

State of New Mexico
LEGISLATIVE EDUCATION STUDY COMMITTEE

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MINUTES

**Legislative Education Study Committee
Main Entrance Administration Area
Los Alamos High School
Los Alamos, New Mexico
July 13 - 15, 2016**

Representative Dennis J. Roch, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:04 a.m., on Wednesday, July 13, 2016, at the Main Entrance Administration Area, Los Alamos High School, Los Alamos, New Mexico.

The following voting and advisory members were present:

Voting: Representatives Dennis J. Roch, Chair, Tomás E. Salazar, James E. Smith, and Christine Trujillo; and Senators John M. Sapien, Vice Chair, Craig W. Brandt, Gay G. Kernan, and Howie C. Morales; and

Advisory: Representatives Alonzo Baldonado, Stephanie Garcia Richard, Jimmie C. Hall, Timothy D. Lewis, and G. Andrés Romero; and Senators Carlos R. Cisneros, Lee S. Cotter, Linda M. Lopez, William P. Soules, and Mimi Stewart.

The following voting and advisory members were not present:

Voting: Representatives Sheryl M. Williams Stapleton and Monica Youngblood; and

Advisory: Representatives Jim Dines, Nora Espinoza, David M. Gallegos, D. Wonda Johnson, Patricia Roybal Caballero, and James G. Townsend; and Senators Jacob R. Candelaria, Daniel A. Ivey-Soto, Michael Padilla, John Pinto, and Pat Woods.

On a motion by Senator Sapien, seconded by Senator Kernan, the committee approved the agenda for the July 2016 interim meeting. On a motion by Senator Sapien, seconded by Senator Brandt, the committee approved the minutes for the June 2016 interim meeting.

Los Alamos Public Schools Strategic Initiatives

Kurt Steinhaus, Superintendent, Los Alamos Public Schools (LAPS), discussed LAPS' strategic plan, highlighted the structure of LAPS and the LAPS teaching workforce, and noted the school district has a waiting list, largely attributable to Los Alamos National Laboratory employees that commute from outside LAPS boundaries. He stated the board has identified some focus areas including student well-being and student academic achievement. He noted the district is focused on transition grades, providing additional assistance and tutoring to students, and providing

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access to Saturday school at the middle- and high-school levels. He highlighted other school district initiatives related to improving student achievement.

Dr. Steinhaus said he would like to see the Legislature support a bill that gives traditional schools that meet high performance goals set by the Legislature the same waivers and flexibility that charter schools get, including waivers for teacher evaluation, testing, and class size. He also offered to be a pilot school district for a teacher evaluation system created by local educators. He further noted LAPS also supports appropriating funds to the state equalization guarantee (SEG). If FY17 “below the line” funding was moved to the SEG, LAPS would have received an additional \$1.2 million and could have hired 16 additional teachers.

Senator Stewart noted LAPS has statisticians who can review teacher evaluations to ensure included measures are fair and realistic, stating LAPS could bring professionals together to develop an evaluation system for all teachers. Representative Garcia Richard noted her intent to sponsor legislation during the 2017 legislative session to address the flexibility LAPS requested. Senator Stewart asked Dr. Steinhaus to assemble a group to work on teacher evaluation issues, including use of a value-added model. Dr. Steinhaus said LAPS is creating an alternative evaluation system, noting New Mexico should study other states’ progress. However, Dr. Steinhaus noted LAPS has not created a new evaluation system yet. Senator Morales suggested LESC should support the creation of an alternative school grading system pilot as well.

Senator Sapien questioned how old standards-based assessment data was cross-walked by the Public Education Department (PED) to the Partnership for Assessment of Readiness for College and Careers (PARCC) data and noted it may be more appropriate to show PARCC scores separately from standards-based assessment scores to avoid confusing stakeholders with the significant drop in test scores in FY15. Senator Sapien also suggested the teacher evaluation system should have been piloted before evaluations were based on PARCC scores.

The Chair noted the LAPS distribution of teacher results on annual evaluations was shifted right of the statewide distribution, showing more effective teachers in the district. In response to the Chair, Dr. Steinhaus noted teacher quality in LAPS positively impacts student achievement.

Los Alamos Juvenile Justice Advisory Board

Alan S. Kirk, Municipal Judge, Los Alamos County, and Chair, Los Alamos Juvenile Justice Advisory Board (JJAB), said the Los Alamos JJAB was created under the Children, Youth and Families Department (CYFD) Continuum Act and is partially funded by CYFD. The board initially funded three programs 12 years ago, but now funds 30 programs in Los Alamos, with a majority of the funding supporting schools. In addition to funding from CYFD, Judge Kirk indicated JJAB receives one-third of their funding from Los Alamos County, one-third from Los Alamos Public Schools (LAPS), and additional funding from United Way. JJAB supports a three-tiered court initiative at the Los Alamos Municipal Court, consisting of a teen court immersion program, a regular teen court program to handle offenses, and a graduated sanctions teen court program that pairs repeat offenders with a case manager. Last year, 10 kids were in these programs.

The Youth Advocate Program is one of JJAB’s major initiatives. The program currently serves primary and secondary students. Judge Kirk said 100 families indicated they would use the program. This year, JJAB has a youth resource advocate at the middle-school level and a case

manager for elementary students, in addition to a case worker at the high-school level. Judge Kirk said JJAB is active in the truancy program at the high school and has funding for a Saturday school program this school year. He did, however, note there is a lack of qualified service providers and therapists in Los Alamos.

Santina Shije, Youth Resource Advocate, JJAB, said she is a licensed social worker serving as a youth resource advocate at the middle school. JJAB has two elementary- and three middle- and high-school level mental health counselors and social workers helping Los Alamos students and families. Participating families generally require outpatient therapy services, academic supports, and mentorship programs to address emotional and behavioral issues, legal issues, peer relationships, truancy, self-confidence, and suicide issues. JJAB staff see youth in school when appropriate, though it is more typical to see students and families outside of school hours. She noted case workers assist families in understanding individualized education plans and work to connect families to other supports.

In response to Representative Garcia Richard, Ms. Shije explained caseload numbers vary from simple outpatient cases that are easily closed to more complex ones, and each advocate has a caseload of 20 to 30 families. Representative Garcia Richard stated JJAB and LAPS identified behavioral issues as the number one issue for families; JJAB received 225 requests for behavioral services in FY16. Judge Kirk said JJAB would be able to leverage state funding and serve more families if more funding were allocated to JJAB. Representative Garcia Richard noted some funding allocated to carry out the provisions of the CYFD Continuum Act reverts annually despite needs for services and said Los Alamos could use those funds to serve families.

In response to a question from the Chair, Judge Kirk observed high expectations of youth in Los Alamos generate stress, depression, and withdrawal, leading to behavioral issues. Often times, high expectations are established for Los Alamos students – both by themselves and their families – and students feel they have to achieve at a high level. When they are unable to perform at a high level, they often feel as if they have failed. JJAB, Judge Kirk said, focuses on these issues. Judge Kirk stated JJAB supports parents' expectations, but also recognizes kids need time to mature and develop skills. Noting the strategic efforts of the Los Alamos JJAB program, the Chair recognized different demographics and different needs in other communities. Representative Garcia Richard noted behavioral health is a pervasive need statewide and funding levels are not sufficient to address the needs and said LAPS is working with the U.S. Department of Health to arrange a Center for Disease Control and Prevention visit.

With more funding, Judge Kirk said JJAB would be able to look at the mental health area and place a caseworker in every school to work with families and students outside of the school system to address, poverty, health, and other issues. He also stated the need for evidence-based programming. Senator Morales concluded the state needs to invest in these issues if we are to prosper.

Educators Rising: Efforts to Increase the Teacher Pipeline

Karen Trujillo, Director, K-12 Outreach, New Mexico State University (NMSU), stated examples of why it is important to begin building the teacher preparation pipeline at the middle- and high-school levels as a possible solution to teacher shortages. Dr. Trujillo said Educators Rising is needed in New Mexico because the number of teacher candidates enrolled in New Mexico colleges of education (COEs) is decreasing and the number of vacant teaching jobs

is increasing. Dr. Trujillo said grow-your-own teacher programs are successful because 60 percent of teachers teach within 20 miles of the high school they graduated from.

Educators Rising New Mexico's five-year plan includes: establishing 100 Educators Rising chapters with career pathways in education; providing students the opportunity to develop 21st Century skills; and ensuring students will receive scholarships to pursue degrees in education at New Mexico colleges and become teachers in the state at the neediest schools. Dr. Trujillo stated 96 participants attended the first Educators Rising conference in Las Cruces, which had 11 different competitions; 16 students competed in the national competition for the first time.

Dr. Trujillo said the national network is developing a curriculum that will make Educators Rising a career and technical student organization. The Public Education Department (PED) provided Educators Rising with a \$30 thousand grant to support teachers' travel, professional development, and curriculum development. Additionally, Dr. Trujillo is working on curriculum and collaborating with higher education for a teacher education program to start Educator Rising chapters at the college-level; currently NMSU is the only college chapter in New Mexico.

Senator Morales stated the teacher shortage is the biggest public education crisis right now as there is a negative stigma associated with the teaching profession. In response to Senator Morales, Dr. Trujillo said high-quality teachers can attract students into teaching. For example, at the state conference, there were inspiring speakers who encouraged students to teach in New Mexico. Senator Morales asked how raising standards to enter the teaching field is affecting the teaching profession. Dr. Trujillo said New Mexico's average ACT score is lower than the national average. She noted New Mexico's unique student demographics and many factors, beyond just a test score, should be taken into consideration.

In response to Senator Morales' question about funding, Dr. Trujillo said, in addition to the funding award from PED, the program also receives funding through a research and public service appropriation and a \$25 thousand grant for the past two years from Cooperative Education Services. Dr. Trujillo stated Educators Rising currently has 30 teacher leaders and would need approximately \$35 thousand to annually to provide \$700 to \$1,000 stipends to each teacher leader. Additionally, administrative support for the curriculum development, writing, and production could cost between \$15 thousand and \$20 thousand. In the future, \$450 thousand to \$500 thousand would be needed to establish, maintain, and operate a statewide office with regional offices.

Teacher Compensation: Salary, Benefits, and Regional Competitiveness

Richard Sims, Chief Economist, National Education Association (NEA), stated teacher compensation is not keeping up with other professions. Overtime, pay, and benefits have been steadily eroded, which affects our ability to attract and retain teachers. Turnover has increased significantly over the last few years, particularly since the recession. Since 2010, when the recession hit education, a large decline in the real salaries of teachers has been seen when adjusted for the cost-of-living and a large reduction in the number of people who could afford a college education. The U.S. Department of Education estimated the loss of 360 thousand educator jobs nationwide without the American Recovery and Reinvestment Act of 2009, which would have affected the wider economy, leading to about 300 thousand fewer jobs in other industries.

Dr. Sims said only a quarter of all states increased per-pupil education funding to pre-recession levels. Dr. Sims said New Mexico's inflation-adjusted per-pupil funding is 10.8 percent less than it was in 2008, which was 13th from the bottom, due in part to the deteriorating economic structures in some states, and in part to changes in tax structures over the last decade. Dr. Sims said changes to the tax system in New Mexico have delayed its ability to fund education and other public services, leading to a longer economic recovery period. Dr. Sims said the states that were best able to restore per-pupil education funding to pre-recession levels did a good job of restoring their tax infrastructure, having the effect of improving teacher quality and reducing turnover. Dr. Sims said his research indicates education is no different from other industries and low compensation leads to higher turnover and makes it harder to retain the best and brightest. In states that have increased teacher pay, more people are considering careers in education.

Dr. Sims also addressed the issue of student debt, saying it has a disproportionate effect on the teaching profession. It costs the same to get a bachelor's degree in most professions, but many of them pay higher salaries than teaching, allowing students to pay off college debt quicker, a significant concern for education students. Because many students' debts cannot be paid off on a starting teacher's salary, many young educators look into other fields. This trend is more prominent in rural states and states with lower-average incomes.

Dr. Sims noted NEA staff is working on a detailed survey with the Economic Policy Institute, which will be shared with LESC. Dr. Sims said New Mexico ranks 43rd nationally in terms of average teacher pay, but is relatively competitive with the surrounding states, though salaries are not rising as quickly as in other states. Nationally, salaries increased 1.8 percent, which is an actual loss when accounting for inflation. Dr. Sims added the largest pay gap is between teachers and non-teachers. A bachelor's degree holder in almost any field except for art history will earn more than a starting teacher. The gap between young educators and other graduates means teachers make on average only 66 percent of what they could make in another field.

Dr. Sims observed New Mexico's retirement plan is in the middle of surrounding states, though there are improvements that could be made. He said New Mexico passes the costs of retirement benefits to educators more than in other states. Although New Mexico is similar to Arizona, other states have lower contributions for pensions and social security. The retirement age in New Mexico is similar to Arizona, Texas, and Utah. Dr. Sims said NEA surveyed teachers on the effects of going from a defined-benefit plan to a defined-contribution plan, and their survey indicated educators prefer a defined-benefit plan; only 10 percent of educators in the survey preferred a defined-contribution plan.

Dr. Sims noted that the multiplier New Mexico uses to calculate pension payments was 2.35, which is relatively high but not out of range with surrounding states; Colorado is 2.5, Oklahoma is 2.0, and Texas is 2.3. Utah is lower. Cost-of-living adjustments are fairly uniform across the states. Although New Mexico and Arizona cap cost-of-living adjustments at around 4 percent, this should not be a factor given the inflationary outlook from the Federal Reserve. Colorado is capped at 2 percent for inflation, which is the current average consumer price index.

Dr. Sims emphasized New Mexico cannot be ranked in the 40s to compete at the national level and that the state was falling in the business competitiveness index. States that are improving their education systems (Utah, for example) have increased their ranking. New Mexico has cut taxes, resulting in fewer dollars for its educational efforts. The survey looked at other states and almost every state with higher rankings has improved their educational effort. Dr. Sims said

businesses and young people want to relocate to states with high-quality education systems and an educated workforce, which is where the state is falling behind. Dr. Sims said it is critical in the very near future for New Mexico to make substantial improvements to the educational system by attracting businesses and young people and positively affect long-term economic growth.

Joseph W. Simon, LESC staff, said his brief has some information that is similar to Dr. Sims' report but looked only at surrounding states. He noted none of the calculations considered cost-of-living factors in other states. In addition, he stated only statewide average teacher salaries were included in his review. He said New Mexico is in the middle for states in the region, behind Colorado, Nevada, and Texas, but ahead of Arizona, Oklahoma, and Utah, in terms of teacher pay. California, he said, has the third highest average teacher salary in the United States (U.S.), and although it is not adjacent to New Mexico, may put pressure on Arizona to increase pay creating a domino effect.

Mr. Simon reported on research from the U.S. Census Bureau on the lifetime earnings of workers by their bachelor degree fields that show education degree holders tend to earn less than other degrees. Additionally, research indicated even if someone gets a bachelor's degree in education and works in another field, estimated lifetime earnings will increase. Elementary and secondary teachers who receive a degree in a field other than education also make less than other graduates in the same field.

Mr. Simon said it was difficult to find information on teacher health insurance in other states because it often varies by district. In addition to New Mexico, two states in the region had some form of statewide plan. Texas requires small school districts to be part of a statewide plan, but larger school districts can choose the statewide plan or their own plan. Oklahoma also offers a statewide plan where school districts can join if they choose.

Mr. Simon said many school districts in surrounding states pay a flat dollar amount in employer contributions to health insurance. New Mexico pays a percentage of the gross premium. This is significant because the cost of health insurance coverage varies based on the family circumstances of the employee. A young teacher just entering the profession may pay a higher share of their health insurance premiums under a percentage system. Some teachers in surrounding states pay nothing toward their health insurance premiums if they are on an "employee only" plan.

TJ Parks, Superintendent, Hobbs Municipal Schools (HMS), told the committee about the effects these national- and state-level trends have at the local level and discussed the effects of the training and experience (T&E) index on teacher compensation. Mr. Parks said T&E is outdated, and the addition of the three-tiered licensure system required school districts to adopt salary schedules that do not align with T&E. For example, HMS has a low T&E. If HMS had the same multiplier as Tatum Municipal Schools, HMS would see a \$10.7 million increase in state equalization guarantee (SEG) funding. Mr. Parks said the cost of 15 teachers is about \$1 million.

Mr. Parks said T&E assumes a teacher with a master's degree is more effective than a bachelor's degree teacher, but many studies have said this is not true. Mr. Parks noted T&E can allocate a lot of money to school districts for decisions that will not result in improved student achievement and said compensation policies should be aligned with results.

Mr. Parks noted salary schedules varied by school district. The Carlsbad Municipal Schools teachers can start at \$40 thousand and earn \$80 thousand after 20 years. Mr. Parks noted that his wife is paid \$15 thousand more in Tatum than she would in Hobbs, a commute of 40 miles. Mr. Parks said at least 87 percent of SEG funding goes to teacher pay in Hobbs, and he cannot afford to pay as much as Tatum. He said cuts to SEG funding ultimately lead to cuts in teaching personnel. Mr. Parks said HMS has recruited teachers from across the country in the past but noted difficulty recruiting in Texas, where school districts offer higher starting salaries.

Mr. Parks said HMS is not competitive with many other school districts. He said HMS sought the Public Education Department (PED) funding for recruiting new math and science teachers but that the requested funding was not awarded, resulting in HMS spending \$70 thousand for bonuses. He said one advantage for HMS was that the school district would pay for a teacher's master's degree. He said that incentive is better than higher salary for attracting enterprising candidates. He also said the level of mentoring and support gives HMS an advantage. He said retirement incentives are good for experienced teachers, but many young teachers do not plan on staying in Hobbs for 30 years.

The Chair asked Mr. Parks for his recommendations to the committee as LESC works on T&E. Mr. Parks said there needed to be discussion about true teacher compensation; he said, with salary schedules, school districts need to budget for raises every year. He said the three-tiered licensure system is not aligned with T&E.

Senator Sapien commented on the use of average salaries for calculations of retirement benefits, noting 71 percent of salary was accurate, but said it would likely be based on a higher salary. He also said discussing Social Security is important because it accounts for anywhere from \$8,000 to \$16 thousand in additional income in New Mexico compared to states that do not pay into Social Security, noting considering Social Security on top of pension payments does a better job of comparing teacher retirement to the median income in New Mexico.

Senator Stewart said New Mexico has good retirement benefits, but the benefit is not generous enough to make up for low salaries. The current average retirement is \$20 thousand per year, including noncertified employees who make less. She said the average retirement for Public Employees Retirement Association of New Mexico (PERA) members is about \$27 thousand to \$28 thousand. Senator Stewart also noted teachers pay more into retirement in New Mexico, currently at 8.75 percent and many teachers only receive 60 percent of their salary, but with PERA you can make up to 90 percent of your salary. She asked Dr. Sims to talk about what kinds of benefits are derived from good salaries. He said there was a strong correlation between education spending and the local economy. Studies have shown increased education spending has an immediate impact on local real estate and spending more money in the education system helps to retain the best and brightest workers. Dr. Sims added increased salaries have an immediate near term effect in the economy. In lower income rural counties, education compensation comprises 85 percent of the budget and the workers tend to spend 100 percent of their income in the local economy. Education spending becomes consumption money in the local community.

Dr. Sims stated the chief executive officer of General Electric finds locations for his business based on the quality of the workforce and not lower taxes. He also described a circular link where business relies on a good workforce to grow the organization, good customers to support the organization, and good local education to replenish the workforce. New workers and

businesses want to locate in these communities and the smaller and more rural a community is the more impact education spending has on the economy.

Senator Soules asked Dr. Sims about the economics of investing in education. Dr. Sims said education spending is one of the best investments for taxpayers. He said studies on the taxpayer return to education are based on a taxpayer with no children. In the U.S., taxpayers get about 12.5 percent in annual returns. The average stock market return is 6.5 percent per year. There are additional long-term benefits, like more people becoming taxpayers that reduce the burden on existing taxpayers.

Senator Soules asked how much New Mexico has been hurt for not investing enough in education. Dr. Sims compared the situation to an investment returns portfolio: by spending less over the years, the state will have lower returns in economic growth. He added if the state had the same tax funding levels from about a decade ago, the state would have a much more well-funded education system and better jobs today. Dr. Sims stated increased education funding saw the biggest jumps in the national rankings on business competitiveness.

Senator Sapien asked about the food tax repealed by the Legislature. Dr. Sims said New Mexico had a model food tax system, where credit is provided to people who needed help with food. He said the state gave up between 11 percent and 13 percent of its sales tax base by repealing the food tax, giving away 85 percent of the food tax base to help 15 percent of the people who needed it. Dr. Sims also said income tax cuts were not very efficient. Because state taxes are deductible on a federal tax return, for a person in the 35 percent bracket, the first 35 percent of the tax break went to the federal government. He stated when states give income tax breaks, the biggest beneficiary will be the U.S. Treasury. Dr. Sims recommended the state look at reinstating the food tax and using targeted tax credits for people who need them.

Senator Soules asked Mr. Parks if HMS would see recruitment benefits if the state raised teacher salaries. Mr. Parks said he thought it would and noted HMS lost 11 staff members who signed contracts and left before the end of the year because they could not make ends meet. Mr. Parks noted that if the \$101 million in FY16 “below the line” funding was appropriated to the SEG, HMS would receive \$1.8 million more than the district received in FY16, including “below the line” awards. He said this would allow local districts to make local decisions that can make an impact and put money in teacher’s pockets. Senator Stewart asked Mr. Parks if HMS would keep New Mexico Reads to Lead! and K-3 Plus if they were not funded “below the line.” Mr. Parks said they would continue running those programs because they are good for kids.

The Chair noted some school districts may not continue certain initiatives if “below the line” funding was appropriated through the formula. Mr. Parks noted a school district that achieved success might lose “below the line” funding intended to support struggling schools and school districts. For example, HMS lost funding for a social worker because its truancy program produced a 28 percent reduction in truancy. He discouraged creating a disincentive for good performance. Senator Sapien noted some school districts might lose money if “below the line” funds were moved into the SEG. Senator Stewart asked how funding would be affected by moving “below the line” appropriations into the SEG. Representative Hall said HMS’ philosophy may not be the same as other school districts.

Senator Morales asked staff for an update on “below the line” appropriations that were unspent in FY16 and reauthorized in FY17, noting these were dollars that were not used to support students in FY16.

Alternative Compensation and Its Impact on Teacher Recruitment and Retention and Student Achievement

Matthew Pahl, Director of Policy, Public Education Department (PED), explained differentiated compensation is a strategic tool many school districts utilized to attract and retain teachers that will also increase teacher performance. This alternative compensation incentivizes excellent educators to teach high-risk student populations. Mr. Pahl described the Denver Public Schools’ ProComp alternative compensation model, the IMPACTplus model that Washington D.C. Public Schools uses, and the District Awards for Teacher Excellence, which was implemented by the Texas Education Authority in 2009. He noted PED requested funds for the Pay for Performance Pilot (PPP) program with these programs in mind. PED hoped the funds would increase retention of effective teachers and increase student achievement. PPP funds individual and group awards. To qualify for an award, the school district or charter school is required to compensate all teachers based on individual performance. The teacher evaluation system is used to identify teachers and principals for awards; awards are prioritized to educators in low-performing or high-need schools. One-third of each award can be used for group awards. In FY15, the pilot program funded 19 awardees, which included nine school districts and 10 charter schools. In FY16, there were 11 new applicants and all received funds.

Based on self-reported data collected from school districts and charter schools, Mr. Pahl said turnover rates were reduced significantly at participating schools and districts. Pojoaque Valley School District (PVSD) reported a reduction from 18 percent to 10 percent; Raton Public Schools’ turnover rate was reduced from 15 percent to 10 percent; and New Mexico School for the Arts’ turnover rate fell from 18 percent to 11 percent. Mr. Pahl acknowledged the pilot program is not the only contributing factor in reducing turnover rates and said PED will conduct a longitudinal study in 2016 to compare participating school districts and charter schools to nonparticipants and will share the results with LESC when the study is completed.

Mr. Pahl explained hard-to-staff stipends provide differentiated stipend amounts to teachers in needed areas such as science, technology, engineering and mathematics (STEM), special education, and bilingual education. In FY15, teachers needed an overall teacher evaluation rating of effective or higher to obtain the award. In FY16, PED allowed higher awards for better performance as well as retention stipends. In FY17, 218 stipends totaling \$1.5 million have been awarded to 38 school districts and charter schools for retention stipends. Of those teachers receiving stipends, 165 were rated effective, 44 were rated highly effective, and nine were rated exemplary. Overall 92 stipends went to STEM teachers, 62 to bilingual teachers, 41 to special education teachers, and 23 to other teachers fulfilling a demonstrated need, such as elementary teachers in rural areas. Mr. Pahl noted PED did not fund recruitment stipends in FY17 and only notified school districts of the elimination of recruitment stipends after initial requests were received by PED.

Mel Morgan, Superintendent, PVSD, said when he applied for pilot funding, PVSD teachers and staff had not received a raise in three years. He noted PVSD would get approximately \$1.5 million if all “below the line” funding were appropriated through the SEG. Dr. Morgan noted having a group and individual incentive award worked well with PPP. PVSD is using a team approach that includes every single person on the team. He mentioned some pitfalls that

needed to be avoided, and noted that rewarding a teacher for individual performance may be contrary to the highly collaborative nature of teaching. Dr. Morgan said there is evidence that while the performance of some staff improves, the performance of more effective staff tends to decline.

Dr. Morgan stated the group award – one-third of the award – included all school-based staff at a single school. The individual award – two-thirds of the award – allowed principals to participate as well as teachers, with a heavy emphasis on student performance data. Noting that the awards had to be meaningful, staff at schools with an “A” grade would earn 100 percent of the award. He explained how awards were set, noting a declining award for declining teacher and administrator effectiveness ratings. Dr. Morgan also addressed some challenges and said since the awards are on a reimbursement basis, it was difficult to cover the awards and get reimbursed by PED because PVSD is a small school district.

Valerie Trujillo, Superintendent, Questa Independent School District (QISD), noted QISD received hard-to-staff and STEM stipend grants over the last three years, though their award declined. She said last year, QISD received \$5,000, and it only covered retention stipends. She noted QISD is rural and faces many obstacles, such as lack of employment opportunities, poor student attendance, and difficult situations in students’ home lives, leading to difficulty recruiting and retaining teachers and administrators. QISD received STEM stipend grants for three years to fill math and science teaching positions. While QISD no longer participates in a Chevron sponsored STEM program called Project Lead The Way due to a lack of teachers, QISD is still using Project Lead The Way curriculum, which provides one of the nation’s top comprehensive approaches to STEM education.

For teachers to be eligible for the hard-to-staff stipends, Ms. Trujillo said 75 percent of the courses in the hard-to-staff area have to be approved by PED, and a teacher moving from one hard-to-staff school to another school will not be eligible for the stipend. In addition, teachers must hold or be eligible for an alternative teaching license with a bachelor’s degree or higher in the relevant content area. For school district eligibility, Ms. Trujillo said the school district must demonstrate a commitment to recruit and retain qualified teachers of STEM, special education, bilingual, or other hard-to-staff area for a minimum of two years. QISD has limited housing opportunities and teachers drive from Colorado, Red River, San Luis, and Taos. To recruit, the school district utilizes venues such as college job fairs, public advertising, and voluntary transfers from within the school district. QISD has not been able to give raises, and this encourages teachers to seek jobs in other school districts that will pay more.

In FY14, QISD awarded hard-to-staff stipends to one math teacher and two science teachers, and in FY15, QISD gave hard-to-staff stipends to two math teachers and two science teachers. PED denied QISD’s request for funding to recruit bilingual and special education teachers in FY17. In conclusion, Ms. Trujillo offered several suggestions to improve the program, including: continued funding of recruitment stipends; allowing teachers to receive the grant if they voluntarily transfer to the hard-to-staff or STEM subject areas; and continuing to research consistent grant amounts based on school district needs.

Representative Trujillo asked which PPP programs PED used as a guide. Mr. Pahl said ProComp was used because their differentiated compensation system clearly outlined the three elements of market- and performance-based compensation and compensation for professional development. He said the program was originally opt-in but since 2008 all new Denver teachers

were automatically placed in the ProComp program. He added that a study was conducted to gather the views of teachers in ProComp and those who selected not to participate, and he offered to send the study to Rachel S. Gudgel, Director, LESC. Senator Soules asked for any peer review of this particular research, and Mr. Pahl said he would provide source material on the research.

The Chair asked how the stipends were distributed to PVSD staff, and Dr. Morgan stated the stipends were distributed through payroll. The Chair commented that paying a higher percentage of employee benefits could be a loss to some employees, while on the other hand, increased salaries would increase retirement earnings. Dr. Morgan noted that this was all taken into consideration, and bonuses were timed so lower-income staff were not negatively impacted.

Superintendent and Community Input

Bill Hargraves, a member of the Los Alamos Public Schools (LAPS) Board of Education, informed LESC about LAPS' application for the XQ: The Super School Project, grant competition started by Laurene Powell Jobs to rethink high school and the district's mission to help its students meet the challenges of the 21st Century.

Tour of Los Alamos High School

Kurt Steinhaus, Superintendent, Los Alamos Public Schools (LAPS); and Joan M. Ahlers, Chief Operating Officer, LAPS, conducted a tour of the high school.

There being no further business, the Chair with the consensus of the committee, recessed the LESC meeting at 4:43 p.m.

MINUTES LESC MEETING July 14, 2016

Representative Dennis J. Roch, Chair called the meeting of the Legislative Education Study Committee (LESC) to order at 8:34 a.m., on Thursday, July 14, 2016, at the Main Entrance Administration Area, Los Alamos High School, Los Alamos, New Mexico.

The following voting and advisory members were present:

Voting: Representatives Dennis J. Roch, Chair, Tomás E. Salazar, James E. Smith, Christine Trujillo, and Monica Youngblood; and Senators John M. Sapien, Vice Chair, Craig W. Brandt, and Gay G. Kernan; and

Advisory: Representatives Alonzo Baldonado, David M. Gallegos, Stephanie Garcia Richard, Jimmie C. Hall, Timothy D. Lewis, and G. Andrés Romero; and Senators Carlos R. Cisneros, Daniel A. Ivey-Soto, Linda M. Lopez, William P. Soules, and Mimi Stewart.

The following voting and advisory members were not present:

Voting: Representative Sheryl M. Williams Stapleton and Senator Howie C. Morales; and

Advisory: Representatives Jim Dines, Nora Espinoza, D. Wonda Johnson, Patricia Roybal Caballero, and James G. Townsend; and Senators Jacob R. Candelaria, Lee S. Cotter, Michael Padilla, John Pinto, and Pat Woods.

ESSA Title I State Plan Efforts

Christopher N. Ruszkowski, Deputy Secretary, Policy and Program, Public Education Department (PED), stated Every Student Succeeds Act (ESSA) changed many of the No Child Left Behind Act of 2001's onerous provisions that states did not like, including eliminating the requirement that 100 percent of students achieve proficiency by 2014. Mr. Ruszkowski emphasized that FY17 is largely a planning year for PED and most of ESSA's requirements go into effect in FY18. He noted federal Title I, Title II, and Title IV funding will be distributed the same. He stated the bright spot for New Mexico is the work done over the last five years has put us in a position where there "is a very light lift" around the new federal law. However, ESSA has created new opportunities to re-engage with families, students, communities, and the Legislature on major PED initiatives and opportunities to refine and improve them. He said PED will spend the rest of the summer, fall, and winter engaging stakeholders across the state to develop the Title I state plan, which is due to the U.S. Department of Education (ED) in March 2017. He explained this leaves sufficient time for stakeholder engagement.

Matthew Pahl, Director of Policy, PED, explained that PED has built a lot of the major systems required by ESSA and said ESSA provides continuity for states like New Mexico. He explained significant progress has been made toward the priorities in the act and noted the focus will include stakeholder engagement on meaningful accountability systems, deep supports for the lowest-performing schools, college, and career interventions for all students, and a robust focus on reading and math instruction and excellent educators in every classroom.

Mr. Pahl explained the state's school grading system has us well prepared for the transition to ESSA. Mr. Pahl said PED's priority schools bureau and the way we identify schools as low-performing for interventions already satisfy ESSA requirements. Mr. Ruszkowski noted the designation of comprehensive and targeted schools – the terminology used by ESSA to identify the lowest-performing schools – is different from old designation requirements. He explained any high school that has a graduation rate of lower than 67 percent must be identified as a low-performing school. He further noted ED is making rules to implement ESSA and this might be the type of regulation that stakeholders in New Mexico want to weigh in on, stating PED together with other states sent a letter to ED questioning that particular threshold.

Mr. Pahl acknowledged that what New Mexico has in place is not perfect and nuanced changes may be needed, but the foundation exists and may be modified to fit ESSA requirements. Mr. Ruszkowski explained PED has identified key areas to work on but explained the list was not exhaustive. He said there are conversations about the alternative demonstrations of competency (ADCs) and how they align to career and technical education pathways. Mr. Ruszkowski said the state needs to ensure a high school diploma has significant value in the real world. He explained another focus area was empowering educators across the state by investing in professional development and creating more teacher leadership opportunities. Mr. Ruszkowski said a teacher summit is scheduled at the end of July where PED will celebrate and champion 300 New Mexico teachers. Mr. Ruszkowski also said PED has been working on educator preparation, accountability, and support for teacher preparation programs, which have been highlighted as needing improvement. He explained ESSA provides flexibility for new and different approaches to educator preparation. Mr. Ruszkowski said stakeholder engagement and input will be the key in deciding how to better integrate all the various state and federal funding streams like, Perkins, Title I, Title II, and Title IV funding. He explained while these multiple funding sources have some restrictions, they need to be better integrated and aligned.

Mr. Ruszkowski explained PED thinks it is imperative for stakeholder engagement. He said an internal PED work group was developed in April to better understand ESSA requirements. The group outlined where New Mexico complies with ESSA and what New Mexico already established to meet the requirements and considered stakeholder work groups to cover graduation requirements, ADCs, educator preparation programs, and English language proficiency.

Mr. Ruszkowski said PED will continue to engage with school district and charter school leaders during bi-weekly phone conferences. He further noted PED will schedule regional meetings and create virtual spaces for feedback. The Secretary will present at the New Mexico Coalition of Educational Leaders conference to inform school district leaders and charter school leaders about the state plan. Mr. Ruszkowski said PED plans to hold daylong community engagement sessions in five to seven regions of the state in the fall that include small group engagements with teachers, parents, tribal leaders, and school and school district leaders; the goal is to visit a community, spend the entire day there talking about the opportunities that ESSA provides, and ensure PED is engaging as many stakeholders as possible on those visits. Mr. Ruszkowski said PED will also host a daylong summit in the fall to present the plan and get final feedback.

Mr. Pahl and Mr. Ruszkowski assured the committee PED intends to engage LESC and assured the committee they would present a monthly update on their efforts. The Chair said LESC is looking for more than an update and wants an opportunity to provide input. Multiple members echoed these concerns and voiced their desire for meaningful stakeholder engagement on the state's Title I plan. Members were also interested in knowing how and when PED was going to engage other stakeholder groups and which groups would be engaged. The Chair indicated he would name a subgroup of LESC members to work on the Title I plan. In response, Mr. Ruszkowski said PED will bring to the committee the questions that emerge.

The Chair noted the characterization that efforts to come into compliance with ESSA will require a "light lift for New Mexico" might lead to a missed opportunity. While he understood New Mexico is in compliance with many of ESSA's requirements, he explained it will be important to engage and collaborate with stakeholders, who believe we need more than compliance because we are not where we should be. He also noted the importance of buy-in for those areas that do not have a lot of support.

Representative Salazar noted he appreciates the emphasis ESSA put in for recognizing English learners (EL) and said New Mexico needs to address the problems of our EL population. Mr. Ruszkowski acknowledged addressing the EL population will not be a light lift and will require significant engagement.

In response to Senator Soules' statement that many states were already engaging stakeholders and the senator's question about stakeholder engagement, Mr. Ruszkowski said PED has not started engaging stakeholders, partially because some federal regulations have not been finalized. Senator Brandt noted federal regulations are due December 2016 and asked if PED is waiting for all regulations to be adopted by ED or if PED is working on those regulations already adopted by ED. Mr. Ruszkowski confirmed meetings will likely be scheduled in the fall and PED plans to submit the plan to ED in March 2017.

Representative Garcia Richard noted ESSA allows for greater flexibility for student and school accountability than PED is referring to. She said the inclusion of student achievement data in

annual evaluations does not appear to be mandated by ESSA. Mr. Ruszkowski noted PED is working with ED to understand the broader requirements around educator quality and equity. He further said ESSA also requires the state to identify ineffective teachers. Mr. Ruszkowski noted the brief accurately portrayed the flexibility of ESSA but also noted PED believes student achievement and growth is important in measuring teacher effectiveness. The representative noted many stakeholders do not believe the value-added model is a reasonable measure of teacher effectiveness.

Representative Garcia Richard asked if parts of the state plan were off the table for stakeholder engagement. Mr. Ruszkowski explained how PED envisioned the stakeholder engagement process and state Title I plan. He explained PED will present some of the fundamental pieces in play, such as assessment, school accountability, district accountability, educator quality, deep support for the lowest-performing schools, and then highlight some of the issues that are going to require significant time, like English language proficiency, and high schools that are below the 67 percent graduation rate because those are the heavy lifts in terms of complying with ESSA and not jeopardizing federal funding. He further noted PED would be naïve not to expect that type of feedback as department staff tours the state. He did, however, note PED would be emphasizing those things requiring significant time to establish baseline compliance.

Representative Youngblood said she understands LESC concerns on being involved in the process and hopes PED will find a way to involve LESC, acknowledging it's ultimately up to PED how to incorporate feedback. In response to her question about the Partnership for Assessment of Readiness for College and Careers assessment, Mr. Pahl noted implementation in its second year was less problematic than in FY15, though he acknowledged implementation of the test is not perfect. He noted some educators might be discouraged with the lack of consistency that adoption of a new assessment would provide.

Senator Kernan said most states are having to reprioritize focus areas and noted key disagreements in New Mexico would likely be around reprioritizing focus because PED will likely have a more limited focus than others want. Senator Kernan expressed desire for a broader list of focus areas from PED and after a conversation about how Race to the Top grant states are currently changing systems that were implemented in response to federal directives, she recommended PED consider looking at those states that have adjusted their policies.

The Chair talked about forming an LESC subcommittee and asked PED when they anticipated setting up a meeting with LESC if this happened. Mr. Pahl explained PED would like to talk about the structure before the August LESC meeting and thinks September and October is when PED will really start. The Chair named the following LESC members to the subcommittee including himself, Vice Chair Sapient, Representatives Smith and Garcia Richard and Senators Kernan and Stewart. He noted these members would be eligible to receive reimbursement for participating in approved meetings, but noted all LESC members could participate. The Chair emphasized that all four are current or former educators and will bring strong perspective and represent bipartisan views on education.

The Chair noted how value systems change over time with exposure. He stated in those instances where an individual is exposed to new or different ideas and chooses to re-affirm their value system; often their value system is stronger because of buy-in. He stated Terry Holliday, former State Commissioner for Education in Kentucky acknowledged this is a once in a generation opportunity to do something on education across the country. The Chair stated this is

an opportunity to re-examine everything that is in our education value system and stated nothing should be off the table as we start the conversation.

Charter School Expansion: Operational Funding and Funding Formula Issues, Including First Year Funding, Enrollment Growth, Phased Grades as New Programs, and School Size Adjustments

Rachel S. Gudgel, Director, LESC, said the Legislative Finance Committee (LFC) and LESC jointly endorsed two bills that addressed charter school funding issues, but that there was criticism that the bills were the result of subcommittee meetings that were not as inclusive as they could have been. She noted staff is bringing the issues back to the full committee for full transparency.

Charles Sallee, Deputy Director, LFC, started with a conversation about what has happened since the Great Recession. He asked the committee to consider whether the state could afford to create a new school district the size of Las Cruces Public Schools as New Mexico entered into the Great Recession or whether the state could afford to create 100 school districts with 200 to 500 students. He noted this is what the state has done with charter schools. Mr. Sallee said the Legislature does not take budget action to address charter school growth within the funding formula. Charter schools are authorized by school districts or the Public Education Commission (PEC) and have a large financial impact on other entities in the system, particularly at a time when the state is still struggling with budget shortfalls and general fund revenues are tracking 10 percent lower than last fiscal year.

Mr. Sallee noted the cost of new charter schools and increased enrollment in charter schools have consumed much of the new funding appropriated to the formula. Parents are choosing to send their kids to charter schools with an expectation of higher performance; however, rigorous research has not been done to see if the charter school intervention is resulting in improved student achievement. There have been large shifts in enrollment and funding not only from students choosing to go to charter schools but within the formula itself through shifts in enrollment throughout the system. He noted over 65 school districts lost enrollment, highlighting Moriarty's loss of 33 percent of its student enrollment from FY08 to FY16. He said declining enrollment often results in policymakers hearing that funding is reduced year over year at some school districts even at a time when formula funding increases; this is exacerbated by charter school growth.

Mr. Sallee noted enrollment in charter schools is mostly in urban areas and there has been an increase of 12,500 students enrolled in charter schools, or 120 percent increase over the last eight years. On average, charter school students cost about 15 percent more than traditional public school students. Scale plays a major role in those differences as a result of the size adjustment. He noted charter schools are discretionary programs and the Legislature needs to establish a clear view of what is expected for this discretionary program. How many of them should there be? How much should they cost? What do you want them to accomplish? New Mexico has not been purposeful in the creation of charter schools. As a result, some charter schools are about choice, some are about working with a niche population including special needs students, and some charter schools replicate what may already exist in a community. Since the Great Recession, the number of charter schools increased from 64 to 100 and almost half of the new money appropriated to the formula has been allocated to charter schools while charter schools only enroll 7 percent of students statewide.

Ms. Gudgel provided a comparison of the per-MEM funding allocation for students enrolled in district schools and students enrolled in charter schools. She noted there is about a \$1,000 difference in funding allocated to school district students and charter school students and highlighted a difference of approximately \$1,300 in Albuquerque Public Schools. Ms. Gudgel noted the school-size factor and enrollment growth factors of the public school funding formula and language in the General Appropriation Act (GAA) for new formula-based programs lead to this difference in funding.

Ms. Gudgel noted staff jointly flagged statutory language barring charter schools from generating size program units in 2011. Language bars separate schools that provide special programs, including but not limited to vocational and alternative education, from being classified as public schools for purposes of generating size adjustment program units. Arguably there are a number of charter schools that are serving similar students as alternative public schools that are barred from receiving size adjustments and the New Mexico Coalition for Charter Schools is looking for alternative accountability systems for those schools because they are serving an alternative population. Additionally, another provision in statute states only school districts are entitled to generate school-size units. Lastly, she noted the Legislature has amended other sections of the Public School Finance Act to explicitly include charter schools, demonstrating legislative intent to make them eligible for certain program units.

Senate Bill 141, *Public School Funding Formula Amendments*, 2016 regular legislative session, attempted to address these issues by codifying access to small school-size units for charter schools albeit at a lesser level. Over a five-year period the bill decreased access to size program units to 50 percent. That bill was not successful and, as a result, the sponsors of the bill requested an opinion from the Office of the Attorney General (AG) on whether charter schools are eligible to generate size program units. The AG has yet to issue an answer.

Ms. Gudgel noted the second factor leading to more operational funding per student is the enrollment growth factor and language in the GAA that allows new programs to be funded based on current year enrollment. She stated schools generate funding based on prior year enrollment but language in the GAA allows new formula-based programs to generate funding based on current enrollment. The GAA language was originally included to address first-year elementary physical education, elementary fine arts, and bilingual program funding. It was later amended to allow a new charter to use current enrollment for funding purposes. However, this provision has been interpreted by the Public Education Department (PED) to allow a charter school that is phasing in new grades to use current year enrollment for phased-in grade levels. At the time of implementation, the only way to account for enrollment growth was through the enrollment growth program unit, which generates program units for school districts and charter schools that experience at least 1 percent enrollment growth over the prior year. The unintended consequence of both of those provisions is students are being counted toward growth at charter schools for phased-in grades that are also being counted as new formula-based programs.

Ms. Gudgel noted about \$19 million in double funding has been allocated to charter schools over the last six years because of these two provisions. LFC and LESC endorsed Senate Bill 165 during the 2016 legislative session; however, the bill was not enacted. The bill prohibited students counted toward new formula-based programs as also counting toward enrollment growth.

Representative Hall said he would like to continue joint committee work. He noted the executive is interested in the Legislature's support of the jointly endorsed bills. The executive has shared some ideas about removing enrollment caps and addressing the renewal process for high-performing charter schools. He also noted he has talked to the executive about student transportation funding. Representative Hall has asked the executive to present their priority bills by October or November. He noted he is supportive of high-performing charter schools but limited finances make it important to ensure equity.

Senator Brandt noted facilities funding needs to be studied and addressed and requested a presentation of facilities funding including how facilities are funded, and alternative sources of funding charter schools have access to.

Senator Ivey-Soto noted students in a first year charter school or in phased-in grade levels may actually be triple funded because they are still being counted at the school district or charter school they were previously enrolled in. He noted the importance of addressing this as the Legislature addresses how to fund new programs.

Senator Ivey-Soto also voiced concern that charter schools are authorized without any regard to the budgetary impact of creating those schools. He noted he would prefer to see a moratorium on the creation of new schools that is tied to the price of oil or another objective measure of fiscal stability. He noted responsibility exists to ensure our school districts are able to continue educating children, but also noted it may be important to continue to have the difficult conversation on whether having 89 school districts is financially viable, highlighting the new micro-district size program unit that allocates more funding to the smallest school districts and annual emergency supplemental appropriations.

Senator Ivey-Soto said a 1 percent enrollment growth threshold for generating additional enrollment growth funding may be too low and also said it may be time to look at start-up funding for charter schools. Mr. Sallee said LFC staff has recommended bringing a purposeful approach to new charter schools that may include pulling first-year funding out of the formula. This would ensure a deliberate decision-making process through the budget to say how many new charter schools do we want for a fiscal year, how much can we afford, what do we want them to do, how big do we expect them to be, and are we willing to fund a subsidy for scaling efficiencies for a period of time if needed?

The Chair asked about creating an annual budgetary allowance for new charter schools, rather than a cap on the number of schools or enrollment. He also asked about whether authorizers can consider the financial capacity of the state to support a new charter school as a reason for denying authorization to a charter school. Ms. Gudgel replied that establishing a budgetary cap for new charter schools could likely be done but may take significant amendments to the Public School Finance Act, the Charter Schools Act, and the GAA. She noted that from FY08 to FY17, PED has never requested funds for new charter schools. In FY13, the only year in that time period, the Legislature included \$8.2 million in the formula for 13 new charter schools; however, they ended up receiving \$15.6 million. She noted PEC does not believe they are allowed to consider the greater impact on state finances when they are authorizing charter schools.

Senator Sapien noted charter schools do not appear to be fundraising to support their schools as was originally anticipated, in large part because it has been easier to ask for state revenues to

cover school costs. Senator Ivey-Soto also recognized the federal government had a \$450 million grant program for start-up charter schools that no longer exists.

The Chair voiced concern that PED has never contemplated asking for money for new charter schools and asked if enrollment growth funding requested by PED covered new charter schools. Ms. Gudgel responded enrollment growth funding requested by PED only funded enrollment growth units – units that first-year charter schools do not generate. She noted the request for enrollment growth funding does not generally cover all enrollment growth units, which are primarily generated by charter schools. The Chair asked about the Legislature's role in addressing the need for funding new charter schools annually. Ms. Gudgel noted that over the past several years, LFC looked at total program units as part of the budget and tried to estimate how units would change and what funding would be needed to hold the unit value flat before funding initiatives. However, she noted part of the conversation during the economic downturn was should new programs even be funded. The LFC issues budget guidelines annually, and for the past several years have noted prioritizing existing with proven results. Mr. Saltee again noted this is an anomalous part of the budget because once a charter school is authorized, it generated funding.

Mr. Saltee noted similarly sized school districts and charter schools can have large difference in per-student funding and you have to analyze the data to see what is driving these differences. School-size funding is the main factor leading to more funding per student at charter schools. The size factor was created for rural schools that could not control student enrollment. In the case of a discretionary program, the policy question is do we want to give that school extra money to stay at a certain size and do we want to give that to them in perpetuity or do it temporarily. SB141 was a compromise to allow start-up subsidies and phase it out over a five-year period because we have seen that not all charter schools can operate without the subsidy. Senator Ivey-Soto suggested the funding subsidy should be tied to the year of operation rather than based on fiscal year, suggesting all new schools should get the subsidy and it should be phased-out or phased-down over time.

Implementation of Performance Contracts: Holding Charter Schools Accountable for Governance, Financial, and Student Achievement Outcomes

Patricia Gipson, Chair, Public Education Commission (PEC), stated when a new charter school is approved to commence operations or an existing school's contract is up for renewal, the school and PEC commence negotiations. During that process, PEC examines their academic framework, negotiating academic goals based on assessment tools approved by the Public Education Department (PED). For English learners, benchmarks established by companies developing assessment tools are used. Many students arrive at school more than two years below grade-level, and PEC tries to ensure a rigorous program. PEC negotiates proficiency and growth measures to move these students closer to grade level. These negotiations afford PEC an opportunity to get to know those schools better, revealing issues PEC may not have been aware of.

Ms. Gipson said PEC also reviews the organizational and financial frameworks. PEC uses a framework template that is New Mexico-owned and unique to the state, established with input from the charter community, financial experts, PEC, and PED. The Charter Schools Division (CSD) at PED performs annual site visits to examine the previous year's frameworks. If a school does not meet or falls far below the standard, an improvement plan is put in place. The

charter school performs a self-assessment of their performance framework to inform the improvement plan.

Ms. Gipson noted the contract negotiation process goes through the academic, organizational, and financial frameworks and takes several months with the help of a contractor to facilitate the negotiations. The contractor has a longstanding history with PEC-authorized charter schools, having participated in negotiations with all but one state-authorized charter school. A preliminary worksheet establishes a base understanding of what is expected by PEC.

Carolyn Shearman, Commissioner, PEC, said PEC decided to use short-cycle assessments for academic indicators a few years ago. She noted charter schools often suggest a performance indicator target they are certain they can exceed but the commission attempts to set rigorous performance standards. Over the last two years nearly all schools have agreed to include at least one reading and math indicator from their short-cycle assessments, though some schools, such as The Masters Program (TMP), request different indicators.

Anne Salzmänn, Head of School, TMP, said charter schools, are evaluated by the state grading based on state test results just like district schools. TMP has been rated an “A” for the last three years. Ms. Salzmänn questioned why charter schools have an additional layer of academic accountability when they are already graded thoroughly on academics by the state.

She said setting goals can be difficult because charter schools enroll students by lottery and administrators cannot predict who their students will be. TMP has math and reading goals but also chose a mission-specific goal of an average number of college credits. When setting academic goals, TMP set math and English goals for moving 10th graders up one level, based on the Accuplacer test used for college placement. Year-end data indicated TMP missed the math standard by 1 percent, achieving at 69 percent. TMP English achievement was off by 2 percent, achieving at 73 percent. School administrators realized many of their students may have undiagnosed learning disabilities, and the school may do better with a two-year performance goal. Ms. Salzmänn indicated PEC prohibited the school from amending their goal to a two-year threshold, so she is uncertain how to proceed. She indicated that many aspects of the process seem unnecessary or redundant, requiring them to spend time that might be better spent elsewhere. For example, she said the various bureaus at PED seem not to communicate with one another, leading to duplicative requests. While Ms. Salzmänn agreed performance frameworks with high standards are important and necessary, she noted that if a school receives a grade of “A” for three years in a row, yet falls below standards, there must be some disconnect. She stated charter school leaders have requested a meeting with PEC to better understand the process and the commission prior to negotiating frameworks.

Katarina Sandoval, Associate Superintendent, Equity and Access, Albuquerque Public Schools (APS), stated APS believes charter schools should be home-grown, and serve and be accountable to the communities and school district from which they come. She stated APS believes they can learn from their charter schools, and bring some of their best practices back to district schools. APS authorized 22 charter schools with robust portfolios including everything from International Baccalaureate schools and college preparation and service learning, to adult education for incarcerated adults. Ms. Salzmänn noted that, over the years, APS has closed five charter schools, the most recent one this past spring.

Ms. Sandoval noted APS creates a culture of mutual accountability with their charter schools through the three performance frameworks. APS asked charter schools to create three to five “smart” goals that have to be realistic and utilize data: one in math, one in reading, one that is mission-specific, and one that addresses the social and emotional learning of their students. APS charter schools appreciate the mission-specific goal because they meet a specific need the district does not, giving APS the opportunity to learn to partner with their charter school to accomplish goals. Sometimes the school grade does not reflect these partnerships and achievements, so the framework goals may help some schools shine in their very specialized work that may not be clear through just a test score. The Charter Schools Department at APS uses a variety of data points to ensure goals are realistic and achievable, yet smart and rigorous. The negotiation process usually takes two to three months each spring.

Progress monitoring occurs in several forms. Quarterly financial reports must be submitted to APS to ensure schools’ fiscal solvency. APS also performs informal site visits to become better acquainted with the work of APS charter schools, helping to build relationships crucial to understanding each school’s vision and mission. There are also formal site visits where all relevant data is collected, APS provides all the reports previously discussed, and school leaders discuss the past school year.

Robert Baade, Director, Robert F. Kennedy Charter School (RFK), said RFK opened in 2000, and is struggling, but not in the way most people might think. RFK has a mission of serving students who are not being served by traditional public schools, which is difficult. Students who enter RFK are four to five grade levels behind. He noted the state’s grading system is an inappropriate way to judge schools like RFK.

Mr. Baade noted academic goals are important and RFK is being very specific about the development of formative assessments and item analysis. Teachers at RFK are developing school-wide formative assessments that will be analyzed to see what students are struggling with. RFK is working to ensure there are rigorous questions similar to Partnership for Assessment of Readiness for College and Careers (PARCC) questions. One of the school’s specific goals is increasing opportunities for career training. This year, the school developed a welding program where the iron workers union is recruiting students directly into the union. Students in the school’s auto paint and body-work program are hired by auto dealers. RFK has a culinary arts program that partners with some Albuquerque gourmet food trucks and restaurants that are now hiring those students. RFK is also considering expansion into the heating, ventilation, and air conditioning and diesel mechanics. Mr. Baade said not all students are going to college and it is important for them to have a career that also permits future education if they choose.

Senator Sapien voiced concern about how the performance framework was implemented. He asked if PEC is renegotiating academic performance standards annually. Commissioner Gipson replied that they are supposed to be reviewed annually, and Senator Sapien indicated that was not the intent of the legislation, a bill he sponsored. Mr. Baade indicated APS renegotiates the academic framework annually with RFK. Senator Sapien said the intent of performance frameworks was to examine, not renegotiate, performance annually. Commissioner Gipson assured him that while the goals are reviewed, the framework is not renegotiated.

Katie Poulos, Director, Options for Parents, CSD, PED, said there have been schools that renegotiated performance metrics in the past but during the most recent round of negotiations, PEC established five-year performance frameworks, and included a statement indicating they

would not be renegotiating. However, a school can opt to renegotiate, as can the commission. In such an instance they can renegotiate goals based on their performance under the previously established framework.

In response to a question from Senator Sapien about duplication, Ms. Salzmann stated repetitive reporting remains a concern. Ms. Salzmann noted she is the only administrative staff for TMP and reporting requirements pull teachers and administrators from classroom work. She stated concerns about reporting the same information to multiple PED bureaus. Senator Sapien asked Matthew Pahl, Director of Policy, PED, to work with Ms. Salzmann and PEC on the issues Ms. Salzmann noted.

The Chair said there are some remaining process challenges, and possibly some remaining policy challenges, so he asked for recommendations or requests from the presenters about policies the Legislature can improve to help make this process more user-friendly, transparent, and accountable. Commissioner Gipson said PEC would like dedicated staff. She noted the attorney assigned from the Office of the Attorney General is tasked with protecting PEC from Open Meetings Act violations and lacks experience with education law. The Chair noted the budget situation right now would make this request difficult, though he supports the idea of dedicated staff.

Ms. Salzmann noted the lines of authority and responsibility between PEC and CSD are blurry. She indicated TMP feels disconnected from PEC and noted this relationship is important, especially since there is often a lack of clarity regarding instructions and requirements. Commissioner Gipson admitted those areas need to be refined. Ms. Salzmann said she envies the relationship APS-authorized charter schools have with APS; noting state-authorized charter schools do not have the same support.

The Chair asked if LESC can do anything to provide clarity in the law to make the mission of CSD easier to accomplish, to which Ms. Poulos replied, CSD feels there is room to work within current law, and hopes they can move forward with more clarity.

Senator Ivey-Soto commented on the lack of funding for PEC and referred to Section 22-8B-9.1 NMSA 1978 which requires the contract to include a detailed description of how the chartering authority will use the 2 percent withheld from the program cost. Senator Ivey-Soto and the Chair highlighted inconsistencies in law that refers the 2 percent to the authorizer and PED. Senator Sapien noted the requirement to include a detailed description of use of the 2 percent in the contract was to require accountability on how the 2 percent was being spent, because it is generally unknown how the 2 percent is being used. In response to the Chair, Mr. Baade noted RFK's charter does not detail how APS will use the withheld 2 percent. Representative Hall noted there has to be something that says goods and services will be provided, but leaving it open ended has always been a problem when the committee tries to find out what that money is for. Senator Sapien suggested all future contracts need to have the 2 percent outlined in them.

State-Chartered Charter School FY15 Audit Findings and Corrective Action Plans

Sunalei Stewart, Chief of Staff, Office of the State Auditor (OSA), stated that state-chartered charter schools are included in the Public Education Department (PED) audit because they are component units of PED, and PED has a role with respect to their financial oversight and accountability. He noted this is not a decision of the auditor's office. Mr. Stewart said there were approximately 159 findings in PED's FY13 audit, 145 of which were related to charter

schools. In FY14, the PED audit had 174 findings, and in FY15 it had 204 findings, 195 of which were related to charter schools. He acknowledged that the increase in the number of findings, while a trend, was due to the increase in the number of state-chartered charter schools.

Mr. Stewart noted many repeat findings that, if not addressed, carry over into the next year's audit. PED's FY15 audit included repeat findings dating back to FY09 that have not been addressed successfully. He stated an inadequate level of oversight and support in terms of training and assistance, and a lack of resources and capacity, at the charter school level are all at play.

About 55 of 205 findings, or 27 percent, are material weaknesses, material noncompliance, or significant deficiencies, and are considered more significant issues that need to be addressed. About two-thirds of the findings are technical compliance issues that should be addressed, but are not major problems. About 84 of the findings are repeat findings that carry over year after year; addressing these repeat findings is one of the key issues. Mr. Stewart noted six charter schools, several of which are related, had disclaimed opinions, which are statements made by the auditor indicating you cannot rely on that entity's financial statements. This is the worst type of audit opinion an entity can receive. OSA noted a number of different issues, such as cash management, accounting practices, licensure, and background checks.

Mr. Stewart stated Timothy Keller, State Auditor, requested a corrective action plan from PED when the FY15 audit was released. OSA is aware day-to-day operations are the responsibility of charter schools, but PED has an oversight role and provides support to charter schools. PED promptly responded to this request and directed the various charter schools to submit corrective action plans to PED that address the findings in the audit report. OSA will not know how successful the corrective action plans were until PED submits the FY16 audit in December 2016.

Mr. Stewart noted the 2 percent withholding is a key issue and said OSA is unaware of any kind of detailed accounting at PED or the school district level of how those funds are being used. OSA will do a sample audit during this audit cycle to try to get an accounting of how those funds are being used. OSA will also examine a sample at the school district level, including Santa Fe, Albuquerque, Deming, and Taos. Mr. Stewart noted OSA is trying to be geographically diverse, but also thinks district size is important. Some of the issues OSA is examining include whether the withheld amounts are correct, how they are being accounted for, and whether the funding is being diverted through budget adjustment requests or other mechanisms. Other questions of concern include, how well it is being segregated for purposes of oversight, what happens when the money does not revert, and whether it remains in a particular fund for charter school oversight.

Paul Aguilar, Deputy Secretary, Finance and Operations, PED, noted statute does not say the 2 percent withholding must be used for administrative oversight. Rather, he noted statute says the funds are to be used to provide administrative support. Mr. Aguilar said PED will be prepared to present LESC with an accounting of the use of funds by the August meeting.

Mr. Aguilar said the number of audit findings generated by PED have decreased from 27, when this administration took over PED, to three in the FY15 audit. He also noted PED submitted its FY15 audit on time but because it was the last major agency to be released by OSA at the end of the third quarter of FY16 it was difficult to implement a corrective action plan that will impact the FY16 audit. He noted one of the six disclaimed audits was actually for a charter school

foundation; there are approximately 11 charter school foundations with expenditures that are greater than \$250 thousand, which are annually audited by PED's external auditor. All of those foundations are nonprofit organizations, not governmental entities. However, the audit rule requires that they be audited as a part of the charter school's audit, and are therefore part of the PED audit. Mr. Aguilar believes this is something the Legislature should review, because PED is being asked to oversee nonpublic funds. He also noted it is unclear how PED has control over the foundations. Mr. Aguilar said 61 charter schools were considered to be component units of the department in FY15.

Mr. Aguilar said the FY15 audit was released on March 15, 2016; OSA requested a corrective action plan from PED on the same day. On April 8, 2016, PED sent a letter to all state-chartered charter schools requesting a corrective action plan. PED submitted the department's corrective action plan to OSA on April 15, 2016. Mr. Aguilar stated that 55 of the charter schools submitted their corrective action plans by PED's May 8, 2016 deadline; the remaining submitted their plans the following week.

Mr. Aguilar assured the committee PED takes these audits very seriously and said PED has an audit group that works with the schools on their corrective action plans to help them make necessary adjustments. He acknowledged there are some charter schools with many repeat findings, though he noted of the 25 percent repeat audit findings, they are not necessarily from the same charter schools that had repeat findings last year. He said one of most frequent repeat findings was due to the fact that many charter schools do not believe they come under the purview of the Mileage and Per Diem Act and reimburse mileage at 100 percent of the Internal Revenue Service (IRS) rate, as opposed to 80 percent of the IRS rate as required by state statute. PED has not yet received guidance from OSA, which was requested in April.

Tori Stephens-Shauger, Executive Director and Principal, Architecture, Construction & Engineering (ACE) Leadership High School, said ACE makes every effort to ensure that they have good financial practices in place. She noted ACE has never had a repeat finding. However, she indicated ACE had an issue this year with the classification of their audit findings in the published audit and they have been working with OSA and PED to correct the issue. Leslie Lujan, Finance Director, ACE, spoke about the audit from a business standpoint as a learning opportunity. She worked closely with the auditors during the process, noting a series of on-site communications about everything the auditors sampled. She found talking through the processes very valuable. Ms. Lujan said the types of findings are more important than the number of findings. After the audit, her first action was to review the recommendations to see what might be done immediately to resolve the issues. At this point, Senator Ivey-Soto disclosed his relationship with ACE, and the Chair advised him to sit with ACE at the presenter's table, to avoid any appearance that LESC is providing counsel to charter schools.

In response to Representative Garcia Richard's question, Mr. Stewart said one statute says the 2 percent withholding is for "administrative support," but another section refers to "oversight." Despite these legal distinctions, he said, support is key to oversight. Mr. Stewart noted there are still unanswered compliance issues. For example, OSA does not know how the withholding is being allocated within PED. OSA wants clarity regarding whether the funds are used to assist state-chartered charter schools or whether they might also be used to support district authorized charter schools. Senator Ivey-Soto noted Section 22-8B-13 NMSA 1978 also makes reference to the Charter Schools Division (CSD), so the suggestion that the funds be spread across several other divisions may be contrary to statute. Mr. Aguilar said CSD is part of PED, and does not

have the capacity to ensure the flow-through of federal funds, ensure nutrition programs are in place properly, or do the work OSA is asking PED to do, like overseeing audits to ensure compliance. CSD may be charged with that work, but CSD does not individually have the capacity, so it is delegated to the appropriate PED bureau.

In response to Representative Garcia Richard, Mr. Aguilar reported PED received a number of complaints from parents, grandparents, and board members at the Creative Education Preparatory Institute (CEPI) earlier this year. During site visits, PED staff noted hundreds of thousands in FICA tax withholding payments were never sent to the federal government and are still owed. Currently, Mr. Aguilar said IRS has garnished about \$200 thousand from CEPI and there is approximately \$140 thousand in cash being used to finalize payroll. PED is working with the federal government to resolve the situation; however, if they levy penalties and interest, the sum might grow to \$900 thousand.

Senator Ivey-Soto noted LESC endorsed Senate Bill 257, *Charter Schools & Public Audit Changes*, two years ago, which would have permitted a component unit to select its own auditor from an approved list at OSA; however, it was vetoed by the governor. In the case of the situation like the one that ACE finds itself in, where the auditor made an error and acknowledged it, but the cost of reissuing PED's audit in its entirety is prohibitive, the provisions of SB257 would have allowed ACE to undertake another audit on its own. He said revisiting SB257 would help address that problem.

Director's Report

a. Administrative Rulemaking

Kevin Force, LESC staff, reviewed rules adopted by the New Mexico Public School Facilities Authority for a rule proposed by the Public School Capital Outlay Council for a building system initiative and rules adopted by the New Mexico Educational Retirement Board related to contributions, service credit, and retirement benefits. He noted a rule change related to substitute teacher membership was temporarily tabled.

b. Informational Items

Rachel S. Gudgel, Director, LESC, noted Dr. Gloria O. Rendón's retirement from the New Mexico Coalition of Educational Leaders effective July 30, 2016. Stan Rounds, former superintendent of Las Cruces Public Schools, will be taking over as Executive Director for the coalition on August 1.

Superintendent and Community Input

Nicole McGrane, an exemplary level 3 teacher in her seventh year of teaching at Barranca Elementary School, and Audrey Juliani, a National Board certified teacher at Barranca Elementary School, in Los Alamos, both noted respect for the teaching profession has declined over the past years. Among other comments, they noted low teacher pay, under prepared beginning teachers, lack of respect for the profession, concerns with alternative teacher preparation pathways, and narrowing of curriculum and overreliance on standardized tests with the accountability movement.

There being no further business, the Chair with the consensus of the committee, recessed the LESC meeting at 3:58 p.m.

**MINUTES
LESC MEETING
July 15, 2016**

Representative Dennis J. Roch, Chair called the meeting of the Legislative Education Study Committee (LESC) to order at 8:37 a.m., on Friday, July 15, 2016, at the Main Entrance Administration Area, Los Alamos High School, Los Alamos, New Mexico.

The following voting and advisory members were present:

Voting: Representatives Dennis J. Roch, Chair, James E. Smith, Christine Trujillo, and Monica Youngblood; and Senators Craig W. Brandt and Gay G. Kernan; and

Advisory: Representatives Alonzo Baldonado, Stephanie Garcia Richard, Jimmie C. Hall, Timothy D. Lewis, and G. Andrés Romero; and Senators Carlos R. Cisneros, Daniel A. Ivey-Soto, Linda M. Lopez, William P. Soules, and Mimi Stewart.

The following voting and advisory members were not present:

Voting: Representatives Tomás E. Salazar and Sheryl M. Williams Stapleton; and Senators John M. Sapien, Vice Chair, and Howie C. Morales; and

Advisory: Representatives Jim Dines, Nora Espinoza, David M. Gallegos, D. Wonda Johnson, Patricia Roybal Caballero, and James G. Townsend; and Senators Jacob R. Candelaria, Lee S. Cotter, Michael Padilla, John Pinto, and Pat Woods.

Legislative Finance Committee Program Evaluation: Assessing “Time-on-Task” and Efforts to Extend Learning Time

Madelyn Serna Marmol, Program Evaluator, Legislative Finance Committee (LFC) said the Legislature has shown interest in available instructional time from efforts to increase the number of school days to the K-3 Plus extended school year program. Dr. Serna Marmol said the report assessed time available for instruction in New Mexico public schools, including factors that cause lost instructional time, and how those factors affect student achievement and different student populations. In addition to using research-based best practices to promote time-on-task, this report used statewide administrative data, and a survey representing teachers and principals from 75 percent schools statewide, including charter schools, to assess the use of instructional time.

Dr. Serna Marmol said New Mexico established minimum hourly requirements for instructional time either on a per-day or per-year basis that if implemented would result in a standard 180-day school-year calendar. She added public schools have used this flexibility to implement different school calendars. Almost all have implemented extended school hours and as a result most have shorter school years – totaling an average of 167 days – but still exceed required instructional hours. However, much of the time is lost to non-instructional activities or impacted by absences. Dr. Serna Marmol said LFC looked at allocated time, engaged time, and academic learning time.

Dr. Serna Marmol said the state lacks a framework and attention to maximize the use of existing instructional time and to ensure investments in extended time programs like K-3 Plus are implemented correctly to result in academic success. She said the Public Education Department (PED) does not provide guidance to school districts and charter schools about effective uses of instructional time; however, PED includes language associated with time-on-task in Domain 2 of the observation tool of the teacher evaluation.

Dr. Serna Marmol said research shows a clear link between learning time and academic success. The vast majority of New Mexico children start school far behind expectations on the first day of kindergarten according to past LFC evaluations and many make academic progress but not enough to close the achievement gap. This problem of catch-up growth is especially acute among low-income, English learners (EL), and Native American students. She stated the seminal study on time-on-task is a California Beginning Teacher Evaluation Study that identified teaching activities and classroom conditions to advance student learning and also provided factors, such as uneven transition between activities and inefficient classroom management procedures that disrupt learning. A 2104 study by the University of California at Los Angeles looked at the difference between high- and low-poverty high schools across California and found teachers in high-poverty schools had an increase in non-teaching responsibilities to meet the needs of their students. High-poverty schools spent 20 minutes per day on extra academic support and an extra hour per week on non-instructional needs.

Dr. Serna Marmol explained the LFC study found similar factors contribute to lost time in New Mexico schools, like community stressors, non-teaching responsibilities, and teacher absences. A recent study from the National Council on Teacher Quality reported teachers nationwide were out of the classroom 11 days per school year, and 16 percent of teachers were chronically absent 16 or more days per school year.

Nathan Eckberg, Program Evaluator, LFC, said New Mexico students lose 32 percent of available instructional time per year. Law requires public schools to provide at least 990 hours for elementary students and 1,080 hours for secondary students. Though physically present 167 days, LFC determined students are provided with the equivalent of 194 days of instruction. Of the 194 available days, 62 days are lost due to a variety of factors. He noted LFC was conservative when determining how much lost time occurs in New Mexico public schools. He explained instructional time is lost to administrative duties such as attendance, lesson plans, and grading, and non-instructional things like breakfast, helping students with non-instructional needs and disruptions, student and teacher absences, and standardized assessment preparation.

Mr. Eckberg stated PED reports up to 2 percent of instructional time is lost to administration of standardized assessments; 2 percent is equivalent to 21 hours or almost four instructional days. Elementary teachers reported eight days are lost to re-teaching. Neither of these are included in the estimated 62 days of lost instructional time.

Mr. Eckberg said attendance, truancy, and discipline are critical factors affecting instructional days. The percentage of students absent 10 or more days for any reason increased from FY13 to FY15; on average, these students were absent 17 days, more than three times the number of days missed by students who were absent fewer than 10 days, who were on average absent five days.

Mr. Eckberg said early release and scheduling may contribute to ineffective use of time. Interviewed school districts with early release indicated district leadership or school principals tracked the use of early release time for professional development. New Mexico does not require districts to justify early release and efforts to ensure effective use of learning time. He explained parent-teacher conferences and half days are counted toward mandated instructional hours even though students are not receiving instruction. He added statute allows 33 hours of full-day kindergarten programs to be used for home visits and parent-teacher conferences; 22 program hours may be used by the teacher for visits and parent-teacher conferences for first through fifth grades.

Mr. Eckberg said lost instructional time directly impacts student achievement. As instructional time is spent on other activities, student achievement decreases as measured by the standards-based assessment. When controlling for other factors including poverty, there is a significant relationship between reading standards-based assessment scores and lost instructional time for elementary and secondary students. Research shows schools with a high percentage of high-poverty and EL have more lost learning time and teachers and students are absent more. He added EL spend more time on state-mandated assessments, and therefore more time out of the classroom than English speakers.

Mr. Eckberg said almost one-quarter of all teachers in New Mexico report economic and social stressors are the most significant challenges to maximizing academic learning time. Between FY14 and FY15, high-poverty schools had teacher turnover rates averaging 39 percent while low-poverty schools only saw 6 percent turnover.

Mr. Eckberg said PED has not fully implemented their early warning system (EWS) slated to be operational by FY15. EWS can identify and track at-risk students and allow for more effective prevention and early intervention services. The Response to Intervention Action Network reports analysis of risk indicator patterns and other relevant information will help school districts better understand the root causes of student disengagement and academic failure.

Mr. Eckberg said extended school year programs such as K-3 Plus have positively impacted student achievement statewide when administered with fidelity. K-3 Plus extends the school year for kindergarten through third grade by 25 instructional days to narrow the achievement gap between disadvantaged students and other students. Since FY13, \$95 million has been appropriated to PED for K-3 Plus summer programs; \$23.7 million was appropriated for FY17.

Mr. Eckberg explained time for learning is important, but time must be used efficiently and effectively and schedules should be optimized to allow for a maximum academic learning time. In schools where allocated time is not used properly, adding time to the day is ineffective, costly, and a poor use of scarce resources. Without efficient planning, an additional hour of instruction will not increase student achievement.

Dr. Serna Marmol said state policies do not maximize time-on-task best practices. She explained most school districts are not conducting comprehensive quality time analyses to create a culture that values time-on-task. Maximizing academic learning time or time-on-task increases student achievement. Sixty-nine percent of elementary teachers and 74 percent of secondary teachers indicated they have received little if any professional development on time-on-task in the past three years. Dr. Serna Marmol said PED instructional audits do not address time-on-task or maximizing instructional time.

Dr. Serna Marmol explained a best practice to maximize academic learning time is classroom management. Poor classroom management wastes class time, reduces students' time-on-task, and detracts from the quality of the learning environment. Effective classroom management has been recognized as a crucial element in effective teaching. Students could gain 45 hours, or eight days of additional instructional time annually if their teacher was able to increase instructional time by 15 minutes a day through more efficient routines, procedures, and transitions.

Dr. Serna Marmol said the report made the following recommendations: the Legislature might want to continue increasing funding for K-3 Plus and include directives to PED in the General Appropriation Act, continue to increase the at-risk index and add accountability measures for school districts' and charter schools' use of at-risk funding to improve performance of at-risk students as part of the budget approval process, and repeal parent-teacher conferences and parent-teacher visits from counting toward instructional hours.

The report recommended PED should: enhance verification of school calendar and time calculations reported by school districts and charter schools through the budget process, fully implement the EWS, and work with K-3 Plus schools to increase the number of classrooms where teachers stay with K-3 Plus students. For school districts, Dr. Serna Marmol said the report recommends: ensuring best practices and effective strategies are used to maximize time-on-task; conducting comprehensive quality time analyses to create a culture that values time-on-task; and analyzing evaluation data for trend analysis and use in professional development.

Matthew Pahl, Director of Policy, PED, said maximizing classroom time is a key to increasing student achievement and has been known as a best practice for some time. He said Domain 2 of the observation tool incorporates elements used to maximize instructional time, and PED is working with teacher preparation programs to focus on those elements as they redesign their teacher education curriculums. Lastly, PED initiatives, such as teachers' pursuing excellence, principals' pursuing excellence, and instructional audits, focus on maximizing instructional time.

Mr. Pahl expressed several concerns about the report. He said the report does not evaluate how effective teachers leverage instructional time, noting effective teachers use time for things like bathroom breaks and transitions to provide instruction. He also stressed the importance of breakfast and lunch for New Mexico students, many of which live in poverty and these may be their only meals. Mr. Pahl also noted the methodology used to calculate the number of possible instructional days may be inflated. He explained the report shows there are 194 instructional days available to students in the study but the appendices show school districts have 180 or fewer days. Mr. Pahl said the report failed to investigate the impact of teacher attendance on school districts and charter schools that chose to include teacher attendance in annual educator evaluations, noting some school districts have seen increased teacher attendance with the inclusion of attendance in evaluations. For example, Albuquerque Public Schools students received 18 thousand additional hours of instruction from licensed teachers after holding them accountable for those days in the classroom.

Mr. Pahl said the report also did not address PED's truancy coach and dropout prevention initiatives, though he acknowledged PED does not have data to evaluate the impact of the programs. Lastly, he noted the report recommends increasing the at-risk index but fails to show how this would enhance time-on-task.

In response to Representative Smith, Mr. Pahl explained PED received funding to develop the EWS that operates with data reported on the 40th, 80th, and 120th day of the school year, providing data to educators three times a year. He stated the EWS is a model from Johns Hopkins University and PED is training school districts to use the data. Mr. Pahl said PED is working with 60 school districts to make the data more real-time to improve response time.

In response to Representative Romero's question, Mr. Eckberg said the LFC survey asked about standardized test preparation and then asked about the actual administering of the assessment. He said many teachers reported students did not have anything to do before or after the test and were allowed to watch a movie or take an additional recess. However, some teachers reported using the time before and after testing for instruction. Representative Romero asked Mr. Pahl to provide evaluation data to LESC.

In response to Senator Soules, Dr. Serna Marmol said LFC researched the highest-performing countries, such as Singapore and Finland, and placed findings in the background information section of the report. She added other countries allow for more preparation time for their teachers and noted how it is incorporated into the day and how they are team teaching. The senator expressed concern that unlike secondary teachers, elementary teachers do not have preparation time built into their schedule, and we know that higher-performing countries allow more preparation time for their teachers.

In response to Senator Soules, Mr. Eckberg said LFC attempted to avoid double counting reported lost instructional time in the report. The report used information gathered directly from teachers to quantify how much instructional time could be lost. Dr. Serna Marmol added LFC was very conservative and there were things not added to the calculation of lost instructional time, such as test preparation time, which could be as many as 15 days.

In response to Senator Soules, Mr. Pahl noted PED checks reported instructional hours through the budget process, but PED does not validate instructional time at virtual schools since it is hard to define, as highlighted by the report. He stated many statutes do not have specialized provisions for virtual schools.

In response to Senator Soules, Mr. Pahl said PED agrees new teachers lack classroom management skills but colleges of education (COEs) are working to pair courses with opportunities to provide practical experience. Unfortunately, he said, student teaching as it stands right now does not provide enough opportunity for teacher candidates.

In response to Representative Youngblood's question, Charles Sallee, Deputy Director, LFC, noted the recommendation to increase the at-risk index gives school districts flexibility to pursue the types of intervention that are good for that community. He noted the importance of accountability for the use of additional funds to ensure they are resulting in improved performance.

In response to Senator Brandt's inquiry on the justification for additional K-3 Plus funding, Mr. Sallee said K-3 Plus was rigorously evaluated over the last five years through a randomized control trial that shows the program is generating positive results, especially when students stay with their K-3 Plus teacher for the entire school year. Mr. Sallee responded to the senator's concern that the report merely "suspected" improved outcomes for students who remained with their teachers and informed the senator he would follow up with the researchers about this question.

In response to Senator Stewart, Mr. Sallee said the issue around home visits and parent-teacher conferences is a matter of whether or not you want to count that as instructional time in your school calendar. He noted LFC is not saying these should not be done, but highlighted that kids may be missing four days of instructional time if one parent-teacher conference is scheduled

every quarter. Senator Stewart said she believes conferences and home visits are instructional time because you are working with parents to improve their student's education. She noted she does not support eliminating them from counting toward instructional time because she believes if they are not compensated, they will not be continued.

In response to Senator Stewart's question, Mr. Pahl indicated PED's teacher summit is scheduled in Albuquerque in late August and will get specifics for the summit to Ms. Gudgel by next week. He added that the purpose of the summit is not for the Every Student Succeeds Act (ESSA) feedback but will not limit conversation about ESSA.

Representative Lewis asked Mr. Pahl how many hours in classroom management are required at COEs, and Mr. Pahl said the requirement is roughly one semester of full-time teaching. He added some schools are considering adding an experiential requirement before students take COE courses.

The Chair observed the legislative recommendations in the report appear to be about creating more time but missing the mark when it comes to effective use of the time we currently have. He noted how time is used is important and said he would like to see more recommendations that addressed the use of time rather than recommendations that added more time.

State-Level Special Education Maintenance of Effort Update

Rachel S. Gudgel, Director, LESC, said the U.S. Department of Education (ED) notified the Public Education Department (PED) in 2013 that the state failed to meet the Maintenance of Effort (MOE) provisions of the federal Individuals with Disabilities Education Act Part B (IDEA-B). The MOE provisions prohibit a state from reducing the amount of state financial support for special education and related services below the amount of the preceding fiscal year. The federal law allows a waiver of that provision for financial hardship and if there is clear and convincing evidence that a free and appropriate public education (FAPE) was provided to all students. PED notified the Legislature of the following shortfalls during the 2013 legislative session: \$48 million in FY10, \$34 million in FY11, and an estimated shortfall in FY12 of \$26.9 million.

ED eventually granted the state's FY10 waiver request but denied the FY11 waiver request. PED has not submitted waiver requests for any fiscal year after FY11. Negotiations have been ongoing to determine which program units should be included in the MOE calculation. Ms. Gudgel stated \$33 million in Section 4 and Section 5 appropriations and \$36 million in operating reserve appropriations were made for FY13, FY14, and FY15 special education MOE on top of the state equalization guarantee (SEG) appropriations. Of those special appropriations, only \$16.9 million was distributed and the remaining balances were booked as contingent liabilities; it appears ED will not allow the state to take credit for unallocated funds. Laws 2016, Chapter 12 (House Bill 311), *Transfers & Reversions to General Fund*, sponsored by Representative Hall de-earmarked the \$36 million operating reserve appropriations that were made to PED in 2013, leaving a balance of \$13.1 million that has been appropriated but not distributed.

In February 2016, PED notified legislators and legislative staff the department had a settlement agreement with ED, though an agreement has yet to be finalized. A calculation methodology was established, that includes only special education units for 3- and 4-year-old developmentally

delayed (DD) students, A, B, C, and D level special education units, and ancillary service provider units. The calculation excludes basic membership program units for 3- and 4-year-old DD students.

Ms. Gudgel noted arguments to reduce our MOE shortfall because of reduced workload and retirement swaps appear to have been denied by ED.

Ms. Gudgel noted the settlement agreement increases the state's base MOE target by \$3 million annually over the next five years and requires an additional appropriation of \$9 million per year for five years for targeted special education. The \$9 million would effectively be a related recurring "below-the-line" or categorical appropriation that would not flow to all school districts and charter schools through the funding formula. She noted an agreement has not been finalized and PED cannot obligate the Legislature to make any appropriations to satisfy the agreement.

Ms. Gudgel noted the agreement appears to commit substantially more money than the shortfall in the long-term. Additionally, she noted it may not be prudent to agree to increase our MOE target at a time when revenues are declining. She also noted PED never sought the FAPE waiver despite ED acknowledging New Mexico never sought the FAPE waiver. Lastly, Ms. Gudgel noted we may not meet our MOE target in FY17.

Eileen Marrujo-Gallegos, Director of Operations, PED, confirmed PED is working to finalize the settlement agreement with ED. She restated the terms of the negotiation Ms. Gudgel provided to the committee and agreed to share the agreement with legislative staff as soon as it was completed. Ms. Marrujo-Gallegos stated PED notified the Legislature of potential FY17 shortfalls during the 2016 legislative session. However, she indicated there are key data points that are currently not available to calculate whether the state is in compliance with MOE requirement in FY17. She noted five state agencies are part of the MOE calculation and the amount they make available is determined in their annual audits, well after the close of a fiscal year. She said the New Mexico School for the Blind and Visually Impaired (NMSBVI) budget remains a concern. NMSBVI is anticipating a \$6 million decrease in their capital budget from 2016 to 2017 – all of which is included in the MOE calculation.

In response to the Chair, Ms. Gudgel said the MOE provision basically says a state has to spend state dollars to continue receiving federal dollars. In the past, if a state did not meet MOE requirements, the base federal allocation would be reduced moving forward. However, language has been included in continuing budget resolutions that make reductions a one-time reduction rather than a permanent reduction to base allocations. The settlement agreement means New Mexico must satisfy its terms to protect reductions to our IDEA-B allocation. Ms. Gudgel noted questions about the merits of the settlement because the state is agreeing to spend a minimum of \$75 million to prohibit a one-time \$85 million reduction in federal funds.

Representative Hall noted PED staff represented the settlement agreement was close to being finalized during the session. He noted the lack of an agreement makes it incredibly difficult from a financial planning standpoint to be able to build a budget. Representative Hall re-iterated the New Mexico constitution vests the power to appropriate with the Legislature and the executive cannot make the Legislature appropriate funds. He highlighted declining revenues and noted the financial situation of the state has worsened since the legislative session, when PED made the Legislature aware of the settlement agreement.

Senator Stewart noted she is concerned about creating a new pot of money to support special education students that will not be distributed to all school districts and charter schools through the funding formula. Ms. Gudgel and Ms. Marrujo-Gallegos confirmed that the annual \$9 million appropriation required by the agreement for targeted special education programs is effectively a discretionary pot of money for PED to allocate to high-quality evidence-based special education programs. However, the portion of the \$9 million appropriation that was allocated for targeted programs would not count toward the state's MOE requirement. The Chair stated he would be more supportive of the appropriation if it counted toward the MOE requirements. He raised concerns about funding a discretionary pot of money at a time when the state may not be able to fund MOE through the formula.

Senator Lopez asked for clarification on a June 28, 2016 letter sent by ED from the Office of Special Education and Rehabilitative Services to PED. She questioned whether ED's determination for 2015 and 2016 that New Mexico is a state in need of assistance affects settlement negotiations or MOE. Ms. Marrujo-Gallegos indicated PED staff would get an answer for the senator.

ADJOURNMENT

There being no further business, the Chair adjourned the LESC meeting at 11:57 a.m.