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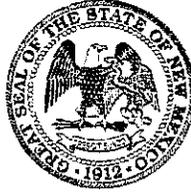
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MINUTES
LESC MEETING
AUGUST 23-25, 2010

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

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) to order at 9:52 a.m. on Monday, August 23, 2010 in the Conference Room at the New Mexico School for the Blind and Visually Impaired (NMSBVI) in Albuquerque, New Mexico.

The following LESC members were present:

Senators Cynthia Nava, Chair, and Lynda M. Lovejoy; and Representatives Rick Miera, Vice Chair, Roberto "Bobby" J. Gonzales, Jimmie C. Hall, Dennis J. Roch, Mimi Stewart, and Jack E. Thomas.

The following LESC advisory members were also present:

Senators Vernon D. Asbill, John Pinto, and Sander Rue; and Representatives Andrew J. Barreras, Ray Begaye, Eleanor Chávez, Nora Espinoza, Mary Helen Garcia, Karen E. Giannini, and Sheryl Williams Stapleton.

US DEPARTMENT OF EDUCATION (USDE) UPDATE: REAUTHORIZATION OF THE FEDERAL *ELEMENTARY AND SECONDARY EDUCATION ACT*

The Chair recognized Mr. Jo Anderson, Jr., Senior Policy Advisor to the Secretary of Education, US Department of Education (USDE), to provide the committee with a presentation concerning the USDE proposal for the reauthorization of the *Elementary and Secondary Education Act* (ESEA), also known as the *No Child Left Behind Act of 2001* (NCLB). Mr. Anderson noted that a copy of his PowerPoint presentation was included in committee members' notebooks.

Mr. Anderson explained that the overarching goal of President Obama and Secretary Duncan for the reauthorization of ESEA was to regain the nation's status as the country with the highest proportion of college graduates in the world by improving access and quality at the early learning end of the education spectrum and by improving readiness, access and affordability, and completion rates at the postsecondary end.

According to Mr. Anderson, as the USDE has distributed funds for all competitive education grants programs, the administration has required states and other education grants recipients to commit to four assurances:

- (1) to raise standards and improve assessments;
- (2) to recruit, retain, and support effective educators and to ensure equitable distribution of these effective educators;
- (3) to build robust data systems that track student progress and improve practice; and
- (4) to turn around low-performing schools, focusing on dropout factories and their feeder schools.

Mr. Anderson stated that the Secretary was pleased to note the development of the Common Core State Standards, an initiative in which New Mexico has participated; and he pointed to the two major multi-state consortia that were applying to USDE for funds to develop a new generation of assessments to measure learning based on these new standards. The importance of better teaching is critical, Mr. Anderson said, as well as improved data systems that track students along the educational continuum and the availability of significant new resources that can be directed to turning around the most struggling schools. Mr. Anderson said that the overarching principles of the ESEA reauthorization were to raise the bar for all students in order to close the achievement gap; to be tight on goals but loose on means; and to foster innovation and reward success.

Mr. Anderson pointed out major themes of the reauthorization of ESEA, and contrasted them with those of NCLB, such as:

- raising the bar by focusing on college and career readiness, versus lowering the bar through perverse incentives;
- giving greater flexibility to all but the lowest performing schools, versus being prescriptive for too many schools;
- recognizing success with rewards and taking lessons from progress and growth, versus being too punitive even where progress is being made;
- encouraging a well-rounded education and better-funded tests, versus narrowing the curriculum and testing only math and English language arts; but
- maintaining ESEA focus on achievement gaps and reaching equity among all groups.

Turning to the federal funding of public education, Mr. Anderson said that, in 2009 the passage of the *American Recovery and Reinvestment Act of 2009* (ARRA) resulted in an unprecedented investment of new federal resources to save jobs and drive education reform of \$98.2 billion. That amount supplemented regular federal appropriations to USDE, which in a normal year are about \$60.0 billion. He said that most of this influx flowed as formula funding for State Fiscal Stimulus funds (\$48.6 billion); *Individuals with Disabilities Education Act* (IDEA) funds (\$12.2 billion); ESEA Title I funds (\$10.0 billion); and funds for educational technology (\$650 million) to states and districts. There have also been competitive funds totaling approximately \$8.2 billion for Race to the Top grants, School Improvement grants, Investing in Innovation grants, and School Longitudinal Data Systems grants, as well as other competitive funding streams. Mr. Anderson also noted that Congress had just passed the “Jobs Bill” to allow districts to rehire teachers and others who would otherwise be laid off because of budget shortfalls.

Among the differences between NCLB and the proposed reauthorization of ESEA, Mr. Anderson pointed to plans to consolidate numerous funding streams into fewer, more focused programs. The reauthorization would also redefine the federal role in P-12 education to focus less on compliance and more on rewards for success and supports for innovation. The new law would focus on enhancing its impact through flexible approaches; emphasizing competitive funding; and requiring accountability for outcomes and evidence of results.

Mr. Anderson stated that the administration's FY 11 budget request includes a \$3.6 billion increase for competitive programs under ESEA, from \$4.2 in FY 10 to \$7.8 in FY 11; and a \$.5 billion decrease in formula funds, from \$20.8 in FY 10 to \$20.3 in FY 11. The administration has also requested an additional \$1.0 billion for ESEA in FY 11 contingent on reauthorization, which, if granted, would be the largest increase in the 45-year history of the law.

Focusing on the proposal to consolidate 48 separate NCLB programs into 11 under the reauthorization, Mr. Anderson explained that they were grouped in six general categories:

- College- and career-ready students: Mr. Anderson said this aspect of the proposal called for the new, voluntary national standards with better assessments tied to standards. The chronically lowest-performing 5.0 percent of schools would receive the lion's share of resources and the most structure and oversight. The other schools will have transparency but also flexibility as long as they produce results. Schools that did well by and large, but that failed year after year with a particular subgroup would receive attention and intervention with that group. Schools that did exceptionally well with challenging groups would be recognized and their practices and their successes would be replicated.
- Great teachers, great leaders: According to Mr. Anderson, the aim of these programs is to treat educators like the professionals they are. The reauthorization would not lose the concept of the "highly qualified teachers" but would shift focus from inputs (that is, résumé qualifications) to student outcomes. Formula funding for Title II programs would be slightly down to approximately \$2.5 billion. But overall the administration proposes to increase funds for Title II; educator preparation programs would be strengthened; and the focus on ensuring equitable distribution of effective educators and the quality of teacher and administrator evaluation would increase. The Teacher and Leader Innovation Fund, (formerly the Teacher Incentive Fund) would increase to \$950 million, for ambitious reforms in teacher and leader placement, compensation, recognition and advancement. The Teacher and Leader Pathways program would be funded at \$405 million to develop and scale up programs such as clinical residencies to prepare effective teachers and leaders where they are needed most.
- Meeting the needs of diverse learners: Mr. Anderson said these programs would continue to offer dedicated funding streams for English language learners (ELLs), migrant education, neglected and delinquent students, Indian students, homeless students, Impact Aid, and rural education. These programs would remain very much the same, maintaining federal support for complete education for historically underserved populations, including: \$450 million in high needs districts and schools for literacy aligned with college- and career-ready standards; \$300 million for science, technology, engineering, and math (STEM) instruction aligned with those standards;

\$265 million to improve low-income students' access to well-rounded curriculum; and \$100 million for college pathways and accelerated learning to improve access to accelerated coursework for students in high-need schools.

- Successful, safe and healthy students: These programs were aimed to ensure students are safe and healthy, Mr. Anderson said, and to give them regular access to adults who care about their success; to provide comprehensive supports from birth to career, working with community-based organizations; offer more time and support for students; and engage and empower families. USDE will award 20 planning grants this fall to community organizations working with districts for \$60.0 million in Promise Neighborhood grants. In addition, \$410 million in competitive Successful, Safe & Healthy Students grants and \$1.2 billion in competitive 21st Century Community Learning Center grants will be awarded this fall.
- Fostering innovation and excellence: Including Race to the Top (\$1.35 billion); Investing in Innovation (\$500 million); Supporting Effective Charters (\$400 million); Promoting Public School Choice (\$90.0 million); and Magnet Schools Assistance (\$110 million).

Mr. Anderson said there is active committee work being done this year in Congress, but that a bill is not likely to be voted on this calendar year. For additional detail regarding the administration's proposal for school accountability in the proposed reauthorization of ESEA, Mr. Anderson referred the committee to the appendix of his PowerPoint in their notebooks. He also told the committee that if they wanted more information, they could read the entire Blueprint for Reform, outlining the proposal for reauthorization, at <http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf>.

Committee Discussion

In response to a committee member's question when Congress might act on the reauthorization of ESEA, Mr. Anderson replied that there was bipartisan support and staff from both sides of the aisle working on drafts. He expected committee hearings in the fall, but, given the election year, he would be surprised to see action before January 2011.

In response to a committee member's question regarding the successes of Reading First and whether the reauthorization bill would likely contain any literacy programs, Mr. Anderson replied that the administration was taking a look at Reading First and state-of-the-art reading programs. He said he would take that interest back to Washington. The committee member requested that he indicate the importance of maintaining federal support for reading programs, particularly since they most heavily affect children in poverty and English language learners.

In response to a question from a committee member regarding school choice and supplemental educational services, Mr. Anderson indicated that the reauthorization proposed by the administration did not include those mandates. Committee members suggested instead that school staff be trained in how to train parents to support their student, or in how to provide a welcoming environment.

In response to a question from a committee member whether Successful, Safe and Healthy Schools funds or any of the other funds in that category could be used along the border, Dr. Kristine Meurer, Acting Assistant Secretary, Student Success Division, Public Education Department, responded that that funding source, formerly Safe and Drug Free Schools, was now competitive and that only five states would receive those funds.

SPECIAL EDUCATION ISSUES

a. Alignment of State Law with Federal Law

The Chair recognized Ms. Pamela Herman, LESC staff, who introduced Ms. Jonelle Maison, Senior Bill Drafter, Legislative Council Service (LCS); Ms. Denise Koscielniak, Director, Special Education Bureau, Public Education Department (PED); and Mr. Albert V. Gonzales, Assistant General Counsel, Office of General Counsel, PED. Ms. Herman said that the group was before the committee to present a discussion draft of the clean-up bill they had prepared at the committee's request to align the language in state special education law with the reauthorized federal *Individuals with Disabilities Education Act of 2004* (IDEA).

Ms. Herman explained that the New Mexico Legislature had passed legislation regarding the educational rights of students with disabilities in 1967, before passage of federal special education legislation. However, the language of state and federal law was not fully aligned; and following the reauthorization of IDEA in 2004, to ensure that PED and the state's school districts were in compliance with the federal law that entitled them to receive approximately \$90.0 million annually to serve students with disabilities, in 2007 PED announced its own new rules aligned with the federal regulations. However, Ms. Herman said that the pre-existing state special education law was not amended, even where the changes in federal law, which overrides state law, rendered certain language in state law obsolete. As a result, she said, PED rule is not currently fully aligned with state law even though the department's rule-making power under the state constitution, strictly speaking, is limited to what is delegated to it by the state Legislature.

Ms. Herman said that in recent years, in the case of bills endorsed by the LESC to make substantive changes in state special education law, PED agency bill analyses included many pages that addressed non-substantive issues such as obsolete language, or where non-substantive language in state law conflicted with that in federal law in the sections being amended. Consequently, Ms. Herman said that during the 2010 interim, the LESC requested its staff, the LCS, and PED staff to form a small work group to study differences between state special education law, state agency rule, and federal law and regulation to determine whether they could be aligned by a clean-up bill. She said that the group had determined that, for the most part, the differences were not matters of substantive law but rather of outdated language in state statute. In addition, she said, the group also had some suggestions for reorganizing some sections of the *Public School Code* as part of the clean-up.

Ms. Herman directed the attention of the committee to the copy of the discussion draft of the bill attached to the staff report in their notebooks and briefly covered its contents:

- Section 1 proposes to move all the definitions currently included in special education sections of state law to the definitions section of the *Public School Code*;
- Section 2 proposes to amend the section of the *Public School Finance Act* that addresses special education and gifted funding units by eliminating obsolete language and by striking a sentence regarding placement of class D students in residential treatment centers since those students are placed by Individualized Education Program teams;
- Section 3 cleans up and simplifies language in the section of law that addresses PED's duty to establish standards and to monitor school districts' and charter schools' provision of special education and related services appropriate to meet the needs of all students with disabilities;
- Section 4 deals with gifted education; by adding charter schools to the section and moving the definition of "gifted child" to the section of the *Public School Code* with all the other definitions; it also creates a new subsection with language captured from the definition, providing that nothing shall prohibit a district from offering additional gifted programs for students who do not meet criteria for gifted children;
- Section 5 proposes to amend the sections of law that addresses PED's responsibility to monitor special education programs; in addition to clean-up language, the work group deleted a subsection that contained evaluation and reporting requirements and inserted a new subsection requiring PED to monitor provision of special education in school districts and report annually to the public on the performance of each school district;
- Section 6 would make the same routine changes in state law in the section of the *Public School Code* that deal with transportation that have been proposed elsewhere, including the transportation of students with disabilities; and
- Section 7 proposes to repeal the existing section of state statute that contains the definitions that are proposed to be moved to Article I of the *Public School Code*.

Ms. Herman told the committee that, when the discussion draft of the bill was complete, the work group had sent copies to a group of seven stakeholders with an interest in special education law, whose names and organizations were attached to the staff report. She said that by the time of the presentation, the LESC had heard from two of them: Mr. James Jackson of Disability Rights New Mexico, and Dr. Anne Tafoya of Albuquerque Public Schools. Ms. Herman said that Mr. Jackson's comments were included in committee members' notebooks, but that Dr. Tafoya's had only been received that morning.

According to Ms. Herman, as the work group developed the discussion draft of the bill, it confined its work to the clean-up language and minor issues in the state's special education law that had tended in the past to divert attention from substantive concerns in bills in the legislative process. In its work, however, the work group identified one area that represented a policy question that the LESC might wish to address: the issue of children aged 3 through 9 who were evaluated as being developmentally delayed and who, because of that condition, need special education services.

Ms. Herman explained that, according to federal law and regulation, this group was the only group of students eligible for special education services who might be served at the discretion of the state and of local school districts. She and Ms. Maison noted that the Legislature had never acted to adopt the term “developmental delay,” and that it was not clear whether PED had had the authority, lacking a statutory basis, to have promulgated an agency rule providing for operation of programs by local districts for developmentally delayed students between the ages of 3 and 9. Ms. Herman noted that, according to PED, approximately 5,000 students were enrolled in programs for students with developmental delays, which suggested that, although there were certainly students with important needs involved, the matter appeared to be a substantive or policy issue for the Legislature to decide. Ms. Koscielniak and Mr. Gonzales noted that every school district in the state had created programs for students with developmental delays and contended that, in creating rules authorizing the programs, PED was acting under its general authority in statute to develop rules and standards for the provision of special education in the schools and classes of the public school system in the state.

The Chair asked for input from the stakeholders, and both Mr. Jackson and Dr. Tafoya indicated that it would be very important to do whatever was necessary to enable the programs for developmentally disabled students to continue. The Chair inquired of legislative staff whether adding developmental delay to the definition of disability would be the appropriate way to address the problem, and Ms. Maison said that it might, or in the alternative to empower PED to handle the matter in rule.

Dr. Tafoya raised a concern about the gifted advisory groups in existing law and said she would submit comments about that in writing.

Ms. Herman stated that the work group would meet again, including Dr. Tafoya and Mr. Jackson, to finish work on the discussion draft, which would be presented again to the committee before the session.

Committee Discussion

In response to a committee member’s question regarding the difference between a department-certified and a department-licensed person, Ms. Herman responded that she understood there were no longer any department-certified personnel.

In response to a committee member’s question regarding the difference between a state-chartered and locally chartered school, Ms. Herman responded that to the greatest extent possible, the drafters attempted to limit the distinction in statute unless it was significant. Dr. David Harrell, LESC staff, pointed to an attachment to one of his reports later in the meeting regarding the rights and obligations of state-chartered and locally chartered charter schools. Mr. Gonzales noted that there was a distinction between grants to locally chartered and state-chartered charter schools.

In response to a committee member’s question whether this discussion bill addressed PED’s concerns, Mr. Gonzales responded that it did, with the proviso that the matter of the developmentally delayed programs was addressed.

The Chair thanked the work group and the stakeholders providing input.

***b. Contracts Between School Districts and Residential Treatment Centers
(Public Education Department (PED) Response to LESC Request)***

The Chair recognized Ms. Pamela Herman, LESC staff, Ms. Denise Koscielniak, Director, Special Education Bureau, Public Education Department (PED), Mr. Albert V. Gonzales, Assistant General Counsel, Office of General Counsel, PED, to discuss the implementation by PED of a statute enacted in 2009 to clarify the responsibility of school districts, PED, and other parties to provide a free, appropriate public education (FAPE), in compliance with the federal *Individuals with Disabilities Education Act* (IDEA), to students placed in private residential treatment centers (RTCs).

Ms. Herman began by explaining that, following a presentation to the LESC in the 2009 interim on the status of implementation of the law, PED had created three draft documents for this presentation at the request of the committee. These were designed to assist local school boards and district staff in contracting with RTCs to provide special education and related services to students for whom they are responsible to provide a FAPE in compliance with the 2009 law and IDEA.

Ms. Koscielniak and Mr. Gonzales reviewed and explained the following documents for the committee:

- a draft memorandum to superintendents and state charter school administrators from the director of the Special Education Bureau of PED that explains when and under what circumstances a school district becomes responsible for providing any or all of the educational, non-medical care and room and board costs of placement in an RTC;
- a draft template for a contractual agreement among a school district placing a student in a private, nonsectarian, nonprofit training center or RTC, the district in which the center is located, and the training center or RTC; and
- a draft application for reimbursement from PED for a school district seeking costs of placement of an individual in an RTC outside the individual's resident school district, based on the various scenarios enumerated in the statute.

Regarding the question of responsibility of school districts to provide educational services to students in private, for-profit treatment centers, Ms. Herman reported that although a 1988 Attorney General Opinion appeared to exempt districts from responsibility for those students, a 2007 rewrite of the *Children's Code* created a new section entitled "personal rights of a child in an out-of-home treatment or habilitation program." She said that one of the rights included in that section is that "in no event shall a child be allowed to remain in an out-of-home treatment or habilitation program for more than 10 days without receiving educational services." According to the statute, if the child has an individualized education program, the sending district is responsible for providing educational services; otherwise, the district within whose borders the center is located is responsible.

In addition, Ms. Herman referred to the *Children's Code*, which, rewritten in 2007, granted children in out-of-home treatment or habilitation programs (including RTCs) a catalog of rights, including the right to a FAPE.

Ms. Herman also described a 2009 statute that required Children, Youth and Families Department (CYFD) to include, in its minimum standards for RTCs, the requirement that they make reasonable provisions for adequate physical space for a school district to provide a FAPE to its students. However, Ms. Herman noted, as of August 16, 2010, the applicable CYFD rule had not been amended as mandated. Ms. Herman told the committee that CYFD staff had stated that, because of staff shortages, the department has not had time to conduct hearings to amend its rule, nor would it be able to inspect facilities annually in the future to determine if they were in compliance with the rule if it were amended as required by statute.

Mr. Robert Martinez, CYFD staff, indicated that the department hoped to be able to begin the process of rule-making soon. He explained that his bureau had been 50 percent understaffed during the last year, and he hoped to be adding additional staff members soon so that it could begin the process of surveying facilities to determine if they were providing the space districts needed as a first step.

Committee Discussion

A committee member raised a concern about students in an RTC who are included in a district's enrollment but then leave the RTC. Because they cannot be tracked, these students are counted as dropouts, adversely affecting the district's dropout rate. The committee member suggested that this issue might require a statutory solution.

The Chair thanked the presenters.

LESC SCHOOL FINANCE WORK GROUP: STATUS REPORT

The Chair recognized Ms. Eilani Gerstner, LESG staff, for a status report on the work of the LESG School Finance Work Group. Ms. Gerstner began by explaining that, at the June 2010 interim meeting of the LESG, the committee approved the objective, activities, and membership of the LESG School Finance Work Group. Since then, she said, the work group has met twice July 12, 2010 and August 9, 2010.

Referring to the staff report, Ms. Gerstner provided an overview of the outcomes of each of those meetings. The first meeting, she said, served as an organizational meeting to discuss the approved objective and activities of the work group and to determine if additional issues needed to be investigated. During the first meeting, the work group:

- appointed two subgroups to conduct further work on (1) reviewing the Public Education Department's (PED) *Public School Accounting and Budgeting Manual of Procedures*, and (2) creating guidance for school boards in their finance and audit duties;
- requested several presentations at the next meeting; and
- heard a presentation from the New Mexico School Boards Association (NMSBA) on a survey that indicated that 25 and 30 percent of school board members are not comfortable with their finance and audit oversight duties, respectively.

At the second meeting, Ms. Gerstner said, the work group heard updates from the appointed subgroups as well as presentations requested at the first meeting.

- The subgroup reviewing PED’s *Public School Accounting and Budgeting Manual of Procedures* reported that many of the 22 sections of the manual had not been updated since the 1990s. The subgroup also reported that it had requested \$50,000 from the New Mexico Public Schools Insurance Authority (NMPSIA) to hire one or more contractors to revise the manual, and at the August 5, 2010 NMPSIA board meeting, NMPSIA’s board approved the request.
- The subgroup developing guidance for school boards presented guidance developed by the New York State School Boards Association (NYSSBA) and indicated that NYSSBA has agreed to share the documents with NMSBA to be adapted for use in New Mexico.
- The work group also received reports on the following topics:
 - licensure and training of school business officials;
 - services available through Regional Education Cooperatives (RECs), including how RECs may help small school districts with school budget issues;
 - a definition of “waste” from the Office of the State Auditor staff;
 - how school business offices can produce standardized report formats for their boards of finance; and
 - Legislative Finance Committee (LFC) program evaluations of five school districts reviewed during the 2009 interim.

Finally, Ms. Gerstner said that the next work group meeting is scheduled for October 1, 2010.

Committee Discussion

In response to a committee member’s question how comfortable superintendents are with financial and audit oversight duties, Mr. Tom Sullivan, Executive Director, New Mexico Coalition of School Administrators, said that he suspected that they are not much more comfortable than the board members who responded to the NMSBA survey. Mr. Sullivan indicated that the one required class in school finance in the educational leadership programs is likely not sufficient preparation.

In response to a question from a committee member on how many new superintendents there were for school year 2010-2011, including transfers, Mr. Sullivan indicated that 24 superintendents were new.

A committee member expressed concern whether LFC program evaluators had sufficient experience to be conducting program evaluations of school districts.

SERVICE LEARNING AND CIVIC ENGAGEMENT

The Chair recognized Ms. Pamela Herman, LESC staff, and Mr. Gregory Webb, Executive Director, New Mexico Commission for Community Volunteerism (NMCCV), to provide the committee with an update on the status of the work of the commission. Mr. Webb began by describing NMCCV’s goals that New Mexico youth become:

- well-educated and provided with opportunities to reach their full potential;
- productive, self-sufficient and employable adults; and
- valued contributors to their community through civic responsibility, connection, and civil engagement.

Mr. Webb then noted a number of initiatives, including;

- AmeriCorps*Vista Cadre Project, a partnership of the New Mexico Forum for Youth in Community, Corporation for National and Community Service, and the NMCCV, which serves as a liaison between schools and community-based organizations for service-learning opportunities;
- planning grants to the New Mexico Green Collaborative and the Center for Philanthropic Partnerships; and
- federal work-study alignment with AmeriCorps, which would make federal dollars available to AmeriCorps alumni attending New Mexico colleges and universities.

Mr. Webb then reported some statistics about volunteerism in New Mexico, noting that \$1.1 billion worth of service was performed for the state by volunteers, including some 550 AmeriCorps members.

Mr. Webb then discussed the commission's investments in certain projects. One was the New Mexico Legacy Project, which, according to Mr. Webb, involves the University of New Mexico Pre-service Teachers and Master Teachers in grades K-12 in an intensive professional development model designed to strengthen their ability to use service learning as an instructional strategy.

Another project was the New Mexico Forum for Youth in Community, which hosts a statewide network of community service-learning centers, designed to serve as hubs for information, professional development, and resource centers for educators.

Mr. Webb concluded by providing examples of high-quality service learning programming, which include the Jane Goodall Institute for Wildlife Research Education and Conservation, the Albuquerque Institute of Math and Science, and Deming Cesar Chavez Charter High School.

There being no other business, the Chair, with the consensus of the committee, recessed the LESC meeting at 4:12 p.m.

**MINUTES
LESC MEETING
AUGUST 24, 2010**

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) to order at 8:50 a.m. on Tuesday, August 24, 2010 in the Conference Room at the New Mexico School for the Blind and Visually Impaired (NMSBVI) in Albuquerque, New Mexico.

The following LESC members were present:

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

The following LESC advisory members were also present:

Senators Vernon D. Asbill, John Pinto, and Sander Rue; and Representatives Andrew J. Barreras, Ray Begaye, Eleanor Chávez, Nora Espinoza, Mary Helen García, Karen E. Giannini, and Sheryl Williams Stapleton.

PED PLAN TO COLLECT AND REPORT COURSE INFORMATION (RESPONSE TO LESC REQUEST)

The Chair recognized Ms. Eilani Gerstner, LESC staff, for a report on the LESC’s request to the Public Education Department (PED) that the department develop a plan to collect and report course information in order to verify district compliance with statute.

Ms. Gerstner referred to the report provided by PED, which outlined a history of the request. She indicated that the request originated with an LESC staff report to the committee in August 2009 that indicated that as many as 44 percent of graduating seniors in 2009 may not have met the requirement to take a New Mexico history course for graduation.

Ms. Gerstner said that, in August 2009, PED reported that the department could not verify how many students were meeting statutory graduation requirements because the department did not collect course grades in the Student Teacher Accountability Reporting System (STARS), only course enrollments. A similar issue caused by collecting only course enrollment was that PED also could not verify whether schools were meeting statutory requirements to offer certain courses.

Referring to PED’s report, Ms. Gerstner said that, by August 20, 2010, PED will issue an “assurances document” to school district superintendents and charter school administrators asking them to certify that: (1) all graduation requirements will be met for the graduating class of 2011; (2) the appropriate course codes and credits will be uploaded into STARS per guidance from the STARS user and reference manuals; and (3) the state identification number for each student will be included on each student’s high school transcript. She said that PED estimates that 12 to 18 months are needed to develop, test, and provide proper grade reporting.

Finally, Ms. Gerstner said that PED’s report included some statistics indicating a lack of compliance with graduation requirements:

- nearly 60 percent of students who graduated in 2010 had taken three years of science as currently required, and 90 percent of those students had taken at least one of the sciences as a lab, as required in state law; and
- nearly 46 percent of students who graduated in 2010 had taken New Mexico history as currently required in law.

These figures notwithstanding, however, Ms. Gerstner said that PED is confident that the districts are meeting course requirements and that the true percentages are much higher.

Committee Discussion

In response to a committee member's question why PED needs assurances from school districts even though the graduation requirements are in law, Ms. Ruth Williams, Manager, Legislative and Community Relations Bureau, PED, indicated that since STARS is not codified in statute and PED is asking the districts to submit the information through STARS, the department needs to strengthen regulations and provide better guidance to districts for submission of data.

In response to committee members' concerns that the percentage of graduating students who took New Mexico history is still low, Senator Nava added that Gadsden Independent Schools has received a waiver to offer the course for high school credit in eighth grade, and other districts may have as well. Ms. Williams indicated that PED would expand the search to grade 8 to see how much the percentage of students taking the course increases.

ACADEMIC RIGOR IN HIGH SCHOOL REFORM PROGRAMS: *HIGH SCHOOLS THAT WORK*

The Chair recognized Ms. Ally Hudson, LESC staff, to introduce a presentation on Academic Rigor in High School Reform Programs with a specific focus on the *High Schools that Work (HSTW)* model.

Ms. Hudson introduced Mr. Gene Bottoms, Senior Vice President of the Southern Regional Education Board (SREB).

Ms. Hudson explained that *High Schools That Work* is the largest and oldest of the SREB school improvement initiatives. While referring to an attachment in the committee notebooks, Ms. Hudson noted that as of 2008, there were over 1,400 *HSTW* sites in 30 states and the District of Columbia. According to an SREB representative, 22 New Mexico high schools are currently identified as *HSTW* sites. Ms. Hudson referred to Table 1 in the staff brief, which outlined each of the New Mexico high schools.

In a brief introduction, Ms. Hudson presented the dual goal of the *HSTW* initiative as the enrichment of students' school experiences both in the quantitative areas of academic achievement and the qualitative elements of value and guidance. She further explained that *HSTW* offers support activities to its sites including development workshops, technical assistance visits, professional development, and coaching visits.

Mr. Bottoms provided the committee with an overview of the *HSTW* model as well as its implementation and effectiveness in New Mexico schools. He also outlined the research-based key practices that form the foundation of *HSTW* efforts.

In his PowerPoint presentation, Mr. Bottoms reviewed New Mexico's National Assessment of Educational Progress (NAEP) grade 4 and grade 8 math and reading scores. He highlighted the improvements in basic proficiency in both grade 4 and grade 8 math from 63 percent to 72

percent and 52 percent to 59 percent respectively, but he emphasized that New Mexico remains below the national average achievement scores. Furthermore, he noted that similar gains on NAEP were not made in reading.

Subsequently, Mr. Bottoms shifted his focus to the state's recent efforts to improve rigor in its high schools. He acknowledged that the increase in required math and science lab units (effective for the graduating class of 2013) was a step in the right direction. Regardless, Mr. Bottoms emphasized that the high school reform efforts fail to provide an option for a career concentration in high school, a pathway that *HSTW* finds particularly relevant for modern work force needs.

To achieve results, Mr. Bottoms explained that the *HSTW* model relies upon key practices that foster the development of a comprehensive school improvement design:

- using data for continuous improvement;
- providing challenging programs of study;
- integrating work-based learning into the classroom and curriculum;
- holding high expectations for all students;
- fostering active student engagement;
- encouraging teachers to work together;
- providing guidance and advisement to all students; and
- offering extra help and transitions to struggling students.

To exemplify the effectiveness of these practices in high schools, Mr. Bottoms juxtaposed the state's aggregate NAEP scores to those of the state's higher achieving *HSTW* sites. Mr. Bottoms was not only able to show academic gains in the areas of reading, mathematics, and science for the state's *HSTW* sites, but also their achievements in college readiness, engaging academic experiences, and connections between school studies and a student's future.

Mr. Bottoms concluded his presentation by issuing 10 challenges to New Mexico's public high schools:

- increase annually the percentages of students meeting college- and career-readiness standards as measured by ACT – English, math, reading, and science (flat since 1999);
- increase annually the percentages of students leaving middle grades ready for challenging high school studies in reading and math;
- establish a graduation goal of 90 percent by 2020, with greater annual gains expected of schools with low rates;
- support school districts and high schools to join a college-ready academic core with a planned sequence of career-technical courses with embedded academic standards by embracing a broader concept of rigor;
- reduce the failure rate in grade 9;
- redesign the senior year to improve transitions to college, advanced training, and careers;
- make adolescent reading a priority for all subject areas in middle grades and high school;
- make the improvement of math instruction a priority for middle grades and high school;

- target both large and small high schools with lowest achievement levels and graduation rates for major improvements; and
- continue efforts to select, prepare, and support a new generation of school principals to be instructional leaders and develop current principals' instructional leadership skills.

Committee Discussion

Acknowledging that society's educational needs have increased in recent years, particularly in the areas of math and science, a committee member asked about the monetary investment of the *HSTW* program. Mr. Bottoms cited an investment of \$15.0 to \$16.0 million per year, and explained that those funds are used to support all of the states participating in the *HSTW* initiative. He further clarified that the funds come from both the *HSTW* operational dollars and nonprofit foundations.

In response to a committee member's question regarding efforts to inspire students in middle school, Mr. Bottoms cited the development of career-technical courses linked to math and science that connect students to real-world problems and motivate them to explore new ideas. He emphasized that all secondary coursework must be relevant to a student's interests and future in order to foster engagement and success.

While addressing a committee member's concern about the transition from grade 8 to grade 9, Mr. Bottoms emphasized the importance of keeping a school focused on its mission. He suggested that teachers in the middle grades should focus on preparing students for success in high school, whereas teacher in the high school grades should focus on preparing students for success in college, career, and work.

Suggesting that the critical link between middle school and high school success is reading ability, a committee member asked how the *HSTW* program encourages improvements in this area. Mr. Bottoms noted that many schools fail to shift from "learning to read" to "reading to learn." In support of this theory, he indicated that all courses taught in the high school setting should include reading and writing as fundamental components of the syllabus. Mr. Bottoms cited initiatives from the state of Florida as exemplary reading programs.

In response to a committee member's question about improving math achievement, Mr. Bottoms cited various initiatives in Texas wherein arithmetic foundations are the focus of all mathematics instruction. Mr. Bottoms suggested that, without basic arithmetic skills, students will be unable to progress to higher level mathematics such as algebra, calculus, and trigonometry. He also referenced the Texas Legislature, which has earmarked a large amount of funds specific to math instruction and ongoing academic support for use in the public middle and high schools.

Regarding achievement on various academic assessments, a committee member inquired about ways in which schools support higher passage rates for their students. Mr. Bottoms cited the state of Georgia, wherein high schools brought in their best teachers to develop redesigned courses that taught the material to struggling students in a new and engaging way. Because the school mission stated that failure was not an option, students were allowed to retake the test as many times as necessary in order to achieve a passing score.

The Chair inquired about the concept of rigor and how some states such as Washington and Minnesota have been able to increase their ACT scores. In reply, Mr. Bottoms cited a need for investments in curriculum planning and the development of school missions. He also suggested that academic improvements will occur when schools connect math and science curricula to one another while simultaneously increasing the courses' reading and writing requirements.

In response to the Chair's inquiry about the traditional role of the guidance counselor in a high school, Mr. Bottoms remarked that this responsibility should not rest solely with the identified counselor; rather it should be the responsibility of all school professionals, specifically teachers. He suggested that a teacher be assigned a group of students in their freshman year and stay with them throughout their high school tenure. Furthermore, Mr. Bottoms recommended that advisement be built into the school schedule. In this way, he suggested, limited resources can be used efficiently, and relationships based on trust and understanding can be established between students and their adult mentors.

The final point of discussion was the importance of parental involvement in the school community. Mr. Bottoms acknowledged that there may be initial opposition to family participation, but he suggested that in time a new school culture would emerge. He further suggested that every student needs to be involved in extracurricular activities, particularly because it is easy to become lost in large schools. In conclusion, Mr. Bottoms echoed the central *HSTW* theme that students who have positive and engaging school experiences will perform much higher than those who do not.

DIRECTOR'S REPORT

a. Approval of LESC Financial Report for May 2010

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

b. LESC FY 11 General Fund Appropriation Reduction

Ms. Ramírez-Maestas announced that the LESC office had incurred an FY 11 budget reduction of approximately \$40,000, leaving the office with a budget of approximately \$1.2 million.

c. Approval of LESC Independent Auditor for FY 10

On a motion by Representative Gonzales, seconded by Representative Hall, the committee approved Mr. Robert J. Rivera, CPA, PC, as auditor for FY 10.

d. Approval of Draft LESC Minutes for June 2010

On a motion by Representative Stewart, seconded by Representative Hall, the committee approved the draft minutes for the June 2010 meeting.

e. Correspondence and News Articles

Ms. Ramírez-Maestas reviewed the following items of correspondence and news articles, noting that they are retained in the LESC permanent files:

- a memorandum from Mr. Bill Dunbar, Secretary of the Children, Youth and Families Department (CYFD), and Dr. Susanna M. Murphy, Secretary of Public Education Designate, to school district superintendents and charter school administrators about the transition of school age children from CYFD facilities into public schools;
- a news release from the Office of the Governor announcing the commitment of \$2.5 million in federal recovery funds to New Mexico teachers and other public school employees to help pay for health insurance premiums and professional development;
- another news release from the Office of the Governor announcing that the Governor will direct the Department of Finance and Administration not to apply budget cuts to public schools until federal funding approved by Congress begins to flow to school districts;
- an announcement from the US Department of Education of the award of \$115.3 million to 124 school districts across the country – including Rio Rancho Public Schools, in New Mexico – to improve the quality of teaching American history;
- a story from the July 25, 2010 *Albuquerque Journal* about Senator Sander Rue having been chosen to receive an award from the American Legislative Exchange Council for his involvement in legislation to create a free, online database to give the public “access to the state’s check register” by department and by agency;
- a news release from the Office of the Governor that New Mexico will begin providing affordable health insurance coverage for high-risk uninsured New Mexicans through the recent federal health care reform act; and
- another news release from the office of the Governor announcing the release of \$1.0 million of federal stimulus money to support early childhood programs across New Mexico.

f. Written Report: Preliminary Adequate Yearly Progress Results from 2010 Assessments

Mr. Adan Delval, LESC Intern, presented the preliminary Adequate Yearly Progress (AYP) reports for 2010 to the committee. Mr. Delval informed the committee that there are fewer schools meeting AYP in 2010 than there were in 2006. Even with the decrease in schools not meeting AYP, students have gradually increased overall proficiency in math, reading, and science since 2004. Although there has been an increase in these subjects, eighth graders have decreased their overall performance by 3.0 percent from 2009. The greatest decrease was seen in math, with a decrease of 5.0 percent in the English language learners (ELLs) category. In accordance with the *No Child Left Behind* law enactment in 2001, schools should be 100 percent proficient by school year 2013-2014. The math proficiency levels have increased to

52 percent in 2010 from 39 percent in 2008. The reading proficiency levels also increased to 64 percent in 2010 from 56 percent in 2008. Mr. Delval also informed the committee that 15 schools had come off “in need of improvement” designation, for meeting AYP for two consecutive years. Finally, he directed the committee to the AYP booklet to see the 37 different ways a school can miss AYP.

STATE REVENUE UPDATE

The Chair recognized Dr. Tom Clifford, Chief Economist, Legislative Finance Committee, to provide the committee with a revenue update. He summarized the state revenue picture as follows:

- compared to the December 2009 revenue projections, FY 10 recurring revenue is down \$32.5 million;
- FY 11 revenue is down \$158.8 million;
- after solvency initiatives, including \$20.0 million of the Governor’s *American Recovery and Reinvestment Act of 2009* (ARRA) funds, FY 10 appropriations exceeded FY 10 revenues by \$194 million;
- FY 11 revenue is \$203.5 million below authorized appropriations; and after transfers authorized by the Legislature, FY 11 revenue still falls short of appropriations by \$151 million; and
- this \$151 million shortfall must be “sanded” pursuant to Section 14 of House Bill 2.

Regarding the recurring revenue forecast, Dr. Clifford reported:

- FY 11 revenue is expected to increase by \$350 million, or 7.3 percent, over FY 10;
- \$185 million of this increase is from new revenue-raising legislation;
- underlying revenue growth is \$165 million, or 3.4 percent;
- the forecast calls for 4.0 to 5.0 percent growth in the future; and
- FY 08 revenues will not be regained until FY 15.

Dr. Clifford stated that the following factors contributed to the changes from the previous consensus revenue forecast:

- Gross Receipts Tax (GRT) fell sharply in FY 10, and it is forecast to recover gradually;
- personal and corporate income taxes were weak in FY 10, but a strong recovery is expected;
- oil and gas prices rose in FY 10 but remain mostly unchanged thereafter; and
- the exclusion of estate tax revenue has also contributed to lower revenues.

Regarding employment, Dr. Clifford stated that US employment growth has returned, adding that New Mexico’s employment growth is lagging behind the nation. He added, however, that recent employment growth had leveled off.

Regarding oil and gas, Dr. Clifford reported that natural gas prices fell sharply after strong winter prices; and he added that a decline in natural gas production had accelerated in the last

two years. He noted that General Fund revenue falls \$5.0 million for each percent decline in production.

Corporate income tax, Dr. Clifford stated, was forecast to increase sharply in FY 11.

Dr. Clifford next discussed the revenue challenges that the Legislature will face when building a budget for FY 12. He began by stating that recurring revenue fell by 20 percent from FY 08 to FY 10. Dr. Clifford stated that, assuming a flat budget from FY 11, the need to replace nearly \$400 million in one-time funds and savings would fall short of projected revenues by approximately \$175 million. He added that this estimate assumes that legislation is passed to extend savings from retirement contribution swaps and the use of tobacco settlement funds for Medicaid.

Committee Discussion

In response to a committee member's question whether ARRA funds to public education were included in the one-time federal funds that led to the projected shortfall below FY 12 revenue, Dr. Clifford responded that the one-time funds included \$23.9 million in ARRA funds used in FY 11, but not the \$45.4 million in ARRA funds used for FY 10.

In response to a follow-up question whether the projected shortfall reflected the \$65.0 million in Edu-Jobs funds that had recently been awarded to New Mexico, Dr. Clifford stated that those funds were not included in the shortfall, and replacing these funds would bring the shortfall from \$175 million to approximately \$240 million.

In response to a committee member's question regarding the recovery of corporate income taxes (CIT), Dr. Clifford stated that CIT levels were almost back to pre-recession levels; and he added that personal income taxes, while growing, are not experiencing as robust of a recovery as the CIT.

FY 11 PUBLIC SCHOOL BUDGETS

The Chair recognized Mr. Michael Griffith, Senior School Finance Analyst, Education Commission of the States; Ms. Pamela Bowker, Deputy Director, School Budget and Finance Analysis Bureau, Public Education Department (PED); and Mr. Tom Sullivan, Executive Director, New Mexico Coalition of School Administrators, to provide the committee with a presentation regarding the FY 11 General Fund appropriation reduction pursuant to Section 14 of House Bill 2, as well as the federal Education Jobs Fund (Edu-Jobs). Because the two agenda items were related, the Chair elected to have these two presentations held together.

Mr. Griffith began by reporting that the Edu-Jobs represented \$10.0 billion in funding nationwide, of which approximately \$65.0 million was allocated to New Mexico. He emphasized that these funds must be used for P-12 purposes and not for higher education. To qualify for these funds, he said, states must have their *American Recovery and Reinvestment Act of 2009* (ARRA) phase II application approved, and the Governor must submit an application to the US Department of Education that states how the funds will be distributed, including assurances that the state meets the Maintenance of Effort (MOE) requirements.

Mr. Griffith explained that states may retain up to 2.0 percent of the funds for administrative purposes. He also noted that the funds:

- must be distributed to local education agencies (LEAs) using either the state’s funding formula or based on the previous year’s Title I distributions;
- must be allocated to LEAs in FY 2010 to FY 2011; and
- cannot be used for general administrative or support service expenditures, or to replenish rainy-day funds or to reduce or retire debt.

Mr. Griffith stated that there are three scenarios under which New Mexico could meet the MOE requirements. Ms. Frances Ramírez-Maestas, LESC Director, added that New Mexico meets the third requirement — under which states whose tax revenue was lower in 2009 than it was in 2006 must either maintain K-12 and higher education spending at 2006 levels or maintain such spending at the same percentage of overall FY 06 budget.

Mr. Griffith stated that, similar to ARRA State Fiscal Stabilization funds, LEAs must request Edu-Jobs funds on a reimbursement basis, and they have until September 2010 to expend them. He noted that LEAs may use the funds for:

- “compensation and benefits and other expenses, such as support services, necessary to retain existing employees”; and
- “hiring new employees ... “to provide early childhood, elementary, or secondary educational and related services”.

Mr. Griffith stated that full reporting requirements have not been released, but they should mirror ARRA requirements. He also noted that LEAs should be tracking how dollars are expended and how many jobs are saved or created. At the state level, Mr. Griffith said PED will need to report which MOE was used and how funds were distributed to districts.

Next, Ms. Bowker referred the committee to two memos: the first provides school districts and charter schools with guidance for reducing their budgets by 3.2 percent; and the second notifies the districts and charter schools that the cut will not take place until they receive their allocation of federal Edu-Jobs funds.

Ms. Bowker stated that the allocations of the federal funds were made based on the unit value, adding that, similar to ARRA funds, PED created a separate account in the Operating Budget Management System (OBMS) to account for these funds.

Committee Discussion

In response to Ms. Ramírez-Maestas’ question about whether the Edu-Jobs funds need to be appropriated by the state Legislature, Mr. Griffith stated that he believed the funds must indeed be appropriated in a legislative session.

In response to a committee member’s question of how much funding the state would receive from the Edu-Jobs fund, Ms. Bowker said that New Mexico was awarded over \$64.0 million, stating that the proposed allocation did not distribute all of these funds, but instead held back

some funding for administrative costs at PED, as well as some funding to adjust the allocation for current-year data.

In response to a committee member's question how much money would be cut from the funding formula pursuant to the 3.2 percent reduction, Ms. Bowker stated that the reduction would total \$71.0 million.

A committee member requested a table showing each district's 3.25 percent State Equalization Guarantee reduction, its Edu-Jobs allocation, and the difference between the two.

GOVERNMENT RESTRUCTURING TASK FORCE: UPDATE

The Chair recognized Ms. Eilani Gerstner, LESC staff, for an update on the activities of the Government Restructuring Task Force (GRTF). Ms. Gerstner began by referring to the staff report and Attachment 1 of the report, which provided a summary of the legislation that created the GRTF.

Ms. Gerstner said that the GRTF has met three times to continue its charge to examine all of state government and to make recommendations leading to increased efficiencies and reduced costs, including those related to public schools. She noted that, at the August GRTF meeting in particular, the task force had requested that interim committees and agencies, including the LESC, review proposals related to their areas of expertise and provide feedback to the task force.

Continuing, Ms. Gerstner explained that at the July meeting the task force had identified 32 proposals for restructuring public education. A staff subgroup was formed to analyze these proposals, and at the August GRTF meeting the task force selected six proposals to pursue:

- merge the Public Education Department (PED) and the Higher Education Department (HED);
- defer Educational Retirement Board contributions by the state for another year;
- reduce the number of school districts;
- provide incentives for districts to save money, perhaps by raising the cap on cash balances;
- place the financial oversight of school districts and charter schools with the Department of Finance and Administration (DFA) rather than PED; and
- implement the proposal in the state's Race to the Top application to establish a link between student growth and teacher performance and a corresponding link between teacher performance and teacher preparation programs, with the Professional Practices and Standards Council recommending that the Secretary of Public Education close persistently ineffective teacher preparation programs.

Ms. Gerstner reviewed the task force's discussions of three of the items presented at the August meeting:

- *Merge PED and HED*: She said that staff recommended to GRTF that, rather than merging the two departments, each agency's internal structures be reviewed to identify how each department could be reorganized to increase efficiencies and cost savings. The task force expressed interest in pursuing this proposal. Several task force members also expressed interest in hearing a more detailed analysis of merging the two departments; however, she said, the task force voted five to four not to conduct this additional analysis.
- *Student achievement, teacher quality, and the influence of teacher preparation programs*: Ms. Gerstner said that the task force expressed interest in pursuing this proposal and requested the following additional information:
 - details on the teacher evaluation process, including forms used to conduct teacher evaluations; and
 - examples of how other states have linked teachers' pay and evaluations to student academic performance.
- *Reduce the number of school districts*: Ms. Gerstner directed the committee to a map of school districts and their enrollments. She said that staff testified to GRTF that the Legislature currently does not have authority to consolidate school districts. Instead, school districts may choose to consolidate or the Secretary of Public Education can order districts to consolidate. However, she said, staff indicated that certain measures could be enacted that would "encourage" consolidation, such as changing the small district size adjustment in the public school funding formula, or setting statutory minimum memberships for a school district and providing an implementation period for existing districts to comply. The task force agreed to pursue this option.

Finally, Ms. Gerstner reviewed the status of several GRTF proposals to restructure state government, including two proposals that would also affect public schools:

- *Consolidating employee benefit programs*: She said that the task force discussed consolidation of the employee benefit programs currently administered by the following agencies, also known collectively as the Interagency Benefits Advisory Committee (IBAC):
 - General Services Department, Risk Management Division;
 - the New Mexico Public Schools Insurance Authority;
 - Albuquerque Public Schools; and
 - the Retiree Health Care Authority.

Staff recommended consolidating all benefit plans administered under IBAC into one risk pool and creating one uniform plan design, rate structure, administration, and customer service organization for all public employees. She said the task force agreed to pursue this option.

- *Office of state attorneys*: Also at the August GRTF meeting, Ms. Gerstner said, the task force heard a preliminary analysis on the creation of a statewide pool of attorneys that would serve school districts, agencies, and departments and eliminate the need to contract for legal services. Another option that was presented by staff was that each

agency maintain its own lawyers, also eliminating the need to contract with legal firms. The task force agreed to further investigate consolidating staff attorneys for all agencies under the direction of the Attorney General's Office.

Committee Discussion

Several committee members expressed concerns about the proposals to reduce the number of school districts and to consolidate the IBAC agencies.

There being no further committee business, the Chair, with the consensus of the committee, recessed the LESC meeting at 4:00 p.m.

MINUTES LESC MEETING AUGUST 25, 2010

Senator Cynthia Nava, Chair, called the Legislative Education Study Committee (LESC) to order at 8:36 a.m. on Wednesday, August 25, 2010 in the Conference Room at the New Mexico School for the Blind and Visually Impaired (NMSBVI) in Albuquerque, 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, Roberto "Bobby" J. Gonzales, Mimi Stewart, and Jack E. Thomas.

The following LESC advisory members were also present:

Senators Vernon D. Asbill, John Pinto, and Sander Rue; and Representatives Andrew J. Barreras, Ray Begaye, Eleanor Chávez, Nathan P. Cote, Mary Helen Garcia, Karen E. Giannini, and Sheryl Williams Stapleton.

NEW MEXICO MUSEUM OF ART EDUCATION WEBSITE

The Chair recognized Ms. Mary Jebson, Deputy Director, New Mexico Museum of Art, and Ms. Lorraine Schechter, Project Director, *New Mexico Art Tells New Mexico History*, to describe the development and implementation of the interactive fine arts outreach project.

Ms. Jebson explained that in 2007 the Legislature appropriated \$75,000 in capital outlay funds to the New Mexico Department of Cultural Affairs for the New Mexico Museum of Art to develop and implement the project, whose purpose was to pilot the use of a web-based format to teach New Mexico history using the holdings of the museum's art collection. She said the capital outlay funds successfully leveraged an additional donation of \$25,000 from a private anonymous source for the project.

Since then, according to Ms. Jebson, the museum hired an historian who combed the museum's collection to identify six themes that could be used to portray the state's history based on state academic content standards and benchmarks: pre-modern history of New Mexico (Ancestral Peoples); 20th Century history of New Mexico (Growing New Mexico); economic growth and development of the West (Opening the West); social and political trends in New Mexico (People, Places and Politics); New Mexico's landscape and environment; and art and architecture of New Mexico. The museum also hired a researcher to develop historical context, and a manager and artist to edit that content, design the website, select images from the museum's collection for the website, and develop questions and educational activities related to the images and themes.

Ms. Jebson said that, as of late summer 2010, the project manager and the museum's information technology staff are building the website and that content, design, images and education activities are coming together to bring the first four themes to life. She said the museum foundation is seeking funds to begin work on the final two themes.

Ms. Schechter provided the committee with a live interactive demonstration of the first two themes on the website: Ancestral Peoples, and Opening the West. She showed how each theme included a page showing several objects from the museum's collection, links to a page for each object with descriptive text about the object and the artist, and classroom discussion activities appropriate to both elementary and secondary grade levels. She further showed how each topic contains links to contextual essays on several sub-topics and links to other websites on the sub-topic. Ms. Schechter showed the committee that the Opening the West theme page also included links to interviews and podcasts.

Ms. Schechter told the committee that she planned to travel to Hobbs in September to meet with a focus group of fourth grade teachers to demonstrate the website for their feedback and fine-tuning.

Committee Discussion

Several members of the committee commended the presenters on the quality of the project, especially in terms of fulfilling the goal of making sure that students in rural New Mexico have an opportunity to enjoy the cultural resources of the museum.

The Vice Chair observed that, when the Legislature passed a bill requiring a half-unit of New Mexico history for high school graduation, there was push-back because there was no textbook; however, in this small market, the large textbook companies were not likely to respond to our need. He said he was heartened to see in-state efforts like this project and IDEAL-NM (Innovative Digital Education and Learning-NM), and he hoped that they would collaborate rather than work in isolation. He requested a written report from the Secretary Designate of Public Education and the Secretary of Cultural Affairs on the possibility of working together on this project.

Representative Stewart requested that Public Education Department send a one-page memorandum to history teachers informing them of the address of the website. The Secretary Designate responded that she would do so.

CHARTER SCHOOL LEGISLATION IN NEW MEXICO

Vice Chair Rick Miera recognized Dr. David Harrell, LESC staff, to begin a series of presentations on charter schools in New Mexico.

Dr. Harrell said that, according to the Public Education Department (PED), 81 charter schools will be operating in school year 2010-2011, in 21 districts throughout New Mexico. Of those 81 schools, Dr. Harrell continued, 33 have either been chartered initially or had their charters renewed by the Public Education Commission (PEC); the rest have been chartered or renewed by their respective local school boards. Forty-eight of the 81 charter schools are located within the Albuquerque Public Schools district.

Given the number of charter schools throughout the state, Dr. Harrell said, a review of some aspects of charter schools seemed to be in order during the 2010 interim. He then noted the topics to be presented:

- Legislative Finance Committee's Program Evaluation of New Mexico Charter Schools;
- Charter School Legislation in New Mexico: Overview;
- Charter School Legislation in New Mexico: Capital Outlay Provisions and Issues;
- A Sampling of the National Charter School Landscape;
- Implementation of HB 74a, *Charter School Oversight for 1 Year*;
- Variety in Charter Schools;
- Recommendations of the New Mexico Coalition for Charter Schools;
- Final Notes from the Field: LESC Charter School Questionnaire; and
- Final Notes from the Field: PED Survey of Charter Schools.

Finally, Dr. Harrell noted a change in the agenda at the request of the Chair: the report on the program evaluation of charter schools by the Legislative Finance Committee, originally scheduled for the afternoon, had been moved to the morning.

LEGISLATIVE FINANCE COMMITTEE'S PROGRAM EVALUATION OF NEW MEXICO CHARTER SCHOOLS

Dr. Harrell introduced Mr. David Craig, Lead Program Evaluator, Legislative Finance Committee (LFC); and Mr. Charles Sallee, Deputy Director for Program Evaluation, LFC, to provide an overview of the findings and recommendations of the LFC's recent program evaluation of charter schools in New Mexico. Dr. Harrell also introduced Dr. Susanna Murphy,

Secretary of Public Education Designate, and Dr. Lisa Grover, Chief Executive Officer, New Mexico Coalition for Charter Schools, to provide responses to the LFC program evaluation.

Mr. Craig explained that the objectives of the LFC program evaluation of charter schools were to analyze oversight (the application and renewal processes, monitoring of schools, and their governance), resource allocation (state funding, expenditures, and spending practices), and student outcomes (the performance of charter school students, especially as compared to students in traditional public schools). The LFC evaluators examined data from all 72 schools operating in New Mexico during school year 2009-2010; solicited input from school districts, the Public Education Department (PED), and the Public Education Commission (PEC); and conducted 16 site visits at selected charter schools.

Among the issues identified in the evaluation, the LFC found that:

- charter schools present “high costs” to the state because of adjustments in the public school funding formula that have been applied to them;
- according to standard measures of student achievement, the performance of charter schools is similar to that of traditional public schools; and
- the current application and renewal process is not rigorous enough to ensure that poorly performing schools are closed and that only high-quality schools are opened.

On the first point – the cost of charter schools – Mr. Craig reported that, in FY 10, charter schools generated \$24.1 million in small school size adjustments and \$7.5 million in growth funding. Citing language in the *Public School Finance Act*, Mr. Craig said that the LFC questions whether charter schools qualify for small school adjustment funds because they appear to be “separate schools established to provide special programs,” which by law are not eligible for those funds. The LFC also suggests that, because of their small size, charter schools are able to generate growth funding with far fewer students than would be required of a school district.

Other fiscal concerns with charter schools, Mr. Craig continued, are (1) the lack of oversight to ensure that the lease payments made to private landlords are at fair market rates, and (2) the possibility of conflicts of interest when, as was the case with some schools, the school founder is also the lease holder. To address these and similar concerns, LFC recommended that authorizers conduct site visits at least annually and request quarterly performance reporting when necessary.

On the second point – the performance of charter schools – Mr. Craig reported that the evaluation found levels of student performance similar to those of traditional public schools according to average scale score gains between school years 2008-2009 and 2009-2010. The evaluation also found lower rates of graduation and higher rates of college remediation among students from charter schools than among students from traditional public schools overall, adding that, like traditional schools, some charter schools perform quite well while others struggle.

On the third point – the rigor of the application and renewal processes – Mr. Craig said that authorizers should approve no new charter schools until they increase their oversight and monitoring of the existing schools, until more poorly performing charter schools are closed,

and until there are more objective performance-based measures in the applications, among other conditions. The evaluation report also recommended that authorizers take a more proactive approach in considering new charter applicants by implementing a process similar to a request for a proposal. Taken together, these measures would result in what is sometimes called “smart caps,” a policy that closes ineffective schools and allows the proliferation of only effective schools.

The committee then heard responses to the LFC program evaluation by Dr. Murphy and Dr. Grover.

To begin, Dr. Murphy commended the LFC for examining charter schools, thanked the Legislature for its investment in charter schools, and emphasized the interest of the Governor and PED in the performance and accountability of charter schools. She then expressed a number of concerns about the methods and findings of the LFC evaluation, among them:

- many of the findings and recommendations were based on past practices without regard to more recent improvements;
- the recommendation that new applications for charter schools not be processed is contrary to current law;
- given their nature, charter schools have legitimate needs for the small school size adjustment and the growth factors in the public school funding formula (on this point, Dr. Murphy cited a recent study by Ball State University showing that, in terms of overall revenue, charter schools receive less than the percentage of total enrollments they serve);
- other aspects of the funding formula harm charter schools, such as their not being allowed to project for special education students, ancillary personnel needs, or bilingual students; nor do they qualify for supplemental emergency funds;
- through a variety of means, including serving on the LESC School Finance Work Group, PED is addressing the financial oversight and accountability of charter schools; and
- student performance in charter schools tends to improve over time.

In general, Dr. Grover concurred with the points raised by Dr. Murphy, but she also agreed with some of the recommendations in the LFC report. In particular, Dr. Grover supported the recommendations for charter school authorizers taking a more proactive approach similar to an RFP process, for conflict of interest disclosures by members of charter school governing boards and local school boards, and for clear protocols for closing ineffective charter schools.

Dr. Grover also addressed the attention focused on charter schools both nationwide and in New Mexico as an alternative to traditional public schools. Among other points, she noted that:

- two of the innovations of the charter school movement – teachers and administrators setting and measuring annual goals for student, fiscal, and operational outcomes; and more school-level autonomy in exchange for well-defined results – could be transferred to the public school system in general;

- with more than 1,500 licensed teachers and administrators working in New Mexico’s charter schools and approximately 14,000 students attending them, charter schools help meet parental demand for school choice;
- with an average age of six years, charter schools are “gaining ground in achievement faster than the traditional system,” according to a recent study by the Center for Education Research Outcomes; and
- instead of arbitrary caps or a moratorium on new charter schools, Dr. Grover recommended the practice known as “smart caps,” which encourages the replication of effective charter schools and provides a well-defined process for closing ineffective charter schools.

Committee Discussion

In response to a question from the Vice Chair, Mr. Sallee explained that the recommendations in the LFC report were those of the staff and that one point needing further analysis is the method of funding growth in charter schools.

In response to a committee member’s concern that excluding charter schools from the small school size adjustment would create a different standard than that applied to public schools in general, Mr. Sallee noted that state law already excludes special alternative schools from the small school size adjustment. Dr. Grover countered that charter schools are not alternative schools in that sense.

In response to several questions from the Vice Chair, Mr. Sallee and Dr. Grover indicated that they could agree on these more specific recommendations from the LFC evaluation:

- require all school districts and charter schools that use procurement cards to implement practices that conform to the program authorized by the Department of Finance and Administration;
- require authorizes to monitor the charter schools they authorize through annual site visits and periodic performance reports; and
- require PED to identify and disseminate best practices of top-performing charter schools.

Among other points, committee discussion addressed the need to ensure that both charter schools and school districts adhere to legal requirements for bond elections, the possibility of using public lands for charter schools, and the need to identify those schools – charter and traditional – that seem to be taking unfair advantage of the small school size adjustment by locating multiple small schools in a single facility.

CHARTER SCHOOL LEGISLATION IN NEW MEXICO

a. Overview

Dr. Harrell began this portion of the presentation with a brief history of charter school legislation in New Mexico. He noted that legislation affecting charter schools has been enacted

in virtually every legislative session since 1993; and at three times in particular the basic charter school law has seen major change.

- The first was in 1993 when New Mexico enacted the state's first *Charter Schools Act*, which allowed only five charter schools, all of them converted traditional schools, approved by the State Board of Education (SBE). Of the original five, Dr. Harrell noted, only one remains: Turquoise Trail Elementary School, in Santa Fe Public Schools.
- During the 1999 legislative session, LESC-endorsed legislation was enacted as the *1999 Charter Schools Act*, reflecting the findings and recommendations of a work group that the State Department of Education had formed during the 1998 interim. Among its provisions, this expanded charter school legislation:
 - made local school boards, rather than SBE, the authorizers of charter schools;
 - allowed start-up charter schools in addition to conversion schools;
 - increased the number of charter schools allowed;
 - required that charter schools receive at least 98 percent of the program cost that they generate; and
 - afforded greater autonomy to the charter schools themselves in terms of curriculum, personnel, and instructional material, among other areas.
- The third major change occurred in 2006 with the enactment of the *Charter Schools Act*, which had an effective date of July 1, 2007.
 - Among its major provisions, this legislation created the Charter Schools Division in the Public Education Department (PED), and it allowed the Public Education Commission (PEC) to authorize charter schools.
 - With a few subsequent amendments, this is the charter school legislation in effect now.

Dr. Harrell then reviewed the purposes of the 2006 *Charter Schools Act*, among them:

- encouraging the use of different and innovative teaching methods and different and innovative forms of measuring student learning and achievement;
- improving student achievement;
- providing parents and students with an educational alternative; and
- holding charter schools accountable for meeting the department's educational standards and fiscal requirements.

Dr. Harrell further explained that charter schools are affected not only by the *Charter Schools Act* but also by several other sections of the *Public School Code*. To illustrate this point, he directed committee members' attention to the attachment to the staff report, *Summary of Selected Provisions in State Law Applicable to Charter Schools*; and he highlighted provisions addressing such topics as application contents and process, student assessments, budgets, enrollment procedures, the governing body, renewal of charters, the revocation and nonrenewal of charters, and appeals.

b. Capital Outlay Provisions and Issues

The Chair recognized Mr. Peter B. van Moorsel, LESC staff, who discussed a staff report concerning the capital outlay provisions in current law as they pertain to charter schools.

Mr. van Moorsel began by noting that the real substance of the report was included in Attachment 1 which, because the relevant statutory provisions are codified in several sections of law, presents them in a matrix whose columns are organized by individual sections of law and whose rows are organized by subject areas.

Referring to the matrix, Mr. van Moorsel began by addressing the statutory provisions concerning the application for a charter. He stated that, regarding charter school facilities, this section of law requires that an application for a charter include a detailed description of the charter's projected capital outlay needs, and that, prior to the end of its planning year, a charter school must demonstrate that its facilities meet educational occupancy standards.

Concerning charter schools' location in public facilities, Mr. van Moorsel noted that the *Charter Schools Act* requires that, on or after July 1, 2015, a new charter school may not open and an existing charter may not be renewed unless it is housed in a public facility; is subject to an approved lease-purchase arrangement, or meets certain other criteria. He also said that the Public School Capital Outlay Council (PSCOC) is permitted to award money from the Charter School Capital Outlay Fund to assist charter schools in locating in public buildings. He added that, according to Public School Facilities Authority (PSFA), currently 33 charter schools meet, or are projected to meet, the facility criteria by 2015.

Mr. van Moorsel next addressed the lease assistance program, stating that the *Public School Capital Outlay Act* requires the school district to make a lease assistance application for a charter school located in the school district, but permits the charter school to submit its own application if the school district fails to make an application on its behalf. In addition, he reported that the act allows charter schools to use lease assistance grants to make payments toward lease-purchase arrangements that have been approved pursuant to the *Public School Lease Purchase Act*.

Mr. van Moorsel next referred to Attachment 2, which shows, by fiscal year, both the total amount of grant assistance awarded by the state on the left axis and the total number of schools receiving grant assistance on the right axis. He noted that the past six fiscal years have seen the number of schools receiving lease assistance awards nearly double, and the amount of funding used for lease assistance increase from approximately \$2.0 million to over \$8.0 million, adding that, of the 77 schools receiving lease assistance for FY 10, 69 are charter schools. He noted that, in a time when the available funding for public school capital outlay is already limited, this recurring cost now represents at least \$8.0 million annually that will go to lease payments instead of being available to fund capital improvements through standards-based awards.

Mr. van Moorsel next addressed the section of the matrix concerning standards-based grant assistance for charter schools. The *Charter Schools Act* addresses this subject by making locally chartered charter school facilities eligible for state and local capital outlay funds and requires that they be included in the school district's five-year facilities plan; by requiring that the facilities of a charter school whose charter has been renewed at least once be evaluated,

prioritized, and made eligible for grants in the same manner as all other public schools; and by allowing money in the Charter School Capital Outlay Fund to be used to assist state-chartered charter schools with the local match for a public school capital outlay project.

Mr. van Moorsel reminded the committee that in 2007 the fund was created and \$4.0 million was appropriated to the fund. He cited the PSCOC's financial plan, in reporting that \$2.1 million remains in this fund for the 2010-2011 funding cycle and subsequent fiscal years.

Mr. van Moorsel next referred to the statutes governing the imposition by school districts of property taxes to fund capital improvements, reminding the committee that amendments in 2007 to the *Public School Buildings Act* (HB 33) and in 2009 to the *Public School Capital Improvements Act* (SB 9) required the capital improvements needs of charter schools to be included on district resolutions to impose such property taxes if the charter school timely provides the necessary information to the school district for inclusion on the resolution. The statutes governing both SB 9 and HB 33 require that the revenue raised by these property levies be distributed to each charter school on the resolution in the proportion of the charter school's enrollment to the district's enrollment. Noting differences between the two laws, he added that the *Public School Buildings Act* requires that, to be on an HB 33 resolution, the capital improvements for a charter school must be included in the five-year facilities plan of the school district, or the state-chartered charter school. He also stated that a state match exists for the SB 9 two-mill levy, and the district must distribute a portion of this match to each charter school in the school district, and not just to those schools on the resolution.

Referring to an attachment showing the election status for both the SB 9 and HB 33 mill levies for districts with charter schools since 2006, Mr. van Moorsel showed those districts that had included charter schools on their resolutions and those that had not. He noted that some charter schools had expressed concerns about a lack of uniformity in how property tax revenues are distributed to charter schools; a reported failure of a school district to comply with the provisions in law requiring distribution of SB 9 and HB 33 funds; and a lack of consequences for noncompliance with these statutes. However, Mr. van Moorsel also reported that other charter schools reported that they had a good relationship with their local districts and that they did not have any issues with access to bond proceeds.

Finally, Mr. van Moorsel cited Albuquerque Public Schools' (APS) policy concerning charter schools, which states that the district must include in its capital master plan a charter school that has had its charter renewed at least once and has been in operation for five years. Once included in the master plan the district works to queue the charter school in the district's prioritization needs assessment. He concluded by reporting that the capital strategy of APS' Capital Master Plan currently includes 24 locally chartered charter schools and one state-chartered charter school, and estimates that these charter schools receive a per student membership count (MEM) capital improvements distribution of \$662 per year.

Committee Discussion

The Chair recognized Mr. Bob Gorrell, Director, PSFA, to respond to a committee member's question regarding the consideration of a charter school's facility needs during the planning year. Mr. Gorrell stated that many capital planning decisions would be made more manageable if all charter schools were to go through the educational specification process to determine the

school's student population, the type of curriculum, and the type and quantity of spaces needed to meet the needs of the charter.

The Chair recognized Mr. Art Melendres, APS staff, to respond to a committee member's question about the effectiveness of using per-MEM distributions of HB 33 funds. Mr. Melendres stated that he felt that school districts and charter schools need to discuss whether the per-MEM distribution of capital funds was the best method, adding that he did not feel that the per-MEM distribution was assisting in locating charter schools in public buildings.

A SAMPLING OF THE NATIONAL CHARTER SCHOOL LANDSCAPE

To provide something of a national context for an examination of charter schools in New Mexico, Dr. Harrell said, the next report on charter schools reviewed a sample of circumstances, initiatives, and issues found among charter schools throughout the country that staff thought might be of particular interest to the committee or that correspond to other parts of the day's presentations. According to several sources, Dr. Harrell continued, more than 5,000 charter schools are currently serving more than 1.5 million students nationwide – approximately 3.0 percent of all public school students. In addition, the National Alliance for Public Charter Schools estimates that approximately 365,000 students are on charter school wait lists throughout the country.

Effects on Student Achievement

Dr. Harrell alluded to a staff report during the 2009 interim stating that, according to standard measures and recent studies, charter schools in New Mexico, as a group, seem to be performing at approximately the same levels as traditional public schools. The same assessment, he continued, seems to apply to charter schools nationwide although definitive conclusions seem elusive. To illustrate, Dr. Harrell cited a recent research brief by Vanderbilt University and the National Center on School Choice, which examined five studies since 2004: one of them found positive effects from charter schools, three of them found mixed effects, and one of them found negative effects.

Although their effect on student achievement is arguably the most important aspect of charter schools, it is also perhaps the most difficult aspect to assess, Dr. Harrell said. For example, studies that compare the performance of students in charter schools with the performance of students in traditional public schools do not always account for inherent differences in the two student populations in terms of motivation, parental support, and other factors. And even when they do it is difficult to attribute student outcomes to charter school status *per se* as opposed to other characteristics like the quality of the teachers or the size of the school.

Teacher Turnover in Charter Schools

Although stability in personnel has been cited as one benefit of charter schools in New Mexico (see "Final Notes from the Field: LESC Charter School Questionnaire," below), Dr. Harrell said, one recent study of charter schools nationwide found that charter school teachers leave the profession and move between schools "at significantly higher rates" than teachers in traditional

public schools – 130 percent greater and 76 percent greater, respectively – with the rates even greater for teachers at start-up charter schools than for conversion charter schools.

This study also found that teachers’ dissatisfaction with some aspect of the charter school was the most common reason for voluntary departures and that, despite fewer regulatory obstacles, charter schools seldom dismissed poor-performing teachers.

Fiscal Concerns

Turning to fiscal issues with charter schools, Dr. Harrell cited a March 2010 report by the Office of Inspector General (OIG) with the US Department of Education, stating that charter executives, officials, and politicians accused in fraud cases in a number of states have inflated student enrollment figures and changed student grades to increase the amount of funding they receive, and then used the money for personal expenses. According to this report, more than 40 criminal investigations of embezzlement have been opened against charter school officials since 2005, resulting in 18 indictments and 15 convictions. The OIG, Dr. Harrell said, places much of the responsibility for these violations on inadequate oversight by the charter authorizers. Highlighting one of the specific cases in the staff report, Dr. Harrell said that three charter school officials in Humble, Texas pleaded guilty to altering student enrollment records between 1999 and 2002, resulting in an additional \$2.5 million in federal funds to the school.

Virtual Charter Schools

Just because of their different format and environment, Dr. Harrell said, virtual schools raise a number of questions and issues. When the virtual school is also a charter school, additional issues seem to arise. According to one study, some of the challenges that virtual charter schools face are:

- accountability for student performance and educational program quality;
- defining enrollment boundaries and funding responsibility; and
- the influx of home-schooled students.

Dr. Harrell then described inroads into this field made recently by a number of states. One example, he said, is Wisconsin, where the legislature in 2007 required an evaluation of the 15 virtual charter schools operating in that state. In its report to the Joint Legislative Audit Committee, published in February 2010, the State Auditor reported, among other points, that:

- enrollment in virtual charter schools has increased every year since school year 2002-2003;
- the 5,250 student open enrollment limit in virtual charter schools will likely be reached within the next few years; and
- on statewide assessments, virtual charter school pupils typically scored higher than other public school pupils in reading but lower in mathematics.

Charter Management Organizations

Dr. Harrell identified charter management organizations (CMOs) as nonprofit entities that manage public charter schools. According to an ongoing national study of their effectiveness by Mathematica Policy Research Inc. and the Center on Reinventing Public Education, Dr. Harrell continued, CMOs were developed to solve problems associated with the number and quality of charter schools. *Education Week* describes them as nonprofit alternatives to education-management organizations, which are typically for-profit ventures.

According to an article in *Phi Delta Kappan*, there are approximately four dozen CMOs currently in operation in the United States. Dr. Harrell then described some of the better-known CMOs – the Knowledge is Power Program (KIPP), for example – and presented preliminary findings of the study currently underway. Among its findings:

- most CMOs operate in large cities in a handful of states, with their schools typically serving low-income and minority students;
- they tend to offer more days of instruction and longer days than traditional district schools; and
- they are more likely than traditional public schools to use compensation to reward the performance of teachers and principals.

Finally, Dr. Harrell cited two provisions in state law that may be factors affecting whether CMOs or education management organizations may operate in New Mexico:

- a prohibition against contracting with a private entity to manage a school in corrective action; and
- a prohibition against a charter school contracting with a for-profit entity.

Performance Contracts

Performance contracts, Dr. Harrell said, are legal documents signed by representatives of the charter school and its authorizer after the charter has been approved. Performance contracts typically emphasize the goals of the charter as contract terms and clarify the process for closing charter schools that do not meet their performance goals. According to survey results received by the National Association of Charter School Authorizers (NACSA), 90 percent of large authorizers – those that authorize 10 or more schools – sign formal contracts with the charter schools they oversee, as do 98 percent of responding district authorizers.

Other State Initiatives

Dr. Harrell concluded this presentation with a brief account of recent charter school legislation across the states as compiled by the Education Commission of the States (ECS). In some cases, he said, the legislation was enacted to support applications for federal funds through the Race to the Top competition; in others it was simply to strengthen charter school laws themselves. In one of the examples, ECS notes recent legislation in both New Mexico and Minnesota to require training for members of charter school governing boards.

Committee Discussion

In response a question from a committee member about performance contracts, Dr. Harrell said that sample contracts could probably be obtained from one of the national charter school associations, like the NACSA. Dr. Grover added that performance contracts would be especially helpful to schools attempting a major turnaround of their performance.

Representative Cote asked that sample performance contracts be provided at the next LESC meeting.

IMPLEMENTATION OF HB 74A, *CHARTER SCHOOL OVERSIGHT FOR 1 YEAR*

Dr. Harrell introduced Mr. Sam Obenshain, Program Manager, Charter Schools Division, Public Education Department (PED), to brief the committee on the implementation of LESC-endorsed legislation enacted in 2010 to:

- ensure that, during the planning year, a charter school develops in accordance with the conditions, standards, and procedures of its approved charter, as demonstrated by three status reports during that year; and
- require that the chartering authority and the charter school agree to the content, format, and schedule of the reports prior to signing the charter contract.

Dr. Harrell said that the need for this legislation arose during the 2009 interim, when the LESC heard an update on charter schools in New Mexico by committee staff and the New Mexico Coalition for Charter Schools (NMCCS). One of the issues that emerged from the committee discussion of the presentation was how to ensure that, during the planning year, the governing body of a charter school does not deviate substantially from the terms of the approved charter. With its effective date of May 19, 2010, Dr. Harrell continued, the planning year legislation will affect any of those charters that are approved in 2010 for a six-year term, which includes the initial planning year.

Referring the committee to a handout, *2010-2011 Charter School Planning-year Checklist*, Mr. Obenshain explained the steps that the division has taken to implement the planning year legislation for state-chartered charter schools and to assist school districts in implementing the legislation for locally chartered charter schools. The checklist, Mr. Obenshain said, consists of a series of activities, including documentation, to be completed by certain deadlines. For example, by December 31, the charter school must have established its governing board and developed bylaws; by March 30, the charter school must have filed a budget plan and designed an enrollment lottery and wait list process in case the number of students applying for admission exceeds the school's capacity; and by May 30, the charter school must have articulated a curriculum framework in line with the school's mission and goals as well as the state's content standards and benchmarks.

Not included in this checklist, Mr. Obenshain said, are items that address facilities issues and indicators. For that aspect of charter schools, the Charter Schools Division relies on provisions in law, such as those that Mr. van Moorsel had reviewed.

Mr. Obenshain concluded his presentation by describing workshops that the Charter Schools Division had conducted. These workshops, he said, have been attended not only by members of the Public Education Commission (PEC) and charter applicants seeking state approval but also by local board members and charter applicants seeking local board approval.

Committee Discussion

One committee member asked several questions about charter applicants' choice of authorizer, whether at the time of the initial application or the time of renewal. In response, Mr. Obenshain said that, as Dr. Harrell had noted, 33 of the 81 charter schools operating in school year 2010-2011 have been authorized by the PEC, but he did not know how many of them were initial applications and how many were renewals. He added that, while the number of PEC-authorized or renewed charter schools is increasing, it is perhaps too early to identify any trends. Dr. Don Duran, Assistant Secretary, Charter Schools Division, PED, explained that the choice of renewal authorizer usually depends upon the relationship between the charter school and its current authorizer. That is, if the relationship is good, then the school is likely to renew with its current authorizer; if not, then with the alternative. Dr. Harrell noted that, according to responses to the LESC questionnaire (see "Final Notes from the Field: LESC Charter School Questionnaire," below), the charter schools initially authorized by their respective local school boards are almost evenly divided among those that intend to or did renew with their local board, that intend to or did renew with the PEC, or that are undecided.

In response to several questions about facilities issues and possible conflicts of interest – prompted in part by findings of the Legislative Finance Committee (LFC) evaluation – Mr. Obenshain said that, despite the omission from the checklist, the Charter Schools Division does examine all charter facilities and potential conflicts of interest between charter schools and landlords. He added that the division employs an annual survey and site visits and that some of the LFC's findings are drawn from past authorizer practices that have since been changed. Mr. Gorrell, added that the Public School Facilities Authority is also gathering data on property owners to identify potential conflicts of interest. Finally, Mr. Joe Guillen, Director, New Mexico School Boards Association, said that the members of charter school governing boards are similar to members of local school boards. One major difference between them, however, is that local school board members are elected by the voters in the school district, whereas governing board members are determined through some other means. Mr. Guillen also suggested that the standards of conduct to which local board members subscribe could be applied to governing board members.

Finally, the Chair suggested that the checklist include more explicit references to the planning year and to facilities issues. One instance she cited was the indicator for the curriculum framework and adherence to standards, which should support the original mission and goals of the charter school. Dr. Grover agreed that such an alignment would be helpful.

VARIETY IN CHARTER SCHOOLS

The next presentation, Dr. Harrell said, was intended to counter a common misconception that all charter schools are alike. In addition to some fundamental differences according to their authorizer – whether a local school board or the Public Education Commission – charter

schools in New Mexico are further diverse in terms of their missions, their student demographics, their pedagogical approaches or philosophies, their facilities, and their results. To illustrate this variety, Dr. Harrell continued, the committee would hear presentations from representatives of four charter schools in New Mexico:

- Turquoise Trail Elementary School, a PreK-6 school in Santa Fe, is the only remaining charter school of the original five authorized under the State Board of Education through legislation enacted in 1993. As such, it is the only conversion charter school in New Mexico.
- El Camino Real Charter School, a K-12 start-up charter school in Albuquerque, has reached the final stage of the school improvement cycle and has received funds through the federal School Improvement Grant program (see Staff Brief: *Use of Federal School Improvement Grant Funds*, June 15, 2010).
- Gordon Bernell Charter School, a 9-12 school in Albuquerque, offers a curriculum and environment for adult students who have been out of school for an extended time, including inmates at the Bernalillo County Metropolitan Detention Center and recently released inmates in the Bernalillo Community Custody Program.
- New Mexico School for the Arts, a 9-11 school that opened in Santa Fe in August 2010, is a residential school with certain admissions criteria that will provide instruction in traditional subjects together with a focus on one of several arts-related curricula.

Ms. Sandra Davis, Head Administrator, Turquoise Trail Elementary School, said that the school had opened in 1990 and converted to charter status in 1994. Current enrollment is 495 in grades pre-K through 6, with 156 students currently on the waiting list for admission. The school leases its facilities from Santa Fe Public Schools: 60,000 square feet of instructional space on a 24-acre campus. The school employs 62 total staff members, with an average teacher/pupil classroom ratio of 1/21. Among other student demographic data, Ms. Davis noted that 67 percent of the K-6 students are on free or reduced-fee lunch, 75 percent are minority, and 18 percent are in special education. Finally, among other achievements and innovations, Ms. Davis said that Turquoise Trail Elementary School:

- made adequate yearly progress (AYP) in math and reading every year from 2005 to 2009;
- became the first Reading Recovery training site in New Mexico;
- expanded its educational program to include instruction in art, music, band, physical education, and technology;
- received a grant of \$13,000 from Los Alamos National Laboratory for STEM (science, technology, engineering, and math) curriculum and equipment;
- conducts weekly professional learning team meetings that give teachers regular opportunities to collaborate, discuss student work, and share effective instructional strategies;
- offers job-embedded professional development and coaching; and
- allowed its former assistant principal to become the principal at Ramirez Thomas Elementary School in Santa Fe, one of nine schools in New Mexico to receive School

Improvement Grant funds and the only one to pursue the Turnaround Model, replicating programs and approaches employed at Turquoise Trail.

Ms. Pamela Engstrom, Head Administrator, El Camino Real Charter School, said that her school, located in Albuquerque's South Valley, is one of the largest charter schools in New Mexico, with nearly 500 students currently enrolled and a number of others on a waiting list. As a family school and one of the few K-12 schools in the area, El Camino Real makes it possible for older students to care for their younger siblings without leaving the campus. The facility, which meets the Public School Facilities Authority adequacy standards, comprises 61,000 square feet, including a gym. There are 60 faculty members among a total staff of 75; and 97 percent of the students are on free or reduced-fee lunch, and 92 percent are minority.

The funds from the School Improvement Grant, Ms. Engstrom said, have already allowed the school to implement a number of programs and positive changes, among them:

- an expanded bilingual program and curriculum;
- the Read 180 program and training; and
- employment of five intervention teachers to analyze teacher and student performance, to target specific groups or deficiencies, and to conduct small group and individual interventions.

In addition, Ms. Engstrom continued, the school has collaborated with Albuquerque Public Schools (APS) in such matters as curriculum, instructional strategies, and governing council development; and incorporated several principles from the Florida Model, including a teacher report card, monthly monitoring of student academic growth, and the discipline program known as Positive Behavior Support.

Ms. Greta Roskom, Head Administrator, Gordon Bernell Charter School, said that the school was named for the late Gordon Bernell, former administrator at the Bernalillo County Detention Center, who had established a computer literacy lab and a 15,000 book library at the jail, among other education-related innovations. As one of only two charter schools of its kind in the nation, Gordon Bernell targets adult high school students 18 and older who are either incarcerated at the Bernalillo County Metropolitan Detention Center (BCMDC) or who are in a community custody program, as well as any other adult seeking a high school diploma. Current enrollment at each of the two campuses – MDC and downtown Albuquerque – is 150. All of the students are considered indigent, 95 percent of the downtown students are unemployed, 20 percent qualify for special education (a percentage that would be higher except that many students are older than the qualifying age of 22), and 90 percent are minority. The teacher/pupil ratio is 1/22.

Given the student demographic, Ms. Roskom said, "our school will never make AYP." Rather, it focuses on such challenges as reducing unemployment, homelessness, substance abuse, and the rate of recidivism among its students. In addition, because the population is highly mobile, students spend on average only 90 days enrolled in the curriculum, which is based on mastery of content standards rather than the amount of class time. Because nearly half of the students begin the program with reading proficiency below grade 6, the school emphasizes the acquisition of basic reading, language, and math skills.

Among other tangible achievements, Ms. Roskom noted that:

- the average gains last year over the 90-day instructional period were 2.5 grade levels in reading and 1.6 in math;
- many students who are released from BCMDC enroll in the continuing program downtown, transferring the credits they have earned;
- in the last two years, 60 students earned high school diplomas, and 45 of them pursued postsecondary education; and
- three recent graduates are currently employed at the school.

Dr. Jim Ledyard, Head of School, New Mexico School for the Arts, cited legislation enacted in 2008 to establish the first public arts charter high school in New Mexico. Opening this year, he continued, the New Mexico School for the Arts (NMSA) offers a dual curriculum that leads not only to a high school diploma but also to pre-professional training in dance, music, theater, and the visual arts. Another difference between this school and other charter schools, Dr. Ledyard said, is that, rather than admitting students through a lottery, “NMSA selects students based on a written application, teacher recommendations and subsequent auditions and portfolio reviews. Students are selected based upon their passion, promise and aptitude in the arts.” From a field of 275 initial applications, the school staff offered 245 students an audition or portfolio review; of those, NMSA offered admission to 151 students; and of those, 138 chose to attend the school.

Students come from all three congressional districts and more than 20 communities throughout New Mexico. Student demographic data, Dr. Ledyard said, are still tentative; but he expects that a third of them are minority, 20 percent will be eligible for free or reduced-fee lunches, and 15 percent will qualify for special education. With an administrative staff of 4.5 full-time equivalents (FTE) and 12 full-time faculty, the teacher/pupil ratio is approximately 1/11.

Finally, Dr. Ledyard said that the NMSA comprises three locations: the main campus, housed in St. Francis Cathedral School in downtown Santa Fe; a residence facility, Cartwright Hall, on the campus of the New Mexico School for the Deaf, where 20 students reside in the school’s five-day residential program; and the dance barns at the National Dance Institute, where dance classes are conducted.

Committee Discussion

In response to several questions from a committee member, Ms. Davis said that Turquoise Trail had lost some slots in its PreK program because of budget cuts but that the school has continued to serve 30 children by absorbing the costs; that the school has a large special education staff, well beyond what *Individuals with Disabilities Education Act* (IDEA) funds; that the most challenging component of making AYP has been the reading proficiency of students with disabilities; and that the school had recently obtained approval to extend each instructional day by 30 minutes.

In response to a committee member’s question about continued enrollment in the NMSA, Dr. Ledyard explained that, once admitted, students essentially compete against themselves to remain enrolled as they must show satisfactory progress in both their arts program and their standard educational program.

Alluding to Ms. Roskom's point about the special education needs of the students at Gordon Bernell, a committee member asked for an estimate of the percentage that would qualify if not for the age limitation in law. In response, Ms. Roskom estimated between 75 and 80 percent of the student population.

In response to a committee member's question about the training required to implement the program Positive Behavior Support, Ms. Engstrom said that it can take up to a full year. She added that programs like that can be especially helpful to students like those she has seen entering and exiting the APS system multiple times during a year.

Also addressing El Camino Real was Dr. Diego Gallegos, Assistant Superintendent for School and Community Support, APS. He explained that, because of the school's consistently poor performance, the Public Education Department had approached APS with the choice of closing the school or assisting it through application for a School Improvement Grant. In choosing the latter option, Dr. Gallegos said that the district had worked with the school to replace the former principal and to bolster the training required of members of the governing board. He added that the district is reviewing the school's capability of offering all grades K through 12 and considering the level of support that the district, as authorizer, can and should provide.

Noting the limited student representation from the southern part of the state, several committee members recommended that the NMSA increase its marketing efforts in that region to help ensure proportionate enrollment from all three congressional districts, as described in the legislation.

Finally, among other points, the committee discussion addressed the ability of these charter schools to provide unusual, if not unique, educational programs; choice as a feature not only of charter schools but also of traditional public schools through open enrollment and inter-zone transfers; and legislation that allows charter districts in addition to charter schools.

RECOMMENDATIONS OF THE NEW MEXICO COALITION FOR CHARTER SCHOOLS

The Chair recognized Dr. Grover, to present recommendations from the New Mexico Coalition for Charter Schools (NMCCS). Dr. Grover referred to an excerpt from a framework for building charter school quality that the NMCCS had developed in conjunction with several national partners. The document indicates areas that the NMCCS is focusing on, accompanied by ways that charter schools can improve upon their own standards.

Chief among the areas that NMCCS has identified as being possible points of improvement, are business and financial practices. Measures identified as possibly having a positive impact on these standards and practices were annual audits, contract management and oversight, and leadership oversight and evaluation.

The metrics by which the NMCCS proposes to evaluate and oversee the implementation of these improvements include:

- clear lines of authority, responsibility, and reporting;
- board monitoring of school leadership performance, as appropriate throughout the year;
- annual evaluation of school leadership performance against established performance expectations (SMART goals);
- absence of material or repeated audit findings in annual audit by qualified independent auditors; and
- fulfillment of terms of charter contract.

Committee Discussion

In response to a committee member's question regarding self-imposed moratoriums on the creation of new charter schools and the time frame in which they would be imposed, Dr. Grover stated that more research is needed in order to determine a timeline for such a moratorium.

In response to an inquiry from the Chair, Dr. Grover stated that some states close the bottom 5.0 percent of charters in regard to performance each year, and that if New Mexico were to adopt a similar policy the overall performance of charter schools would increase exponentially. She did note that, as of next year, any charter school joining the coalition will be required to sign onto performance standards.

In response to a question from the Chair, Dr. Grover noted that any such measures applying to poor-performing charters would be in addition to Educational Plans for Student Success.

Senator Nava requested a copy of the complete framework for building charter school quality.

FINAL NOTES FROM THE FIELD

a. LESC Charter School Questionnaire

Dr. Harrell said that, to obtain some sense of the activities of charter schools, their relationships with their authorizers, and their views of charter school legislation, the staff of the LESC sent a brief questionnaire to the 61 charter schools that had been in operation for at least three years, the time period that is often cited as the minimum for gauging progress or achievement. Twenty-seven of the 61 charter schools contacted sent complete responses and another four joined a group of 20 in a consolidated response to one of the questions (see the responses to question 6, below), for a total response rate of 51 percent.

Dr. Harrell then presented overviews and examples of the responses to each of the six questions.

What programs, practices, or school organizational structure have you implemented as a charter school that you could not have done otherwise?

Overview

Dr. Harrell reminded the committee that the first listed purpose of the *Charter Schools Act* is “to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been replicated successfully in schools with diverse characteristics.” Given this purpose, he said, it is little surprise that respondents to this first question described a wide variety of programs, practices, and organizational structures. The responses are categorized and discussed below under the headings Choice, Small School Size, Programs and Projects, and Other Practices.

In many cases, Dr. Harrell continued, practices that charter schools cite are variations on a theme found in traditional public schools: dual credit and professional development, for example. Nonetheless, because charter schools operate with some degree of autonomy, the staff members feel more inclined to experiment, to try new approaches, or to extend existing approaches to new audiences or arenas.

Choice

Several respondents emphasized the innovation of choice that charter schools afford students and their parents, often citing sizable waiting lists as evidence that people are taking advantage of that choice. For example, the Academy for Technology and the Classics, a 7-12 grade school in Santa Fe, cites 447 lottery entries in 2010 for only 80 student slots.

Small School Size

Their small size was one of the most often-cited features of charter school respondents to the question about their programs and practices, allowing a greater degree of personal attention to such things as counseling, mentoring, and monitoring work and attendance. For example, at Cesar Chavez Community School, a high school in Albuquerque, students keep the same mentor throughout their attendance, a mentor who is also assigned to the students’ siblings; and Spanish-speaking families have a bilingual mentor.

Programs and Projects

In addition to broad concepts, respondents identified a large number of more specific programs or projects that the charter structure facilitates. East Mountain High School, in Albuquerque, for example, described its Discovery Projects – nine-day end-of-year “experiential learning projects with groups of students and a teacher” that include travel to other cities or countries – and Inquiry Projects – each student’s research into “an essential question of his or her choice,” with results presented at the end of the year.

Other Practices

Finally, Dr. Harrell said, questionnaire respondents identified a number of other practices within their charter school structures. Several respondents described their plans for shared governance, such as the “distributive leadership model” at Amy Biehl High School, which affords all staff members some leadership role and which emphasizes the point that “teachers must strive to think more like principals and principals must strive to think more like teachers.”

What have been the outcomes of these programs, practices, or organizational structures?

Frequent responses to this question noted success with standard measures of student or school achievement. And in a few cases, schools claimed to have overcome significant deficits in student proficiency. For example, Cesar Chavez Community School reported that more than half of its students arrive with reading or math scores below sixth grade levels “and a significant number at or below third grade in math,” whereas short-cycle assessments show nearly 47 percent proficiency rates in reading and 30 percent in math at the high school level.

Three schools reported earning national recognition: Southwest Secondary Learning Center; Moreno Valley High School; and the Academy for Technology and the Classics. Other cited outcomes were less quantifiable: such points as high rates of teacher, student, and parent satisfaction, as well as increased student motivation. Several respondents also noted that parents say their children want to come to school.

Have you shared any successful initiatives with the school district in which your charter school is located? If so, what were the outcomes? If not, why not?

Although not recognized specifically in New Mexico law, Dr. Harrell said, one of the often-cited purposes or benefits of charter schools is that they will share their experiences with traditional public schools and thereby improve outcomes for all public school students. However, the responses to this question suggest that New Mexico has made only limited progress in this regard. Of the 27 responses to this question, only 14 said yes, and one of those qualified the answer by stating that the sharing was school-to-school, not school-to-district. On the other hand, only five respondents answered no. The others indicated that the sharing with districts was limited (three responses), mixed (two responses), or unclear or uncertain (three responses).

As one example, the response from Amy Biehl High School suggested that APS has followed the charter model by investing resources to create smaller, mission-driven schools or to partner with specific charters to do the same, citing as examples the Nex+Gen Academy on the Del Norte campus, the Early College Academy within the Career Enrichment Center, and the revamping of the Alternative School Complex.

How would you describe your relationship with your authorizer? (Please name your authorizer.)

Because the questionnaire was distributed only to charter schools that had been in operation for at least three years and because the Public Education Commission (PEC) has been authorizing charter schools only since 2007, most of the respondents were initially authorized by their local school boards; and 15 of those were authorized by Albuquerque Public Schools.

Altogether, 16 of the 25 charter schools that had been authorized by local school boards reported good relationships with their authorizers; five reported poor relationships; two more reported what might be called mixed relationships; and two said that there was no relationship whatsoever. Both of the schools that had been authorized by the PEC reported good relationships with their authorizer.

When your charter is due for renewal, will you renew it with your local school board or the Public Education Commission? Please explain the reasons for your choice.

Dr. Harrell said that the responses to this question had already been mentioned during the presentation on the implementation of HB 74a. To add a few more details, of the 25 charter schools that had been authorized by local school boards, the responses are almost evenly divided among those that plan to or did renew with the local board (10), that plan to or did renew with the PEC (eight), and that are currently undecided (seven). Two of those currently undecided are leaning toward renewing with the local board, and another is waiting to see the outcome of the school board election in February.

What provisions, if any, in the *Charter Schools Act* or in agency regulations should be changed? Why?

Dr. Harrell said that 20 charter schools submitted a consolidated response to this question, indicating consensus at least among those schools. This group, like a number of individual respondents, raised objections to a change that has been proposed: the recommendation of the Legislative Finance Committee program evaluation to remove charter schools from the small school size adjustment factor in the public school funding formula. Among other points, respondents also recommended:

- allowing charter schools to use alternative methods of measuring student success, such as graduation rate, retention of and success with students who have histories of multiple placements and failure, and achieving the mission and goals of the charter;
- requiring an accounting for the 2.0 percent of charter school budgets received by the authorizer;
- providing clear authorizing standards for the oversight of charters, including such matters as notice and opportunity to cure violations of the charter contract; assurance that the charter is included in district operations, specifically capital funding; mandatory training for authorizers; and an established procedure before a charter can be revoked or not renewed; and
- amending the enrollment procedures in the *Charter Schools Act* to grant priority to children of faculty and staff of the charter school.

Committee Discussion

There being no committee discussion, the meeting proceeded to the next agenda item.

b. PED Survey of Charter Schools

Dr. Don Duran, Assistant Secretary, Charter Schools Division, PED, provided a brief description of a survey that the division sent to all charter schools in March 2010, asking them to identify innovative practices that they have implemented. The Charter Schools Division intends to compile these responses and post on the Public Education Department website a sort of catalog of best practices that the charter schools can share among themselves and with school districts. The categories to be addressed include such things as school mission, student assessment systems, instructional practices, community involvement, and fiscal policies and procedures.

Committee Discussion

There being no committee discussion, the Chair thanked the presenters.

COMMUNITY INPUT

The Chair recognized Dr. Curtis J. Mearns, Senior Evaluator, Apex Education, who provided the committee with a demonstration and led a thought exercise using different varieties of apples and their unique traits as an analogy to charter schools and their ability to address different student needs in different environments.

There being no further committee business, the Chair adjourned the LESC meeting at 2:53 p.m.

C Mearns Chairperson

1-17-2011 Date