

LEGISLATIVE EDUCATION
STUDY COMMITTEE

REPORT TO THE SECOND SESSION
OF THE
FIFTY-FIRST LEGISLATURE

State of New Mexico
February 2014



STATE OF NEW MEXICO
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February 2014

Fifty-first Legislature, Second Session, 2014
State Capitol
Santa Fe, New Mexico

Dear Legislators:

This report summarizes the activities of the Legislative Education Study Committee (LESC) during the 2013 legislative interim as well as the committee's recommendations for the 2014 legislative session.

Like the reports of previous interims, this one reviews the research and testimony that the LESC considered in making its appropriation recommendations for public school support and for legislation introduced during the 2014 legislative session. And like previous reports, this one is being presented primarily in electronic format on the LESC website, <http://www.nmlegis.gov/lcs/lesc>. In addition to serving the purposes of economy and efficiency, this format will allow hyperlinks that you may use to move quickly and easily from one part of the report to another. Please note, however, that hard copies can still be provided upon request to the LESC office.

On behalf of the committee, it is my pleasure to present this report. I hope that you will find it informative and useful.

Sincerely,

A handwritten signature in blue ink that reads "Frances Ramirez-Maestas".

Frances Ramírez-Maestas

THE LEGISLATIVE EDUCATION STUDY COMMITTEE

As a permanent bipartisan, bicameral committee of the Legislature, the Legislative Education Study Committee (LESC):

- conducts a continuing study of all education in New Mexico, the laws governing such education, and the policies and costs of the New Mexico educational system, including the training of certified teaching personnel in postsecondary institutions;
- recommends funding levels for public education;
- recommends changes in laws relating to education; and
- makes a full report of its findings and recommendations.

The LESC comprises 10 voting members appointed to provide proportionate representation from both houses and both major political parties, as well as a number of advisory members of the Legislature.

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Please note that this document contains hyperlinks. Click on titles in the table of contents to view topics; then click on the left margin of any page to return to the table of contents.

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LEGISLATIVE EDUCATION STUDY COMMITTEE

REPORT OF THE 2013 INTERIM

RECOMMENDATIONS OF THE LESC

STUDENTS AND SCHOOLS

1. **Appropriation for After-school and/or Summer Programs:** Introduce legislation to appropriate \$2.0 million from the General Fund to the Public Education Department (PED) for expenditure in FY 15 for after-school and/or summer programs that provide expanded academic and enrichment learning opportunities for students.
2. **Replace GED Terms with Equivalency Credential:** Introduce legislation to replace the terms “general education diploma,” “general equivalency diploma,” “general educational development certificate,” and “GED,” with the term “high school equivalency credential.”
3. **Dual Credit Program Parity:** Introduce legislation to: provide dual credit program parity for all high school students; clarify language; and update home school registration requirements.

PUBLIC SCHOOL TRANSPORTATION

4. **Transportation Boundary Agreement Joint Memorial:** Introduce a joint memorial to develop and implement a two-year pilot program that allows two school districts to enter into transportation boundary agreements on the basis of school choice.
5. **Transportation Boundary Agreement Bill:** Endorse legislation to add a new section to the *Public School Code* to provide for school transportation boundary agreements; and to create a resolution process (endorsed by the Indian Affairs Committee).
6. **Public Education Department School District Liens on Certain School Buses:** Introduce legislation to amend the *Public School Finance Act* to require school districts to file liens on contractor-owned school buses under contract to the school district.

7. **PED School Transportation Fund:** Introduce legislation to create the School Transportation Training Fund, consisting of payments from school districts and charter schools for school transportation training; and to provide that money from the fund is subject to appropriation by the Legislature for PED to administer the fund and provide school transportation training workshops and training services.
8. **School Bus Fuel Gross Receipts:** Introduce legislation to create a new section of the *Gross Receipts and Compensating Tax Act* to provide for an exemption from the gross receipts tax for receipts for the sale of fuel for school buses; and provide for an exemption from the compensating tax for fuel used for school or school-related bus transportation of students.
9. **School Bus Global Positioning System Devices:** Introduce legislation to appropriate \$889,000 from the General Fund to PED for expenditure in FY 14 to provide for installation and operation of security and global positioning system devices for school buses.
10. **School Transportation Reporting Dates:** Introduce legislation to amend the *Public School Finance Act* to change the dates for school districts and state-chartered charter schools to report school transportation information to the State Transportation Director; and to change the bases for determining transportation distribution allocations, effective July 1, 2014.
11. **Transportation Emergency Fund:** Introduce legislation to amend the Transportation Emergency Fund to clarify that an increase in the price of fuel could constitute an emergency.

ACCOUNTABILITY AND ASSESSMENT

12. **Remove School “Adequate Yearly Progress” and Funding Incentives:** Introduce legislation to remove all references to “adequate yearly progress” in state law; and to reconcile multiple amendments to the same section of law in Laws 2007.
13. **Two-tiered High School Diploma:** Introduce legislation to provide for a New Mexico general diploma to be awarded to high school students who meet certain graduation requirements; and to distinguish the New Mexico Diploma of Excellence awarded to high school students who meet additional graduation requirements.
14. **Education Technology Infrastructure:** Introduce legislation to: define “education technology infrastructure”; provide for allocations from the Public School Capital Outlay Fund for education technology infrastructure; establish an education technology infrastructure deficiency corrections initiative; allow for waivers for the local school district share of program cost; and declare an emergency.

FISCAL MATTERS

15. **State Support Reserve:** Introduce legislation to require reimbursement of the State Support Reserve Fund to maintain the credit balance required in statute.
16. **Home School Program Units:** Introduce legislation to incorporate the home school student program unit provision in the program cost calculation provisions of the *Public School Finance Act* (technical cleanup).

OTHER TOPICS

17. **Anti-obesity Memorial:** Introduce a memorial requesting the creation of a task force to assess the role of elementary school physical education in reducing obesity in children and to develop a plan for increased weekly instruction to improve children's fitness.
18. **School District Building Systems Needs:** Endorse legislation to amend the *Public School Capital Outlay Act* to allow the Public School Capital Outlay Council to provide annual allocations to school districts to address building systems needs (endorsed by the Public School Capital Outlay Oversight Task Force).
19. **Reading Reciprocity:** Introduce legislation to repeal and reenact a section of the *Public School Code*; and to require demonstration of the knowledge of the science of teaching reading for elementary and special education licensure for a teacher licensed in another state.

INTRODUCTION

Each interim, the Legislative Education Study Committee (LESC) examines a wide range of education issues, both fiscal and programmatic, that affect the achievement and well-being of preschool, elementary, secondary, and postsecondary students in New Mexico. Issues are identified at the initiative of committee members, other legislators, or bills or memorials; and the LESG Interim Workplan establishes the framework for the committee's research, data collection, deliberations, and analysis.

This report summarizes the LESG's examination of education issues identified during the 2013 legislative interim and includes the committee's recommendations for legislation during the 2014 legislative session. For the 2014 session, the LESG chose not to make its own recommendations for public school support but instead to assist the House Education Committee in developing recommendations for HB 3, the *Education Appropriation Act*.

During the 2013 interim, the LESG received extensive testimony from education stakeholders statewide regarding progress and concerns on such matters as the school grading system; the teacher and principal evaluation system; high school graduation requirements; the implementation of the Partnership for Assessment of Readiness for College and Careers assessments and Common Core State Standards; changes in the General Educational Development (GED) credential; the instructional material process; special education maintenance of effort; and charter schools.

In addition, presenters from around the country shared their knowledge and expertise in these areas to provide the committee with current information on related developments in other states. Also, for a second year, the LESG formed a subcommittee to work with stakeholders on school bus transportation.

In order to see and hear the concerns of constituents, the LESG held three meetings outside of Santa Fe: the July meeting in Ruidoso; the August meeting in Chama; and the September meeting in Clovis. At all of its meetings during the 2013 interim, the LESG continued to provide a forum for students, school personnel, members of the public, and other interested parties to express their views on education issues.

This report includes summaries of presentations categorized according to certain themes: Students and Schools, Public School Transportation, Accountability and Assessment, Fiscal Matters, and Other Topics. Although the report covers all of the issues examined during the 2013 legislative interim, it is intended only as a summary, not a detailed record. Readers interested in more information about these topics are encouraged to consult staff reports, minutes, reports of previous interims, and other material on file in the LESG office or available through the LESG website, <http://www.nmlegis.gov/lcs/lesg>. And readers interested in public school data are encouraged to consult a companion report, [*Public School Data Reference Guide, 2014*](#).

ISSUES STUDIED BY THE LESC

STUDENTS AND SCHOOLS

EARLY CHILDHOOD EDUCATION

THE *EARLY CHILDHOOD CARE AND EDUCATION ACT*: IMPLEMENTATION UPDATE

Enacted in 2011, the *Early Childhood Care and Education Act* has as its purpose “to establish a comprehensive early childhood care and education system through an aligned continuum of state and private programs, including home visitation, early intervention, child-care, early head start, head start, early childhood special education, family support and pre-kindergarten, and to maintain or establish the infrastructure necessary to support quality in the system’s programs.” During the 2013 interim, the LESC heard an update on the implementation of the act.

Testimony began with an LESC staff review of the history and provisions of the act, including:

- a review of seven core principles, arising out of collaborative efforts of the New Mexico Business Roundtable (NMBR) and the New Mexico Early Childhood Development Partnership;
- the establishment of the Early Learning Advisory Council (ELAC) and its designation as the state’s official council for the Head Start program, as required by federal law;
- the membership of the council, comprising three *ex officio* members; three members appointed from, and by, the NMBR Board of Directors; and nine other members, from various other stakeholder groups, appointed for staggered terms by the Governor;
- the creation of the Early Childhood Care and Education Fund, a non-reverting fund administered by the Children, Youth and Families Department (CYFD); and
- requirements that ELAC make recommendations to the Legislature and CYFD on the best manner of leveraging available program funds, as well as general recommendations regarding the coordination and alignment of an early childhood care and education system in New Mexico, with particular attention to several prescribed components.

The Chair of ELAC (and Chief Executive Officer of the NMBR) testified about the council’s efforts to implement the provisions of the act. Among the points raised were:

- the background and initial findings of the council;
- the council’s mission statement: “To create a quality, sustainable, and seamless Early Care and Learning System, responsive to each child, from birth to age 5, and their family across New Mexico, by building partnerships, integrating systems, and making strategic, research-based and data-driven recommendations to policymakers and stakeholders”;

- the council’s vision statement: “To be the collective voice to move forward the Early Care and Learning System in New Mexico”;
- the council’s three long-term priorities:
 1. accessibility to high-quality early childhood programs, with particular attention to children with disabilities, children from diverse linguistic and cultural backgrounds, and children with challenging behaviors;
 2. improved school readiness (now and at third grade), through focus on children’s progress across certain domains; and
 3. a high-quality early childhood workforce, with appropriate training, credentials, and range of competencies; and
- strategies and best practices to address the council’s three priorities.

Additional testimony came from the respective chairs of committees that ELAC had formed:

- the Chair of the Access to Quality/Early Childhood Programs Committee testified that this committee is working to expand services, particularly high-quality child-care, into all identified early childhood investment zones (see “Race to the Top - Early Learning Challenge Grant,” below);
- the Chair of the School Readiness Committee reviewed the aspects of that committee’s work toward helping students enter school at or above age level;
- the Chair of the Workforce Development Committee testified that early childhood educator pay levels are not commensurate with the work that these educators do; and that help is needed not only to supplement their incomes, but also to help encourage highly qualified educators and caregivers to enter and remain in this field of work;
- the Chair of the Finance Committee described that committee’s focus on all potential funding sources to create multiple pathways for families in need of services, as well as expanding current operations and improving services; and
- the Chair of the Public Policy Committee noted ELAC’s interest in the multiple systems of early childhood development in New Mexico.

Testimony on this topic concluded as the Chair of ELAC noted that the council hopes to accomplish its goals before the provisions that created the council sunset in 2017.

RACE TO THE TOP - EARLY LEARNING CHALLENGE GRANT

The purposes of the federal Race to the Top - Early Learning Challenge (RttT - ELC) Grant are to improve the quality of early learning and development programs and services and to close the achievement gap for children with high needs. Staff testimony reviewed the grant application, which was a joint effort by PED, CYFD, and the Department of Health (DOH), with PED taking administrative lead even though CYFD would receive the majority of the funds and manage the majority of the programs. While New Mexico did not receive any funds in Phase I of the program, the state was awarded \$25.0 million, to be paid out over four years, in Phase II. An additional \$12.5 million was allocated in July 2013, to be dedicated to the Tiered Quality Rating and Improvement System, which establishes common standards for all pertinent, publicly funded programs and uses a common assessment system as the basis for quality improvement.

Staff testimony continued with an account of other projects that grant funds will support:

- focusing on early childhood investment zones, which are those areas where children are at greatest risk based on socio-ecological risk factors, where families have limited access to quality early childhood services, but where the communities have the greatest will and capacity for creating quality early learning programs;
- expanding professional development opportunities;
- developing a cross-agency early childhood data system; and
- developing a universal kindergarten assessments tool and process.

Testimony on the RttT - ELC Grant concluded with comments from agency representatives involved in the administration of the grant: the Early Childhood Services Division, CYFD; the Family Infant Toddler Program, Developmental Disabilities Support Division, DOH; and the Literacy Program, PED. Among the points raised in this testimony were:

- a focus on at-risk children;
- long-term commitment to early childhood development;
- the importance of tracking children across systems, via their assigned unique identifiers; and
- the use of the New Mexico Early Learning Guidelines for the development of the kindergarten assessment.

AFTER-SCHOOL PROGRAMS: STATEWIDE PROGRAM POLICIES

At least since 2003, the Legislature has funded multiple public school initiatives under the broad category of “extended learning opportunities.” Appropriations totaling approximately \$21.4 million, including appropriations to PED and sometimes other state agencies, have supported after-school initiatives statewide. Staff testimony during the 2013 interim focused on the variety of federal funds that complement these state-level appropriations.

Two of the largest sources of federal funding, according to this testimony, are the Child Care Development Fund (CCDF) and the 21st Century Community Learning Centers (21st CCLC).

- Authorized by the *Child Care and Development Block Grant Act* and the *Social Security Act*, the CCDF assists low-income families in obtaining child-care so they can work or attend training and/or education; and it seeks to improve the quality of child-care and promote coordination among early childhood development (see “Early Childhood Education,” p. 2) and after-school programs. For federal fiscal year 2013, New Mexico was awarded nearly \$40.0 million from the CCDF.
- Authorized under Title IV, Part B, of the *Elementary and Secondary Education Act*, as amended by the *No Child Left Behind Act of 2001*, the 21st CCLC seeks to create community learning centers that provide academic enrichment opportunities for children, particularly students who attend high-poverty and low-performing schools; to meet state and local student standards in core academic subjects; to offer students a broad array of enrichment activities that can complement their regular academic programs; and to offer literacy and other educational services to the families of participating children. Among other points from this testimony:

- in New Mexico, the 21st CCLC program is the only federal funding source dedicated exclusively to before-school, after-school, and summer-learning programs; and
- due to a lack of federal funding, just over 8,700 of the nearly 160,000 eligible children in New Mexico attend a 21st CCLC program.

Staff testimony further identified other federal programs that can complement state-level appropriations for after-school programs – among them Title I, the Social Services Block Grant, Impact Aid, nutrition assistance programs administered by the US Department of Agriculture, and Temporary Assistance for Needy Families. Also available is foundation funding, such as the Charles Stewart Mott Foundation’s Pathways Out of Poverty program, which supports initiatives that promote learning beyond the classroom, especially for traditionally underserved children and youth, as a strategy for improving public education. From this foundation, PED has received two grants for \$225,000 each to support the advancement of the New Mexico Statewide After School Network – one grant for the period from October 1, 2012 to September 30, 2013; and the other for October 1, 2013 to September 30, 2016.

Testimony from PED began with a review of the applications in response to a request for proposals for 21st CCLC grants. From 65 applications during the spring of 2013 (32 in the first round and 33 in the second), PED awarded grants to 22 programs. According to this testimony, the applications were scored on nine categories by an evaluation committee comprising 15 individuals. Additional PED testimony noted that the evaluations were based on a 1,000 point rubric and the A-F school grading system (see “A-F School Grading System,” p. 16).

The PED testimony concluded with an account of the state’s Afterschool Alliance, which works to create, strengthen, and sustain a statewide system of support for quality after-school programs; and the distribution of a document called *School and Family Support Bureau*, which outlines programs and initiatives supported by PED that, through intra- and inter-agency collaboration, promote healthier schools by providing professional development, technical assistance, and resources to school districts and charter schools.

See Recommendation 1.

GENERAL EDUCATIONAL DEVELOPMENT

Developed in 1942 in response to the needs of the industrial era, the General Educational Development (GED) program has offered students a widely accepted alternative to a traditional high school diploma. The program and test have been revised over time to reflect changing needs although the fundamental purpose has remained. During the 2012 interim the LESG heard testimony about the most recent changes, scheduled to go into effect in 2014:

- the apparent privatization of the GED, through a new corporation called GED Testing Service LLC, formed by the American Council on Education and Pearson PLC;

- mandatory computer-based testing for the new GED; and
- the likelihood of increased cost of the new GED, from approximately \$35 to \$120.

One point that arose during the 2012 interim was that the term “general educational development” appears in statute and that the acronym “GED” is a registered trademark. In response to this matter and a number of other concerns, the LESC endorsed a bill during the 2013 session that would have changed statutory references to a more generic term. Although the bill passed, it was pocket-vetoed by the Governor.

Testimony throughout the 2013 interim reviewed these issues as well as some changes in the field of alternative adult testing since the 2013 legislative session.

- LESC staff testified that in 2013 at least two organizations have announced the development of high school equivalency tests intended to be used as an alternative to the GED.
 - The Educational Testing Service (ETS) announced that it will release the High School Equivalency Test, or HiSET, in January 2014, for subject areas aligned with the Common Core State Standards (CCSS) (see “Common Core State Standards: Update,” p. 7). The test is reported to be offered in a computer-based and pencil-and-paper format at a cost of \$50 per test-taker, which includes the ability to retake the test twice within 12 months.
 - CTB/McGraw-Hill announced that it will release the Test Assessing Secondary Completion (TASC) in January 2014. The TASC is said to be aligned with the CCSS and offered on the computer or in pencil-and-paper format, at a cost of \$52 per test-taker. The company also intends for the test to utilize artificial intelligence scoring in 2016.
 - In addition, both ETS and CTB/McGraw-Hill identified other states that had recently amended their laws to remove specific references to the GED.
- The Higher Education Department (HED) testified about the need to change statutory language in order to allow for options for high school equivalency tests. The HED testimony also noted the department’s intention to issue a request for information about available options.
- Testimony by the Director of Adult Basic Education (ABE) at New Mexico State University-Grants focused on several issues with the new GED: concerns with computer-based testing, costs in addition to the \$120 student fee, the requirement that students pay by credit card, and the ability of students to bypass ABE programs and take the test without any preparation.
- Testimony by the GED Testing Service reviewed the background of the GED and the rationale for the conversion to computer-based format, emphasizing that many jobs require familiarity with computers.

In other testimony during the 2013 interim, LESC staff noted an opinion from the Legislative Council Service identifying a number of advantages to amending statute to use a broad term such as “high school equivalency diploma” instead of terms that denote the GED specifically; and the Public Education Department (PED) stated that, because the current agreement with GED does not expire until the end of 2014, the department will not act until

then, at which time PED intends to partner with HED and the testing centers to consider all options.

See Recommendation 2.

COMMON CORE STATE STANDARDS: UPDATE

The Common Core State Standards (CCSS) are designed to emphasize critical thinking skills and to ensure that students leave high school with the necessary skills for college and/or a career. The CCSS initiative began in December 2008, when the National Governors Association and the Council of Chief State School Officers formed a collaborative effort and published the document *Benchmarking for Success*. In August 2013, LESC staff, the Secretary-designate of Public Education, and a representative from the Educational Issues Department of the Washington, DC office of the American Federation of Teachers (AFT) provided an update on the implementation of the CCSS in New Mexico.

LESC staff testimony reviewed information that the National Conference of State Legislatures (NCSL) and other presenters had provided during the 2012 interim. Among the points that NCSL raised were that the standards are:

- not a federal mandate, but rather a common effort among the states;
- focused on the core areas of English/language arts and mathematics; and
- not a curriculum or a national assessment, but rather a set of standards.

Among other points in the NCSL testimony, LESC staff noted that:

- the implementation timeline continues through 2015 and includes several years of pilot programs in various districts and states; and
- New Mexico is a governing state member of one of the two consortia implementing the initiative, the Partnership for Assessment of Readiness for College and Careers (PARCC), which will administer its first summative assessment in 2015 (see “Partnership for Assessment of Readiness for College and Careers,” p. 28).

The Secretary-designate testified that the Public Education Department (PED) was allocated \$1.0 million in FY 13 and \$1.5 million in FY 14 to support teachers and principals in efforts to implement the CCSS. After one year of implementation – January 2013 through June 2013 – over 2,500 teachers and administrators have been trained, she said. Speaking more specifically, the Secretary-designate said that:

- 645 educators had taken online courses in English/language arts, math, and teaching reading to English language learners;
- 1,460 teachers and administrators had participated in in-person workshops;
- 289 educators had participated in webinars, which were recorded and continue to be available online; and
- CCSS experts had delivered regional mentoring sessions to 160 educators.

For year two, the department hosted a CCSS professional development summit in September 2013, as well as an “anchor standards workshop” for secondary school teachers. PED is also providing support for parents, the Secretary-designate concluded, with five town hall meetings across the state and brochures that have been translated into Spanish.

The AFT representative testified that the organization has formed an ad hoc committee that adopted the following recommendations for CCSS implementation in May of 2011:

- school, district, and state administrators should participate in the same professional development trainings required of teachers, in order to ensure that administrators also have a deeper understanding of the processes and implementation of the content and instructional changes;
- collaboration among stakeholder groups should be encouraged during the rollout of the new standards;
- state officials should provide a “road map” to guide what children should learn and teachers should teach; and
- modern technology should be used in innovative ways to reinvent approaches to teaching with the rollout of the standards.

Finally, at the December 2013 LESC meeting, the Secretary-designate indicated that more than 700 public schools in New Mexico met PARCC technical standards, leaving over 100 schools that must have their technical standards addressed before CCSS implementation (see “Partnership for Assessment of Readiness for College and Careers,” p. 28).

CAREER AND COLLEGE READINESS

Since 2006, the LESC has received a variety of reports on career and college readiness. During the 2013 interim, testimony came from the Education Commission of the States (ECS), in the form of an overview of the ECS reports on:

- career and college readiness;
- career/technical education; and
- dual/concurrent enrollment.

Regarding career and college readiness itself, ECS identified three “anchors” for college readiness intended to help states transition to new standards:

- Among the recommendations for the first anchor, high school, ECS suggested such actions as making the 12th grade year relevant by implementing instructional strategies for students who score below college-ready benchmarks in math and English and aligning high school criteria with first-year course prerequisites; improving access to accelerated learning opportunities; and redesigning college and career advising so that all high school students graduate with a clear postsecondary plan.
- Regarding the second anchor, higher education, ECS testified that it is important to have recent high school graduates choose a meta-major upon entrance into postsecondary education; and to align funding with priorities by adopting funding

formulas for postsecondary education that properly signal state priorities, among other initiatives.

- For the third anchor, a bridge aligning the P-16 system, the primary recommendation in the ECS testimony was to create a shared, statewide definition of college and career readiness that signals to students what it will take to succeed in postsecondary education.

The ECS testimony on career and college readiness concluded with a discussion of recent actions in five states: Colorado, Florida, Indiana, Kentucky, and Tennessee. In Tennessee, for example, the postsecondary funding system is based entirely upon outcomes (such as course completion, retention, and graduation) instead of inputs (such as enrollment).

Moving to career/technical education (CTE), ECS testified that, after being discontinued in many high schools across the country because of costs, CTE has recently risen to the top of the education policy agenda for governors, legislators, and agency heads. According to this testimony, state policymakers have taken a greater interest in CTE because of such factors as:

- a pervasive gap between workforce needs and the skills of entering workers;
- the projected growth in skilled occupations requiring technical certification or a credential beyond a high school diploma; and
- interest in improving high school graduation rates by helping students see connections between programs of study and career opportunities in high-wage, in-demand fields (see “High School Graduation Requirements: Superintendent Input,” p. 26).

Finally, describing a model state policy on dual/concurrent enrollment, the ECS testimony recommended such provisions as allowing students to participate in dual enrollment even if their high schools have no partnership with an institution of higher education (IHE); requiring public IHEs to accept eligible students; and basing student eligibility on quantifiable indicators of a student’s ability to succeed in a postsecondary course. The ECS testimony also cautioned policymakers that state mechanisms for funding dual enrollment programs can create barriers for low- and middle-income student participation; and identified another five states with recent innovations: Arizona, Colorado, Missouri, Tennessee, and Texas. In Colorado, for example, the Concurrent Enrollment Advisory Board creates common procedures across K-12 districts and colleges and makes policy and funding recommendations to other boards and the Legislature.

DUAL CREDIT REPORT

Dual credit programs allow high school students to take courses offered through a postsecondary educational institution and earn credit at the high school level and the college level simultaneously. Dual credit is frequently said to fulfill a number of purposes and produce a number of benefits, among them:

- providing high school students an introduction to college life;
- affording high school students access to college-level material;

- shortening the time – and thereby the expense – required to complete a postsecondary degree;
- suggesting college as a possibility for students who had not previously considered it;
- enhancing the academic and vocational offerings of the school district; and
- leading to better completion rates for students in both high school and college.

Among other provisions, the state law governing the dual credit program in New Mexico requires PED and the Higher Education Department (HED) to evaluate the program and to make annual reports to the Governor and the Legislature. During the 2013 interim, LESC staff provided some background to the dual credit program, and HED presented information from the annual report.

The testimony by HED included selected statistics from the report, among them:

- dual credit enrollment for school year 2011-2012 was 11,666 unique students;
- a majority of dual credit students, approximately 55 percent, were female;
- the subject areas that experienced the highest enrollment of dual credit students were:
 - English language and literature/letters;
 - health profession and related clinical services; and
 - mathematics and statistics;
- the majority of dual credit students (59 percent) limit themselves to a single course during the school year, while 26 percent of students enroll in two dual credit courses;
- almost 78 percent of the enrollees in school year 2011-2012 met the success criterion mandated in the *A-B-C-D-F Schools Rating Act*: that students in dual credit courses must achieve a grade of C or better in order to be considered successful;
- the most popular dual credit programs at postsecondary institutions were at Central New Mexico Community College, Doña Ana Community College, and New Mexico Junior College;
- online delivery of dual credit courses has grown in popularity, with the spring semester of 2012 experiencing the highest percentage of online course delivery (19 percent) in recent years; and
- the percentage of dual credit courses being taught on college campuses, rather than on high school campuses, is increasing.

The testimony by HED concluded with results of a recent survey distributed to colleges, universities, and school districts relating to textbook purchases. Survey responses indicated a variety of options in which textbooks are purchased directly from a bookstore, from a publisher, or online.

See Recommendation 3.

CHARTER SCHOOLS

During the September 2013 meeting, the committee heard an update by LESC staff, staff of the Public Education Department (PED), and the Executive Director of the New Mexico Coalition for Charter Schools (NMCCS) on four aspects of charter schools:

- recent administrative actions;
- the continued implementation of charter school contract provisions added to the *Charter Schools Act* in 2011;
- the possibility of a single, statewide chartering authority in New Mexico; and
- charter school governance board succession policies and practices.

LESC staff testified that 15 letters of intent had been submitted for new charter schools for school year 2013-2014, a number reflective of the general downward trend of submission of such letters in recent years. Also reflective of recent trend, fewer than half of those letters resulted in applications for new charters:

- Columbus Community School, grades 7-12, in the Columbus/Deming community;
- Dream Diné, pre-kindergarten through grade 8, in San Juan County;
- Explore Academy, grades 9-12, in Albuquerque;
- Health Sciences Academy, grades 7-12, in Gadsden; and
- R.I.S.E. - New Mexico, kindergarten through grade 5, in Albuquerque.

Another administrative action noted in LESC staff testimony was the decision of the Public Education Commission (PEC) in July to revoke the charter of The Learning Community, acting on the recommendation of the Charter Schools Division (CSD) of PED, which cited a number of violations of law and policy as the basis for the recommendation.

Discussion of the *Charter Schools Act* focused on two questions: whether the 2011 amendments sufficiently provide for a charter school that is being considered for revocation to submit any kind of plan either to the chartering authority or to PED addressing the deficiencies potentially leading to charter revocation; and what effect the new performance contracts have had on deliberations concerning the renewal of charters. On the latter point, PED testified that these provisions had resulted in a “robust” negotiation for reauthorization of at least seven schools and the denial of two, resulting in more rigorous performance goals for those schools that have yet to undergo the negotiation process under the provisions of the amended *Charter Schools Act*.

Continuing the testimony on charter school performance, PED testified that, in school years 2011-2012 and 2012-2013, charter schools received a higher percentage of grades A and B than traditional public schools (see “A-F School Grading System,” p. 16); and that charter schools posted higher levels of growth in student performance.

On the topic of the possibility of a single statewide authorizer of charter schools, LESC staff testified that the number of potential authorizers in states varies widely from one in several states to more than 300 in California. Typical authorizing bodies are the state educational agency, local education agencies, independent chartering commissions, and nonprofit organizations. LESC staff further testified that charter school advocacy organizations and

model legislation tend to favor many authorizers, of multiple types, in any given jurisdiction. The PED testimony addressed such topics as the oversight, function, and nature of the PEC, as well as the crossover of duties between authorizers, whether local school boards or the PEC, and PED's duty of oversight of all public education.

Finally, regarding succession plans and best practices for filling board vacancies, LESC staff testified that, according to the National Alliance for Public Charter Schools (NAPCS), many charter schools lack concrete and comprehensive succession plans, thus putting the long-term sustainability of those schools at risk. This testimony also cited the recommendations that NAPCS has made to create viable succession plans, and it reviewed applicable provisions in both the *Charter Schools Act* and the *New Mexico Administrative Code*. The actual mechanics of succession and filling governing body vacancies, this testimony continued, are dealt with as part of the individual charter application process, so that, while the broad policies and goals of succession plans may be similar among different schools, the actual details may vary greatly among specific institutions.

In addition, the Executive Director of the NMCCS testified that the charter school application asks for a description of how future board members will be selected as vacancies arise, and he provided as examples a number of answers from actual charter applications. And in response to committee concern that charter school boards could become "self-perpetuating bodies" with no external oversight, PED testified that the CSD is partnering with the NMCCS to develop more training for governance boards.

VIRTUAL CHARTER SCHOOLS

The National Association of Charter School Authorizers defines a virtual charter school as:

An educational organization that offers K-12 courses through Internet-based methods, with time and/or distance separating the teacher and learner. Students enroll to earn credit towards grade-level advancement and/or graduation.

Although they are not suited for all students, virtual charter schools are a growing component of the charter school movement nationwide. In New Mexico, one locally chartered virtual charter school – the New Mexico Virtual Academy (NMVA) – opened in Farmington for school year 2012-2013; and another – New Mexico Connections Academy (NMCA) – opened as a state-chartered charter school in school year 2013-2014, following a court order that upheld the action of the Secretary-designate of Public Education, who had, on appeal, reversed the initial denial of the NMCA's application by the Public Education Commission (PEC).

Staff testimony during the 2013 interim began with a review of some of the questions, issues, and concerns that the committee had considered during the 2012 interim, among them:

- the legal definition of the term "school" and the question whether it includes virtual charter schools;

- contractual prohibitions in the *Charter Schools Act*, particularly one barring contracting with a for-profit entity for the management of a charter school, while nevertheless not including a legal definition of the term “management”;
- the role of the chartering authority in New Mexico; and
- potential areas of regulation of virtual charter schools, such as attendance, teacher qualifications, assessments, academic accountability, and funding.

Staff testimony further noted that, during the late 2012 and early 2013 interim LESC meetings, the committee considered several policy options for potential legislation, including:

- prohibition or delayed approval of virtual charter schools until some of the outstanding issues could be addressed; and
- a review of the *Public School Code* and other areas of state law that might be ripe for repeal or amendment to accommodate and regulate virtual charter schools.

The committee’s consideration of these issues, staff testimony continued, led to the introduction of at least three pieces of legislation in the 2013 session, two of which passed. However, the Governor vetoed the bill that would have granted rulemaking authority to the PEC and separated the PEC from the Public Education Department (PED); and the bill that would have prohibited private entities from managing public schools was pocket-vetoed. A third bill, which would have established a one-year moratorium on initial applications for virtual charter schools, did not pass.

The NMVA testimony noted that the virtual charter school:

- serves 500 students in grades 6-11 (with a plan to add grade 12 for school year 2013-2014);
- employs New Mexico-certified, highly qualified teachers to deliver and guide instruction;
- maintains a drop-in learning center in Farmington that can accommodate 45 students; and
- utilizes the K12 curriculum as its instructional model.

In addition, this testimony continued, the students at the NMVA must:

- take all state assessments and meet state standards, as well as district and state graduation requirements;
- receive special education services and accommodations as required by law and individual education plans; and
- demonstrate attendance and engagement consistent with state laws and regulations.

Testimony from K12 Inc., the vendor that provides the school’s instructional program, provided a breakdown of NMVA’s demographics. Among the points noted were that 75 percent of the school’s students reside in seven counties, including 28 percent in Bernalillo County; and that the school has an overall withdrawal rate of 29.8 percent. This testimony also included an explanation of how virtual education works and a description of the NMVA instructional model. The K12 testimony concluded with a comparison of the

school year 2012-2013 standards-based assessment results of NMVA students with those of Farmington Municipal Schools (FMS) students and public school students statewide. The results indicated that, in general:

- a higher percentage of NMVA students scored proficient and above in reading than FMS and statewide students; and
- a lower percentage of NMVA students scored proficient and above in math than FMS and statewide students.

Initial committee discussion focused on the service agreement between K12, LLC (a wholly owned subsidiary of K12, Inc.) and the NMVA Governing Council to determine whether the prescribed responsibilities of K12 under the agreement rose to the level of “management.” Other issues of concern to members included:

- the availability of Advanced Placement classes;
- how state funding follows a student from his or her original district to the virtual charter school, and vice versa;
- verification of student work; and
- how virtual charters are to be included in the teacher and school leader evaluation program.

PUBLIC SCHOOL TRANSPORTATION

THE 2012 LESC INTERIM SUBCOMMITTEE ON SCHOOL BUS TRANSPORTATION

During the 2012 interim, the LESC convened the LESC Interim Subcommittee on School Bus Transportation to examine issues related to school transportation that had arisen since the last time the topic was studied, in the 1990s. Among issues discussed by the subcommittee were:

- the 12-year replacement provisions in current law;
- maintenance costs, including costs associated with different kinds of roads and road surfaces;
- the funding of school bus replacements with revenue sources other than the General Fund;
- the \$20.1 million needed to address school bus replacements that are behind the 12-year replacement cycle in current law;
- issues relating to the rental fees, including consideration for amending current law to provide for a longer payment period; and
- the possibility of a separate appropriation category or fund for fuel.

The 2012 interim subcommittee recommended that the LESC endorse legislation to:

- provide a gross receipts tax exemption for fuel purchase;
- base school bus transportation distribution on prior-year reporting;

- provide supplemental fuel funding based on mileage;
- extend the bus rental fee period from five to 12 years;
- fund school-owned bus replacements through a capital appropriation;
- provide funding for a statewide global positioning system (GPS); and
- request formation of a task force study of transportation issues.

For consideration of the 2013 Legislature, the LESC endorsed all of the subcommittee's recommendations except for the recommendation to create and fund a task force. Although none of the recommendations were passed into law, PED did receive a \$13.0 million capital appropriation to purchase school buses.

THE 2013 LESC INTERIM SUBCOMMITTEE ON PUBLIC SCHOOL TRANSPORTATION

Testimony on school transportation during the 2013 interim began with a staff background on the school transportation program. In addition to a review of the work of the 2012 interim subcommittee, this testimony noted that:

- the Legislature appropriates transportation funds to PED, which then distributes funds to the school districts through a statutory, categorical funding formula designed to provide for eligible to-and-from school transportation costs;
- local school districts are responsible for the daily management of school transportation programs based on distance parameters in law; and
- according to PED staff, approximately 30 percent of school districts statewide administer their own school transportation services, with the remaining 70 percent of school transportation services provided by school bus contractors.

Committee discussion of this issue led to the formation of the 2013 LESC Interim Subcommittee on Public School Transportation, which was directed to focus on:

- a review of the LESC-endorsed legislation that did not pass during the 2013 legislative session and amending it as necessary;
- the application of the transportation funding formula (TFF) to state-chartered charter schools; and
- concerns among school districts that the transportation cost differentials applied to small districts with fewer than 1,000 students do not appear to offset the decreases in student membership.

Over the course of two meetings, this subcommittee reviewed a number of additional issues related to school transportation, among them:

- a dispute between Gallup-McKinley County Schools (GMCS) and Central Consolidated Schools (CCS) regarding school district transportation boundaries, in which GMCS is sending buses to pick up students at locations within the boundaries of CCS, which is prohibited by PED rule;
- with regard to the 2012 subcommittee's policy option of amending the TFF based upon prior-year data:

- a hold-harmless provision for school districts that experience growth from the previous year's data in the current year; and
 - the PED preference not to move to the average of the 80th and 120th day reporting dates;
- research and studies on bus replacement criteria to address whether miles, years, or a mix of both would be more appropriate for determining when buses are replaced;
 - returning to a General Fund source for school bus replacements and maintenance;
 - funding based on total enrollment versus ridership;
 - measures to determine transportation program allocations;
 - provisions in laws of other states;
 - the possibility that PED boundary rules create one standard for school districts and another for state-chartered charter schools; and
 - concerns over the circumstances of transportation boundary agreements between districts as instituted in rule.

At the November 2013 LESC meeting, the subcommittee reported on its work and submitted nine recommendations, seven of which were endorsed by the LESC during the December meeting.¹

Finally, other committee discussion in November included:

- adjusting the weight given to mileage in the TFF and appropriating funds to establish a GPS system monitored by PED that would provide accurate mileage data;
- concern over changes to the TFF, the effects of those changes on school districts, and the need to be analytical as growth factors are added;
- amending the Transportation Emergency Fund to allow use of funds to supplement increases in fuel costs; and
- the effect of student migration on transportation boundary agreements.

See recommendations 4 - 11.

ACCOUNTABILITY AND ASSESSMENT

A-F SCHOOL GRADING SYSTEM

Enacted in 2011, the *A-B-C-D-F Schools Rating Act* created a new public school accountability system that, beginning in school year 2011-2012, was to operate in addition to, and separate from, the existing adequate yearly progress (AYP) system created in state and federal law. Among its provisions, the legislation requires that:

¹ The LESC also supported two recommendations for appropriations: the first, for global positioning system devices, will be addressed during the appropriations process; and the second, for school bus replacements, will be submitted as a capital outlay request. In neither case, however, will the recommendation appear in a separate bill with an LESC endorsement in the title even though the committee did support both appropriations.

- all public schools be graded annually on an A-F scale;²
- the rating scale for elementary and middle schools include factors such as student proficiency and growth, as well as growth of the lowest 25th percentile of students;
- the rating scale for high schools include additional academic indicators such as high school graduation rates and growth in those rates;
- parents of a student in a public school rated F for two of the last four years have the right to transfer the student to any public school in the state or continue schooling through the statewide cyber academy; and
- the Public Education Department (PED) ensure that a local school board or charter school governing body is prioritizing the resources of a public school rated D or F until the school earns a grade of C or better for two consecutive years.

While the overall grading system is prescribed in law, the details and many of the substantive provisions are in PED rule, first promulgated in December 2011 and then revised in May 2012.

In July of the 2013 interim, the LESC received an update on the school rating system. Among the points covered in staff testimony was a summary of 2013 legislative actions relating to the grading system. The Legislature passed one bill (SB 587a, *State School Grades Council*) to revamp the A-F grading system by forming a state school grades council; however, the Governor vetoed it.

In addition, LESC staff noted the 2013 legislative appropriations relating to the grading system:

- \$15.95 million for the 2013 K-3 Plus Program, with appropriation language to require that:
 - elementary schools receiving a D or F school grade for school year 2011-2012 be eligible to apply for K-3 Plus funds;
 - PED ensure that applicant schools that meet the high-poverty standard defined in state law be prioritized; and
 - remaining funds be made available to applicant schools that do not meet the high-poverty standard but that received a D or F school grade for school year 2011-2012;
- \$4.0 million to PED for interventions in D and F schools, with appropriation language that:
 - makes the appropriation contingent on PED allocating the funds to schools rated D or F for school year 2012-2013; and
 - allows PED to prioritize funding to school districts that commit to provide matching funds; and

² Bureau of Indian Education schools, private schools, and home schools are exempt from the school grading requirements.

- \$2.0 million to PED to provide stipends to:
 - teachers and school leaders to move from schools rated A or B to schools rated D or F that serve a high proportion of at-risk students or high-poverty students; and
 - high school teachers of Advanced Placement (AP) classes that increase the proportion of students receiving college credit for AP classes.

In August, the Secretary-designate of Public Education reported on the A-F school grades for school year 2012-2013. Her testimony noted that:

- the number of A schools in New Mexico more than doubled in a single year;
- A schools outgained F schools;
- almost 10 percent of the schools received an A, an increase of nearly 5.0 percent;
- for the first time, there are more A and B schools (306) than D and F (303) schools;
- over 70 percent of schools either maintained or increased their school grade;
- only one high school earned a D grade; and
- no high schools received an F grade.

See Recommendation 12.

USING STUDENT ASSESSMENTS TO MEASURE TEACHER AND PRINCIPAL PERFORMANCE

In 2011, the Legislature considered, but did not pass, legislation that would have implemented a new system for evaluating teachers and principals. Through executive order in the 2011 interim, the Governor created the New Mexico Teacher Evaluation Advisory Council (NMTEACH), whose charge was to provide recommendations to the Governor regarding how best to measure the effectiveness of teachers and school leaders based on specific parameters. In the 2012 session, the NMTEACH recommendations led to other legislation that the Legislature considered but did not pass.

Then in April 2012, the Governor issued a press release directing PED to formulate a new teacher and principal evaluation system through rule. Published and effective in late August 2012, the PED rule on evaluating teachers and principals bases 50 percent of a teacher's evaluation on student achievement growth assessed annually through a combination of 35 percent standards-based assessment and 15 percent additional department-approved assessments. For school leaders, the evaluation is based in part on a minimum of two multiple measures that must align with improved student achievement, for 25 percent of the evaluation.

Throughout the 2012 interim, the LESC heard testimony about this new teacher and principal evaluation system. Among the points of concern was the use of standards-based student achievement data to evaluate school personnel, a concern that resurfaced during the 2013 interim.

HJM 30, STUDY USES OF STANDARDIZED TEST SCORES

Passed by the 2013 Legislature, House Joint Memorial (HJM) 30, *Study Uses of Standardized Test Scores*, requests that the LESC convene a work group to study the validity of using standards-based assessments for purposes other than assessing students, namely teacher and school administrator effectiveness and school grading. HJM 30 also requests that the work group report to the LESC by October 1, 2013. In their discussion of HJM 30 during the June 2013 interim meeting, committee members decided not to convene a work group but instead to request a report about the memorial and related issues.

The LESC staff report on HJM 30 reviewed the assertions that led to the resolutions and to the requested actions in the joint memorial. Among the points raised were that:

- when used for their intended purpose – to measure the proficiency of individual students against content standards in academic disciplines – standardized student test scores can provide information to teachers regarding how their students are performing on identified standards, and they can help parents understand the academic proficiency of their students;
- in addition to teachers themselves, a number of factors beyond the teachers’ control affect student learning gains;
- there is broad agreement among statisticians, psychometricians, and economists that student test scores alone are not reliable and valid indicators of teacher effectiveness;
- analyses of value-added modeling (see “Using Assessments to Determine Teacher Performance,” p. 20) have led researchers to doubt whether the methodology can accurately indicate teacher effectiveness; and
- tying teacher and principal evaluations to standardized test scores may lead to excessive focus on reading and mathematics and a subsequent narrowing and oversimplification of the curriculum.

The LESC staff report also noted the divided opinion on the usefulness of student assessment data as a means of evaluating teachers and principals.

- On one hand, in its analysis of HJM 30, PED says that student assessment scores “are a fundamental component of effectiveness evaluation systems, and research has found that student gains on standardized assessments are meaningfully related to more challenging achievement assessments, student perception surveys, expert observations of instructional practice, and assessments of teachers’ content knowledge.”
- On the other hand, other research identifies some cautions in the use of standardized student assessments in evaluating teachers.
 - A 2010 policy brief by the Economic Policy Institute concluded that basing 50 percent of a teacher’s evaluation on student test scores is “unwise” (see “Atlanta Schools Testing Scandal and What It Tells Us,” p. 25) and that the “serious problems of attribution and nonrandom assignment of students,” as well as certain practical problems, “would still argue for serious limits on the use of test scores for teacher evaluation.”

- In January 2013, the Bill and Melinda Gates Foundation released the results of its three-year study on teacher effectiveness; the Measures of Effective Teaching (MET) Project. Among other findings, the MET Project concluded that a balanced approach using student surveys, classroom observations, and a teacher's track record of student achievement gains on state tests produces ratings that are less likely to fluctuate from year to year; and the MET Project cautioned that anyone using these measures for high-stakes decisions should be cognizant of the possibility of error for individual teachers.

USING ASSESSMENTS TO DETERMINE TEACHER PERFORMANCE

Supplementing the staff report on HJM 30 was a presentation by the Principal Research Analyst of the American Institutes for Research (AIR) Center on Great Teachers and Leaders (GTL Center), which seeks to assist states in the implementation of evaluation systems that provide information on what educators do (professional practice) and on how well students learn (outcomes).

According to this testimony, 44 states and the District of Columbia have recently updated educator evaluation legislation or rules, and several others have changes pending. These changes include mandates or recommendations to incorporate student achievement data into educator evaluation, with some variation in the requirements and a focus on growth that takes student starting points into account rather than measuring a single point in time.

Approximately 35 states, including New Mexico, use or will implement a statewide value-added or student growth percentile measure for tested grades and subjects.

Before using assessments for teacher evaluation, however, the GTL Center analyst further testified, one should ask whether the assessment or measure:

- aligns with what students are expected to learn and teachers are expected to teach;
- measures growth and fairly assesses all students; and
- has evidence of reliability.

Value-added measures (VAMs), this testimony continued, can provide useful information. Examples include a positive correlation between student growth measures and other measures of teacher performance (like instructional practice and principal evaluations) and evidence that teachers with high VAM scores do something different than teachers with low scores. However, this testimony emphasized that VAMs should not be used alone for high-stakes decisions and that VAMs are not perfectly precise or reliable, partly because student test data are an imperfect measure.

To evaluate teachers in non-tested grades and subjects, the GTL Center analyst testified that states are likely to use one of the following approaches:

- collective measures based on tested grades and subjects (that is, school-wide value-added);
- building or buying assessments to measure growth; and
- student learning objectives (SLOs) or goal-setting.

Each of these measures, however, this testimony concluded, contains inherent cautions or problems, such as validity concerns with assigning scores from one subject to teachers in other subjects; the difficulty and expense of developing or purchasing exams that cover all subject areas; and the difficulty of implementing an SLO-based system consistently across classrooms and schools.

EFFECTIVENESS EVALUATION SYSTEM

AGENCY RULE AND RELATED POINTS

Adopted in August 2012 and amended in September 2013 (see “Using Assessments to Measure Teacher and Principal Performance,” p. 18), the PED rule titled *Teacher and School Leader Effectiveness* implements an evaluation program for public school teachers and administrators called the Effectiveness Evaluation System (EES). During the 2013 interim, the LESC heard a variety of testimony on the provisions and implementation of this rule and on other aspects of teacher and principal evaluation.

LESC staff testimony began with a summary of the components of the PED rule. In general, this testimony explained, 50 percent of a teacher’s evaluation is based on student achievement measures, whether derived from the state standards-based assessments or some other student assessment. Details vary, however, depending upon whether a teacher is a member of Group A, Group B, or Group C.

- Group A teachers teach subjects tested by the standards-based assessments in those grades in which the assessments are administered;
- Group B teachers teach either non-tested subjects or tested subjects in grades in which the standards-based assessments are not administered; and
- Group C teachers teach in grades K-2.

For the remainder of a teacher’s evaluation, staff testimony continued:

- 25 percent is based on teaching observations by one of two types of observers – either “approved” or “certified” – using the New Mexico Teacher Evaluation Advisory Council (NMTEACH) rubric or protocol; and
- 25 percent is based on “multiple measures,” which vary, again, according to the group to which the teacher belongs.

Turning to the evaluation of administrators, LESC staff testified that the EES requires that every school leader have an annual effectiveness evaluation, which must be conducted by a qualified person approved by PED. For the EES rating itself:

- 50 percent is based on the change in the school’s letter grade;
- 25 percent is based on the school’s multiple measures; and
- 25 percent is based on “documented fidelity observations of the school leader.”

Also, like teachers, administrators are categorized into three groups:

- Group A principals are all principals and assistant principals (certified administrators);
- Group B principals are all principals and assistant principals (certified administrators) who perform observations but not summative evaluations; and
- Group C administrators are certified administrators who do not observe or evaluate certified teachers.

Regarding appropriations, LESC staff testified that since 2012 the Legislature has appropriated \$6.4 million in special, nonrecurring appropriations to PED for initiatives related to educator effectiveness:

- for FY 13, a \$1.0 million appropriation to PED for implementing a new teacher evaluation system that is based on student achievement growth; and
- for FY 14:
 - \$3.4 million for implementing a new teacher and school leader evaluation system; and
 - \$2.0 million for teacher and school leader stipends.

Staff testimony also reviewed highlights from the Measures of Effective Teaching (MET) Project, sponsored by the Bill and Melinda Gates Foundation (see “HJM 30, *Study Uses of Standardized Test Scores*,” p. 19). According to the final report of the project, *Ensuring Fair and Reliable Measures of Effective Teaching: Culminating Findings from the MET Project’s Three-Year Study*:

- identifying great teachers requires multiple measures;
- more effective teachers not only caused students to perform better on state tests, but they also caused students to score higher on other, more cognitively challenging assessments in math and English;
- adding a second observer increases reliability significantly more than having the same observer score an additional lesson; and
- a balanced approach – incorporating observations with student achievement gains and student feedback – to identify teacher effectiveness has important advantages.

Testimony from PED provided an overview of the NMTEACH section on the PED website and reviewed the evaluation plan, as well as the toolbox section, which includes an observation protocol comprising four domains:

- preparation and planning;
- creating an environment for learning;
- teaching for learning; and
- professionalism.³

³ These four domains are derived from a research-based set of components for instruction called the Danielson Framework for Teaching, which is the observation instrument used in the MET Project.

Among the other points addressed in PED testimony were Teachscape, the software tool used for observation and evaluation management, professional learning, and talent management; and the concept of the value-added model, illustrated through a gardening analogy.

EVALUATION PILOTS UPDATE

As they implement their teacher and principal evaluation plans, schools have the option of adopting the state default evaluation plan or developing a custom plan and seeking PED approval for it. During school year 2012-2013, 68 schools, including four charter schools, voluntarily participated in an evaluation pilot project. Some of these schools used the state default evaluation plan while others had developed their own custom plans.

In introducing the topic, LESC staff testified that, prior to 2012, when the *Teacher and School Leader Effectiveness* rule was first codified by PED, the *Performance Evaluation System Requirements for Teachers* rule primarily governed the requirements for a highly objective uniform statewide standard of evaluation (HOUSSE) for teachers from early childhood through grade 12, which rated teachers as either meeting competency or not meeting competency. According to PED:

- every aspect of the nine teacher competencies in HOUSSE can be found in the four domains in the NMTEACH Observation Protocol; and
- each effectiveness rating aligns with the *School Personnel Act* because teachers who receive EES ratings of exemplary, highly effective, or effective will meet competency and teachers who receive minimally effective or ineffective EES ratings will not meet competency.

Schools Using the State Default Evaluation Plan

LESC staff testimony provided an overview of the factors and weights employed to evaluate teachers in the pilot, which differed in some respects from those in PED rule. The LESC testimony also reviewed the role of end-of-course (EoC) exams in the evaluation of teachers participating in the pilot.⁴ One point in this testimony was that, starting in 2014, passing the EoC exams will be the primary way in which students can demonstrate competency in social studies and writing, subjects that are not assessed by the standards-based assessments. Working with committees of teachers in the summer of 2012, PED created EoC exams in six subjects, and the department is currently developing some 30 more (see “High School Graduation Requirements: Superintendent Input,” p. 26).

The LESC also heard testimony from two of the schools using the state default plan and participating in the pilot project. Officials from South Valley Academy (SVA), a locally chartered charter school that has received high rankings from both PED and *US News and World Report*, testified that SVA volunteered to be part of the pilot to help the school obtain better results and to contribute to the school’s culture of improvement. While the yearlong

⁴ PED rule defines an end-of-course exam as “an exam administered to assess student content knowledge upon completion of a course.” The department further indicates that teachers may use EoC exams instead of or in addition to their own final exams; and that EoC exams should be administered during a set testing window during the last two weeks of the fall and spring semesters. PED allows districts to develop their own EoC exams subject to department approval.

pilot allowed time for staff to review the evaluation rubric, this testimony urged PED to consider a more conservative implementation timeline to allow administrators to learn how the evaluation system works after understanding the pilot results. Another point raised in this testimony was the SVA's frustration over PED's unexplained rejection of the school's proposed action-research project, which would account for 25 percent of a teacher's evaluation.

Additional testimony came from three administrators with Deming Public Schools (DPS), who described the pilot experiences of Bell Elementary School and Red Mountain Middle School. According to this testimony, the pilot project provided DPS time to understand the components of the evaluation system. However, this testimony continued, a more gradual roll-out would have helped school and district officials more fully understand the process; many school principals remain frustrated about the lack of clarity regarding how they will be evaluated; and the district has received no data about student achievement or multiple measures from the pilot project.

Schools Using Custom Evaluation Plans

LESC staff testified that the New Mexico Virtual Academy (NMVA), a district-authorized charter school in Farmington that provides a virtual (online) curriculum for grades 6-12 statewide, was approved for a custom plan of teacher evaluation (see "Virtual Charter Schools," p. 12). According to written testimony from NMVA, in addition to the nine teacher competencies and indicators, NMVA teachers will also be evaluated based on six domains specific to teaching at that school: planning and preparations, communications, instruction and achievement, virtual environment, professional responsibilities, and retention.

Testimony by Moriarty-Edgewood Schools expressed the district's commitment to implementing the new evaluation system with fidelity, focusing on improving instruction and student learning, but also noted that the district's efforts have been hampered by technical problems with Teachscape and inconsistent information provided during PED training sessions.

Noting that their framework was developed prior to the current PED rule, officials with Santa Fe Public Schools (SFPS) testified that their new evaluation system is focused on objective measures. One difference between the SFPS custom evaluation plan and the state plan is that the district uses only two groups of teachers – those who teach tested subjects and those who teach non-tested subjects – instead of three groups of teachers (see "Agency Rule and Related Points," p. 21). PED approved the district plan, according to this testimony, primarily because SFPS included achievement growth measures. In fact, the district plan requires all teachers to develop achievement growth measures regardless of the subject they teach.

Additional testimony came from a number of teachers. In general, they expressed no objection to being evaluated but requested that the LESL consider endorsing measures to provide an additional year to implement the evaluation plan and to expand the timeline currently in place.

OBSERVATION AND FEEDBACK COMPONENT

During the November meeting, the LESC heard testimony on the observation component of the EES by the New Mexico School Leadership Institute (NMSLI) and by PED.

The NMSLI testimony began with a history of the institute and its work, including a description of the partnership between the NMSLI and PED that led to the NMSLI being approved to deliver the two-day NMTEACH training in October 2013. This testimony explained that the NMSLI has focused on the role of the principal in the EES, explaining that the system requires the principal to shift from the role of manager to that of instructional leader. The NMSLI testimony also identified the two major challenges for principals trying to become effective instructional leaders: time and expertise.

Citing the value of effective feedback, the NMSLI testimony alluded to a recommendation of the MET Project (see “Agency Rule and Related Points,” p. 21): that principals need 60 to 90 hours of training to prepare them for an evaluation and feedback system; currently, however, the NMSLI and PED are offering principals approximately 24 hours of training. Even so, PED testified that principals have been satisfied with the clarity of the trainings offered by the NMSLI.

The PED testimony also emphasized the impact that school leadership has on school achievement and explained that the training for observation and feedback was developed by New Mexico educators as a result of the evaluation pilots during school year 2012-2013. PED added that every one of the approximately 2,200 principals in New Mexico public schools has received training, whether through the Teachscape software program, live regional trainings, or webinars.

Finally, committee discussion of this testimony focused on the concerns raised by other testimony – and by some committee members themselves – that PED is attempting to implement the EES too quickly, before schools are fully prepared for it.

ATLANTA SCHOOLS TESTING SCANDAL AND WHAT IT TELLS US

In August 2010, after rejecting the report of a blue ribbon commission that had looked into large, unexplained test score gains in some Atlanta schools, the Governor of Georgia named two special prosecutors to conduct a criminal investigation into allegations of widespread cheating on standardized examinations by officials in the Atlanta Public Schools. During the October 2013 LESC meeting, one of these prosecutors testified before the committee on what has become known as the Atlanta schools testing scandal.

Among other points, this testimony described a climate of fear in which teachers were threatened with losing their jobs if they refused to cheat, administrators were praised for misdeeds, and local officials based decision-making on image, believing it was “better to look good than to be good.” Such conditions, this testimony continued, are unintended consequences of basing 50 percent of a teacher’s evaluation on student performance (see “HJM 30, *Study Uses of Standardized Test Scores*,” p. 19).

The Governor’s report found that cheating had been occurring since 2001, involving 44 schools, 189 educators, and 38 principals. In 30 of these schools, 82 principals and teachers

confessed; but the investigators suspected that two to three times more were involved. The testimony to the committee also cited a subsequent investigation by the *Atlanta Journal-Constitution*, which examined approximately 1.6 million records across the country, including New Mexico, and found widespread evidence of cheating.

To prevent such cheating incidents, the prosecutor offered several lessons learned from the Atlanta experience, among them:

- the importance of making tests be more about children than adults;
- the value of school leaders surrounding themselves with and listening to people who will speak honestly;
- the practice of teachers and instructional support staff not testing their own students on state-mandated standardized tests, if possible; and
- the need for vigilance in ensuring that test protocols are followed.

Even with these precautions, however, this testimony concluded, high-stakes testing is likely to lead to high-stakes cheating.

HIGH SCHOOL GRADUATION REQUIREMENTS: SUPERINTENDENT INPUT

High school graduation requirements have been a recurring topic of LESC meetings for a number of years, particularly in terms of the increased number of credits required, more rigorous and extensive course offerings and requirements, and alignment between these requirements and the expectations of postsecondary institutions and the workforce. One example of the committee's continued interest is LESC-endorsed legislation that was enacted in 2007. This legislation requires that, beginning in school year 2010-2011, in order to graduate from high school with a diploma of excellence, a student must complete at least 24 units and demonstrate competency in required subject areas either on a standards-based assessment or assessments or by means of a portfolio of standards-based indicators established by PED. The required subject areas are mathematics; reading and language arts; writing; social studies, including sections on the constitutions of the United States and New Mexico; and science.

During the 2013 interim, the LESC continued its examination of high school graduation requirements – this time, however, as explained below, at the request of district superintendents throughout the state.

To implement the expanded graduation requirements in state law, PED has issued guidance through a number of memoranda and emails. To illustrate, a memo from PED in August 2012 outlines “traditional” and “alternative” demonstrations of competency for students graduating in 2014. The traditional demonstrations for math, reading, and science are prescribed scores on the standards-based assessments; for social studies and writing, the traditional demonstrations are scores on the end-of-course (EoC) exams (see “Schools Using the State Default Evaluation Plan,” p. 23) or their equivalent. As alternative demonstrations of competency in subject areas that have a related college readiness/placement exam, students must meet the appropriate cut score in one of the following:

- the Advanced Placement exam;
- the ACT, SAT, or PSAT;
- the Accuplacer; or
- the International Baccalaureate curriculum.

For other subject areas, a variety of EoC options comprise the alternative demonstrations.

Since the memoranda in 2012, PED has issued a number of other guidance documents addressing the requirements and circumstances of certain individual subjects, such as science and physical education (PE). For example, a November 4, 2013 memorandum describes circumstances under which PED will waive the PE requirement on a case-by-case basis for school year 2013-2014 only. Despite PED's indication that the multiple guidance documents were intended to clarify requirements and to explain flexibility afforded school districts, a number of superintendents have found the frequent notices to be confusing and inconsistent; and they requested that the LESC hold a hearing on the topic.

Testimony came from several school superintendents; representatives of the New Mexico Coalition of Educational Leaders and the New Mexico School Superintendents' Association (NMSSA); PED; and a high school senior whose graduation status seemed uncertain. Some of the testimony was unique to specific districts. For example, one superintendent reported having told a parent one morning that his child would not graduate only to receive an email from PED that afternoon describing circumstances that would allow the senior to graduate after all. For the most part, however, the testimony raised several common concerns.

- As an indication of the extent of confusion throughout the state, an informal survey of school superintendents found that just over 50 percent of public high school seniors and their parents across the state are uncertain regarding their graduation/diploma status.
- While the alternative demonstrations of competency are welcome, the cut scores set by PED for those tests are higher than those required by most colleges; and it is unlikely that students unable to pass the standards-based assessment will be able to achieve passing scores on the ACT or other college readiness exams. In addition, the cut scores for some EoC exams will not be set until April 2014, which one superintendent said is "unacceptable for seniors."
- There seems to be a limited understanding or awareness among school districts that school boards have legal authority to establish criteria for alternative demonstrations of competency.
- Although the superintendents have appreciated the opportunities for discussion – like the conference call with the Secretary-designate of Public Education in early November 2013 – there is some concern that the lack of long-term planning may adversely affect the educational system.
- There is confusion among school districts whether marching band will satisfy the PE credit.
- Finally, some of the testimony addressed the effect on students.
 - One superintendent testified that some seniors are considering either dropping out or taking the GED (see "General Educational Development," p. 5).

- An honor student who participates in extracurricular activities and takes AP courses, including AP pre-calculus, testified that he is in danger of not graduating because he did not pass an EoC in math.

One specific recommendation to emerge from this testimony – endorsed by individual superintendents and by the NMSSA – was to create a tiered system or pathway to a high school credential, as New York and Texas have done and as Colorado is considering. The intent, this testimony continued, is not to lower standards but to recognize that some students’ success will come from experiences and resources other than college. Under this tiered system, students committed to a college-bound path would fulfill the requirements of the diploma of excellence, while students on a different path would receive a general diploma that testifies to their completion of required units and courses that meet state standards and that are taught by highly qualified teachers.

Finally, testimony from PED noted that the department had added flexibility for social studies by allowing the course score to be used to meet competence and also permitted course grades to be used in place of EoC exams for courses taken years ago. PED also testified that the Higher Education Department (HED) had not been involved in the development of the EoCs, prompting committee concern about the requirement in law that PED collaborate with HED in aligning high school curricula and EoC exams with postsecondary placement tests.

See Recommendation 13.

PARTNERSHIP FOR ASSESSMENT OF READINESS FOR COLLEGE AND CAREERS

New Mexico is a member state of the Partnership for Assessment of Readiness for College and Careers (PARCC), which is one of two assessment consortia that receive federal funds to design computer-based tests aligned to the Common Core State Standards (see p. 7). Once the rollout is complete, the PARCC assessments are expected to replace the current New Mexico standards-based assessments. In February 2013, PARCC issued preliminary technology guidelines for administering the assessments, followed in September of that year with revised guidance, including the minimum external and internal bandwidth required per test-taker. The latter version provides two sets of guidance: minimum specifications that “address the oldest operating systems and lowest levels of hardware capacity”; and recommended specifications that “outline the levels of computer and network capacity that are more likely to meet growing demands.” During the August 2013 meeting, LESC staff and representatives of several participating entities presented information on broadband connectivity needs in preparation for the PARCC exams.

LESC staff provided an overview of:

- the state’s PARCC readiness based on published minimum technology requirements;
- comprehensive technology plans for public schools, including recent legislative efforts; and
- background information relating to:

- the implementation of the PARCC assessment for school year 2014-2015;
- the Information Technology Advisory Group (ITAG) of the Public School Facilities Authority (PSFA);
- the federal E-Rate program; and
- 2012 interim testimony provided to the LESC.

The Department of Information Technology (DoIT) identified the goals of its Broadband Program for New Mexico:

- provide broadband data analysis and maps;
- develop and launch a Web map through which a user can enter an address to see available broadband service providers and technologies;
- make available a speed-testing utility to validate network performance;
- compile and serve a database of community anchor institutions to support broadband adoption; and
- develop and provide training videos and toolkits.

DoIT testimony also described the components of a \$4.8 million grant from the National Telecommunications & Information Administration that the program received in January 2010; and reviewed the recommendations from the statewide Broadband Summit, held in Albuquerque in early August.

PSFA staff reviewed ITAG's role in developing broadband availability, noting elements that must be addressed in developing technology policies and adequacy standards while emphasizing that high speed broadband access is as vital to off-site school infrastructure as water, electricity, and roads.

The Public Education Department (PED) explained its role in supporting technology readiness, primarily in the gathering of data through two projects – the TechReadiness and SpeedTest – that measure the readiness of schools for the PARCC tests. Schools will be required to participate in order to apply for an allocation from a \$5.2 million legislative appropriation to PED earmarked for technology in schools in FY 14.

Testimony by the New Mexico Exchange Carrier Group (NMECG) noted that broadband capabilities are available in all public school districts, half of which are served by NMECG companies. Although 95 percent of school districts currently have internet fiber availability, right of way access and construction costs are still significant challenges.

Education Networks of America (ENA) testified about the contractor's managed data service, which includes constant network monitoring and customer technical assistance, E-Rate assistance, managed data circuit delivery, and required equipment and maintenance.

Finally, in December 2013, LESC staff provided an overview of *Broadband Assessment and Recommendations: Education, Healthcare, and Economic Development*, a report published by DoIT in November. The report notes that, with the exception of Albuquerque Public Schools and Las Cruces Public Schools, most school districts are operating with the amount of bandwidth they believe they can afford. The report further indicates that often this amount is enough to handle current needs but insufficient to handle the demands of the PARCC exam

or the emerging digital learning environment. The report adds that the unmet broadband needs are primarily in rural schools, and the needs remain unmet due to the cost to provide service. Staff testimony also cited a PED website – (<http://webapp2.ped.state.nm.us/SchoolData/TechFootPrint.aspx>) – that illustrates technology readiness by district and school.

See Recommendation 14.

FISCAL MATTERS

SPECIAL EDUCATION MAINTENANCE OF EFFORT

In order to be eligible for grant awards for special education through the federal *Individuals with Disabilities Education Act* Part B (IDEA-B), a state must fulfill certain requirements in the *Code of Federal Regulations* (CFR):

- a state must not reduce the amount of its financial support – known as maintenance of effort (MOE) – for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year; and
- if a state fails to meet MOE and is not granted a waiver, the US Department of Education (USDE) Secretary shall reduce a future IDEA award by the same amount by which the state failed to meet the requirement.

During the June 2013 committee meeting, LESC staff testified that the week before the 2013 legislative session convened, the Legislature became aware of New Mexico’s not meeting the federal MOE requirements for state fiscal year (SFY) 10 and SFY 11.⁵ Staff further testified that in February 2011 the Public Education Department (PED) had begun a dialogue with the USDE regarding waiver requests and data submissions; and that PED had submitted two separate waiver requests for SFY 10 and SFY 11, each citing an unforeseen decline in the financial resources of the state as rationale for a waiver from MOE requirements.

LESC staff further explained that certain national developments could affect the state’s MOE waiver requests:

- language in the most recent federal appropriations bill passed by the US Congress limiting the reduction of IDEA-B funds for failing to meet MOE to a single year; and
- a federal district court ruling, originating from South Carolina’s MOE waiver, requests that the USDE must provide both written notice and an administrative hearing before its determination becomes final.

In addition, the waiver requests the supplemental data for SFY 10 and SFY 11 that PED submitted to USDE appeared to consider certain federal stimulus dollars as state financial support for special education. LESC staff explained that, according to guidance from the Office of Special Education and Rehabilitative Services of the USDE, a state may treat State

⁵ The state fiscal year runs from July 1 to June 30; the federal fiscal year runs from October 1 to September 30.

Fiscal Stabilization Funds as non-federal funds for the purpose of any requirement to maintain fiscal effort (that is, MOE) under any other program that the USDE administers, such as IDEA, upon prior approval from the USDE Secretary.

On June 3, 2013, staff testimony continued, the USDE responded to New Mexico's waiver requests by granting a waiver for SFY 10 but denying a waiver for SFY 11. Citing a letter that the USDE sent to PED, LESC staff further testified that the USDE:

- determined that, for years after SFY 09, New Mexico's required level of state financial support for special education is \$461,998,168, the level made available in SFY 09;
- found that the state did not qualify for prior approval for the use of federal stimulus dollars in its calculation of state financial support for special education;
- for SFY 10, granted a waiver of \$48,094,194 based on "exceptional or uncontrollable circumstances"; and
- for SFY 11, rejected the waiver request in the amount of \$34,120,713.

The USDE further noted that data provided by PED suggests that the state may have failed to meet MOE in SFY 12 by approximately \$26.4 million, and the USDE letter raised further concerns that "the State may not maintain State financial support in SFY 2013" either. LESC staff also indicated that further reductions to the state's IDEA-B grant award might occur in federal fiscal year (FFY) 14 and SFY 15.

To address these needs, staff testimony continued, the *General Appropriation Act of 2013* contains several contingent provisions related to meeting special education MOE requirements for both SFY 13 and SFY 14. LESC staff also described two sets of contingent provisions related to meeting MOE in CS/HB 628, *Special Education Funding* (Laws 2013, Chapter 191):

1. for SFY 13 and SFY 14, the legislation could appropriate up to an additional \$20.0 million and \$16.0 million, respectively, from the General Fund Operating Reserve, contingent on certification of need by the Board of Finance; and
2. for SFY 13 and SFY 14, if funds were transferred from the State Equalization Guarantee (SEG), the legislation could appropriate up to \$20.0 million and \$16.0 million, respectively, from the operating reserve to replace any funds transferred out of the SEG, contingent on the USDE's rejecting this transfer of funds.

While the appropriations and transfers contained in the *General Appropriation Act of 2013* and Laws 2013, Chapter 191 could address MOE requirements for SFY 13 and SFY 14, LESC staff alerted the committee to two unresolved issues:

1. failure to fulfill contingency language for SFY 13 as a result of the amount of time needed for a final determination of SFY 10 and SFY 11 waiver requests by USDE; and
2. possible reduction of federal IDEA-B grant awards in SFY 15.

In his testimony, the Deputy Secretary of Finance and Operations, PED, stated that the USDE decision to deny a waiver for SFY 11 was affected by information received above and

beyond what PED had provided. Partly because of uncertainty about the validity of this additional information, PED was appealing the USDE's rejection of the state's waiver request for SFY 11. The Deputy Secretary also explained that the MOE was not met for SFY 12 as a function of reduced appropriations and indicated that PED would soon pursue a waiver for SFY 12.

OVERVIEW OF FEDERAL FUND SEQUESTRATION

Sequestration is the process by which federal discretionary and mandatory program levels are reduced as outlined in the federal *Budget Control Act* (BCA). In an overview of this process, LESC staff testimony explained that, when drafting the BCA, the US Congress put in place automatic reductions for mandatory and discretionary spending for defense and non-defense programs in case federal legislation was not enacted to reduce the federal budget deficit in 2012. Because no such federal legislation was enacted, for FY 13 reductions were done through automatic across the board cuts called "sequestration."

According to estimates by the US Department of Education (USDE), staff testimony continued, New Mexico will have a \$20.5 million net reduction in federal education funding for elementary, secondary, and vocational programs. This estimate includes federal FY 13 award reductions of:

- \$7.4 million for Title I programs;
- \$5.1 million for Impact Aid programs;
- \$15.5 million for *Elementary and Secondary Education Act* programs;
- \$4.8 million for special education programs; and
- \$181,000 for vocational and adult education programs (including career and technical education state grants).

LESC staff further testified that, during the Spring Budget Workshop in 2013, the Public Education Department (PED) directed school districts to budget 90 percent of federal funds instead of 95 percent as in years past due in part to concerns about reduction of federal funds through sequestration. In addition, guidance from the USDE suggests that PED will take the sequester amount from the July 2013 regular appropriations for FY 14 instead of forward-funded programs. Therefore, most FY 13 programs would not be affected by sequestration, with the lone exception of the Impact Aid program, which would face FY 13 cuts. PED estimates Impact Aid will be reduced by approximately 6.0 percent, or approximately \$5.6 million, whereas the USDE and Federal Funds Information for States estimate a 5.2 percent reduction, or approximately \$4.9 million.

Finally, staff testimony addressed the State Support Reserve Fund (SSRF), which was established in law to supplement the State Equalization Guarantee (SEG) so that the unit value will not be reduced. According to this testimony, if sequestration continues for FY 14 and has an effect on projected credits or if other federal funds for which the state takes credit do not materialize (federal forest reserve funds, for example), then the state may lack an adequate balance in the SSRF with which to hold the unit value constant.

See Recommendation 15.

OVERVIEW OF THE PUBLIC SCHOOL FUNDING FORMULA

To provide a fiscal orientation for new committee members during the 2013 interim, LESC staff presented an overview of the public school funding formula (PSFF), supplemented by several staff-developed documents. Beginning with the history of the formula, this testimony noted that the PSFF was implemented in school year 1974-1975, based on a model developed by the National Education Finance Project. The premise behind the formula – that all students are entitled to an equal educational opportunity despite differences in the wealth of their local districts – departed from the prior method, which had funded New Mexico’s schools according to local district wealth.

Staff testimony also explained that the formula recognizes different costs for different grades or programs like bilingual education or fine arts; is designed to distribute funding in a noncategorical manner, which means that local school districts have autonomy in using the funds to address local priorities; and is student-driven, using the average number of students enrolled on the prior year’s second and third reporting dates to identify the membership of each school district or state-chartered charter school.

The mechanism through which the PSFF distributes funds is known as the State Equalization Guarantee (SEG) distribution. The SEG distribution is the amount of money distributed by the state to each school district and state-chartered charter school to ensure that the district’s or charter school’s respective operating revenues, including certain local federal revenues, are equal to their program costs. Each year the SEG appropriation recommendation considers the prior year’s program cost as the base funding amount. The recommendation then considers student enrollment growth, insurance costs, and fixed costs – also known as “opening the doors” costs – in the development of the appropriation.

The PSFF has been amended multiple times since 1974, and it was the subject of major studies in 1995-1996 and then again in 2007-2008. Staff testimony emphasized that the 2007-2008 study, conducted by the American Institutes for Research, found that, while the PSFF remains equitable, it needs larger appropriations – some \$334 million at the time of the study – to achieve sufficient levels of funding for the state’s public schools.

Finally, using as an example a bill introduced but not passed during the 2013 legislative session, LESC staff testimony illustrated several key questions to ask when considering a modification to the PSFF.

See Recommendation 16.

OTHER TOPICS

REVIEW OF SELECTED COMPONENTS OF THE INSTRUCTIONAL MATERIAL PROCESS

Among its provisions, the *Instructional Material Law* requires the Public Education Department (PED) to create the Instructional Material Bureau (IMB) to administer the

provisions of the law and to enforce rules for the handling, safekeeping, and distribution of instructional material, among other duties. The law also requires the Secretary of Public Education to appoint a chief of the bureau and further requires PED to establish an instructional material review process in rule. Part of this process, as established in PED rule, is a summer review institute that includes Level 2 and Level 3-A teachers as reviewers of record, in partnership with Level 1 teachers, students completing teacher preparation programs, parents, and community leaders as observers.

Regarding the distribution of funds from the Instructional Material Fund, the law requires PED, on or before April 1 of each year, to allocate to each school district, state institution, or private school not less than 90 percent of its estimated entitlement based on the estimated 40-day membership for the next school year. The law further requires PED, on or before January 15 of each year, to re-compute each entitlement using the certified 40-day membership for that year and then allocate the balance of the annual appropriation, adjusting for any over- or under-estimation in the first calculation.

PED rule delineates certain other aspects of the instructional material process. Regarding the adoption of instructional material, rule requires PED to ensure that:

- there be one annual adoption;
- material be adopted for a six-year period; and
- the subject area at each annual adoption consist of those subject areas whose adoption period expires at the end of the year during which the adoption is conducted.

During the 2013 interim, the LESC received a staff report on selected components of the instructional material process that had been of interest to the LESC.⁶

THE ADMINISTRATION OF THE INSTRUCTIONAL MATERIAL ADOPTION PROCESS

Staff testimony reviewed the staffing of the IMB and the current administration of the adoption cycle. On the first point, LESC staff noted that the IMB is being managed not by a bureau chief appointed by the Secretary of Public Education but by a contractor, who is the only staff member in the bureau. On the second point, this contractor described the 2013 summer institute, which focused on instructional material for Career Technical Education and Driver Education and adopted a multiple list of approved educational material. Staff testimony reported other observations of the contractor, noting in particular that PED had fulfilled most of the requirements in statute and rule pertaining to the annual adoption but that Level 1 teachers, students completing teacher preparation programs, parents, and community leaders had not been included in the institute.

THE DISTRIBUTION OF THE INSTRUCTIONAL MATERIAL ALLOCATIONS

Staff testimony noted some of the points from the final audited trial balance summaries for the Instructional Material Fund from FY 09 through FY 12 and the preliminary trial balance summary for FY 13, retrieved through SHARE, the state's financial management system. Among the points raised, it appears that PED has:

⁶ This LESC staff report was also presented to the Legislative Finance Committee, whose staff had done a program evaluation of the Instructional Material Fund during the 2013 interim.

- distributed the initial 90 percent allocation in the first month of the fiscal year only once, in FY 09;
- distributed the initial 90 percent allocation in the other years as late as September, the third month of the state’s fiscal year, potentially causing a negative effect on schools’ ordering and purchasing of instructional material (although PED reports that the department has received no complaints);
- made the final 10 percent allocation not by January 15 but in either May or June of each of the five fiscal years examined, affording recipients a limited time in which to expend the funds;
- has distributed funds directly to locally chartered charter schools rather than through the chartering district, as the law intends; and
- since FY 10 has not applied a statutory multiplier for additional students that was enacted in 1999 to ensure that schools meet statutory obligations regarding students’ free use of instructional material.

SPECIAL PROVISIONS FOR CHARTER SCHOOLS

Since 1999, the *Charter Schools Act* has required PED to waive for charter schools a number of provisions of the *Public School Code*, among them the purchase of instructional material. In accordance with this provision, staff testified, the Manual of Procedures (incorporated into PED rule) specifies that charter schools have 100 percent discretionary authority to purchase on or off the adopted list, and they have no limitations regarding whether the instructional material they purchase is core/basal or supplementary. Even so, staff testimony continued, the IMB contractor confirmed that any instructional material that charter schools purchase must meet the statutory definition of the term: “. . . school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media.”

Staff further testified that, according to information from a small sample of charter school administrators, instructional material funds have been spent on online and internet-based instructional materials, including licenses to use certain web-based curriculum.

OVERSIGHT OF THE *INSTRUCTIONAL MATERIAL LAW*

The committee’s interest in the oversight of the *Instructional Material Law* dates at least to November 1999, when an audit report identified a number of findings related to confusing and contradictory regulations, lack of oversight of the requirement that districts were receiving the lowest prices offered, and little enforcement of instances of noncompliance. An item of particular interest during the 2013 interim was the management of the IMB by a contractor rather than a bureau chief.

According to staff testimony, the contractor has explained her primary responsibilities as programmatic, related to the adoption process. This arrangement has included:

- ensuring that the Summer Review Institute is executed effectively;
- ensuring that accredited private/nonpublic schools are able to apply for instructional material funding; and

- working with accredited private/nonpublic schools that have incomplete components of their application to complete necessary sections and then receive funding.

Not included in the contractor’s current responsibilities is monitoring to ensure that the prices for items on the multiple list are the lowest in the nation, as required by PED rule.

Finally, with regard to the appointment of a chief of the IMB, staff testified that the Deputy Secretary of Finance and Operations, PED, has indicated that the department is currently engaged in the process of hiring a full-time chief but that the expected timeline is uncertain.

THE ROLE OF THE IN-STATE DEPOSITORY

One of the components of the instructional material process is the in-state book depository. Although it does not define the term, the *Instructional Material Law* recognizes the function of the depository in its requirement that PED provide payment to an in-state depository on behalf of private schools. PED rule does define the term “New Mexico instructional material depository” as a facility authorized through application to the bureau chief to serve as an agent representing multiple publishers and other educational entities for the purpose of managing district/school instructional material orders. And this rule requires accredited private/nonpublic schools to purchase items of instructional material through a New Mexico instructional material depository or in-state distribution point.

Staff testimony noted that, currently, the only operating depository in New Mexico is Archway Depository. Archway has identified the following benefits of schools’ purchasing instructional materials through a depository:

- lower shipping fees;
- more direct access to publishers;
- the depository staff’s familiarity with New Mexico’s instructional material process; and
- the readiness of depository staff to act as additional advocates for the school district if issues arise in the process of purchasing instructional materials.

LESC staff further testified that a review of orders completed through Archway Depository suggests that some eligible accredited private/nonpublic schools did not make purchases in FY 13 or apply for instructional material funding. According to information from a small sample of those schools, eligible accredited private/nonpublic schools may not be applying for or expending available funds because of a lack of outreach and training from PED or because, in light of past situations that limited available year-end cash balances, they are saving their allocation amounts for larger, more expensive instructional material purchases.

THE 2010 GENERAL OBLIGATION BOND FOR SCHOOL BOOKS AND INSTRUCTIONAL MATERIALS

During the 2012 interim, members of the LESB questioned the legality of PED’s use of \$2.0 million from general obligation (GO) bonds approved in 2010 “to purchase school books and instructional materials statewide.” Rather than distribute the funds to schools throughout the state, which some committee members said was the intent of the language, PED awarded the

funds to schools that received a letter grade of A (see “A-F School Grading System,” p. 16) or that were recognized as a “Top Growth” school.⁷

During the 2013 interim, LESC staff reported the results of a consultation with staff from the Legislative Council Service (LCS) on the question noted above. According to LCS staff, this testimony continued, the use of the term “statewide” rather than a phrase such as “all public schools statewide” may afford PED the latitude to distribute the bond proceeds for instructional materials to selected schools.

POTENTIAL ACTIONS THE COMMITTEES MAY WISH TO CONSIDER

Finally, LESC staff testimony listed three potential actions that the LESC and the Legislative Finance Committee (LFC) may wish to consider, based on the information presented:

- when considering legislation authorizing the issuance of GO bonds to provide distributions to public schools statewide, ensure that the language clarifies whether the proceeds are for all public schools or selected public schools;
- require PED to provide an annual report to the committees outlining the department’s administration of the *Instructional Material Law* and related PED rule, including certain requirements; and
- direct LESC and LFC staff to conduct a follow-up review of the instructional material process and to provide a report with potential policy considerations.

EDUCATIONAL ASSISTANTS: SALARY COMPARISONS NATIONWIDE

At least since the 2001 interim, the LESC has considered issues regarding the licensure and salaries of educational assistants (EAs) in the public schools. In school year 2001-2002, the Public Education Department (PED) reported that the average salary for an EA was \$12,550. The next year the reported average salary increased to \$13,162; however, many full-time EAs were receiving annual salaries below \$10,000.

Reviewing some of the background to the issue, LESC staff testimony in 2013 noted an LESC-endorsed memorial in 2003 that led to a work group. In January 2004, the LESC endorsed legislation based upon the final recommendations of this LESC work group; and later that year legislation was enacted to create a career advancement initiative for EAs that resulted in provisions in current law that outline the role, licensing framework, and minimum salaries for EAs.

LESC staff testimony also provided an overview of two sources of data for EA salaries:

1. The Bureau of Labor Statistics (BLS) reports that the current nationwide average salary for EAs is \$25,500, while the average of EA salaries in New Mexico is \$21,600. The highest average annual wages for EAs, according to the BLS, are found in Alaska, Nevada, Delaware, Maine, and Washington.

⁷ A “Top Growth” school is one that increased its school grade by two letter grades from the preliminary grades issued in January 2012 to the final grade issued in July 2012.

2. The PED Student Teacher Accountability Reporting System (STARS) data indicate that the statewide average salary for EAs in New Mexico is \$16,000.

The staff testimony also cautioned that certain reporting factors, such as errors in data entry or EAs serving in multiple functions, may affect the accuracy of the STARS data.

The president of the Albuquerque Educational Assistants Association and Executive Vice President of the New Mexico chapter of the American Federation of Teachers testified about the increasing responsibilities placed on EAs, while their salaries have not kept up with the increasing duties they are required to perform.

Also testifying were several EAs, who raised such issues as their high visibility and interaction with students, their serving as the first line in the disciplinary process when students misbehave, their gratification from working closely with students and affecting their lives, and their difficulty meeting expenses with their low salaries.

DYSLEXIA

Over the years, the LESC has examined the barriers faced by students with dyslexia, a condition that federal special education law identifies as a “specific learning disability.” During the 2013 interim, the committee heard testimony about recent developments in services for students with dyslexia, including the implementation of a state law enacted in 2010, *Dyslexic Student Intervention*.

Testimony began with an LESC staff review of *Dyslexic Student Intervention*, which defines dyslexia as “a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction.” Among its other provisions, this law provides that:

- school districts and charter schools must train special education teachers to provide appropriate specialized reading instruction for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services;
- the Public Education Department (PED) must provide technical assistance for special education diagnosticians and other special education professionals regarding the formal special education evaluation of students suspected of having a specific learning disability, such as dyslexia; and
- PED must adopt rules, standards, and guidelines necessary to implement the law.

Among the PED rules, staff testimony continued, are provisions for an instructional delivery system called Response to Intervention (RtI), “a multi-tiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions.”

Other testimony came from a representative of the Southwest Branch of the International Dyslexia Association (SWIDA) and the Executive Director, Region IX Education Cooperative (REC IX), who described their collaboration regarding four modules aligned to the RtI framework. SWIDA requested that PED make the modules widely available and proposed that the two organizations collaborate in disseminating a survey of all public schools to learn how they are addressing the needs of students with dyslexia through the RtI framework. In reply, PED said that the modules are not available on the PED website but on the REC IX website and that the department can provide additional support.

Finally, the SWIDA testimony also noted that, when *Dyslexic Student Intervention* cites the “neurological origin” of dyslexia, it indicates that some brains have more difficulty learning to read and spell than other brains. Furthermore, as a normal variation in the population – no matter the country, language, or socio-economic status of the individual – dyslexia is an educational issue that the schools must address.

CHILDHOOD OBESITY: POLICIES AND INTERVENTIONS

In developing its workplan for the 2013 interim, the LESC requested a presentation on childhood obesity in New Mexico to include:

- a discussion of successful school-based interventions and policies aimed at improving child health, with specific emphasis on healthy lifestyles and selecting good food choices;
- an analysis of foods served in schools, including an evaluation of nutritional values;
- best practices with school meal nutrition in New Mexico and other states; and
- district and state policies governing the availability and sale of soft drinks and high fat/sugar/processed carbohydrate snack foods in schools.

While researching the topic, LESC staff realized that the best practices and academic research both place an equal emphasis on nutrition and on physical education (PE) and physical activity; therefore, testimony to the committee covered both student nutrition and student physical fitness.

Staff testimony began with an overview of provisions in current law, the best practices of the National Association for Sport and Physical Education, and physical activity among New Mexico students. This testimony then turned to student nutrition, noting, among other points, the school nutrition programs overseen by the US Department of Agriculture (USDA):

- the National School Lunch Program;
- the School Breakfast Program; and
- the Fresh Fruit and Vegetable Program.

In addition, the federal *Healthy, Hunger-Free Kids Act of 2010* (HHFKA) reauthorized the USDA’s school nutrition programs through the federal *Child Nutrition Act* and allocated \$4.5 billion nationwide over 10 years in order to increase the number of low-income children who are eligible for free or reduced-price school meals and to expand a program that provides

after-school meals to at-risk children. Other provisions in the HHFKA, staff testimony continued, introduced certain changes to the *Child Nutrition Act* related to student nutrition and childhood obesity, among them that:

- the USDA has the authority to establish national nutrition standards for all food products sold on school grounds – vending machines, lunch lines, and school stores;
- the USDA must develop new meal patterns and nutrition standards for meals and snacks in schools, which must be consistent with recommendations of authoritative agencies and current nutrition science; standards must be reassessed every 10 years or sooner;
- water must be available and free of charge during school meals; and
- federal funds are to be allocated for school gardens and farm-to-school programs in which schools partner with local farms to provide nutritious, local foods for meals.

Staff testimony concluded with an account of two state nutrition programs: (1) Breakfast after the Bell, which provides for legislative appropriations of \$1.92 million in FY 14 to provide funding for schools to serve breakfast to students after the instructional day has begun; and (2) the New Mexico Produce in Schools program, for which the Legislature appropriated \$100,000 in FY 14 for the purchase of New Mexico-grown fresh fruits and vegetables for school meal programs, although the appropriation was not tied to any nutritional standards.

The committee then heard testimony from several experts in the field of child nutrition or physical activity:

- A professor emerita of pediatrics from the University of New Mexico (UNM) School of Medicine testified that Type 2 diabetes is becoming more common in children and that obesity is a high-risk factor for its development. To address this problem, two interventions are used in concert with each other: nutrition and exercise. Regarding nutrition, this testimony noted the importance of honoring a child’s culture through efforts to change eating behavior; regarding exercise, the testimony cited findings of research that exercise among school-aged children results in enhanced learning, better memory, and better test-taking.
- Also citing research, a professor of exercise physiology at the UNM College of Education testified that being sedentary negatively affects health, while regular exercise increases short-term learning and performance on tests.
- Two representatives of the American Association for Health, Physical Education, Recreation, and Dance-New Mexico (one of them a certified PE teacher) discussed the importance of quality PE programs taught by teachers who are best suited to train students to be active, not only in adolescence but also later on in adulthood.
- Finally, the Director of the School and Family Support Bureau, Public Education Department (PED) reviewed provisions in current law regarding elementary PE that were enacted in 2007. One point raised in this testimony was that, because of insufficient funding, only 40 to 50 percent of elementary schools in the state are still receiving funding for their PE courses. Another point was that PED is developing end-of-course exams for PE in both pencil-and-paper and performance-based formats (see “High School Graduation Requirements: Superintendent Input,” p. 26; and “Schools Using the State Default Evaluation Plan,” p. 23).

See Recommendation 17.

ADDITIONAL PRESENTATIONS AND REPORTS

In addition to the presentations summarized elsewhere in this report, the LESC heard testimony from the New Mexico Teacher of the Year 2012-2013. The committee also heard testimony on the following topics: local district and legislative initiatives in reading retention and intervention; current education issues at Ruidoso Municipal Schools; the review of teacher preparation programs by the National Council on Teacher Quality; restructuring of the College of Education at the University of New Mexico; K-12 rankings; a report from the Legislative Finance Committee (LFC) on its program evaluation of the cost and outcomes of special education services; lessons learned from the University of Virginia; K-12 online learning policy; public school budgets for FY 14; recurring and nonrecurring appropriations to PED for FY 14; allocations by school district and charter school; insurance appropriation requests for FY 15 from the New Mexico Public Schools Insurance Authority and Albuquerque Public Schools; performance-based assessments at the Architecture Construction and Engineering Leadership High Charter School; school-based health centers; children's brain development; an LFC evaluation of the impact of child-care and Head Start on student achievement; a guide to early literacy by the National Governors Association; the impact of third grade retention in Florida; a report from the College Board on Advanced Placement; higher education initiatives for American Indian students; the New Mexico Collegial Learning Collaborative Proposal; and the LFC program evaluation of the Instructional Material Fund.

Finally, the committee also received the following written reports: *Public School Capital Outlay Awards Annual Report*; *Broadband Assessment and Recommendations: Education, Healthcare, and Economic Development*; *School Athletics Equity Act Summary Report*; *K-3 Plus Annual Report, SY 2012-2013*; and *PreK Annual Report, SY 2012-2013*.

See recommendations 18 and 19.

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