

**MINUTES**  
**LESC CHARTER SCHOOLS SUBCOMMITTEE MEETING**  
**August 27-28, 2014**

**WEDNESDAY, AUGUST 27, 2014**

Representative Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) Charter Schools Subcommittee to order at 1:50 p.m., on Wednesday, August 27, 2014, Student Union Building, Governance Room, 3<sup>rd</sup> Floor, New Mexico Highlands University, Las Vegas, New Mexico.

The following voting members of the LESC Charter Schools Subcommittee were present:

Representatives Mimi Stewart, Chair, Dennis J. Roch, Vice Chair, Jimmie C. Hall, Rick Miera, James E. Smith, and Christine Trujillo; and Senators Craig W. Brandt, Linda M. Lopez, and William P. Soules.

The following voting members of the LESC Charter Schools Subcommittee were not present:

Senators John Sapien and Pat Woods.

Also in attendance was Senator Daniel A. Ivey-Soto.

**REVIEW OF CURRENT AND POTENTIAL LANGUAGE FOR STATUTORY  
DEFINITIONS RELATED TO CHARTER SCHOOLS**

The Chair recognized Mr. Kevin Force, LESC staff, and Ms. Abby Lewis, Assistant Attorney General, Civil Division, for a review of potential statutory language relating to charter school definitions.

Referring to an LESC staff document included in the subcommittee notebooks, Mr. Force explained that LESC staff developed a four-column matrix to summarize specific information relating to four potential definitions for school district, charter school, virtual online cyber school, and public school. The matrix, he noted, include current language in the *Public School Code* as compared to other provisions of New Mexico law as well as potential issues and example language from other states.

Subcommittee discussion included the possibility of separate definitions for a local charter/state-chartered charter school. One member commented that the model language in the matrix may not be adequate.

Ms. Lewis provided the subcommittee with a handout, *Suggested Additions to Definition in Charter Schools Act*, which included 17 terms and the statutory citation in the act, for:

- non-religious;
- local educational agency;
- lottery;

- enrollment preference;
- governing body training;
- discretionary waivers;
- non-discretionary waivers;
- impasse;
- material terms;
- indicators;
- measures;
- metrics;
- targets;
- planning year;
- material violation;
- minimum educational standards; and
- support staff.

Ms. Lewis outlined potential conflicts in the language and subcommittee members discussed concerns relating to the need for more clarifying language for these terms, including requirements for governing board training; material violations, and minimum educational standards.

The Chair requested that Mr. Force and Ms. Lewis provide an additional report to the subcommittee during its September meetings, including options for recommended definition language.

## **SCHOOL TRANSPORTATION FUNDING**

The Chair recognized Mr. David Craig, LESC staff, and Mr. Antonio Ortiz, Student Services and Transportation Division, Public Education Department (PED), for a discussion relating to the funding of school transportation services of charter schools.

Referencing the LESC staff brief, Mr. Craig reported that during the 2012 and 2013 interims, the LESC convened the an interim subcommittee on public school transportation to examine issues related to school transportation. Among issues discussed by these subcommittees, he added, was testimony provided by PED staff indicating that state-chartered charter schools were receiving school transportation funding formula allocations, in excess of what was needed, to provide to-and-from transportation services. For the subcommittee’s review, he noted that the staff brief included a chart comparing FY 13 transportation revenues and expenditures for state-chartered charter schools. With regard to charter school transportation funding for FY 15, Mr. Craig reported that the staff brief also included a comparison of FY 14 final allocations and the FY 15 initial allocations. He then summarized the comparison by noting that:

- 64 school districts and seven charter schools received reductions from final to initial allocations; and
- 25 school districts and seven charters received an increase.

Mr. Ortiz indicated, however, that the reductions and increases in allocations may change upon determination of the final FY 15 allocations.

Mr. Craig reported that provisions in law relating to transportation for charter schools exist in the *Public School Code*, the *Public School Finance Act*, and the *Charter Schools Act*, as well as in the PED administrative rule. He noted that provisions in current law and rule require:

- locally chartered charter schools to negotiate with the chartering district for transportation;
- a separate transportation budget and calculation of allocation for the locally chartered charter school;
- the district to collect and submit required reporting for the locally chartered charter school's transportation;
- PED to calculate transportation allocations for each state-chartered charter school;
- the allocations to be based on the tentative transportation budget of the state-charter for the current fiscal year; and
- periodic installment payments to state charters to be based on the allocations certified by the state transportation director.

However, Mr. Craig stated, with regard to state-chartered charter schools, provisions in the *Public School Finance Act* do not specify whether state-chartered charter schools are to receive a transportation funding formula distribution or be eligible to receive such funding.

With regard to geographic boundaries for transportation, Mr. Craig indicated that provisions in current law:

- related to the school district creation of geographic boundaries for public schools that would be designated as "walk zones" do not apply to charter schools;
- locally chartered schools are required to negotiate with a school district for school transportation services; and
- as part of the negotiation, the school district is required to establish the limit not to exceed the school district boundary.

Among other provisions for locally chartered charter school negotiating transportation services, Mr. Craig stated, PED rule requires:

- transportation to be limited to the school district boundary;
- negotiations to be limited to transportation by school bus or a per capita feeder agreement only;
- the cost to the charter school to not exceed the amount generated by the eligible student allocation if services are provided by existing to-and-from services or resources;
- school districts to be responsible for additional costs associated with establishment of new to-and-from transportation systems;
- a separate transportation budget and calculation of allocation for the charter school; and
- the district to collect and submit required reporting for the charter school's transportation.

Mr. Craig emphasized that there are no provisions in law that relate to transportation boundaries or distances for state-chartered charter schools.

To conclude, Mr. Craig stated that they subcommittee may wish to discuss whether:

- the current mechanism for allocating transportation funding to state-chartered charter schools is adequate;
- the eligibility criteria for charter schools to receive a transportation allocation needs further clarification; and
- geographic boundaries or distances should be established for charter school transportation services.

#### **THURSDAY, AUGUST 28, 2014**

Representative Mimi Stewart, Chair, called the meeting of the Legislative Education Study Committee (LESC) Charter Schools Subcommittee to order at 9:05 a.m., on Thursday, August 28, 2014, Student Union Building, Governance Room, 3<sup>rd</sup> Floor, New Mexico Highlands University, Las Vegas, New Mexico.

The following voting members of the LESC Charter Schools Subcommittee were present:

Representatives Mimi Stewart, Chair, Dennis J. Roch, Vice Chair, Jimmie C. Hall, James E. Smith, and Christine Trujillo; and Senators Craig W. Brandt and Linda M. Lopez.

The following voting members of the LESC Charter Schools Subcommittee were not present:

Representative Rick Miera; and Senators John Sapien, William P. Soules, and Pat Woods.

#### **STATEWIDE CYBER ACADEMY ACT**

The Chair recognized Mr. David Craig, LESC staff, for a review of the *Statewide Cyber Academy Act* (Act).

Mr. Craig reported that during the 2007 regular session, LESC-endorsed legislation was enacted to create the Act, which created the statewide cyber academy (academy) in the Public Education Department (PED) as a collaborative program among PED, the Higher Education Department (HED), telecommunications networks, and representatives of other state agencies engaged in providing distance education. Among its provisions, he noted, the Act requires the academy to provide distance-learning courses for grades 6 through 12 and professional development for teachers, instructional support providers, and school administrators. He stated that the academy was incorporated into the Innovative Digital Education and Learning (IDEAL-NM) initiative in the summer of 2008. IDEAL-NM, Mr. Craig indicated, is a partnership between school districts, PED, HED, and universities; and funding for the statewide cyber academy was supplemented by appropriations to these entities.

Mr. Craig stated that according to PED's IDEAL-NM Annual Report for school year 2012-2013:

- IDEAL-NM was created in response to the 2005 Performance and Accountability Contract, "Making Schools Work," to leverage technology in the following ways:
  - expand education opportunities, close achievement gaps, support college and career goals, and prepare students for global competition;
  - reduce the cost of technology access to P-12 schools, higher education institutions, and state agencies;
  - reduce the travel and personnel costs of state agency trainings and P-12 teacher professional development via online courses;
  - increase technology application skills of New Mexico youth and adult learners; and
  - facilitate more cooperation between P-12 schools, higher education institutions and state agencies;
- on October 27, 2006, the statewide eLearning program that would implement a shared eLearning infrastructure using a single statewide learning management system (LMS) for web conferencing, and help desk support for K-12 schools, higher education institutions, and governmental agencies was announced;
- two pieces of legislation in the 2007 session helped create the framework for the IDEAL-NM initiative:
  - Senate Bill 209, *Cyber Academy Act*; and
  - the *High School Redesign Act*, which required New Mexico school districts to offer distance-learning programs beginning school year 2008-2009;
- the distance-learning rule was established in 2008 to provide guidance regarding:
  - open enrollment and distance learning;
  - district and school participation parameters;
  - student enrollment;
  - program quality; and
  - the statewide eLearning Service Center (IDEAL-NM);
- in 2007, the New Mexico Legislature allocated:
  - \$6.4 million in nonrecurring funds (special appropriations) for the purpose of procuring the statewide LMS be shared by K-12 schools/districts, higher education institutions, and governmental agencies;
  - \$1.0 million in recurring operational costs to establish the statewide eLearning service center; and
  - while the initial start-up costs for IDEAL-NM were significant, the costs decreased as the program was further implemented by:
    - \$3.1 million in year two;
    - \$2.4 million in year three;
    - \$1.4 million in year four; and
    - \$1.0 million in year five;

- IDEAL-NM is exploring alternative funding structures to support the long-term sustainability of the program;
- IDEAL-NM implemented a statewide Cyber Academy (academy) beginning in the summer of 2008, with 54 enrollments from nine school districts;
- two New Mexico-developed courses (Algebra I and New Mexico History) were offered along with additional courses in partnership with an online course provider;
- the vision of the academy was to provide equitable access to education opportunities for all New Mexico students by reducing geographic and capacity barriers through the innovative use of technology;
- the academy works in partnership with New Mexico schools to deliver quality and rigorous online courses taught by highly qualified New Mexico teachers via a supplemental or blended model;
- in this model, students attend and enroll through a physical school, and credit for course completion is awarded by the enrolling school;
- the academy currently supports about 5,000 enrollments per year;
- these numbers are expected to increase with the new high school graduation requirements now in effect per the *High School Redesign Act*, where all graduating seniors must complete an Advanced Placement (AP), honors, online, or dual credit course;
- as a nationally recognized program, IDEAL-NM provides statewide eLearning services to P-12 schools, and state government agencies; and
- IDEAL-NM is a program of PED.

Referring to an attachment to the staff brief, under the heading “virtual school,” the academy is currently one of many programs operated by PED’s IDEAL-NM. Currently, according to PED, department staff is working with NMTEACH (New Mexico Teacher Evaluation Advisory Council) to integrate the new teacher evaluation system within the academy.

### **CYBER/VIRTUAL SCHOOL FUNDING: COMPARISON OF OTHER STATE MODELS**

The Chair recognized Mr. Force, LESC staff, to discuss cyber or virtual school funding models.

Referring the subcommittee to the staff brief, Mr. Force reported that according to a recently published report by the Education Commission of the States (ECS), a few states have created funding formulae specific to fully online schools that may fund those schools at a slightly lesser level than traditional schools. The brief, he noted, identified four primary areas of concern that policymakers should consider when devising such funding plans. He then reviewed each of these areas and highlighted key points:

1. Student enrollment areas:

- unlike traditional schools, virtual charter schools, where the curriculum is delivered entirely online, are not subject to natural or political geographic boundaries; and
- a traditional school’s pool of potential students is limited to the school district in which it resides, whereas cyber-schools, by virtue of their online delivery system, may draw their students from across an entire state.

## 2. Size of schools:

- closely related to the issue of enrollment area is that of school size;
- as online schools may draw their students from a relatively unlimited geographic area, they are also unconstrained by the physical limitations naturally imposed by a brick-and-mortar school's physical size;
- there is no effective limit to the size of the student body, as virtual schools need not house their students within a necessarily finite space. For example, the Pennsylvania Cyber Charter School enrolled more than 10,000 students for school year 2012-2013, three times more than the average Pennsylvania school district. Mr. Force added that exacerbating this issue are two related potential problems: (1) a loss of predictability for traditional school districts; and (2) the potential impact of private and home-school students attending virtual charter schools.

## 3. Student-counts for funding:

- most states continue to base funding for virtual charter schools on the same factor as traditional schools — seat time;
- while the particular count day on which student attendance is based, or the number of school days or hours a state requires under its compulsory attendance laws may differ, the base factor is still the physical attendance of students in school; and
- clearly, in online schools, physical attendance is not only not required, it is seldom even considered, given the distance in time or space between teacher and pupil that is one of the hallmarks of online education.

Mr. Force noted that in response to this fundamental difference, some states have begun funding virtual charter schools based on course enrollment; yet even this approach fails to address the problem of students enrolling in, but failing to complete, virtual courses. Depending on the jurisdiction, if a student fails to complete a course at an online school, and then returns to traditional public school, many current funding schemes would result in a state effectively paying twice for that student: first for the uncompleted program, and then for the traditional school. A more practical and effective approach may be to fund virtual schools based on course completion. Florida, he noted, funds virtual charters based on course completion, and even requires a student to pass an end-of-course exam before awarding funding, if one is required for the class.

## 4. Costs of providing educational services:

- while many agree that the cost of delivering an education through an entirely online school is less than that of traditional schools, thus far there is little research indicating the exact cost difference between the two;
- expenses that virtual schools frequently lack, in comparison with traditional schools, include student travel and facility maintenance; and
- the National Center for Educational Statistics indicates that traditional schools may spend as much as 10 percent of their budgets on facilities, 9.4 percent on maintenance and operations, and 4.4 percent on transportation, suggesting that education through entirely online charter schools may cost nearly 25 percent less than traditional schools. These figures, however, do not consider those costs that may be unique to

fully online schools, such as the expense of individually providing laboratory or computer equipment to their students.

Mr. Force emphasized that ECS also notes that some states are hesitant to fund virtual schools at the same level as traditional public schools, due in some part to the pervasive presence of private, for-profit management companies in online charter schools. For example, according to *Education Week*, for the second consecutive year, Pennsylvania declined to authorize any new virtual charter schools, at least in part because five of their six recent applicants were too closely tied to for-profit management companies.

Mr. Force stated that other points noted in the ECS brief indicate that:

- Pennsylvania funds online charters at the same per-pupil funding level as traditional schools, less costs for factors like transportation, adult education and debt services; moreover, current legislation proposes to add pension contributions and food service to those factors that may be deducted from base cyber-charter school funding;
- Ohio's formula awards a base funding equal to that of traditional schools, but does not fund cyber-schools for certain programs, such as at-risk students, English language learners, career and technical training, and poverty-based assistance; and
- Georgia funds students enrolled in fully online schools at 61 percent less than those in traditional brick-and-mortar schools.

To conclude, Mr. Force referred the subcommittee members to a comparison table presented to the committee in July, which includes statutory funding language for three reviewed states (Colorado, Florida, and Arizona). He indicated that specific language that addresses funding differences between traditional schools and fully virtual schools was emphasized in the table.

### **SUBCOMMITTEE DISCUSSION: SEPTEMBER 2014 SUBCOMMITTEE MEETING AGENDA**

The Chair announced that the next subcommittee meeting will be convened after the adjournment of the LESC interim committee on Wednesday, September 24.

After a discussion of the subcommittee's remaining interim work, the members agreed that additional meetings may be necessary in order provide policy recommendations to the LESC during its November interim meeting. As a result, the Chair requested LESC staff to contact subcommittee members to determine if a meeting could be scheduled for September 11-12 in Albuquerque, possibly at the East Mountain High School.

### **ADJOURNMENT**

There being no further business, the Chair adjourned the LESC subcommittee meeting at 11:42 a.m.