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## MINUTES LESC MEETING June 15-17, 2016

Representative Dennis J. Roch, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 8:33 a.m., on Wednesday, June 15, 2016, in the Elfego Orona Performing Arts Center, Los Lunas High School, Los Lunas, New Mexico.

The following voting and advisory members were present:

**Voting:** Representatives Dennis J. Roch, Chair, Tomás E. Salazar, James E. Smith, Sheryl M. Williams Stapleton, Christine Trujillo, and Monica Youngblood; and Senators John M. Sapien, Vice Chair, Craig W. Brandt, and Howie C. Morales; and

**Advisory:** Representatives Alonzo Baldonado, David M. Gallegos, D. Wonda Johnson, and Patricia Roybal Caballero; and Senators Jacob R. Candelaria, Daniel A. Ivey-Soto, Linda M. Lopez, John Pinto, William P. Soules, Mimi Stewart, and Pat Woods.

The following voting and advisory members were not present:

**Voting:** Senator Gay G. Kernan; and

**Advisory:** Representatives Jim Dines, Nora Espinoza, Stephanie Garcia Richard, Jimmie C. Hall, Timothy D. Lewis, G. Andrés Romero, and James G. Townsend; and Senators Carlos R. Cisneros, Lee S. Cotter, and Michael Padilla.

Also in attendance were Representative Kelly K. Fajardo and Senator Clemente Sanchez.

### Los Lunas Public Schools And Belen Consolidated Schools Strategic Initiatives

Dana Sanders, Superintendent, Los Lunas Schools (LLS), and Max Perez, Superintendent, Belen Consolidated Schools (BCS), discussed strategic initiatives for their school districts. Mr. Perez stated the main goals for BCS during the 2015-2016 school year were to promote a culture of safety, improve the letter grades of BCS, and increase graduation rates by at least 10 percent. He reported on the reorganization of BCS administration to reduce administrative costs, the development of their alternative education program, and securing funding for infrastructure improvements. Mr. Perez highlighted the completed remodeling of Gil Sanchez Elementary School and initial plans for Rio Grande Elementary School. Mr. Perez said the district resolved a \$1 million budget deficit and increased their graduation rate by 14.5 percent, surpassing their goal to increase graduation rates by 10 percent.

According to Mr. Perez, BCS participates in a number of the Public Education Department (PED)-sponsored initiatives, including Reads to Lead! and K-3 Plus. BCS has three truancy coaches and several participants in PED's teachers pursuing excellence and principals pursuing excellence programs. He noted major challenges for BCS are declining enrollment, higher salary costs due to advancement in teacher licensure levels, and increasing health insurance costs.

Ms. Sanders reviewed LLS initiatives, including aligning LLS standards with the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment. Ms. Sanders said seven out of 10 elementary schools participate in K-3 Plus but noted LLS did not apply for Reads to Lead! funding because the school district has chosen not to use the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) test. Ms. Sanders noted PED requires all students in the school district to be assessed using the DIBELS to be eligible for Reads to Lead! funding and LLS did not want to use the DIBELS assessment for every student regardless of whether those students benefited from Reads to Lead! funding. Ms. Sanders said LLS was the only school district in the state that did not use DIBELS district-wide and did not receive Reads to Lead! funding in FY16. Ms. Sanders also discussed the need to make changes to the training and experience (T&E) index to account for teacher licensure levels.

In response to Senator Woods, Mr. Perez noted BCS' bonding capacity is at 91.2 percent.

In response to the Chair, the superintendent stated there has been a consistent pattern of declining enrollment over the last 10 years and he believes it is connected to the local economy and jobs.

The Chair noted LESC is aware of costs due to tier migration and the committee endorsed Senate Bill 141, Public School Funding Formula Amendments, during the 2016 legislative session to align the T&E index to the three-tiered licensure system. In addition to tier migration, the Chair explained school districts also have to pay for new minimum salaries for level 2 and level 3 educators.

Senator Stewart questioned whether the drop in proficiency was entirely due to PARCC. In response, Mr. Perez noted scores are based on the norms and changes in leadership could have played a role in the decline as well. The Chair commented lower proficiency rates will likely be a trend across the state.

Senator Morales asked whether either of the school districts lost funding for special education ancillary staff due to the recent data validation audit PED conducted. Ms. Sanders noted LLS lost 660 ancillary full-time equivalent (FTE) units at a cost of \$2.3 million. Ms. Sanders noted LLS has a healthy cash balance, but stated tier migration will cost the school district \$375 thousand that is not accounted for in the funding formula.

Representative Baldonado asked about the late December announcement by PED of FY15 school grades. The timeframe for reporting errors to PED was from December 20, 2015 to early January, 2016, requiring LLS staff to work during holiday leave to validate school grades; it was discovered that a math test was counted twice. Ms. Sanders noted she did not understand PED's calculation of a D grade for Los Lunas High School.

The Chair said many states are making the argument that the federal government is coercing states to comply with federal requirements that are not in federal law as a condition of continued receipt of federal funding. He noted LLS' attempt to maintain local authority over public school

decisions when LLS turned down funding for Reads to Lead! The Chair asked Ms. Sanders what assessment the district uses in lieu of DIBELS, and Ms. Sanders stated the Developmental Reading Assessment.

Senator Morales asked Ms. Sanders why LLS did not participate in a recent Legislative Finance Committee (LFC) survey. Ms. Sanders thought LLS did participate in the survey, and noted they participated last year. Senator Morales emphasized the importance of using data to make decisions and Ms. Sanders offered to follow up on LLS participation in the LFC survey. She also noted concerns with over-testing students. Senator Morales also expressed similar concerns and suggested the Legislature does not want schools administering tests merely to receive funding.

Senator Ivey-Soto said it was unfair for PED to change the grading system without warning. He pointed out school grades are based on a three-year average, so it may take three years for a school to recover from changes.

Representative Salazar asked about transportation issues in both districts and Ms. Sanders said LLS has used millions in operational funds over the past few years for transportation. She noted students must ride the bus on the 40th day for the school to receive funding for that student. Mr. Perez noted operational funds should not be used for transportation.

Senator Stewart said the Legislature removed the statutory requirement that DIBELS be used as the required assessment for K-3 Plus, but compromise language allowed PED to approve the required assessment. She noted DIBELS is good for a five minute assessment but should not be used for any other purpose. The Chair noted PED may not require DIBELS during FY17.

Senator Sapien voiced concerns over the validity of school grades and noted that his school, Corrales Elementary, has fluctuating school grades. Ms. Sanders agreed it is difficult to compare FY15 grades with previous grades and get a true performance comparison. The best comparison currently is to look at how a school district compared with others. She said it is difficult to explain changes in student standing to students, parents, and the community, and encouraged legislators to address this issue. Mr. Perez is also concerned with the accountability system.

Senator Sapien suggested PARCC scores should not be used in school grades or teacher evaluations for three years. He also noted PED agreed to crosswalk old standards-based assessment data with PARCC data to provide a comparison in performance; PED may be hiring Dr. Pete Goldschmidt on a contractual basis to do this work.

### **Charter Schools: An Overview**

Kevin Force, LESC staff, conducted a pop-quiz on charter schools consisting of 17 questions to separate myths and misconceptions from truth.

First, he asked, “Are charter schools public schools, private schools, or other?” Charter schools are public schools that are required to meet the same state and federal standards as other public schools; they are funded through the public school funding formula and are open to all New Mexico students; they are exempt from certain requirements of the Public School Code and regulations having to do with class loads, teaching loads, and length of school day, though waivers do not relieve charter schools of satisfying underlying obligations.

Next, Mr. Force asked, “Are charter schools bound by requirements pertaining to the length of the school day or minimum instruction time?” Charter schools receive automatic waivers from requirements pertaining to length of the school day, but are not relieved of the duty to provide the minimum required instructional hours per year. He noted it is unclear how virtual charter schools are meeting minimum instructional time requirements.

Third, he asked, “What is the length of a charter school’s charter?” The initial charter term is six years, with the first year used as a planning year; otherwise, the term is five years, with five-year renewals, absent any other considerations or conditions. However, Mr. Force noted some schools are authorized and renewed for less than five years if, for example, their authorizer is concerned about some aspect of their charter or performance framework. He added the Public Education Department (PED) is interested in offering high-performing charter schools extended terms to allow them to better focus resources on their respective missions over the longer charter period.

Fourth, Mr. Force asked, “Is there a limit on the number of charter schools that may be authorized?” Up to 15 charter schools can be authorized annually, with remaining slots rolling over to the next year, up to a maximum of 75 schools in a five-year period. This limit has never been reached.

Fifth, he asked, “Are charter schools part of a school district or are they districts unto themselves?” Locally chartered charter schools are a part of the local school district that authorized them. State-chartered charter schools are considered “local education agencies,” a term analogous to school districts, with some limitations and are considered a component part of PED.

Mr. Force then asked, “Are charter schools required to notify a school district of their intent to apply for a charter to be located in the district?” All charter applicants are required to file a letter of intent that must be sent to both PED and the pertinent school district, even if the prospective school is seeking authorization from the Public Education Commission (PEC).

Mr. Force asked, “May charter schools place limits on the number and types of students they serve?” Charter schools are open to all students who choose to attend, within the school’s enrollment cap. Enrollment is decided on a first-come, first-served basis, or through a lottery, with any remaining students placed on a waiting list. Senator Ivey-Soto noted the limit on enrollment is determined by the authorizer, and is not subject to law.

Next, he asked, “Do charter schools have attendance boundaries?” Charter schools are schools of choice open to any student who wants to apply, regardless of their location, although transportation in these instances may be an issue. While charter schools may draw students from any school district, virtual schools are the most likely to draw students from school districts statewide. This could potentially have a wide-reaching effect on school districts in the state, including an impact on school districts’ state equalization guarantee distributions.

Mr. Force asked, “Do special education students have the same access to charter schools as other students?” All students have the right to enroll or participate in a charter school’s enrollment lottery. The obligation to provide a free and appropriate public education applies to all public schools, which are likewise required to offer individualized education programs (IEPs) to students identified as having special needs.

Next, Mr. Force asked, “Are all charter schools focused on alternative curricula, programs, and missions?” Charter schools are guided by their charters and performance frameworks, which means they have the flexibility to develop nontraditional academic programs or curricula that are innovative or that fit special needs. Some charter schools offer education with an emphasis on science, technology, engineering and mathematics (STEM) courses, arts, or foreign languages, for example, while others have a more traditional approach, and still others are highly experimental. Charter schools are exempt from some requirements of the Public School Code and PED regulations so they may pursue those avenues with greater freedom than traditional public schools. One of the original ideas behind charter schools, he noted, was that in their efforts to offer experimental or focused curricula, structure, and programs, they might act as crucibles to see which new ideas are the most successful, so that those programs and ideas might be transplanted to traditional public schools; however, it is unclear that this happens. Few experimental charter school programs in New Mexico have made the transition from their origin in charter schools to wider dissemination and use in school districts.

He then asked, “Must charter schools participate in the same standardized testing as their traditional school counterparts?” Charter schools must administer the same tests and be evaluated under the same accountability system as their traditional peers.

Next, Mr. Force asked, “May charter schools hire less-qualified staff than traditional public schools?” Charter school teachers must be state-certified and meet all other state and federal requirements to teach and are subject to annual evaluations.

He asked, “Are charter schools responsible for providing transportation to and from school for their students?” While he answered, “no,” he noted that state-chartered charter schools may receive transportation funding, while locally chartered charter schools negotiate with the local school district in which the school is located to provide transportation to eligible students. There is no requirement, however, for charter schools to provide transportation, except pursuant to a student’s IEP. Locally chartered charter schools and their local school districts may establish a transportation boundary that does not exceed the borders of the school district. The Chair noted state-chartered charter schools do not have the restrictions that local charters do.

Next, Mr. Force asked “Are charter schools responsible to the public for the management and success of their programs and students?” While the answer is yes, Mr. Force said that it is not unqualified. Charter schools are directly managed by their governing bodies, which are not elected by public vote. Locally chartered charter schools are overseen by local school boards and state-chartered charter schools are overseen by PEC. Both local school boards and PEC are elected bodies that execute enforceable agreements with charter schools, and in that way, charter schools are responsible to members of the public.

Mr. Force then asked, “Do charter schools receive funding at the same level and by the same mechanisms as traditional public schools?” Mr. Force replied yes, although differences in various formula factors, such as the school-size adjustment factor and the enrollment growth factor, transportation funding, and the withholding of 2 percent administrative offset can result in differences in funding levels for some charter schools compared with school districts. These differences can be exaggerated in the case of virtual charter schools, which are still funded according to the public school funding formula, but have much lower overhead and maintenance costs than traditional brick-and-mortar schools.

Mr. Force noted New Mexico charter schools received 46 percent of public school funding increases over the past seven years despite only serving 7 percent of the student population. The funding formula gives extra weight to smaller schools, which often benefits charter schools, many of which have small enrollments. A recent Legislative Finance Committee (LFC) report noted charter schools dilute money available to all public schools through the school size-adjustment and enrollment growth factors and generally do not outperform traditional public schools. The Chair observed some charter school advocates that are showing different per-student funding levels because they are including capital funding. Senator Ivey-Soto noted, when considering all funding sources, charter school per-student spending totals \$12 thousand per student while school districts spend \$20 thousand per student. During the 2015-2016 school year, Mr. Force said school districts received an average of \$7,638.44 per student while charter schools received \$1,093.47 more, or 14.3 percent, per student (an average of \$8,731.91 per student). Mr. Force added only charter schools are permitted to count basic membership generated in new programs toward enrollment growth units, resulting in the double-funding of these students.

He then asked, “Do charter schools outperform traditional public schools?” PED and LFC analysis has found charter schools performance is not better despite added flexibility.

Last, he asked, “Are state-chartered and locally chartered charter schools eligible for capital outlay funding under the Public School Capital Improvements Act (SB-9) and the Public School Buildings Act (HB-33)?” He answered yes, noting pertinent sections of law.

The Chair asked if a charter school and its students located within a school district benefit when the school district has a mill levy approved, and Mr. Force replied that this should be the case but does not always happen.

Mr. Force confirmed to Representative Trujillo that PEC is the authorizer for all state-chartered charter schools, yet has no staff. Rather, he noted PED staff staffs PEC.

The Chair explained LESC will work all summer on charter school issues and include topics related to authorization, governance, and funding practices. He also noted LESC will discuss performance contracts and invite local and state-chartered charter schools to testify in July.

### **Excellent Schools New Mexico**

Scott Hindman, Executive Director, Excellent Schools New Mexico (ESNM), discussed his role as Chief Financial Officer and Director of Finance and Operations of the Achievement School District in Memphis, Tennessee. The school district, mainly consisting of low-income African-American students, was formed with federal Race to the Top grant funds.

Mr. Hindman was hired by Bellwether Education Partners as the Founding Director for ESNM in 2015, and he discussed ESNM’s three strategic goals: funding new charter school start-up and expansion costs; funding teacher talent initiatives; and community engagement and education about school performance and choice. Mr. Hindman noted ESNM received grant funding from the Daniels Fund to carry out these strategic goals.

In support of ESNM’s strategic goals, Mr. Hindman stated a number of charter schools have significant waiting lists. He noted 260 students have applied for 180 seats at the South Valley Academy in Albuquerque and cited this as justification for the need for an organization such as

ESNM in New Mexico. Mr. Hindman explained ESNM is seeing more demand from other organizations.

Mr. Hindman referred to an economic development study done by Eric A. Hanushek, Jens Ruhose, and Ludger Woessmann, to determine what New Mexico's gross domestic product (GDP) would be over the next 80 years if New Mexico performed at the same level as Minnesota, the top state in the study; the researchers noted New Mexico's GDP would increase by \$720 billion over that time period if the state performed similar to Minnesota or \$642 billion if the state performed at a level similar to Montana (the best performing state in the Rocky Mountain region).

Mr. Hindman noted he is looking for feedback and is working with charter school operators that are interested in this opportunity.

Senator Morales asked Mr. Hindman about collaboration with the Public Education Commission (PEC) and the New Mexico Coalition for Charter Schools (NMCCS). Mr. Hindman presented to PEC in March and has spoken with several commissioners individually. He noted that NMCCS and ESNM support each other in many ways despite having some differences. Mr. Hindman added that Greta Roskom, Co-Executive Director, NMCCS, has been helpful, but emphasized that NMCCS is focused on policy while he is focused on operations at this time. Senator Morales, asked for clarification regarding ESNM's main goal of improving school performance, and Mr. Hindman answered his goal is to expand quality in schools and communities whether it is at the school district or charter school level.

Senator Morales commented that the Legislative Finance Committee (LFC) recommended a freeze on any new programs and asked Mr. Hindman whether he has talked to LFC. Mr. Hindman confirmed communication with LFC and noted LFC supported ESNM in some ways, such as access to options, though rationales were often different from his own. Mr. Hindman explained charter schools are 3.5 times more likely to receive "A" school grades than traditional public schools. Senator Morales asked whether Mr. Hindman is interested in ESNM becoming a charter school authorizer and Mr. Hindman replied "no."

Mr. Hindman suggested the highest performing charter schools should serve low-income students. He noted he compared selected New Mexico charter schools with other charter schools nationally to compare growth and demand. Senator Morales expressed skepticism about programs in other states that may or may not work in New Mexico. Mr. Hindman noted he has been in contact with LESC, LFC, NMCCS, and a broad network of people in the business and nonprofit sectors supporting students along the I-25 corridor.

Senator Morales asked if the ESNM board was hand-picked, and Mr. Hindman answered "no," stating that Patrick Mason, a Gallup attorney, launched ESNM. Senator Morales expressed concern over a lack of diversity among charter school governing board members and noted issues related to charter school directors who choose their own board members. Mr. Hindman noted ESNM is a nonprofit board and partners like the Daniels Fund, the Broad Foundation, and Thornburg Foundation, require a funding match and metrics before they contribute.

Representative Trujillo asked Mr. Hindman about Mr. Mason's law clients and Mr. Hindman mentioned a consulting firm that does planning for education organizations. Representative Trujillo also asked if ESNM prefers working with state-approved or locally approved charter

schools. Mr. Hindman noted his organization does not have a preference. Representative Trujillo asked if any of the schools that are working with ESNM are receiving money from the Daniels Fund; Mr. Hindman was unsure and noted ESNM does not have any influence over how the Daniels Fund allocates their resources. Representative Trujillo asked if there is a cap on charter schools and Rachel S. Gudge, Director, LESC, answered there is a cap of 15 per year over a five-year period, or a total of 75 schools over that time. Caps on enrollment are established in the charter contract. She also noted the Legislature is not involved in the process.

Senator Candelaria observed that Mr. Hindman mentioned the economy and asked how ESNM adds value and makes charter schools more accountable to ensure students perform better. Mr. Hindman said it starts with establishing metrics; his organization will work with school personnel to identify things like what curriculum they will use and what kinds of teachers should be hired. Mr. Hindman noted his organization will look for similarities and differences in how students are taught and consult with families and students to find out what they need.

Senator Candelaria noted consulting with teachers and local stakeholders is a move in the right direction and indicated he wanted to learn more about ESNM. He said it seems like this model was developed and tested in other places with similar issues between traditional schools and charter schools, unions, and school boards, etc. Senator Candelaria advised Mr. Hindman to build trust with other education stakeholders before the legislative session begins.

Representative Stapleton noted it seems like outsiders are trying to take advantage of lenient New Mexico laws. Mr. Hindman again noted the waiting lists at many high-quality charter schools and clarified his goal is to ensure students are better served by the public education system; his group is not forcing anyone to open new charter schools but will work with individuals who want to open a new charter school. Mr. Hindman explained ESNM will be providing grant assistance for new start-up schools. Representative Stapleton asked what school choice means to ESNM, and whether closing charter schools is part of that choice. In reply, Mr. Hindman expressed a desire to have conversations based on data.

Representative Roybal Caballero noted concerns over out-of-state entities attempting to correct in-state issues that are legislative responsibilities. In addition to the handout calling for a fundamental change in the state's education system, she also found fault in associating schools with state and federal government structures, since public schools are operated through elected school boards. She then asked Mr. Hindman to provide some examples of how national models are integrated with New Mexico, and he explained that the primary focus of ESNM is to fund the growth of schools. He noted ESNM will support initiatives that teachers and schools develop and provide through feedback. Representative Roybal Caballero added New Mexico is aware of the issues impacting education delivery, and the inability to address those issues and noted she did not see any information on how ESNM will address social and academic achievement gaps.

Representative Youngblood suggested focus has to be placed on need and said it would be a gift to replicate successful programs that could benefit more students. Mr. Hindman noted Memphis provided more charter school access to low-income students and encouraged schools to reduce their wait lists. He noted the task is difficult and requires capital resources to be successful. Representative Youngblood voiced support for replicating high-achieving schools.

The Chair discussed charter school growth issues and small school-size adjustment units in the funding formula, which appear to undergird the charter school establishment in the state. He



suggested if demand for charter schools existed they should be able to grow rather than remain small at additional cost to the state. In reply, Mr. Hindman said he has taken notice of the small size of New Mexico charter schools and would support identification of solutions to allow charter schools to grow. Regarding quality and performance, the Chair said the charter school authorization process leads to mixed results, though authorizers always promise high-quality charter schools. The Chair asked Mr. Hindman how high-quality can be assured when schools are authorized, and Mr. Hindman explained this is why ESNM leans heavily on replication strategies to provide assurance data in advance.

The Chair asked Mr. Hindman how he would address low-performance, and Mr. Hindman indicated that looking at generational poverty is a good place to start. He explained achievement numbers will typically be low, which creates an opportunity for large growth. Mr. Hindman also emphasized schools in New Mexico should be reviewed on a case-by-case basis. In Memphis, he said there were consequences for schools that had an opportunity to improve but did not.

The Chair observed members are not satisfied with the status quo and have differing opinions on how to improve. He emphasized the need for high performance and having new schools come online with adequate funding that does not impact traditional schools.

### **Public Education Department Initiatives to Improve Access to High-Quality Charter Schools**

Katie Poulos, Director, Options for Parents, Public Education Department (PED), and Matt Pahl, Director of Policy, PED, presented the Charter Schools Division's strategy for charter schools.

Ms. Poulos noted 99 charter schools currently operate in the state, 62 of which are chartered by the Public Education Commission (PEC) and 37 by local school districts. She indicated approximately 41 percent (39 schools) of charter schools received an A or B grade and approximately 32 percent (31 schools) received a D or F grade. One hundred charter schools will be operating in FY17.

The implementation of effective, rigorous charter school authorizing practices with clear expectations for both authorizers and schools are necessary to maintain charter school quality in the state. PED wants to implement targeted evaluations of academic, organizational, and financial performance at charter schools to both increase the quality of existing charter schools and provide operators information necessary for starting successful new schools. Ms. Poulos indicated schools showing poor performance should be subject to greater oversight; conversely schools with data demonstrating greater effectiveness should be afforded greater autonomy.

Ms. Poulos explained PED must focus on four key areas:

1. Recognizing, rewarding, and supporting the growth and expansion of effective and high-quality charter schools;
2. Improving evaluation and reporting processes to substantiate imposition of disciplinary action on poorly performing charter schools;
3. Improving charter school support and communications to improve financial, academic, and organizational outcomes; and
4. Reforming governing body training and requirements to enhance governance quality.

Ms. Poulos discussed PED's efforts to differentiate requirements for effective charter schools from ineffective ones. She noted high-quality schools should be afforded some relief from administrative requirements, and should be supported at all levels. The department is collaborating with stakeholders, including the New Mexico Coalition for Charter Schools (NMCCS), to disseminate best practices of high-quality charter schools; to that end, PED and NMCCS are working on a federal grant to help fund such dissemination efforts.

Issues having to do with audits and background checks have made apparent charter schools' needs for help meeting performance goals. Greater evaluation and reporting will help with this issue. Ms. Poulos noted PED increased the number and quality of site visits, helps schools with staff hiring and attendance issues, and provides meaningful early review of new schools to quickly intervene and address performance concerns.

Ms. Poulos emphasized PED is providing consistent and meaningful technical assistance and communications to charter schools, along with increased training to address issues with governance, performance, applications, planning year requirements, and renewal. The Charter Schools Division (CSD) at PED offered training to ensure cross-division and -department collaboration and support.

Ms. Poulos noted PED should also continue to focus on rigorous governing board training so members better understand their roles and responsibilities. For example, PED recently conducted training with staff from four charter schools and will hold its first governing board training session on July 23. She said the department plans to increase the number of people providing the training and to expand included content.

She stated success means seeing an increase in the number of effective, high-quality schools, achieving measureable improvements in the performance of struggling charter schools, closing low-performing charter schools, and demonstrating improved organizational and financial performance for all charter schools. She noted PED's FY15 audit included numerous charter school findings and all implicated charter schools have been required to submit corrective action plans.

Mr. Pahl noted these priorities were presented to LESC in May as PED interim priorities for 2016. PED wants to reward high-quality charters by granting 10-year charter terms to relieve them of administrative burdens of more frequent renewal requirements to focus attention on better serving their students. Longer charter terms might also give banks more confidence in lending to these schools. He indicated that capital outlay funds currently unavailable to charter schools might be made available if longer terms were possible. Mr. Pahl also discussed creating a pathway for charter replication that removes some restrictions, such as enrollment caps, for successful schools. Finally, he noted PED would like automatic closure provisions for low-performing charter schools that demonstrate chronically low academic, fiscal, or organizational performance, with the caveat that unique charters serving unique populations should be exempt from such potential closure.

Regarding authorization of only high-quality charter schools, the Chair inquired about the perception that PED overrode applications previously rejected by PEC. Mr. Pahl acknowledged a difference in opinion between PED and PEC as to what charter school success looks like; however, PED and PEC are getting closer to an agreement.

Regarding the implementation of Laws 2011, Chapter 14 (Senate Bill 446), *Charter School Contracts*, Senator Sapien noted the initial rollout of the new law was poor and did not appear to comply with the intent of the bill. In reply, Ms. Poulos noted she reviewed the performance frameworks and pushed her team to show schools are actually meeting standards. She noted greater clarity on the implementation of performance frameworks.

Mr. Pahl noted many of PED's proposals work around the performance framework, PED sees it as a great tool, but agreed there could be more robust leveraging of the contract so it becomes a more meaningful tool for the authorizers and schools. Senator Sapien observed the state's ranking on charter school policies and laws rose from 38th to third with enactment of SB446, but questioned whether negotiations between charter school and their authorizers were really happening. Ms. Poulos noted state-chartered charter schools are directly negotiating with PEC on specific academic performance measures. Senator Sapien then asked why policy changes were not possible through the negotiation process, and Ms. Poulos said that implementation is differentiated to optimize state resources. Senator Sapien also expressed concern that reduction of oversight for high-performing charter schools could lead to lower performance; he also expressed concern over the prospect of 10-year renewals, citing major fluctuations in school grades annually.

Senator Stewart asked Mr. Pahl about going to the Public School Capital Outlay Council for more charter school money, noting the fund balance has declined. Mr. Pahl said charter schools are having difficulty obtaining matching funds, but that not every school should have a building built for them; rather, the best path may be to update older buildings. Senator Stewart said school districts are using mechanisms to provide facility funding for charter schools, noting the Albuquerque Public Schools bond election earmarked \$56 million for charter school projects. Mr. Pahl acknowledged efforts in Las Cruces and Albuquerque to help charter schools, but explained charter schools in other communities are still having problems. Senator Stewart noted a charter school in Silver City was offered space at a high school which is 50 percent occupied but turned the facility down to make a request for a new facility.

Senator Stewart said she still disagrees with PED about the definition of "high-quality school" and is concerned PED will authorize the designation without legislative approval. She noted concerns with the school grading system and teacher evaluation system, stating research shows standardized test scores are better determinants of socioeconomic status than academic performance. After citing the need for consensus on what high-quality means, Senator Stewart asked Ms. Poulos about the Albuquerque Sign Language Academy (ASLA) and the tests given to deaf students, Ms. Poulos stated ASLA students achieved more than a year's growth in one year. Ms. Poulos agreed to follow up and provide Senator Stewart an answer.

The Chair asked Mr. Pahl about banks preferring a 10-year authorization for charter schools, and wanted to know if any banks requested it in writing. Mr. Pahl said he has heard this anecdotally, but will follow up on the issue.

The Chair then asked Ms. Poulos if she is working with PEC to provide training for charter school governing board members, and Ms. Poulos said her division provides staff support and attends every PEC meeting. Additionally, PED offers training to new PEC members at the discretion of the commission and invites them to governing board trainings. The Chair asked how PEC and CSD resolve disagreements. Ms. Poulos said PED provides rationales for their recommendations weeks in advance. Representative Trujillo noted PEC will be presenting at the

next LESC meeting and asked whether PED will be providing them with support, and Ms. Poulos answered in the affirmative.

Senator Soules commented the justification for charter schools when he was a board member was that they were legitimate crucibles for experimenting with innovative ideas to improve education, but that now the rhetoric appears to be around “school choice” and “mission orientation.” Ms. Poulos noted early college high schools are a charter school innovation and the federal grant to provide funding to identify highly effective practices benefits all schools.

Senator Soules asked if schools recommended for closure are afforded due process, and Ms. Poulos replied that PED makes expectations in this area clear. Senator Soules, however, suggested PED needs enough staff to ensure schools in need are provided adequate help from PED.

Representative Salazar inquired about budgeting issues created by new charter schools, and Rachel S. Gudgel, Director, LESC, said charter schools are the only entities that can open without legislative budget approval and there generally has been no new funding appropriated annually to cover the cost of new charter schools, which results in dilution of the unit value.

#### **New Mexico Coalition for Charter Schools 2016 Interim Priorities**

Kelly Callahan and Greta Roskom, Co-Executive Directors for the New Mexico Coalition for Charter Schools (NMCCS), discussed the coalition’s 2016 interim priorities. They noted the coalition invited LESC and the Public Education Department (PED) to its interim meetings, hoping the collaboration will lead to well-crafted and -researched suggestions for potential legislation.

Ms. Roskom indicated NMCCS formed three committees to focus on its main interim priorities: funding, facilities, and accountability. The funding committee was formed to address Senate Bill 141 (2016), *Public School Funding Formula Amendments*, which Ms. Roskom noted was a contentious bill. Committee members include charter school leaders and school business managers, representatives from LESC, PED, the New Mexico Business Roundtable, and Senator Daniel A. Ivey-Soto. The committee examined potential alternatives to funding formula changes included in SB141, hoping to have less impact on charter schools, such as comparative funding for charters and traditional schools including all funding sources, not just the operational funding allocated through the state equalization guarantee (SEG) distribution.

Ms. Roskom noted that while LESC has heard much on the topic of charter school facilities, the committee may not be aware of all NMCCS is working on. For example, noting that most charter schools are within the boundaries of Albuquerque Public Schools (APS), \$58 million was made available through the Public School Buildings Act (commonly referred to as HB-33) for charter school capital projects with the passage of the APS bond election in February. Other approaches being discussed include removal of enrollment caps, differentiated funding schemes based on school mission, a new, separate funding formula factor for charter schools, and other facility funding solutions for charters.

Ms. Callahan noted NMCCS was approached by the Colorado League of Charter Schools, the grant operator in that state, which is surveying several states to determine what kinds of funding are available for charter schools to acquire facilities and what challenges charter schools face.

Their analysis may help with financial planning; the report will be shared with policymakers when it is released in the fall.

Ms. Roskom noted a third NMCCS committee is studying accountability issues and is working with interested stakeholders, PED, and a Colorado-based company, Momentum Strategy & Research, to review alternative accountability language for those few charter schools serving special needs or disadvantaged populations. The coalition believes between 30 percent and 40 percent of charter schools in New Mexico target high-needs students and should be protected from automatic closure resulting from poor performance. She suggested PED should modify its report card with alternative accountability measures that better reflect the work these schools are doing.

The Chair asked whether the funding spreadsheet compiled by NMCCS included private donations and Ms. Callahan answered “no,” stating NMCCS pulled all public funding amounts from PED’s Operating Budget Management System (OBMS). The Chair asked if school districts knew their data was mined, noting that he was unaware others could log in to view the information, and Ms. Roskom stated Michael J. Vigil, Founder and CEO, Vigil Group, LLC, accessed the data on behalf of NMCCS. Ms. Callahan also indicated the business managers on the NMCCS committees have access to OBMS data as well.

The Chair asked how the NMCCS committees were formed, and Ms. Roskom stated they asked people with expertise to volunteer. She observed that 37 people attended the last meeting, indicating great interest in the work. After acknowledging Senator Ivey-Soto’s role, the Chair found it curious that no members of the House or Senate Education committees were invited, as any potential legislation will necessarily come before those committees.

Senator Sapien thanked the presenters, but wondered why he, given his work in this area, had not been invited. Ms. Callahan replied they intended to come to LESC with ideas and suggestions fully formed, but extended an invitation to members, while Ms. Roskom suggested developing a process to keep LESC members informed.

Regarding the spreadsheet comparing school district funding with charter school funding, Senator Sapien asked why NMCCS does not include nonpublic funds in its comparison since it includes sizeable grants and donations, and enhance both sides of the funding argument. Ms. Roskom answered they wanted to examine equitable spending of public dollars, since the SEG is where inequities seem to arise. Charter schools set up foundations for the solicitation and collection of private funds, which are not reported to the state. Senator Sapien acknowledged this, but said public schools do not have the capability to access private funds and said any discussion of funding equity should include all potential sources, including private donations.

Senator Ivey-Soto sent a copy of the spreadsheet comparison to LESC staff to inform discussion. He noted it is encouraging that we have education partners in the traditional or charter school systems who apply for private grants and funding, but that is not required of them. Noting, for example, that if all fund sources were considered, per student funding at Mosquero Municipal Schools would be around \$83.3 thousand per student, and Vaughn Municipal Schools at over \$50 thousand per student, he encouraged members to review the spreadsheet. Senator Ivey-Soto thinks changes need to be made to the formula, and appreciated conversations with the Chair about placing funds in appropriate categories to be honest about the purpose of the funding. He

further noted school-size adjustments should be addressed by disallowing the adjustment when there are multiple school campuses on the same property.

Senator Sapien noted he had not seen the spreadsheet, but noted capital funds are not guaranteed, unlike SEG. He inquired whether spikes for capital improvements and lease purchase agreements were reflected in the spreadsheet. Ms. Roskom said “yes,” though charter schools vary widely and it can be difficult to draw conclusions, since the formula works differently to address the needs of each school. She acknowledged the presence of some anomalies and inconsistencies, which would require more careful consideration.

Senator Ivey-Soto said he would prefer a comparison of five years of funding data. With charter schools, PED assumes the facilities are in place before approving their budget. Senator Sapien said when the original charter school law passed in the 90s, funding was not anticipated for facilities nor were lease payments anticipated either.

The Chair suggested a compromise approach to the funding spreadsheet that included all funding sources but disaggregated dollars by funding source and purpose.

Senator Morales noted the charter schools could have had more input in the development of SB141, but noted it was endorsed by both LESC and the Legislative Finance Committee (LFC), which is rare, and asked if LFC is participating in the NMCCS committees. Ms. Roskom stated LFC had not yet been invited but that they would be attending LFC meetings and contact Charles Sallee, Deputy Director for Program Evaluation, LFC, to present to the NMCCS committees. Senator Morales then asked if the spreadsheet was done voluntarily or if it was paid for. Ms. Roskom replied it was assembled by Mr. Vigil who volunteered to do the work. Senator Morales expressed some apprehension over accessing school district data while school districts were unaware, and said he hopes to hear more on this issue to prevent school districts from being caught off guard.

### **Director’s Report**

#### ***a. Approval of April 2016 LESC Minutes***

On a motion by Senator Sapien, seconded by Senator Morales, the committee approved the minutes for the April 2016 interim meeting.

#### ***b. Administrative Rulemaking***

Kevin Force, LESC staff, cited two entries in the *New Mexico Register*. First, the Public Education Department (PED) published a Notice of Proposed Rulemaking in the May 31, 2016 issue of the *Register*, announcing amendments to Part 6.10.7 NMAC, “Statewide Standardized Testing Security Issues and Irregularities.” The rulemaking proposes to eliminate language that prohibits disparaging or diminishing the significance or importance or use of standardized tests in Section 6.10.7.11, “Staff Responsibility.” Mr. Force noted this rulemaking arises from a lawsuit filed by the American Civil Liberties Union on March 30, 2016, alleging the rule unconstitutionally restricted free speech and violated due process rights and the right to a public education.

The April 30, 2016 issue of the *Register* included final adoption of rules for early childhood educator, athletic coach, and school business official licensure, at Parts 6.61.8, 6.63.8, and 6.63.12, NMAC, respectively. Adopted rules for early childhood licensure included definitions for such terms as “adaptive living skills,” “at-risk,” and “intervention strategies,” as well as

requirements for licensure and required teacher competencies. Amendments for the licensure of athletic coaches include required verification of training in sports first aid and CPR (cardiopulmonary resuscitation) as approved by the New Mexico Activities Association. Finally, amendments adopted for the school business official licensure would permit licensing of persons who have a high school diploma, or equivalent, at least five years of verifiable experience working under a licensed school business official, and 40 hours licensure credit for school business official license continuing education. Staff presented the initially proposed changes at the November 19, 2015 LESC meeting; the proposed rules were adopted on April 30, 2016 without change.

The Chair also discussed a proposed rule change by the Educational Retirement Board (ERB) that would include all substitute teachers who work up to .25 full-time equivalent as ERB members. School districts would be obligated to pay the employer portion of the ERB contribution for qualifying substitute teachers and the employee would be required to contribute to the fund. The rule was tabled at an earlier public hearing over concerns raised by Rio Rancho Public Schools regarding the extra, unplanned expenses of increased contributions. Figures offered by Albuquerque Public Schools indicated it will cost \$750 thousand in additional contributions. Affected substitute teachers, who might never qualify for ERB benefits, will be required to contribute up to 14 percent of their pay under the proposed change. The Chair encouraged Mr. Force to follow the rule's progress and keep LESC informed in case the committee chooses to take an official position on the proposed changes.

### ***c. Informational Items***

Rachel S. Gudgel, Director, LESC, reported the following items were included in the meeting materials for the committee's review:

- a Legislative Finance Committee general fund revenue report dated June 1, 2016, indicating revenues for FY16 are tracking lower than anticipated in January 2016;
- a guidance dated May 13, 2016, from the U.S. departments of education and justice related to the civil rights of transgender students; and
- a PED document dated May 5, 2016, related to academic proficiency and student promotion decisions for students in first through third grades.

Representative Trujillo asked whether teachers will be required to report data that complies with the PED document and the Chair said school district personnel, not teachers, will fill out the report. Representative Trujillo also noted the letter gives parents the ability to opt out of retaining their child, and the Chair noted parents must sign the waiver option stating the school district informed them of their child's reading deficiency and the school district's recommendation to retain the student.

Senator Stewart asked the Chair if the promotion form is standard policy or new, and the Chair said it is new; Senator Stewart requested to see the student promotion data collected by PED. The Chair noted this as a request.

Representative Roybal Caballero asked if the form will be translated in languages spoken in the districts. The Chair said that districts are obligated to provide documents to parents who speak other languages.

Senator Sapien commented he is happy to see PED requiring school-district reporting to better inform the retention conversation and identify whether there is a problem before implementing a mandatory retention policy.

There being no further business, the Chair with the consensus of the committee, recessed the LESC meeting at 4:08 p.m.

**MINUTES  
LESC MEETING  
June 16, 2016**

Representative Dennis J. Roch, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 8:40 a.m., on Thursday, June 16, 2016, in the Elfego Orona Performing Arts Center, Los Lunas High School, Los Lunas, New Mexico.

The following voting and advisory members were present:

**Voting:** Representatives Dennis J. Roch, Chair, Tomás E. Salazar, James E. Smith, Sheryl M. Williams Stapleton, Christine Trujillo, and Monica Youngblood; and Senators John M. Sapien, Vice Chair, Craig W. Brandt, and Howie C. Morales; and

**Advisory:** Representatives Alonzo Baldonado, D. Wonda Johnson, and Patricia Roybal Caballero; and Senators Jacob R. Candelaria, Linda M. Lopez, Michael Padilla, John Pinto, William P. Soules, and Mimi Stewart.

The following voting and advisory members were not present:

**Voting:** Senator Gay G. Kernan; and

**Advisory:** Representatives Jim Dines, Nora Espinoza, David M. Gallegos, Stephanie Garcia Richard, Jimmie C. Hall, Timothy D. Lewis, G. Andrés Romero, and James G. Townsend; and Senators Carlos R. Cisneros, Lee S. Cotter, Daniel A. Ivey-Soto, and Pat Woods.

Also in attendance was Senator Clemente Sanchez.

**National Trends in the Teaching Workforce and the Teacher Ecosystem**

Joseph Hettler, Partner, The New Teacher Project (TNTP), briefed the committee on national trends in the teaching workforce and the teacher ecosystem. He stated TNTP was started in 1997 by teachers who believed all students deserve great teaching, and he said research indicating students with at least one highly effective teacher are less likely to have children as teenagers, more likely to attend college, earn a higher salary, and save more for retirement.

Mr. Hettler reported there is a gap between teacher supply and demand at the national level, which is expected to grow in the coming years. Increased student enrollment, the retirement of baby boomer teachers, and a generational shift toward shorter careers will likely amplify long-term demand. He continued by stressing the importance of social media campaigns to develop teacher recruitment pipelines. Additionally, data tracking and effective use of recruitment funding are key initiatives in reaching out to prospective teacher candidates.

Mr. Hettler noted teaching fellowships, such as Teach for America or TNTP's residency program in New York, are valuable tools to recruit teachers. He also stated it is important to identify



teacher vacancies earlier in the year, sometimes as early as March, because this is the best time for school districts to recruit qualified teachers. Vacancies can be identified by surveys and interviews to assist key personnel in knowing the numbers, which can benefit both job seekers and school districts.

To summarize, Mr. Hettler spoke about challenges of student learning and high attrition rates putting a strain on hiring needs. He said he can focus on other pipelines and updating school district policies and practices to begin hiring earlier in the school year to improve recruitment strategies.

Senator Soules noted it was important that Mr. Hettler described the decrease in numbers of teachers going into teacher preparation programs, which in turn gives school districts less options for hiring qualified teachers. Mr. Hettler stated early hiring could indicate which school districts are operating at a higher level, and their processes can be viewed as best practices to help other districts improve their own processes. Also, he stated different pipelines fill distinct needs, such as a paraprofessional pipeline that can operate from the state level in a supportive environment.

Senator Stewart said she would like the state to promote the kind of professional development driven by teachers at each school district, and school districts with best practices could share information through a teacher resource center. Mr. Hettler agreed it is important for teachers to take a leadership role in initiatives in their school districts, such as establishing learning communities and enhanced professional development opportunities.

The Chair mentioned there is decreased interest in teaching making it more difficult to find teachers for high-needs schools. Mr. Hettler noted this is a struggle in many states, and he suggested it was vital to highlight the advantages of teaching in New Mexico. He recalled how Tennessee recruited unemployed teachers from New York and mentioned it is important to allocate money for teaching in high-needs communities. Mr. Hettler noted research indicates performance of teachers in high-needs communities is better when there is mutual consent between the community and teacher, effective incentives, more teacher preparation time, and additional opportunities for teachers to gain a leadership role. For instance, in Tennessee there are innovation zones that allow financial incentive-pay programs and additional supports to assist teachers in low-performing schools.

Representative Roybal Caballero stated school district curriculum needs shifted from the traditional delivery of community-based to a nontraditional private focus. She suggested holistic approach will attract more resources to New Mexico. Mr. Hettler said TNTP focuses a lot of its work on populated areas and is starting to shift to more rural areas. In addition, TNTP offers cultural classes and training to help new teachers understand cultural concepts.

### **Alternative Pathways to Educator Licensure that Address Teacher Shortages**

Joseph Hettler, Partner, The New Teacher Project (TNTP), discussed alternative pathways to educator licensure that address teacher shortages. According to the National Center for Education Information, two out of five new public school teachers hired in all states since 2005 came through alternative teacher preparation programs. Mr. Hettler noted there are three changes in the federal Every Student Succeeds Act that are related to alternative certification requirements, including: elimination of the highly qualified teacher requirements; new ways to use federal Title II funding, where 5 percent can be used to address the cost of teacher

preparation programs such as teacher residencies and teacher academies; and evaluating alternative programs for effectiveness.

TNTP focuses its efforts on three models for teacher preparation programs, which include supporting effective educator development (SEED) partnerships, university residency programs, and paraprofessional partnerships. He said content is aligned to a school district's instructional materials and academic standards, and prospective teachers receive hands-on training, student teaching experiences, and expert coaching from experienced teachers.

In conclusion, he said each model is focused on increasing the number of effective teachers in high-need schools. Through the SEED grant, TNTP partnered with three large urban school districts to train new teachers, ensure a quality workforce, and support innovation. For university residency programs, undergraduates train during a year-long residency in a high-need school, learn the craft of teaching from experienced educators, and graduate with a degree in their current major and a teaching certificate. Paraprofessional partnerships collaborate with online universities to provide paraprofessionals with low-cost and efficient opportunities to earn a bachelor's degree and teacher certification.

Michelle Exstrom, Education Program Director, National Conference of State Legislatures, discussed alternative licensure pathways to address teacher shortages. She discussed reports of declining enrollment in teacher preparation programs and noted teachers are leaving the field or retiring at a rate of nearly 50 percent after five years.

States addressing teacher shortages are implementing various initiatives, including salary increases, market-based pay, career ladders, teacher cadet programs, strategic partnerships between teacher preparation programs and school districts, and recruitment of teachers in high-need areas and subjects.

In conclusion, Ms. Exstrom discussed international comparisons with world-class education systems, such as Finland and Singapore, to show the United States can learn from them. The international systems are successful because they are aware of how many teachers are needed in each subject area, have rigorous preparation programs, alternative certification is not an option, and have low teacher turnover. Currently, Indiana, Kentucky, and Delaware are implementing their state policies to have similar benchmarks as the international countries.

Representative Roybal Caballero asked Mr. Hettler if TNTP has worked with states that have similar demographics to New Mexico. Mr. Hettler said TNTP is currently working with 25 states, and Arizona is the best state to compare New Mexico to in terms of demographics.

Senator Morales noted New Mexico ranks last among nations that have taken the Program for International Student Assessment. He asked which countries were top-ranked and Ms. Exstrom said Finland, Poland, Estonia, Canada, Singapore, and China. Senator Morales asked if the poverty levels of those countries were available and Ms. Exstrom offered to send information on these countries. Senator Morales noted when poverty is taken into account to level the playing field, the United States ranks second. He noted every student is educated in the United States, regardless of economic status, and it is important to implement programs that alleviate poverty and show an academic correlation.

Senator Soules asked Ms. Exstrom if there are educational reforms which utilize elements of international initiatives that are successful in other states. She stated that Indiana, Kentucky, and Delaware have established stakeholder groups that are willing to identify and study successful international initiatives that could be successful in their individual states. It is important to establish a cohesive educational system by communication and collaboration with key stakeholders and to implement what is best for New Mexico's diverse population.

### **Tour of Los Lunas High School**

Dan Padilla, Principal, Los Lunas High School, conducted a tour of the high school.

### **Every Student Succeeds Act (ESSA) Update**

Lee Posey, Federal Affairs Counsel, National Conference of State Legislatures, provided the committee with an update on the federal Every Student Succeeds Act (ESSA). She gave a brief overview of the law noting the U.S. Department of Education (ED) is negotiating rulemaking for key ESSA provisions and state consultation meetings with stakeholders should begin soon.

Ms. Posey noted there is increased state responsibility, rather than the federal oversight states endured under No Child Left Behind Act of 2001, which includes: specific accountability systems states will implement; assessment of school performance; and strategies to turn around low-performing schools. Teacher evaluation systems are no longer required, but teacher equity must still be considered to prevent shortages of effective teachers in high-need areas.

She reviewed the required indicators including academic achievement, progress, and measures. Indicators are required to be disaggregated by student subgroups, including: economically disadvantaged students; students from major racial and ethnic groups; children with disabilities; and English learners (EL). States are now required to collect subgroup data on children in foster care, homeless children, highly mobile students, and military children.

Ms. Posey said changes were not made to math and reading assessment requirements and schools are still required to meet the 95 percent participation rate for tests; consequences for failing to meet the 95 percent participation rate will be established by the state. States can choose their own assessments or use a state-approved nationally recognized assessment like ACT. She also noted alternative assessments for students with the most significant cognitive disabilities can be given up to 1 percent of those students; however, school districts can exceed the cap by obtaining a waiver from the requirement. She said tests for ELs must assess ELs with appropriate accommodations, be in the language most likely to yield reliable information about what the student can demonstrate, and ELs will be required to be assessed in reading and language arts in English if they have been in the United States for three years.

She cited changes to Title I and Title II funding. Specifically, the Title I set-aside of 7 percent is to be used for school improvement, and there are broad uses for new student support and academic enrichment grants. She said these grants provide all students with access to a well-rounded education, improve school conditions for student learning, and improve the use of technology to improve the academic achievement and digital literacy of all students. If New Mexico is fully funded, Ms. Posey said, the state should receive over \$13 million. Title II funding will increase by 5.2 percent, from \$18 million in FY15 to \$19 million in FY23.

In conclusion, she briefed the committee on early education provisions, including \$250 million for preschool development grants.

Senator Stewart asked Ms. Posey about other states' efforts on Title I state plans and stakeholder engagement. Ms. Posey said in most states someone has played the role of the convener, usually the state secretary of education. However, the law does not indicate who is in charge of setting up and obtaining stakeholder input. ESSA requires the governor to have a specified time period to review the state's accountability plan and give final approval before it is submitted to ED. It also requires the state to collaborate with stakeholder groups on the accountability plan, including the governor, the Public Education Department (PED), teachers, legislators, charter schools, parents, and representatives of Native American tribes. Ms. Posey said states are not required to conduct stakeholder consultation meetings in any particular way but they do have to do this in a timely manner. She also noted Washington State has already coordinated a detailed stakeholder engagement plan that includes processes for working groups and larger groups.

The Chair noted New Mexico, like many other states in the country, is in the initial phase of establishing a process for the state's accountability plan. Ms. Posey stated it is in a state's best interest to reach out to key stakeholders and move forward with the process if the state educational agency is not moving forward with the state's Title I accountability plan.

Senator Morales asked about the 95 percent rule in assessment participation. Ms. Posey indicated there could be consequences, including Title I funding shifts, if the 95 percent test participation rate is not met. It is up to each state to determine the consequences if that threshold is not met. If students opt out, they are still required to be counted toward the participation rate under ESSA.

Joe Guillen, Executive Director, New Mexico School Boards Association (NMSBA), reported on the National School Boards Association meeting in Washington D.C. He stated NMSBA informed the New Mexico congressional delegation that it would be in the state's best interest if flexibility went to the local level and not just state level. NMSBA wrote a letter to PED informing the department that NMSBA wants to be involved in the process as there is limited time for public comment of ESSA's federal regulations.

### **Pipeline Trends In College of Education Programs**

Dr. Lora Bailey, Dean, School of Education, New Mexico Highlands University (NMHU); and Jesse Chenven, Interim Director of Education Programs, Central New Mexico Community College (CNM), discussed pipeline trends in college of education (COE) programs.

Dr. Bailey stated community college students enrolled in New Mexico only have a 15 percent chance of graduating. Rural students graduate at a rate of 18 percent. She noted four factors contribute significantly to the bachelor's completion rates of two-year community college students: average student socio-economic status; urban or rural; selectivity; and the university sector. To allow community college students transferring to four-year institutions to be successful, COEs must work to define substantive articulation agreements and collaborate to develop and strengthen articulation agreements with specific graduation outcome measures.

Dr. Bailey concluded by presenting the committee with additional legislation to consider, which included: college students and their efforts to pay tuition associated with earning educator licensure at the bachelor's level; kindergarten through 12th grade teachers and their efforts to be retained in their current teaching positions; COEs and their efforts to recruit the highest achieving students into education careers; and public school advocates and their mission to increase the effectiveness of schools to graduate students who might later become teachers.

Mr. Chenven discussed CNM's education programs and noted CNM students transfer into four institutions of higher education. CNM started the alternative licensure program in 2007 with a focus on elementary education, secondary education, and special education (SPED). The program also offers coursework for the Teachers of English to Speakers of Other Languages (TESOL) and gifted endorsements. CNM has graduated 336 students from the education program and 530 students from the alternative licensure program.

CNM works with school districts in the region to fill the need for SPED and science, technology, engineering and mathematics (STEM) teachers, and is currently working with Rio Rancho Public Schools (RRPS) to address their need for SPED teachers. This summer, CNM is creating a special licensure cohort for RRPS general education teachers rated as effective or higher seeking to become SPED teachers. For a district the size of RRPS, 20 SPED teachers would be significant, and CNM aims to provide results in 18 months. The school district pays for the courses and provides stipends for the teachers as well.

Mr. Chenven discussed strategic partnerships with school districts, schools, and the business industry as useful incentives for retaining teachers. For example, CNM works with Intel and Sandia National Laboratory to recruit alternative licensure candidates into apprentice and induction models for new teachers. It is important to provide incentives to support high-quality teachers to stay in hard-to-staff settings. Schools with the highest performance tend to have low turnover rates. He alluded to a disconnect between COEs and public schools, saying there is no explicit continuity, and articulated transfer pathways are an essential piece to build continuity.

Senator Brandt asked what the CNM alternative licensure program entails, and Mr. Chenven said statute requires a minimum of 12 credit hours and no more than 21 credit hours. CNM's program is 18 credit hours, with an emphasis on competencies and identifiable outcomes that address the skills needed to utilize the content teacher candidates have learned.

Senator Soules asked Dr. Bailey about NMHU's accreditation and she answered the National Council for Accreditation of Teacher Education (NCATE), which provides strategy, ensures pedagogy, encourages partnerships with public schools, and ensures efforts to address practices with a framework.

Senator Soules asked Mr. Chenven about the nine hours of upper-level courses CNM provides for SPED and TESOL and gifted endorsements. Mr. Chenven said the requirements for initial endorsement are different now, and students have to pass a new test developed by Pearson, which was formerly the New Mexico Teacher Assessments. For endorsements, he said you must either have taken the required credit hours or pass the competency exam in that subject area. Senator Soules expressed concern that people with no pedagogy training are teaching and Mr. Chenven noted his concerns are well placed, and stated there are benefits and challenges to alternative pathways. As a community college, CNM responds to the needs of school districts and the state. The state may need teachers in certain areas, and it is up to CNM to support teachers by providing the adequate framework.

Senator Padilla asked about home visitation and whether there is a component to train home visitors. Mr. Chenven answered several pathways are available and one of them is a home visitation certification. Senator Padilla asked about experiential learning for special needs training, and Dr. Bailey said the NCATE requirement is to have field experience early. She also

mentioned a memorandum of understanding with Albuquerque Public Schools for a \$500 thousand grant for an in-service teacher program.

The Chair asked if the teacher evaluation system differentiates between teachers certified through an alternative program or teachers certified through a traditional college of education program. Mr. Chenven said CNM asked the Public Education Department to differentiate between alternative certified and nonalternative certified teachers in teacher evaluations; however, the current evaluation system does not differentiate between them. The Chair asked how students would be served by different evaluations and Mr. Chenven noted differentiation would allow recognition and support for alternative certified teachers as they go through the evaluation process.

There being no further business, the Chair with the consensus of the committee, recessed the LESC meeting at 5:28 p.m.

### **MINUTES LESC MEETING JUNE 16, 2016**

Representative Dennis J. Roch, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 8:47 a.m., on Friday, June 17, 2016, in the Elfego Orona Performing Arts Center, Los Lunas High School, Los Lunas, New Mexico.

The following voting and advisory members were present:

**Voting:** Representatives Dennis J. Roch, Chair, Tomás E. Salazar, James E. Smith, Sheryl M. Williams Stapleton, Christine Trujillo, and Monica Youngblood; and Senators John M. Sapien, Vice Chair, and Craig W. Brandt; and

**Advisory:** Representatives Alonzo Baldonado, D. Wonda Johnson, and Patricia Roybal Caballero; and Senators Jacob R. Candelaria, Linda M. Lopez, Michael Padilla, John Pinto, and Mimi Stewart.

The following voting and advisory members were not present:

**Voting:** Senators Gay G. Kernan and Howie C. Morales; and

**Advisory:** Representatives Jim Dines, Nora Espinoza, David M. Gallegos, Stephanie Garcia Richard, Jimmie C. Hall, Timothy D. Lewis, G. Andrés Romero, and James G. Townsend; and Senators Carlos R. Cisneros, Lee S. Cotter, Daniel A. Ivey-Soto, William P. Soules, and Pat Woods.

#### **Special Education Ancillary FTE Data Validation**

Paul Aguilar, Deputy Secretary of Finance and Operations, Public Education Department (PED); Jerry Reeder, Executive Director, Special Services, Rio Rancho Public Schools (RRPS) and President, New Mexico Council for Administrators of Special Education (NMCASE); and Kirk M. Carpenter, Superintendent, Aztec Municipal Schools and President, New Mexico School Superintendents' Association (NMSSA), briefed the committee on issues with PED's special education ancillary full-time equivalent (FTE) data validation. Mr. Aguilar observed that the LESC staff report was the fairest brief addressing this issue he has seen during his five years at PED and thanked staff.

Mr. Aguilar acknowledged the controversy surrounding the ancillary FTE data validation the department conducted earlier this year, noting school districts were not informed in advance of the review. He stated the review was not an audit. PED is responsible for ensuring accuracy of any data reported in October, December, and February that is used in funding formula calculations. He noted that the department reviews reported data after every reporting date to ensure it is accurate and works with school districts to ensure they understand what needs to be reported.

Mr. Aguilar stated PED had not changed procedures from previous years. The Special Education Bureau looked at data statewide, did a review of data in the Student Teacher Accountability Reporting System (STARS), and looked for anomalies. As the bureau looked at data, they noted anomalies in some claims for special services funding. In some cases there was no data reported and in others the number of hours reported did not align with the number of FTE being claimed. He stated each ancillary service provider generates about \$100 thousand per year. Mr. Aguilar noted PED worked with school districts to understand the anomalies. He stated approximately 15 school districts were asked to reconsider their data and make corrections to ensure it was accurate.

Mr. Aguilar noted that some school districts will receive less money due to revised data, but by basing funding on accurate reporting, school districts will receive the dollars they are entitled to. Mr. Aguilar said some revenue lost due to the data revisions may be mitigated by an increase in the unit value. He pointed out that the unit value was set low because of volatility in revenue. Mr. Aguilar said PED wanted to avoid a reduction.

Mr. Aguilar stated PED did not intentionally keep superintendents out of the discussion and addressed the issue with superintendents immediately when they learned superintendents were interested.

Mr. Reeder referred to an email RRPS received from the Special Education Bureau at PED that indicated the data validation was an ancillary FTE audit. He stated PED initially indicated RRPS was notified by PED that they had over-claimed 34 ancillary FTEs. RRPS met with Mr. Aguilar and representatives from the Special Education Bureau to understand the formula PED used to identify anomalies. He noted different formulas are available to school districts but PED has used only one of the formulas to identify anomalies. Mr. Reeder said the first meeting with PED was two to three hours long and the school district's attorney had to meet with PED a second time and discussion primarily centered around the formula that was being used to calculate ancillary FTE; a resolution was not reached at that time.

Mr. Reeder said RRPS based its caseload on one ancillary provider for 35 students. He indicated a reduction in funding could increase caseloads to 60 to 65 students. Mr. Reeder provided the committee with RRPS' response to PED and said he would be able to provide the committee with STARS information and best practices in New Mexico and nationally, which they also provided to PED. Mr. Reeder acknowledged RRPS established a better way to capture service hours, preparation time, case loads, documentation required for federal law, individualized education program (IEP) time, supplementary time, and travel time as a result of the data validation.

Mr. Reeder stated NMCASE surveyed school districts and charter schools on this issue; he provided the responses from 22 school districts and charter schools. Mr. Reeder said most

school districts said they were asked to reduce ancillary FTE reported on the 80th day while a few school districts were asked to increase reported ancillary FTE. A number of school districts reported making no changes. He noted school districts reported use of all three calculations methodologies to validate data with PED. Mr. Reeder noted concerns with reductions made in reported data at Cobre Consolidated Schools and Roswell Independent Schools.

Mr. Reeder reported some school districts did not challenge PED's calculation and reduced their 80th- and 120th-day data. He noted school districts that questioned PED's calculation had better results; for example, RRPS only reduced reported ancillary FTE by two FTE.

Mr. Carpenter said superintendents were told by PED the data review process is routine but has not been done for some time due to short staffing. He noted reported funding decreases between \$11 thousand and \$60 thousand for some school districts, which may be difficult for some school districts. Another district had a \$2.5 million decrease and is appealing the determination. He acknowledged some of the reductions were due to school district reporting errors. He also stated one school district underreported their ancillary FTE and will see a \$700 thousand increase because of the data validation.

Mr. Carpenter noted PED assured the superintendents that they would be notified of issues arising from data validation in the future. He also stated school districts were concerned that they had no definitions for how ancillary staff would be counted and were concerned how changes to reported data would affect special education maintenance of effort. He said school districts wanted PED to meet with superintendents and set up a work group. Mr. Carpenter said the first meeting went well, but continued work is needed. Mr. Carpenter said superintendent acknowledge PED has the authority to review data and make changes to policy, but he noted it would be beneficial to work together to inform policy changes.

Mr. Aguilar pointed out that some differences in data reported on the 40th, 80th, and 120th days are natural. He also said that superintendents certify the data they submit is true and accurate and superintendents who certify inaccurate data may be at legal risk. Mr. Aguilar rejected the assertion that PED engaged in a "money grab." He said that money appropriated to the state equalization guarantee could not be used for any other purpose. He stated he did not yet know how this issue would affect federal maintenance of effort requirements but that the federal government also required that accurate reports are made. He lastly noted Hanna Skandera, Secretary of Public Education, has established a regular, productive call with NMSSA that the department will continue in 2016 and 2017. Mr. Aguilar repeated that there is no new methodology that is being used to calculate ancillary FTE; PED will continue using the three different methodologies and has no plans to change the methods.

The Chair said the committee is aware of the Legislative Finance Committee (LFC) hearing a few months ago; it was early on and contentious. The Chair stated that Michael Lovato is no longer with PED and asked if his replacement would be available for questions. Mr. Aguilar replied Mark Mutz is the interim director and would respond to questions. Mr. Aguilar also pointed out that PED had been criticized in the past by both the LESC and LFC for not ensuring accurate data reporting.

Senator Padilla stated he sent a letter to PED regarding the issue and never received a response from the department. He asked Mr. Aguilar how much notice the superintendents received from PED. Mr. Aguilar responded that the data validation process was not new and when the special



education directors realized the fiscal implications they contacted their superintendents. Senator Padilla noted communications with school districts could be improved, and Mr. Carpenter indicated the secretary is regularly communicating with NMSSA on a number of issues.

Senator Padilla asked Mr. Reeder how the process could be improved. Mr. Reeder said it would be helpful for school districts to know how they will be reviewed so that they can prepare. Mr. Carpenter agreed with Mr. Reeder, noting increased transparency will help ensure school districts are reporting correct information. Senator Padilla said he was encouraged but surprised the meetings with PED just started and asked if there was a particular time of year that is best to receive information. Mr. Reeder replied it would be best at the beginning or end of a school year. Mr. Aguilar noted the STARS manual had been updated to clarify acceptable services. Mr. Aguilar commented if services are provided pursuant to an IEP they can be counted as service time provided.

Representative Youngblood asked if federal funding was involved in the review, and Mr. Aguilar answered the review was limited to state equalization guarantee funding. She asked how money for ancillary FTE is spent and Mr. Aguilar said it is distributed as a block grant. He said children were not being denied services because the formula is designed to address student needs. Representative Youngblood said that in her opinion this funding should only go to students in need of services. When she asked if RRPS was able to justify the services it needed, Mr. Aguilar noted they were unable to justify 2 FTEs. Representative Youngblood asked if any reviews were still outstanding. Mr. Aguilar noted Albuquerque Public Schools (APS) had not yet been finalized.

Mr. Carpenter repeated his concern about communication and PED processes. Representative Youngblood asked Mr. Aguilar if he feels he has established a clear communication path with school districts. Mr. Aguilar replied he did, noting superintendents are generally comfortable calling him directly. Mr. Aguilar acknowledged some mixed messages initially, but noted communications will be unified going forward. Representative Youngblood said the budget does not look good and school districts will have to understand that we have no money moving forward, so it is best to communicate and work together.

Representative Salazar said he appreciated the presenters were not trying to push blame on each other but noted there still seems to be some concern. He asked about the budget impacts in small, medium, and large school districts and asked about challenges in smaller school districts. Mr. Carpenter said that training was an issue, especially for smaller districts. Training is essential and needs to be continuous, since there is frequent turnover. He emphasized the need to know how to account for FTE correctly. Mr. Carpenter said what is needed is not new forms, but better and more frequent training, and Mr. Aguilar said there will be training for special education directors in August.

Senator Sapien asked about the backgrounds of Mr. Lovato and Mr. Mutz. Mr. Aguilar said Mr. Lovato was a football coach and principal at Capital High School and Mr. Mutz was a special education teacher and principal at Santa Fe High School. Senator Sapien inquired whether either had any experience working with school budgets. Mr. Aguilar indicated the budget process will run through him from now on and that there is a job posting for a new special education director and Mr. Reeder will be on the interview panel.

Senator Sapien said superintendents are telling him PED moves too quickly and that new issues emerge before prior issues are resolved. He said there are too many miscommunications between PED and schools, leading to confusion rather than clarification.

Senator Stewart expressed concerns with the potential impact on students but was encouraged to hear PED is paying attention. Noting there is good conversation coming out of this, she stressed the need to work together. She said that she heard students will see reduction of services and the APS has many lawsuits due to people who feel they are not getting service.

Senator Brandt observed that, despite what PED said about there not being an audit, the letter to Mr. Reeder says “audit” three times and that this is the first year that he has received emails from constituents about “changes” to ancillary services. In reply, Mr. Aguilar said it was a miscommunication and noted this was the first time FTEs were being claimed with no reported related services. Senator Brandt said it was obvious to him that something had changed.

The Chair asked Mr. Aguilar, if the methodology for calculating ancillary FTE had changed. Mr. Aguilar said in his view nothing has changed, and noted several significant anomalies.

Representative Roybal Caballero said there was a “money grab” perception because the most vulnerable were targeted. She asked how often PED is audited. Mr. Aguilar stated PED has a financial audit every year and a single audit of all federal funds on a three-year cycle. Representative Roybal Caballero said the Legislature may have to review the issue if services are reduced.

The Chair noted he would like to see a comparison of FY16 ancillary FTE claimed for funding with the number of ancillary FTE claimed for funding in FY16 when the preliminary funded run is completed by PED. Mr. Aguilar noted the preliminary funded run should be compared with last year’s preliminary funded run.

### **State-Level Special Education Maintenance of Effort Update**

The Chair moved this meeting item to the LESC meeting in July.

### **Superintendent and Community Input**

Jim Jackson, Executive Director, Disability Rights New Mexico informed the committee Albuquerque Public Schools (APS) may be impacted due to the ancillary support staff reduction of 23 people, which will increase the risk of additional complaints, litigation, and other related problems. He noted renewed emphasis on documentation creates an administrative burden, which is something he feels should be reduced. Last, Mr. Jackson noted the recent departure of the Public Education Department (PED) special education director, Mr. Lovato, and said while this may be helpful; the high turnover at PED of special education directors is part of the problem with special education ancillary FTE data validation.

Liz Thompson, a pediatric physical therapist on contract with APS, explained large school districts have legal support to resolve disputes with PED, unlike small school districts. She said that one school district’s special education budget was reduced by 300 percent. After noting the amount of time it takes to document services – in some instances up to 15 hours to write an individualized education program, Ms. Thompson expressed concern about the process becoming too cumbersome. Regarding proposed changes to the methodology for the full-time equivalent validation and the lack of transparency at PED, Ms. Thompson noted the importance

of clarity and proper notification. She also indicated there is a nationwide shortage of professionals providing special education services, and it is difficult to replace them.

The Chair noted the committee received a letter from Superintendent Tom Sullivan regarding charter school funding.

There being no further business, the Chair adjourned the LESC meeting at 12:27 p.m.