

State of New Mexico
LEGISLATIVE EDUCATION STUDY COMMITTEE

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MINUTES
LESC MEETING
JANUARY 18, 2016

Representative Dennis J. Roch, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:05 a.m., on Monday, January 18, 2016, in Room 307 of the State Capitol in Santa Fe, New Mexico.

The following members of the LESC were present:

Voting: Representatives Dennis J. Roch, Chair, Nora Espinoza, Tomás E. Salazar, Christine Trujillo, and Monica Youngblood; and Senators John M. Sapien, Vice Chair, Craig W. Brandt, and Howie C. Morales; and

Advisory: Representatives Alonzo Baldonado, Jim Dines, David M. Gallegos, Stephanie Garcia Richard, Jimmie C. Hall, D. Wonda Johnson, Timothy D. Lewis, G. Andrés Romero, Patricia Roybal Caballero, James E. Smith, and James G. Townsend; and Senators Lee S. Cotter, Daniel A. Ivey-Soto, Linda M. Lopez, Michael Padilla, William P. Soules, Mimi Stewart, and Pat Woods.

The following members of the LESC were not present:

Voting: Representative Sheryl M. Williams Stapleton and Senator Gay G. Kernan; and

Advisory: Senators Jacob R. Candelaria, Carlos R. Cisneros, and John Pinto.

DIRECTOR'S REPORT

a. Approval of December 2015 LESC Minutes

On a motion by Senator Sapien, seconded by Representative Trujillo, the committee approved the minutes for the December 2015 interim meeting.

b. Approval of Draft LESC Annual Report for the 2015 Interim

On a motion by Representative Salazar, seconded by Senator Sapien, the committee approved the draft LESC Annual Report for the 2015 Interim.

c. Informational Items

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

- a copy of the order granting plaintiffs' petition for preliminary injunction in *State Ex. Rel. Stewart v. Skandera*;
- Public Education Department (PED) and Children, Youth and Families Department Pre-kindergarten Program Report for School Year 2014-2015;
- PED Math and Science Advisory Council Annual Report for School Year 2014-2015;
- PED Tribal Education Status Report for School Year 2014-2015; and
- Public School Capital Outlay Council and Public School Facilities Authority FY15 Annual Report.

d. Assign Every Student Succeeds Act (ESSA) Work Group Members

The Chair informed the committee that the assignment of the Every Student Succeeds Act (ESSA) work group members will be delayed until PED responds to the LESC letter requesting participation in the development of a Title I Plan.

Committee Discussion

Representative Garcia Richard asked how the work group would be formed, and the Chair answered that the work group will be made up of a variety of voting and advisory members. The Chair added that some of the work group members will have an education background and members will be selected to provide balanced geographic and partisan representation.

Leighann Lenti, Deputy Secretary, Policy and Program, PED, informed the committee that PED is waiting to receive guidance from the U.S. Department of Education before responding to the LESC letter. Senator Sapien emphasized the need for LESC to have a proactive plan, and Senator Stewart agreed. She added that the Title I Plan requires participation from a large group of stakeholders, many of whom attend LESC meetings.

UPDATED PUBLIC EDUCATION DEPARTMENT BUDGET REQUESTS

Paul Aguilar, Deputy Secretary, Finance and Operations, Public Education Department (PED), stated that since PED's presentation in December, new money projections for FY17 decreased from \$292 million to \$228 million. Mr. Aguilar indicated that the executive recommendation for new money to education is approximately \$101 million compared to a Legislative Finance Committee (LFC) recommendation of \$101.8 million. Although the total difference is small, he noted there are specific differences, such as an LFC appropriation of \$54 million for teacher pay increases compared with an executive priority for pay for performance. He also stated PED

believes there is no compaction issue with teacher salaries at level two when compared with the level one increase to \$34 thousand.

Mr. Aguilar discussed above and middle of the line funding and noted that there were no significant changes from PED's request in December.

Mr. Aguilar said school transportation funding statutes do not separate funding for school districts and charter schools, and emphasized the need to think about school transportation and our children as a whole. Reductions in transportation funding, he noted, may trigger requests for supplemental funding, and Lordsburg Municipal Schools (LMS) has made the largest request thus far. Rather than transporting some students 60 to 70 miles each way every day, Mr. Aguilar said that LMS entered an agreement with the Duncan Unified School District (DUSD) in Arizona to pay tuition for students living near the border to attend DUSD schools.

Leighann Lenti, Deputy Secretary, Policy and Program, PED, presented the department's targeted program request focusing on the youngest learners, teacher preparation, and interventions for low-performing students, including truancy and dropout prevention. She pointed out the main differences in the revised budget request, including: a \$2 million decrease for K-3 Plus; a \$500 thousand decrease for stipends for the top 50 teachers; and a decrease of \$500 thousand for interventions and supports, which includes the Principals Pursuing Excellence (PPE) program. Ms. Lenti noted 79 percent of schools participating in the program saw an increase in their school grade compared to 30 percent statewide for non-PPE schools. She also noted PED received more requests for truancy coaches than the department was able to fund.

Mr. Aguilar discussed legal fees and supplemental appropriations, indicating two funding formula lawsuits that are going to trial in 2017 or 2018, and the state has already provided over a million documents for ongoing discovery requests. PED requested \$2 million to fund legal fees associated with these two lawsuits, \$400 thousand of which the department anticipates needing in FY16. He also noted the \$4 million request for emergency supplemental funding for school districts.

Committee Discussion

The Chair asked where the original PED request differs from the executive request, and Mr. Aguilar noted that the department wanted to put school bus replacement and prekindergarten funding into the recurring pool. Bus replacement appropriations used to be recurring, he said, but since the recession its funding shifted to capital outlay and the funding level is not keeping up with the replacement schedule. Mr. Aguilar advised the committee that a 12-year bus replacement cycle is good, but a 20-year replacement cycle, which has been discussed, is too long.

Representative Salazar and Mr. Aguilar discussed philosophical differences regarding compaction of the teacher-salary schedule, with Representative Salazar noting that it will eventually occur. Mr. Aguilar responded that the tier system is based on minimum salaries, which allows school districts to pay teachers more than the minimum.

Representative Dines asked whether PED had a model reflecting the true cost of education if funding was available, and Mr. Aguilar stated he could not answer the question entirely due to the sufficiency lawsuits. He commented that PED uses a base-plus method that looks at growth

based on inflationary factors to provide funding and school districts prioritize expenditure of the money. Representative Dines noted that business forecasts look at where an organization wants to be in five years. Mr. Aguilar explained that this is shown in the recommendation, which adds funding to keep pace with inflation. Representative Dines said he wanted to talk to PED during the interim about a plan to provide raises to teachers in future years.

Representative Espinoza asked Mr. Aguilar to comment on the issue of “winners and losers” when it comes to school district funding, and Mr. Aguilar stressed the importance of looking at the system as a whole versus “winners and losers.”

Senator Stewart reminded the committee that the education partners, which represent most of the education community, said it has been eight years since the last teacher salary increase, and suggested this is one of the reasons for the current teacher shortage. She noted sponsoring legislation to increase minimum teacher salaries three times in past sessions, and is the sponsor for a bill this session that appropriates \$16 million to move each tier up by \$10 thousand over four years. Senator Stewart added that the education partners did not ask for “below the line” expansion, which could have provided a 2 percent raise.

Representative Espinoza requested information on how New Mexico teacher salaries compare with other states when benefits are included in the total teacher compensation program.

The Chair asked about the duplicate line-items for teacher supplies, and Mr. Aguilar said the line-item was moved from recurring to nonrecurring. The Chair also inquired about reverted funds from teacher supply debit cards, and Mr. Aguilar replied that the contractor needed 30 days to reconcile records and PED will need another 30 days after that.

Representative Trujillo expressed concerns with “below the line” money disequalizing the formula, and Mr. Aguilar stated that New Mexico is required to submit a disparity calculation to the federal government annually that demonstrates there is not more than a 25 percent difference between the highest and lowest per-pupil funded school district. He noted that the current calculation shows a difference of 14 percent, and Representative Trujillo requested PED to provide the document.

Representative Garcia Richard asked for a complete review of the decrease in the budget request, and Ms. Lenti indicated approximately \$20 million of the decrease came from the removal of bus replacements and prekindergarten classroom requests.

The Chair asked whether the \$101 million request maintains the percentage of overall new money to education, and Mr. Aguilar confirmed that the request still amounts to 44 percent of all new money. The Chair observed that some colleges are renting text books and asked if funding is available for rental costs. In response, Mr. Aguilar said he thinks the law says “provide” not “purchase” and will have to check for verification.

The Chair inquired as to what the budget recommendation does for the special education maintenance of effort (MOE) status, and Mr. Aguilar said it looks like a \$21 million increase to the program cost meets MOE requirements, but that figure is still on the edge (there could be a \$1 million to \$3 million difference). Rachel S. Gudgel, Director, LESC, informed the committee that she discussed MOE with House Appropriations and Finance Committee staff, and noted the

Legislative Finance Committee recommendation is lower in the state equalization guarantee distribution because compensation funding was placed in the back of the bill.

POTENTIAL LESC-ENDORSED LEGISLATION: BILL DRAFTS AND COMMITTEE REVIEW

Core Arts Standards

Senator Cisco McSorley provided the committee with a revised bill draft reflecting the suggested LESC changes to direct the Public Education Department (PED) to create new arts standards using national standards as a template. He said that New Mexico has standards in place now, but they have not been revised since 1996.

The Chair noted that arts is not a required area like reading and math, and the bill should not call standards by name, but can allude to nationally recognized standards. Senator McSorley said there is \$100 million available from the federal government to create arts standards.

Senator Brandt said he appreciated some of the changes, but still had concerns that there is no qualifying language on what the standards have to be. He asked if Senator McSorley talked to PED to see if they are willing to change the standards. Senator McSorley replied that Vicki Breen, Education Administrator, Arts Education, PED, was intimately involved in the creation of the bill. Senator Brandt also expressed concern that the bill was too prescriptive and could create legal problems.

Representative Dines said he is in favor of incorporating the arts in education, but, in his legal career, has seen both sides claim to adhere to nationally recognized standards only to have their claims disputed.

Senator Padilla noted that the arts are a significant part of the state's economy, and Senator McSorley described the relationship between art and tourism, citing impacts on the state's economy and noted that the largest Indian art market in the country is in Santa Fe.

Representative Youngblood emphasized the need to be careful about support for national standards. As a supporter of the National Dance Institute (NDI), she would not want to tie the hands of existing programs like NDI. Senator McSorley indicated he would bring support letters from NDI and Folklórico.

Representative Trujillo moved the bill for endorsement, which was seconded by Representative Salazar. The committee endorsed the bill 5:1 with Senator Brandt voting "no."

School Use of Restraint and Seclusion

Representative Smith discussed a change to the seclusion and restraint bill regarding whether students can bring themselves out of time out, and the Chair recommended amending the bill rather than substituting it to keep the endorsement. Senator Stewart asked whether the co-sponsor, Senator Bill B. O'Neill, was in support of the change, and Representative Smith confirmed that he was.

Representative Trujillo moved the bill, with the amendment, for endorsement, seconded by Senator Sapien. The committee endorsed the bill 5:1 with Senator Brandt voting “no.”

LEGISLATIVE FINANCE COMMITTEE CHARTER SCHOOL EVALUATION

Yann Lussiez and Cody Cravens, Legislative Finance Committee (LFC) program evaluators, presented the *Performance, Cost, and Governance of Selected Charter Schools* program evaluation findings and recommendations to the committee. Mr. Lussiez reviewed the executive summary of the evaluation, noting 102 charter schools are authorized for operations in FY17, including two virtual charter schools. He added that charter schools serve approximately 7 percent of the student population and make up 11 percent of all public schools statewide; however, they received 46 percent of public education funding increases over the past seven years.

After stating that combining all charter schools would make them the third largest school district in the state, Mr. Lussiez explained there is little difference between student achievement in charter schools and traditional public schools. He said the charters of poorly performing charter schools are rarely revoked and high-performing charter schools do not share best practices with district schools. Additionally, virtual schools have not demonstrated cost effectiveness.

Mr. Lussiez indicated the six charter schools selected for the evaluation provided different educational programs with varied academic results and per-student program costs. Two locally chartered charter schools (Robert F. Kennedy (RFK) and South Valley Academy (SVA), Albuquerque Public Schools) and two state-chartered charter schools (Architecture, Construction, and Engineering (ACE) Leadership High School in Albuquerque and The MASTERS Program (TMP) in Santa Fe) were randomly selected for the evaluation. In addition, both virtual schools (New Mexico Virtual Academy (NMVA) in Farmington and New Mexico Connections Academy (NMCA) in Santa Fe) were selected to evaluate virtual education. These six schools, according to Mr. Lussiez, represent 11.4 percent of the total charter school student population.

He expressed concern that, despite the fact that charter school growth has doubled, their financial operations are not subject to state government oversight, and noted that charter schools dilute the amount of state money available to all public schools through size adjustment program units, enrollment growth, transportation funding, and overall per-student cost. Mr. Lussiez indicated that in FY15, all six charter schools in the evaluation received enrollment growth funding, and in some cases, the additional program units amounted to 30 percent of total school funding. Additionally, he stated that SVA adjusted its funding to remove the need for the program units and explained that a law to prevent the double-funding of students in new programs was not implemented by the Public Education Department (PED) as intended by the Legislature.

Mr. Cravens reviewed school transportation funding issues and commented that many charter schools received more funding than needed to transport students.

Mr. Cravens discussed the National Association of Charter School Authorizers (NACSA) study on the performance of state policies related to charter schools. He said that New Mexico ranked 12th in a grouping of 21 states with similar charter laws, behind Washington, Texas, and Mississippi.

In FY15, Mr. Cravens explained, school districts received approximately \$1.6 million from the 2 percent administrative fees withheld from locally chartered charter schools and approximately \$2.2 million was withheld by PED from state-chartered charter schools. However, he noted that charter school authorizers and PED cannot account for expenditure of the 2 percent withholding.

Charter schools were responsible for 87 percent of the financial statement audit findings for PED in FY13, the last audit available, and a significant number of findings for school districts. Mr. Cravens explained the three lowest performing charter schools were not renewed by the Public Education Commission (PEC) in 2010; however, the Secretary of Public Education overturned those decisions.

Regarding virtual schools, Mr. Cravens stated that K-12 Inc., the service contractor for NMVA, operates in 26 states and is permitted to contract for services but not management. He noted issues with quality control and serious problems with dropouts, and cited a National Education Policy Center report which found that in FY14, two-thirds of the virtual schools were rated academically unacceptable and graduation rates were less than half the average of traditional public schools.

Mr. Cravens indicated NMCA was able to increase their program cost from \$2.7 million in FY14 to \$4.9 million in FY15 by increasing their enrollment by more than 300 students, which contributed to an increase in per-student funding from \$5,672 to \$11,039. Therefore, he indicated virtual schools have not demonstrated cost effectiveness despite lower costs. He added that service contractors received \$1.5 million from NMVA and over \$3 million from NMCA in FY15.

To address these issues, LFC staff recommended the Legislature should consider limiting the age which students may be counted in the state's public school funding formula to age 22. In addition, PED should create a school report card that addresses elementary school, middle school, and high school grade configurations, facilitate the opportunity for high-achieving school districts and charter schools to share innovative best practices, and provide advice and support to school districts and charter schools to implement best practices developed by successful charter schools in New Mexico. Finally, charter schools should report annually to PED on successful best practices implemented at their school, specifically including data showing evidence of success and directions for successful implementation.

In response, Matt Pahl, Director of Policy, PED, suggested that charter schools are becoming more influential in the state due to increasing enrollment among other factors. Nevertheless, he said there is still confusion over what charter schools are, noting they are public schools of choice which are not for everybody but can be powerful for those who use the opportunity.

Mr. Pahl stated PED agrees with LFC's finding that charter school performance is similar to traditional public school performance. He explained that the Charter Schools Division (CSD) at PED has devised a strategic plan to ensure that charter schools provide better, more consistent quality for New Mexico students. Through the strategic plan, Mr. Pahl indicated CSD has begun to: create systems to implement targeted, high-quality evaluation of academic, organizational, and financial performance to increase the effectiveness and quality of existing charter schools, including focused site visits; provide site-specific support for charter schools, including trainings and other resources, to enable schools to become more successful; and assist with the continued development and implementation of effective and high-quality charter school authorizing

practices. He said CSD's strategic plan is in line with the report's recommendation that PED create a strategic plan to address PEC authorizations, including decreasing state-chartered charter school audit findings, sharing governing council best practices, and closely monitoring special education practices.

PED disagreed with several of the report's findings. Mr. Pahl noted that: when micro district size adjustment and emergency supplemental support are factored in, the amount of size-based subsidy received by certain school districts is significantly higher than charter schools; charter schools are not responsible for expansion of enrollment growth across the state, as the state's enrollment has not increased significantly in recent years; assertions that accountability for charter schools is inadequate are false because charter schools are subject to the same A-F school grading process as traditional public schools; and PED developed a supplemental accountability model (SAM) which addresses schools that serve high-risk populations.

Mr. Pahl explained the report also makes several findings related to charter schools that are not presented in the context of all public schools. While noting it was true that from FY08 to FY15 charter schools received 46 percent of the change in funding while educating only 7 percent of all students, he said this ignores the fact that charter school enrollment increased by 111 percent compared to a 1.4 percent increase in school district enrollment over the same time period. In addition, the response from PED: suggested comparing charter schools that qualify for school size adjustment program units with district schools that qualify for the same subsidy; acknowledged that standards-based assessment (SBA) scores declined at most selected charters between FY13 and FY14, but noted LFC should have mentioned that statewide SBA scores also decreased; and concurred with previous LFC findings that licensure level and experience do not have a significant impact on student performance.

Anne Salzmann, Head of School, TMP Early College Charter High School, testified that the LFC evaluation was a positive experience for the school. She said parents send their children to TMP because the school offers smaller class sizes and will work with each student at his or her own academic level. This approach, she said, is unlike traditional public schools, which do little to serve students who need the most help. Ms. Salzmann also noted smaller class sizes make it easier for teachers at TMP to manage and serve disruptive students.

Julie Radoslovich, Director and Principal, SVA, commented that the students who attend SVA are poor, one-third are classified as English learners (ELs), and almost all are first generation college-bound. She stated that the *US News and World Report* identified SVA as one of the top schools in the state in FY14 and indicated that the 74 percent graduation rate at SVA is expected to climb to 80 percent next year. Ms. Radoslovich recalled how SVA founders responded to a community need when graduation rates in Albuquerque's South Valley fell to 25 percent. She emphasized that SVA values depth of understanding more than breadth of coverage, which is why her students protested against the Partnership for Assessment of Readiness for College and Careers (PARCC) exams. Ms. Radoslovich said SBA was never timed, unlike the PARCC exam, and she asked LESC to remove the requirement. Many of her students live in poverty and do not have computers at home, resulting in the need for more time to complete computer-based exams. To conclude, Ms. Radoslovich explained that PED school report cards need to reflect the whole school, including middle school, which she noted is not considered.

Robert Baade, Director, RFK Charter School, explained that over 70 percent of his students live in poverty and 58 percent are ELs. Many students at RFK have very low reading levels, so

Mr. Baade said these students need a lot of remediation. He indicated some students show two years of growth in one year of attendance and explained that the mission of the school is not focused on college placement. Rather, Mr. Baade noted that RFK has a job placement focus, working to place students in culinary arts, welding, and other vocational areas of work. To conclude, Mr. Baade emphasized RFK is not a failing school and said that all students are welcome. He discussed a 25-year-old mother who went to RFK to be able to help her children with homework and also indicated that RFK accepts expelled middle school students and is working with Bernalillo County to serve students with drug issues.

Tori Stephens-Shauger, Co-Founder, Executive Director and Principal, ACE, informed the committee that her school is working with the architecture, construction, and engineering job sectors that rely heavily on innovation. Currently, the school has 390 students, and Ms. Stephens-Shauger believes enrollment will climb to more than 400 students this fall. She stated that alumni data shows ACE graduates are career-ready no matter what industry they choose to enter. In addition, Ms. Stephens-Shauger reported that her school is closing the achievement gap between white and minority students and graduates a number of students previously headed to dropping out. Therefore, she believes that standardized testing does not measure the true impact ACE has on its students.

Leslie Lujan, Finance Director, ACE, responded to several financial findings in the LFC evaluation. She said FY15 was an unusual year for the school. The school had to raise funds for a down payment to purchase its own building. Ms. Lujan also addressed instructional expenditures for special education and explained that the teachers at ACE are paid more because they work longer hours and sign a 208-day contract.

Jodie Dean, Principal, NMCA, noted she received good information as a result of participating in the LFC evaluation. She said NMCA is proud of earning a school grade of B in its second year of operation. Additionally, she disputed the FY15 per-pupil cost of \$11,039 reported by LFC and indicated the cost was actually \$6,200 per pupil.

Committee Discussion

The Chair observed that charter schools are schools of choice compared to rural schools that require more funding to overcome geographical issues. He also questioned whether charter schools in three school districts were in violation of a state law that sets a 10 percent limit on school enrollment in school districts under 1,300 students, and Mr. Pahl said he would check with Mr. Aguilar to provide an accurate response.

The Chair asked Ms. Lujan whether ACE used state equalization guarantee distribution funds to purchase the new building, and she answered in the affirmative, stating this was allowable.

Senator Ivey-Soto commented that he felt the LFC evaluation was fair. After revealing that he represents charter schools, he explained that charter schools are the only entities that are allowed to “self-select” their governing boards and part of the problem is identifying external people to serve on governing boards. Senator Ivey-Soto emphasized the need to make fair funding comparisons because charter school and traditional public school budgets are not the same.

Representative Hall observed the LESC-LFC joint meetings on charter schools were productive and expressed a desire for the meetings to continue in the 2016 interim. He said charter schools are invited to participate in the discussion and noted critical issues still need to be resolved.

Senator Stewart suggested charter school authorizer issues need to be addressed. She discussed changing statute to allow more expert independent authorizers, and the Chair indicated that the Secretary of Public Education, as a member of the NACSA, should be a ready partner. Senator Stewart also advised caution in dealing with the complexities of authorization, since charter schools vary in their preference for school district or state authorizers.

Senator Sapien commented that the Attitude, Skills, and Knowledge (ASK) Academy in Rio Rancho is doing great work with robotics and science initiatives, and observed that some charter schools, like proprietary businesses, are not ready to openly share best practices. He also highlighted the need to advocate for improved relationships between charter schools and school districts.

SUPERINTENDENT AND COMMUNITY INPUT

Meredith Machen, President, League of Women Voters of New Mexico, commented that New Mexico must address the fact that much of the new money appropriated to public schools is going to charter schools that only serve 7 percent of our students. She also said school districts should be permitted to choose other innovative options like magnet schools. She advocated for giving the Public Education Commission more authority to fulfill its obligations as an authorizer. Citing a strained state budget, Ms. Machen stressed that unregulated charter school growth cannot be permitted and asked LESC to endorse legislation to define a maximum age for public education students in an effort to control per-pupil spending.

Tom Sullivan, Superintendent, Moriarty-Edgewood School District, noted charter schools should be able to generate their own at-risk index and not be permitted to generate school size adjustment program units. He indicated there are 15 school districts and 18 charter schools with less than 150 students. To Senator Ivey-Soto's point, Mr. Sullivan said the statute regarding school size adjustment program units is clear and the language has been misapplied for at least 15 years. Alluding to the impact of alternative schools, he said it is expensive to assist teen parents and have juvenile probation officers, and now school districts are prohibited from generating size funding for alternative schools that offer these programs. To make the case that the funding formula has been disequalized, Mr. Sullivan explained that: average funding for all New Mexico students is \$7,677 per student; five school districts receive funding under \$7,000 per student; 53 school districts receive less than \$10 thousand per student; and 43 charter schools have funding levels over \$10 thousand per student.

ADJOURNMENT

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