

**State of New Mexico**  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**

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**MINUTES**  
**LESC MEETING**  
**APRIL 17-18, 2008**

D. Pauline Rindone, Ph.D., Director  
Frances R. Maestas, Deputy Director

Representative Rick Miera, Chair, called the Legislative Education Study Committee (LESC) meeting to order on Thursday, April 17, 2008 at 9:36 a.m., State Capitol, Room 307, Santa Fe, New Mexico.

The following LESC members were present:

Representatives Rick Miera, Chair, Roberto "Bobby" J. Gonzales, Jimmie C. Hall, and Mimi Stewart; and Senators Cynthia Nava, Vice Chair, Vernon D. Asbill, and Mary Jane M. Garcia.

The following LESC advisory members were present:

Representatives Ray Begaye, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Thomas A. Garcia, John A. Heaton, Jim R. Trujillo, and Teresa A. Zanetti; and Senators Carlos R. Cisneros, Dianna J. Duran, Lynda M. Lovejoy, and Senator John Pinto.

◇ **Approval of Agenda**

On a motion by Representative Hall, seconded by Representative Stewart, the committee unanimously approved the agenda as presented.

**SUMMARY OF 2008 PUBLIC SCHOOL-RELATED LEGISLATION  
AND FY 09 APPROPRIATIONS**

Chairman Miera recognized Dr. D. Pauline Rindone, Director, Legislative Education Study Committee (LESC), who, together with LESC staff, presented a summary of public school support and related appropriations for FY 09, as well as other legislative initiatives of the 2008 legislative session.

To begin, Dr. Rindone called the committee's attention to a memorandum dated March 7, 2008, entitled, *Summary of Public Education-related Legislation Passed by the Forty-eighth Legislature, Second Session, 2008 (after executive action)*. Dr. Rindone said that this document is prepared by LESC staff after every legislative session to provide legislators with a summary of all education-related legislative activity during the session.

Dr. Rindone stated that the Legislature passed two appropriation acts: CS/HB 2, et al., the *General Appropriation Act of 2008*, which contains the funding for public school support and for the Public Education Department (PED) and CS/SB 165, as amended, *State Agency Expenditures* (also known as HB 2 Junior), which includes a number of public education-related appropriations. Dr. Rindone said that both of these acts were signed by the Governor, with partial vetoes.

Noting that the 2008 legislative session was limited primarily to budget issues, Dr. Rindone called the committee's attention to five tables in the memorandum that would be summarized by LESC staff: Table 1, *Public School Support and Related Appropriations for FY 09, General Appropriation Act of 2008, Laws 2008, Chapter 3 (partial veto)*; Table 2, *Public Education-related Appropriations (for expenditure in FY 09 unless otherwise noted), CS/SB 165, as amended, Laws 2008, Chapter 6 (partial veto)*; Table 3, *Public School Capital Outlay, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008 (FL/SB 471, with emergency clause [Laws 2008, Ch. 92] (partial veto))*; Table 4, *Public School Capital Outlay, General Obligation Bonds, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008 (CS/SB 333, with emergency clause [Laws 2008, Ch. 80])*; and Table 5, *Public School Reauthorizations, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008 (FL/SB 352, as amended, with emergency clause [Laws 2008, Ch. 83])*. She added that the final attachment to the memorandum, *Passed Public School-related Legislation, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008 (After Executive Action)*, contained a list and short summary of bills that passed.

Dr. Kathleen Forrer, LESC staff, discussed tables 1 and 2 of the memorandum. She first explained two terms related to the discussion: (1) "above the line," which refers to items included in the State Equalization Guarantee (SEG) appropriation, such as fixed costs and salaries, and (2) "below the line," which includes all of the categorical and related appropriations. She then directed the committee's attention to Table 1, *Public School Support and Related Appropriations for FY 09, General Appropriation Act of 2008*.

Dr. Forrer said that of the approximately \$2.6 billion appropriated by the 2008 Legislature for public school support and related recurring appropriations, close to \$2.4 billion is designated for distribution through the SEG. She explained that, for each school district, the SEG plus certain local and federal revenue equal program cost, which is the amount of money assumed under the Public School Funding Formula for districts to be able to provide the educational services necessary for all of their students, taking into account the students' individual needs. Noting that the total previous year program cost serves as the base for the subsequent fiscal year appropriation, Dr. Forrer stated that the FY 09 program cost of more than \$2.4 billion, which represents an increase of approximately \$110.8 million, or 4.8 percent, over the FY 08 program cost, includes:

- approximately \$33.6 million to open the school doors, which includes dollars for enrollment growth; the employer portion of the insurance costs; and fixed costs;
- approximately \$39.2 million for a mandatory average 2.0 percent salary increase for teachers, instructional staff, and other licensed and non-licensed school employees and \$3.3 million for an additional 1.0 percent average salary increase for educational assistants; secretarial, clerical and technical assistants; business office support staff; maintenance, custodial, warehouse, and delivery employees; and food service employees;
- approximately \$12.3 million to fund the 0.75 percent increase in the employer's contribution to the Educational Retirement Fund (ERF);

- \$8.0 million to fund an expansion of elementary physical education programs to include approximately 38,600 additional children in kindergarten through sixth grade;
- \$464,800 to cover school district assessment costs, including printing, scoring, and reporting; and
- \$14.0 million to increase the school year by one full instructional day.

Noting that the Legislature had initially included an additional \$4.0 million in program cost to begin to address the projected insolvency of the Retiree Health Care Fund, Dr. Forrer explained that because the \$4.0 million was contingent upon legislation that did not pass, those dollars had to be deducted from program cost. This deduction, she added, had resulted in a small decrease in unit value of approximately \$6.00. She stated that, based on an estimated 626,780.339 units, the Public Education Department (PED) had established the FY 09 initial unit value at \$3,892.47, an increase of 5.9 percent, or \$218.21, over the FY 08 final unit value.

Dr. Forrer then discussed the categorical appropriations, noting (1) that there are sufficient funds in the transportation distribution to provide both the mandated average 2.0 percent and the mandated average 1.0 percent salary increases to all transportation staff, including those employed by contactors; and (2) that the \$39.0 million for instructional material includes \$1.3 million to help districts defray the textbook costs for the dual credit program. Among the other appropriations to PED, she said, are \$2.45 million for breakfast for elementary students; close to \$2.4 million for emergency supplemental distributions (plus an additional nonrecurring appropriation of \$5.0 million); \$8.5 million for pre-kindergarten programs, plus an additional \$1.0 million in TANF (Temporary Assistance for Needy Families) funds; approximately \$7.2 million for K-3 Plus (an additional \$3.0 million in TANF funds was line-item vetoed by the Governor); and \$770,000 for truancy and dropout prevention programs (although the original appropriation was \$1.0 million, \$230,000 specifically designated for truancy court in the Second Judicial District was vetoed). Dr. Forrer also noted that the *General Appropriation Act of 2008* included not only \$1.4 million in recurring funds for the Regional Education Cooperatives (RECs) for operational (infrastructure) costs but also language allowing the RECs to retain any distributed portion of the \$1.8 million appropriated to PED in previous fiscal years and scheduled to revert at the end of FY 08.

Finally, Dr. Forrer briefly reviewed Table 2, *Public Education-related Appropriations*, which summarizes additional nonrecurring public education-related appropriations included in HB 2 Junior. She noted that the appropriations to PED totaled approximately \$2.9 million, including an additional \$1.0 million for breakfast for elementary students; \$300,000 for the Charter School Stimulus Fund; and \$250,000 for Innovative Digital Education and Learning (IDEAL-NM). In addition, almost \$1.7 million is appropriated to other state agencies for a variety of programs, including \$250,000 to the Higher Education Department (HED) for IDEAL-NM. Summarizing the total funding for the New Mexico Cyber Academy/IDEAL-NM, Dr. Forrer noted that the Legislature had appropriated a total of \$2.0 million for FY 09: \$750,000 to PED and \$750,000 to HED in the *General Appropriation Act of 2008*, and an additional \$250,000 to PED and \$250,000 to HED in HB 2 Junior.

Mr. Peter van Moorsel, LESC staff, discussed tables 3, 4 and 5 of the memorandum, which summarized three separate capital outlay bills. He first discussed Table 3, *Public School Capital Outlay, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008 (FL/SB 471, with emergency clause [Laws 2008, Ch. 92] (partial veto))*, which provides a summary of direct capital outlay appropriations to PED and other agencies for public school-related projects. Mr. van Moorsel explained that these appropriations total approximately \$39.0 million, adding that \$1.8 million in appropriations for public school-related projects was vetoed by the Governor. He said that of the \$39.0 million, approximately \$19.7 million was from severance tax bond receipts; and approximately \$19.3 million was from the General Fund.

Mr. van Moorsel stated that approximately \$9.0 million of these appropriations were for statewide capital outlay projects, including: \$3.0 million to construct pre-kindergarten classrooms; \$1.0 million to purchase library books for public and charter schools; \$1.0 million to purchase laptops for seventh grade students; and \$4.0 million to purchase school buses. He explained that Table 3 listed almost \$25.9 million in capital outlay appropriations to individual school districts, as well as approximately \$5.9 million in capital outlay appropriations to state supported schools.

Mr. van Moorsel discussed two other capital outlay initiatives passed by the Legislature and signed by the Governor. He noted that Table 4, *Public School Capital Outlay, General Obligation Bonds, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008 (CS/SB 333, with emergency clause [Laws 2008, Ch. 80])* depicts the *2008 Capital Projects G.O. Bond Act*, which, upon voter approval, authorizes the issuance and sale of General Obligation bonds for a variety of capital projects and improvements, including a total of \$11.0 million for libraries statewide; and an additional \$8.0 million for capital improvements for the New Mexico School for the Deaf and the New Mexico Military Institute. He also discussed Table 5, *Public School Reauthorizations, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008 (FL/SB 352, as amended, with emergency clause [Laws 2008, Ch. 83])*, which shows reauthorizations of approximately \$17.4 million in various education related capital outlay appropriations from previous fiscal years.

Finally, Mr. van Moorsel discussed the LESC-endorsed *Public School Capital Outlay Omnibus Bill*, which makes changes in the standards-based process that the Public School Capital Outlay Council (PSCOC) uses to award capital funds to school districts and charter schools. He explained that the bill provides for a reduction in the offset that results from a direct legislative capital outlay appropriation if the facility will be jointly used by the school district and another governmental entity; and provides incentives for school districts to perform effective maintenance on their facilities. He said that these incentives include authorizing the PSCOC to increase the state share of an award by 5.0 percent for a district with an exemplary preventive maintenance program; and extending through FY 09 the time that the \$2.5 million appropriation for the Facilities Information Management System (FIMS) may be expended. He added that the omnibus bill also appropriates \$3.0 million from the Public School Capital Outlay Fund to the New School Development Fund, to pay for equipment and other nonoperating costs unique to the first year of operation of new schools. Mr. van Moorsel also explained that the Governor vetoed one other provision that would have allowed qualifying school districts that otherwise cannot generate the funds necessary to build a facility above adequacy standards to receive, under certain limited conditions, additional amounts from the Public School Capital Outlay Fund.

Directing the committee's attention to an attachment to the memorandum entitled *Passed Public School-related Legislation, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008 (After Executive Action)*, Dr. Rindone highlighted and summarized the following education-related bills that were enacted into law in 2008:

- *Community College & School District Elections (HB 249)*, amends statute to allow community college elections to be held in conjunction with school district elections. A related proposed constitutional amendment, *School Elections with Other Elections, CA (SJR 4, as amended)*, if passed by the voters, will amend Article 7, Section 1 of the state constitution to allow school elections to be held at the same time as other nonpartisan elections.

- *Study School Staff Shortage Issues* (HJM 3) requests that PED and the Office of Education Accountability (OEA) examine issues related to turnover and emergencies resulting from shortages of counselors, nurses, and other professional instructional support personnel in public school districts and charter schools; and further requests that PED and OEA report their findings and recommendations, if any, to the LESC before the next regular legislative session. (Endorsed by the LESC)
- *Expand Schools in Dual Credit Program* (SB 31) amends statute relating to the student eligibility criteria in the dual credit program: (1) to include students at the state-supported schools, except for the New Mexico Military Institute; and (2) to allow students to take classes for dual credit during the summer term. (Endorsed by the LESC)
- *New Mexico School for the Arts Act* (SB 34, as amended) authorizes the creation of a state-chartered, statewide residential high school for the arts to provide intensive pre-professional training for students with demonstrated artistic abilities and potential; and clarifies that state money may not be used for outreach activities or room and board. (Endorsed by the LESC)
- *Educational Due Process Reimbursements Cap* (SB 145, as amended) amends the *Public School Insurance Authority Act* to change the cap on a single due process reimbursement to member school districts and charter schools to \$100,000; and to provide a methodology for members to submit claims to the New Mexico Public School Insurance Authority (NMPSIA) and for NMPSIA to reimburse member costs on a pro rata basis if there are not enough funds for full reimbursement. (Endorsed by the LESC)
- *Technical Corrections to 2007 Laws* (SB 257) makes technical corrections to the enrolled and engrossed copies of certain laws of 2007 to conform those laws to the actions of the Legislature. Dr. Rindone explained that the law relating to charter school employment decisions, which had been endorsed by the LESC, was one of the laws affected by this legislation.
- *College & Workplace Readiness Assessments* (SB 460) amends the *Public School Code* to change the statewide college and workplace readiness assessments to include short cycle diagnostic assessments in reading, language arts, and mathematics in grades 9 and 10; and to allow the eleventh grade standards-based assessment to serve as the graduation assessment. Dr. Rindone stressed that although SB 460 was not an LESC-endorsed bill, it supports the LESC's 2007 high school redesign initiative by specifying in greater detail the new high school assessment requirements.

Noting that a number of House and Senate memorials had also been passed by the 2008 Legislature, Dr. Rindone stated that she would discuss them as part of the next item on the agenda, *Proposed Activities for the 2008 Legislative Interim*. In conclusion, Dr. Rindone noted that information regarding education-related legislation that had failed to pass could be found in *Public School-related Legislation Introduced but Not Passed by the 48<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2008*, the last document included in Item 1 of the committee notebooks.

### **Committee Discussion:**

A committee member asked what percentage of the total General Fund recurring appropriations for FY 09 and what percent of the new recurring revenue had gone to public schools. In response, Ms. Frances Maestas, LESC staff, said that a preliminary estimate based on the Legislative Finance Committee's post-session review indicated that public schools and PED had received approximately 43.4 percent of the total General Fund recurring appropriations and approximately 33.5 percent of the "new dollars." At the request of the Chair, Ms. Maestas

provided the committee members with a table indicating that since FY 05, the public schools' share of both the total recurring appropriations and the new dollars has been decreasing. The committee expressed concern regarding the apparent downward trend, and Chairman Miera requested LESC staff to write a letter on behalf of the committee regarding this issue to all New Mexico legislators. Other committee members suggested that the letter should also include information comparing teacher compensation in New Mexico with that in other states.

Several committee members expressed concern about the failure to pass legislation during the 2008 session to address the projected insolvency of the Retiree Health Care Fund, noting that this failure meant that \$4.0 million must be deducted from the SEG appropriation for FY 09. Dr. Rindone said that the bill would have increased the employer's share by 0.3 percent but that the \$4.0 million in the SEG would have covered only a 0.2 percent increase in the employer's contribution and not the 0.3 percent specified in the bill. The committee agreed that the issue needed to be resolved during the 2009 legislative session.

In response to a committee member's question regarding whether the FY 09 transportation appropriation included sufficient funds to cover the rising fuel costs for school buses, Dr. Forrer said that although the 2008 Legislature had appropriated an additional \$1.6 million in nonrecurring dollars for school year 2007-2008 for this purpose, there is no way of knowing at this time whether the regular transportation appropriation for FY 09 will be adequate. A committee member then asked if, in order to save fuel, districts could increase the distance students were required to travel on their own before becoming eligible for bus service. Chairman Miera asked Ms. Theresa Saiz, Director of Transportation, Rio Rancho Public Schools, if she would like to comment. Noting that the distances at which students are entitled to transportation are established in statute, Ms. Saiz explained that Rio Rancho makes continuing efforts to streamline routes in an effort to reduce miles traveled and thereby reduce fuel use. However, she explained, the district also has a policy of not locating bus stops near the residences of registered sex offenders. Nevertheless, she continued, the district has been able to achieve a small reduction in miles traveled without compromising student safety. She expressed concern that the district might be forced to use money set aside for maintenance to cover fuel costs if they continued to rise at the current rate.

A committee member expressed a number of concerns regarding the changes to the statewide assessment system enacted during the 2008 legislative session, including the use of short-cycle assessments in the ninth grade (rather than the Preliminary Scholastic Aptitude Test, PSAT), and the use of the eleventh grade standards-based assessment as the graduation assessment (rather than the ACT or the SAT). The committee member asked for an explanation of how the changes in the assessment system aligned with the state's goal of creating a seamless transition from high school to college. Dr. Rindone noted that the use of short-cycle assessments does not preclude the use of an assessment such as the PSAT but explained that short-cycle assessments are designed to give teachers and students immediate feedback regarding student progress toward meeting state standards. Short-cycle assessments, she noted, allow teachers to address students' gaps in mastery of subject matter before students are faced with high-stakes tests, such as the graduation exam or college placement tests. In addition, she said, the 2008 legislation requires eleventh grade students to take one or more of the following assessments: a college placement exam (such as the ACT or SAT); a workforce readiness assessment (such as WorkKeys); or an alternative demonstration of competency using standards-based indicators.

A committee member asked Dr. Catherine Cross Maple, Deputy Secretary for Learning and Accountability at PED, why the ACT is not being considered as the graduation requirement. Dr. Cross Maple explained that the federal *No Child Left Behind Act of 2001* requires states to use a standards-based assessment as the graduation requirement and that the US Department of Education does not recognize the ACT as a standards-based test. However, she said, through the state's participation in the American Diploma Project, the state's standards are being aligned with the ACT.

Chairman Miera requested that PED provide the committee with monthly written updates on fuel costs for school transportation to ensure that adequate funding is available amid rising oil prices.

## **PROPOSED ACTIVITIES FOR THE 2008 LEGISLATIVE INTERIM**

Referring to the proposed activities for the 2008 interim, Chairman Miera said he wished to reverse the order of discussion of Item 2a, the Interim Meeting Schedule, and Item 2b, the Interim Workplan, because the contents of the workplan would influence when and where meetings should be held.

### ***b. Approval of Proposed LESC 2008 Interim Workplan***

Calling the attention of the committee to the draft LESC 2008 Interim Workplan, Chairman Miera noted that the month-by-month Workplan was accompanied by an issues framework explaining each topic.

The Chair said the committee would continue with the direction it took in the last interim, evaluating programs already in place rather than looking at new programs for which funds may not be available. He said that, based on consultation with and the agreement of the Vice Chair, he proposes that during the 2008 interim, the Legislative Education Study Committee (LESC) dialogue with all 89 school districts regarding how the proposed funding formula will affect their individual districts, and hold conversations with each public college and university about its P-20 partnerships.

The Chair said that in his view, the purpose of the meetings with school districts should be to give each district an opportunity to see the results of the calculator, to see what they would receive through the new formula, and to describe their local issues and priorities. The meetings would allow the committee to see how districts would use the funds the formula would generate. The Chair stated that he did not intend to open up the proposed new funding formula itself to changes or the addition of new factors.

Regarding institutions of higher education, Chairman Miera said he hoped to hear much about the nature of their collaborations with local school districts, the agreements that are in place or needed, and how their mission statements reflect this perspective to determine if legislative action is necessary. The Chair noted that, for the committee to understand higher education funding, the April agenda included a presentation on the higher education funding formula, and in June the committee would hear a presentation on the Land Grant Permanent Fund.

For the convenience of the entities invited to meet with the committee, the Chair said the LESC agendas are being structured to set aside one full day for public school districts and one-half day for colleges and universities in each region where the LESC meetings are being held. He said the committee will meet in six areas of the state to accommodate all the invitees.

The Chair then opened the meeting to comments and suggestions on the proposed workplan from committee members. Representative Stewart noted that the proposed new funding formula did not pass in the last session, not for lack of support but for lack of the required \$360.0 million in new annual revenues to implement it. She requested that discussions with districts about the formula include which funding mechanisms or new revenue streams their communities would be ready to support, and also requested a thorough review of the proposed Educational Plan for Student Success (EPSS) early in the interim. Committee members discussed several prospective sources of new revenue, as well as proposals to set aside a certain percentage of new state revenues, as ways to better support public education in the state.

Senator Lovejoy requested that state recognition of the four tribal colleges be included in the workplan. The Chair said that the tribal colleges will be invited to present to the committee as participants in the dialogue on P-20 partnerships. In addition, the workplan includes HM 59, *Assess Tribal Public Libraries*, which requests that the Library Division of the Cultural Affairs Department and the Indian Affairs Department undertake a joint comprehensive assessment of tribal libraries throughout the state.

Senator Nava requested that when the committee considers proposed legislation, it look at funding the Students with Disabilities Scholarship that was created by a 2007 LESC-endorsed bill but not yet funded.

Senator Asbill requested permission to distribute copies of a resolution approved by the Artesia Public Schools Board of Education regarding the proposed new public school funding formula, which was provided to him by Mr. Mike Phipps, Superintendent of Artesia Public Schools, and a member of the Funding Formula Study Task Force. Senator Asbill pointed to the steps mentioned in the resolution that the school board said it was committed to take in order to ensure adoption of the recommendations of the Funding Formula Study Task Force.

Senator Asbill inquired if the committee's consideration of the Legislative Finance Committee Audit of Rio Rancho Public Schools should be moved from the August meeting in Farmington to the June meeting in Albuquerque for the convenience of the school district; however, Dr. Rindone indicated that the audit would not be completed in time for the June meeting.

Senator Asbill noted that SJM 12, *Study School Transportation Funding*, was slated for the October LESC meeting and suggested the committee discuss the issue of fuel costs sooner. The Chair indicated that, in fact, the committee may well need to schedule monthly reviews of the cost of fuel and availability of funds to pay for it.

Senator Nava requested that, in creating a task force to create an improved student advisement plan with the \$50,000 in funds appropriated to the Public Education Department (PED) in HB 2, the department include the group ENGaging LATino Communities for Education (ENLACE), since that was the group that prompted the advisement initiative.

Representative Zanetti suggested the committee meet with Dr. David J. Schmidly, President, University of New Mexico (UNM), regarding his proposal for tuition rebates for students who finish their bachelor's degrees in four years. Senator Nava noted that two years ago, Dr. William Flores, then Provost at New Mexico State University and now Deputy Secretary at the Higher Education Department (HED), suggested a similar incentive for institutions rather than students, and she said these two ideas might be combined. The Chair noted that the President of UNM is

scheduled to address the committee at the LESC June meeting in Albuquerque, and that in the meantime, the Higher Education Secretary Dasenbrock had indicated to the Chair that he would discuss the proposal with Dr. Schmidly.

Referring to the \$3.0 million appropriated in 2008 to the *New School Development Fund* for start up costs for new schools, Senator Nava inquired if criteria had been developed for distribution of the funds. Dr. Rindone said the criteria are contained in the LESC-endorsed 2007 *Public School Capital Outlay Omnibus Bill*, and that the Public School Capital Outlay Council and Public School Facilities Authority will develop procedures for distribution of the funds to eligible schools.

Representative Heaton expressed concern that a high school in his district was releasing students in good academic standing early once a week so students who are not meeting proficiency can attend remediation classes, and said that the school may not be providing the required minimum number of instructional hours for all students. The Chair indicated that Public Education Secretary García had noted this and would look into it and advise him of the outcome.

Representative Heaton inquired whether it was possible to schedule state assessments in May, rather than March, after students have completed the full year's curriculum. Secretary García responded that this would require eliminating the open-ended questions on the assessment when a new contract is negotiated with the testing company. She said that the state will be negotiating a new testing contract in a year, so there is time to explore this issue.

On a motion by Representative Gonzales, seconded by Representative Hall, the committee voted unanimously to approve the LESC 2008 Interim Workplan, with the understanding that staff be allowed the flexibility of making necessary changes in consultation with the Chair and Vice Chair.

***a. Approval of Proposed LESC 2008 Interim Meeting Schedule***

Dr. Rindone directed the committee's attention to the tentative LESC Interim Meeting Schedule for the 2008 interim and stated that she had reviewed the proposed dates with the Chair and Vice Chair, who had concurred with the proposed schedule.

At the request of Representative T. Garcia, the committee agreed to move the September meeting from Chama to Raton for the convenience of school districts in the northeastern part of the state.

In response to a request by Representative Begaye, the committee agreed that during the August meeting in Farmington, it would visit Central Consolidated Schools in nearby Kirtland and hold a portion of the meeting at the school district's Performing Arts Center.

On a motion by Representative Gonzales, seconded by Representative Stewart, the committee voted unanimously to approve the 2008 Interim Meeting Schedule as presented, with the changes noted for August and September.

**Legislative Education Study Committee  
2008 Interim Meeting Schedule**

Date	Location
May 12-13-14, 2008	Roswell
June 9-10-11, 2008	Albuquerque
August 6-7-8, 2008	Kirtland & Farmington
September 8-9-10, 2008	Chama, Raton
October 8-9-10, 2008	Deming
November 19-20-21, 2008	Santa Fe
December 17-18-19, 2008	Santa Fe
January 19, 2009	Santa Fe

**DIRECTOR'S REPORT**

***a. Approval of LESC Minutes for December 2007 and January 2008***

On a motion by Representative Gonzales, seconded by Representative Hall, the LESC minutes for December 2007 were unanimously approved.

On a motion by Representative Gonzales, seconded by Representative Hall, the LESC minutes for January 2008 were unanimously approved.

***b. Approval of LESC Financial Reports for December 2007 through February 2008***

On a motion by Representative Hall, seconded by Representative Gonzales, the LESC financial reports for December 2007 through February 2008 were unanimously approved.

***c. Approval of LESC Budget for FY 09***

Dr. Rindone explained that the committee had approved the FY 09 Legislative Education Study Committee (LESC) budget at its September 2007 meeting; however, the total budget amount was revised to reflect the appropriation provided by the 2008 Legislature for an average 2.4 percent salary increase for LESC staff in FY 09.

On a motion by Representative Gonzales, seconded by Representative Hall, the LESC budget for FY 09, which includes a 2.4 percent salary compensation for the LESC staff and director effective the first full pay period of FY 09, was unanimously approved.

***d. Approval of LESC Auditor for FY 08***

As a reminder, Dr. Rindone explained that the committee approved the LESC audit for FY 07 at the January 2008 meeting; however, because the final copy of the audit was not yet available, the committee was given a copy of the final audit at this time.

Dr. Rindone stated that Mr. Robert J. Rivera, CPA, PC, submitted a proposal to perform the LESC FY 07, FY 08, and FY 09 audits. Dr. Rindone said the committee had approved Mr. Rivera to conduct the FY 07 audit and was again recommending him to perform the LESC FY 08 audit.

On a motion by Representative Hall, seconded by Representative Gonzales, and unanimously approved by the committee, Mr. Rivera will perform the LESC FY 08 audit.

*e. Correspondence*

Dr. Rindone reviewed all of the items of correspondence included in the committee members' notebooks, adding that these items are also available in the LESC permanent files. In particular, she directed the committee's attention to a letter from the Children, Youth and Families Department (CYFD) responding to previous questions from the committee regarding teacher qualifications and budget information for CYFD-approved New Mexico PreK programs. She also noted correspondence from the Office of Education Accountability (OEA), which, in response to a December 2007 letter from the LESC, states that future external evaluations of New Mexico PreK, whether conducted by the National Institute for Early Education Research (NIEER) or any of its research partners, will include data disaggregated by agency in order to allow a comparison of Public Education Department (PED)-approved and CYFD-approved programs. Dr. Rindone indicated that the next NIEER external evaluation report is tentatively scheduled to be presented to the committee in November, adding that the first external evaluation of K-3 Plus will be presented at the same time.

In response to a committee member's question regarding what curriculum is being used in New Mexico PreK programs, Dr. Rindone explained that there is no mandated curriculum but that all PreK programs, whether approved by PED or CYFD, must adhere to the state standards.

Referring to a memorandum from the Secretary of Public Education to school districts and charter schools relating to language in the *General Appropriation Act of 2008* that requires an additional full day of instruction for students in school year 2008-2009, a committee member asked if it had been determined how school calendars were being adjusted. In response, Dr. Cross Maple stated the school districts and charter schools had been requested to provide documentation verifying the addition of a full instructional day when they submit their 2008-2009 school year budget for approval by the Secretary. She noted that, based on the current school year calendar, the addition of an instructional day in the school calendars will vary among school districts and charter schools.

In response to a question from Chairman Miera regarding the numbers of instructional hours required in a school year, Mr. Tom Sullivan, Executive Director, New Mexico Coalition of School Administrators, stated that current law requires 990 hours for grades 1-6 and 1,080 hours for grades 7-12. Dr. Rindone emphasized, however, that the language in the appropriation bill specifies that the additional instructional day is not to be substituted with an equivalent number of minutes or hours. On that point, Senator Asbill stated that the language in the *General Appropriation Act* is session law and, consequently, the committee should consider legislation in 2009 to ensure that the additional day is included in the number of instructional days required.

## EXECUTIVE SESSION

The Legislative Education Study Committee (LESC) met in executive session at 2:53 p.m.

When executive session ended, Representative Rick Miera, Chair, called the LESL meeting back into order at 4:35 p.m. There being no further discussion and with consensus of the committee, Chairman Miera recessed the meeting at 4:35 p.m.

### MINUTES LESC MEETING FRIDAY, APRIL 18, 2008

Representative Rick Miera, Chair, called the Legislative Education Study Committee (LESC) meeting to order on Friday, April 18, 2008, at 9:06 a.m., State Capitol, Room 307, Santa Fe, New Mexico.

The following LESL members were present:

Representatives Rick Miera, Chair, Robert J. Gonzales, Jimmie C. Hall, and Mimi Stewart; and Senators Cynthia Nava, Vice Chair, Vernon D. Asbill, and Gay G. Kernan.

The following LESL advisory members were present:

Representatives Ray Begaye, Nathan P. Cote, Nora Espinoza, Mary Helen Garcia, Thomas A. Garcia, John A. Heaton, Sheryl Williams Stapleton, Jim R. Trujillo, and Teresa A. Zanetti; and Senator Carlos R. Cisneros, Lynda M. Lovejoy, and John Pinto.

### ***NO CHILD LEFT BEHIND ACT OF 2001 (NCLB) REAUTHORIZATION***

Chairman Miera recognized Mr. David Shreve, Federal Affairs Counsel for State-Federal Relations, National Conference of State Legislatures (NCSL), to provide the committee with a briefing on the prospects for and issues surrounding reauthorization of the federal *No Child Left Behind Act of 2001* (NCLB). Mr. Shreve supplied a handout to accompany his presentation, entitled "2007-2008 Federal Actions in Education: Where Are We and Where Do We Go from Here?" He also gave committee members a packet of background materials for reference.<sup>1</sup>

Mr. Shreve began his presentation by reviewing the US Department of Education (USDE) February 2007 proposal to reauthorize NCLB, entitled "Building on Results." He said the proposal assumed the law to be a highly effective standards based reform whose success warrants the expansion of its reach; it would increase state reporting requirements, extend federal authority over additional grade levels and subject areas, and preempt state law in the areas of

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<sup>1</sup> (1) a 2003 memorandum to state legislators from NCSL officers posing legal concerns regarding NCLB; (2) a March 2007 comparison of the United States Department of Education's (USDE) proposed amendments to NCLB with NCSL Task Force recommendations; (3) "The Leader's Edge," an October 2007 critique by the American Association of School Administrators of inconsistent interpretation of NCLB from state to state; and (4) Utah SB 162, enacted in March 2008, to require legislative and executive approval of federal program agreements that cost certain amounts in state or federal funds.

charter schools, vouchers, and collective bargaining agreements with teachers. Although the proposal promises greater flexibility and waivers for states, Mr. Shreve asserted that the many waivers already granted expose a tightly regulated but arbitrary and inconsistent federal process that fails to address the fundamental structural deficiencies in the law.

Mr. Shreve said that NCSL representatives met with administration officials to raise concerns about the proposal, followed by a meeting of the NCSL Task Force on NCLB that detailed objections to the expanded scope of federal mandates in the proposal. The group voiced the following concerns: the proposal represents further unwarranted intrusion of the federal government into K-12 education; it includes the continued use of adequate yearly progress (AYP), an invalid metric of student achievement; it perpetuates conflicts between NCLB and the *Individuals with Disabilities Education Act* (IDEA); and it offers expensive and unworkable solutions to the problem of assessing English language learners. In summary, the task force judged that administration's proposal would result in a more, not less, complex administration of the law without resolving any of its basic problems.

Technically, Mr. Shreve said, NCLB expired September 30, 2007. However, the law contains an automatic one-year extension and in fact remains in effect permanently so long as Congress continues to appropriate funds. So far, he said, more than 100 bills have been introduced in Congress to amend NCLB. Mr. Shreve indicated that in the short term, congressional committee action may continue, and while there is the outside chance of an attempt to move the reauthorization, the presidential primaries make action unlikely. He said that the NCSL task force on NCLB has urged Congress that any draft its committees adopt should take into consideration the recommendations in the 2005 report of the Task Force.

Mr. Shreve explored the question whether the uneven granting of flexibility and waivers by USDE is a solution to problems inherent in NCLB, or a symptom. He gave examples of a wide variety of authorized waivers, which serve mainly to reduce the number of schools not making AYP, and said these adjustments so alter the impact of the AYP that they are evidence *per se* of a "failed metric." According to Mr. Shreve, despite the admirable and articulate goals of NCLB, it has become a highly technical and, to many, incomprehensible process-oriented exercise in bureaucracy that could be made worse, and certainly will not be made substantially better, by the expansion of the federal role in K-12 education.

On the subject of federal funding to support the goals of NCLB, Mr. Shreve pointed out that the result of targeting the most disadvantaged districts, and reserving 4.0 percent of funds for school improvement activities, is that many districts and states are seeing sharp declines in Title I funds.

Mr. Shreve concluded his discussion of NCLB by summarizing two recent federal appellate court decisions interpreting the law. Addressing the "unfunded mandate" section of NCLB, the US Court of Appeals for the Sixth Circuit in Detroit ruled that language in the act stating that no state could be forced to "spend any funds or incur any costs not paid for under this Act" can reasonably be interpreted to mean that the states need not comply with requirements of the act that are not paid for with federal funds. Regarding alleged conflicts between NCLB and IDEA, the US Court of Appeals for the Seventh Circuit in Chicago held that if the two laws are in conflict, the more recent law, that is, NCLB, takes precedence. Mr. Shreve indicated that these holdings have the force of law only in states within those federal circuits, but the opinions could be influential in cases arising in other parts of the country.

Mr. Shreve turned to other federal education issues, foremost among them the reauthorization of the federal *Higher Education Act*. Conflicting versions of this bill have passed both chambers of Congress and were in a conference committee at the time of the presentation. He said that the House version, which passed by a large margin, contains a “maintenance of effort” section that would require state legislatures to maintain their appropriations for higher education at or above the rolling average rate of the previous five years, or lose federal Leveraging Educational Assistance Partnership (LEAP) funds that aid low income students. According to Mr. Shreve, New Mexico received approximately \$413,000 in LEAP funds for federal FY 07. Mr. Shreve stated that the measure would preempt state budgeting authority contrary to the principles of federalism, and would likely defeat its intended goal of preserving low tuition at state-funded higher education institutions by discouraging states from increasing higher education budgets when their revenues rise if they would face sanctions in future years when cuts became necessary. Mr. Shreve commended the Legislative Education Study Committee for its letter of February 13, 2008 to members of Congress urging removal of the “maintenance of effort” clause in the final version of the bill.

Finally, Mr. Shreve touched on changes in Medicaid regulations that would hurt states by disallowing administration and transportation costs; the issue of national curriculum standards, which NCSL delegates debated in 2007 and voted not to support; and a USDE announcement that by 2013, all states must use a uniform method to calculate high school graduation rates.

#### **Committee Discussion:**

In response to a committee member’s question whether the US House version of the reauthorization of the *Higher Education Act* includes tuition credits as higher education appropriations in the “maintenance of effort” provision, Mr. Shreve replied that he believes it does not. He stated that the only compromise achieved with House negotiators so far has been exclusion of capital outlay expenditures, since those fluctuate so much from year to year.

In response to a committee member’s question whether English language learners may be tested in their native languages for NCLB, Mr. Shreve replied that they may, and it is in the state’s best interest to do so to more accurately gauge what they know. He noted, however, that some states have as many as 30 minority languages, including unwritten languages such as Hmong, making testing in those languages all but impossible.

In response to a committee member’s question if it is possible to exclude any special education students from AYP calculations, Mr. Shreve said that because of concerns about appropriate expectations for special education students, the law allows for alternative assessments for up to 1.0 percent of all students who are significantly cognitively disabled, and USDE now allows for another 2.0 percent of all students who may not be able to achieve proficiency in the same time frame as non-disabled students. He said that, while the percentages were not selected scientifically, the flexibility shows a slow acknowledgement of major problems with NCLB.

In response to a committee member’s question regarding the sizes set by states for subgroups for purposes of AYP (N sizes), Mr. Shreve replied that N sizes are set in state plans, and that while within each state the N size must remain constant for all subgroups, among states N sizes differ. In response to the member’s question regarding the N size in New Mexico, Dr. Rindone replied that it is 25 students for measuring proficiency and 40 for determining participation rates.

In response to a committee member's question about how state standards are set, Mr. Shreve said that the state sets them, develops assessments, sets proficiency targets, and then determines proficiency levels based on those decisions. He said it is impossible to compare the progress of schools between states because the rigor of state standards differs so much. Some states set high standards and now face more political fallout, while others initially set standards low, intending to raise them in the future. Mr. Shreve explained that NCLB was intentionally written to require a national system of school reform without infringing on the right that states hold sacrosanct to establish their own educational standards and curricula.

Mr. Shreve indicated that if New Mexico wishes to seek changes in its N size or any other aspect of its state plan, although he advised against it, now would be the best time because of the intensity of criticism being leveled at NCLB. He quoted Representative George Miller of California, Chairman of the US House Committee on Education and Labor and one of the fathers of NCLB, as saying in reference to the need for change that "*No Child Left Behind* may be the most negative brand in America." According to Mr. Shreve, by becoming so mired in process, the original purposes of NCLB have fallen out of sight, which is the real shame of the law. He reported that many observers in Washington, DC believe that some aspects of the current law will survive, and the rest will be replaced by a more comprehensive and functional vision of what the appropriate federal role in education can and should be.

Chairman Miera thanked Mr. Shreve for his briefing and for the work that the National Conference of State Legislatures does on behalf of the states.

### **HIGHER EDUCATION FUNDING FORMULA**

Chairman Miera recognized Dr. Reed Dasenbrock, Secretary, and Mr. Tino Pestalozzi, Director, Institutional Finance and Capital Projects, Higher Education Department (HED) for a discussion of the Higher Education Funding Formula.

Dr. Dasenbrock reported that a formula for determining the funding needs of the state's postsecondary institutions was originally developed in the mid 1970s. That formula, he emphasized, generated dollars based primarily on two components: (1) an instruction component that considered the costs associated with offering various educational programs, including faculty and staff salaries and benefits; and (2) a general component that considered the other services necessary to provide quality higher education, including student services, academic support, institutional support, plant operations, and maintenance. In 2003, Dr. Dasenbrock noted, the funding formula was revised through the efforts of a Blue Ribbon Task Force appointed by the former New Mexico Commission on Higher Education. Beginning in FY 04, he stated, the revised formula, commonly referred to as the base plus/minus formula model considers each institution's prior year appropriation as the base funding level which can either be increased or reduced based on certain characteristics at each institution. To conclude, Dr. Dasenbrock reported that current law requires HED to develop a higher education funding formula; however, the provisions for calculating formula funding are only in HED rule.

Referring to a committee handout, *The Higher Education Funding Formula: An Overview*, Mr. Pestalozzi outlined the four major components of the base plus/minus formula model as follows:

The Instruction and General Expenditures (I&G) component, Mr. Pestalozzi reported, generates funds for the state's public higher education institutions based on student credit hours at various academic levels. He explained that by assigning each course a unique identifier, courses are categorized into lower, upper, and graduate levels of instruction and also clustered into three tiers based on the cost of providing instruction in each course. The total student credit hours by level of instruction and by tier are then multiplied by an HED-assigned dollar value to determine Instruction and Instructional Support dollars for the school year.

To determine if an institution is eligible for a workload adjustment, Mr. Pestalozzi stated, the total student credit hours and the Instruction and Instructional Support dollars are compared to the institution's base year data. The base year, he explained, is considered to be the most recent academic year that an institution qualified for a workload adjustment. An institution qualifies for a workload adjustment, he continued, if the student credit hours or the Instruction and Instructional Support dollars increase by 3.0 percent or more or decrease by 5.0 percent or more. Referring the committee to an example of a workload adjustment on page 13 of the committee handout, Mr. Pestalozzi indicated that the difference between the institution's base year and the most recent academic year fall semester headcount is multiplied by a HED-determined (student services) rate to determine the amount to either be added or subtracted from an institution's base allocation.

Another factor of the I&G, Mr. Pestalozzi noted, generates funds for physical plant operations and maintenance at each institution. Based on eligible space used for I&G purposes, a flat rate per square foot of allowable space plus an average utility cost per square foot is calculated for each institution to determine a total plant workload adjustment for the school year.

With regard to the Revenue Credits component, Mr. Pestalozzi reported that certain revenue credits are considered in the calculation of the Higher Education Funding Formula, including (1) Land Grant Permanent Fund revenues received by constitutionally created colleges and universities funded by the formula (New Mexico Institute of Mining and Technology, New Mexico State University, the University of New Mexico, Eastern New Mexico University, New Mexico Highlands University, Northern New Mexico College, and Western New Mexico University) and (2) minimum mill levy revenues in current law for branch community colleges at one-mill and for independent community colleges at two-mills. He noted that additional mill levy revenues generated above the minimums in law remain at the institution for discretionary use. The formula, he added, also considers a tuition rate increase which adjusts the overall appropriation by an assumed percentage of increase in tuition that can be imposed by each institution's governing board. For FY 09, Mr. Pestalozzi noted, the percentage assumed by the Legislature in making the appropriation for higher education was 2.0 percent.

Another component of the formula, Transfers, Mr. Pestalozzi stated, considers an adjustment to the appropriation for state-funded scholarships, Building Renewal and Replacement (BR&R) and Equipment Renewal and Replacement (ER&R). He explained that the calculation for scholarships and BR&R considers a 3.0 percent increase or decrease from the previous year and for ER&R, the useful life of inventoried equipment used for I&G purposes. Each calculation, he noted, is compared to the prior year to determine an increase or decrease in the formula dollars. Appropriated dollars, he emphasized, are required to be transferred and expended in appropriate budget items, namely Student Financial Aid and Plant Funds.

Mr. Pestalozzi indicated that the final component, Inflationary Increases, adjusts the appropriation for compensation increases of faculty and staff as well as inflationary costs for group insurance, utilities, and library acquisitions.

To conclude, Mr. Pestalozzi reported that institutions may also receive additional program funding from the Program Development and Enhancement Fund that provides funding through a competitive proposal process for certain programs, such as Nursing and Teacher Education. Other incentive funds are available from the Higher Education Performance Fund to reward institutions that meet HED-determined performance and outcome standards, such as minority participation. Matching funds, Mr. Pestalozzi added, are available from the Workforce Skills Development Fund to support entry level, high-skill training programs at community colleges and for research universities from the Technology Enhancement Fund for innovative applied research. Finally, the Endowment Fund provides matching funds to all colleges and universities for endowed faculty chairs, professorships, and faculty development.

### **Committee Discussion:**

In response to a committee member's question regarding the criteria used to determine funding from the Higher Education Performance Fund, Dr. Dasenbrock reported that distributions from the fund are based on performance criteria contained in the *General Appropriation Act*, such as retention rates.

In response to a committee member's question regarding the tuition waiver for high school students taking college courses and participating in the dual credit program, Dr. Dasenbrock stated the 2008 Legislature appropriated approximately \$9.2 million to HED to provide for a tuition credit at higher education institutions that provide a tuition waiver to students enrolled in dual credit courses.

In response to a committee member's question regarding the amount of funding provided in the formula for ER&R, Mr. Pestalozzi reported that for FY 09 approximately \$15.5 million was calculated for ER&R in the funding formula; however, he noted these dollars fund ER&R at 46.5 percent.

In response to a committee member's question as to the amount of funding required to fund ER&R at 100 percent, Mr. Pestalozzi stated that approximately \$33.3 million would be required to fully fund this item.

In response to a committee member's question as to how HED determines the distribution of funds to institutions to support nursing programs. Dr. Dasenbrock indicated that dollars are allocated from the appropriations to the Program Development and Enhancement Fund based on a Request for Proposals (RFP) process. He stated that UNM generally receives a higher percentage of these funds primarily because the institution has the unique role of not only educating nurses but also those individuals who teach in nursing programs.

In response to a committee member's question relating to the possibility of tuition increases possibly outstripping lottery revenues, Dr. Dasenbrock stated that he felt the lottery would be sustainable if consensus among the state's public institutions could be reached for a low- or no-tuition policy in exchange for an agreement on the part of the Legislature not to take a tuition credit in establishing the higher education appropriation. In response to another question as to

whether the institutions would support a low- or no-tuition policy, Dr. Dasenbrock stated that he would be meeting with the institutions in mid-May to discuss and hopefully reach consensus on such a policy.

In response to a committee member's question regarding the mill levy revenues that institutions are allowed to keep for discretionary purposes, Mr. Pestalozzi stated that, using UNM-Taos as an example, as a branch college it is required to impose a minimum one-mill levy; however, the college imposes a two-mill levy that generates approximately \$1.1 million. He noted that since the funding formula takes credit for half of that amount, or \$550,000, the remaining \$550,000 is retained by UNM-Taos for discretionary use. He stated that a mill rate increase would require voter approval only when an institution decides to increase its rate and that, by law, mill rates are capped at five-mills. In response to another question relating to HED approval for a mill rate increase, Mr. Pestalozzi reported that approval is only required from the governing board of the institution and not from HED.

In response to a committee member's question as to whether the Legislative Education Study Committee (LESC) staff has been included in discussions regarding higher education funding, Dr. Dasenbrock replied that the work of the Blue Ribbon Task Force, convened by the former Commission on Higher Education, has been continued by HED through the Funding Formula Enhancement Task Force. The task force, he added, meets regularly to discuss funding issues and develops recommendations for HED to consider prior to a legislative session. Historically, he noted, the LESG has been less involved in higher education funding formula activities than the Legislative Finance Committee and the Department of Finance and Administration. However, he stated, LESG staff have recently been added to the task force participant list.

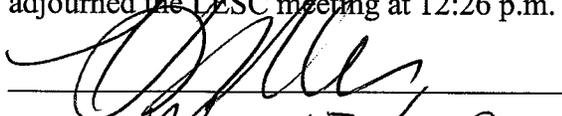
Among other points raised during the discussion, the committee expressed concern that the higher education funding formula does not consider funding for workforce training and the need for the state's two-year institutions to provide and strengthen career-technical education programs.

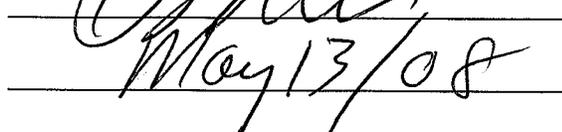
Senator Nava commented that the LESG currently has statutory authority for teacher preparation programs in higher education institutions and suggested the committee review and considers amending current law to expand that authority further into higher education.

On a motion by Senator Nava, seconded by Representative Hall, the committee voted unanimously to send a letter to the president of each two- and four-year institution and the president of each board of regents supporting the policy recommendation of the Secretary of Higher Education for a low or no tuition policy, provided the Legislature does not take a tuition credit in establishing the higher education appropriation.

#### **ADJOURNMENT**

There being no further business, and with the consensus of the committee, Chairman Miera adjourned the LESG meeting at 12:26 p.m.

  
\_\_\_\_\_  
Chairperson

  
\_\_\_\_\_  
Date