

**Legislative Finance Committee  
January 20, 2014  
State Capitol Room 307  
Santa Fe, NM 87501**

**Monday January 20, 2014**

The following members and designees were present on Monday, January 20, 2014: Chairman Luciano “Lucky” Varela; Vice Chairman John Arthur Smith; Representatives Henry “Kiki” Saavedra, Larry A. Larrañaga, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, and William “Bill” J. Gray; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Carroll H. Leavell, Howie C. Morales, George K. Muñoz, Steven Neville, and Pete Campos. Guest Legislators: Representative Jimmie C. Hall. Senators Mary Kay Papen, William F. Burt, and Clemente Sanchez.

**Program Evaluation: Instructional Materials Fund – From Textbooks to E-books.** Rachel Mercer-Smith, program evaluator, and Jon Courtney, program evaluator, Legislative Finance Committee, presented the findings of the LFC evaluation report titled, “Oversight and Spending of Instructional Materials in Public Schools.” Instructional materials may impact student learning as significantly as teacher quality and are fundamental to student achievement. In FY14, New Mexico allocated \$21 million for the purchase of instructional materials. The report highlighted three key findings: 1) The instructional materials process suffers from a lack of oversight, and school districts and charter schools sometimes expend funds in ways inconsistent with state law. 2) The system for funding instructional materials does not meet current needs, resulting in reports of inadequate resources while allocated money goes unspent. 3) New Mexico is unprepared for a transition to a personalized digital learning environment.

The LFC presented the following key recommendations.

The Legislature should

- Amend the Instructional Materials Law to require instructional materials funds be used on state-approved materials on the multiple list, which includes both core/basal and supplemental materials.
- Consider making the instructional materials fund a reverting fund or consider taking credit for unspent instructional materials allocations if substantial fund balances continue at school districts, charter schools, state-funded schools, and private schools.
- Modify statute mandating adequate instructional materials be available to all students at school and at home from the current statute, which requires one textbook be available to each student to take home.
- Modify statute to require all districts have a plan in place to ensure all students have adequate access to instructional materials as defined by the Legislature.
- Clarify statute to make it the responsibility of the Public Education Department to determine whether districts and charters are meeting the definition of instructional material adequacy.

- Direct the Public Education Department to develop quality and accountability standards for all digital content, e-reader devices, and electronic courses, and other technologies used for instruction.

The LFC recommended that the Public Education Department should

- Enforce penalties for districts, state charter schools, and private schools, including withholding instructional materials funding in cases of non-compliance with statute and regulation.
- Update guidance for instructional material expenditures and inventory to ensure provided information accurately reflects statutory requirements, eliminating references to “core/basal” and “supplemental” expenditure limits not included in statute.
- Develop a system for tracking allocation expenditures and fund balances across years, including actual carry-over.
- Continue collecting education technology plans and report this information to the Legislature and public annually.

Paul Aguilar, deputy secretary, Public Education Department (PED), provided the agency’s response. Mr. Aguilar noted that while the agency agrees with some of the report’s findings and recommendations, the agency expressed concern with the reliance on PED data to determine whether schools had violated statutory limits on instructional material expenditures and asserted PED should rely on independent district auditors to identify such violations. Additionally, PED disagreed with evaluation findings that suggest \$5.2 million appropriated for the purchase of computers for the Partnership for Assessment of Readiness for College and Careers (PARCC) administration was not allocated entirely in accordance with General Appropriation Act language. He disagreed with the LFC’s methodology for estimating the cost of career and technical material adoption and disagreed with recommendations to revert instructional material funds in the future if significant carryover balances continue.

**LESC Staff Memorandum on Select Instructional Materials Topics.** Mark Murphy, fiscal analyst, Legislative Education Study Committee (LESC), presented a memo titled “Staff Report: Review of Selected Components of the Instructional Material Process.” The report expressed concern with the timeliness of allocation distribution and additional pupil calculations use to determine final instructional material allocations. Additionally, the report noted that general obligation bond proceeds to support purchase school books statewide may not have been distributed according to legislative intent. The LESL report recommended the Legislature clarify general obligation bond language in the future.

Representative Larrañaga asked if LFC collected information about the efficiency of instructional material use in schools. Representative Larrañaga expressed concern that students may not be allowed to carry backpacks in schools and thus may need to leave textbooks in their lockers.

Representative Salazar expressed concern that schools may not have sufficient numbers of textbooks. A teacher from Las Cruces present in the audience volunteered that she did not have adequate numbers of textbooks in her school. Representative Sandoval expressed similar concern.

Representative Miera was asked for his opinion by a member of LFC. Representative Miera mentioned perhaps the state does not need to adopt all subjects every six years and perhaps using electronic textbooks would be less costly.

Senator Smith referenced a chart in the LFC report that indicates schools may be using revenue sources to purchase textbooks and questioned whether schools are using resources efficiently given the large carryover balances reported in the LFC evaluation. Senator Smith also noted that despite reports of insufficient resources due to student growth, only three districts have experienced much student growth in the last 10 years.

Senator Smith asked which districts had not provided instructional material budget reports or responded to the LFC survey. LFC staff indicated that this information may be shared with the committee. Senator Smith asked how other states fund instructional materials and whether evaluations in other states suggest better ways to ensure resources reach classrooms. Ms. Mercer-Smith responded that several states have moved away from line-item appropriations for textbooks, yet reviewed literature suggests most states report textbook shortages despite various funding mechanisms.

Senator Neville mentioned several states are beginning to express concern with the common core state standards and asked if the PED had specific estimates of the costs associated with purchasing common core materials. Deputy Secretary Aguilar responded that after making initial purchases, costs should not be significantly different from the current costs of materials.

Senator Munoz asked if any districts reported integrating electronic and traditional paper textbooks. Ms. Mercer-Smith responded that most are not but six surveyed districts report piloting digital textbooks.

Senator Cisneros and Chairman Varela both expressed concern about school districts, charter schools, and private schools that have received instructional material funds in recent years but failed to submit mandatory budget report annually.

### **Miscellaneous Business**

#### *Action Items*

**Approval of November 2013 and December 2013 Meeting Minutes – Senator Smith moved to approve the November 2013 and December 2013 meeting minutes, seconded by Representative Larrañaga. The motion carried.**

**Program Evaluation: College Readiness in New Mexico.** Michael Weinberg introduced the report with information about the importance of a postsecondary education and how resources are wasted on developmental college courses that do not count toward a postsecondary credential and decrease the likelihood of students completing college. Nationally, states and students spent about \$3 billion on remedial courses in 2010, including the instructional costs and lost annual earnings. In New Mexico, the figure is \$22 million in 2013, including instructional costs and the amount spent on tuition by students. Nearly four in 10 students in community colleges never complete these developmental courses.

Approximately 78 percent of the students enrolling in developmental classes are recent graduates of New Mexico public high schools. However, a lack of accountability for post-high school performance as well as barriers in the pipeline between high schools and colleges result in thousands of students graduating from high school each year without being ready for postsecondary education. Even with increased secondary assessment and graduation standards, it appears many students will continue to fall short. Instead, high schools can better use existing assessments to predict college readiness and intervene to prepare students before graduation.

Similarly, postsecondary institutions have opportunities to enroll better-prepared students by more closely collaborating with surrounding high schools through implementation of the changes to common core state standards, agreements through the dual credit program, and alignment of high school graduation requirements with college admission requirements. Particularly at large community colleges, like Central New Mexico Community College (CNM) and New Mexico State University-Doña Ana (DACC), improved partnerships with a handful of feeder high schools could significantly impact incoming student college-readiness. For students who still require remediation, national best practices include more accurate placement methods, reduced time in developmental classes, and providing support within credit-bearing courses. These strategies are being used at various degrees across institutions and the preliminary results are promising. The implementation shift, however, needs to be dramatically ramped-up to see meaningful improvements in college completion rates.

Mr. Weinberg presented a major finding of the report: Minority and low-income students as well as under-performing high schools have disproportionate rates of developmental education. The average statewide remedial rate of recent high school graduates remained at 51 percent in FY12; remedial rates, however, are even higher for Native American students (59 percent), Hispanic students (68 percent), and low-income students (79 percent). The four largest community colleges offer 82 percent of those developmental courses: CNM (including UNM students), DACC, San Juan College in Farmington, and Santa Fe Community College. As noted in the 2010 LFC evaluation of the University of New Mexico (UNM) and New Mexico State University (NMSU), the majority of students at each institution come from a relatively small number of “feeder” districts and schools.

Research supporting the finding included developmental education strongly correlates with poverty and some high schools are outperforming expected rates while others are doing worse than expected; college completion rates for students requiring developmental courses are low; and at-risk students need additional supports to succeed in college.

Another key finding of the report is that New Mexico’s high schools under-prepare students for postsecondary education. This is supported with evidence: Increasing graduation requirements, including dual credit course-taking, must be purposeful to lead to better college readiness outcomes. In both reading and math, SBA scores are generally predictive of a high school student’s likely need to require remediation in college, but proficient scores do not mean college ready. The high school senior year, an ideal opportunity to improve college readiness, is often under-used.

Valerie Crespin-Trujillo presented the final major finding about how higher education institutions are shifting toward promising practices, but need to expand implementation to improve outcomes. Examples included how postsecondary institutions are revising course placement strategies to reduce the need for developmental courses; New Mexico's public colleges and universities are also using integrative models to reduce the time students spend in non-credit bearing developmental education courses; improving student supports increases success in gateway courses; and colleges and universities will need support in scaling-up approaches that improve student performance.

The evaluation recommended the following:

The Legislature should increase requirements for a college-ready high school diploma.

The Higher Education Department (HED) should

- Provide postsecondary performance feedback to high schools annually on the department's website;
- Direct institutions to align placement scores statewide; and
- Monitor and evaluate institutions' alternatives to developmental education and provide technical support for postsecondary institutions to improve implementation.

The Public Education Department (PED) should revise the A-F school grading system to include college readiness as measured by remediation rates and gateway course completion.

The HED and PED should

- Require high schools to use the SBA or its equivalent to intervene with targeted courses for high school students likely to need college remediation;
- Align high school graduation requirements with college admissions criteria; and
- Promulgate rules limiting dual credit to courses of study demonstrating improved student performance.

The public postsecondary institutions should

- Limit the number of credit hours required by degree program to a reasonable standard;
- Establish semester-by-semester road maps for all programs;
- Develop measures as part of the Accountability in Government Act to report results of developmental education outcomes; and
- Expand implementation of alternatives to developmental education.

High schools should use standards-based assessments and other data to better advise college-bound students, particularly regarding senior year course-selection and purposeful dual credit enrollment.

Jose Garcia, secretary of the Higher Education Department, presented a summary of the response letter and highlighted the department's efforts to focus the funding formula on rewarding degree completion, particularly for under-served students.

Following the presentation of the program evaluation, members of the LFC asked questions and made comments:

Senator Neville said we should examine the possibility that colleges redirect the costs of remediation to high schools. Mr. Garcia responded stating the attempt to shift the burden of remediation from higher education to public education has been on the table in a number of states so far New Mexico has not put forth effort to move in that direction, he stated he would discuss the proposal with the governor.

Representative White commented the report assumes all students should graduate to be college ready, but not all students are college material. For high school graduates who go directly into the workforce, he suggested a need for more guidance for both college and workforce bound students.

Representative Tripp asked about high school redesign and if the senior year of high school could be eliminated because not much is taking place that final year of high school. Mr. Weinberg said students who graduated last spring were the first group to graduate under the new requirements. Representative Tripp asked if the standard should be raised. Mr. Weinberg said the solution may not be raising the standard but perhaps differentiated standards for students who are motivated to go to college. He said tiers of diplomas could depend on long-range plans.

Senator Sanchez asked how developmental education has changed over the past few decades and raised the question if students are proficient through the SBA, why are they placed in developmental education. He went on to discuss the possibility that institutions are misplacing students in courses to increase revenue. He asked why students are taking so long to achieve a bachelor's degree and suggested the high school senior year be used more efficiently. He also suggested the PED and HED need to conduct a curriculum review at the high school level to better prepare students. Mr. Garcia spoke about incentives stating when we had a college and university system that incentivized the collection and accumulation of student credit hours rather than college completion and success in college then you would expect that incentive would inspire programs that would encourage students to accumulate student credit hours.

**LFC Proposed 2014 Legislation.** Rachel Gudgel, principal fiscal analyst, LFC, proposed consideration of six draft bills for potential committee sponsorship including improved quality and coordination of early childhood care and education programs, increased funding for “at-risk” public education students, increased funding for school districts with fewer than 200 students, changes to the legislative lottery scholarship intended to improve the solvency of the program, and proposals to improve the solvency of the judicial and magistrate pension funds. Summaries of the bills follow.

Early Childhood Care and Education Act - In response to the LFC program evaluation “Impact of Child Care and Head Start on Student Achievement,” this draft addresses the quality and coordination of early childhood services in the following three ways: directs the Early Learning Advisory Council to develop legislative recommendations to improve accountability for early childhood education and care, appropriates \$500 thousand to the Children, Youth, and Families Department (CYFD) to fund the planning of high quality child care demonstration projects,

appropriates \$500 thousand to the Higher Education Department to assist postsecondary institutions in developing early childhood work force training programs, and appropriates \$1.2 million to CYFD to improve the quality of registered homes and provide ongoing training and education for child care service providers.

**Senator Cisneros moved to adopt the endorsement of the early childhood care and education bill, seconded by Senator Munoz. The motion carried.**

Create Micro District Size Adjustment Factor – Introduced by Representative Hall as House Bill 35 creates a new factor in the public school funding formula for school districts with fewer than 200 MEM (qualified enrolled students) and appropriates \$5.8 million to cover the additional units generated. The bill will decrease the need for large emergency supplemental appropriations annually and increase the stability in annual budgeting for qualifying small school districts.

**Senator Cisneros moved to adopt the endorsement of the creation of the micro district size adjustment factor bill, seconded by Representative Tripp. The motion carried.**

Increase At-Risk Cost Differential in Public Education Funding Formula – Introduced by Representative Varela as House Bill 19 increases the funding formula weight for at-risk students from 0.0915 to 0.115 and includes an appropriation of \$20 million to cover the additional units generated. Previous LFC evaluations have identified the state’s largest achievement gap is highly influenced by poverty and language status, regardless of ethnicity or race. Typically, additional costs are associated with the need for extended learning time and intervention services, among others. The current formula places little weight, as compared with other components and other states’ formulas, on the additional incremental costs associated with educating at-risk students. Of the more than \$2.4 billion distributed through the funding formula, only 3 percent of this funding will be allocated to serve at risk students in FY14, or approximately \$70 million. The bill directs additional funds to school districts and charter schools that serve the state’s most at-risk students, helping to close the achievement gap.

**Senator Cisneros moved to adopt the endorsement of the increase to the at-risk cost differential in the public education funding formula bill, seconded by Senator Campos. The motion carried.**

Legislative Lottery Scholarship Solvency - The draft addresses immediate solvency concerns with the Legislative Lottery Scholarship Fund and changes the Legislative Lottery Scholarship Program (LLSP). The draft includes two general fund appropriations, both contingent on legislative action for FY15: \$8 million in recurring funds to achieve solvency for the LLSP and \$2.9 million in nonrecurring funds to provide full tuition scholarships for students who have received the scholarship for at least three semesters by the end of FY14 (“legacy students”). The draft requires students attending four-year institutions to take 15 credits per semester (up from 12), while students at two-year institutions would continue to be considered full-time at 12 credit hours per semester. The bill also shortens the scholarship term to seven semesters total and increases the minimum required GPA to 2.75. Scholarship awards would be decoupled from tuition and funded at set scholarship amounts for two-year, comprehensive, and research institutions.

**Senator Cisneros moved to adopt the endorsement of the legislative lottery scholarship solvency bill, Representative White suggested a change in the language on page four line eight from “shall” to “may,” seconded subject to additional amendments by Senator Campos. The motion carried with Representatives White and Gray voting in the negative.**

Judicial Pension Reform - The Investments and Pension Oversight Committee (IPOC) has endorsed legislation to increase the funded ratio of the Judicial Retirement Fund. “Judicial Pension Reform Options,” would increase the funded ratio of the plan to 80 percent in 30 years. The LFC staff recommends the following amendments to House Bill 33: reduce the service credit from 3.5 percent to 3 percent, increase the cost-of-leaving-adjustment (COLA) suspension threshold from 80 percent to 100 percent, increase the final average salary from one year to five years, and require “return-to-work” members to contribute to the pension. LFC staff also recommends a one-time appropriation of \$500 thousand to immediately improve solvency. The amendments proposed would increase the funded ratio of the plan to 100 percent within 30 years.

**Senator Cisneros moved to adopt the endorsement of the judicial pension reform bill, Representative Varela recommended an amendment to HB33, seconded subject to additional amendments by Representative Salazar. The motion carried.**

Magistrate Pension Reform - The draft amends the Magistrate Retirement Act (MRA) to improve solvency of the magistrate retirement plan. The draft changes current statute in the following ways: increases the employer contribution from 11 percent to 15 percent in the MRA, increases the employee contribution from 7.5 percent to 10.5 percent; increases the vesting period from five years to eight years, reduces the service credit multiplier from 3.75 percent to 3 percent, suspends the COLA for existing retirees and future retirees for two out of every three years, calculates final average salary based on a high five years as opposed to the current one year, and includes a one-time appropriation to the MRA of \$1 million. The proposal for the MRA will require all magistrate judges to contribute to the pension fund regardless of eligibility to participate. The current funded ratio of the MRA is 58 percent. Without reform, the funded ratio of the plan is estimated to reach zero in the next 20 years. The changes proposed will result in the MRA achieving a funded ratio of 100 percent in the next 30 years.

**Senator Cisneros moved to adopt the endorsement of the magistrate pension reform bill, seconded by Representative Salazar. The motion carried.**

### *Information Items*

**OptumHealth New Mexico Responses to LFC Progress Report on Behavioral Health and Follow-Up Questions.** Pam Galbraith, program evaluator, LFC, said she presented a program evaluation titled “Costs and Outcomes of Select Behavioral Health Grants and Spending” in May 2013. Subsequent to that a progress report was given in December 2013. At that time OptumHealth NM was requested to attend and be available for committee questions. OptumHealth NM declined the request and did not attend the hearing. Subsequent to the December meeting, OptumHealth NM agreed to provide a written response to questions and to attend today’s hearing.

Chairman Varela asked the reason for their absence during the original hearing and the subsequent progress report. Elizabeth Martin, chief executive officer, OptumHealth NM, said they had not seen a copy of the report and did not know the scope of questions. She said OptumHealth played a small role in referrals for the audit.

Ms. Galbraith said the original program evaluation was directed at the operation of the behavioral health services division of the Human Services Department (HSD). She said during the original program evaluation HSD expressed a concern that they were beginning an audit of a select group of behavioral health providers and asked that LFC not delve into specific program integrity issues at this point and LFC agreed. In December 2013, under the usual procedure of an LFC program evaluation, a progress report was conducted and presented to the committee that focused more on program integrity. As a part of the report, evaluators addressed if there were opportunities for OptumHealth to have identified issues earlier and expressed concerns about how involved OptumHealth was in their role for administering program integrity from the time their contract began in 2009 to the present. Ms. Galbraith said OptumHealth stated they had submitted at least 100 reports of suspicious billing activity to the Human Services Department. The level of activity could not be validated from the fraud and abuse reports submitted to HSD by OptumHealth. HSD and OptumHealth state the concern that fraud may have occurred was a result of OptumHealth having an upgrade to their information system. With the reporting system enhancement, claims are being audited prior to payment. OptumHealth attests the methodology for assessment of the claims did not change with the upgrade.

Chairman Varela discussed the system used to run claims and its trouble validating the claims and paying providers. He said some of the edits were suspended to enable the client or provider to get the funds. He asked if any claims were paid that may not have met the criteria. Ms. Martin said there were problems with the payment claim system in 2009 and new policies were in place. She noted the system is a claim payment system but does not generate claims. She said providers manufacture claims and those claims could be suggestive of potential fraud waste and abuse, which would have been flagged. She said monitoring for potential fraud waste and abuse has continued throughout their contract and resulted in over 100 referrals to HSD.

Chairman Varela expressed concern with alleged fraud issues that came up in the audit resulting in overpayment and identified after edits were restored. Ms. Martin said our contract says we are to refer any suspicious activity to HSD using a system that flags outliers, once the system flags them we take the claim and compare it to the clinical record indicating services provided. Ideally you would have a claim that would mirror the service provided to the consumer. If there are discrepancies OptumHealth conducts a desk audit to confirm any outlier could be the result of potential fraud waste and abuse.

Responding to Representative Sandoval, Ms. Martin said the OptumHealth contract is worth more than \$400 million for four and a half years. Representative Sandoval asked why OptumHealth does not bear any responsibility for the problem. Ms. Martin said OptumHealth made its first referral in 2009 and has consistently referred concerns in a timely manner since the beginning of the contract until the contract concluded on December 31, 2013. She said she cannot speculate as to why HSD took the time it did to react.

Senator Cisneros expressed concern with OptumHealth's absence at committee meetings and pointed out its involvement and lack of response. He asked for clarification as to what constitutes waste and abuse. Ms. Martin said when fraudulent behavior involves intent while wasteful behavior can often be resolved with training. She said OptumHealth's may pay a claim even though it was wasteful behavior and then educate the providers how to bill properly. She said when that sort of error becomes chronic and persistent it may enter the abusive range. Persistent and chronic may have intent behind it and would be fraudulent. Senator Cisneros expressed concern with the recommendation to hire replacement providers without giving due process or an opportunity for those 15 providers to explain what was happening.

Senator Cisneros asked why OptumHealth would be entitled to any recouped funds after this is settled. Ms. Martin said there is a provision in our contract that if and when an investigation is concluded, monies should be brought back into the system. She added the amendment (amendment 15) to the contract was not in place in any of the contracts when this activity was being referred. She said she knows there has been a question of OptumHealth's incentive. She said their incentive is to ensure the dollars allocated make it to the individuals who need them. Senator Cisneros expressed concern that OptumHealth stands to profit from the fraudulent, wasteful and abusive acts of those individuals hired.

Senator Munoz asked if repeat offenders were referred to HSD on a monthly basis or if they were referred once. Ms. Martin said OptumHealth makes an initial referral and continue to add to it instead of opening a new referral every time. Senator Munoz asked if HSD sent any responses as to why it had not taken any action on referrals. Ms. Martin said HSD was inconsistent in its response to. Senator Munoz asked who suggested Amendment 15 be entered on the contract. Ms. Martin said she could not remember but said it was language that was present in all managed-care contracts initiated by HSD and OptumHealth responded in kind. Senator Munoz asked if the amendment was part of the original contract or if it was added at a later date. Ms. Martin said it was added at a later date.

Senator Papen asked if Ms. Martin went to Arizona with Diana McWilliams, acting director, NM Behavioral Health Services Division, HSD and PCG prior to the audit. Ms. Martin said she did at HSD's request. Senator Papen asked why she went to Arizona to start contracting with providers to take over before the audit was conducted. Ms. Martin said it was contingency planning; at that point OptumHealth was aware there were several severe billing irregularities. Ms. Martin said the trip in November was to assess technical assistance for the providers in New Mexico. Senator Papen said some providers were contacted about coming in and taking over these New Mexico providers. Senator Papen pointed out the fact that OptumHealth gave some of these providers high scoring audits and asked if why they would then also be accused of fraud. Ms. Martin reiterated OptumHealth is not washing its hands but identifies billing irregularities, not fraud. Senator Papen said OptumHealth changed their billing methods three and asked how these companies are supposed to keep up with these changes and not have some errors.

With no further business, the meeting adjourned at 1:33 p.m.

  
Chairman Luciano "Lucky" Varela

  
Vice Chairman John Arthur Smith