

State of New Mexico
LEGISLATIVE EDUCATION STUDY COMMITTEE

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MINUTES
LESC MEETING
SEPTEMBER 14 - 16, 2016

Representative Dennis J. Roch, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:21 a.m., on Wednesday, September 14, 2016, in Room 307 of the State Capitol in Santa Fe, New Mexico.

The following voting and advisory members were present on:

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

Advisory: Representatives Alonzo Baldonado, Stephanie Garcia Richard, and Patricia Roybal Caballero; and Senators Daniel A. Ivey-Soto, Linda M. Lopez, Michael Padilla, and Mimi Stewart.

The following voting and advisory members were not present:

Voting: Representative Monica Youngblood; and Senators Craig W. Brandt and Gay G. Kernan; and

Advisory: Representatives Jim Dines, Nora Espinoza, David M. Gallegos, Jimmie C. Hall, D. Wonda Johnson, Timothy D. Lewis, G. Andrés Romero, and James G. Townsend; and Senators Jacob R. Candelaria, Carlos R. Cisneros, Lee S. Cotter, John Pinto, William P. Soules, and Pat Woods.

On a motion by Senator Sapien, seconded by Representative Trujillo, the committee approved the agenda for the September 2016 interim meeting. On a motion by Representative Smith, seconded by Senator Sapien, the committee approved the minutes for the August 2016 interim meeting.

Strategic Initiatives of Select Regional Charter Schools

Jodie Dean, Principal, New Mexico Connections Academy (NMCA), said NMCA is a virtual charter school that was authorized by the Public Education Commission (PEC) in June 2013 and was accredited in the spring of 2016 by AdvancEd. Families choose to go to NMCA in part

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because of social issues, tough schedules associated with activities and athletics, and because of difficulties associated with medical issues. The school also serves students older than age 18. The school offers socialization opportunities, and requires students attend at least two of these activities per year. NMCA is a Title I school that loans computers to low-income families and provides them with Internet access. The school has increased enrollment of students from rural parts of New Mexico. Ms. Dean cited parent satisfaction surveys that indicated 94.2 percent of the school's parents would recommend the program to families not currently enrolled, 94 percent of parents agree that students are challenged by the school's curriculum, and 88.2 percent of parents feel their students received an adequate or greater amount of contact with instructors.

Senator Padilla asked Ms. Dean about the budget for ancillary services and whether NMCA has social workers, school nurses, and other providers. She said NMCA contracts with individuals to provide those services. Ramoncita Garcia, Special Education Manager, NMCA, explained that social workers at NMCA do evaluations either virtually, online, or face-to-face, attend individualized education program meetings, and write goals for those students.

Representative Baldonado asked what a typical day for a student looks like. Ms. Dean said a student starts the day by looking at what assignments they have in each of their courses. Instructors provide a live lesson in a virtual classroom where the teacher provides instruction. Students have the opportunity to ask questions with their microphone or in a chat box, and receive answers immediately. For instance, if a student is in an Algebra 2 classroom, they would attend the live lesson at 9:00 a.m. They are able to go back and review the lesson while they complete the assignment if there is a concept they did not grasp. For an English class, they may have to read two chapters out of whatever novel they are studying at the time. For science lessons that have to be taught in a hands-on fashion, the school is able to send materials to students, who can watch the instructor do the lab and use their camera to share what they are doing. The program's scheduler allows parents and students to note what is going on so all parties can access it.

Representative Salazar asked how NMCA is able to divert its Title I funding. Ms. Dean said that the school's spending is approved by the Public Education Department (PED) and offered to provide a specific breakdown of funding at a later date.

Senator Morales voiced his concerns over retention, asking whether NMCA had any turnover data. Ms. Dean answered that NMCA collects that data as part of their initial charter goals and offered to share specific data at a later date. Senator Morales then asked if NMCA was a for-profit charter school. Ms. Dean answered yes; NMCA is governed by Connections Education. The senator was very concerned by this. Ms. Dean noted the contract with Connections Education for NMCA's curriculum was an agreement entered into by the NMCA board and approved as part of their charter. The senator asked if Connections Education was purchased by Pearson and Ms. Dean said she believed that to be the case. The senator asked if she knew the purchase amount Pearson paid for Connections Education. After Ms. Dean said she did not know Senator Morales shared that it was purchased for \$400 million. He quoted the Chief Executive Officer (CEO) of Connections Education, who said, "The reason why we can make money is very simple: it is the scale. We are serving 20 thousand students, that allows us to take our overhead and spread it out and as we get bigger we will have the opportunity to become more profitable. Most people have this reaction and ask why should you have a for-profit company involved in public education, but every company in public schools from the cafeteria to text books are making a profit." The senator asked if the philosophy changed since the CEO's

comment, and Ms. Dean answered that she is not aware and educated enough regarding the CEO's comments and his philosophy or opinions. She responded by saying NMCA and its governing board entered a contract for Connections Education to provide curriculum and services to the school; NMCA and its staff own the service we provide to the students. The school purchased the curriculum which is provided virtually through Connections Education.

Senator Morales asked what software package NMCA is using and Ms. Dean said NMCA uses a package through Connections Education (and by extension Pearson) that is called *Connexus*. The senator asked about vendors for instructional materials and who NMCA uses, and Ms. Dean said NMCA utilizes the materials provided by Connections Education and Pearson. He asked if NMCA accepts private donations and Ms. Dean stated that NMCA does not, and also does not fundraise or seek donations from any source.

Senator Morales wondered how NMCA is able to purchase land, pay for lobbyists and commercials, etc. without private funding. In reply, Scott Binkley, High School Teacher at NMCA said his understanding of the law is that a charter school is not allowed to be a for-profit school and that every school that is virtual or uses a blended model leases or rents their education management system (EMS). Mr. Binkley said they use formula funding to pay a vendor for the use of that service, whether it is Blackboard or any other program. He noted that Pearson is a for-profit company, and NMCA utilizes their EMS, *Connexus*, in the same way that any virtual or blended school will use an EMS that they do not own.

Representative Trujillo noted that if NMCA is owned by Pearson and uses their materials, it sounds like a conflict of interest. In response, Ms. Dean clarified Pearson does own Connections Education, and NMCA uses Connections Education as a vendor for its curriculum, delivery, and student management system. To her knowledge, it is not seen as a conflict of interest at this point. The representative recalled PEC did not initially approve NMCA and was only approved after court direction.

Carmie Toulouse, Commissioner, PEC, explained PEC denied NMCA's initial request for a charter but that denial was overturned by court order. She stated PEC commissioners believed state law only allowed brick-and-mortar schools to be authorized and did not allow authorization of online charter schools. NMCA appealed PEC's decision to the Secretary of Education, who overturned PEC's decision. PEC took the case to district court, but lost. Ms. Toulouse stated she thought the district court would have been overturned on appeal, but noted the Attorney General's Office did not file an appeal. Ms. Toulouse stated the PEC was also concerned NMCA would be part of a nationwide conglomerate, noting NMCA's website appears to indicate this. She stated PEC members believe a conflict of interest exists, but they have been unable to address it because of the court order. Representative Trujillo reiterated her position that it is a conflict of interest and asked the LESC to go on record to find out the legality of the school's relationship with Connections Education and Pearson, stating public education money should not be going to for-profit schools.

Ms. Dean confirmed for Representative Smith that NMCA's curriculum is state approved. The representative also asked if NMCA has experienced any Internet connectivity problems around the state, to which Ms. Dean replied no.

Senator Sapien asked how NMCA determines whether a student who is logged in is actually working instead of pretending to be logged in. Ms. Dean explained that when the student logs in,

the system will track whether they are active or idle. If the student is active, the system displays a green indicator and NMCA staff is able to go real time to where the student is at with their curriculum. Senator Sapien asked how much money NMCA spends with Connections Education. In reply, Ms. Dean offered to get more information from the Vigil Group. The senator noted NMCA must go through a competitive request for proposal process and asked Ms. Dean whether the state procurement process is being followed. She said it is, and acknowledged it is possible for a lower bidder to receive the contract to provide instructional materials, but those decisions are made by the school's governing council.

Ray Griffin, Head Administrator, Turquoise Trail Charter Elementary School, said Turquoise Trail is the oldest charter school in New Mexico and was named school of the year by the New Mexico Coalition for Charter Schools last year. Dr. Griffin explained neighborhood subdivisions are growing near Turquoise Trail, resulting in increased enrollment at the school. The school is focused on growth in proficiency and in 21st Century skills. The school holds elections where every teacher and parent can vote on the slate of officers for their governing board.

Due to a conflict in the distribution of education technology note funds in Santa Fe, Turquoise Trail has not received education technology funds that should have been allocated a year ago, Dr. Griffin stated. He requested members revisit the law and help clarify the way those funds can be distributed in a fast, fair, and appropriate manner. Dr. Griffin concluded by explaining Turquoise Trail does not charge annual fees like other charter schools in New Mexico. The Chair stated he was not aware that charter schools charge fees and noted it may not be legal to charge fees. Dr. Griffin explained fees, such as registration or activity fees, can be charged. The Chair requested that LESC staff research what kinds of fees exist across different charter schools.

Senator Padilla asked what oversight the governing board has over curriculum. Dr. Griffin explained the board would not necessarily make a curriculum decision; they would ask a lot of questions about it and they would want to see the positive academic achievement results from using a particular curriculum.

Representative Smith asked how the school pays for buses. Dr. Griffin said Turquoise Trail worked diligently with the state transportation division with the understanding that without charter school transportation, the school would lose 100 students and 10 teachers, which would have changed the school dramatically. He expressed interest in a conversation with the new superintendent in Santa Fe, believing that it is mutually beneficial to cooperate on transportation.

Senator Sapien asked how the school's governing board is elected. Dr. Griffin said members are elected by a paper ballot conducted in the hallway of the school. The senator suggested being careful when saying the board is elected, since school board members are duly elected in a process governed by the Secretary of State.

Susan Lumley, Principal, The Academy for Technology and the Classics (ATC), said ATC offers a traditional liberal arts classical education while providing technology tools to enhance critical thinking, problem-solving, and analysis. The school has had an A for the last four years, is consistently ranked one of the top five high schools in New Mexico, and is ranked in the top 5 percent of all high schools in the United States according to *U.S. News and World Report*.

Over 90 percent of ATC students scored proficient or higher on the Partnership for Assessment of Readiness for College and Careers exam. The school's per-pupil allocation is about \$7,000, or 93 percent of what Santa Fe Public Schools (SFPS) receives. If the Legislature took away the small school adjustment, she said ATC would receive approximately 83 percent of the per-student funding SFPS receives. The ATC governing council is elected by the parents and teachers through a school-based election process. Ms. Lumley attributes the success of the school's students to its mentoring programs and effective internal teacher accountability system.

Substitute Teachers as Educational Retirement Fund Members: Proposed Educational Retirement Board Rule Change

Rick Scroggins, Deputy Director, Educational Retirement Board (ERB), said ERB held a rulemaking hearing where it proposed changes to five administrative rules, including a rule that exempts any "substitute" from membership. Roderick Ventura, General Counsel, ERB, said the rule excludes short-term substitutes from ERB membership, but long-term substitutes are not. He said long-term substitutes, who fill in for a longer period of time, such as a teacher's maternity leave or extended leave of absence, would be covered by ERB membership. Mr. Ventura noted, however, the rule does not clearly define "long-term" or "short-term," making application of the rule confusing. He said ERB was concerned the rule is not being interpreted uniformly across the state. He noted, for example, some school districts might be giving all long-term and short-term substitutes blanket exemption from ERB membership, inconsistent with the intent of the rule. ERB also learned that at least one school district may have been giving substitutes the choice of whether to be an ERB member or not, again inconsistent with the rule. Mr. Ventura said ERB decided to simplify the rule by deleting the substitute exemption, requiring membership for substitute teachers to be determined based on their full-time equivalent (FTE). ERB provided 25 days notice of the proposed rule and notified about 8,000 members.

Mr. Ventura noted public comment revealed most responses were not in favor of the change, though responses were limited. He noted comments generally focused on two issues: first, the change would be difficult to administer since it is difficult to determine the FTE of a substitute teacher at the beginning of their tenure; and second, the rule change may negatively impact budgets because ERB contributions would have to be made for teachers not currently considered members that are working over 0.25 FTE. He said Rio Rancho Public Schools was originally the only school district that provided a cost estimate, which was about \$60 thousand a year. Mr. Ventura said ERB reached out to Albuquerque Public Schools (APS) and Santa Fe Public Schools (SFPS) to see how the rule change would affect these two school districts. SFPS was not able to estimate an impact and APS estimated it would cost the district \$742.3 thousand. Mr. Ventura said the APS estimate included making ERB contributions for all substitute teachers, though it was unclear that all substitutes would be considered members pursuant to the rule change.

Mr. Ventura said ERB staff met with LESC and the Legislative Finance Committee (LFC) staff to discuss the proposed rule and determined information was not available to analyze the impact of the rule change. Because of this, staff recommended the board table the substitute rule change, which the board did. Mr. Ventura also noted that in April, ERB adopted a "universal reporting" rule, which requires employers to report to ERB on all of their employees, whether they are exempt or members. He said this rule may help ERB determine how many substitutes would be affected by a future rule change.

Antonio Gonzales, Interim Associate Superintendent for Human Resources, Albuquerque Public Schools (APS), said APS paid 1,147 substitute teachers a combined salary of \$5.3 million in FY16. One hundred twenty-four substitutes were considered long-term substitutes and paid the 7.9 percent required contribution to ERB, totaling \$88.8 thousand. Employer contributions calculated at 13.9 percent per individual totaled \$156.2 thousand. Dr. Gonzales said 44 of the 124 substitutes ended up not being eligible for the benefit because they requested a refund. He said about 47 percent of APS substitutes will meet the 0.25 FTE threshold, but it is impossible to predict which substitutes will exceed that threshold, due to the nature of these employees' work. He said the district will have to collect contributions from all substitutes, knowing the majority will request a refund. He noted it will be difficult to track each substitute's FTE, which could cost upwards of \$11 thousand in administrative payroll staff costs annually. Dr. Gonzales noted this would make retaining substitutes a challenge. He said a 7.9 percent reduction is significant for this minimal salary, likely making it difficult to maintain a strong and vibrant pool of substitutes.

Senator Stewart raised concerns about reducing take-home pay of employees who are already receiving low pay and noted this might result in a smaller substitute teaching pool. She noted, for example, some substitutes might only teach 43 days if they were required to pay contributions after 44 days. The senator said that the only time you want to consider making a substitute teacher an ERB member is when they are employed full-time.

Senator Padilla asked if employees were eligible for refunds for just a single year or for the entire time the employee served in the district. Tami Coleman, Chief Financial Officer, APS, replied that if the employee asks for a refund it is 100 percent of the contributions made; Dr. Gonzales clarified ERB will only refund the employee's portion (7.9 percent) plus interest and the employer's 13.9 percent contribution stays in the fund. The Chair noted two kinds of employees request refunds: (1) an employee who has contributions withdrawn but was not eligible for membership; and (2) an employee who is an eligible member that resigns and rolls their contributions in to a 401(k) or a retirement plan in another state. The Chair asked if the school district receives a refund of district contributions in either scenario. Mr. Scroggins said the district gets a refund under the first scenario but does not get a refund in the second scenario.

The Chair asked when substitutes would begin earning service credit if this rule were enacted. Mr. Scroggins replied it would begin when they started having contributions taken out of their paychecks and would not be retroactive. The Chair asked if ERB had an estimate of how many substitute teachers would earn enough service credits to qualify for a benefit. Mr. Scroggins stated that current substitute teachers are not reported to ERB, so ERB does not have that kind of historical information. Ms. Coleman guessed that it would be very few, if any. The Chair said his guess is zero. He said this rule looks to him like a money grab, since it appears that contributions will be required from people who will never qualify to receive any benefits.

The Chair asked if ERB staff had been directed to continue researching the issue even though the board tabled the rule change. Mr. Scroggins stated the board has not directed staff to continue researching the issue, and currently does not have any intention to consider the rule change in the future; however, he stated he could not guarantee the board would not consider the rule change again in the future. The Chair said LESC may be interested in endorsing a bill to preclude this kind of approach and encouraged ERB participation in the drafting process. Mr. Scroggins said ERB would be willing to work with LESC.

Representative Roybal Caballero asked what substitutes think of the proposed rule. She said top-down decision-making needs to be avoided. She suggested substitute teachers be surveyed to find out what they think. Mr. Ventura said ERB does not have data for substitutes that are not members, but noted ERB is interested in knowing what substitute teachers think of the rule change. The representative asked whether teachers who have served as substitutes for many years but have not accrued service credit would be able to purchase credit for the time they have served. Mr. Ventura answered no, noting statute defines people who are allowed to purchase service credit and substitutes are not included.

FY18 Group Insurance Premiums for Schools and Funding Requests

Sammy Quintana, Executive Director, New Mexico Public Schools Insurance Authority (NMPSIA) noted NMPSIA serves 88 school districts, 99 charter schools, and 25 educational entities. Recently, Eastern New Mexico University (ENMU) and Western New Mexico University (WNMU) have petitioned to join NMPSIA's risk pool. Mr. Quintana said assets insured by NMPSIA are in excess of \$22 billion. NMPSIA covers 24 thousand employees, \$1.8 billion in payroll, 350 thousand students, and 8,900 vehicles. Workers' compensation is the most expensive type of coverage, followed by general liability and property coverage.

NMPSIA tries to keep claims as low as possible through its loss prevention programs, technical assistance, and on-site school facility audits. Additionally, through the loss prevention abatement compliance report, NMPSIA informs school districts on improvements they are required to make.

Mr. Quintana discussed the FY18 appropriation request. He noted the FY17 operating budget was \$73.2 million and the FY18 appropriation request totals \$76.3 million, or a 4.2 percent increase. The proposed increase is due to growth. He noted that when a new charter school opens, NMPSIA is required to cover it and this includes additional training. This year, NMPSIA is going to update the appraisal of their covered property, which will cost approximately \$500 thousand and will result in an increase in premiums.

Ernestine Chavez, Deputy Director, NMPSIA, discussed healthcare benefits, including NMPSIA's benefit fund, fund balance, and premium rate increases. Premium increases have been stable since FY09; however, it is projected that for FY18, there may be a 14 percent increase on the high-option medical plan. NMPSIA will be introducing a new plan with New Mexico Health Connections (NMHC) in January 2017.

She noted that the operating budget in FY17 for the benefits fund is \$320.9 million, and the appropriation request for FY18 totals \$352 million, or a 9.7 percent increase. As claim costs continue to rise, NMPSIA implemented plan changes that took effect on July 1 related to the prescription drug plan. Changes will also be made to increase certain deductibles and out-of-pocket costs, which will lead to an overall savings of about \$16.2 million for FY17.

NMPSIA is working with Express Scripts on negotiation strategies as prescription drug costs continue to rise. The increase in cost is due to the high cost of specialty drugs. In conclusion, NMPSIA hopes to promote its disease management and wellness programs, which will increase member education and keep chronically ill patients on track.

Carrie Robin Brunder, Director of Government Affairs and Policy, Albuquerque Public Schools (APS), noted the Risk Management Department at APS is self-insured for workers'

compensation, property, and liability, and its primary function is to protect assets through loss prevention and control. She said the workers' compensation budget for FY17 is \$7.6 million and the property and casualty budget is \$13.5 million.

Ms. Brunder said over the last two fiscal years, APS has consistently drawn down both risk and property insurance fund balances. To meet the increased costs associated with workers' compensation claims, APS is going to increase the payroll collection (employee contribution) rate for FY17 and FY18. There will be no changes to the life insurance or dental plan; however, there will be an 8.1 percent increase for the vision plan. A key change to the prescription drug coverage plan includes implementing a home delivery incentive program, which will be less expensive for APS. The school district anticipates a 13.2 percent increase in overall medical costs for plan year 2017 and is developing a plan to address this. APS will encourage its members to participate in the wellness incentive program. The school district will be offering some more options on value-based plans, including NMHC, and multi-tiered health plan options with Blue Cross Blue Shield (BCBS) and Presbyterian. NMHC and BCBS negotiated to have the same doctors in both of their networks, and Presbyterian uses its own plan for their facilities and may have different doctors than the NMHC in its open network.

Representative Trujillo asked Mr. Quintana about ENMU and WNMU's plans to join the NMPSIA plan and asked if other entities have been invited to join NMPSIA. Mr. Quintana replied that the two universities approached NMPSIA to receive a side-by-side comparison of NMPSIA coverage versus their current coverage with the state risk pool through the General Services Division (GSD). The comparison revealed both universities could save about 20 percent and receive expanded coverage. Mr. Quintana noted GSD has not approved the institutions' requests and Representative Trujillo asked for more information on why GSD is opposed to allowing education entities to join NMPSIA's risk pool.

The Chair said GSD's Risk Management Division reported they realized a 25 percent reduction for risk coverage after recently issuing a request for proposal (RFP). He asked if NMPSIA staff has researched the issue, noting NMPSIA is projecting a 5 percent increase. Richard Valerio, Chief Financial Officer, NMPSIA, said for FY17, NMPSIA saw a reduction of about 2 percent, which saved about \$200 thousand. However, NMPSIA-covered properties will be appraised in FY18 and there is reason to believe reported assessed property values will be increased. The Chair asked if NMPSIA staff is looking at the open market to find more competitive rates to save money for their members. Mr. Quintana replied that statute requires NMPSIA to submit an RFP for rates every four years and noted NMPSIA is complying with this requirement. He also noted NMPSIA selected a new consultant broker. Mr. Quintana offered to do a side-by-side comparison and Representative Trujillo suggested that NMPSIA and GSD should present to LESC to compare their processes.

The Chair asked what will happen if the Legislature cannot meet appropriation requests for NMPSIA and APS, and Ms. Chavez replied that NMPSIA could consider more drastic plan changes even though the changes for FY17 are substantial, noting that some deductibles for medical and prescription drug coverage have doubled and will be costly to some families. In February and March, NMPSIA will look to see where they stand with the plan changes and report to the board. Ms. Brunder made it clear that APS is not asking for an appropriation and their strategy is to work with NMHC, which has been aggressive in its contract negotiations with providers, some of whom still opted to join them and benefit from the increased pool of customers despite reduced rates. Ms. Brunder added APS tried to manage increased costs

through preventative care, but now has to pass on some of these major changes to employees and taxpayers.

Every Student Succeeds Act: State Title I Plan

Matthew Pahl, Director of Policy, Public Education Department (PED), said PED launched an Every Student Succeeds Act (ESSA) website which is linked on the PED website that serves as a portal with background information on ESSA, including: the federal law, a description of stakeholder engagement opportunities, and information on the ESSA transition and implementation. He said additional links will be added as PED continues developing the plan. He stated the website will also have a link to sign up for future stakeholder engagement meetings. Mr. Pahl noted the website will host a link to a virtual space that any New Mexican can use to provide feedback on ESSA.

Mr. Pahl stated that throughout the fall of 2016 PED will convene a variety of groups including community meetings. He further noted the department will travel across the state in October and November to the following locations: Gallup, Farmington, Santa Fe, Albuquerque, Roswell, and Las Cruces. He explained the meetings will have stakeholder engagement from different groups including district and community leaders, tribal leaders, a group for educators and students, and a group for families. He assured the committee the meetings will be held at appropriate times for group members to participate based on feedback the department received from prior LESC meetings.

Mr. Pahl noted PED will also have a technical work group for Title III to discuss policy changes pertaining to family engagement and ESSA, and provisions regarding English learners (EL). He also said PED will include home to school partnerships that promote success in schools; family and community engagement; and instruction that is culturally and linguistically responsive to really connect students with their school learning. Mr. Pahl said the technical work group will meet in Albuquerque in September, October, and November.

Mr. Pahl also noted there will be two technical work groups that PED will host that will focus on graduation requirements and opportunity to learn (OTL). The Future Ready Students group will focus on graduation requirements and how to build the requirements so they are all meaningful for students, clearly articulated, and feasible for students to graduate. He explained the group will also focus on alternative demonstrations of competency (ADC) used for students who have not passed the Partnership for Assessment of Readiness for College and Careers assessment and discuss how those ADC are meaningful for students and connect them with college and career.

Mr. Pahl explained the second work group will focus on OTL and school grades, as well as the best way to implement a new indicator of English language proficiency for school accountability. He explained the OTL survey should be made more robust, or different indicators should be added, to create a more universal picture of how schools are supporting students and families. Finally, Mr. Pahl explained the group can clarify outcomes on the report card to make it more accessible to families.

Mr. Pahl explained ESSA provides more support for students in foster care by requiring schools to provide transportation for students in foster care to their school of origin. Mr. Pahl noted statute may need to be amended to meet this requirement, though he acknowledged the department would know more after the federal regulations are finalized. Mr. Pahl said both PED

and the Children, Youth and Families Department plan to work together to modify these practices as the final regulation is published.

In response to Senator Stewart's question about the Title III stakeholder work group, Mr. Pahl said PED reached out to Title III directors and bilingual multicultural directors to nominate participants and also reached out to other community stakeholders for these work group meetings. Christopher N. Ruszkowski, Deputy Secretary, Policy and Program, PED, said the technical work group meetings will be limited to 15 to 20 people and other meetings participation may be limited because of space constraints.

In response to Senator Stewart's concern about widespread notification of stakeholder engagement meetings, Mr. Ruszkowski said PED posted meeting dates and locations last week but has not yet established a registration link nor have invitations been distributed for the community meetings. He indicated PED would be reaching out to experts and teachers on the secretary's advisory group to participate on the technical workgroups.

In response to Senator Stewart's question about engaging the Native American community, Mr. Pahl said the opportunity to learn technical work will focus on ELs and will include representatives from the Hispanic and Indian Education Advisory Committees. He also said PED will visit several communities that serve large populations of Native American students, including Farmington and Gallup. Mr. Pahl also indicated the department's Indian Education Bureau will be involved in the stakeholder engagement process.

In response to the Chair's question about limitations on community meeting participation, Mr. Ruszkowski said New Mexico First will facilitate the community meetings and will provide guidance on an appropriate number of participants to ensure constructive and meaningful dialogue. Mr. Pahl said the department may consider scheduling additional meetings in a particular community if demand exists.

Representative Roybal Caballero recommended PED collaborate with Engaging Latino Communities for Education, the Unidos Project, the Latino Task Force, and the Learning Alliance, as part of stakeholder engagement. The representative indicated these groups will be helpful as grassroots organizations to help determine how to use English language proficiency as an indicator for accountability. The representative also stated these grassroots groups are active in communities all over the state.

The Chair asked PED to communicate meeting details to LESC staff and in turn asked staff to forward that information to members.

Director's Report

Informational Items

a. Administrative Rulemaking

Rachel S. Gudgel, Director, LESC, noted the Children, Youth and Families Department (CYFD) filed a notice of proposed rulemaking, and held a public hearing on August 15, 2016, expecting to finalize several rule changes by October 1, 2016, that will bring the state into compliance with the federal Child Care and Development Block Grant Act of 2014. Among the issues addressed by these rules are background checks, including a five year requirement of all educators, providers, and persons in-home childcare facilities. They also deal with the extension of childcare assistance eligibility to 12 months from six months, permitting individuals with

interruptions in work, to continue receiving child care for a longer period of time while these sorts of issues are resolved. There are also changes to health, safety, and facility requirements, particularly new limitations on class sizes, as well as requirements for pre-service training to be completed by caregivers within three months of beginning work. Finally, the rules mandate the establishment and implementation of an expulsion policy that would require greater review and attempts to resolve children's issues without expulsion when possible.

b. LESC September Newsletter

Ms. Gudgel reported that the LESC September newsletter was emailed to members.

c. Letter to Administrative Office of the Courts – Juvenile Truancy

Ms. Gudgel noted the letter to the Administrative Office of the Courts, requested at last month's meeting, requests courts partner with schools to curb truancy.

e. August 2016 Consensus Revenue Estimate

Ms. Gudgel noted the consensus revenue estimate is collaboration between the Legislative Finance Committee (LFC), the Department of Finance (DFA), and the Taxation and Revenue Department. She noted appropriations exceeded revenues in FY16 by \$616.5 million and an estimated \$459 million in FY17, prior to spending reductions. She noted reserves were left at \$130 million in FY16, resulting in a \$325 million shortfall in the current year. She noted cuts to public school funding are being considered by DFA, LFC, and the Public Education Department (PED). She noted the agencies are collaborating to estimate how much general fund will revert if the unit value is held flat. She also noted public schools ended FY16 with an estimated \$252 million in cash balances, or an increase of more than \$50 million. She noted there is discussion of sweeping some amount of these cash balances to address the FY17 shortfall. Ms. Gudgel indicated LFC and LESC staff met with Stan Rounds, Executive Director, New Mexico Coalition of Educational Leaders, to discuss FY17 solvency. Mr. Rounds was asked to discuss the shortfall with superintendents and bring ideas back to legislative staff.

Mr. Rounds indicated he would be meeting with school business officials and will put together a small working group of superintendents to work with LESC and others in the coming weeks.

Mr. Rounds noted schools are aware of the budget crisis and are prepared for no growth in new funding. He noted he estimates between \$20 million to \$25 million in general fund revenue would revert if the unit value is held flat. He stated the prospect of sweeping cash balances is not a good one for school districts. He emphasized school districts are not frivolously saving cash but that there are many reasons school districts have saved money over the past several years. He noted text book adoption cycles have not been fully funded and school districts save money for certain adoption cycles. Mr. Rounds stated most school districts are running sophisticated models that look at funding needs over multiple years and growth in school district cash balances is purposeful – from \$118 million to \$250 million – to address funding needs over multiple years. He suggested a better approach would be to reduce appropriations to reward those school districts that have done good planning and been thoughtful about future budgets.

Mr. Rounds suggested the Regional Education Cooperatives may be better used as a way to address the costly things a small school district has to do rather than considering closing or consolidating school districts.

Mr. Rounds also noted the Legislature should consider balancing spending cuts with revenue enhancements.

Senator Morales asked about bonding issues and whether other school districts in addition to Hobbs Municipal Schools had concerns about cash balance sweeps. Mr. Rounds answered yes, school districts are concerned that reduced cash balances will result in downgraded bond ratings. The senator asked if there will be any impacts on federal funds when cash balances are swept and Mr. Rounds said federal special education maintenance of effort requirements will need to be addressed. Mr. Rounds noted the group he will be putting together could advise PED, LFC, and LESC on the impact of certain decisions. The senator noted the budget cuts of 2010 were not done strategically and asked the superintendents' organizations, school boards, and others to write a letter to the Legislature and governor asking them to consider all options to address the current deficit and shortfall for next year including revenue enhancements. Representative Trujillo asked Mr. Rounds to include the education partners including the two largest unions.

Senator Stewart stated she talked to the Albuquerque Public Schools and they said a lot of their cash balance is to pay for things that are reimbursed by federal or state grants after expenditures have been made, including state capital outlay appropriations. The Chair noted that cash balance by its very nature is one-time nonrecurring money and the more a budget hole is balanced with one-time money the bigger the hole is next time since your saving account is gone and there is still not a new funding source.

f. New Mexico School Boards Association Fall 2016 Region Meetings Schedule

Ms. Gudgel noted Joe Guillen, Executive Director, New Mexico School Boards Association, invited LESC members to attend regional school board meetings. The schedule of meetings was provided to members.

There being no further business, the Chair with the consensus of the committee, recessed the LESC meeting at 5:24 p.m.

**MINUTES
LESC MEETING
SEPTEMBER 15, 2016**

Representative Dennis J. Roch, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:05 a.m., on Thursday, September 15, 2016, in room 307 of the State Capitol in Santa Fe, 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, and Christine Trujillo; and Senators John M. Sapien, Vice Chair, and Howie C. Morales; and

Advisory: Representatives Alonzo Baldonado, Stephanie Garcia Richard, and Patricia Roybal Caballero; and Senators Linda M. Lopez, Michael Padilla, and Mimi Stewart.

The following voting and advisory members were not present:

Voting: Representative Monica Youngblood; and Senators Craig W. Brandt and Gay G. Kernan; and

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

Overview of New Mexico Dual Credit Program

Daniel Howard, Provost, New Mexico State University (NMSU) indicated there has been a dramatic increase in dual credit enrollment over the last eight years, noting dual credit students represent approximately 20 percent of NMSU-Alamogordo students and about 50 percent of the students at NMSU-Carlsbad and NMSU-Grants.

Dr. Howard stated the dual credit students that are enrolling in NMSU have higher high school grade point averages (GPAs) and ACT scores, indicating they are high-achieving students. He also said dual credit students are doing better than average compared to non-dual credit students. However, Dr. Howard explained the performance differential is decreasing over time because more students are enrolling in dual credit courses.

Dr. Howard noted expansion of dual credit participation is straining the resources of some colleges and universities since institutions do not receive tuition or general fees from these students. He said postsecondary institutions must absorb the costs of dual credit courses; the costs of opening new sections for dual credit students is a problem because of this. Another issue with dual credit programs in New Mexico is related to teacher credentials. Many high school teachers do not have the credentials the Higher Learning Commission recommends for accreditation. Because of this, postsecondary institutions are prohibiting some high school teachers from teaching dual credit courses, even though they may be effective at teaching these courses.

Dr. Howard explained there is no conformity on qualifying requirements for students taking dual credit courses and said it is basically up to the school systems and the institutions of higher education to decide which students qualify. He explained the students who qualify can vary widely and often there are not any prerequisites to take a dual credit course. He recommended establishing entry requirements to take dual credit courses to ensure students are taking appropriate courses that are not above their skill level. Dr. Howard indicated student advisement is currently not adequate for dual credit students and institutions are seeing students take courses that do not put students on the pathway to achieving a degree. Dr. Howard said federal financial aid is problematic for some students that are reaching the limit of courses that can be taken to qualify for financial aid. He recommended some of these issues could be addressed by a task force that would consist of high school and college faculty and administrators, the Public Education Department (PED), and the Higher Education Department (HED) staff, to come up with a funding model for dual credit courses that actually works. Dr. Howard also said guidance needs to be created for teachers and credentials; minimum qualifications for students taking dual credit courses; better advisement; and limitations on courses available for dual credit. The Chair noted some of these issues can be done through regulation by PED and HED and better communication between colleges and schools. He also noted when we talk about funding we get

into the legislative realm. The Chair recommended LESC staff could convene these parties to discuss possible solutions to these issues.

Renay Scott, President, Doña Ana Community College (DACC), said DACC's dual credit students have higher GPAs and ACT scores, like dual credit students at NMSU. However, she said as more students enroll in dual credit courses, they are not performing as well and are receiving more Ds or Fs in courses. Dr. Scott noted some students who take dual credit courses in high school still need remedial coursework when they enter college, though the percentage of dual credit students needing remediation is generally lower than non-dual credit students. Dr. Scott noted staff is currently working to disaggregate remedial coursework data to determine which students need remedial coursework and what dual credit courses they took in high school.

Dr. Scott indicated many students taking dual credit courses do not take courses in prescribed pathways but noted students in early college high schools generally take courses from prescribed pathways with a limited choice of courses to choose from. Early college high school students generally see a higher percentage of awards than other students, supporting the recommendation to limit dual credit courses to certain pathways.

Dr. Scott said DACC maintains an Office of Dual Credit Admission Advising with full-time employees with expenditures around \$250 thousand annually. Additionally, she noted that, between 2014 and 2017, it cost DACC \$486 thousand to \$712 thousand to serve dual credit students. She noted the cost of instruction reflects the growth in early college high schools. She explained the calculation for the cost of instruction was based on taking any courses that had 100 percent dual credit students and using the lowest part-time faculty rate for a conservative expense estimate. She stated DACC did not receive any revenue for dual credit students during those years. Dr. Scott noted some of the issues with textbooks exist because publishers publish new textbooks. DACC is looking into the use of iPads, e-books, instructor-developed texts, and free materials on the Internet to address high course material costs. She noted DACC is piloting some of these programs this spring.

Zeke Kaney, Principal, Hobbs High School (HHS), Hobbs Municipal Schools, said the application process makes HMS early college high school dual credit program successful. He explained 150 students applied for 50 spots at the early college high school; students were selected to participate through a rigorous vetting process. Mr. Kaney said students were required to take the Compass test to demonstrate they will be successful at the early college high school. He also said references were required along with an explanation from each student why they want to attend the early college high school. Mr. Kaney said prospective first-generation college students receive additional points in the vetting process. He explained New Mexico Junior College (NMJC) provides dual credit students with a mandatory tutoring service and the high school has a small grant to pay for counseling services one day per week.

Mr. Kaney said NMJC's Advanced Career Technical Academy offers classes that prepare them to work for URENCO, such as welding and safety. Mr. Kaney said, however, most of the Hobbs students that are enrolled in dual credit courses actually take courses at the high school taught by qualified teachers who are expected to have the necessary credentials. He explained the district reimburses those teachers who want to maintain their endorsement to teach dual credit.

Mr. Kaney noted textbook requirements change every year and the dual credit students taking courses on the high school campus are essentially using advanced placement textbooks, which

save the school district money. Students in the early college high school have to buy books from NMJC, and Hobbs is responsible for paying for these books annually. The increase in dual credit participation from 15 students participating a year ago to 50 students currently participating has resulted in a substantial financial burden on the school district.

Robert V. Trujillo, Principal, Taos High School (THS), Taos Municipal Schools, explained 50 students currently participate in the Friday dual enrollment program offered at the University of New Mexico-Taos (UNM-Taos). He said THS counselors provide students with a next-step plan document to outline student goals for the future. Mr. Trujillo said THS received a PED grant under High Schools That Work as one of four schools working to define programs of study to counsel students on what they are interested in based on data and workforce readiness information.

Mr. Trujillo said last year THS developed a course information guide with a program of studies so students can identify fields of interest. He noted they have a college navigator through a grant and that person helps with advisement for students going into the UNM-Taos dual credit program. Mr. Trujillo said part of the advisement process includes reviewing transcripts and making sure students are placed correctly in dual enrollment courses.

In response to Representative Trujillo's question about how schools are partnering with industry to engage students, Mr. Kaney emphasized the alignment of resources, which includes members of the community. He noted this is a part of the federal Perkins grant program, which requires community input on certifications. Mr. Kaney noted they have a community sponsorship with Xcel Energy where students learn to be linemen, and they take a technology class at the high school while pursuing a certification in the lineman program, and some of them are employed immediately after high school with Xcel Energy. He further noted the ServSafe training, within their culinary arts program, provides certification that most restaurants require.

In response to Senator Morales' question about students taking dual enrollment classes at colleges which are already offered in high school, Mr. Kaney said it is a growing area of concern. Dr. Howard said they have been asked to open new sections of algebra, a class traditionally taught in high school, which in theory could save a school district the cost of a full-time instructor, but noted the institution is responsible for paying costs associated with establishing additional courses.

Senator Morales asked about dual credit courses taught at the high school being counted in the overall enrollment at institutions of higher education, Dr. Howard said dual credit students are included in an enrollment headcount. He noted institutions are seeing increases in their enrollment due to dual credit students.

In response to Senator Morales' question about the costs of high school teachers versus college instructors, Dr. Howard said college instructor salaries are typically much higher than high school teacher salaries, and noted it is more expensive to have a tenured faculty member teach a dual credit course. The senator asked if high school teachers receive a stipend for teaching a dual credit class, and Mr. Kaney said yes and added it comes out of the district operational budget for a regular teaching day.

Senator Morales asked who ensures dual credit students are on a pathway to a degree, and Dr. Howard said this varies widely across the state. He noted students attending dual credit

courses at NMSU are advised by their high schools and not NMSU. Dr. Howard indicated wide variation in advisement around the state. Dr. Scott said DACC has a three-person advisement office, but the advisor often accepts the student's course choices since they do not understand the requirements of the high school.

Senator Morales asked LESC and the Legislative Finance Committee staff to break down dual credit costs to look for efficiencies since two different types of funding formulas are addressed. The Chair asked for legislative staff to be involved in the dual credit task force because of those issues.

The Chair said the Dual Credit Council at PED is offering webinars this fall on instructional materials (in October) and faculty quality and Higher Learning Commission Alignment (in December). He asked about HED's plan to set up a dual credit task force, and Dr. Howard said the Council of University Presidents is considering asking Barbara Damron, Cabinet Secretary, HED, to convene such a task force. The Chair suggested that one task force discussion topic include focus on why some school districts are underutilizing their instructional material allocations while others are spending beyond their allocations and dual credit's impact on lottery scholarship eligibility.

Use of 2 Percent State Equalization Guarantee Set-Aside for State-Chartered Charter Schools

Paul Aguilar, Deputy Secretary, Finance and Operations, Public Education Department (PED), noted two statutes reference the withholding of 2 percent of a charter school's state equalization guarantee (SEG) distribution. Section 22-8-25 NMSA 1978 of the Public School Finance Act states 2 percent can be withheld by PED for administrative services and Section 22-8B-13 NMSA 1978 of the Charter Schools Act states 2 percent may be withheld by PED's Charter Schools Division (CSD) for administrative support. He noted PED has always considered these two statutory provisions to mean the same thing. The Chair pointed to Section 22-8B-9 NMSA 1978, which states the performance contract must indicate how the chartering authority is to use the 2 percent withholding and the chartering authority of state-chartered charter schools is the Public Education Commission (PEC). Mr. Aguilar stated PEC is not a state agency and cannot receive appropriations. Additionally, because of the statutory conflicts, he noted this language is not executable.

PED considers "administrative services" to include compensation for PEC, CSD, and other departments within PED that support charter schools, such as the School Budget and Finance Analysis Bureau, Office of General Counsel, Fiscal Grants Management Bureau, the procurement bureau, the licensure bureau, and Assessment, Accountability, and Evaluation Bureau. Mr. Aguilar estimated 8 percent to 9 percent of the total 2 percent withholding is used to support PEC, which has been more active in its reporting to committees like LESC and the Legislative Finance Committee (LFC). Mr. Aguilar also noted the 2 percent withholding often does not cover PED's costs of taking over the governing board of a charter school or closing a charter school.

Senator Padilla noted serious problems at La Promesa Charter School in Albuquerque and Mr. Aguilar stated PED has taken over La Promesa's board of finance. The senator asked Mr. Aguilar about reports that teachers were not being paid on time. He replied noted it was payday the Friday PED took over the school and only the administrators' payroll was complete that day. PED worked over the weekend to ensure teachers received paychecks Monday

morning. Mr. Aguilar committed to scheduling a meeting at the school one evening after the special legislative session to meet with parents. He also indicated he would confirm the payroll issues were addressed and noted the contract business manager at La Promesa resigned abruptly the day before.

Senator Stewart expressed concern that PEC was not present at the hearing. She stated adequate funding is necessary for PEC to perform its duties and suggested allocating 1 percent of the 2 percent withholding to PEC and the other 1 percent to PED. She noted PEC continues to struggle to do their work without their own staff. She also noted she would like to see detailed information about how the department spends the 2 percent withholding. She questioned why PED denied a contract for a facilitator to do all the contract negotiations, when that contractor has been used by PEC for several years. Mr. Aguilar acknowledged PED is attempting to resolve the facilitator issue with the PEC Chair, but noted a conflict of interest and legal implications with the facilitator PEC wants to contract with.

Representative Smith also asked whether charter schools have to complete their own audits or PED provides the audit. Mr. Aguilar said locally chartered charter schools are part of the audit of the local school districts. State-chartered charter schools are component units of the PED audit. Despite being part of the audits of other entities, Mr. Aguilar stated charter schools pay for their portion of the annual audit but either the school district or PED procures the auditor.

Representative Smith asked whether PED provides all the monetary support to PEC. Mr. Aguilar replied that PED does, and it comes out of the 2 percent withholding. Mr. Aguilar estimated PEC's expenditures in 2012 were somewhere around \$70 thousand, and now its annual expenses are more than \$200 thousand. The representative asked if PEC commissioners submit reimbursement requests for attending meetings, to which Mr. Aguilar replied yes, they submit mileage and per diem reimbursement requests. The Chair stated when he was a PEC commissioner, only one member was designated as a liaison to any committee and only that member was able to receive reimbursement for attending those meetings. He asked if this was still the case. Mr. Aguilar stated he believed there is not currently a limit on the number of members that can be reimbursed for attending any given meeting.

The Chair asked Mr. Aguilar if he had a full breakdown of how the 2 percent withholding is used, noting the committee previously requested a spreadsheet showing how the remaining 91 percent of 2 percent withholding is used. Mr. Aguilar stated he could provide it at a later date. The Chair asked Mr. Aguilar how PED interprets the legislative intent of the conflicting statutory provisions, particularly with regard to the performance contract requirement to detail how the authorizer is going to use the 2 percent withholding. Mr. Aguilar believed the intent may have been that the chartering authority would determine how the 2 percent withholding is spent, but noted there is no mechanism to provide for that for state-chartered charter schools. PEC serves as an advisory body to PED and there is not a provision that allows PEC to direct PED on how to spend any money. Mr. Aguilar, however, acknowledged it was likely legislative intent was synonymous for both locally chartered and state-chartered charter schools, but because of his previous statements, said it is difficult to execute for state-chartered charter schools.

The Chair asked if there is anything that prevents PED from transparently describing how it intends to use the 2 percent withholding. Mr. Aguilar said nothing prevents PED from providing this information, except for the statute, which requires a detailed description of how the

authorizer will use the 2 percent withholding. Mr. Aguilar noted the authorizer and PED may have different expectations regarding how the 2 percent withholding is to be spent.

Mr. Aguilar said PED will provide a spreadsheet to LESC detailing how the 2 percent withholding is used by PED, but he noted he does not agree that the intent of the statute was that the recipient of the dollars would detail an expenditure plan. The Chair noted LESC may want to clarify the performance contract statute. Mr. Aguilar stated he believed the services provided by PED to support charter schools cost well in excess of the 2 percent withheld by PED.

The Chair asked why full-time equivalent positions funded by the 2 percent withholding are no longer listed as other state funds on PED's budget. Mr. Aguilar said he talked with his Administrative Services Director after Rachel S. Gudgel, Director, LESC, brought this issue to his attention and noted the change was made by that office and not at his direction. The Chair commented that PED should be transparent and provide this information to eliminate questions about how the money is being spent.

Charter School Lease Purchase Agreements

Daniel Hill, General Counsel Staff Manager, Public Education Department (PED), provided an overview of PED's process for approving lease purchase agreements for charter schools and noted PED's approval procedure is separate from the Public School Facilities Authority (PSFA) review. Once approved, the governing council is given notice the agreement can be executed. PED is working on a checklist to clarify the procedure and continues to work with charter schools and PSFA to improve the process.

The Chair asked Mr. Hill to expand on the separate PED and PSFA approval procedures and asked if there are any differences in the criteria. Mr. Hill said PED's review of lease purchase agreements is limited to requirements of the Public School Lease Purchase Act. PSFA's review is focused on facility or construction related criteria. The Chair noted PED recently denied four lease purchase agreements and asked why. Mr. Hill replied the four agreements were denied due to an ongoing issue with the pledging of school funds to secure financing. This ongoing issue is not clearly addressed in statute, but Mr. Hill noted PED does not believe it is permissible under law and therefore denied approval for those agreements. The Chair asked if there is an official appeals process for denied lease purchase agreements and Mr. Hill answered there is no appeals process set forth in this statute.

The Chair noted several prior agreements that skipped the approval process and asked how PED is addressing that issue. Mr. Hill said that PED does its due diligence to make sure lease purchase agreements comply with the law but there may have been some schools that entered into lease purchase arrangements without seeking PED approval. Mr. Hill stated PED is working with these schools to make them come into compliance with the law. The Chair also asked what happens to facilities once payment has been completed in the terms of the lease purchase agreement. Mr. Hill noted a lease purchase agreement is essentially a real estate contract and upon final payment the facility is owned by the charter school. The Chair stated he heard stories that once ownership transferred to a charter school, the charter school transferred ownership to their foundation or nonprofit organization and asked if Mr. Hill has seen any evidence of that. Mr. Hill said he was not aware of any such occurrence and stated most agreements are structured so the foundation is the landlord and the ownership of the building transfers from the foundation to the school upon final payment.

Representative Smith noted Turquoise Trail Charter School wanted to expand and asked if they could extend their lease purchase to raise capital to make a capital purchase. Mr. Hill replied charter schools cannot take on debt and cannot get financing; if they want to amend their arrangement to add new facilities, they have to have sufficient funds. Representative Smith noted the prior comment about the foundation being the landlord and asked if the foundation rather than the school could get additional dollars to add onto the school, and Mr. Hill answered yes.

Representative Baldonado referred to the attached list of charter schools that have approved arrangements and noticed that School of Dreams Academy in Los Lunas is not on the list though the representative was under the impression they were in a lease purchase agreement. Mr. Hill replied they are not on the list and made the distinction that a lease with an option to purchase is different than a lease purchase arrangement. Mr. Hill noted a lease with an option to purchase does not require PED approval.

The Chair asked what happens if the option to purchase expires without being executed. Mr. Hill said his understanding is that charter schools cannot use the Public School Capital Improvements Act (SB-9) and the Public School Buildings Act (HB-33) funding unless they have an approved lease purchase arrangement and so a straight lease with an option to purchase would have to be funded through regular lease reimbursement payments and if the option expired or terminated he did not know what effect if any that would have on funding.

In response to Representative Salazar and the Chair, Mr. Hill stated PED reached out to the six schools on the attached list that do not have approved lease purchase arrangements. He added there could be some confusion in semantics but PED would work to ensure these schools are in compliance with the law. Representative Salazar asked who provides training for charter school governing boards. The Chair noted members can attend school board trainings, but does not know if all six governing boards availed themselves of the opportunity. In addition, Katie Poulos, Director, Charter Schools Division (CSD) at PED, said all governing members are required to receive at least five hours of training annually; she noted PED could work with PSFA to offer training on this issue. Representative Salazar noted recommendations in the staff report that talk about training for lease purchase agreements and a review of cost effectiveness. In response Ms. Poulos said CSD is open to suggestions to improve training.

The Chair noted Mr. Hill stated a lease agreement with an option to purchase is not considered a lease purchase agreement and does not trigger PED approval. Rachel S. Gudgel, Director, LESC, and a member of the Public School Capital Outlay Council (PSCOC), said PSCOC treats this differently than PED. Ms. Gudgel said the Council has spent a significant amount of time looking at the 2015 public building deadline statute, which requires charter schools to be housed in a public facility, in a lease purchase agreement, or a lease with a nonprofit entity or private entity with other specific conditions. Compliance with the 2015 public building deadline is a condition for eligibility for lease assistance funding. PSCOC, with assistance from PED staff, has treated all leases with an option to purchase as lease purchase agreements, subject to PED approval. Ms. Gudgel indicated the attached list of charter schools with lease purchase agreements was provided by PED. PSFA staff did some follow up, finding some agreements look like they are lease purchase agreements, though the charter school has not exercised the option to purchase. Ms. Gudgel stated if lease agreements with an option to purchase do not need PED approval per Mr. Hill's testimony, the Council should be treating these agreements as lease agreements that must comply with other statutory requirements depending on who the

charter school is leasing from. The Chair noted there may be a deficiency in the law if only lease purchase agreements need PED approval.

Robert Gorrell, Director, PSFA, said PSFA began reviewing lease agreements this year. He noted PSFA saw multiple complexities in lease agreements several years ago and developed standardized leases, though only two or three charter schools use them. Mr. Gorrell suggested PSCOC should consider requiring use of the standardized lease to receive lease assistance. Senator Stewart suggested it is time to require a standardized lease agreement. In response to a comment from Senator Stewart about charter schools not complying with legal requirements of the Public School Lease Purchase Act, Ms. Gudgel noted there are a number of charter schools that presented to the Council that they are in a lease purchase agreement though they have not been approved by PED. Ms. Gudgel said this raises questions about the enforceability of the agreements.

The Chair asked if a charter authorizer can address these issues by including them as conditions for authorization, and Mr. Gorrell said absolutely, they would have the most authority. Ms. Gudgel agreed and noted she is not sure authorizers are aware charter schools need to be in compliance with these requirements. She said PSFA is required by statute to approve the facilities that are subject to a lease purchase agreement, but noted communication and outreach to authorizers and proposed and existing charter schools about the requirements of the 2015 public building deadline would help address these issues. The Chair recommended including the Public School Capital Outlay Oversight Task Force in the discussion.

Virtual Charter Schools: Funding and Accountability

Rachel S. Gudgel, Director, LESC noted virtual charter schools remain unaddressed in state statute; although LESC discussed the issue in the past, the committee decided to wait to address the issue after the Legislative Finance Committee (LFC) completed a program evaluation of charter schools in 2015. The program evaluation noted a number of potential problems with virtual schools. A third virtual charter school, Pecos Connections Academy, was approved by Carlsbad Municipal Schools. All three virtual charter schools in New Mexico are associated with K12 Inc. or Connections, reflecting national trends. Of the 275 thousand students that attend virtual charter schools, 175 thousand students attend a virtual charter school associated with one of these two entities.

Ms. Gudgel reviewed a number of issues regarding virtual charter schools in New Mexico that should be addressed in state law, including application of the public school funding formula to virtual charter schools, attendance and student-counts, differences in operational expenditures between traditional and virtual schools, procurement issues, capital outlay, transportation, enrollment growth, and accountability.

Formula funding generally follows the student, so before opening, charter schools must submit a notice of intent to the Public Education Department (PED) and the local school district in which they will be geographically located, putting school districts on notice that they may lose students to the new charter school. However, while virtual charter schools only notify school districts in which they are geographically located, they may draw students from across the state. Statute might be easily clarified to require a newly proposed virtual charter school to notify every school district in the state of their intent to open.

Ms. Gudgel noted for virtual schools, student membership is still based on attendance and student seat time, yet it is unclear how attendance is being monitored and enforced at virtual charter schools, another potential issue for LESC to examine. She noted Florida, for example, funds virtual charter schools according to course completion rather than by the same method as traditional brick and mortar schools.

Ms. Gudgel cited the 2015 LFC program evaluation, which indicated national research shows virtual charter schools could cost up to 25 percent less than traditional schools to operate. In New Mexico, however, virtual charter schools do not cost less, and she noted the committee may wish to consider funding virtual charter schools differently than traditional schools.

Ms. Gudgel stated the New Mexico Virtual Academy (NMVA) did not issue a request for proposal (RFP) when purchasing educational services and supplies, but rather, due to a stipulation in their contract, entered into a sole source contract to purchase directly from K12, Inc. While the New Mexico Connections Academy (NMCA) did issue an RFP, they received few bids and ultimately awarded the contract to Connections Education. Both schools may have been able to purchase services for less, if a true RFP process had been undertaken.

Ms. Gudgel noted charter schools are eligible for capital outlay funding from multiple sources, including lease assistance, and the Public School Capital Improvements Act (SB-9) and the Public School Buildings Act (HB-33) funds. The Public School Capital Outlay Council limits lease assistance funding for virtual schools to the actual number of students in attendance at the facility on a given day, rather than total student membership. SB-9 and HB-33 funds, for which virtual charter schools are also eligible, are property tax funding sources that raise additional issues. Local property taxes are allocated to charter schools based on a per-student allocation. However, it is unclear, given virtual charter school enrollment is comprised of students from multiple jurisdictions statewide, which students would be counted to make the virtual charter school's allocation and whether a virtual charter school that is serving students from another jurisdiction should be entitled to any local property tax revenue from other jurisdictions. Ms. Gudgel noted the committee may want to clarify these issues in law.

Ms. Gudgel suggested the committee may also want to consider how to fund transportation for virtual charter school students and determine whether such funding is appropriate.

While the LFC report noted virtual charter schools receive more per-student funding than the statewide average, the increase is generally not driven by small school size funding, but by enrollment growth funding. The virtual academies have seen significant growth, particularly since they lack natural geographic limitations on their student body. Both connections academies in New Mexico, for instance, have enrollment caps of 2,000 students, leaving the potential for continued increased enrollment growth funding. For example, Ms. Gudgel said the NMCA received approximately \$10 thousand per student in FY15, well above the statewide average per student funding.

Ms. Gudgel noted a variety of concerns related to accountability, including weaker academic growth, both overall and for subgroups, and underperformance when compared with traditional charter school students. She noted the national average for on-time graduation in four years was 81 percent in FY14, but was only 40 percent for virtual charter schools. The Center for Research on Educational Options (CREDO) at Stanford University released a study in October 2015 that addressed the issue of learning time, noting virtual charter students learned the equivalent of

72 fewer days in reading and 180 fewer days in math. The CREDO study suggested the progress of virtual charter schools be examined before allowing expansion or proliferation. Ms. Gudgel said the LFC report noted some concern regarding the rigor of virtual charter school curricula and accountability. For example, while purporting to offer a rigorous curriculum, in FY15, NMCA received two instructional audit findings related to research-based strategies and interventions, English learners, and a lack of differentiated instruction to meet differing student needs.

Senator Padilla inquired about student to teacher ratios, and Ms. Gudgel noted that the state average is one teacher to 12 students while the ratio is closer to one teacher to 40 students at NMCA and NMVA. Senator Padilla stated he considered this ratio high, even with regard to the lack of physical classrooms, although, as Ms. Gudgel said, charter schools receive waivers from class-size limitations. Senator Padilla asked for a comparison of teacher ratios in virtual charter schools in New Mexico versus those nationwide.

Representative Roybal Caballero, indicated concern that virtual education is growing without proper oversight and accountability, suggested seeing virtual education in action. The Chair noted that he had conferred with Ms. Gudgel about the possibility of visiting the NMCA office in Santa Fe to observe instruction and view the facilities.

Senator Stewart asked the Chair if LESC is going to ignore the fact that virtual charter schools are being managed by for-profit entities in violation of state law. In reply, the Chair noted the Legislature's role is to write law, leaving enforcement to the executive branch, either through PED or the Office of the Attorney General (AG). LESC has an AG opinion about the issue of "management," but Ms. Gudgel noted that opinion was issued before LESC-endorsed legislation in 2015 added a definition of "management," rendering that AG opinion effectively moot. It may be appropriate, she suggested, requesting a new AG opinion specifically regarding current law.

Representative Salazar asked how schools are held accountable in New Mexico other than by standardized tests. Paul Aguilar, Deputy Secretary, Finance and Operations, PED, noted school grading is another mechanism for accountability. Ms. Gudgel also noted Senate Bill 446, Charter School Contracts, of the 2011 legislative session requires charter schools to be placed on performance contracts; when performance metrics are not met, the authorizer and charter school should either confer on how to improve performance, or the charter school should be closed. Moreover, if a school receives a 'D' or 'F' for two consecutive years, the school's budget receives higher scrutiny from PED.

Senator Morales noted NMCA staff testified on Wednesday that they are a for-profit school, and asked Ms. Gudgel about their status. Ms. Gudgel said they are a public school, and thus not a for-profit entity, although they are doing business with for-profit entities, as many schools do. The senator asked if NMCA hires fewer teachers, for example, do the savings go to profit, to which Ms. Gudgel replied all schools are permitted to keep any remaining cash balances at the end of a school year. She continued, that virtual charter schools provide computers and Internet access to students at home, a cost generally not incurred by non-virtual schools. Senator Morales asked how much NMCA pays annually for the license to use the Connections curriculum, wondering if the committee should request an investigation into potential wrongdoing with state formula funds.

The Chair noted issues that might be included in any virtual charter school-related LESC-endorsed legislation, including: notification of intent to open a virtual charter school to all school districts; virtual charter school eligibility for capital outlay funds, as well as a determination of the appropriate municipal source of those tax dollars; transportation funding limits for virtual charter schools; enrollment growth funding; accountability through the budget review process, particularly regarding instructional time; funding of virtual charter schools, based either on a limited percentage of traditional schools' awards, course completion, or on some other factor. Regardless of how all the issues are addressed, the Chair noted that New Mexico law cannot remain silent on virtual schools.

Superintendent and Community Input

Tom Sullivan, Superintendent, Moriarty-Edgewood School District, thanked LESC for addressing the Educational Retirement Board's recent proposal to change rules related to substitute teachers. He also addressed several charter school issues. He stated New Mexico is among the poorest states in the country and yet over the last 15 years a parallel public school system has been developed that borders on being quasi-private, the virtual charter schools being the best example. He also noted the virtual charter schools have far less funding allocated to personnel than school districts and suggested the virtual charter schools could likely handle larger budget cuts than school districts. Mr. Sullivan noted if cuts occur in the middle of the school year, school districts will be subject to the New Mexico Supreme Court ruling in *Hatch Valley v. Aggie Lara*, which essentially required school districts to demonstrate everything else had been done to deal with budget cuts before contracts can be broken after the school year begins. He stated the court indicated cash balances would need to be used prior to breaking contracts. Mr. Sullivan asked LESC to continue to advocate for public schools in this budget crisis.

There being no further business, the Chair with the consensus of the committee, recessed the LESC meeting at 4:34 p.m.

MINUTES LESC MEETING SEPTEMBER 16, 2016

Representative Dennis J. Roch, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:09 a.m., on Thursday, September 16, 2016, in room 307 of the State Capitol in Santa Fe, 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, and Christine Trujillo; and Senator John M. Sapien, Vice Chair; and

Advisory: Representatives Alonzo Baldonado, David M. Gallegos, Stephanie Garcia Richard, Jimmie C. Hall, and Patricia Roybal Caballero; and Senators Linda M. Lopez, Michael Padilla, and Mimi Stewart.

The following voting and advisory members were not present:

Voting: Representative Monica Youngblood; and Senators Craig W. Brandt, Gay G. Kernan, and Howie C. Morales; and

Advisory: Representatives Jim Dines, Nora Espinoza, D. Wonda Johnson, Timothy D. Lewis, G. Andrés Romero, and James G. Townsend; and Senators Jacob R. Candelaria, Carlos R. Cisneros, Lee S. Cotter, Daniel A. Ivey-Soto, John Pinto, William P. Soules, and Pat Woods.

PARCC Scores

Christopher N. Ruszkowski, Deputy Secretary, Policy and Program, Public Education Department (PED), said of the 21 different Partnership for Assessment of Readiness for College and Careers (PARCC) grade-level and subject assessments administered during the 2015-2016 school year, there were increases in the percentage of students' being proficient on 19 of the assessments. Matthew Pahl, Director of Policy, PED, said 423 thousand math and reading assessments were administered in FY16 compared with 404 thousand assessments in FY15; approximately 99 percent of the assessments were taken on the computer.

Mr. Ruszkowski said 57 school districts showed improvement in English language arts (ELA). Mr. Pahl noted middle school students showed some of the highest growth in the state. Sixth-graders increased their proficiency by 2.3 percentage points, seventh-graders by 1.9 percentage points, and eighth-graders by 2.9 percentage points. Additionally, 3,200 more Hispanic students and 4,000 more economically disadvantaged students are proficient compared with the prior year. Native Americans showed the greatest growth in reading at 3.3 percentage points. Mr. Ruszkowski noted the statewide PARCC scores in math increased by 2.5 percentage points and 77 school districts showed gains in math. Approximately 7,300 more students are proficient in math compared to a year ago, and 4,400 of those students are Hispanic and 5,000 are economically disadvantaged. Mr. Ruszkowski commended the Gadsden Independent School District for having the three top schools in ELA growth and the top school in math growth.

In response to Representative Salazar's question about the highest rate of growth in English, Mr. Pahl said the percent of Native American students scoring proficient increased from 13.6 percent in FY15 to 16.9 percent in FY16. The representative noted that improvement is good, but pointed out the subgroup with the largest gain still had more than 80 percent of its students not achieving proficiency.

Senator Sapien asked if PED is looking at the results from year to year, and Mr. Pahl stated PED has not done the longitudinal analysis yet.

The Chair noted, as a school administrator he looked at assessment data provided to the school district by PED and calculated proficiency percentages by each grade level based on this data. He said he provided his calculations to the Logan Municipal Schools' teachers, who indicated the information he provided them did not match the information PED reported on their website. For example, one Logan teacher indicated PARCC data on the PED website indicated 5 percent of her students scored at level 5 but the data the Chair provided her indicated she did not have any students scoring at level 5. The Chair said he contacted PED about the differences and was advised PED implemented a new data masking technique with FY16 data reported on the department's website. The Chair indicated PED said the technique removed some students from the proficiency level where they actually scored and placed them in another proficiency level where no students scored, so all proficiency levels showed some students scoring at each level.

PED staff indicated this was also done so PED would not breach student score confidentiality and for transparency. The Chair noted the masking technique provides intentionally misleading data to the public. He also noted that data was still being misreported on the PED website to the general public on the day of the hearing. Mr. Ruszkowski acknowledged PED received this question from several school districts over the past few weeks. He said this statistical practice is commonly used to protect student identities and avoid federal Family Educational Rights and Privacy Act violations. In previous years PED zeroed out those rows for the same reason. PED is considering the feedback received from school districts. The Chair asked if PED communicated the change to school districts, and Mr. Ruszkowski said he believed PED informed school district test coordinators and assessment and accountability staff.

Several members echoed the Chair's concerns about misreported data. Representative Gallegos suggested PED run both scenarios, including the current and previous methods, on Logan Municipal Schools to see which method works better. The Chair noted it is easier to identify differences since he comes from a small school district. He noted it would be more difficult to identify differences in a larger school district. Senator Stewart suggested PED make a change to correct the data, and Mr. Ruszkowski said PED is considering that option.

School Grades

Tim W. Hand, Deputy Director, LESC, provided a detailed explanation of how school grades are calculated, highlighted some strengths of the data available in the school report card, and presented opportunities for improvement for the school report card as an accountability measure as well as a tool for school improvement. Mr. Hand emphasized there are already impactful decisions being made using these school grades and that a better understanding of the intricacies would help guide policy development in the future.

Mr. Hand explained that, for the current standing portion of the 2015-2016 school year report card, which represents up to 40 points of the school grade, one-half of the points are based on proficiency and one-half on growth. In the 2014-2015 school year, the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment was new, and the Public Education Department (PED) predicted proficiency would decline. To account for this, PED established two-thirds of the points based on growth and one-third based on proficiency to ease the transition. For the 2016-2017 school year, growth will represent one-third of the points and proficiency will represent two-thirds of the points.

Mr. Hand explained school growth determines how the school performs compared to similar schools based on growth in student achievement. Senator Sapien asked how academic peer groups are formed and if a crosswalk was developed between the standards-based assessment and PARCC. Mr. Hand explained the standards-based assessment score and the PARCC score are each individual covariates, and there is no crosswalk. The Chair noted that the academic peer group is not limited to that school or district, and Mr. Hand concurred that theoretically it is every student in the state in that grade level scoring around the same score in prior years.

Regarding student growth, the Chair noted that once the expected score is calculated using academic peer groups, if the student scores higher than expected, the score is considered positive growth and if the student scores lower than expected, it is presumed that student is underperforming and the score is assigned negative growth. Mr. Hand added that the growth score is the standard distance between the expected score and the actual score and these scores are called Z scores. A cumulative density function translates the Z score into a specific number

of points either for a teacher's evaluation or growth calculations within school grades. Senator Sapien noted that the growth model used in school grades and teacher evaluations that was developed by Dr. Pete Goldschmidt has not been peer reviewed.

The next section of available points includes the opportunity to learn survey and bonus points. The Chair asked how schools could earn more than 10 points. Christopher N. Ruszkowski, Deputy Secretary, Policy and Program, PED, said PED bases the calculations on historical averaging and feedback from the field and sets the denominator of the calculation at five points less than available points, which make it possible to earn more than 10 points. Mr. Hand explained that static graduation rates, growth in graduation rates, participation in college- and career-readiness, and scores on college- and career-readiness assessments make up the graduation and college- and career-readiness portion of the school report card. Mr. Ruszkowski clarified a question by the Chair and Senator Sapien regarding growth points available for schools with high graduation rates by explaining that if a school has a graduation rate higher than 95 percent, the school earns all the points for growth. Mr. Hand noted the components of bonus points include student and parent engagement, habitual truancy improvement over the prior year, activities from the New Mexico Activities Association, and use of the online assessment format. Senator Stewart highlighted issues with bonus points.

As an opportunity for improvement, Mr. Hand talked about the relationship between growth and proficiency. The Chair asked if the system is fair for a teacher who is evaluated on the proficiency of students who are mostly low-income (eligible for free and reduced lunch or FRL). Mr. Hand replied they are certainly at a disadvantage. Alternatively, the Chair said regarding growth, teachers have an equal chance at success regardless of FRL status because students' prior achievement is controlled in the data. Mr. Hand noted that is exactly what a covariate does: it sets an expected score based on prior performance of academic peers that allows for growth calculations to be equitable.

The Chair observed that the problem in New Mexico is most teachers believe they are being evaluated on proficiency but that is not the case. Mr. Hand noted he worked to explain this to teachers when he was in Las Cruces but the federal No Child Left Behind Act of 2001 mindset, which was focused on proficiency, left teachers feeling out of control as to whether or not their students could become proficient. Students at schools are succeeding at achieving proficiency in low socioeconomic conditions but it takes more resources, incredible teaching, and a little bit of luck. The Chair suggested increasing efforts to inform teachers that the growth of their students is disassociated from their special education status, income level, mobility, and other factors.

Senator Stewart asked if growth will count less next year. Under the federal Every Student Succeeds Act (ESSA), Mr. Ruszkowski said, proficiency, growth, and graduation rates must be included. He noted that there will be a conversation with the U.S. Department of Education (ED) on the weight of proficiency moving forward.

Mr. Hand recommended growth should continue to be a focal point because the current standing points on the school report card are more difficult to obtain for schools with lower socioeconomic status students. Even though current standing proficiency points only amount to around 30 points, those points could, for instance, swing a school grade from a D to a B or vice versa. Mr. Hand explained that about half of the schools in the state have between 80 and 100 percent of their students eligible for FRL. The schools that have a high percentage of students eligible for FRL have a much different distribution of grades with more F grades and

fewer A grades. Mr. Hand said there are several schools that are beating the odds by having high proficiency despite lower socioeconomic status. However, it is much less likely for these lower socioeconomic schools to receive a passing grade.

Mr. Hand said national surveys reveal it is preferable for schools to emphasize character development and creativity and these could be considered as a component in school grades. He noted previously when he was working with Las Cruces Public Schools many stakeholders value social and emotional outcomes and a teacher's ability to shift the mindset of students. Representative Roybal Caballero said this needs more sources to ensure that it is not a skewed perspective. Mr. Hand also noted that it may be useful to use the data in the school report card to discover pockets of exceptional learning and growth to guide practice.

Mr. Ruszkowski emphasized 30 thousand more New Mexico students are in A and B schools than four years ago. He noted 33 percent of schools saw an increase in their letter grade compared to only 29 percent in 2015. Regarding schools on the rise, Desert View Elementary School in Gadsden Independent School District (GISD) grew from an F to an A in the last year and there were a number of other schools in GISD that increased two or three letter grades in the 2015-2016 school year.

Representative Garcia Richard asked if the points available in the current standing category are dictated by ED. Mr. Ruszkowski said there is no prescribed amount of proficiency required by ED. The representative noted Mr. Hand said proficiency points in current standing are harder for some schools to earn based on data, and ESSA enables stakeholders to have a conversation about addressing this issue. The representative described this presentation as setting the stage for how the LESC and PED can collaborate on these issues. Matthew Pahl, Director of Policy, PED, pointed to technical committees in which representatives from school districts and schools weigh in on these issues and invited Mr. Hand to participate based on his expertise and because it increases PED's engagement with the Legislature.

Representative Smith indicated charter school grades affect the distribution less than other schools because there are fewer of them. Additionally, charter schools target populations that typically underperform academically. Mr. Pahl said PED is working to change criteria for supplemental accountability model schools to account for this.

Representative Gallegos said a school board member in his district asked if PED lowered the bar down to push school grades up. However, based on his understanding of the PED presentation, the bar has moved up, but schools still improved. Mr. Ruszkowski confirmed with the change in proficiency that the bar has gone up. He added that PARCC proficiency has increased in math and reading.

Senator Stewart advocated for the use of course grades and not centering accountability on a single test as the state considers implementation of the Title I plan required by ESSA.

ADJOURNMENT

There being no further business, the Chair adjourned the LESC meeting at 12:39 p.m.