides a template for how future reviews in a range of subject areas could be conducted. That being said, Dr. Howell confirmed that the results of the study were disappointing, revealing a need for improvement in the reading courses in most if not all teacher preparation programs in the state.

Dr. Howell then presented the work group’s five recommendations, developed from the documents prepared by the reviewers:

1. Rigorously assess candidate knowledge of how to teach reading based on the scientific research as a condition for elementary licensure, either through the New Mexico Teacher Content Knowledge Assessment in Elementary Education or through a separate exam.
2. Convene a statewide gathering of programs in early spring 2011 for faculty to review the issues raised in the report, to share texts, supplemental resources, syllabi, instructional activities and assessments, and other resources and approaches, for the purpose of strengthening reading instruction statewide.
3. Develop a list of recommended texts that address the five essential elements of literacy instruction, among which programs would be encouraged but not required to select for coursework beginning in the school year 2011-2012.
4. During the 2011 legislative interim, convene the Deans and Directors at an LESC meeting to present the approaches and solutions developed at the spring gathering.
5. Explore the feasibility of including a review of required reading courses based on alignment with scientific research as part of the National Council for Accreditation of Teacher Education (NCATE) accreditation review process.

Representative Stewart told the committee that the enterprise was a very positive one. She made clear that, while the negative results of the study came as a shock to the work group members, the willingness on the part of programs to address deficiencies that the study disclosed was genuine. She also said that it was important to note that there were one or two programs in the state that could serve as excellent examples in the area of reading instruction.

The Chair recognized Ms. Melissa Stotts of the Special Education Department, Albuquerque Public Schools (APS) for a brief statement. Ms. Stotts told the committee that her staff provides professional development for regular and special education teachers and that currently most of the teachers come to the district unprepared to teach reading. She provided a document created by the National Dyslexia Association, The Knowledge and Practice Standards for the

Teaching of Reading, which she said would provide excellent guidance to the teacher preparation programs. Also from the Special Education Department, APS, Dr. Ann Tafoya said she was encouraged to hear the testimony from the colleges, and she believed a good faith effort on their part would begin to make a difference in reading achievement in the district. Dr. Tafoya noted that APS spends approximately \$1.0 million annually training teachers to teach reading.

### **Committee Discussion**

A committee member observed that the five essential elements of reading instruction were similar to engineering, in that they could provide teachers with a way to customize instruction that each student needs. In response, Representative Stewart disclosed that one of the areas where most programs were weak was in instructing teacher candidates how to assess their students in order to provide that differentiated instruction.

In response to a question from a committee member whether the results of the study would be a standardized statewide reading curriculum, Representative Stewart stated that more standardization is needed, particularly in the selection of texts, to ensure that all programs are using materials that address the essential elements effectively; and Dr. Harmon observed that each institution would still have leeway to present the material in the way best suited to its program, so long as it prepared students for the proposed candidate test.

In response to a committee member's question regarding who would be required to take the proposed test, Representative Stewart noted that the exam would be for candidates for new licensure. She pointed out that the cost of training the existing teaching force in this material would be high, probably a matter for a future Legislature.

In response to a committee member's question regarding the impact of the study and its recommendations on private institutions, Ms. Herman said that both public and private teacher preparation programs were subject to approval by the Public Education Department (PED) and their candidates were required to meet all the teacher qualifications in law, including passing required tests.

Several members of the committee thanked the work group, particularly for their willing collaboration, as well as for the results of the study. Representative Hall expressed his gratitude to the work group and reviewers for their efforts, his pleasure at having an opportunity to learn more about the state of reading instruction in New Mexico. He expressed his continuing sense of urgency regarding the serious shortcomings revealed in the study, and his frustration with programs that might still resist addressing them.

The Chair recognized representatives of teacher preparation programs present in the audience: Ms. Volkens; Dr. Michael Morehead, Dean, College of Education, New Mexico State University; Dr. Michael F. Anderson, Dean, School of Education, New Mexico Highlands University; Ms. Dawn Wink, faculty member, Santa Fe Community College; and Dr. Patricia Manzanares-Gonzales, Dean, School of Education, Western New Mexico University. She commended them for their participation in the study.

## **EDUCATOR ACCOUNTABILITY REPORTING SYSTEM (EARS)**

The Chair recognized Ms. Ally Hudson, LESC staff; for a report on the Educator Accountability Reporting System (EARS). Ms. Hudson explained that EARS is a data system that measures how well colleges, schools, or departments of education are performing in the preparation of educators. She further explained that statute requires the Public Education Department (PED) to work with teacher preparation programs, the postsecondary institutions that offer those programs, and the Higher Education Department (HED) to provide a report to the Legislature each year.

Ms. Hudson presented the highlights from the 2010 EARS report. She began by explaining that 12 of the 13 New Mexico teacher preparation programs submitted data for the report. She noted that one of the institutions that did not report in 2010, the University of Phoenix, is a private institution that is not subject to the reporting requirements in law; and two other private institutions – the University of the Southwest and Wayland Baptist University – voluntarily participated in the report.

Among other findings, Ms. Hudson explained that the report makes the following points:

1. Educator preparation programs continue to attract academically prepared candidates.
2. Standards for admission to teacher education programs use common factors that enhance transparency and seamless transferability among institutions.
3. The goal of all educator preparation programs is that their student population closely mirrors their local ethnic populations.
4. Field and clinical experiences are designed to connect classroom practices to candidate preparation.
5. The field and clinical experience candidates are placed with highly qualified teachers.
6. The goal of teacher preparation programs is to recruit, prepare, and graduate candidates in the high need areas of math, science, special education, bilingual education, and Teachers of English to Speakers of Other Languages (TESOL).
7. The 2010 version of EARS contains significant improvements in financial data collection and analysis.

Ms. Hudson noted that, although statute requires that data from EARS be reported into PED's Student Teacher Accountability Reporting System (STARS), this goal has not yet been accomplished because additional funding will be required to make the necessary modifications to STARS.

Regarding the evaluation plan, Ms. Hudson explained that current law requires that the EARS report include an evaluation plan with objectives and measures for increasing – among other things – student achievement, teacher retention, and the pipeline for math and science teachers. According to the report, the deans and directors of teacher education have established six objectives to begin addressing the requirement for common evaluation measures across all educator preparation programs:

- increase student achievement for all students;
- increase teacher and administrator retention;

- increase the percentage of students who pass the New Mexico Teacher Assessment (NMTA) for initial licensure on the first attempt;
- increase the percentage of elementary and secondary school classes taught by teachers who demonstrate their mastery of the state academic content and performance standards; and
- increase the number of teachers trained in math, science, and technology.

Ms. Hudson indicated that the report highlights several limitations and makes some recommendations to address them:

- NMTA scores are not always correctly attributed to the preparing institutions because students self-report their affiliation.
  - Recommendation 1: Include in the 2011 EARS report the revised Title II NMTA scores of students who are enrolled – but are not program completers.
- The financial aspect of the EARS report does not capture the role of colleges of arts and sciences in the preparation of teaching candidates.
- In some institutions, information technology does not collect all the data needed to generate the EARS report, thus requiring manual data collection and analysis.
  - Recommendation 2: Participating institutions should develop similar data systems that address EARS reporting needs.

Currently, neither the colleges of education nor PED can accurately report the number and percentage of teacher preparation program graduates hired by New Mexico school districts.

- Recommendation 3: PED should work with appropriate stakeholders to ensure that the information in STARS is accurate.
- The responsibility of compiling individual institutional reports and summary data has been left to the deans and directors.
  - Recommendation 4: This task should not be the sole responsibility of the deans and directors.

### **Committee Discussion**

In response to a committee member's concern regarding the deans' and directors' responsibility of compiling individual institutional reports and summary data, a dean referred to the need for significant involvement from both PED and HED in generating the EARS report. In response, a committee member suggested that the LESC might encourage more active participation from the departments.

The deans and directors of teacher education indicated their interest in meeting with the incoming cabinet secretaries of public education and higher education early in 2011 to present their priorities for collaboration.

### **LOTTERY STUDY COMMITTEE: UPDATE**

The Chair recognized Ms. Ally Hudson, LESC staff, for an update on the Lottery Study Committee.

Ms. Hudson began by noting that, in June 2010, a staff report to the LESC noted a number of issues with the Legislative Lottery Scholarship. According to Ms. Hudson, in response to some of those issues – the status of the Lottery Tuition Fund in particular – the Higher Education Department (HED) convened the Lottery Study Committee in late summer 2010.

Ms. Hudson indicated that the Lottery Study Committee met three times during the 2010 interim.

Through the course of their deliberations, identified three issues that merit further discussion:

1. whether the lottery scholarship should pay for remedial coursework;
2. how to clarify whether a student has earned a high school diploma or merely a certificate of completion; and
3. the challenges encountered by students with disabilities as they try to complete degrees.

Regarding remedial coursework, Ms. Hudson explained that, under current provisions, a student may be enrolled in one or more remedial classes and still qualify for the lottery scholarship as long as the student maintains a 2.5 GPA in college-level coursework.

Ms. Hudson indicated that the confusion surrounding a student's receipt of a diploma vs. a certificate of completion stems from a statute cited in the June staff report that says "if a student exits from the school system at the end of grade 12 without having passed a state graduation examination, the student shall receive an appropriate state certificate." This certificate is not equivalent to a high school diploma. According to the Public Education Department (PED), a student's official high school transcript should clarify if he or she received a diploma or a certificate. However, both HED and a number of postsecondary institutions have reported that some transcripts do not contain this information. For those institutions that are not open-enrollment, a certificate would not be sufficient for college acceptance. Furthermore, a certificate would not qualify a student for bridge or lottery funds.

As reported earlier in the 2010 interim, LESC-endorsed legislation was enacted in 2007 to amend the definition of the term "full time" and the maximum number of consecutive semesters of eligibility for students with disabilities to provide that "full time" means at least six credit hours per semester and that eligibility extends up to 14 consecutive semesters. Through the course of its discussions, Ms. Hudson noted that the Lottery Study Committee identified two issues regarding students with disabilities who receive the lottery scholarship:

1. like other students, many students with disabilities receive a high school certificate of completion, as opposed to a diploma, therefore calling into question their scholarship eligibility; and
2. according to observations from postsecondary faculty and administrators, some of these students are struggling to complete credits toward a degree.

Through their analyses of these particular issues and the solvency of the Lottery Tuition Fund, Ms. Hudson explained, the members of the study committee considered a range of ideas. Some of these ideas would increase the requirements of qualifying for or maintaining the lottery scholarship:

- require a high school cumulative GPA of 2.0, or an American College Testing (ACT) composite score of 17 or above;
- in FY 12, increase the number of required credit hours from 12 per semester to 27 per year; and, by FY 14, phase in a requirement for 30 credit hours per year; and
- increase the required cumulative GPA from 2.5 to 2.75.

Other ideas that the study committee discussed would revise the conditions required or allowed:

- restrict lottery scholarship coverage to six credit hours of remedial coursework;
- cap lottery scholarship coverage at 18 credit hours per semester;
- limit General Educational Development (GED) eligibility to no older than 24 years of age;
- allow for year-round lottery scholarship coverage for those students who want to take summer coursework or are in programs that require year-round enrollment; and
- request that PED clarify whether a student received a diploma, GED certificate, or certificate of completion on a student's high school transcript.

Finally, Ms. Hudson noted that according to the Department of Finance and Administration (DFA), if tuition rates at the state's postsecondary institutions were to rise 7.0 percent or more in the upcoming fiscal year, the Lottery Tuition Fund may be insolvent by FY 14.

### **Committee Discussion**

In response to a committee member's question regarding the future work of the Lottery Study Committee, the Secretary of Higher Education indicated that HED is planning to invite additional stakeholders to the work group. The Secretary further explained that the study committee plans to gather data from the state's public postsecondary institutions regarding the potential impact of any changes to the Legislative Lottery Scholarship.

In response to a committee member's question regarding remedial coursework, Ms. Hudson confirmed that current provisions in law allow the Legislative Lottery Scholarship to pay for remedial coursework.

Committee discussion also focused on a concern that current lottery provisions may not be sufficiently rigorous, therefore setting some students up for failure. In response, Ms. Hudson cited provisions from other states that have a scholarship similar to the Legislative Lottery

Scholarship including: a minimum high school GPA, a minimum ACT (or other standardized test) score, and a sliding scale for scholarship coverage based on a student's academic performance at the postsecondary institution. In conclusion, Ms. Hudson noted a balance between maintaining access to the scholarship and requiring increased levels of academic achievement.

## **SUPERINTENDENTS AND COMMUNITY INPUT**

The Chair recognized Ms. Anna Otero Hatanaka, Director, Association of Developmental Disability Community Providers; and Mr. Norman Segal, Executive Director, Abrasoz Family Support Services, in order to provide background on the Department of Health (DOH) Family Infant Toddler (FIT) Program and propose a legislative change to the committee.

The federal *Individuals with Disabilities Education Act*, Mr. Segal said, requires that states provide early intervention services to children with disabilities until the child's third birthday. As statute currently reads, Mr. Segal continued, a child must exit the program upon his or her third birthday, unless a parent completes an application allowing a child to remain in the program until the beginning of the next school year. The proposed change would allow the child only to complete the current school year with the program, which is funded by the *American Recovery and Reinvestment Act of 2009* (ARRA), the funds from which will cease to flow in the next fiscal year.

According to Mr. Segal, state agencies will need time to:

- promulgate regulations;
- inform parents and change their transition plan; and
- train FIT providers and school districts.

### **Committee Discussion**

In response to a committee member's question about the type of disabilities that FIT addresses, Ms. Hatanaka replied that the program engages young people with autism, developmental delays, Down syndrome, and a number of other issues.

In response to a related question, Ms. Hatanaka reported that DOH has proposed cutting the program by 50 percent, but that an attempt is being made to reduce the amount of reimbursement and services in order to prevent cutting the service entirely to any kids.

In response to an inquiry from the Chair, Ms. Hatanaka reported that DOH has taken more time than expected to collaborate with the Public Education Department on this issue, so she has not had a chance to appear before the Health and Human Services Committee.

There being no other business, the Chair, with the consensus of the committee, recessed the LESC meeting at 4:03 p.m.

**MINUTES  
LESC MEETING  
TUESDAY, DECEMBER 14, 2010**

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) to order at 9:25 a.m., on December 14, 2010, in Room 322 of the State Capitol in Santa Fe, New Mexico.

The following LES C members were present:

Senators Cynthia Nava, Chair, Mary Jane M. García, Gay G. Kernan, and Lynda M. Lovejoy; and Representatives Rick Miera, Vice Chair, Roberto “Bobby” J. Gonzales, Jimmie C. Hall, Dennis J. Roch, and Mimi Stewart.

The following LES C advisory members were also present:

Senators Vernon D. Asbill, Stephen H. Fischmann, Howie C. Morales, John Pinto, and Sander Rue; and Representatives Andrew J. Barreras, Ray Begaye, Eleanor Chávez, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Karen E. Giannini, Sheryl Williams Stapleton, and Shirley A. Tyler.

Also in attendance were Representative Anna M. Crook and Representative Thomas A. García.

**BUILDING CHARTER SCHOOL QUALITY IN NEW MEXICO**

The Chair recognized Mr. David Hansen, Vice President of External Affairs, National Association of Charter School Authorizers (NACSA); Mr. Todd Ziebarth, Vice President of State Support Services, National Alliance for Public Charter Schools (NAPCS); and Dr. Lisa S. Grover, Consultant, NAPCS, to brief the committee on efforts by multiple organizations to ensure that New Mexico’s charter schools are performing as well as possible.

Mr. Ziebarth and Mr. Hansen began their presentation by briefly discussing their respective organizations and the means by which they hope to accomplish their stated goals. The “Building Charter School Quality in New Mexico” report, Mr. Hansen said, provides an overview of the state’s charter school landscape as well as gap analyses in four areas:

1. charter school policies;
2. charter school authorizer practices;
3. support services for public charter schools; and
4. the public education data system.

The purpose of the report, according to Mr. Hansen, is to guide improvement in each of these areas to improve the overall environment in which charter schools operate. He stated that the recommendations contained within the report will help improve the performance of all public schools and the students they serve.

The following recommendations of the report, according to Mr. Hansen and Mr. Ziebarth, focus on state policy changes and the improvement of authorizer practices:

- require performance-based contracts to assure charter school outcomes and protect autonomy granted in statute;
- fund charter schools equally and equitably, especially in terms of facilities;
- clarify approval, oversight, renewal, and revocation processes;
- remove all caps on growth to assure all communities have widespread availability;
- provide authorizer accountability in the law to assure authorizer capacity and commitment to the state's charter school program;
- grant charter schools more autonomy by exempting them from more state laws and regulations;
- fully implement the state's public education data system, with an immediate focus on creating the ability to measure student progress over time; and
- expand support services to charter schools, particularly in performance management, start-up, and renewal services. These services will help in measuring the quality and performance outcomes of charter schools.

### **Committee Discussion**

In response to a committee member's question regarding the involvement of Native American tribes with charter schools, Dr. Grover stated that the coalition provides orientation and additional aid with groups that intend to open charter schools, and that groups who choose to use the coalition as a resource in their application process have a much better chance of being approved than groups who do not.

In response to a committee member's question whether the coalition was aware of the reason that a number of tribal charter school applications were denied, Ms. Grover stated that she was unaware of the specific details surrounding each denial. She also said such issues highlight the need for at least two charter school authorizers in a state.

Mr. Hansen added that, because of their inexperience, many local districts are not good charter school authorizers and that a statewide authorizer is likely to be more fair and independent.

In response to a committee member's question about the performance of charter schools in the state, Dr. Grover stated her belief that if the lowest performing 10 percent of the charter schools closed, the average performance of charter schools statewide would experience a major increase.

Dr. Grover added that, while Albuquerque has the majority of the charter schools in the state, the lowest performing 10 percent are dispersed throughout the state; and she suggested that the law could be improved to clarify school closure procedure by including closure protocols in the performance recommendations.

Responding to a committee question regarding the idea of caps on the number of charter schools, Mr. Ziebarth stated that charter school caps are unfairly limiting on rural districts. Dr. Grover added that New Mexico's policy regarding charter school caps in rural districts was one of the reasons New Mexico failed to receive federal Race to the Top funds.

Responding to a question from a committee member, Dr. Grover stated that the coalition of charter school advocates would sponsor legislation creating performance contracts for charter schools.

In response to a committee member's inquiry regarding the specific difficulties charter schools have had in the waiver process, Dr. Grover alluded to reports that automatic waivers in law have sometimes been refused.

The Chair asked the presenters, their opinion on making charter schools operate more efficiently and effectively, and they agreed upon strengthening the rights of charter schools, moving toward funding equity, and changing the data system to allow student-level longitudinal growth tracking for all public schools.

Finally, in response to a committee member's question what the coalition is seeking in terms of facilities for charter schools, Dr. Grover expressed her wish that underutilized district facilities be more available for charter school use.

### **FY 12 PUBLIC SCHOOL SUPPORT RECOMMENDATIONS**

The Chair recognized Mr. Peter B. van Moorsel, LESC staff, and Dr. Susanna M. Murphy, Secretary-designate of Public Education, to present the Public Education Department (PED) FY 12 public school support recommendations.

Dr. Murphy began by reporting that this year's request was developed with the following major considerations:

- the overall state revenue picture;
- guidelines from the Department of Finance and Administration (DFA);
- Governor Richardson's education priorities;
- education reform initiatives;
- closing the achievement gap;
- compliance with statutory requirements; and
- compliance with *No Child Left Behind* (NCLB).

In total, Mr. van Moorsel reported, PED is requesting almost \$2.5 billion in funding, which represents an increase of \$146.1 million, or 7.7 percent, over the FY 11 appropriation. Included in the request is:

- over \$2.3 billion to the State Equalization Guarantee (SEG), which includes almost \$88.8 million to replace nonrecurring federal dollars from two sources that were distributed during 2010:
  - almost \$23.9 million in State Fiscal Stabilization Funds pursuant to the *American Recovery and Reinvestment Act of 2009* (ARRA); and
  - approximately \$64.9 million in federal Education Jobs Funds that were awarded in August 2010;

- approximately \$116.4 million in categorical public school support; and
- approximately \$32.1 million in related recurring appropriations, including the PED budget.

Dr. Murphy continued by reviewing trends in membership and units in the public schools, which factored into the public school support request figures:

- preliminary funded membership for FY 11 has increased by 3,641.75 from FY 10;
- growth units statewide continue to remain between 2,000 and 3,000 each year;
- under the current funding formula, small and rural districts will probably continue to struggle to meet state mandates as their student populations continue to decline; and
- the units for FY 11 are still preliminary and have not yet been adjusted for actual growth or new charters, and units are anticipated to increase by approximately 4,000 after 40<sup>th</sup> day data are finalized.

Dr. Murphy then presented a table showing a comparison of statewide units and membership between budgeted FY 10 and FY 11 figures.

### **Committee Discussion**

In response to a committee member's question about the time required for PED to process school district requests for reimbursement, Mr. Steve Burrell, Interim Deputy Secretary for Finance and Operations, PED, stated that currently it stands at approximately 30 days, sometimes fewer. He explained that one of the issues affecting timely reimbursement is the vacancy rate at PED, adding that even more positions are being lost due to the expiration of ARRA funding.

In response to a committee member's suggestion, Mr. Burrell, agreed that New Mexico PreK classrooms would more appropriately be funded by severance tax bonds instead of through the General Fund.

In response to a committee member who asked about the level of local autonomy in the instructional material adoption cycle decision-making process, Secretary-designate Murphy noted that memos are being issued to districts with the intent of clarifying changes to the adoption cycle. Dr. Sheila Hyde, Deputy Secretary for Learning and Accountability, PED, added that districts have complete autonomy regarding the use of adoption cycle funds. She also said that New Mexico is currently working with other states to form a consortium in order to be in a better bargaining position to create incentives for publishers to work with institutions in developing online and digital materials.

A member of the committee expressed concern that reading intervention programs are being concentrated in central New Mexico and missing areas of the state that need it most. Secretary-designate Murphy responded that the funding for that program is distributed throughout the state. In response to a related question, Dr. Murphy said that boarding schools are eligible to receive reading intervention program funding from the state as long as they are accredited.

Responding to committee concern that the *Graduate New Mexico* program still has an unencumbered balance of over \$7.0 million, Dr. Murphy stated that her figures show that 900

students are currently enrolled and that approximately \$9.4 million had been budgeted with the assumption that 10,000 students would participate. The committee agreed that the topic warrants further discussion.

## **PUBLIC EDUCATION DEPARTMENT ASSESSMENT PRIORITIES WORK GROUP REPORT**

The Chair recognized Dr. Tom Dauphinee, Interim Supervisor, Assessment and Accountability, Public Education Department (PED), to review and explain changes to assessment and evaluation in New Mexico's public schools.

Dr. Dauphinee began by explaining that the Assessment and Accountability Department met with a stakeholder group in order to examine which assessments were critical and how to prioritize student assessment funding as part of cost-saving measures. Representation at the meeting included school districts, the Albuquerque Federation of Teachers (AFT) New Mexico, the Legislative Finance Committee, the New Mexico Coalition of Community Colleges, New Mexico Coalition of School Administrators (NMCSA), New Mexico School Boards Association, the Northern New Mexico Network, the Office of Education Accountability, PED, and the US Department of Education.

Dr. Dauphinee then reviewed the budget deficits that PED estimated that the department and school districts would incur from mandated testing and assessments under the existing program:

- \$1.18 million for school districts during FY 11;
- \$4.24 million for school districts during FY 12; and
- \$800,000 for PED in FY 12.

The panel, according to Dr. Dauphinee, attempted to formulate a plan with stakeholders that would satisfy testing requirements as well as accomplish savings by reducing the number of non-essential tests. The stakeholders recommended suspending or eliminating the following tests:

1. standards-based assessments/High School Graduation Assessment (to avoid the need for retesting in reading, math, and science in grade 12);
2. standards-based assessments in social studies in grade 11;
3. standards-based assessments in writing in grades 3-8 and 11;
4. short-cycle assessments in grades 9 and 10;
5. College Readiness Assessment;
6. Workforce Readiness Assessment;
7. Driver's License Academic Achievement Test (grade 8 standards-based assessments for private and home school students);
8. alternate demonstration of competency for high school graduation; and
9. Dynamic Indicators of Basic Early Literacy Skills for students with specific learning disabilities in grades K-3 (a short-cycle assessment is federally required, but not a specific assessment).

Finally, Dr. Dauphinee briefly reviewed the revised *PED Accommodations Guidance Manual*, for which statute requires approval by the LESC.

### **Committee Discussion**

Responding to a call from the Chair for audience comment, Mr. Tom Sullivan, Executive Director, NMCSA, and Ms. Christine Trujillo, President, AFT New Mexico, expressed their appreciation for the work of the stakeholder group.

A committee member expressed concern that the cut scores on ACCESS for English language learners (ELLs) may be too low, creating the possibility of over-identification of ELL students. Dr. Sheila Hyde, Deputy Secretary, Learning and Accountability, PED, replied that the department is working with its Bilingual Bureau in order to review eligibility for ELL status. Responding to other questions on the same topic, Dr. Dauphinee summarized the accommodations in place for ELLs on standards-based assessments.

Responding to a concern from a committee member regarding the standards-based assessments for students with disabilities who are reading significantly below reading level, Mr. Dauphinee stated that federal law requires that every student be tested. There are no waivers. He also noted that federal rule allows the state to count passing scores on an alternative assessment for 1.0 percent of the total student enrollment, those determined to be students with the most significant cognitive disabilities.

Finally, on a motion by Representative Stewart, seconded by Representative Roch, the committee approved the *Accommodations Guidance Manual* as presented.

### **SUMMER SCIENCE PROGRAM**

The Chair recognized Mr. Stephen L. Cotler, Vice Chairman, Board of Trustees, Summer Science Program (SSP), to present a summary report and request for funding to allow New Mexico students to have their SSP tuition fee waived.

Mr. Cotler began by describing the history and background of SSP, stating that SSP has now completed its eighth year of operation in New Mexico and that it is one of the world's oldest, most prestigious, and most challenging pre-college science enrichment programs. Affiliated with Caltech, the Harvard/Smithsonian Minor Planet Center, and Massachusetts Institute of Technology, and with financial support from New Mexico Tech, Los Alamos National Laboratory (LANL), and Sandia National Laboratories, SSP brings 36 high school science students to its campus at New Mexico Tech each summer for an intense, college-like experience that inspires them to realize their potential in college and beyond.

Mr. Cotler then described the history of SSP New Mexico's tuition fee waiver policy. In 2005, a grant of \$54,000 from LANL funded tuition fee waivers for any New Mexico resident enrolled in SSP, resulting in a sudden increase in New Mexico applications and acceptances; however, a reorganization of LANL in 2006 resulted in the cancellation of financial support for SSP. At that point, Mr. Cotler continued, SSP decided to self-fund the waiver program, which resulted in even more New Mexico students attending. Between 2007 and 2010, the state

underwrote the full-tuition waivers provided by SSP, which also proved highly successful in enrolling New Mexico students into the program. In 2010, budgetary restrictions caused the state to cut support for the waivers. Unless the tuition waiver is reinstated, Mr. Cotler said, enrollment from New Mexico students will drop in 2011 and beyond.

Hearing no committee discussion, the Chair thanked Mr. Cotler for his presentation.

### **LESC SCHOOL FINANCE WORK GROUP: FINAL REPORT**

The Chair recognized Ms. Eilani Gerstner, LESC staff, to present the final report of the LESC School Finance Work Group. Ms. Gerstner explained that the impetus for the work group had been LESC-endorsed Senate Joint Memorial 24, *Study School District Finances & Operations*, which did not pass. However, Ms. Gerstner explained, in keeping with the LESC's focus on public school finances during the 2010 interim, the LESC requested that a work group be formed and that updates on the progress of the work group be provided at each interim meeting.

After having met four times, Ms. Gerstner explained, the work group reached consensus on the following recommendations:

- Legislation
  1. Amend the *Audit Act* to remove the requirement that the Public Education Department (PED) approve the selection of an independent auditor by a school district.
  2. Amend the *School Personnel Act* to require PED to develop more stringent oversight of School Business Officials (SBOs).
  3. Amend provisions of the *Public School Code* relating to local school board members and charter school governing body members to require 10 hours of mandatory training and to provide sanctions for members who fail to complete the mandatory training.
  4. Amend the *School Personnel Act* to add "financial malfeasance or misfeasance" to the definition of "ethical misconduct" in current law.
  
- Language
  5. Include language in the *General Appropriation Act* to transfer the positions in the Office of Inspector General at PED to the Office of the State Auditor for education-related reviews.
  
- Memorial
  6. Introduce a joint memorial requesting that PED, in collaboration with the Office of Education Accountability, regional education cooperatives, Cooperative Educational Services, and other stakeholders examine the feasibility of the consolidation of certain business services.

- Letters
  7. Write a letter to the Office of the State Auditor (OSA) requesting that OSA investigate possible changes to two items regarding audit practices.
  8. Write a letter to PED from the LESC requesting that PED include confirmation on the school budget questionnaire that school districts and charter schools have established SBO succession planning.
  9. Write a letter to the New Mexico Association of School Business Officials (NMASBO) from the LESC requesting that NMASBO develop courses that count toward required annual Certified Public Accountant training.

Finally, Ms. Gerstner reported that the work group has requested \$50,000 from the New Mexico Public Schools Insurance Authority to hire one or more contractors to revise the PED's *Public School Accounting and Budgeting Manual of Procedures* and that the work group had selected a team of contractors to begin the work.

### **Committee Discussion**

In response to several committee members' questions why requirements for SBOs need to be codified, Ms. Gerstner replied that, although SBO requirements have existed in PED rule, they may not have been uniformly enforced. Further, codifying the requirements would allow additional requirements to be included: for example, training in the SBO competencies for superintendents and charter school administrators. Mr. Phil Baca, Program Manager, PED, added that, in school year 2008-2009, only 79 licensed SBOs were reported to PED statewide from all districts and charter schools, even though all business officers are required to be licensed.

In response to a committee member's question what succession planning might entail, Ms. Gerstner indicated that succession planning includes cross-training other staff members in business office duties and having a plan in place to keep the business office running in the event that the business official leaves.

In response to a committee member's question on the status of the revisions to PED's manual of procedures, Ms. Ruth Williams, Legislative Liaison, PED, indicated the contract for the work on the manual was still under review at the department. Mr. Craig Johnson, LESC staff, indicated that a draft contract had been ready on November 12, 2010. Several committee members then expressed concern that the contract was still under review at PED and urged PED to expedite the process.

In response to a committee member's question why legislation would be necessary to require 10 hours of training for school board and governing body members rather than the five hours required by rule, Mr. Joe Guillen, Executive Director, New Mexico School Boards Association (NMSBA), indicated that NMSBA supports increasing the required hours as long as additional hours focus on financial duties of boards and that the change be made in rule, rather than in law.

The committee then agreed to change recommendation number three (above) from legislation to a letter from the LESC to PED requesting that the department change PED rule to require 10

hours of training for school board and governing body members rather than five, and that the additional hours be focused on financial duties of school boards and charter school governing bodies.

### **POTENTIAL COST-SAVING AND EFFICIENCY MEASURES**

The Chair recognized Mr. Peter B. van Moorsel and Mr. Craig J. Johnson, both LESC staff, for a presentation on potential cost-saving and efficiency measures.

Mr. van Moorsel briefly outlined the potential measures. The first set of measures reflected LESC alternatives to the Government Restructuring Task Force (GRTF) proposals, including:

1. Eliminating small school size units for schools claiming more than one school in one facility (as an alternative to GRTF's proposal to change the provisions for small school and small district units).

On a motion by Representative Stewart, seconded by Representative Roch, the committee voted unanimously to present this alternative to GRTF.

2. Temporarily capping size adjustment and growth units at a specific percentage of basic program units (also as an alternative to GRTF's proposal to change the provisions for small school and small district units).

On a motion by Representative Roch, seconded by Representative Hall, the committee voted unanimously to present this alternative to GRTF.

3. Amending statute to create a Budget and Finance Division in the Public Education Department (as an alternative to GRTF's proposal to strike language in the state constitution that gives the Secretary the responsibility to distribute and account for public school funds).

On a motion by Representative Hall, seconded by Representative Stewart, the committee voted unanimously to present this alternative to GRTF.

4. Transferring PED's Office of the Inspector General full-time equivalents (FTEs) to the Office of the State Auditor (as an alternative to GRTF's proposal to move financial oversight from PED to the Department of Finance and Administration).

On a motion by Representative Stewart, seconded by Senator García, the committee voted unanimously to present this alternative to GRTF. Representative Roch and Senator Kernan voted against the motion.

Mr. van Moorsel stated that the following public education-related cost measures would affect the public school funding formula by either changing the way in which it distributes funds or by reducing the amount of funding needed by reducing school districts' and charter schools' workloads:

5. Reducing the school year by one instructional or professional development day. Mr. van Moorsel noted that, based on FY 11 budgeted operational expenditures, LESC staff estimated the savings for these options to be \$12.9 million and \$11.25 million, respectively.

On a motion by Representative Stewart, seconded by Senator Kernan, the committee voted unanimously to adopt the recommendation to reduce the school year by two professional development days, at an estimated savings of \$22.5 million.

6. Making changes to the Educational Retirement Board contribution rate, including:
  - a. delaying the 0.75 percent employer contribution increase scheduled to take effect on July 1, 2011;
  - b. extending the 1.5 percent employer/employee contribution swap that is scheduled to expire on June 30, 2011; and
  - c. increasing the magnitude of the swap noted above to realize additional General Fund savings.

The committee endorsed the recommendation to extend the 1.5 percent swap, increase it by an additional 1.75 percent, and delay the 0.75 percent increase.

7. Reducing administrator salaries. The LESC staff estimated that a 3.0 percent salary reduction for selected administrative positions could generate a General Fund savings of approximately \$1.2 million.

The committee did not endorse this cost-saving option.

8. Eliminating double funding of new charter school students by requiring that the prior-year membership used by districts to calculate program units not include students who were enrolled in that district in the prior year and, in the current year, are attending a charter school in its first year of operation.

On a motion by Senator Kernan, seconded by Representative Roch, the committee voted unanimously to endorse this cost-saving option.

9. Limit the funding of ancillary service FTE by requiring that, in calculating related services (ancillary) units, school districts and charter schools may not exceed 1.5 times the PED guidelines for calculating related services FTE.

On a motion by Representative Stewart, seconded by Representative Hall, the committee voted unanimously to endorse this cost-saving option.

10. Suspending for school year 2011-2012 the graduation requirement that students pass the 11<sup>th</sup> grade New Mexico Standards-based Assessment. Using the 11<sup>th</sup> grade New Mexico Standards-based Assessment for *No Child Left Behind Act of 2001* purposes but not using it as a required graduation assessment would eliminate the costs of students retaking the exam.

On a motion by Senator Kernan, seconded by Senator García, the committee voted unanimously to endorse this cost-saving option.

Mr. van Moorsel next discussed two policy options that did not affect the public school funding formula:

11. Limiting elementary breakfast funding to non-provision II schools.

The committee did not endorse this cost-saving option.

12. Capturing and reallocating unspent Graduate New Mexico funds.

On a motion by Representative Stewart, seconded by Senator García, the committee voted unanimously to endorse this cost-saving option.

Finally, Mr. van Moorsel presented several efficiency measures for discussion purposes. He explained that these measures might not necessarily save General Fund dollars in FY 12, but they could improve the efficiency of public school operations or increase revenues in the future:

- extending the increased Land Grant Permanent Fund distribution beyond FY 12. The state constitution currently provides that the additional distribution from the fund will decrease from 0.8 percent to 0.5 percent in FY 13;
- requiring State Board of Finance approval of emergency supplemental funding requests, which could improve the effectiveness with which these limited funds are used;
- imposing a moratorium on all new public schools and higher education branch campuses to save on increased construction and operational costs;
- amending statute governing the reversion of balances in the Public School Fund – the two options presented were to make the Public School Fund nonreverting or to transfer some of the balances in that fund to the State Support Reserve Fund;
- studying the public school transportation formula to develop more efficient methods of funding school transportation; and
- extending the instructional material adoption cycle from six to eight years to save money.

### **Committee Discussion**

In response to a committee member's question whether the creation of a School Budget and Finance Division within PED would save money, the Chair explained that this action alone would not save money, but it would enable future funding to PED to be directed to that division, ensuring that the department's finance positions are filled and able to support school districts.

In response to a committee member's question whether PED currently has the authority to prohibit multiple schools in one building from claiming size units, Dr. Susanna Murphy, Secretary-designate of Public Education, indicated that PED does have some discretion and authority, but she emphasized that the department would need to review these matters on a case-by-case basis.

## LESC POTENTIAL LEIGSLATION FOR THE 2011 LEGISLATIVE SESSION

- a. Review of Draft Legislation*
- b. Review of Other Potential Legislation*

The Chair proposed to defer discussion of Item 13 to Thursday, in order to give Dr. Tom Clifford time for his presentation of Item 14, State Revenue Update.

### STATE REVENUE UPDATE

The Chair recognized Dr. Thomas Clifford, Chief Economist, Legislative Finance Committee (LFC), to present the committee with an update on General Fund revenue and the outlook for the FY 12 budget.

Dr. Clifford began by providing the following overview of the state's financial situation:

- a sluggish and uneven economic recovery is expected;
- revenue growth has returned but remains uneven;
- assuming 4.4 percent revenue growth in FY 12, current services deficit is estimated at between \$215 million and \$410 million;
- FY 11 spending is down 8.5 percent, but revenue is down 15 percent – the difference having come from temporary federal funds; and
- reserves will fall to 4.5 percent or less if FY 11 allotments are increased.

Moving on to economic growth and inflation, Dr. Clifford said that output is growing slowly, but inflation, especially wage inflation, remains subdued. He reported that unemployment remains elevated: 9.3 percent at the end of 2011.

Total New Mexico employment saw little growth in FY 11, Dr. Clifford said, forecasting a growth average of 1.0 percent per year for the next five years. The previous high will not be reached for five more years, he predicted.

The price of crude oil is staying in the \$70 to \$90 dollar range, Dr. Clifford said, and natural gas has been pushed down by shale gas production and the weak economy, but its value has been boosted by a liquids premium.

Moving on to Taxable Gross Receipts (TGR), Dr. Clifford stated that this revenue source has begun increasing in the last few months, and the growth rate turned positive in the first quarter of FY 11 for the first time in two years. He also noted that the level of TGR is still approximately 10 percent below its peak level of fall 2009.

Dr. Clifford then discussed the consensus General Fund recurring revenue outlook, noting that FY 11 is up \$366 million from FY 10, down \$143 million from post-session estimate, and that FY 08 levels will not be reached until FY 15. Recurring revenue, he said, fell by over 20 percent from FY 08 to FY 10. He then gave additional details on the outlook and discussed causes of expected change in growth.

Dr. Clifford also presented, by category, the difference between Department of Finance and Administration and LFC revenue estimates.

Shifting the discussion to appropriations, Dr. Clifford said that:

- total FY 11 spending is down 8.5 percent from the FY 09 peak;
- public education is down 6.2 percent;
- higher education is down 11.6 percent
- Medicaid spending is down 0.6 percent; and
- spending on other agencies is down over 15 percent.

Summarizing the financial picture of the General Fund, Dr. Clifford said that over \$1.0 billion in savings was generated through solvency measures, reserves were drawn down by \$500 million, and annual General Fund spending is down \$750 million.

Dr. Clifford then gave an overall perspective of General Fund reserves, noting their levels over the past nine years, with a forecast for FY 11 reserves of 4.5 percent.

Regarding capital outlay, Dr. Clifford finished his presentation with the following figures:

- gross severance tax bond (STB) capacity in FY 11 = \$264.7 million;
- net senior STB capacity after water fund earmarks is estimated at \$237.8 million; and
- supplemental STB capacity is estimated at \$147.7 million in FY 11, all short-term.

### **Committee Discussion**

In response to a committee member's questions about sponge bonds, Dr. Clifford described them as conservative financial practice and explained that they are intended to be used for debt service using the current balance in the capital outlay fund. The State Treasurer, he added, is responsible for these investment decisions.

## **SUPERINTENDENTS AND COMMUNITY INPUT**

The Chair recognized Mr. William Murrell, Superintendent, Roy Municipal Schools, to address the committee on the increasing burden that budget cuts have caused his district and other small rural districts. Mr. Murrell stated that it costs approximately \$1.4 million to operate the district, but that the State Equalization Guarantee provides Roy with only approximately \$655,000, a difference of more than \$800,000, most of which will be requested as emergency funding. Superintendent Murrell discussed ways his district has dealt with shortfalls in the past, but he expressed discomfort about his district's prospects for dealing with a shortfall of this magnitude.

The Chair then recognized Mr. Ken Palmer and Ms. Patricia Palmer, co-founders of Artworks America, to explain their privately funded "Eco-Art" initiative, which attempts to provide schools a positive message about reducing waste and proper stewardship of the environment. The initiative plans to facilitate projects on which students can create works of art with recycled materials on a large format.

There being no other business, the Chair, with the consensus of the committee, recessed the LESC meeting at 4:20 p.m.

**MINUTES  
LESC MEETING  
WEDNESDAY, DECEMBER 15, 2010**

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) to order at 9:15 a.m., on December 15, 2010, in Room 322 of the State Capitol in Santa Fe, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, Mary Jane M. García, and Gay G. Kernan; and Representatives Rick Miera, Vice Chair, Roberto “Bobby” J. Gonzales, Jimmie C. Hall, Dennis J. Roch, and Mimi Stewart.

The following LESC advisory members were also present:

Senators Vernon D. Asbill, Stephen H. Fischmann, Howie C. Morales, John Pinto, and Sander Rue; and Representatives Andrew J. Barreras, Ray Begaye, Eleanor Chávez, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Karen E. Giannini, Sheryl Williams Stapleton, and Shirley A. Tyler.

**EDUCATIONAL RETIREMENT BOARD (ERB)  
BENEFIT PLAN DESIGN CHANGES**

The Chair recognized Ms. Jan Goodwin, Executive Director, Educational Retirement Board (ERB), to brief the committee on benefit plan changes to the ERB.

Alluding to a handout that accompanied her presentation, Ms. Goodwin began by explaining the basic formula for a sustainable pension fund: contributions and investment returns to the fund must be greater than or equal to payments to members plus administration expenses.

Noting that the Educational Retirement Fund (ERF) is currently paying out more than it is bringing in, Ms. Goodwin observed that the pension fund has historically been underfunded. That fact, coupled with a major breakdown in capital markets and a continuing increase in payments to members, has led to the current insolvent state of the fund. She noted that the number of retirees has increased while the membership is flat – a trend that is expected to continue.

Ms. Goodwin reviewed data showing that the sum paid out in pensions more than doubled over the past decade, from \$312.2 million in 2000 to \$659.3 million in 2010, as a growing number of ERB employees retired each year, vested with larger pensions than previous cohorts because

of legislatively mandated increases in educator salaries during that period. As a result, she said, the current unfunded actuarial accrued liability of the fund stood at \$4.9 billion as of 2010.

According to Ms. Goodwin, the funded ratio of the ERF (that is, the ratio of actuarial value of assets to the actuarial accrued liability) currently stands at 65.7 percent, down from 75 percent in 2005. She said that the preferred ratio for the funds was 80 percent, but that, without changes, the funded ratio will never reach that level. She also noted that the funding period, or amortization period, should never exceed 30 years. Even though the current funding period is approximately 62 years, that figure represents an improvement over years 2004 to 2007, when the funding period had been calculated at infinity.

Ms. Goodwin laid out a timeline of recent investment events, from the bursting of the “Internet bubble” in 2000 to the collapse of “subprime” markets in 2008.

Ms. Goodwin stated that, in the past five years, the ERF has turned the corner and investment results have been good. To illustrate, she cited the following data as of June 30, 2010:

- total investment return for the 12 months ending September 30, 2010: 13.4 percent;
- investment gains: \$1.1 billion;
- ranking: in the top 3.0 percent for large pension funds in the United States;
- five years: 4.7 percent per year, in the top 14 percent of such funds; and
- 10 years: 3.5 percent, in the bottom 33 percent.

Ms. Goodwin noted that the ERB has instituted significant safeguards to protect the fund as well as legal action to recover funds lost through malfeasance.

Ms. Goodwin stated that the ERB had instructed staff to investigate four proposals to shore up the solvency of the fund, to forestall a projected 2040 unfunded actuarial accrued liability of \$17.2 billion. She said that the sooner some action was taken, the less drastic the solutions would have to be. She reviewed the proposals on the table, which included changes in the length of service requirement for new members, a longer period for new members to vest, and increases in member contributions. Ms. Goodwin indicated that the ERB planned to vote on the proposals at its December 17 meeting.

### **Committee Discussion**

Before taking questions from the committee, the Chair invited questions and comments from the audience.

In response to a question from the audience about the potential effective date of proposed changes, Ms. Goodwin responded that the date was a matter of legislative prerogative, but that vested members would be “grandfathered” in and not affected by many of the changes. She noted that the ERB was also looking at “safe harbor” provisions for members on the verge of retiring. She said that the state constitution protects the contract rights of ERB and Public Employees Retirement Association (PERA) members, but that the law imposed on the governing board the responsibility to “enhance or preserve” the fund’s long-term solvency.

A member of the audience from the university community stated that he thought the ERB understood that members did not want to see longer service requirements, and that it should be possible to reach 80 percent solvency by 2040 without hurting members.

An audience member representing a school employees' union expressed members' concerns regarding any proposed change to retirement plans, and requested that the LESC consider postponing any recommendations until the members had an opportunity to offer more feedback and restore trust in the process.

Two representatives of the Education Partners indicated that the partners' consensus was to oppose any changes to service or contributions for vested members; however, they said that they also understood the situation, that they appreciated the recent openness of the ERB, and that they were ready to work together to explore ways to ensure solvency based on sound, verifiable actuarial projections.

A committee member voiced the opinion, based on a two-year task force study of the issues and potential solutions, that the Legislature needed to act in the 2011 session to address fund solvency, but not on the backs of current members.

In response to a committee member's question regarding when an employee acquires legal rights under the retirement system, Ms. Goodwin said that members acquire rights after the first five pre-vested years. However, she also cited Article 20, Section 22 of the Constitution of New Mexico, which grants the ERB, as well as the board of the PERA, the full authority for investment and administration of their respective funds and which allows modifications to the plans to enhance or preserve their actuarial soundness.

Responding to a committee member's question about the proposals scheduled for consideration by the ERB in December 2010, Ms. Goodwin stated that the board had requested alternates to the original four proposals, including a four-year period to phase in increased employee contributions.

In response to a committee member's question about the attempts to recover lost funds, Ms. Goodwin said that the state has entered into litigation to try to recover some \$58.0 million in lost investments; however, she was unable to predict how successful that effort might be.

Responding to a committee member's question regarding a recent survey of what members would be willing to accept regarding management of the fund, Ms. Goodwin said that, overall, members favored combined solutions regarding contributions and service, they were favorable to a 0.5 or 1.0 contribution increase, and they were comfortable with a longer working period. She also said that the actual survey questions and script were available on the ERB's website.

A number of other points were raised during the discussion, among them: the complaints from ERB members who were concerned that changes might affect their current benefits; the fact that the state has no capital outlay or stimulus money to fall back on should the fund fall short of projections; the possibility that, as the fund begins to recover, false confidence in the soundness of the fund can become an issue as people tend to reduce contributions and increase benefits; and potential or actual abuses of the system by members. In response to the last point,

the Chair agreed to a joint meeting between the House Education Committee and the Senate Education Committee during the upcoming legislative session.

### **TRANSFORMING EDUCATION FROM BIRTH THROUGH 4<sup>th</sup> GRADE**

The Chair recognized Mr. Bill Jordan, Policy Director, New Mexico Voices for Children, to address the need for increased funding for early childhood education programs, perhaps through increasing the distribution from the Land Grant Permanent Fund as a revenue source.

Mr. Jordan began by discussing the return on early childhood education investments and their effect on students' long-term success in school, the work force, and earning potential. He emphasized that less than 1.0 percent of the state budget is spent on preparation before school, but 60 percent is spent during the later years, some of it compensating for what was not learned during the years of prime opportunity – early childhood. As a means of highlighting the point that spending early is a more effective way of addressing many of the issues that public education faces, Mr. Jordan cited studies showing that effective early learning can reduce such things as rates of remediation and incarceration and increase such things as graduation rates, productivity, and earnings.

Mr. Jordan stated that the Land Grant Permanent Fund is the wisest source of funding for these programs, especially during times of budgetary constraint; and he recommended legislation that would allow a referendum on whether to use these funds.

#### **Committee Discussion**

In response to a committee member's question about the importance of home and community on student learning, Mr. Jordan described the need for a continuum of integrated programs from birth through grade 3, including high-quality child-care and pre-kindergarten that include more parental involvement. However, he added, the funding for such programs has been reduced and many of the staff members earn only minimum wage.

The committee discussion raised a number of other points, among them: the possibility of public opposition to the constitutional amendment necessary to change the distribution rate of the Land Grant Permanent Fund; the effectiveness of the EvenStart program and the concerns over reduced state and federal funding; and frustration with the amount the state spends on remedial education, suggesting that a shift toward funding "proactive" programs should be examined.

### **SUPPLEMENTAL EDUCATIONAL SERVICES**

The Chair recognized Dr. David Harrell, LESC staff, for a presentation on supplemental educational services (SES). Dr. Harrell introduced two other presenters: Ms. Linda Sink, Chief Academic Officer, Albuquerque Public Schools (APS), to discuss issues with SES from the district perspective; and Mr. Sam Ornelas, Director, Title I Bureau, Public Education Department (PED), to discuss issues with SES from the state perspective. Dr. Harrell also acknowledged two other staff members from APS – Ms. Laurie Everhart, Director of Title I;

and Ms. Bettina Eklund, Instructional Coordinator, Supplemental Educational Services and School Choice – and two other staff members from the Title I Bureau at PED – Mr. Art Martinez, SES Coordinator; and Dr. Roxann Morris, Education Administrator.

Dr. Harrell began by explaining that the federal *No Child Left Behind Act of 2001* (NCLB) requires each Title I school that has failed to make adequate yearly progress (AYP) for three consecutive years to use a portion of its Title I funds to provide SES to students from low-income families attending that school. Federal guidance defines these supplemental educational services as academic instruction provided in addition to instruction during the school day, “such as tutoring, remediation and other supplemental academic enrichment services that are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State’s academic content and achievement standards.” These services “must be high quality, research-based, and specifically designed to increase student academic achievement.” According to information from PED, Dr. Harrell continued, during school year 2010-2011 approximately 450 schools in 61 districts are required to provide SES to their students through providers chosen by the parents from a list of 66 providers approved by PED.

Despite this level of activity, both here and in other states, Dr. Harrell suggested that the future of the SES program may be in doubt. He reminded the committee of testimony in August 2010 by the US Department of Education (USDE) indicating that SES is unlikely to remain in the *Elementary and Secondary Education Act* (ESEA) when it is finally reauthorized. That prospect notwithstanding, however, SES is still a requirement in federal and state law; and it became an issue during the 2010 legislative session, when the Legislature considered CS/HB 142, which would have added requirements related to the curriculum used by SES providers, the hourly fees charged by the providers, the use of Title I funds, and student performance data. Under these conditions, Dr. Harrell said, a review of some of the issues that have arisen with the implementation of SES seems warranted.

For the rest of his part of the presentation, Dr. Harrell reviewed four other points, directing the committee’s attention to additional information in the staff report and the attachments to the report:

- Regarding federal and state provisions, Dr. Harrell said that, to be included on the state-approved list, SES providers must meet four criteria prescribed by federal guidance, the first of which is a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the state’s academic content and student academic achievement standards. In addition to the federal requirements, state law, as enacted in 2003 and as amended in 2006, through legislation endorsed by the LESC, further requires PED to adopt rules that:
  - govern the priority for students who are provided with SES;
  - adopt a sliding-fee schedule based on the educational level of the tutors; and
  - require providers to use a pre- and post-assessment instrument approved by the department “to measure the gains that students achieve through supplemental services.”

- Dr. Harrell next described the deliberate entrepreneurial nature of the SES program, citing an observation from the early years of the program that SES was “the federal government’s largest free-market experiment in education.” More recently, he continued, market research has shown that, as an industry, tutoring has been growing at the rate of 15 percent per year, to more than \$4.0 billion; and the most recent USDE guidelines often refer to the “SES marketplace.” Reflecting this national growth, New Mexico has seen an increasing number of SES providers approved to operate in the state.
- Regarding perhaps the most fundamental question asked of SES – whether the program contributes to academic gains by the students who receive the services – Dr. Harrell noted the findings of several studies, including some in New Mexico, that indicate that SES has contributed little or nothing to student achievement gains. Although it is difficult to isolate and measure the effects of tutoring services themselves, he added, it is notable that a consistent theme through these evaluations is that there is so little evidence of benefit to students.
- Finally, Dr. Harrell noted that, because SES is a federal program prescribed by federal law and guidance, there are limits upon state and local officials’ ability to address issues and concerns. As one example, Dr. Harrell reported that both federal guidance and PED rule prohibit SES vendors from offering incentives to recruit students or their parents. However, it is permissible for a vendor to give a computer to a student who completes the program as long as the “primary purpose” of the computer is instructional. Federal guidance also says that the state should monitor SES providers to ensure that they are not using computers as unallowable incentives. In practice, Dr. Harrell suggested, it would seem that the line between these two functions – recruitment and instruction – may be difficult to discern.

Alluding to a handout, Ms. Sink described the administration and oversight of the SES program offered through APS. She also reported the findings of a study of SES that the district conducted during school year 2006-2007. Focused on 24 schools and 10 PED-approved SES providers, this study examined whether students receiving SES demonstrated higher academic achievement than their peers in the same schools who did not receive the services and whether there was a difference among providers in terms of their effect on student achievement. In brief, Ms. Sink explained that the study found little improvement in student achievement and no differences in student gains across providers.

Ms. Sink then reviewed several problems that APS has had with the SES program, among them:

- limited alignment between the curriculum used by the district and that offered by the SES provider;
- the absence of a requirement that a minimum number of hours of tutoring be provided;
- billing problems resulting from the wide range of rates that providers charge, meaning that, in some cases, parents have exhausted their funding on only a few hours of tutoring by one high-rate provider and therefore have been unable to transfer to another provider;

- a conflict of interest arising when providers hire teachers to tutor their own students or other students from their own school. Ms. Sink called this tactic an unfair recruitment practice; and
- issues related to the providers' use of APS facilities to conduct the tutoring sessions.

To address these problems, Ms. Sink continued, APS has proposed a number of measures, among them:

- requiring that providers offer proof of professional development for tutors to align the tutoring services with the district's curriculum;
- establishing a minimum number of hours of service and controlling the hourly rate, perhaps 24 hours at approximately \$65 per hour;
- prohibiting teachers from being hired as tutors for their own students or students from their own schools;
- requiring PED to raise the standards for approving SES providers; and
- allowing districts more flexibility in negotiating contracts with providers and in developing and enforcing policies more stringent than state and federal regulations.

Acknowledging that some of these recommendations may exceed the authority of either the state or the district, Ms. Sink said that APS also recommended that legislators work with New Mexico's congressional delegation during the reauthorization of the ESEA to resolve SES problems at the federal level.

Finally, Ms. Sink discussed a grant of \$1.0 million over three years that APS received in 2008 to work with SES providers to improve collaboration for academic outcomes through after-school services. Called PICAASO, the grant focuses on curriculum development for after-school programs to ensure that the tutoring curriculum aligns with the district's curriculum. Under the terms of the grant, four SES providers receive certain services, including professional development. Data are not yet available, Ms. Sink concluded, to show whether these four providers have been more effective than others in enhancing student achievement.

Mr. Ornelas began his presentation with a description of the SES providers offering services in New Mexico during school year 2010-2011. He said that 34 of those 66 providers are based in New Mexico and the remaining 32 are based in other states, with 14 of the total providing their services online. Regarding the base rates charged by those providers, Mr. Ornelas said that approximately 80 percent of the providers charge between \$50 and \$80 per hour of tutoring and that approximately 90 percent charge between \$40 and \$92 per hour. The proportion of that rate actually paid, however, varies according to the credentials of the tutor and the student/tutor ratio, as prescribed by PED rule.

Mr. Ornelas noted that 49 of the approved providers offer services to APS, with a student enrollment of more than 95,000. While that number of providers may seem high, he said, with the potential of confusing parents with too many choices, it is in line with – or even lower than – the number of providers serving other large districts.

Addressing other aspects of the SES program, Mr. Ornelas expanded upon some of the points that Dr. Harrell had raised. For one thing, he emphasized an August 2010 study that had synthesized the findings of studies of 17 states or large school systems, concluding that, as

currently designed and implemented, SES is not meeting its primary goal of improving student achievement on standardized test scores. He added that standardized tests can be a somewhat blunt instrument for measuring student achievement. For another thing, Mr. Ornelas said that, despite the federal provision that states remove from the approved list any provider that fails to contribute to increased student proficiency for two years in a row, states have seldom taken that action largely because it is virtually impossible to isolate the effects of short-term tutoring from the other factors affecting student achievement. A PED survey of other western states – among them: Texas, Oklahoma, Colorado, Nevada, and Hawaii – found that, like New Mexico, none of them have removed any SES providers from their approved lists. Given the businesslike nature of the SES program, Mr. Ornelas added, any state attempting to remove a provider would likely face strong objection.

Speaking of the district-level aspects of SES, Mr. Ornelas emphasized the importance of the local contract process and the language used, as well as the importance of focusing on small achievable goals for individual students. He also said that, while he agrees with the APS recommendations, guidance from the USDE that a provider's instruction be consistent with local curriculum does not mean that the content and methods must be identical, only that they must focus on the same standards. He added that, according to district monitoring reports in school year 2009-2010, approximately 77 percent of districts found that providers' instruction was consistent with the district's curriculum and state standards; and that approximately 83 percent reported that instruction was driven by individual student plans. It is important, Mr. Ornelas continued, for the district and the provider to agree on the definition of curriculum – that is, whether it means a course of study, a program, or a model – and he acknowledged that parents who expect the tutoring to consist mainly of homework help may wonder why, after an hour or two of after-school tutoring, their child still has work to do at home.

### **Committee Discussion**

In response to a question from a committee member about the prospects of improving SES if the APS recommendations were implemented, Ms. Sink acknowledged that, even then, there would still likely be some concerns simply because of the federal guidelines that prohibit further state or local discretion.

This committee member also asked whether the student outcomes might be different if different assessments were used to measure student achievement. In reply, Ms. Sink said that short-cycle assessments would be more reliable indicators. Mr. Ornelas agreed, noting that the short-cycle assessments are more finely tuned than the standards-based assessments. He added, however, that the variety of short-cycle assessments used throughout the state would prevent a uniform measure of student achievement.

In response to a committee member's question about the cost of SES, Mr. Ornelas said that, last year, districts throughout the state spent approximately \$10.0 million of their Title I funds. Ms. Eklund said that this year APS is spending approximately \$5.1 million in services for some 4,300 students, approximately 1,000 of whom the district expects to drop out of the program.

In response to committee members' questions about efforts to monitor the quality and effect of SES, Mr. Ornelas referred to PED rules governing such matters as the timing of the tutoring services, prohibitions against the use of incentives or other unfair business practices, and the

requirement of an individual improvement plan for each student enrolled in SES. He also said that the department has encouraged approved providers to hire the most highly qualified tutors they can. On this point, Ms. Eklund said that most of the tutors hired by providers in APS have bachelor's degrees. Dr. Sheila Hyde, Deputy Secretary for Learning and Accountability, PED, said that the department is reviewing the request-for-proposal process to determine if it might be made more stringent; and she suggested that assistance from APS would be helpful.

Responding to other questions raised by committee members, Mr. Martinez noted that certain policies, such as providers' access to school facilities, vary among districts. And he cautioned that a rule or law applicable statewide may be helpful in some districts but harmful in others. For example, some districts, small ones especially, may not want to prohibit their teachers from tutoring their own students; whereas, APS, if the board so chose, could already implement such a policy on its own. Mr. Martinez also reminded the committee that parental choice is the key factor in the selection of providers and that federal regulations are designed not only to foster parental choice but also to prevent any practices that might interfere with it.

Finally, among other points, committee members noted that, to be effective, SES tutoring must focus on specific academic needs rather than broad goals; that the design of SES emphasizes program over outcome, when, instead, it should identify the desired outcome first and then devise a means to achieve that outcome; that the money spent on SES might be better used to expand the K-3 Plus Program if federal regulations would allow; and that the reauthorization of the ESEA may make some of the present concerns moot.

***STUDY AUTISM & SCHOOL SERVICES (SJM 25a):***  
**LESC UPDATE FROM NOVEMBER 2010 INTERIM PED REPORT**

The Chair recognized Mr. Adan Delval, LESC intern, to provide the committee with an update from the November 2010 interim Public Education Department (PED) report in response to SJM 25a, *Study Autism & School Services*. Reviewing the memorial, Mr. Delval stated that it requested PED to conduct a study to determine how to provide best practice services to all children with autism in public schools and to develop a written plan showing how PED will work with state agencies and stakeholders to develop and implement appropriate systems of care for all students with Autism Spectrum Disorder (ASD).

Mr. Delval noted that, at the November LESC meeting, representatives from the New Mexico Autism Society reported that, while the joint memorial requested that PED work collaboratively with stakeholders in the development of appropriate systems of care for all students with ASD, many stakeholders were not included in the study. At the conclusion of the discussion, he said, the Chair requested that PED contact the stakeholders outlined in the joint memorial to review the work and recommendations of the department relating to SJM 25a and to provide a follow-up report to the committee at its December meeting.

In response to this request, Mr. Delval reported, PED called a meeting of the stakeholders on November 22, 2010, offering to those unable to attend the opportunity to provide comments either through email or over the phone. Then on December 6, 2010, the Secretary-designate of Public Education sent a memorandum to the LESC Chair outlining the points of consensus reached by the stakeholders. According to this memorandum, PED:

- will issue best practice guidance on items to consider when writing individualized education programs for students with ASD;
- requests more time – until the end of school year 2010-2011 – to complete the SJM 25a study;
- will work with the Department of Health to gather information and to determine questions for an updated survey of a broadened stakeholder group; and
- will reconvene the current stakeholder group to review the data and information and to update the recommendations in the current study.

### **Committee Discussion**

The Chair invited members of the audience to address the committee. In response, Ms. Gay Finlayson, partly on behalf of Senator Clinton D. Harden, raised some concerns about the work and plans of PED, among them: that PED has been reluctant to adopt the autism supplement for Individual Educational Programs that the state of Texas has successfully used for years; and that funds spent on a university professor from Maryland to create autism teams in New Mexico school districts could be better spent building capacity in New Mexico by using staff from the University of New Mexico and New Mexico State University.

A committee member asked why an out-of-state contractor was being used to address autism issues in New Mexico. In response, Ms. Denise Koscielniak, Director, Special Education Bureau, PED, said that, at the time in question, New Mexico lacked the human resources to adequately begin a project using the current model.

In response to a committee member’s question about the nature of autism-therapy groups, Ms. Koscielniak said that currently there are teams in 17 districts that give presentations and tours, based on need, to build familiarity within the districts with regard to dealing with ASD.

### **BEGINNING TEACHER MENTORSHIP PROGRAM (PUBLIC EDUCATION DEPARTMENT RESPONSE TO LESC REQUEST)**

Senator Nava recognized Ms. Eilani Gerstner, LESC staff, for a staff report on the beginning teacher mentorship program. Ms. Gerstner acknowledged Dr. Scott Hughes, Director, Office of Education Accountability (OEA), and Mr. Larry Martinez, Professional Development Bureau Chief, Public Education Department (PED), who were available for questions.

Ms. Gerstner began by explaining that, in 2010, the LESC sent a letter to the Secretary of Public Education requesting that the PED, in collaboration with OEA, examine:

1. the specific uses of mentorship funds in each school district, including the amounts of compensation provided to mentor teachers;
2. the performance outcomes of district mentorship programs, including beginning teacher retention rates and the rate and number of attempts required for Level 1 teachers to advance to Level 2 licensure; and
3. in the instance of Level 1 “mentor” teachers:

- a. the specific mentoring services each Level 1 mentor teacher is providing compared to the mentoring services provided by Level 2 and Level 3 mentors in the same school district;
- b. the levels of teachers (Internship and Level 1) that each Level 1 teacher is mentoring; and
- c. the years of teaching experience that each Level 1 mentor teacher has, including whether and for how long the teacher taught on an Internship license before receiving a Level 1 license.

Ms. Gerstner provided highlights of the findings in the report from PED and OEA, titled *PED and OEA 2010 Mentorship Report* (attached to the staff report). To address portions of the LESC request, PED surveyed 158 school districts and charter schools in September 2010. PED reports that 96, or 61 percent, of those surveyed responded. Among other findings, the survey results indicated:

- regarding the specific uses of mentorship funds:
  - stipends for mentors ranged from \$150 to \$2,000 per mentor;
  - respondents spent a total of \$329,348 on mentor training; and
  - respondents spent a total of \$655,859 on supplies for their mentorship programs.
- regarding performance outcomes of district mentorship programs:
  - PED implemented a change in the Student Teacher Accountability Reporting System (STARS) to track beginning teacher retention data starting with school year 2009-2010. Results from the first year of data indicated that:
    - the most commonly cited reason for departure was “Unknown”; and
    - the next most-often cited reason was “Personal”;
  - PED indicated that 81 percent of Level 1 teachers passed their professional development dossiers (PDDs) on their first submission to advance to Level 2;
- finally, on the issue of Level 1 teachers serving as mentors:
  - in school year 2008-2009, one school district – Gallup-McKinley County Public Schools – reported using 23 Level 1 teachers to mentor other teachers. At PED’s request, the district explained that the reasons for Level 1 teachers serving as mentors included:
    - staff turnover;
    - remote location of some schools;
    - insufficient numbers of Level 2 and Level 3 teachers to pair with each first-year Level 1 teacher; and
    - cases where Level 1 teachers were considered to have superior teaching skills to available Level 2 or Level 3 teachers;
  - however, in the 2009-2010 survey, 14 school districts and nine charter schools reported using Level 1 mentor teachers. PED indicated that the department would

enforce the amendment to the *School Personnel Act*, effective for school year 2010-2011, requiring that mentors be Level 2 or Level 3 teachers.

### **Committee Discussion**

The main point of discussion was concern regarding the use of “Unknown” and “Personal” as reasons that districts may cite for teachers leaving the district. Several committee members, as well as Dr. Hughes and Mr. Martinez, agreed that the reliance on those categories makes it difficult to determine the actual reasons why a teacher leaves a school district. Other committee members noted, however, that simply removing those response options may compel teachers not to respond at all.

### **SUPERINTENDENTS AND COMMUNITY INPUT**

The Chair recognized Mr. Tom Sullivan, Executive Director, New Mexico Coalition of School Administrators (NMCSA), who expressed concern over the proposal that the committee was considering eliminating the double funding for students newly enrolled in a charter school. Among other points, Mr. Sullivan cited a number of factors beyond a district’s control that might create a fiscal hardship for the district. In response to a question from the Chair, Mr. Sullivan said that the NMCSA would support an across-the-board moratorium on new schools.

The Chair recognized Ms. Alicia Nation, Volunteer Executive Director & Chair, Education and Equine Assisted Therapy Committee of the New Mexico Mustang & Burro Association, to speak to the committee about Equine Assisted Therapy, or the use of horses and the philosophy of animal husbandry as a way of enhancing learning for those students who may not respond to traditional teaching methods.

There being no other business, the Chair, with the consensus of the committee, recessed the LESC meeting at 5:19 p.m.

### **MINUTES LESC MEETING THURSDAY, DECEMBER 16, 2010**

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) to order at 9:48 a.m., on December 16, 2010, in Room 322 of the State Capitol in Santa Fe, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, Mary Jane M. García, and Gay G. Kernan; and Representatives Rick Miera, Vice Chair, Roberto “Bobby” J. Gonzales, Jimmie C. Hall, Dennis J. Roch, and Mimi Stewart.

The following LESC advisory members were also present:

Senators Vernon D. Asbill, Stephen H. Fischmann, Howie C. Morales, and John Pinto; and Representatives Andrew J. Barreras, Ray Begaye, Eleanor Chávez, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Sheryl Williams Stapleton, and Shirley A. Tyler.

Also in attendance was Representative Anna M. Crook.

## **DIRECTOR'S REPORT**

### ***a. Approval of Draft LESC September 2010 Minutes***

On a motion by Representative Gonzales, seconded by Representative Stewart, the LESC approved the minutes of the September 2010 meeting.

### ***b. Approval of LESC Financial Report for October 2010***

On a motion by Representative Gonzales, seconded by Representative Stewart, the LESC approved the financial report for October 2010.

## **FINAL REVIEW OF LESC RECOMMENDATIONS FOR THE 2011 LEGISLATIVE SESSION**

The Chair recognized Ms. Pamela Herman, LESC staff, for a final review of proposed legislation for the 2011 session.

Ms. Frances Ramírez-Maestas, LESC Director, called the committee's attention to a list of potential legislation included with a packet of proposed legislation prepared by the LESC staff in collaboration with the Legislative Council Service. She indicated that the list and discussion draft items were based on the matters presented to the committee at its November meeting and the committee discussion.

The Chair noted that, in order to provide committee members with more time to review the proposed legislation, the committee would be asked to provide preliminary approval of the list included with the packet. She noted that at the January LESC meeting, the committee would have an opportunity to review legislation based on the potential cost-saving and efficiency measures considered by the committee in the discussion on Tuesday. At that time, sponsors for all LESC-endorsed measures also would be assigned. Ms. Ramírez-Maestas noted that the bills in the packets provided to committee members for items 1 through 17 were drafts subject to revision based on committee input and further work with the Legislative Council Service. The list of education-related potential legislation for the 2011 session that was provided to committee members included the following:

## LESC-ENDORSED ITEMS INTRODUCED BUT NOT ENACTED IN 2010

1. **Extend Educational Testing Contract Lengths:** Amend the *Procurement Code* to allow extensions of up to 12 years for the development and implementation of standardized tests in grades K through 12 and for the development and implementation of teacher tests for professional licensures (HB 67, 2010).
2. **Alternative School Curricular Plans:** Amend the *Public School Code* to allow the Secretary of Public Education to waive class-size requirements for classes to which a student teacher who meets certain criteria has been assigned (SB 78a, 2010).
3. **Education Dept. Pays for Standard-based Tests:** Amend the *Assessment and Accountability Act* to require the Public Education Department (PED) to pay the costs of administering, scoring, and reporting standards-based assessments (SB 106, 2010).
4. **Create Dual Credit Textbook Fund:** Add a new section to the *Public School Code* to:
  - create the Dual Credit Textbook Fund to distribute money to school districts, charter schools, state-supported schools, and Bureau of Indian Education (BIE) schools, or college bookstores on warrant of the PED, to provide textbooks and course supplies for their students participating in the Dual Credit Program;
  - require that PED establish, by rule, a method to allocate and distribute monies in the fund to school districts, charter schools, state-supported schools, BIE schools, or college bookstores on warrant of the PED; and
  - require certain reports from school districts, charter schools, state-supported schools, BIE schools, or PED (SB 114a, 2010).
5. **K-3 Plus Funds Allocation:** Introduce legislation and include language in the *General Appropriation Act of 2011* to ensure that K-3 Plus funds can be made available to school districts before the start of the fiscal year, so that districts receive the funds in time to commence programs prior to the start of the new school year.

The committee agreed by consensus to endorse items 1 through 5.

## ITEMS EXAMINED BY THE LESCS DURING THE 2010 INTERIM

### CHARTER SCHOOLS

6. **Monitoring of Charter School Performance by Authorizers:** Introduce legislation to amend the *Charter Schools Act* to require an authorizer to monitor the fiscal condition of any charter school it has authorized when that charter school has received an adverse audit. The monitoring shall continue until the charter school receives a clean audit, and it shall consist of at least one site visit and at least three status reports per year. Each status report shall address the charter school's progress toward resolving the specific audit findings.
7. **Enrollment in Charter Schools Created Through Restructuring:** Amend the *Assessment and Accountability Act* to clarify that, if a traditional public school in

Restructuring 2 is converted to a state-chartered charter school pursuant to its restructuring plan, it must grant enrollment priority to students already attending that school.

On a motion by Senator García, seconded by Representative Stewart, the committee unanimously approved items 6 and 7.

### **DUAL CREDIT PROGRAMS**

8. **Dual Credit Reimbursement:** Introduce legislation to provide that dual credit reimbursement through the higher education funding formula shall be based on course completion, not enrollment.

After a brief discussion of whether passage of Item 8 had the potential to limit dual credit opportunities for some students, the committee agreed by consensus to defer a decision on the item until the January LESC meeting.

### **SPECIAL EDUCATION**

9. **Align State and Federal Special Education Law:** Introduce legislation to align the language in state special education law with that in the federal law to which the state and public schools are accountable.

On a motion by Senator Kernan, seconded by Representative Stewart, the committee unanimously approved Item 9.

### **PUBLIC SCHOOL PERSONNEL**

10. **Reading in Teacher Preparation Programs:** Amend the *School Personnel Act* to require that, to qualify for licensure to teach grades K-5, a candidate must demonstrate an understanding of, and ability to apply, the scientific research on teaching of reading by passing a rigorous exam.

On a motion by Representative Stewart, seconded by Representative Hall, the committee unanimously approved Item 10.

### **11. Evaluations of Teachers and Principals and Their Preparation Programs:**

- a. Introduce legislation to amend the *School Personnel Act* to create an annual evaluation system for teachers and principals that:
  - i. includes a student growth component;
  - ii. is integrated into the existing three-tiered licensure system;
  - iii. links the teacher's or principal's evaluation to the PED-approved teacher preparation or educational leadership program that prepared the individual for licensure; and
  - iv. prescribes a process that could lead the Professional Practices and Standards Council to recommend that the Secretary of Public Education close a program that, despite prescribed interventions, continues to be ineffective by;

- establishing an educator evaluation council to make detailed recommendations to PED, the Legislature, and the Governor for the design of the evaluation system by December 2011;
- providing for a two-year pilot study of the new system by three school districts: large, medium, and small; and
- establishing a timetable for statewide system implementation.

or

- b. Introduce a memorial to request that the Office of Education Accountability (OEA), in collaboration with PED, form a work group including teachers unions, the business community, the LESC, teacher preparation and educational leadership programs, school districts, and other stakeholders to design an annual evaluation system that includes a student growth component and that is linked to educator preparation programs. The memorial should request a report during the 2011 interim to the LESC, including findings and recommendations for proposed legislation for introduction in the 2012 session.

On a motion by Representative Stewart, seconded by Representative Hall, the committee unanimously approved option 11a.

#### **SUGGESTIONS FROM LESC MEMBERS AND OTHERS**

12. **Bullying Prevention Programs:** Introduce legislation to require PED to establish guidelines for bullying prevention policies to be promulgated by local school boards; require local boards to promulgate policies by August 2011; and require every public school to implement a bullying prevention program by August 2012.
13. **Bullying Study Memorial:** Introduce a memorial requesting the Children, Youth and Families Department, PED, and the Department of Health to conduct a joint study of the incidence, nature, and effects of bullying and other forms of harassment affecting New Mexico children and youth, and to report findings and recommendations to the LESC by November 30, 2011.
14. **Diploma Endorsements for Career Technical Excellence:** Endorse legislation requiring that, by the beginning of school year 2012-2013, PED establish a system to allow school districts voluntarily to award “diploma stamps” on diplomas of students who excel in completion of specified career technical education courses.
15. **Education Assistance Act Amendments:** Endorse legislation to repeal and replace sections of the *Educational Assistance Act* to allow the NM Student Loan Guarantee Corporation and the NM Educational Assistance Foundation to manage the orderly elimination of the Federal Family Education Loan Program portfolio and to explore other opportunities that could provide services to educational institutions and students in the state.
16. **Suspend Non-federally Required Assessments:** Endorse legislation to suspend, for one year, all student assessments currently required in state law but not in federal law (*recommendation of the December 10 PED Student Assessment Priorities Stakeholder Meeting*).

On a motion by Representative Hall, seconded by Senator García, the committee unanimously approved items 12 through 16.

#### **APPROPRIATIONS AND GENERAL OBLIGATION BONDS**

17. **Library GOBs:** Allocate \$2.0 million for the issuance of General Obligation Bonds to purchase school library materials (recommendation of the New Mexico Task Force for School Libraries).
18. **Appropriate Funds for the Summer Science Program:** Endorse legislation to appropriate \$50,000 to New Mexico Tech for the Summer Science Program.
19. **Appropriate Funds for the MESA Program:** Endorse legislation to appropriate \$110,000 to PED for the MESA Program.

On a motion by Representative Hall, seconded by Senator García, the committee unanimously approved items 17 through 19.

#### **PENDING RECOMMENDATIONS OF THE LESC SCHOOL FINANCE WORK GROUP**

20. **Approval of Independent Auditors:** Introduce legislation to amend the *Audit Act* to remove the requirement that PED approve the selection of an independent auditor by a school district.
21. **Codify School Business Official Licensure Requirements:** Introduce legislation to amend the *School Personnel Act* to require PED to:
  - provide by rule for licensure of school business officials (SBOs), including initial and continuing licensure, competencies, ethics and reporting requirements, and a savings clause; and
  - track the denial, suspension, or revocation of SBO licenses and determine if these actions occur in a timely manner;
  - assess the quality of and enforcement of training requirements for SBO licensure; and
  - require mandatory training for superintendents on the evaluation of SBOs, including how to assess SBO competencies.
22. **Expand Definition of Ethical Misconduct:** Introduce legislation to amend the *School Personnel Act* to add “financial malfeasance or misfeasance” to the definition of “ethical misconduct” in current law. In addition, change from 30 to 90 days the time frame in which PED must serve an employee with the department’s notice of contemplated action.
23. **PED Office of Inspector General (OIG) Positions:** Include language in the *General Appropriation Act of 2011* to transfer six PED OIG positions to the Office of the State Auditor (OSA) and to dedicate the positions to education-related reviews.

24. **Memorial Regarding Consolidation of Small District Business Services:** Introduce a memorial requesting PED, in collaboration with the OEA, the OSA, regional education cooperatives, Cooperative Educational Services, and other stakeholders to examine the feasibility of consolidating certain business services for small school districts, such as payroll, legal services, human resources, audit preparation, audit services, and federal program management; and provide a report to the LESC during the 2011 interim.
25. **Letter Regarding Increased School Board Training Requirements:** Write a letter to PED requesting that the department change rules relating to school board member and charter school governing board member training to require 10 hours of mandatory training, five of which shall be focused on the financial and audit responsibilities of boards and governing bodies.
26. **Letter Regarding Certain School Audit Issues:** Write a letter to the OSA requesting that OSA explore:
- whether the state audit rule could be amended to allow certain school districts to submit their financial audits on December 15 rather than on November 15; and
  - the feasibility of allowing locally chartered and state-chartered charter schools to have audits independent of their authorizers.
27. **Letter Regarding SBO Successor Planning:** Write a letter to PED requesting that PED include confirmation on the school budget questionnaire that school districts and charter schools have established SBO successor planning as part of their internal control process.
28. **Letter Regarding CPA Training Courses:** Write a letter to the New Mexico Association of School Business Officials (NMASBO) requesting that NMASBO develop courses that count toward required annual Certified Public Accountant training.

On a motion by Representative Hall, seconded by Senator García, the committee unanimously approved items 20 through 28.

#### **PENDING RECOMMENDATIONS OF THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

29. **Subcontractor Bonding:** Endorse legislation to raise the minimum contract size on which a subcontractor's bond shall be required for public school capital outlay projects to \$250,000.

On a motion by Senator García, seconded by Representative Miera, the committee unanimously approved Item 29.

30. **SB 140, School Facility Leases and Standards:** Create certain standards and requirements for charter school facilities; specifically, require that:

- charter school facilities receive a condition rating better than the average condition of all New Mexico public schools for that year, as measured by the New Mexico Condition Index; and
- charter schools gain Public School Facilities Authority approval before entering into facility lease or lease-purchase agreements.

Noting that Item 30 was still under consideration by the Public School Capital Outlay Oversight Task Force, Representative Miera suggested that action to endorse the item be deferred until the January LESC meeting.

When the Chair inquired if committee members were aware of any other items that should be included, members requested that the following be considered:

**31. Repeal 180 Full Instructional Day Requirement:** Introduce legislation to:

- repeal the provision enacted in 2009 to require that a school year consist of 180 full instructional days for a regular school calendar or 150 days for a variable school calendar, exclusive of professional development days and adjustments for cancelled days due to inclement weather; and
- require that school calendar adjustments for cancelled days due to inclement weather or other unforeseeable events must be made in increments of full instructional days.

**32. Supplemental Educational Services:** Pending ongoing discussions with representatives from PED and school districts, introduce legislation to provide greater state and district oversight of supplemental educational services provided with Title I funds to eligible students in schools in need of improvement.

The Chair briefly reviewed the measures considered for cost-saving and efficiency on Tuesday. The committee agreed by consensus that the staff should work with the Legislative Council Service to have potential legislation drafted to reflect the items the committee had discussed for a final discussion and vote at the January meeting.

The Chair reminded the committee that there would be an executive session of the LESC on Sunday, January 16, 2011 to discuss the public school support recommendation for FY 12, followed by the final meeting of the 2010 interim on the afternoon of January 17, 2011.

**ADJOURNMENT**

There being no further business, the Chair adjourned the LESC meeting at 11:08 a.m.

*Chava*

Chair

*7-26-2011*

Date