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BEFORE THE PUBLIC EDUCATION COMMISSION

STATE OF NEW MEXICO

TRANSCRIPT OF PROCEEDINGS

REGULAR PEC MEETING

August 9, 2012

9:35 a.m.

Mabry Hall - Jerry Apodaca Education Building

300 Don Gaspar

Santa Fe, New Mexico

REPORTED BY: Cynthia C. Chapman, RMR-CRR, NM CCR #219

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A P P E A R A N C E S

COMMISSIONERS:

- MR. M. ANDREW GARRISON, Chair
- MS. CAROLYN SHEARMAN, Vice Chair
- MR. EUGENE GANT, Secretary
- MS. CARLA LOPEZ
- MS. MILLIE POGNA
- MR. VINCE BERGMAN
- MR. JEFF CARR

STAFF:

- MS. KELLY CALLAHAN, Director,
Charter Schools Division
- MR. WILLIE BROWN, General Counsel, Public Education
Department
- MS. BEVERLY FRIEDMAN, Liaison to the PEC

ALSO PRESENT:

- MR. PAUL AGUILAR, Deputy Secretary of Finance and
Operations, Public Education Department

1 (August 9, 2012, 9:35 a.m.)

2 THE CHAIR: We're calling the New Mexico
3 Public Education Commission meeting of Wednesday,
4 August 8, 2012, to order. [Verbatim.]

5 Good morning, everybody. Good morning,
6 Commissioners. Good morning. We will begin with a
7 roll call with Secretary Eugene Gant.

8 (Roll call conducted.)

9 COMMISSIONER GANT: You have seven
10 present, two absent. You have a quorum.

11 THE CHAIR: Thank you, sir. We are going
12 to be doing the Pledge of Allegiance. Commissioner
13 Vince Bergman is going to lead us in that. And then
14 Gene Gant will lead us in the Salute to the
15 New Mexico Flag. And the Statement of Aspiration, I
16 will acquiesce to Vice Chair Shearman to give a
17 statement to everyone. Please stand.

18 (Pledge of Allegiance and Salute to the
19 New Mexico Flag.)

20 COMMISSIONER SHEARMAN: I asked Chairman
21 Garrison if I could have the opportunity to do the
22 Statement of Aspiration today. There was a column
23 in the Artesia Daily Press last Sunday, written by
24 Ned Cantwell, who's a regular columnist. And it
25 speaks to education rather tongue-in-cheek, but I

1 thought it said a lot of the things that we all can
2 identify with. And it starts out:

3 "Third graders Patricia, Billy, and Denise
4 meet at the bus stop for the first day of school in
5 Any Town, New Mexico. 'Hey, guys, here we are
6 again. Another school year with everyone trying to
7 figure out if we're stupid or smart so they can make
8 up some new tests. Adults are, like, weird,' Denise
9 says.

10 "'Yeah,' Patricia agrees. 'Last year,
11 they gave our school an F at the beginning and a B
12 at the end. It was like magic. All of a sudden, we
13 could read. I still can't spell 'jury,' but I know
14 my dad had to go before one before they sent him to
15 jail.'

16 "'Oh, bummer. I heard about that,' Denise
17 comforts. 'Is your mom doing okay?'

18 "Tears cloud Patricia's eyes. 'She's
19 still doing a lot of meth. My grandpa gave us some
20 money so we don't have to find another place to move
21 this month.' And there was a momentary silence as
22 the kids think about their lot in life.

23 "Patricia breaks the silence. 'I really
24 don't much care about going to school today.' And
25 Denise agrees, 'Yeah, me, too. It's terrible. Mom

1 has the job at the convenience store, but we can't
2 hardly afford nothing. She met this guy, and he
3 helped us out for a little while, but he's gone now.
4 I guess I'm going to have another little baby
5 brother or sister in about seven months.'

6 " 'Does your mom help you with your
7 schoolwork,' Patricia wonders. 'That, she always
8 says, I need to figure it out on my own, 'cause she
9 is so tired. She really gets mad, though, when I
10 get bad grades. She says it makes her look like a
11 bad mom.'

12 " 'Ms. May says I need to repeat second
13 grade this year, but my mom went down and raised
14 such a stink, they let me go on. I'm so scared, it
15 makes my stomach hurt.'

16 "Patricia agrees. 'But we are lucky to
17 have a lot of teachers who really care about us.
18 Some of them make me feel good inside, and I wish I
19 could take them home with me. They seem to be,
20 like, worried about this school grading stuff. I
21 asked Ms.'" -- pardon me -- "'I heard Ms. May
22 talking to Ms. Johnson about teacher evacuation or
23 something like that. It's when somebody comes in
24 the classroom to watch your teacher teach.'

25 " 'No, Denise corrected. 'It's not teacher

1 evacuation. It's teacher vacation.'

2 "'Whatever,' Patricia says. 'Anyway,
3 Ms. May told Ms. Johnson, understanding a teacher by
4 just watching her for a short time would be like
5 deciding to marry a guy after standing in line with
6 him at the grocery store.'

7 "Denise pondered that for a moment. 'My
8 mom would probably do that,' she said.

9 "While the girls prattled on about school
10 and life and threatening days ahead, they finally
11 noticed -- yuck -- a boy. Billy sat staring
12 morosely at the sidewalk and kicking dirt with his
13 new tennis shoes. Billy's parents were comfortably
14 middle class, mom, a social-climber who cared more
15 about his honor roll status than what he learned,
16 and dad was a jock.

17 "'Hey, Billy,' Patricia said. 'Why the
18 grunchy face? First day of school is supposed to be
19 fun.'

20 "'Oh, it's been a crappy summer,' Billy
21 said. 'My dad is all bummed out because I didn't
22 make Little League All-Stars, and now my mom will be
23 after me to make her look good by getting good
24 grades. I wish they'd just let me be a kid and help
25 me be the best I can be.'

1 "The big yellow school bus rounded the
2 corner, and as the three climbed aboard to begin
3 another educational venture, the door squeezed shut
4 behind them. 'I wonder what's wrong with our
5 schools,' Patricia said as she settled into her
6 seat. 'Maybe New Mexico School Czar, Hanna
7 Skandera, ought to grade the parents.'"

8 Just wanted to share that with you.

9 THE CHAIR: Thank you, Commissioner
10 Shearman.

11 Next item on the Agenda is No. 4, Approval
12 of the Agenda. The Chair will entertain a motion.

13 COMMISSIONER CARR: Move we approve the
14 Agenda.

15 COMMISSIONER GANT: Second.

16 THE CHAIR: It's been moved and seconded.
17 All those in favor, say "Aye."

18 (Oral vote of Commissioners.)

19 THE CHAIR: The Agenda is approved. And
20 Approval of the Minutes is Item No. 5 from the
21 June 27, 2012, meeting. If all Commissioners have
22 had a chance to look over those minutes, I will
23 entertain a motion to approve.

24 COMMISSIONER SHEARMAN: Second.

25 COMMISSIONER GANT: There hasn't been a

1 motion yet.

2 COMMISSIONER SHEARMAN: I'm sorry. I
3 thought I heard a motion. I move we approve the
4 minutes as presented.

5 COMMISSIONER BERGMAN: Second.

6 THE CHAIR: It's been moved and seconded.
7 All those in favor, say "Aye."

8 (Oral vote of Commissioners.)

9 THE CHAIR: The minutes are approved. We
10 have one minute to our timed item, which is Open
11 Forum. We'll take a 60-second break.

12 (Brief pause in proceedings.)

13 THE CHAIR: Good morning, Mr. Willie
14 Brown. Good morning, sir.

15 MR. BROWN: Good morning, Mr. Chair,
16 members of the Commission. Thanks.

17 THE CHAIR: Item No. 6 is Open Forum.
18 Public comments and observations regarding education
19 policy and governance issues, as well as the
20 Strategic Plan for Education are heard at this time.
21 There is a four-minute time limit per presenter.
22 Persons from the same group and having similar
23 viewpoints are asked to select a spokesperson to
24 speak on their behalf. Multiple and repetitious
25 presentations of the same view will be discouraged.

1 I have the Open Forum sign-in sheet, and
2 we have Carlos T. Huff. Good morning, sir.

3 MR. HUFF: Good morning, Mr. Chairman,
4 ladies and gentlemen. Thank you for this brief
5 opportunity to speak with you. My name is Carlos
6 Huff. I'm the program manager for the ASVAB Career
7 Exploration Program. It is a fully federally funded
8 program designed to help sophomores, juniors, and
9 seniors, whatever their status, high-school students
10 across the country identify careers based upon their
11 interests and their academics.

12 It's the only program like it in the
13 country. Last year, 580,000 students across the
14 United States participated in this program.
15 Sixty-two percent of those students said that this
16 program helped them identify careers they had not
17 previously considered.

18 Here in the state of New Mexico, only
19 4,000 students participate in our program. It is a
20 voluntary program, but I would like for this
21 committee to permit me an opportunity in the future
22 to make a more complete presentation on the program,
23 with the purpose -- with the end -- of asking the
24 Secretary of Education to place this program on the
25 Strategic Plan for all high schools in the State of

1 New Mexico.

2 I've brought handouts which I would like
3 to leave for you.

4 THE CHAIR: Let me ask counsel, what would
5 be the process for that?

6 MR. BROWN: Mr. Chair, members of the
7 Commission, you could receive the handouts and
8 examine them at another time, you know, vote to pass
9 them on to the Secretary. I guess she's not here,
10 and Mr. Aguilar is not here yet. But he would have
11 heard what the presenter just said, or he could
12 receive them and pass them on to her himself.

13 But you can receive them, and I think you
14 should.

15 THE CHAIR: Okay. Please? Thank you,
16 sir.

17 MR. HUFF: You're welcome. Thank you,
18 ladies and gentlemen.

19 THE CHAIR: Go ahead and pass them to
20 Commissioner Bergman. She's busy typing.
21 Excellent. Have a good morning, Mr. Huff.

22 MR. HUFF: Thank you, ladies and
23 gentlemen, for your time.

24 COMMISSIONER SHEARMAN: Thank you.

25 THE CHAIR: If there is no one else that

1 wanted to speak before the Commission, Open Forum
2 has now ended.

3 Item No. 7, Report from Public School
4 Facility Authority on Requirements for New Charter
5 Schools. Bob Gorrell, the PSFA Director. Good
6 morning.

7 MR. GORRELL: Good morning.

8 MS. CASIAS: Good morning.

9 THE CHAIR: Martica -- I know it starts
10 with a "C."

11 MS. CASIAS: Casias.

12 THE CHAIR: I was going say "Casias."
13 Good morning, Martica. Welcome.

14 MS. CASIAS: Thank you. I have updated
15 material as of yesterday that I'd like to pass
16 around.

17 THE CHAIR: Yes, ma'am.

18 MS. CASIAS: We wanted to get everything
19 on the record.

20 THE CHAIR: I have trouble with the
21 acronym. I always want to say "Finance" for any "F"
22 that I see.

23 MR. GORRELL: So does everybody else.

24 So --

25 THE CHAIR: I can imagine your pain.

1 MR. GORRELL: Thank you. We really
2 appreciate you allowing us here. And I want to
3 recognize Mr. Gant as one of the Council members of
4 the Public School Capital Outlay Council, as well as
5 Joe Guillen, who is in the audience.

6 And, two, I want you to know that the
7 community really appreciated Mr. Gant being down in
8 Roswell. We had an opening of the Missouri School,
9 which is a replacement school, and it was last week.

10 Martica?

11 MS. CASIAS: Chair Garrison, would you --
12 how would you like me to proceed? You've all read
13 the Executive Summary. Would you like me to go over
14 the -- the Charter School Update List one by one
15 or --

16 THE CHAIR: You know, let me -- for the
17 sake of everyone in attendance, let me go over
18 the -- the Executive Summary that I was supposed to
19 have read already. So thanks for catching me.

20 MS. CASIAS: Okay.

21 THE CHAIR: My nearsightedness requires
22 glasses removal.

23 HB 283, passed into law July 1, 2011,
24 requires that the Public School Facilities
25 Authority, PSFA, assess proposed facilities and

1 establish that charter school facilities meet, or
2 will meet within 18 months, prescribed levels of
3 appropriateness. PSFA review and approve Ed Specs,
4 facilities master plans, and then generate wNMCI
5 scores for proposed facilities. These are provided
6 to the PED for consideration, along with the
7 charter's application to the Public Education
8 Commission, PEC.

9 Charters may use their defined facilities
10 information to shop for a facility. 22-8B-4.2
11 approves specific metrics in two areas:

12 One, each facility must have an
13 Educational Occupancy, E-Occupancy, as defined by
14 the New Mexico Building Code;

15 And, two, cannot house children.

16 [Verbatim.]

17 In order to meet the New Mexico Building
18 Code for an E-Occupancy, all of the life, health,
19 and safety codes must be met in relation to housing
20 children.

21 The State Fire Marshal and the State
22 Construction Industries have the ability to prohibit
23 occupancy if this requirement has not been met.

24 E-Occupancy certifications are provided by the
25 New Mexico Construction Industries Division, CID,

1 and PSFA provides support to the charter towards
2 this certification.

3 Two: Facilities be equal to or better
4 than the average wNMCI of all New Mexico schools.
5 PSFA conducts site assessments and correlated
6 proposed facilities with the Ed Spec FMP in order to
7 determine the wNMCI.

8 The wNMCI is a measure of function and
9 adequacy of a facility to support the intended
10 educational programs. A report and score is
11 generated for each proposed charter facility.

12 Depending upon the request from the
13 charter -- from the charter, an assessment may occur
14 for one facility on one site, several facilities on
15 one site, or several assessments may occur for
16 several facilities on several sites. Each site
17 assessment may take PSFA staff anywhere from four to
18 40 hours.

19 Attached is a map of the charter locations
20 statewide and a listing of assessed charters and
21 their current status. And I will not read the
22 Charter Schools Facilities Code.

23 And, Ms. Casias, you may continue.

24 MS. CASIAS: Chair Garrison, I'd like to
25 draw your attention to the paper that I just passed

1 out. And that is the current status of the charters
2 that PSFA has looked at for E-Occupancy. I
3 highlighted the ones that do meet E-Occupancy with
4 the lavender. But you will note that Estancia
5 Valley has the weighted NMCI met, but not the
6 E-Occupancy. The plans are at CID, and we were told
7 that they would be released yesterday or today. So
8 it doesn't have a "yes," but more than likely, it
9 will have a "yes" by the end of the day.

10 THE CHAIR: Martica, let me just
11 interrupt. I just want to make note that the Deputy
12 Secretary for Finance and Operations, Paul Aguilar,
13 is here. Good morning, sir.

14 MR. AGUILAR: Good morning, Mr. Chairman.

15 MS. CASIAS: So of the charters that were
16 before you last time, the current list has one --
17 five that are ready with the meeting average
18 weighted NMCI and meeting the E-Occupancy, all the
19 requirements of House Bill 283. You'll see the red
20 on the far right-hand column indicates our last
21 contact with the charters.

22 I will stand for questions unless, Chair
23 Garrison, you'd like me to read through it.

24 THE CHAIR: Commissioners, any
25 suggestions? Or would you like to take a moment to

1 read through?

2 COMMISSIONER GANT: Mr. Chair, good
3 morning. Mr. Chair, I think one of the questions
4 that should be asked is how are we go- -- how are
5 the schools with a "No" in the E-Occupancy being
6 handled? Do we know?

7 MR. GORRELL: Mr. Chair, the
8 responsibility of -- of any entity in the State of
9 New Mexico, whether you're at your home or a
10 business, is to get a -- an occupancy before you
11 occupy. So the charters, while we try to make
12 ourselves available and have even tried to contact
13 them, it is their responsibility to contact the
14 Construction Industries Division and -- and make
15 sure, before they move into a facility, that they
16 have that E-Occupancy. It's a State law.

17 That -- but the limit of PSFA involvement
18 is as I described. We have, as you can see, tried
19 to call them. Sometimes we don't get a return call.
20 Other times, we do. And I don't know if there are
21 other entities that are following up with the
22 charters or not.

23 THE CHAIR: Mr. Gorrell, a request that
24 some of the Commissioners -- could you move that
25 microphone in between you all?

1 MR. GORRELL: Yes. Thank you.

2 THE CHAIR: Thank you so much.

3 MR. GORRELL: Sorry.

4 THE CHAIR: Did that answer your question,
5 Commissioner Gant?

6 COMMISSIONER GANT: Yes. Thank you.

7 THE CHAIR: Commissioner Lopez?

8 COMMISSIONER LOPEZ: Yes, as far as PSFA
9 is concerned. But what about -- Kelly? What about,
10 do we let them open? What happens? This is --
11 we're under the wire with some of these schools.

12 MS. CALLAHAN: Mr. Chair, Commissioners,
13 Commissioner Lopez, I actually have an update as
14 well for those schools, because there were other
15 conditions that were set forth. So -- this
16 report -- I actually filled in one of the last
17 things just this morning. So we do have a -- a
18 draft of a report with an update on the -- on the
19 schools, and actually, probably have a little bit
20 more than Martica, just -- we did make contact. So
21 we have updates. And so I have information.

22 There's -- the report is accurate as far
23 as concerned, but we have dates that they've
24 proposed when they're going to have their
25 E-Occupancies.

1 And so, you know, I can go through -- like
2 I said, I just got this report yesterday, and so
3 trying to do the updates as -- as best we can. Our
4 position at the CSD is absolutely, the school will
5 not open. We have no choice about that. The --
6 there is a couple of schools that have adjusted
7 their opening date by a week or two. And there's
8 nobody that says that they're not going to get the
9 E-Occupancy.

10 But, again, that's a -- that's not our
11 call. That's the -- that's the construction and
12 cities -- municipalities. So we have an update.
13 And it's -- Martica, it's very similar to what -- to
14 what yours is, except I have a couple of target
15 dates.

16 So it's as to your pleasure how you want
17 me to proceed. I can certainly make this available
18 for the Commissioners, because I wanted to get
19 Martica's -- and we can put it all together. But
20 the -- there's only one school that hasn't done the
21 conditions that were set forth. And -- and so I am
22 reluctant to -- they do have an E-Occupancy. This
23 is William and Josephine Dorn.

24 Until they get those conditions met -- and
25 I don't know if I have the authority to do this.

1 But I don't want them to open without meeting the
2 conditions of the PEC. And so I guess that's
3 something that maybe Mr. Brown can address.

4 THE CHAIR: So your question to Mr. Brown
5 is what?

6 MS. CALLAHAN: We have a school that
7 hasn't met the conditions of the PEC, the submission
8 of the policies and the completed Planning Year
9 Checklist. This is the William and Josephine Dorn
10 Charter Community School. They do have their
11 E-Occupancy and facility in place, but they haven't
12 met the conditions that the PEC set forth.

13 THE CHAIR: And the conditions that we set
14 forth, are these pertaining to the facilities, or
15 are they the general conditions?

16 MS. CALLAHAN: Mr. Chair, Commissioners,
17 this is for policies for the school that were set
18 and the completion of the Planning Year Checklist.

19 THE CHAIR: I would say, then, they would
20 not open if they have not met conditions. But I --
21 we have not been down this road before as far as
22 having someone going down to the wire and then not
23 meeting conditions. Mr. Brown, do you have any
24 input for us?

25 MR. BROWN: Good morning, again,

1 Mr. Chair, members of the Commission. My
2 recommendation, you know, to protect us from, of
3 course, adverse litigation, is to make sure if --
4 you know, because we are seemingly going down this
5 road -- that to have it in writing in no uncertain
6 terms, to notify the school that, "Unless you do
7 these things, you are not permitted to open."

8 It sounds more ministerial, what I'm
9 hearing, that it's a matter -- they can do this.
10 There's no reason why they cannot be ready, because
11 they have all the things -- the structures in place.
12 So these are some last-minute policies that they
13 can -- you know, probably in two or three days, they
14 can probably do that. But we should have that in
15 writing to them, maybe certified mail or whatever
16 the method of conveyance is, so that they know.

17 THE CHAIR: Thank you, Mr. Brown.

18 COMMISSIONER CARR: Mr. Chair, so then
19 what's the proposed opening day of school for them?
20 Is that --

21 MS. CALLAHAN: Mr. Chair,
22 Commissioner Carr, August 20th.

23 COMMISSIONER CARR: Okay. So that's
24 something we need to handle today, huh, in some form
25 or fashion?

1 THE CHAIR: I don't think we handle it.
2 She'll send out the notification; correct?

3 MS. CALLAHAN: Mr. Chair, Mr. Carr, I'd be
4 happy to send out a letter. They -- we're talking
5 very, very minor things that they can take care of
6 probably in an afternoon. It's just a matter of
7 getting them submitted. And -- and so I'd be happy
8 to draft a letter to send out to the school
9 certified mail, that they won't be able to open
10 unless they comply with the terms and conditions
11 that the PEC set forth in the meeting in June.

12 THE CHAIR: Okay. I'm just thinking
13 how -- it perturbs me that a school has been granted
14 a charter, and then we're staring at loose ends
15 before school is supposed to start. It reminds
16 me -- not unlike the situation that Mr. Gorrell
17 has -- that they -- all this work -- this is work.
18 And someone doesn't do what they're supposed to do,
19 and then the law states, "Oh, you get your two
20 months." Even though they didn't do what they're
21 supposed to do, they still get another 18 months.

22 And we still don't know what's going to
23 happen then, because this is new to the PEC. Just
24 my voiced frustration with the responsibility of
25 having a charter school.

1 COMMISSIONER CARR: Well, Mr. Chair, I
2 have another question then. What was the original
3 date that they were supposed to have all this stuff?
4 Was it, just, they were supposed to have this done
5 before school started, or do we have another date
6 that everything was supposed to have been done?

7 MS. CALLAHAN: Mr. Chair,
8 Commissioner Carr, the Planning Year Checklist needs
9 to be completed, and they're missing one policy that
10 needs to be approved. And then there are other
11 policies that they had in place -- FERPA was
12 specifically mentioned in the -- missing from the
13 Planning Year Checklist. And then there are other
14 ones needed.

15 They had drafts, but they didn't have the
16 approvals. So it's a very -- I'm -- I'm -- very
17 minor things that just need to happen pretty
18 quickly. And we have been in communication with the
19 schools to work with them. So we're trying to
20 remind them as well. And so I -- you know, I would
21 be happy to do a letter that I can send
22 electronically and certified mail.

23 THE CHAIR: Mr. Brown.

24 MR. BROWN: Mr. Chairman, members of the
25 Commission, maybe assist them, they could be

1 directed to confer with the Charter Schools
2 Association, because, surely, these are sort of
3 standard policies that all schools have to put
4 together to submit. So they don't have to reinvent
5 the wheel, so to speak. That might help them to
6 expedite and comply, because these sound like
7 relatively minor little glitches.

8 THE CHAIR: They've -- they've been
9 receiving assistance since day one -- right? -- with
10 trainings and such?

11 MS. CALLAHAN: Mr. Chair, yes. They've
12 been receiving training throughout the year. And in
13 the meeting on the 27th, to address your question
14 about the date, the schools needed to have these
15 policies approved and in place prior to the opening
16 of school.

17 And -- but the Planning Year Checklist is
18 the one that's -- that's holding them up. The
19 policies is not -- you know, that -- if they get
20 them done before August 12th or 20th, when they
21 open, then they met the conditions. The FERPA one,
22 however, was an "Incomplete" on the Planning Year
23 Checklist that needs to be complete prior to the
24 opening. That's one of the conditions that's set
25 forth in the statute and regulation is that Planning

1 Year. And so that's the one that's kind of sticking
2 us right now.

3 COMMISSIONER GANT: Mr. Chair?

4 COMMISSIONER LOPEZ: Carolyn had a
5 question.

6 THE CHAIR: Ms. Shearman and Commissioner
7 Gant.

8 COMMISSIONER SHEARMAN: I just wanted to
9 make a point. If we don't have a -- if you have
10 additional information, Kelly, that ties into
11 facilities and that sort of thing, rather than just
12 piecemealing it, if you have a report that ties
13 with -- with theirs, I personally, would like to
14 hear it at this time. But that's up to everyone
15 else.

16 COMMISSIONER LOPEZ: Yeah. She has a
17 question.

18 THE CHAIR: I'm sorry, Commissioner
19 Shearman. I was trying to kill two birds with one
20 stone, and I killed none.

21 COMMISSIONER SHEARMAN: And they both
22 died.

23 THE CHAIR: They flew away.

24 COMMISSIONER SHEARMAN: I made the point
25 that I believe Kelly has a report that ties in with

1 facilities, and, if so, I would like to hear it, if
2 that's appropriate and agreeable with everyone.

3 THE CHAIR: Yes, absolutely.

4 MS. CALLAHAN: Mr. Chair, Commissioner
5 Shearman.

6 THE CHAIR: I just want to also respect
7 Bob Gorrell's time and Martica Casias' time. Are
8 you okay?

9 MR. GORRELL: Oh, yes. We blocked out
10 several hours, in case you needed us.

11 THE CHAIR: Thanks. Oh, you are hanging
12 out with Commissioner Gant. Okay. Kelly, please.

13 MS. CALLAHAN: Mr. Chair, Commissioners,
14 the PEC conditions for commencement of operations
15 for new charter schools is a statistics report that
16 we've been running from the last meeting. And the
17 schools were to submit policies, updates,
18 requirements that needed to be fulfilled. So that's
19 why we've been monitoring, keeping track, loading
20 them into our school files.

21 And so we have an update on each one based
22 on their conditions that were set forth. There may
23 be some differing off of, Martica, the list that you
24 submitted. But I think they're pretty close in
25 terms of timing, and we may just have gotten an

1 answer which you didn't.

2 So -- the first school that we're going to
3 address is Coral Community School. They are set to
4 open August 20, 2012. And the facilities that they
5 had is they had to change. And Martica noted that
6 on here, that their facility fell through. The
7 original plan, as stated, is no longer applicable in
8 terms of the facility. The school has a new
9 facility that has been approved by the PSFA, as long
10 as school enrollment remains under 65.

11 The building does have E-Occupancy
12 certification, and the lease should be signed within
13 the next couple of days. So you didn't have the
14 E-Occupancy --

15 MS. CASIAS: We did.

16 MS. CALLAHAN: Oh, okay. Yes, they did.
17 My apologies. And so their lease should be
18 available in the next couple of days. So they had
19 something fall through, but they did meet the
20 requirements of the NMCI and the E-Occupancy.

21 They had policies that had to be approved.
22 They were approved and submitted to the CSD right
23 after the meeting. And the school has appropriate
24 insurance coverage, and the E-Occupancy, and the
25 PSFA approvals have been met. So we're just waiting

1 on the lease for Coral.

2 Estancia Valley Classical Academy, the
3 opening date is now September 4. In terms of the
4 facilities, Annette Montoya reported that Estancia
5 Valley Classical Academy is awaiting a building
6 permit, which could be approved between today and
7 late next week. The school has sufficient numbers
8 of the modular units to open an elementary school,
9 and the rest of the units should arrive in seven
10 days.

11 They have done preparatory work on the
12 grounds and plan to get started this weekend, if the
13 permit arrives. They have delayed the opening until
14 September 4 and have adjusted their schedule to
15 insure enough instructional dates, should something
16 fall through with the new plan. They do not yet
17 have E-Occupancy, is that correct, what you have?

18 MS. CASIAS: (Indicates.)

19 MS. CALLAHAN: They did not have any other
20 conditions.

21 La Jicarita Community School have no
22 conditions, and they have been approved for an
23 additional planning year. And I noticed that
24 they're in the process of getting their portables.
25 So we'll keep monitoring that as well.

1 La Tierra Montessori School of the Arts
2 and Sciences, their opening date is slated for
3 September 4th. The policies from the Planning Year
4 Checklist need to be approved. They're -- they're
5 meeting to approve the policies -- they're all in
6 draft form -- to approve the policy is on August
7 20th. So they do have a plan for their approval
8 prior to the opening of school.

9 E-Occupancy. There was a walk-through of
10 the facility yesterday, which was August 6 when we
11 had this update, and the school is in the process of
12 attaining its E-Occupancy. And that's kind of where
13 you are as well, Martica?

14 MR. GORRELL: That's what it says, last
15 sentence, uh-huh.

16 MS. CALLAHAN: Yeah. McCurdy Charter
17 School, all policies from the Planning Year
18 Checklist had to be approved; they were approved and
19 submitted. Their opening date is for August 16. We
20 received information this morning that they had an
21 E-Occupancy certificate for the school, but it is
22 missing.

23 We have received a report from the
24 Española Fire Marshals' Office, and they're awaiting
25 the certificate. So I don't know if that's --

1 MS. CASIAS: Mr. Chair, Mrs. Callahan, the
2 existing facility is an E-Occupancy, because it's
3 always been a school. So they do have an
4 E-Occupancy, and they do have an 18-month plan of
5 correction in place.

6 MS. CALLAHAN: And so they're -- they
7 don't have the certificate to submit to CSD, so
8 they're coming forth with other documentation is
9 what they're doing. So we feel like they're on
10 track. They've -- they're making due diligence to
11 meeting that.

12 Mission Achievement and Success, the
13 opening date is August 13. All of their policies
14 were submitted and approved by their governing
15 council. Their special ed plan has been submitted
16 to the CSD and to the Special Ed Bureau, and the
17 school has an E-Occupancy in place.

18 The New America School in Las Cruces,
19 opening date August 20. Policies from the Planning
20 Year Checklist, their board meeting is today. They
21 have a final policy of dual credit that needs to be
22 approved. It is on the board's agenda, and as soon
23 as it's passed, it will be posted on WebEx, which is
24 the server that we use for their documents. So they
25 have completed their due diligence.

1 The E-Occupancy, that Martica's report
2 notes that they have it. The last report that we
3 had, it was E-Occupancy is pending. So they have
4 E-Occupancy, so we'll go ahead and check that off.

5 Sage Montessori School is opening date,
6 August 27. Their policies have been submitted and
7 approved by their governing board. And they expect
8 their E-Occupancy by August 15. And I was trying to
9 look at the -- to see if you had that information.

10 MS. CASIAS: No, Ms. Callahan, I don't.

11 MS. CALLAHAN: So the information we have
12 is they will receive it by August 15. Again, they
13 won't be able to open, but they have completed the
14 other conditions.

15 Southwest Aeronautics, Mathematics and
16 Science Academy, there were no conditions, and the
17 school has E-Occupancy. And they are slated to
18 open -- I don't have their opening date. But
19 they're supposed to open on time.

20 Uplift Community School, the opening date
21 is September 4. The policies are approved and
22 submitted. Their Planning Year Checklist, the
23 school has submitted an RFP for their transportation
24 plan, which was the condition. And all of the
25 policies from the Planning Year Checklist, outside

1 of FERPA, have also been approved and submitted.

2 The school --

3 MR. GORRELL: We don't have a plan.

4 MS. CALLAHAN: This is their -- their
5 Planning Year Checklist is the compliance that they
6 have to do for the Charter School Division. So, no,
7 not the -- as far as the building --

8 MR. GORRELL: So they don't have a
9 facility or a plan.

10 MS. CALLAHAN: So the E-Occupancy -- the
11 school's main building is undergoing renovation,
12 portables in process of being delivered. The school
13 is on target for E-Occupancy prior to the opening of
14 school. That's the report we have from the school.

15 MS. CASIAS: So, Mr. Chair and
16 Ms. Callahan, we haven't made an assessment to
17 whatever site they've reported to Ms. Callahan. We
18 have no knowledge of it or any contact.

19 MS. CALLAHAN: Mr. Chair, Commissioners,
20 Mr. Gorrell, Ms. Casias, we will make contact with
21 the school that they need to get in touch with you
22 ASAP to get an update on what's going on, because
23 without the modular classrooms -- they have three
24 different sites here? Is that accurate?

25 MS. CASIAS: Ms. Callahan, we looked at

1 three different sites for them, yeah. And the last
2 one, with the 8/19/12 date, is we haven't heard from
3 them since 8/19. But no E-Occupancy. But, yes, we
4 have seen the modulars. I'm sorry.

5 MS. CALLAHAN: So we'll have the school
6 get in touch with you as soon as possible.

7 MS. CASIAS: Okay.

8 MS. CALLAHAN: Because we received this
9 information, I believe, earlier this week.

10 MS. CASIAS: Okay.

11 MS. CALLAHAN: So I will insure that they
12 have that. But they have complied with the other
13 conditions.

14 And then William W. and Josephine Dorn
15 Charter School. Opening date is set for August 20.
16 They have not done their FERPA policy, which is the
17 completion of their Planning Year Checklist. And
18 they have not submitted their policies and do not
19 have a plan at this time that they've submitted as
20 well. The other schools don't have their policies
21 approved, because they're waiting for their board
22 meetings. But they are on the agenda and are moving
23 forward. We don't have any updates from the school
24 about this. So we don't know if there's a board
25 meeting.

1 And the school's E-Occupancy is in place.

2 And that's -- those are the reports of the
3 schools that we covered. The other school is the
4 Farmington school, which is a district-approved
5 school, Farmington district-approved school. And I
6 can get this to you electronically.

7 As I said, I was walking out the door this
8 morning and got the information about McCurdy.

9 THE CHAIR: I want to make note that
10 Deputy Secretary Aguilar -- they're opening some
11 schools today, so he stepped out. But he will be --
12 he'll be in and out intermittently. And he also
13 offered that if we need to get a letter out today
14 for my signature -- or just with your signature, it
15 doesn't matter to me -- to them, he can get that
16 done. So we'll move on the William and Josephine
17 Dorn school.

18 MS. CALLAHAN: Mr. Chair, Commissioners,
19 yes, I can -- I can also have somebody draft
20 something upstairs.

21 THE CHAIR: And I appreciate General
22 Counsel Brown's recommendation to -- to -- let's
23 assist. They haven't not complied as of yet. They
24 need to have those things by the opening of school.
25 But it is a requirement. I don't care if they're

1 minor or major; they're requirements. And that also
2 speaks to your schedule. How many hands do you need
3 to hold every year to -- to -- to go all the way to
4 the eleventh hour? I just -- it doesn't feel good
5 all the way around for me.

6 MS. CALLAHAN: Mr. Chair, I appreciate
7 that, because it's a little frustrating for us.

8 THE CHAIR: Maybe we can get some
9 recommendations from the CSD on process as we go
10 through for the future to see what we can do.

11 MS. CALLAHAN: Mr. Chair, Commissioners,
12 yes. One of the things is we were evaluating the
13 Planning Year after the meeting -- last meeting,
14 with some of the issues that came up for an
15 eleventh-hour kind of thing. We're actually going
16 to do -- in our submission process, we're actually
17 going to set target dates for -- they have brought
18 target dates, which were quarterly. We're actually
19 going to do monthly and more frequent updates for
20 the Planning Year schools, and do a much more
21 thorough collaboration with the PSFA, now that we
22 know what we know, we still don't know -- I don't
23 know.

24 But we're going to try to do better about
25 a more strategic Planning Year Checklist that's

1 going to be a lot more comprehensive in terms of due
2 dates.

3 THE CHAIR: And that's been a frustration
4 all along is the Public Education Commission
5 approves an application, and a site does not have to
6 be selected yet. So we've had schools that were for
7 specific zip codes that ended up in a whole
8 different community. Albuquerque has many different
9 communities. It isn't just, "Oh, we're in
10 Albuquerque."

11 So someone targeting 87105 and 87121 area
12 code -- zip codes -- it ends up over on Yale
13 Boulevard, it just strikes me as putting the cart
14 before the horse.

15 Then, after that, we have this Planning
16 Year Checklist; but, yet, as of July 1, SEG funding
17 is already -- first allocations have already gone to
18 the schools. So then what happens, if this turns
19 bad, that they have to give money back. It just
20 gets very, very convoluted.

21 And I think the same thing goes with the
22 facilities, too, that it sure is a lot of work with
23 a lot of fragmented pieces.

24 MR. GORRELL: Mr. Chair?

25 THE CHAIR: Mr. Gorrell.

1 MR. GORRELL: I had a question on
2 Farmington. So you'll follow up with them as well
3 on the E-Occupancy, because they still don't have
4 it. And I guess if you're going to kind of alert
5 them by letter or notice? And for your information,
6 they weren't sure they were going to be in that
7 space that we looked at.

8 They have talked about possibly -- James
9 Barfoot shared with us maybe the Cate Center they
10 would relocate them to, which already has an
11 E-Occupancy. But we don't know the condition of the
12 facility.

13 And, then, Mr. Commissioner, I appreciate
14 your comment on this process. And it -- you know,
15 every time you do something, the first time you
16 learn, it's a prototype. So it doesn't surprise us.
17 And I'm sure everybody can get better.

18 We certainly appreciate this speaking for
19 the Council, who are trying to hold the -- the
20 general condition of schools throughout the state
21 down. You know, we've been able to achieve about
22 34-percent facility condition index average, which
23 is not great, but it's definitely not the 70 that it
24 was when we started. Had these schools not gone
25 through this process, a lot of the facilities that

1 we looked at, when we said, "This isn't going to
2 work, the schools, had they just come in in bad
3 shape as they were, would have raised the
4 condition -- worsened the condition, because the
5 score would raise in the state.

6 So by going through this process, it
7 doesn't better or hurt the average, which is --
8 which is the benchmark that we're measured by our --
9 by the DFA, as far as progress made in this program.
10 So thank you.

11 THE CHAIR: What's the numeric, the
12 percentage line of demarcation?

13 MR. GORRELL: The numerics that I'm
14 quoting, there's two. One is the Facility Condition
15 Index. It's a very simple measure of the general
16 condition of a facility. Doesn't matter whether
17 it's a school or not. It's a repair cost divided by
18 the replacement cost. And whenever I say
19 34 percent, if you have a \$100,000 house, it needs
20 \$34,000 of repair to be modernized like new. So as
21 you can see, it's not in that good of shape. But we
22 started at 70. So good progress has been made.

23 It's actually going to be hard, from our
24 calculations, to hold that 34 percent. We have a
25 lot of older facilities out there that are going to

1 make it come up. The number that you see us using
2 here is the New Mexico Weighted Condition Index.
3 And it kind of turns a little bit of a blind eye on
4 how old something is, but looks to see if it can act
5 functionally to support the educational programs,
6 which is, of course, the most important purpose of a
7 facility, to support what's happening within it.

8 So that's what that measure is. They are
9 interrelated. And -- but the point I wanted to make
10 was, as we looked at these, had they come throughout
11 this process requiring that they be at least average
12 condition, the general condition of the schools in
13 the state would have worsened.

14 THE CHAIR: So the average percentage is
15 what?

16 MR. GORRELL: Thirty-four percent.

17 MS. CASIAS: The FCI?

18 MR. GORRELL: The FCI, Facility Condition
19 Index.

20 MS. CASIAS: But the percentage that the
21 charters need to meet is 22.24 is the average
22 Weighted NMCI that the charters --

23 THE CHAIR: So that's what I was looking
24 at, that last column -- second to the last column --
25 "Meets average." So that number is the 22.24. I

1 received a report. I'm going to do a report in
2 front of the Legislative Education Study Committee,
3 and I wanted to be clear on those numbers. I know
4 you've explained it to us before. But I'm a
5 physical educator, so I'm thinking of Basal
6 Metabolic Rate and BMI. So I need to be told about
7 four times before it starts clicking.

8 So, okay, that does help me, because I
9 received a report that has all the Weighted NMCI
10 scores, but I wasn't sure what the -- that number
11 was.

12 MR. GORRELL: Mr. Chair, the Weighted NMCI
13 actually is easier to achieve than the FCI. We'd be
14 happy to share all this, if you're going to make a
15 report, or even support you when you make that
16 report. But, for instance, if a -- if a portion of
17 a facility, the building, the heating, the air, the
18 electrical, is just very old, it's twice the life
19 that, you know, it should have been replaced
20 20 years ago, but they're still using it, as long as
21 it works, it doesn't count against the score at all.

22 The Facility Condition Index would measure
23 that and count against. So the Weighted NMCI is
24 actually easier to meet, so long as the space is
25 there, and an educator can provide, you know,

1 education within that space.

2 THE CHAIR: Thank you.

3 MR. GORRELL: Yes.

4 THE CHAIR: I will take that offer. I --
5 I report to the LESC on August 24th. That's a
6 Friday. And I -- I don't believe that their agenda
7 is quite out yet. But I'll follow up with you all.

8 MR. GORRELL: Thank you.

9 THE CHAIR: Did you bring your cards, by
10 any chance?

11 MR. GORRELL: Yes.

12 THE CHAIR: Oh, I see. And I believe I
13 have mine, too. So we can touch base. Any other
14 questions from Commissioners? Commissioner Gant.

15 COMMISSIONER GANT: Mr. Chair and members
16 and others, listen to what we've talked about this
17 morning. First, before I forget it, Ms. Callahan,
18 Mr. Chair, I would suggest that you -- on the
19 Farmington one, you touch base with that
20 superintendent and the board. That is their school,
21 so you don't want to go around the head shed out
22 there. So I would touch base with them and let them
23 know the concerns of the PSFA on that school out
24 there. And I'm surprised they don't have their
25 E-Occupancy; but, again, I'm not.

1 My comments are that this has been going
2 on for years, this last-minute, "Hey, you, we've got
3 to finish this up and open up the school."

4 Last year, we had one in Las Cruces. We
5 agreed to a Certificate of Completion. And then
6 they tell us, "Well, we're going to put some
7 portables." And those portables came in one week
8 before school was supposed to start. And they still
9 had the sidewalk or the driveways and all that other
10 stuff to lay, infrastructure. Hadn't done it. You
11 know, I watched that school daily to see what was
12 going to happen.

13 New America, they're getting down to the
14 last day. Oh, they're going to make it. But is it
15 at the convenience of the adult or the convenience
16 of the -- of the kid -- of the student? This
17 year-long checklist, they've had it since September.
18 So where have they been? These policies, they get
19 the help of the Coalition, their -- why are we
20 waiting? Why are they waiting now to the lasting
21 minute to make it happen? Many of them don't even
22 start to look for facilities until January,
23 February. New America did not even start
24 construction until March? April?

25 MR. GORRELL: March-April.

1 COMMISSIONER GANT: March-April. And it
2 was a messy two-story building that they totally
3 gutted and renovated. This goes on and on. Out
4 there at one of our schools out there, they're
5 bringing the portables in from Missouri. Why are
6 they spending that kind of money to bring a portable
7 all the way from -- Ohio? I'm sorry, Ohio.

8 Something is wrong with this picture.
9 These are adults that are supposed to be doing adult
10 work. And it's getting a little old to hear excuses
11 of why things are not done in a timely manner.

12 I don't care if it's minor or major. It's
13 on the checklist. Get it done. In my world, if
14 we'd come down to the last minute like this, we'd
15 all be looking for jobs. And is this what we
16 demonstrate to our kids? "Well, we can do it -- we
17 can do it when we get it done"?

18 As adults, we need to be demonstrating to
19 kids how to really get the work done properly. And
20 right now, in my view, some of these people that are
21 running charter schools are setting bad examples for
22 the kids they're going to teach. And that's just my
23 call -- it's really -- this is my sixth, seventh
24 year. I've been in this charter business when I was
25 a school board member down in Cruces, when they

1 first started doing it.

2 It hasn't changed that much since then.
3 We're getting better. Ms. Callahan and her crowd
4 over there really have come a long way. But that's
5 only happened within the last year or year and a
6 half. And we've had how many years to get this far,
7 And we're still stumbling along, still making
8 excuses?

9 And I think it's got to stop. And if they
10 don't have the checklist by 1 January done, I'm
11 hard-core. They don't get it. They get put off for
12 another year. That's just my opinion, because why
13 should Ms. Callahan, why should PSFA be jumping
14 through their fifth point of contact to get all
15 their work done, when the schools, the people
16 putting the schools together, aren't doing the work
17 that they need to get done? And that's just my
18 opinion, and I thank you very much.

19 THE CHAIR: I think your opinion is echoed
20 by many of the Commissioners. And that's why we're
21 looking at that macro-view in front of the LESC,
22 because some things in the law do need to change in
23 order for us to take that strong stance. So thank
24 for you those comments, Commissioner Gant.

25 Any other questions or comments from other

1 Commissioners? Did you have anything to add,
2 Mr. Gorrell?

3 MR. GORRELL: No, thank you.

4 THE CHAIR: Or Ms. Casias?

5 MS. CASIAS: I had a point.

6 THE CHAIR: One more -- okay. So
7 Ms. Casias?

8 MS. CASIAS: I had a point of
9 clarification for you, Mr. Chair Garrison. You said
10 something about the 18-month plan of correction.
11 The only -- that has to be submitted and approved.
12 The people that haven't met the weighted NMCI that
13 haven't submitted one, then nothing happens. But
14 McCurdy submitted one with a plan. It's not just
15 the assumption that the others get the 18 months.
16 And I just -- Mr. --

17 THE CHAIR: So they submit to who?

18 MS. CASIAS: They submit it to PSFA for
19 our review and approval, that, indeed, their
20 construction plans can be achieved within 18 months.
21 But it has to be submitted. So if you haven't
22 submitted one, we can't assume that the rest of the
23 people will be ready in 18 months.

24 THE CHAIR: So when you say someone hasn't
25 submitted something, so nothing happens. What does

1 that mean, "Nothing happens"?

2 MS. CASIAS: Well, the other people --
3 Mr. Chair, Commissioners, the other people without
4 the E-Occupancy haven't submitted a plan to get into
5 a facility within 18 months.

6 MR. GORRELL: Or the facility condition to
7 be able to meet it. McCurdy -- the law says that
8 the 18-month plan will be submitted to PSFA, and the
9 Director shall approve, if appropriate.

10 THE CHAIR: It says "shall, if
11 appropriate"?

12 MR. GORRELL: "If appropriate." Yes. And
13 the recommendation then goes back to the PED. But
14 we look at their plan, whether the corrections that
15 they're going to make to the facility, or the new
16 facility, will need the adequacy, at least to the
17 middle range, to the average, as well as we look to
18 see is there a potential financial source to be able
19 to achieve this. We don't have any background or
20 information to check that, but we make note of that.
21 It goes on to PED, and I believe Kelly and her group
22 take a look at whether that's possible.

23 But with that plan, then, they will go --
24 like McCurdy, we're expecting them to hire a
25 design-build contractor to go and build some other

1 facilities for them that they'll move into within
2 the 18-month period.

3 At the end, as far as the inspection, to
4 see if it's made, that's a loose end. We don't
5 know. And if anybody else had a plan of whether
6 they actually get it done or what it is when they
7 finish, that's a loose end, too.

8 And on your point, the law is blind on
9 that currently, the statute. Probably it could be
10 handled administratively, you know, just to set the
11 conditions, I think, as Willie had suggested
12 previously.

13 THE CHAIR: Commissioner Gant. Thank you
14 for that clarification. Commissioner Gant, and then
15 Commissioner Shearman.

16 COMMISSIONER GANT: Mr. Chair, members,
17 clarify for me. If they don't have the 18-month
18 plan and they don't have an E-Occupancy, then they
19 can or they cannot open that school?

20 MR. GORRELL: The law is clear on the
21 E-Occupancy. They cannot. That's outside of this
22 283.

23 THE CHAIR: The NMCI score.

24 MR. GORRELL: That would be an illegal
25 occupancy. And there are penalties to that, because

1 it puts people at risk. The -- as far as the
2 building condition goes, it says that the -- with
3 the plan, that there is a plan that's approved. I
4 would have to assume that when a plan is approved,
5 there's an expectation that it is done within
6 18 months; otherwise, the 18 months wouldn't have
7 been mentioned in the statute.

8 As far as at the end of the 18-month,
9 whether that occurs or not, the statute isn't clear.
10 So could they go ahead and occupy and be outside of
11 what they have submitted as a plan? I suppose they
12 could. There would not be a law to prevent them
13 from happening -- that from happening, except that
14 the law also says that they -- that the facility
15 that they move into should be of at least average
16 Weighted NMCI.

17 So, administratively, we could set up a
18 process where we review the facility after it's
19 completed. If it's completed on that date or not,
20 and if it doesn't meet that, then they are outside
21 of -- in my opinion, this would be a question back
22 to your counsel -- they would be outside the
23 requirements of the statute for having an
24 appropriate facility for the students, and you could
25 say, you know, "You can't do that."

1 But those are my opinions.

2 COMMISSIONER GANT: Mr. Chair. Mr. Chair.

3 THE CHAIR: Hold on one second. I need to
4 ask for clarification. That is the 22.24?

5 MS. CASIAS: Yes, Mr. Chairman.

6 THE CHAIR: That's the line of
7 demarcation? Mr. Gant, go ahead.

8 COMMISSIONER GANT: Okay. If it's got a
9 "No" in the facilities NMCI, currently, then they
10 must come with -- either you approve the facility or
11 an 18-month plan. Correct?

12 MR. GORRELL: If the facility they're in
13 now has an E-Occupancy but does not meet the
14 Weighted NMCI, they've given a plan of how they're
15 going to correct that within 18 months. Then they
16 are within the law; they're approved.

17 COMMISSIONER GANT: That's McCurdy. There
18 are some others in here that have "No" for both.

19 MR. GORRELL: Yes.

20 COMMISSIONER GANT: Let's say, for some
21 reason, you go out there and you look at it and,
22 okay, it's E-Occupancy you can do, but you don't
23 have the weighted. So you have to have both?

24 MR. GORRELL: Mr. Chair and Mr. Gant, you
25 absolutely -- you have to have both. That's what

1 the law says. E-Occupancy, and either you are in a
2 facility that meets the average, or you will within
3 18 months.

4 COMMISSIONER GANT: Okay. All right. So
5 you have several in here that have neither, and some
6 that don't have the weighted. So they can't open,
7 either.

8 MR. GORRELL: Well, that would not be our
9 decision. We make the report and provide it to PED.

10 COMMISSIONER GANT: Okay. I -- okay.

11 THE CHAIR: It's a symphony of
12 collaboration.

13 COMMISSIONER GANT: It's a mess. Okay.
14 Go ahead, I think.

15 THE CHAIR: Commissioner Shearman.

16 COMMISSIONER SHEARMAN: Something that's
17 been said makes me think that there is an
18 implication here that a school that does not have
19 the E-Occupancy certification could, today, present
20 you with an 18-month plan on how they would be an
21 acceptable facility. Good. I hope you're shaking
22 your head "no."

23 MR. GORRELL: Chair Garrison and Member
24 Shearman, no. They -- nobody can occupy a facility
25 unless it has appropriate occupancy and approval,

1 and whether that's a house or a commercial building
2 or schools or E-Occupancy. So, regardless, they
3 cannot move into a facility that does not have
4 E-Occupancy.

5 They could move into a facility that
6 has -- that is in worse condition, like McCurdy,
7 than the average, so long as they have a plan to
8 correct that -- the facilities, either the
9 facilities they're in, or, in McCurdy's case,
10 they're going to build a new one -- within 18
11 months.

12 COMMISSIONER SHEARMAN: But my question
13 is, when McCurdy came to us, their 18-month plan was
14 part of their application.

15 MR. GORRELL: Yes.

16 COMMISSIONER SHEARMAN: We knew they had
17 an 18-month plan; it had been approved; everything
18 was good. I'm saying could a school come to you
19 today and say, "We haven't -- we've written an
20 18-month plan. Will you approve it today?
21 Tomorrow? And we can get started, open school next
22 week," with our not having seen that 18-month plan,
23 and our approval of that charter was absent of any
24 notification that they were going to go for an
25 18-month plan?

1 MR. GORRELL: Mr. Chair, Member Shearman,
2 my -- our understanding is -- and, again, this is
3 a -- it would be a legal question. But our
4 understanding is that submission to us, our
5 approval, our forwarding on to PED, who then would
6 provide it as part of the application, it coming
7 after the application, I -- it does not say that
8 that would be. It seems like that's outside of what
9 the law is expecting.

10 COMMISSIONER SHEARMAN: Okay.

11 MR. GORRELL: But I'm -- this is a counsel
12 question.

13 COMMISSIONER GANT: Mr. Chair?

14 MR. BROWN: Mr. Chair and members of the
15 Commission.

16 THE CHAIR: I just want to let
17 Commissioners know that Mr. Brown is here to help
18 us. So if you have a question of him, ask the
19 question of Mr. Brown. Thank you, sir.

20 COMMISSIONER SHEARMAN: Would you please
21 respond, Mr. Brown?

22 MR. BROWN: You know, first of all, my
23 understanding is -- and I've read it several times,
24 the new provision -- that when a school wants to
25 operate a new school, the baseline for operation,

1 before you get -- even get to the 18 months, is that
2 they have to meet the average condition. Correct?
3 Am I correct, Mr. Gorrell?

4 MR. GORRELL: Or have a plan to correct it
5 within 18 months.

6 MR. BROWN: It says -- I have it. "Or the
7 charter school demonstrates, within 18 months of
8 occupancy or relocation of the charter, the way in
9 which the facilities will achieve a rating equal to
10 or better than the average." So you're correct.
11 "Equal to." So, Ms. Shearman, what was your
12 question? If the following has occurred --

13 COMMISSIONER SHEARMAN: My question is,
14 can an 18-month plan be submitted after the fact?
15 After the school's application to become a charter
16 school has been approved, can the application for an
17 18-month plan be received and considered after that?

18 MR. BROWN: You know, it would seem to be,
19 in the absence of, you know, Charter School Division
20 guidance, vis-a-vis what we have on the Web site or
21 rule, I think, yes; the answer is yes. And until we
22 say, "You can't do that; here is a time frame when
23 you have to do that," the answer would be yes,
24 because we haven't said no yet. We haven't set
25 the --

1 THE CHAIR: And also we haven't, in some
2 cases, assessed because they haven't chosen a
3 facility yet. So --

4 COMMISSIONER SHEARMAN: I guess my
5 question hinges on do they have to declare, in their
6 application, they have a facility or are seeking a
7 facility, or they have a facility that requires an
8 18-month plan and that's the way they're going?
9 Does that have to be part of the application?

10 MR. BROWN: And, Mr. Chair, Commissioner
11 Shearman, I think that's always been -- since way
12 back, I guess, since 2007, part of the structure is,
13 I think, all they have to do is give us an assurance
14 that they will get a facility, because, you know,
15 you can't -- they're not a legal entity at the time
16 when they apply. So they can't sign the lease or
17 anything like that. So they just assure, "We're
18 going to do this."

19 And I believe former Assistant Secretary
20 Duran, he expressed some, I guess, confusion at what
21 they intended to do, because they would mention
22 facilities, but they hadn't -- the facility is owned
23 by a school district or a part of the school
24 district, but they hadn't talked to the school
25 district yet. And so there was frustration built

1 in.

2 So, you know, we can't hold it against
3 them, because they're just assurances that they're
4 going to. And where the rubber meets the road is,
5 you know, I guess at the time -- I guess now, with
6 the 18 months -- in the past you've had your
7 planning year, "Where is your facility," you know,
8 "Where -- you don't have E-Occupancy permits, nor do
9 you have the conditional index, because you don't
10 have a facility."

11 COMMISSIONER GANT: Mr. Chair, can I add
12 to Mr. Brown's comment there?

13 THE CHAIR: Commissioner Gant?

14 COMMISSIONER GANT: Based on House
15 Bill 283, with the new charters -- applications --
16 and we have a group of them that's on the last page
17 here -- they have to have an Ed Spec, an Educational
18 Specification, a Facility Master Plan approved by
19 the PSFA prior to their application coming to the
20 CSD or to the local district for consideration. We
21 move forward in that area. The only area that we
22 haven't moved forward in is actually pinpointing the
23 facility.

24 The Ed Spec and the Facility Master Plan
25 says, "This is what we need." Mr. Gorrell and his

1 folks, Martica, they say, "Yes, you know what you
2 need in the way of facility. If you get approved
3 for -- you know, it's, like, in September, then you
4 go look."

5 The current list here, I mean, the new
6 ones, were -- that we just finished doing the
7 Certificate of Completion on did not fall under,
8 directly, HB 283, although we did approve them last
9 September. The law did go into effect. But because
10 the applications did not come to us until actually
11 at the same time the law went into effect, they
12 didn't fall under this Ed Spec/Facility Master Plan
13 issue, the new ones.

14 The new ones have to have the
15 Ed Spec/Facility Master Plan prior to -- and it has
16 to be loaded in their application that they have
17 been through the PSFA process. That's one step
18 forward, okay? Am I correct, Mr. Gorrell?

19 MR. GORRELL: Yes, Mr. Chair, that is
20 correct. I would -- I would add that 22-8B, which
21 is where the law is, C, "On or after" -- and this is
22 on the question from the Chair, does it say
23 "shall"? -- "On or after July 1, 2011" -- which was
24 after the application, but before these schools are
25 approved to open -- "On or after July 1, 2011, a new

1 charter shall not open an existing charter or shall
2 not relocate unless the facilities of the new or
3 relocated charter school, as measured by the
4 condition index," blah, blah, blah.

5 So before they open the door, the law says
6 they have to be in an average facility or have a
7 plan.

8 COMMISSIONER CARR: Mr. Chair?

9 THE CHAIR: Commissioner Carr.

10 COMMISSIONER CARR: So the question to the
11 Commission and Mr. Brown is do we need to send a
12 letter to these schools and remind them that if they
13 don't have this, that you can't open the doors until
14 you submit an 18 month plan or until -- and until
15 that's approved?

16 MS. CALLAHAN: Mr. Chair, Commissioners, I
17 just -- in a point of clarification, I have
18 Martica's report. The only other school that
19 doesn't have an average New Mexico Condition Index
20 is Gallup, the Uplift School. Is that -- am I
21 reading that correctly?

22 MR. GORRELL: It's plural.

23 MS. CALLAHAN: And one of their facilities
24 does meet, right now, but doesn't have E-Occupancy?
25 Is that -- am I correct in understanding that that's

1 the only other school that doesn't, besides McCurdy?

2 MR. GORRELL: Well, we have a question,
3 still, on the -- on the Farmington school, because
4 that facility may change; but yes.

5 COMMISSIONER GANT: Mr. Chair,
6 Ms. Callahan, from what I was listening to earlier,
7 maybe I -- my ears don't hear everything. But there
8 is confusion right now as to what facility Gallup is
9 really going to use? Is there some confusion out
10 there?

11 MS. CASIAS: Mr. Chair, members, it
12 appears that they're going to use the Uplift -- the
13 address on Highway 564. But we have not really seen
14 the plans or approved them at this point.

15 If they do use the modulars, the modulars
16 were bought from a manufacturer that precertifies
17 them with an E-Occupancy, but it hasn't gone through
18 CID for that yet.

19 MR. GORRELL: So, again, just to be
20 perfectly clear, we have to look at the E-Occupancy
21 is a -- as Martica has just said, can come with an
22 expectation. They know that they've been approved
23 elsewhere with an E-Occupancy; we can't think of a
24 reason why not. But if it is a portable that is
25 configured for classrooms and they need some other

1 space, like a gym, it would not work. It would not
2 work under the weighted NMCI, because it doesn't
3 support the program.

4 So it is -- it's more than just having --
5 having a facility. It's in a facility that is
6 appropriate to support what they're trying to do.
7 So -- so we do, for example, on this -- this one in
8 Gallup, when they finally settle in with these
9 facilities, and we know what they are, we've got to
10 go look at them.

11 We've made some assumptions, and if those
12 assumptions hold, then everything is good on the
13 last one of the Uplift. The other two, they're not
14 good. Something has to be done.

15 COMMISSIONER GANT: Mr. Chair,
16 Commissioner Carr's comment; I believe a letter is
17 appropriate, at least for Gallup.

18 THE CHAIR: For the schools that need a
19 letter. So, Ms. Callahan, if you can make sure that
20 happens, I think it speaks to Willie's point earlier
21 to -- keep holding on.

22 MS. CALLAHAN: Mr. Chair, Commissioners, I
23 agree. I mailed a note that we need to contact
24 Uplift and to make sure that they're in touch with
25 PSFA in terms of the whole picture of what they're

1 doing. They may be under the mistaken assumption
2 that because they have portables that are considered
3 ready, E-Occupancy, that they may be missing other
4 elements, and we need to get them straight on that.

5 And so, definitely, we'll -- we'll draft a
6 letter. Does that need to come from you, Mr. Chair,
7 or can it come from me?

8 THE CHAIR: Take care of business.

9 MS. CALLAHAN: The other one, I would like
10 to come from you. And, actually, it's being drafted
11 right now.

12 THE CHAIR: Whatever I sign and has my
13 name on it usually isn't read. So you make that
14 choice.

15 MS. CALLAHAN: No, that's --

16 THE CHAIR: Mr. Brown.

17 MR. BROWN: Mr. Chair and members of the
18 Commission, with all due respect, I just want to
19 point out that in terms of the Open Meetings Act,
20 this is not an action item. So I'm not sure what
21 Ms. Callahan is referring to, something for your
22 signature that may or may not have been voted on
23 today.

24 As to this current agenda item, I sort of
25 can work with Ms. Callahan, and any kinds of letters

1 she needs to draft, I will. But we have to be
2 cautious of, from the Commission, throwing ideas,
3 "Put this in" -- "Put this in the letter." This is
4 not an action item.

5 THE CHAIR: You take care of the letter.
6 Thank you, sir, Mr. Brown. One second. Since we're
7 talking about facilities, you're changing facilities
8 pretty soon. Tell us about that, please.

9 MR. BROWN: Yes. August 23 will be my
10 last day with the Commission at noontime. I'm
11 moving on. I've been with the Commission, this
12 month, 14 years. And some of you may have heard of
13 the late Michael Davis, State Superintendent. And
14 he was the one who hired me twice, I must say; hired
15 me in 1998, and then rehired me as the General
16 Counsel when they invented that position -- or
17 created that position in 2002.

18 So I'm moving on. I'm moving over to the
19 Santa Fe County right after Labor Day.

20 THE CHAIR: I have a couple of comments
21 but let's give him a round of applause. If it were
22 after 5:00 and a day later, I'd have a nice roast
23 for you. It's not happening. But we have a card
24 for you, Willie, and it's our heartfelt thanks for
25 all your service.

1 I always tell people we're here for the
2 same reason. It's to do the very, very best and
3 provide the most outstanding education we can for
4 New Mexico's children. And you've been a part of
5 that for so many years. And we really appreciate
6 you and wish you the best of luck --

7 MR. BROWN: Thank you. Thank you.

8 THE CHAIR: -- in your endeavors.

9 MR. BROWN: I'm sure there are Euros in
10 that envelope, right?

11 THE CHAIR: I was trying to stuff a cigar
12 in there, but it didn't fit.

13 COMMISSIONER GANT: Mr. Chair?

14 COMMISSIONER POGNA: Mr. Chairman?

15 THE CHAIR: Commissioner Pogna; then
16 Commissioner Gant.

17 COMMISSIONER POGNA: I just wanted to tell
18 Mr. Brown that it's a card, but no money in it.

19 MR. BROWN: It's the thought that counts.

20 THE CHAIR: Commissioner Gant?

21 COMMISSIONER GANT: Further discussion on
22 facilities. If you note at the bottom -- or on the
23 last page of this is a listing of the -- of the new
24 applications, which we will be hearing in the
25 next -- at the end of the next week or two. And as

1 you'll note it says, "Approved, Ed Spec and FMPs,"
2 and the date when they were approved.

3 And I go back to my earlier comments based
4 upon the law. This is -- had to be done before the
5 applications were submitted. And if you look at the
6 dates, all these that are on here did meet that
7 requirement, according to HB 283 and the statute
8 that Mr. Gorrell quoted. There is one missing
9 though. Am I correct?

10 MS. CASIAS: You are correct, Mr. Gant,
11 uh-huh. It's the Lisa Lou Peaches Academy [ph], if
12 I've got the name --

13 COMMISSIONER GANT: Yes.

14 MS. CASIAS: And I just noticed that at
15 the very same time that you did. We have not
16 received their FMP/Ed Spec. We received a portion
17 of it, and we requested more information. And I
18 would say to you, Commissioner and Mr. Gant, that it
19 was on here when I looked at it, so I must have
20 deleted it accidentally. So my apologies. Very
21 observant of you.

22 COMMISSIONER GANT: And that was a good --
23 I would say that was a good delete. But no further
24 comment.

25 THE CHAIR: Any other questions of

1 Mr. Gorrell or Ms. Casias? Is it "Mrs." or "Ms."?

2 MS. CASIAS: Married.

3 THE CHAIR: Mrs. Casias.

4 MS. CASIAS: I always get confused. Miss,
5 Mrs., Ms.

6 COMMISSIONER SHEARMAN: Covers everything.

7 COMMISSIONER LOPEZ: All of the above.

8 COMMISSIONER GANT: Mr. Chair, I'd like to
9 make a comment. Mr. Gorrell and Martica, they go to
10 a lot of meetings which I do attend. They've got a
11 lot of work to do. They've got nine members of the
12 PSCOC they have to satisfy. And let me tell you.
13 You know who sets on that PSCOC -- Mr. Aguilar is
14 one of them. And then all the directors for the
15 divisions -- I mean, whatever they call them --
16 departments in the State are sitting there.

17 They all get beat up. They usually have
18 the right answers, but they still get beat up, and
19 they have to do this month after month after month.
20 And then they have to go out and take care of the
21 school districts. They have to go look at all their
22 buildings. They have to put all -- they've got to
23 put up with these superintendents that get unhappy
24 with them because they're not getting the right
25 answer from the PSFA they think they should receive,

1 and they don't get their building plans approved,
2 their renovation plans approved; they don't get
3 exactly what they want in capacity for their
4 buildings and all that.

5 So -- and they only have 50 people to take
6 care of 89 school districts and millions of square
7 feet of buildings. And then they come in here and
8 face us with a smile. He's still smiling. And then
9 he has to put up with us this last year doing his
10 evaluation. He's still smiling. Okay?

11 So I'd like to thank these two, plus the
12 other 48 that work for Mr. Gorrell, for all they do
13 to keep our kids in good school facilities, and the
14 teachers, give them a place to really do their job
15 right. And that's just my comment. Thank you.

16 MR. GORRELL: Thank you, Mr. Gant.

17 THE CHAIR: Appreciate that comment. And
18 it's good to get that perspective once in a while
19 and hear it. So I'm glad you said it, and we do
20 appreciate your very hard work.

21 MR. GORRELL: Thank you very much. Thank
22 you, Mr. Gant.

23 THE CHAIR: I need to trade cards with you
24 there, sir.

25 MS. CALLAHAN: Mr. Chair?

1 THE CHAIR: Ms. Callahan.

2 MS. CALLAHAN: Mr. Chair, Commissioners,
3 the Charter School Division also would like to thank
4 PSFA. Martica and Richard have been so helpful.
5 And one of the things that we discussed at the last
6 meeting that we had is to do some collaboration on
7 the training and presentations that we're going to
8 do for the new schools that are going to be
9 approved.

10 And, Commissioner Gant, I can assure you
11 that the process will be a lot smoother. We learned
12 a lot, and I'm very, very appreciative of their
13 openness and willingness to help us kind of
14 navigate, because we aren't facilities people.
15 And -- we're educators. And so I can assure you
16 that the process next year will be much different,
17 cleaner, and complete, as we present to the Public
18 Ed Commission. So thank you.

19 THE CHAIR: Thank you. Ms. Casias, do me
20 a favor. It's on my list, and you just snuck out on
21 me. Thank Joe Guillen for his attendance for the
22 New Mexico School Board Association.

23 MS. CASIAS: Absolutely.

24 THE CHAIR: Thank you very much. He
25 walked out before I could announce it.

1 COMMISSIONER CARR: Could we take a short
2 break?

3 THE CHAIR: It's been requested to take a
4 short break. Anyone opposed to that? Let's take a
5 break until 11:00. We're in recess.

6 (Recess taken, 10:50 a.m. to 11:00 a.m.)

7 THE CHAIR: The meeting is back in
8 session. We are on Item No. 8, Legislative
9 Education Study Report on Virtual -- Virtual
10 Skills -- Virtual Schools, Dr. David Harrell, the
11 LESC Deputy Director. Good morning, sir.

12 MR. HARRELL: Good morning, Mr. Chairman,
13 Commissioners.

14 THE CHAIR: Oh, yes. I'm going to give
15 just one introduction again. I want to introduce
16 Joe Guillen from the New Mexico School Boards
17 Association. You are back. I thought you were
18 leaving for good. We just wanted to thank you for
19 your attendance, sir.

20 MR. GUILLEN: It's a pleasure to be here.

21 THE CHAIR: Thank you, sir.

22 MR. HARRELL: Okay. Mr. Chairman, members
23 of the Commission, thank you for the invitation to
24 make a presentation to you today. Listening to the
25 discussion this morning, I realize that your work is

1 already quite complex and multifaceted. And with
2 the advent of virtual charter schools, it's likely
3 to become even more so.

4 A great deal to consider under this topic.
5 And I know Commissioner Gant, at a recent meeting,
6 had raised some concerns about virtual charter
7 schools already, and I'm sure the Commission has
8 been giving it some thought.

9 What I'll be presenting to you is a
10 revised and, in some cases, updated version of the
11 report that Kevin Force, who's an attorney on our
12 LESC staff, and I presented to the Committee in
13 July. So there's some new material here from that,
14 and also some new material from the preview draft
15 that I had sent Beverly Friedman earlier.

16 I should begin with a disclaimer, however.
17 I'm an unlikely choice, frankly, to talk about
18 anything related to technology. If you follow the
19 "Dilbert" cartoon strip at all, you're familiar with
20 the pointy-headed boss who has a number of issues.
21 And there's one strip in particular that I could
22 identify with. It shows him holding up this laptop
23 computer, staring at it intently as if to scrutinize
24 its mysteries. And then Dilbert, in another frame,
25 says, "Do you think we should tell him it's just an

1 Etch-a-Sketch?"

2 So that -- I may not be quite at that
3 level, but I'm not far from it, frankly. So with
4 that as a kind of caveat, we'll proceed with the
5 discussion.

6 First of all, virtual charter schools, as
7 you probably know, are a growing component of
8 charter schools nationwide. In school year
9 2010-'11, there were virtual schools in 30 states
10 serving approximately 250,000 students altogether.
11 The number of full-time online charter schools has
12 grown from fewer than 50 in 2000 to more than 200 in
13 2007. And the number of full-time charter school
14 enrollments has grown from just over 20,000 to more
15 than 140,000 during that same roughly ten-year
16 period.

17 And now, as the Commissioners have
18 discussed earlier, there is a virtual school
19 scheduled to open in Farmington, locally authorized
20 this fall. There's been an application, among the
21 14 that you've received, for a virtual charter
22 school, planning to have -- to open in Santa Fe for
23 2013-'14. Certainly, it's time to consider some of
24 the issues and circumstances that arise. So the
25 report that I've provided you with and the

1 highlights of which I'll go over as quickly as I can
2 this morning covers -- covers three main subjects:
3 The -- what I call the concepts and components of
4 virtual charter schools, issues that virtual charter
5 schools raise, and legal questions about virtual
6 charter schools. And I should note that any of the
7 topics under any of these three subjects would merit
8 a full report of its own. The issues are complex
9 enough. The purpose today merely is to identify
10 some things that need to be taken into account.

11 First, in terms of a definition, the
12 National Association of Charter School Authorizers,
13 a group that you're quite familiar with, as you've
14 worked with this group in the past, defines the term
15 this way: It's an educational organization that
16 offers K-12 courses through Internet-based methods
17 with time and/or distance separating the teacher and
18 the learner. Students enroll to earn credit towards
19 grade-level advancement and/or graduation. So
20 fairly straightforward and simple enough.

21 Next, it goes on to say that virtual
22 schools provide learning that, quote, "is not bound
23 by time, space and pace, liberating education
24 systems from the confines of rigid blocks of time
25 and uninspired configurations of space to better

1 meet the needs of students." Rather lofty prospect.

2 In terms of what happens in a virtual
3 charter school, this, frankly, was one of my first
4 questions as I was looking into this topic to begin
5 with, what actually goes on. Okay. You're in a
6 virtual school. What do you do? What happens? And
7 I am pleased to report that what happens is not what
8 I saw in another cartoon not long ago.

9 There's a traditional classroom, and on
10 every student desk is a computer. No students
11 anywhere. Even worse, there's no teacher, only a
12 computer on the teacher's desk. But this is not
13 what happens in a virtue school. In a typical day,
14 students will log on to their assignments or their
15 class sessions from home or at a learning center.
16 They may begin the day with schoolwork, engage in
17 some other activities midday, family activities,
18 maybe, work or whatever, and then return to
19 schoolwork at night.

20 They also typically spend time working
21 offline, reading books, doing math problems,
22 drawing, performing music, whatever.

23 It's also expected -- and we'll see this
24 again in a moment -- a parent or other responsible
25 adult is asked to supervise, sometimes to assist

1 with instruction, motivation or guidance. K12,
2 Inc., which is the provider of the virtual
3 educational program for the Farmington school,
4 compares the virtual classroom to a Webinar, an
5 online experience that even I have had, as limited
6 as my technological expertise may be.

7 According to the International Association
8 for K-12 Online Learning, community learning centers
9 that students visit at their option are becoming
10 more common as our classroom options, in which the
11 teachers and students log on at the same time.
12 There are also more frequent opportunities for
13 social interaction, like field trips, than there
14 were in the earlier days of virtual schooling.
15 Teachers also typically keep regular posted office
16 hours, when they will be online and available for
17 their students.

18 And speaking of the students, one point of
19 agreement among virtually all parties is that
20 virtual charter schools are not for everyone, not
21 for every student. The student best served by such
22 an environment must be capable of independent work.
23 Certain demographics of students seem specially well
24 suited for virtual charter schools: those who need
25 an accelerated program, maybe; those who have

1 certain medical issues, behavioral concerns. It's
2 also said to be a good option for students who are
3 focusing intently on performing arts or athletics in
4 some way.

5 But whatever the status or the needs of a
6 virtual school student, there is broad agreement
7 that a critical component is a supportive adult at
8 home who must be very involved in what the student
9 is doing.

10 The educational program itself is
11 delivered electronically, for the most part.
12 Separation in time and/or space, NACSA says -- gives
13 this example. A student in California may be
14 learning from a teacher in Illinois who is employed
15 by a program in Massachusetts. Instruction can be
16 delivered synchronously; that is, people are
17 interacting at the same time; or asynchronously;
18 that is, students will log on to a program already
19 there at their own convenience.

20 So that was the first main subject that
21 I'll be covering.

22 The second, which I'll have to admit is
23 the longest of the three, is the issues raised by
24 charter schools. Some of the points that anyone
25 contemplating authorizing a charter school or

1 opening or enrolling in a charter school might
2 consider:

3 The first one that comes up is cost. It's
4 what we typically ask about almost anything. And
5 according to the sources that I consulted, this is
6 actually one of the least understood of the aspects
7 of virtual education or virtual charter schools.
8 NACSA says that the costs are not well-known, and
9 that association acknowledges estimates ranging
10 anywhere from \$300 per course per semester to about
11 \$7,500 per pupil for comprehensive virtual schools.
12 There are lots of estimates in between.

13 Some sources suggest that the per-student
14 cost in a virtual charter school is generally lower
15 than a traditional school. And certainly, there are
16 some expenses that a virtual school -- that a
17 traditional school has that a virtual school would
18 not: Transportation, for example; food service,
19 things of that sort.

20 But there may also be other costs that are
21 actually higher in a virtual charter school than in
22 a traditional. Hardware and software, obviously,
23 and maybe certain school equipment. K12, for
24 example, on this point notes that, for science
25 classes, the vendor actually provides essentially

1 multiple science labs by sending a microscope, other
2 equipment to individual students' homes. So rather
3 than providing a single lab at the school, there are
4 multiple labs in students' homes.

5 And one of the issues encountered,
6 apparently, in determining the actual cost of
7 virtual charter schools, according to the National
8 Education Policy Center, is that the companies that
9 operate these schools, who provide the services,
10 have not been terribly forthcoming yet in all the
11 costs that they incur, all their financial data.

12 There's a business relationship involved, and we'll
13 take a look at that a little more fully in a moment.

14 Funding these costs, whatever they may be,
15 is another challenge, another financial challenge,
16 with virtual charter schools. Several authorities,
17 including NACSA, say that funding based on the
18 traditional count day, which is a factor in
19 New Mexico, makes little sense for virtual schools,
20 because students complete coursework from home or
21 anywhere any hour of the day or any day of the week.

22 Some states, according to the
23 International Association, have adopted a
24 competency-based approach to funding, in which the
25 payment is dependent upon students' course

1 completion. So the money does not come up front.

2 Three things in particular related to
3 New Mexico come to mind under the funding challenge.
4 One is the effect that a charter school -- virtual
5 charter school may have on the enrollment and,
6 therefore, the funding of schools in other districts
7 by drawing students away. This would be a point to
8 consider.

9 Another possibility -- another factor,
10 rather -- is the possibility, even the likelihood
11 that a virtual charter school will attract students
12 currently being home-schooled who are not part of
13 the public school funding pool anyway. And if that
14 happens, then we have more students to be funded and
15 likely to have an effect on the unit value.

16 And facilities was a topic you were
17 talking about this morning. That's an issue that
18 comes up with virtual charter schools as well. The
19 Public School Capital Outlay Act and the lease
20 assistance provision may need to be examined,
21 because the \$700-per-pupil figure may not apply to
22 virtual charter schools in the same extent -- to the
23 same extent the same way that it does to traditional
24 charter schools.

25 Student recruitment and enrollment,

1 another topic that should be considered. Because
2 the schools are indeed virtual, they are online,
3 they could theoretically enroll students from
4 anywhere. As a result, the recruitment efforts of
5 virtual charter schools tend to be pretty
6 broad-based.

7 The New Mexico Virtual Academy in
8 Farmington, for example, recruited students
9 statewide. And the most recent enrollment
10 figures -- it was a successful recruiting effort,
11 evidently. The most recent enrollment figures show
12 that only 28 of the 354 students currently
13 enrolled -- that's about 8 percent -- come from
14 San Juan County, which, of course, is the location
15 of Farmington. The rest, 92 percent, come from 27
16 other counties altogether; and 113 of them, or
17 32 percent, from Bernalillo County alone.

18 And K12 explains that this enrollment
19 ratio, these recruiting efforts are on purpose, and
20 there are two reasons. One is that K12 likes to
21 have the demographic in a particular school reflect
22 the demographic of the state as a whole; hence, the
23 statewide recruitment efforts.

24 The other reason is that the company tries
25 not to drain the membership of the host district,

1 but rather to bring students in from other
2 districts, with the hope that the effect on the
3 other districts' enrollments will be minimal.

4 There are varying views of student
5 achievement in virtual charter schools. Some -- as
6 there are with achievement in charter schools in
7 general. Some research on the effectiveness of K-12
8 online learning, the International Association
9 referred to a meta-analysis that the U.S. Department
10 of Education did recently -- actually, in 2009 --
11 and found overall, the results -- found better
12 performance among students in virtual schools than
13 those receiving face-to-face instruction. Most of
14 these studies, though, were of post-secondary ed,
15 which was the material, or the data, available at
16 the time.

17 On the other hand, the National Education
18 Policy Center describes as, quote, "largely
19 negative," the findings related to student
20 achievement. And few studies of full-time virtual
21 elementary or secondary schools have been completed.
22 Pages 6 and 7 of your report contain some
23 illustrations of state-specific studies which show
24 similarly mixed -- mixed results.

25 One point of interest, I think, in

1 relation to student achievement and student services
2 is the suitability of virtual -- virtual charter
3 schools for students with disabilities. Like any
4 other public school, a virtual charter school would
5 be subject to the federal IDEA. And virtual charter
6 schools can offer excellent educational services,
7 sometimes through contracts or other arrangements
8 with other providers.

9 There's a case in point from an Education
10 Week story on Page 7 of your report. On the other
11 hand, some sources note that not all online classes
12 are suitable for students with disabilities and not
13 even always that accessible.

14 The U.S. Department of Ed is attempting to
15 address this issue, recently funded a new center
16 called the Center on Online Learning and Students
17 with Disabilities, whose purpose is to explore how
18 online learning can be made more accessible,
19 engaging, and effective for K-12 learners with
20 disabilities.

21 Regarding student assessment, many of the
22 tests will be administered online, just like the
23 lessons. But standards-based assessments must be
24 administered at a location under security testing
25 provisions. What K12 does, if there are enough

1 students from a -- well, if there are enough
2 students from a particular location -- let's say,
3 Santa Fe -- enrolled in the virtual school in
4 Farmington, the school will send a staff member, a
5 teacher, to monitor the standards-based assessment
6 there. Otherwise, the students have to make
7 arrangements to come somewhere where the test is
8 being monitored. But they are subject to the same
9 standards-based assessments as any other public
10 school student.

11 NACSA raises an interesting point about
12 another aspect of the standardized assessments of
13 students: The effect that it might have on
14 state-level accountability and reporting. The roots
15 of the standards-based assessments, according to
16 NACSA, can be distorted by what's called the "churn
17 rate"; that is, the turnover rate of students in
18 virtual charter schools, because many of them aren't
19 there for a very long period of time in a given year
20 and may not be there in subsequent years, so you
21 don't have any real indication of student growth.

22 And I think New Mexico needs to be mindful
23 of this circumstance, in general, and also because
24 of the A-to-F grading system and the proposed
25 teacher evaluation system.

1 Just as learning is different in a virtual
2 charter school, so is teaching, calling for a
3 particular kind of professional development geared
4 toward this particular context.

5 And, according to several sources, there
6 is apparently a major gap or lacking -- a point of
7 lacking service. According to NACSA, most states
8 require no specialized training even now, but some
9 states -- and they cite Tennessee and Wisconsin as
10 examples -- do require teachers in virtual schools
11 to have certification and professional development.
12 And the Georgia Department of Education has actually
13 developed its own professional development program
14 for virtual teachers.

15 But some colleges of ed are stepping up to
16 the plate. In fact, the International Association
17 cites our own New Mexico State University as a good
18 example of one providing effective professional
19 development for teachers. It's nice to hear a good
20 thing about New Mexico for a change.

21 And at one -- while we're talking about
22 teachers, I wanted to mention one other issue that
23 may need to be addressed, which is not in your
24 report. I just read a report in Education Week
25 yesterday about the effect that virtual charter

1 schools may have on teacher employment conditions.

2 There's a school district in Colorado
3 that -- the story focuses on a school district in
4 Colorado that recently cut three foreign-language
5 teachers, replacing them with an online program
6 provided by a subsidiary of K12. Now, like
7 everything, this issue is much more complicated than
8 it sounds; it's not quite that clear-cut. But to
9 the extent that teachers' employment, whether
10 they're hired or not, what they do, how they're
11 compensated for it, what their responsibilities are,
12 may be affected by virtual charter schools or
13 virtual schools in general, it's another point
14 that's rather worth considering.

15 Of particular interest, I would think to
16 yourselves, the Commissioners on the PEC, is the
17 role of chartering authority, something else that
18 needs to be reexamined or -- in terms of the virtual
19 charter schools. NACSA is a good source here.
20 "Because of the potential scale involved, this
21 association says, "authorizing a single high-quality
22 virtual school can provide valuable opportunities to
23 thousands of students, while a single low-quality
24 virtual school can harm thousands."

25 And it's the responsibility of the

1 authorizer," NACSA says, "to carry out due diligence
2 to prevent disservice to students."

3 NACSA identifies a number of particular
4 points that chartering authorities shall consider in
5 reviewing applications for virtual charter schools.
6 And they're listed for you on Pages 9 and 10 of your
7 report. But I probably -- with your indulgence, I
8 probably should highlight them now.

9 One: Fairly obvious is -- I suppose, is
10 expertise in educational technology. It does need
11 to reside somewhere. And if the governing board of
12 the school doesn't have it, then the authorizer
13 needs to kind of step up to the plate. The
14 contracts for school management organizations, what
15 the terms are, whether the governing board has
16 sufficient technological expertise to oversee the
17 provider, the performance record of school
18 replicators, this comes up fairly often. In fact,
19 the Revised Notice of Intent -- and credit here to
20 Ms. Callahan and the Charter School Division -- the
21 Revised Notice of Intent does address this point.
22 If your proposed school replicates something
23 somewhere else, tell us how and what it is.

24 Data management systems, academic
25 reporting. I think Senate Bill 446 here, NACSA

1 recommends something called a "data bridge" between
2 the chartering authority and the school of a very
3 easy and frequent sharing of information back and
4 forth. And if it is a virtual charter school, that
5 probably ought to be fairly well facilitated.

6 Larger scale is another topic that NACSA
7 thinks authorizers should be mindful of. Given the
8 capacity of a virtual charter school, as we noted,
9 will take students from just about anywhere, there's
10 a temptation to grow, perhaps to grow before they're
11 ready. And this is something that authorizers need
12 to be mindful of. And then the special ed services,
13 which we've talked about a little bit already.

14 As I've suggested a time or two so far,
15 there is a business side to virtual charter schools,
16 perhaps even more pronounced than there is between
17 charter schools in general and public schools in
18 general. Perhaps more so than others, virtual
19 charter schools rely on vendors and providers. In
20 fact, one of the conditions that the Farmington
21 Municipal Schools Board placed upon the New Mexico
22 Virtual Academy was a detailed memorandum of
23 understanding between K12 and the Virtual Academy
24 that spelled out all the business relationships.
25 And I've included in your report some of the points

1 from this MOU. So, far it's the only one we have in
2 New Mexico in effect. And it provides an
3 interesting glimpse into what the business
4 relationship might be.

5 I'll just mention some of the highlights
6 quickly. For one thing, the MOU anticipates a
7 long-term relationship, an initial term of ten years
8 and renewal of seven years each, requires that K12
9 have the responsibility to recommend policies for
10 the operation of the program, assesses an annual
11 administrative services fee of up to 15 percent, an
12 annual technology services fee of up to 7 percent,
13 provides that K12 will hire an administrative
14 position, and also be involved in advertising,
15 screening, recruiting candidates, or people to serve
16 in the other positions: A head administrator,
17 business manager, special ed coordinator. Requires
18 the school to use its best efforts to gain approval
19 for extending the grades served and increasing the
20 enrollment. This harkens back to a point that NACSA
21 raises about the large scale potential of virtual
22 schools.

23 And a final point about the issues coming
24 up, I call it striking a balance, moving ahead.
25 Because virtual schools are a growing part of the

1 public school entity, educators and policy-makers,
2 it seems, cannot ignore them, but instead should
3 anticipate them. As NACSA says, finding the right
4 balance between insuring quality, but not yet
5 stifling innovation, may be the most difficult
6 challenge that authorizers and policy makers face in
7 the 20th century.

8 Similar views come from other sources.

9 One, in particular, this National Education Policy
10 Center, takes a somewhat more cautious tone here.

11 Quote, "While we share the excitement of new
12 technologies and the potential these have to improve
13 communication, teacher effectiveness and learning,
14 we are convinced policy managers should move forward
15 cautiously, and only after piloting and thoroughly
16 vetting new ideas."

17 In fact, one of the recommendations of
18 this group is that policy-makers consider a
19 moratorium on new virtual charter schools until a
20 number of unresolved questions can be answered.

21 So that's the end of the second main
22 subject. We're almost done. Bear with me just a
23 moment longer, and we'll take a look at some of the
24 legal questions that virtual charter schools have
25 raised.

1 For New Mexico, in particular, probably
2 the most fundamental question is whether virtual
3 charter schools are even permissible under State
4 law. Some of you -- some of the Commissioners will
5 recall that, in 2009, there were three organizations
6 that applied to the PEC to become State-chartered
7 virtual charter schools. And all three were denied.
8 The PEC denied all three, but not for reasons
9 related to the virtual status. The applications
10 were found to be deficient in other ways.

11 Even so, the Assistant Secretary of
12 Education, Dr. Duran, Mr. Brown mentioned earlier,
13 asked for a legal opinion about the legality of
14 virtual charter schools in general. The Assistant
15 Secretary asked two questions of, then, the counsel
16 for the Charter Schools Division, Rudy Arnold, whom
17 some of you will remember.

18 The questions were whether the PEC could
19 authorize virtual charter schools, and whether the
20 Secretary of Public Education could waive the
21 requirements of the School Code to allow the
22 creation of virtual charter schools.

23 And, very briefly, the counsel replied, to
24 the extent that State law contemplates schools as a
25 physical presence, brick-and-mortar buildings,

1 particular place tied to attendance areas with walk
2 zones, allowable class sizes, all of which, he said,
3 suggested that the legislature had in mind the
4 physical presence of children in school buildings.

5 And I've not attached this opinion to your
6 report, but I'd be happy to provide it, and I've
7 been asked if I would. So I'll provide a copy of
8 that opinion to you later today.

9 Additionally, the attorney noted that the
10 legislature could have permitted virtual schools
11 when it passed the statewide Cyber Academy Act, but
12 it did not. Therefore, the counsel's conclusion was
13 that the PEC could not legally authorize virtual
14 charter schools, and the Secretary could not waive
15 requirements allowing virtual charter schools.

16 Now, even if this opinion were to be
17 upheld -- and one might argue, as I suspect the
18 New Mexico Virtual Academy does, that having a
19 learning center, the building that was discussed
20 earlier today, satisfies the requirement of a
21 physical place, because it will host offices, as I
22 understand it; it will provide a place for students
23 to come and learn. Perhaps that meets the
24 requirement, perhaps not.

25 And Connections Education, which has

1 applied for New Mexico Connections Academy, along
2 with the Rio Grande Foundation, has proposed a
3 teaching/learning center in Santa Fe, presumably on
4 the same grounds. So there will be a physical
5 presence. It remains, however, it seems to me,
6 frankly, an interesting question to consider.

7 Also in State law, as I'm sure you know,
8 there's a prohibition in the Charter Schools Act
9 that says, quote, "The governing body of a charter
10 school shall not contract with a for-profit entity
11 for the management of a charter school."

12 Now, the prohibition seems clear enough in
13 theory. In fact, though, it may become -- or in
14 practice, it may be difficult to apply, in part,
15 because the term "management" is not defined. We
16 were looking a moment ago at the MOU between the
17 NMVA -- New Mexico Virtual Academy -- and the
18 Farmington Schools -- the governing body, rather, of
19 the school and K12. There's a long list of
20 administrative functions that the NMVA is providing:
21 Assisting with handbooks, discipline. We talked
22 about the involvement in recruiting personnel; just
23 a wide range of things. In fact, by its own
24 admission, K12 is doing everything for the school
25 except managing instruction.

1 When asked whether this relationship
2 violates the prohibition, the response was simply
3 that the -- what K12 is doing does not constitute
4 management of the school, because the company does
5 not have the authority to determine policy, only to
6 recommend policy. And that is spelled out in the
7 MOU. So it's, again, an interesting question that
8 needs some examination.

9 Two other legal points from other
10 jurisdictions. We've talked about two things in
11 New Mexico. But from two other jurisdictions --
12 North Carolina had a case similar to our own.
13 Recently, a local school board approved a virtual
14 charter school to be operated by a nonprofit group
15 affiliated with K12. And there's some details of
16 the case on Page 14 of your report. The essence of
17 the story is this:

18 The State Board of Ed in North Carolina
19 had previously announced its intention not to
20 entertain applications for virtual charter schools
21 in school year '12-'13. Even so, the local school
22 board approved one. It was the Calaveras County
23 Board Of Education approved the North Carolina
24 Virtual Academy. Evidently, under North Carolina
25 law, however, the State Board does have the

1 authority to step in at that point, which it did,
2 and denied the charter school, at which point
3 North Carolina Learns, the local group that was
4 proposing the school, sued the state in
5 administrative court, where the judge granted
6 approval of the academy's application.

7 The State Board, together with some 89 of
8 the school -- of the state's school districts,
9 appealed that decision to the Wake County Superior
10 Court, and the judge in that case overturned the
11 administrative judge's ruling, thereby denying the
12 charter school.

13 And we've learned just a few days ago
14 that -- North Carolina Learns -- or NC Learns -- has
15 decided to appeal the ruling of the Superior Court.
16 So the issue is not over yet. It's kind of gone
17 back and forth.

18 But one interesting little sideline here
19 is that the attorney representing North Carolina
20 Learns is a sitting member of the State Senate in
21 North Carolina.

22 Finally, we come to some issues of
23 security violations, investigations, and class
24 action lawsuits. These are of some interest to
25 New Mexico, I think, because they involve K12, the

1 provider of the educational program for the
2 New Mexico Virtual Academy. I might point out that
3 K12 is generally referred to as the largest provider
4 in the country of educational programming for --
5 virtual educational programming. It is not the only
6 one; but it is apparently one of the more prominent.

7 And these lawsuits that have been filed,
8 these class-action suits, were apparently
9 precipitated by a story in the New York Times in
10 December of last year. That story examined the rise
11 of online schools in general, with a focus on K12,
12 particularly the Agora School of Pennsylvania, and
13 found a number of issues to raise. They're
14 spelled -- many of them are spelled out in the
15 report, but just to mention a couple of the
16 highlights.

17 Much of the funding that K12 receives from
18 government sources is rolled into advertising,
19 lobbying, and recruitment, rather than actual
20 education. There was a case of a virtual academy,
21 K12 virtual academy in Colorado, that was -- that
22 was receiving funding for students who weren't even
23 enrolled. Much of the money had to be reimbursed.
24 K12 was said to maximize its income by establishing
25 virtual schools in poor districts, which receive

1 more money than some other districts, even though
2 very few of the students attending the virtual
3 school come from the poor district.

4 And although K12 claims that the
5 performance of its students is superior to their
6 peers in traditional schools, a study of students in
7 eight different Pennsylvania virtual charter
8 schools -- that was done by Stanford University, by
9 the way -- concluded that in every subgroup, with
10 significant effects, cyber charter performance is
11 lower.

12 Anyway, there were points like this raised
13 in the article in the New York Times, and that
14 led -- apparently led to the filing of several
15 class-action lawsuits in the U.S. District Court for
16 the Eastern District of Virginia, alleging --
17 emphasize the word "alleging" -- violations of the
18 Securities Exchange Act of 1934. And, again, the
19 allegations -- many of the allegations are laid out
20 for you in the report. A couple of examples:

21 K12 is alleged to have engaged in improper
22 and deceptive recruiting and sales strategies aimed
23 at enrolling students regardless of how well suited
24 they might be to the program; failed to disclose
25 administrative pressure from upper management to

1 pass students, despite poor or nonexistent academic
2 performance. Defendant's statements regarding the
3 company's performance and practices were false,
4 misleading, lacked a reasonable basis. Because of
5 all of this, the company's stock fell precipitously
6 affecting shareholders.

7 And that was probably one of the
8 motivations as well. In fact, the K12 common stock
9 fell approximately 23-and-a-half percent on
10 December 13, shortly after the story was published;
11 and 34.4 by December 16, unusually high.

12 And Mr. Chair and members of the
13 Commission, nothing says business, whether you're
14 talking schools or anything, like the involvement of
15 Wall Street. And that's where we have it here. So,
16 Mr. Chairman, members of the Commission, those are
17 my remarks. I'd be happy to respond to questions.

18 THE CHAIR: Thank you, Dr. Harrell. We'll
19 start with Commissioner Bergman.

20 COMMISSIONER BERGMAN: Thank you,
21 Dr. Harrell. You've kind of generally touched on
22 this in your remarks earlier. But I have not heard
23 anybody raise anything as specific as what I would
24 like to raise now in regard to a statewide virtual
25 charter school.

1 My district includes a number of very
2 small school districts in close proximity to
3 Roswell. I've got Dexter, Hagerman, and Hondo, for
4 instance. I am concerned about the impact that a
5 statewide school recruiting students statewide would
6 have on those small districts. If they took just
7 five or ten students out of those small districts,
8 that could have a very significant negative impact
9 on their budgets.

10 I just wanted to urge you, through your
11 LESC, to get the legislature to look into how --
12 somehow -- before I see a headline that says, "Mora
13 Is Going Bankrupt," or something, because they lost
14 a bunch of students. So I wanted to raise that
15 issue.

16 MR. HARRELL: Thank you, Mr. Bergman.

17 THE CHAIR: Thank you, Commissioner
18 Bergman.

19 COMMISSIONER CARR: Mr. Chair?

20 THE CHAIR: Commissioner Carr.

21 COMMISSIONER CARR: I have about eight
22 questions.

23 THE CHAIR: Use your microphone, please.

24 COMMISSIONER CARR: Yes, I will. Bear
25 with me. I -- after -- at close to the conclusion

1 of your report, the first thing that came to my mind
2 was virtual schools are a virtual Pandora's box
3 right now. And based on most of the research
4 that -- you know, all the research I've read -- that
5 virtual school students don't do as well.

6 And the -- another -- and a lot of other
7 studies that I've read that don't relate directly to
8 virtual schools would be the fact that we move very
9 quickly in trying new things before we've actually
10 done research using our students as guinea pigs.
11 And I know I wouldn't want my child to be a guinea
12 pig.

13 You know, I'm educated. My wife and I are
14 both teachers. And we might -- neither one of us
15 would want our child educated via computer. And
16 there are probably -- I'm sure -- and there are
17 cases where it's maybe preferred. I mean, there
18 are -- you know, there are individual cases. And,
19 you know, you mentioned autistic kids and things
20 like that, where it's better. I've seen students
21 who would be better off, you know, doing a lot of
22 virtual schooling, you know, on a small scale, a
23 small percentage of kids who can work on their own,
24 or it's an added part of the curriculum.

25 So I guess my first question is what --

1 what can virtual charter schools offer that the
2 State of New Mexico -- the PED and local schools --
3 what can they offer that's not already being
4 offered?

5 MR. HARRELL: Mr. Chairman,
6 Commissioner Carr, a few things come to mind,
7 although I don't know that I'm in the position to
8 provide a definitive answer. But, certainly,
9 convenience is one of them. Accessibility at any
10 time, almost from anywhere, as long as there's
11 Internet access, seems to be a particularly
12 attractive factor to students that have pretty
13 complicated lives, whether they're working to
14 support their families, or they're training for the
15 Olympics, as happens now and then, things of that
16 sort. So that would certainly be a factor.

17 I would think, too, that there may be an
18 expanded opportunity, greater variety of courses.
19 Particularly to build somewhat upon Commissioner
20 Bergman's point, if you're a student in a small
21 district, and you want to take AP Physics, and
22 you're only one of two students -- or maybe the only
23 student -- in that small district who wants to, then
24 access to an online course would be an advantage.

25 I might mention, too, that while this

1 report is focused on full-time virtual charter
2 schools, that is not the only option for online
3 learning, as Commissioners are well aware. What's
4 called "blended learning" is, I think, a more common
5 practice, in which there's a mixture of traditional,
6 in-class instruction, and online instruction, which,
7 in many cases, would meet a lot of the needs that a
8 full-time virtual charter school would.

9 And, in fact, our graduation requirements,
10 as you know now, require -- or our graduation
11 standards, rather -- require at least one course in
12 distance ed to receive a diploma of excellence. So
13 the State is encouraging online learning in that
14 regard.

15 Other issues come to bear, though. If
16 what you're looking at is a full-time virtual school
17 instead of -- completely instead of -- a traditional
18 brick-and-mortar school.

19 COMMISSIONER CARR: Yeah. I know that
20 there's a -- I forgot the name of it. But we offer
21 on- -- what's the --

22 COMMISSIONER SHEARMAN: New Mexico IDEAL.

23 COMMISSIONER CARR: Yeah, New Mexico IDEA
24 [verbatim].

25 COMMISSIONER SHEARMAN: IDEAL New Mexico.

1 COMMISSIONER CARR: And Taos actually has
2 a virtual -- not a virtual -- where the students
3 actually come in and work under a teacher's
4 supervision and that sort of thing, you know. And
5 that blended idea makes more sense than anything,
6 you know. The idea of doing everything online is
7 interest- -- scary to me, and I would like to see a
8 lot more study on that type of thing.

9 So another question -- I -- I'll make this
10 a rhetorical question -- is I -- you know, how --
11 and it's a continuous question, you know, how --
12 accountability. Yeah, okay. Students have to maybe
13 come in and take the SBA or the -- you know, and do
14 that. But when they take a test online or they
15 submit work online, you know, it's pretty -- I mean,
16 we don't -- we have no verifica- -- I don't think
17 there's any way to verify who actually submitted the
18 work.

19 And, you know, I just took a defensive
20 driving class online. I did it correctly. A
21 defensive driving class; right? I mean, I did it
22 online. And I didn't have a little joystick, where
23 we pretended to drive, either. And I did it
24 correctly. I went through the material. I took
25 notes, and I took a test, because, you know, I'm an

1 ethical person. And I did it.

2 I -- you know, I could have asked -- my
3 wife wouldn't have done it, but I could have asked
4 her to do it, or paid somebody to take that class
5 for me. And then I would have gotten that discount
6 on my insurance. I mean, it's very easy to do that.
7 So that's a huge -- I don't expect you to answer
8 that one. I -- but that's a question that I have.

9 I have concerns in regards to -- I mean,
10 to home-schooling. I have nothing against
11 home-schooling. But this is a way to get around the
12 law and get -- get things -- you know, it's just --
13 it's kind of to circumvent our laws in regards to
14 home-schooling and funding, or it can.

15 And so -- and then here's the other one.
16 In regards to Farmington, I mean, this is not a
17 question, either, but a statement.

18 And it goes to what Commissioner Bergman
19 said. If a school is going to be offering
20 enrollment in all 33 counties, the law -- we should
21 have a law that says that that's at least a state
22 charter school, with -- and so that people from
23 districts and people from all 33 counties could come
24 in and have comments about whether -- you know, how
25 that's going to affect them on a local basis.

1 And I represent a lot of "local rule"
2 schools, too, you know, that, you know, one or two
3 students could make a huge difference. And the
4 Farmington issue is of great concern to me.

5 Special ed. You mentioned autistic
6 students. The growing trend on special ed has been
7 inclusion, where special ed students are no longer
8 separated from other students, but they're included
9 in other classrooms. And they do better when
10 they're developing their social skills, and they
11 don't feel isolated and feel like they're not equal
12 with the other students in the -- in a school
13 setting.

14 So I don't -- except maybe with autistic
15 kids, maybe, or -- and I'm sure there's always
16 exceptions, as there are with all learners. I would
17 think that most people involved in special ed would
18 think that virtual learning wouldn't work out very
19 well.

20 And then -- and here's the other issue. I
21 mean, this is an issue that's going on -- it's been
22 going on at a college level already. You can get a
23 master's degree and a Ph.D. online. I don't know
24 what -- I mean, you know, they could be worthwhile,
25 maybe after you've already earned your bachelor's

1 degree or something. It's -- and they -- there's a
2 growing trend to hire part-time college instructors,
3 who, quite often, maybe aren't up to par. Or they
4 may offer them -- pay them \$2,000 per class. As a
5 matter of fact, if I wanted to teach a class at UNM
6 part time, I think they would pay me \$2,000 for one
7 class for one semester.

8 What kind of quality people are we going
9 to get to -- to work -- to teach for \$2,000 per
10 semester? I -- you know, I -- I wouldn't want -- I
11 wouldn't want to go to a class -- I mean, you know,
12 that was being taught by a part-time professor,
13 necessarily. And a kid -- and they could be fine.
14 I -- they could be a professional in the field or
15 something, and they're just wanting to add something
16 or something. And sometimes that can work out.

17 But I would think overall in most cases,
18 part-time versus full-time faculty? Somebody
19 putting their whole efforts into something is very
20 different than someone doing it almost like a hobby
21 or for extra money.

22 So I think that that's -- that's an issue
23 to talk about. And I want -- I don't want to see
24 somebody from another state teaching a class in a
25 virtual school. I mean, I want to employ people

1 from New Mexico if we're going to do this as well.
2 And I don't think there's anything to stop a virtual
3 school from hiring a teacher from another state
4 right now. Of course they'd have to have -- I would
5 assume they would of course have to have
6 certification in New Mexico, you know. And, of
7 course, and how would they relate culturally and,
8 you know, to -- you know, to us, if -- you know, if
9 they weren't from here, they didn't live here. I
10 would think there would be a lot of issues
11 surrounding that. And I don't know, you know, if
12 there's been any studies on that in particular.

13 But those are all questions. I mean -- of
14 course, under current law, I mean, there's no way we
15 could place a moratorium. We have to follow current
16 State law. I mean, you want it to -- we'd have to
17 maybe put that in legislation, that we could allow
18 moratoriums or something until further study is done
19 of some of these new innovations.

20 And I don't want to stifle innovation
21 either. That's the whole purpose of charter schools
22 is they're going to do something new and much better
23 than what's already being done. And if they're not
24 offering something new and better, then -- then
25 you -- then I don't want -- I don't want it to

1 exist. I want it to be better.

2 And if it's better, great. If it's -- if
3 they're not offering anything new, and it's maybe
4 just a way for -- for a for-profit company to make
5 money or to give somebody -- you know, our students
6 come first. And -- and I -- I think if we don't
7 look at this more closely, I think our students are
8 going to be harmed by this. And I think -- I think
9 there's a lot of students who have already been
10 harmed by virtual education. So I'll leave it at
11 that. Thank you, Mr. Chair.

12 THE CHAIR: Thank you. Commissioner Gant
13 and then Commissioner Shearman.

14 COMMISSIONER GANT: I just have -- I'll
15 keep it as short as I can.

16 THE CHAIR: Use your microphone, please.

17 COMMISSIONER GANT: I'm sorry. In
18 Dr. Harrell's discussion, you talked about
19 recruitment. And Deputy Aguilar, I believe it was
20 at the last meeting or the one previous, he came
21 back and made the very clear statement that SEG
22 funding cannot be used for advertisement and, I
23 believe, recruitment. Is this correct?

24 MR. AGUILAR: Mr. Chairman, provisions in
25 House Bill 2, language contained in House Bill 2 for

1 Fiscal Year '13 precluded the use of SEG for that
2 purpose.

3 THE CHAIR: All right. Now, I guess
4 Farmington doesn't fall under '13, School Year '13,
5 do they?

6 MR. AGUILAR: Mr. Chairman, they're
7 beginning operation now in School Year '13.

8 COMMISSIONER GANT: All right. So my
9 question arises, then, with how can they -- K12, in
10 this case -- be using SEG -- how can they prove
11 they're not using SEG funding for recruitment if
12 they're doing it across the state and they're
13 spending a lot of money? That's a question that
14 they need to be proving they're not using SEG for
15 that purpose, right?

16 MR. AGUILAR: Mr. Chairman, the answer to
17 your question is yes. They do need to prove that.
18 Secondly, through the charts of accounts, they do
19 have other funding sources; not a lot of money, but
20 they receive the federal funding -- start-up monies.
21 And I don't know if they have a foundation or not.
22 But they can use those monies as long as they're not
23 State General Fund monies for that purpose.

24 So -- and that can be accounted for
25 through the -- the chart of accounts. So we can

1 track that for all charter schools.

2 COMMISSIONER GANT: I would say that's one
3 of the items that the authorizer, whether it's the
4 PEC or the local, need to be watching very closely,
5 because for-profit, or even nonprofits, they're not
6 going to want to get too deeply into these funds
7 that may cost them in the long run. So I think we
8 need to watch that one very closely.

9 MR. AGUILAR: Mr. Chairman, our analysts
10 in our School Budget, in the Financial Analysis
11 Unit, that's one of their checkpoints, as they
12 review the financials that are submitted by the
13 schools, all charter schools this year, beginning
14 this year.

15 COMMISSIONER GANT: Thank you. Next, in
16 your review, Dr. Harrell, did you find anywhere
17 that -- or any discussion or value points that talk
18 about how a virtual school, K-12 -- a lot of them
19 like to talk about being a K-12, kindergarten
20 through high school -- how these virtual schools can
21 actually teach the social skills needed by all
22 levels of students as they grow older when they
23 start interacting with the world, and how these
24 social skills can be taught virtually to prepare the
25 students for the areas we talk about often? We talk

1 about the ability to go into higher education or
2 into the workforce. And many of the communities we
3 deal with across the state, they have, you know --
4 the economic status in many communities have parents
5 that both work, if they're lucky to have two
6 parents, or single moms and single dads all working.
7 And we're not sure about how they're getting the
8 instruction in social skills, even if they go to a
9 public school, a traditional public school.

10 So how do virtual schools say they're
11 going to teach these social skills needed by
12 everybody, you and I included? I mean, they're not
13 going to teach us. But our children, our
14 grandchildren, how are they going to do that? Do
15 you know? Were there any readings on that?

16 MR. HARRELL: Mr. Chairman,
17 Commissioner Gant, there is a good deal said about
18 that in the literature about virtual charter
19 schools. One thing -- one point that I noticed is
20 that, according to several sources, there are --
21 apparently, in the early days of virtual charter
22 schools, there was a good deal of concern about the
23 very point you raised, that students were feeling
24 isolated or being isolated. They spend a great deal
25 of time in front of the computer and seldom interact

1 with any other human beings, for that matter.

2 More recently, however, the trend appears
3 to be to engage students in more frequent
4 opportunities for interaction with other students,
5 with their teachers. They will meet physically for
6 field trips. They will sometimes gather at a
7 learning center, such as the one the New Mexico
8 Virtual Academy has secured. They engage in other
9 activity -- sports, even. They may not have enough
10 to field a football team, but they may get together
11 for pickup basketball or something like that.

12 So there's apparently a greater awareness
13 among the virtual school community, the virtual
14 charter school community, of the need for social
15 interaction. How frequent or effective it is
16 probably depends upon the school itself, as much as
17 the student and the student's family, for that
18 matter.

19 So if that's -- that's one of the things
20 that comes up. And it's also apparently the case
21 that the younger students spend less time in front
22 of the computer than the older ones. So there is
23 perhaps more of an attempt for outreach for social
24 activities for younger students than for those
25 perhaps in high school.

1 COMMISSIONER GANT: I will note, from my
2 experience in volunteering in the schools, or school
3 board, or whatever, that oftentimes, the student you
4 want to reach, maybe through virtual schools, the
5 ones who need to do it differently, for whatever
6 reason, are the ones that don't participate. They
7 don't get into the clubs; they don't go out for
8 athletics; they don't get into music and chorus and
9 band and all these things.

10 Even if they're offered, I mean, almost
11 shoved at them, you can't demand, you can't require
12 they do it. And if a virtual school offers these
13 items, like clubs and honor -- and all this other
14 stuff, you can't force them to do it. So you're
15 going to have those students sitting out there that
16 don't want to participate, regardless of what you do
17 for them.

18 So I still have a problem with the social
19 skills. I really do. They just -- some of them
20 want to be isolated. And some of them don't learn
21 those social skills. And then they -- then when
22 they get out into the real world -- not the
23 virtual -- then they have their problems. And they
24 go off to the higher ed, and they get into the real
25 world, and they can't -- oftentimes can't handle it.

1 So that's just a point I'd like to make.

2 Standardized testing, you brought up,
3 Dr. Harrell, is my next subject. And as you've
4 noted, Farmington's virtual school has -- the
5 majority of the students are somewhere else in the
6 State of New Mexico, Albuquerque District, whatever.
7 And my question, I guess, may be directed to you,
8 Dr. Harrell, or the Deputy here. In what way are
9 these standardized test results accounted for? Are
10 they accounted for, say, in the Albuquerque
11 District? Are they accounted in the Farmington
12 District? Or how -- the students are physically
13 located one place and taking the test somewhere
14 else.

15 MR. AGUILAR: Mr. Chairman, and
16 Commissioner, it's contemplated that the students
17 will either travel to Farmington, I believe -- I
18 can't speak -- or to other locations in the state
19 where staff from the school will administer the
20 standardized tests. As a stand-alone school, the
21 results of those tests are the responsibility of the
22 charter school. And so, for accountability
23 purposes, those students will be accounted for by
24 that particular school.

25 COMMISSIONER GANT: And thank you, Deputy.

1 That raises a question, to my mind, is that in many
2 areas, we've talked about, that Commissioner Carr,
3 Commissioner Bergman talked about, they're very
4 small school districts. And if one or two of the
5 students come out of these districts, or even
6 Albuquerque -- well, they've got a bunch of them
7 there.

8 But even Animas and Artesia and all these
9 other real small districts, Mora, et cetera, if
10 there's one or two, then there's a -- becomes the
11 responsibility of that parent or guardian or whoever
12 the adult is in that relationship for the virtual
13 school, to get that child, that student, to a
14 teaching -- a testing location. Now, if you're a
15 single parent, strapped for cash, you may or may not
16 have transportation. Then you run into a problem.

17 So what's -- you know, I see that as a
18 barrier to many children that may -- may be
19 successful in a virtual school, that being a barrier
20 for that child, that student, to be able to be in a
21 virtual school, if that parent cannot get that child
22 to a testing location. And I'm quite sure -- I'm
23 not going to bet on it -- but the school that's
24 being run is not going to send somebody out to Mora
25 to give the kid a test.

1 So how do we -- that's a barrier. And
2 we -- by State law, you cannot have a barrier for a
3 child to join a public school. And this is a public
4 school. Am I correct?

5 MR. AGUILAR: Mr. Chairman, all charter
6 schools, by nature, are public schools. I think
7 it's important to note that attendance in charter
8 schools is by lottery. Folks sign up and show a
9 desire. And I believe that it's -- that all of the
10 requirements that are associated with participating
11 in that charter school are made clear on the front
12 end.

13 And so the assumption that they would make
14 themselves -- they would avail themselves to a
15 particular location for testing would be conveyed on
16 the front end.

17 COMMISSIONER GANT: Well, then, we are --
18 Deputy, my issue, though, is yes, that's how it
19 works. But that parent and that student go for --
20 or they read it online, or they get this information
21 in the mail, that you have to be able to go to a
22 test site. And then the parent looks at that and
23 says, "Johnny, I can't do that."

24 So, therefore, to me, that child had a
25 desire to do it, or the parent had a desire to do

1 it, but there's a barrier that doesn't allow them to
2 even get into the lottery, even to get on the list
3 to say, "I can do it."

4 That is a barrier. And I think that we're
5 putting something in front of these kids, or these
6 parents, that says, "I can't do it."

7 I know there's parents down in Cruces that
8 can't do it. They cannot take their kid, hardly, to
9 school. They can't take their kid to school, to a
10 public school. They depend on the bus system,
11 because they have to be at work. If they're not at
12 work at 7:30 in the morning, goodbye job. And that
13 could be the same way -- to me, that's a barrier
14 that we need to look at.

15 Commissioner Carr brought up the -- the
16 comment he made about teachers, licensed teachers,
17 basically. And I guess -- and I agree with him --
18 shouldn't we -- is there a way -- maybe we can't do
19 it by law -- of requiring that the teacher who is
20 going to be employed by these virtual schools be
21 part of the community and not off in Ohio or
22 Washington, D.C., or whoever or wherever, maybe in
23 India.

24 And, you know, sure, they get certified to
25 teach in New Mexico under New Mexico standards or

1 whatever it is. But to be part of the community? I
2 mean, that's important that teachers are a part of
3 the community, in my view, in which they teach,
4 because they have an ownership to what they're
5 doing. They're not just getting a paycheck.

6 MR. AGUILAR: Mr. Chairman, Commissioner,
7 I can't state with certainty that all of the
8 certified staff that would be providing instruction
9 are physically located in Farmington. I can -- and
10 I'll check into that. It was my understanding from
11 the charter school that a -- that those staff would
12 be located in the state and would be living here.
13 All of them need to meet the State licensing
14 requirements and hold an active teaching license in
15 New Mexico. And all of those folks will be assigned
16 the class loads so that they will be the teachers of
17 record for those students.

18 Again, I don't believe there are any
19 out-of-state teachers, physical people that are
20 involved in terms of providing the direct
21 instruction. But, again, I would have to do a
22 little bit more investigation before I could -- I
23 could absolutely confirm that.

24 MR. HARRELL: And, Mr. Chairman and
25 Commissioner Gant, and Mr. Aguilar, if I might add,

1 the New Mexico -- the K12, the provider, has
2 provided assurances that all the teachers will be
3 certified -- will be licensed, Level I, II, or
4 III-A, and that the school will pay statutory
5 minimum salaries, at least -- so they do intend to
6 satisfy those provisions.

7 THE CHAIR: Counsel Brown?

8 MR. BROWN: Mr. Chair, Commissioner Gant,
9 I do want to point out, for a point of -- purpose of
10 clarification, that the Charter Schools Act does
11 state that -- and I'll just read the two sentences
12 that apply. "A charter school shall hire its own
13 employees. The provisions of the School Personnel
14 Act shall apply to such employees, provided,
15 however, that a charter school may determine, by
16 indicating in its charter, that either its governing
17 body or head administrator shall make all employment
18 decisions."

19 So that, to me, it reinforces that the
20 laws of the State of New Mexico apply to people who
21 are employed in the State of New Mexico. So I think
22 that dovetails with what Mr. Harrell just said.

23 COMMISSIONER GANT: Thank you. Thank you,
24 Mr. Chair.

25 THE CHAIR: Thank you, Commissioner Gant.

1 Commissioner -- who was first?

2 COMMISSIONER SHEARMAN: Me.

3 THE CHAIR: So Commissioner Shearman and
4 then Commissioner Lopez.

5 COMMISSIONER SHEARMAN: Thank you.

6 Dr. Harrell, going back to your report, on Page 12,
7 where you talk about the legal questions about
8 virtual schools, and you allude or refer to Rudy
9 Arnold opinion letter back in 2009, that -- well, I
10 won't restate what you already stated, but schools
11 are brick and mortar, so on and so forth.

12 Is there not a New Mexico Administrative
13 Code rule -- pardon me -- that also speaks to -- I'm
14 trying to recall what it says -- something about no
15 more than 50 percent of instruction can be delivered
16 other than face-to-face, teacher and student? I
17 know I'm putting you on the spot. But do you recall
18 that? Or perhaps Mr. Brown?

19 MR. HARRELL: Mr. Chairman, Commissioner
20 Shearman, I would be delighted to defer to
21 Mr. Brown. It does sound to me as if you're
22 alluding to the Distance Education Rule. But
23 whether those are the precise numbers, I'm not as
24 familiar with the regulation as a statute.

25 MR. BROWN: Mr. Chair, members of the

1 Commission, Commissioner Shearman, you are referring
2 to -- that is a reference to the Distance Learning
3 school -- Distance Learning Rule, rather. And I
4 read, you know, Mr. Rudolph's [verbatim] 2008
5 report, and then I've just read this -- the report
6 from Dr. Harrell.

7 And before I address your question, I do
8 want to point out that the whole, I guess, confusion
9 in this area is that the technology of distance
10 learning has outpaced New Mexico law. And that's
11 really what the problem is here, that you have, you
12 know, I guess good-faith service providers around
13 the country who want to go and -- into states
14 educating public school students and private school
15 students and maybe having their own schools. Who
16 knows?

17 And I was looking on Page 13 of
18 Dr. Harrell's report, and he paraphrased what
19 Mr. Rudolph [verbatim] had said about, you know, the
20 legislature had not put -- they had chosen not to
21 put in distance learning charter schools in the
22 statewide Cyber Academy Act.

23 And I look at it as slightly different. I
24 have it with me. I read the statewide Cyber Academy
25 Act. It does not address the issue. That's the

1 problem. It just doesn't address it. It doesn't
2 say either you can or can't do it. It created its
3 own world of how the State saw -- I mean, it also
4 doesn't address IDEAL New Mexico. That is something
5 that this agency -- that's how we implement the
6 statewide Cyber Academy. So that's not in there,
7 either. So we're kind of like a -- a fish out of
8 water as to how to address that.

9 But to get to your question about the
10 distance learning, I don't think it says 50 percent.
11 But it says you can't have all of it. And that
12 rule, if you read it, it's talking about school
13 districts. It doesn't say anything about the --
14 the -- the Public Education Commission. It doesn't
15 say anything about State-authorized charter schools.
16 I guess you could say that it anticipated, at the
17 very minimum, locally chartered charter schools at
18 the time.

19 But it's -- it does apply, yes. But the
20 wording of it, it's not that clear; because, again,
21 we wrote a rule, you know, somewhat in a bubble,
22 some years ago. I think the rule came out in 2007,
23 as the Charter School Act was being amended to allow
24 for State-authorized charter schools. So have they
25 converged? Maybe irregularly, yes, but not fully.

1 So, you know, I think it remains to be
2 seen what, if anything, the legislature will do in
3 this area, because I assume that's why Dr. Harrell
4 is here is to kind of, you know, see what you think.
5 And he's giving you what he thinks, and he's done a
6 very detailed analysis. But it -- the -- the law
7 and the rules, it's kind of a quagmire as to what
8 applies and what doesn't. And so that would make
9 the job difficult for you when you sit down and you
10 look at these applications.

11 COMMISSIONER SHEARMAN: Okay. Thank you.
12 I still -- in my mind, I can see a number there, 50,
13 75 percent. I just cannot recall exactly. But
14 that's not necessarily the issue at this time.
15 Thank you.

16 Dr. Harrell, let me ask you. When you
17 were speaking about the cyber academy that's been
18 approved in Farmington, on Page 10, when you're
19 speaking about the MOU that was signed between K12
20 and the Farmington School District, in the last
21 bullet on Page 10, indicates that K12 will assess an
22 annual administrative service fee to the school of
23 up to 15 percent of the school's program reviews.
24 And then the next bullet on the top of Page 11
25 assesses an annual technology service fee of up to

1 7 percent.

2 That's 22 percent of their program
3 revenue. I'm assuming that's SEG. Did they -- in
4 any of your research, did they articulate more
5 specifically what an administrative service fee is
6 or what a technology service fee is?

7 MR. HARRELL: Mr. Chairman,
8 Commissioner Shearman, I put that not quite in those
9 words, but I put that very question to the K12
10 representatives to whom I -- whom I spoke. And the
11 response was that the administrative services fee --
12 well, first of all, it's up to 15. It may not
13 actually be 15. But it is up to 15 percent. And
14 you're correct; the SEG money and the federal money,
15 any revenue that the school receives.

16 The administrative services fee to that
17 whatever that amount is will apply to the wide range
18 of functions that the vendor will provide. And I --
19 I don't have them all han- -- well, let's see. If
20 you'll look on Page 11, further down on Page 11 of
21 the staff report, this list, which has seven or
22 eight items in it, is only a partial list.

23 If you look at the MOU itself, you'll be
24 interested to see an even longer list of particular
25 activities the vendor will provide: Preparing

1 forms, manuals, handbooks, working on legal matters,
2 helping with preparation of the budget, recommending
3 discipline policies, developing teacher training,
4 centralized purchasing, a wide range of activities
5 that K12 will perform.

6 And when I put that very question to the
7 K12 representatives, I was told that these are the
8 things that the 15-percent administrative services
9 fee will be applied to. And I should point out
10 that, as you say, this could add up to 22 percent if
11 you look at them both. The technology services fee
12 is for tech support for the -- generally.

13 COMMISSIONER SHEARMAN: Software and the
14 platform and all that.

15 MR. HARRELL: But there is also a fee.
16 And I do not know what it is. But the governing
17 board has to pay something for the educational
18 program itself. So whatever that costs is in
19 addition to these two fees. And, on top of that, as
20 I think one of my footnotes indicates, the
21 chartering authority, which in this case is the
22 Farmington School Board, is entitled to retain up to
23 2 percent of the school's SEG. Whether Farmington
24 intends to or not, I don't know. But they're --
25 those things add up.

1 COMMISSIONER SHEARMAN: Well, my other
2 observation -- or possibly question -- is, in my
3 experience, school districts spend over 80 percent
4 of their SEG funding to pay their teachers, and the
5 benefits of those teachers, and aides and so forth.
6 This has already accounted for 22 percent. If they
7 have to pay the district another 2 percent, we're up
8 to 24 percent.

9 Then I was assuming the technology fee was
10 the software and so forth to run K12's program. But
11 if it's not, then that is very expensive. They're
12 already up to almost 25 percent of their income to
13 pay fees to their service provider before they even
14 start paying their teachers.

15 I don't see how that -- I don't think
16 they'll have enough money to do it all. Not my
17 problem. We didn't authorize them. But I -- it
18 just is a serious question in my mind.

19 I don't have another question, but I do
20 want to make a statement. In all the years that
21 I've been on PEC, anytime a virtual school has come
22 before us, I've had serious, serious questions about
23 it. My background is when I was with Eastern
24 New Mexico University for almost 30 years, I headed
25 the task force that started online distance

1 education for the University for the Roswell campus.

2 We started the program. We contracted
3 with a platform provider. We wrote the courses, in
4 some cases. We had huge enrollments because lots of
5 people want to take advantage. They don't want to
6 drive away from their homes and leave their children
7 and their jobs to further their education.

8 But remember, these were adults. These
9 were adults. And it was not at all unusual for us,
10 in those first years, to have a 50-percent failure
11 rate in those classes. Online distance education is
12 not for everyone. And the younger the child is, the
13 more difficult I can see that commitment to the
14 time, the strict discipline that it's going to take
15 to sit there and do that work by yourself, and the
16 discipline and the time allocation it's going to
17 take from the parents or the caregiver or whomever
18 is going to be at home with that child doing that
19 work. Somebody's got to help them.

20 So until the day comes -- and I hope PEC
21 has a big job or a big hand in it -- until the day
22 comes that New Mexico has very clear policies and
23 procedures to authorize virtual schools and to
24 oversee virtual schools, I hope the legislature will
25 stick with their prohibition -- in my mind, I agree

1 with Mr. Arnold's interpretation of the
2 legislation -- I hope we can hold off on virtual
3 charter schools until we have the tools in place to
4 have good ones.

5 They're -- they can be marvelous and meet
6 the needs of lots of people. But they've got to be
7 good. And we don't have those policies and
8 procedures and oversight in place. We're not even
9 close. So that's my soapbox for the day. Thank
10 you.

11 THE CHAIR: Thank you, Commissioner
12 Shearman. Oh. Commissioner Lopez.

13 COMMISSIONER LOPEZ: Thank you
14 Commissioner Shearman. Well said.

15 THE CHAIR: It's been a while ago since
16 you requested.

17 COMMISSIONER LOPEZ: I agree. One thing
18 that has not been laid out, but needs to be
19 addressed, is, if, in those really small districts,
20 students get pulled out and the SEG funding goes
21 with them, there are students left who don't have
22 connectivity in their homes. So if it affects their
23 school, they get -- you know, there's a justice
24 issue there, an economic justice issue there. So I
25 hope the legislature looks at that also. Thank you.

1 THE CHAIR: Commissioner Gant.

2 COMMISSIONER GANT: Mr. Chair, members,
3 Deputy Aguilar -- I can't speak -- you -- you and
4 the PED and your legislat- -- and our legislators
5 have a big hill to climb right now, because my fear
6 is that, as Commissioner Shearman says, we don't
7 have the statutes, the rules, the policies,
8 procedures to adequately put a virtual school in
9 place. We can't even do it as a state.

10 I mean, we've got IDEAL New Mexico. That
11 works pretty good, because of the way it's set up.
12 But I think the legislators need to start looking at
13 it at the next session. I don't know how they get
14 the bills in there, or how they discuss it. I know
15 that LESC, they've got their report from
16 Dr. Harrell. I don't know where they're going with
17 it. But I fear there are going to be some children,
18 over time, that start this and drop out of it. And
19 where do they get picked up and how do they get
20 picked up and how is their overall education over
21 time impacted?

22 So the State of New Mexico needs to catch
23 up with the rest -- I guess, with the rest of the
24 world in this area, because it's going to be counted
25 against us. They claim we're the 49th state in

1 everything. Well, I don't believe that, personally.
2 But if we get a bad mark in this area, it's another
3 black eye that we have. And I don't think we need
4 another one.

5 That's just -- I know you all have a lot
6 to do in this. I don't know how we can play in it
7 as the Public Education Commission. I hope we do,
8 like Commissioner Shearman said. But you have a
9 long, tall hill to climb on this subject. And
10 that's just my comments.

11 MR. HARRELL: Mr. Chairman, if I may,
12 Commissioner Gant, offer at least a partial
13 response. You've raised quite genuine concerns. I
14 just wanted to tell you that one thing I'll be doing
15 in preparation for the August meeting of the LESC is
16 producing -- I call it the table, or technological,
17 legal-minded people call it a matrix or something.
18 But, anyway, a document that at least makes an
19 attempt to begin to identify the sections of State
20 law that needs to be, at least, looked at, if not
21 amended, to accommodate virtual charter schools.

22 I think the point that a couple of you
23 have raised -- and I think Mr. Brown suggested as
24 well -- is well-taken, that it's already here.
25 Virtual education is already a factor in public

1 schooling. And it's only growing. And it's come
2 here already. And it's likely to grow here. But it
3 does need to be addressed through statutory and
4 regulatory provisions to insure quality.

5 That's the essential concern that I think
6 all of us share. But at least this would be a
7 starting point. And it's -- it isn't, of course,
8 just the Charter Schools Act that's involved. The
9 Public School Capital Outlay Act is involved. The
10 School Personnel Act may well be involved, and a
11 number of other sections of state law. Even the tax
12 code is a possibility.

13 Senator Harden, who was attending the LESC
14 meeting in Portales, raised that question. To what
15 extent are the out-of-state providers of virtual
16 educational programs subject to New Mexico gross
17 receipts tax? Interesting question.

18 So the -- the ramifications are
19 far-reaching. And that statute, once that's
20 addressed, then there's a large body of agency
21 regulation that will need to be reviewed. And
22 ideally, much of this should be done quickly, but it
23 should also be done well.

24 THE CHAIR: Thank you, Dr. Harrell.
25 Deputy Secretary?

1 MR. AGUILAR: Mr. Chairman, just a
2 comment. You know, the possibility of virtual
3 learning opens up a lot of opportunities. And, you
4 know, we need to give our parents and our students
5 the -- you know, every effective option that they
6 have to -- to help the students succeed.

7 And so, you know, we feel that these
8 issues deserve the time to take a look at. And
9 we're committed to working with yourselves, with our
10 legislative partners and other stakeholders to --
11 let's be thoughtful, and let's -- let's -- you know,
12 let's get to where we need to be, but let's do it
13 the right way so that we're not back here again in a
14 couple of years rehashing all of these issues. And
15 so we look forward to working with folks to get
16 where we need to be.

17 THE CHAIR: Thank you, Deputy Secretary.
18 The report that you mentioned, is that -- is that
19 think tank going to be providing a report for the
20 August meeting, or -- or are you -- you had
21 mentioned an assessment of virtual schools and the
22 law.

23 MR. HARRELL: Oh. Mr. Chairman, that's
24 just something I'm planning to do for the LESC, just
25 trying to make a sort of catalog of what sections of

1 State law may need to be examined in terms of
2 virtual education, virtual charter schools.

3 THE CHAIR: I would love for the PEC to be
4 able to give input on that for you all.

5 MR. HARRELL: I'm sure this will be an
6 ongoing process. What I was describing is simply a
7 starting point.

8 THE CHAIR: However we can help.

9 MR. HARRELL: We value and appreciate the
10 involvement of the PEC. Commissioner Shearman, in
11 particular, has attended our meetings; Commissioner
12 Gant very often. Commissioner Bergman was in
13 Portales. Commissioner Carr -- I think almost all
14 of you have been to recent LESC meetings, and we
15 have long relished and benefited from the working
16 relationship with this group.

17 THE CHAIR: Thank you, sir.

18 COMMISSIONER SHEARMAN: Thank you very
19 much.

20 THE CHAIR: Any other questions?
21 Dr. Harrell, thank for you this report, and thank
22 you for your time and expertise.

23 MR. HARRELL: Mr. Chairman, thank you.
24 And if the Commission would indulge me in one
25 personal moment?

1 THE CHAIR: Absolutely.

2 MR. HARRELL: I wanted to tell you
3 something relating to myself. I am not following
4 Mr. Brown to Santa Fe County. However, I am
5 retiring, effective the end of September. So I've
6 notified the Committee members and the staff, of
7 course, a while ago. But I wanted to take this
8 opportunity to tell you as well. And, also, to
9 express my gratitude to you for the careful
10 oversight you give -- have given over the years to
11 public education in New Mexico.

12 And I appreciate very much your collective
13 and individual energies and interests, and I think
14 it has been a good working relationship between the
15 Committee I've worked for for a little over
16 12 years, the LESC, and the PEC. One of my early
17 duties with the LESC was to monitor the State Board
18 of Education meetings. So that was my occasion to
19 go to Hobbs for the first time, for example, which I
20 enjoyed.

21 So I've had kind of a personal history
22 with not only this group, but its predecessor
23 organization as well. But I've come to respect
24 greatly the work and integrity that you've all
25 brought to bear to the task, and I will miss that

1 involvement. But for a variety of reasons, it seems
2 to be a good time to move on for me. I did want to
3 make that announcement.

4 THE CHAIR: Congratulations. Yes,
5 absolutely. We wish you the best.

6 MR. HARRELL: Thank you.

7 COMMISSIONER SHEARMAN: We'll miss you.

8 COMMISSIONER GANT: You'll be missed.

9 COMMISSIONER SHEARMAN: Thank you.

10 THE CHAIR: Yeah, decision-making time.
11 It's 12:26. I had talked with the Deputy Secretary,
12 and he's at our disposal as far as the rest of the
13 agenda. So is there any -- any recommendations for
14 lunchtime?

15 COMMISSIONER BERGMAN: I'd just as soon go
16 forward. That's just me.

17 COMMISSIONER SHEARMAN: I'd like to take a
18 break.

19 COMMISSIONER LOPEZ: I'd like to take a
20 break.

21 COMMISSIONER SHEARMAN: Till 1:00, or just
22 keep going?

23 COMMISSIONER CARR: I'm good either way.

24 COMMISSIONER GANT: I don't care.

25 THE CHAIR: We could always do what we did

1 last time, a half-hour to go get something from that
2 cafeteria. Do you want to do that?

3 COMMISSIONER BERGMAN: Keep it short.

4 THE CHAIR: Let's take 33 minutes. We're
5 in recess.

6 (A recess was taken at 12:30 p.m., and
7 reconvened at 1:06 p.m., as follows:)

8 THE CHAIR: I call the meeting back into
9 session. Item No. 9 is discussion of Southwest
10 Secondary Learning Center Report and PEC Options.
11 Deputy Secretary Paul Aguilar, Finance and
12 Operations.

13 MR. AGUILAR: Thank you, Mr. Chairman.
14 And with me today is Mr. Craig Johnson. He is the
15 director of my School Audit Bureau. And he's the
16 one that conducted the evaluation of the complaints
17 that were generated earlier this year. Before he
18 begins, however, I did want to make a couple of
19 comments, Mr. Chairman.

20 One is that I know that there had been
21 some concerns on the Commission regarding some of
22 the questions or concerns that the Commission had
23 that were not addressed in this report. Mr. Johnson
24 and Ms. Callahan have had a follow-up meeting with
25 the folks in Albuquerque and will -- are compiling

1 those -- the answers to your questions. And those
2 will be available. We plan to e-mail them out about
3 mid next week, about Wednesday of next week or so.

4 And so I apologize on behalf of the
5 Department for -- I thought those had been
6 addressed, and I apologize for not addressing them.
7 But I do just want to let you know that we have gone
8 back to make sure that the questions of the
9 Commission are answered, so we can stand for
10 questions on that when Mr. Johnson is done.

11 And, Mr. Chairman, just as a continuation
12 of our discussion from this morning before lunch,
13 there are a number of issues, as we talked about,
14 regarding virtual education, charter education, and
15 the use of virtual education for credit recovery
16 for -- for regular learning and those sorts of
17 things. I think the issues are very complex. And,
18 as I mentioned this morning, we look forward to
19 working to address them.

20 But I think you're going to see that some
21 of those issues continue in this evaluation. And so
22 I think it just increases the imperative that we get
23 these issues addressed and get them addressed in
24 statute quickly and start getting prepared for this
25 coming session so that we can, you know, fix the

1 glitches that we found and to make things a little
2 bit more efficient and effective.

3 So, Mr. Chairman, at your pleasure, I
4 would introduce Mr. Johnson.

5 THE CHAIR: Mr. Johnson? Good afternoon.

6 MR. JOHNSON: Good afternoon, Chairman
7 Garrison.

8 THE CHAIR: I was going to say "Good
9 morning," but --

10 MR. JOHNSON: I made that edit on my
11 notes.

12 THE CHAIR: We're cruising along, yes,
13 sir. Welcome. And, at your pleasure, just tell us
14 what you've got.

15 MR. JOHNSON: Thank you. Good afternoon,
16 Chairman Garrison, members of the Commission, and
17 Deputy Secretary Aguilar. I believe you have a copy
18 of my report in your binder, as well as a one-page
19 summary. So if you had a chance to read the full
20 report, you can get a sense of it with the one-page
21 briefing.

22 This report was also presented in July to
23 the Legislative Education Study Committee. So any
24 members that are -- people that are attending today
25 that are interested can download that report and its

1 attachments off of the LESC Web site.

2 On May 16, Mr. Chairman, the Public Ed
3 Department received a letter from Albuquerque Public
4 Schools Superintendent Winston Brooks regarding a
5 student who had obtained credit from Southwest
6 Secondary Learning Center in a relatively short
7 period of time and requested a review of Southwest
8 Secondary's curriculum, policies, and procedures.

9 And on May 23, PED sent letters to APS and
10 Southwest notifying them of our review. PED
11 reviewed the regulatory environment guiding distance
12 learning, and analyzed relevant data from Southwest
13 Secondary APS and PED. And fieldwork was conducted
14 at Southwest Secondary and at APS in early June, and
15 exit conferences were held with Southwest and APS
16 also.

17 And while this review focused on programs
18 operated by Southwest, the challenges, as you've
19 heard today, posed by distance learning and credit
20 recovery are certainly not restricted to Southwest
21 Secondary. Several other school districts and
22 charter schools offer various online, extended
23 learning, or credit recovery programs.

24 For example, approximately 50 districts
25 have agreements with e2020, an online education

1 provider. And APS offers all core classes and some
2 elective courses for credit recovery through their
3 E-Academy site. Nationwide virtual learning
4 opportunities are expanding rapidly. The number of
5 students enrolled in online courses will increase to
6 more than 10 million by 2014, according to experts.

7 Currently, state laws covering distance
8 learning, credit recovery, and extended learning
9 opportunities do not provide clear guidance, given
10 the range of the many distance learning and content
11 delivery options available to students today.

12 There are two sections of the Public
13 School Code, the Statewide Cyber Academy Act and the
14 Technology for Education Act, that address the
15 related functions of ed technology in the Statewide
16 Cyber Academy. The Technology for Education Act
17 establishes the Council on Technology in Education
18 to advise PED, PEC, and the legislature regarding
19 the establishment of appropriate tech standards,
20 curriculum instruction, appropriations for ed
21 technology.

22 The Statewide Cyber Academy Act began the
23 implementation of a statewide E-learning delivery
24 system for pre-K through 12, higher ed, and state
25 agencies. It basically created IDEAL-New Mexico.

1 And just by way of reminder, I'm sure you've heard a
2 lot about IDEAL. But to teach in a cyber academy, a
3 prospective E-teacher must be "highly qualified"
4 with a teaching endorsement that corresponds with
5 the content area being taught. They must have three
6 or four years of experience in face-to-face
7 classrooms, and they must have experience as an
8 online learner as well.

9 Now, the point that you've heard several
10 times today, I guess -- and I'll repeat it again --
11 is that neither the Statewide Cyber Academy Act, nor
12 the Technology for Education Act fully address
13 non-IDEAL-New Mexico distance learning courses, such
14 as the e2020 courses used at Southwest Secondary.

15 However, the Distance Learning Rule, which
16 was referenced earlier, specifically 6.30.8, in the
17 NMAC, establishes some general parameters under
18 which distance learning courses are to operate.
19 Among the provisions, the rule provides for the
20 following parameters:

21 If a charter, or if a district or charter
22 school determines that a student fails to comply
23 with the provisions of the rule, the district or the
24 charter may deny the student credit for the distance
25 learning course.

1 In order to participate in a distance
2 learning course, a student must have the written
3 permission of the student's enrolling district
4 charter school or state institution.

5 All local school boards and charter school
6 governing authorities shall adopt written policies
7 providing for student access to distance learning
8 courses.

9 Students participating in asynchronous
10 distance learning courses must log on to their
11 distance learning course at least the same number of
12 days per week as the traditional face-to-face
13 course.

14 And students participating in synchronous
15 distance learning courses shall log on to their
16 computers at the scheduled class times.

17 And the Distance Learning Rule is included
18 as an attachment to the report that you have in
19 front of you.

20 Southwest Secondary reports that there are
21 no written agreements regarding distance learning
22 between Southwest and APS. And APS students did not
23 receive written permission to take classes at
24 Southwest, as required by the Distance Learning
25 Rule.

1 The Distance Learning Rule establishes
2 certain requirements which were not met in this
3 instance. The Rule requires that schools providing
4 distance learning courses shall enter into written
5 agreements with the students' enrolling districts or
6 charter schools prior to providing the distance
7 learning courses, and the agreements must include
8 the courses to be delivered, the delivery period,
9 the financial arrangements, support mechanisms
10 needed on behalf of the students, state assessment
11 responsibilities on behalf of the students,
12 identification of the responsible entity, and time
13 lines for granting grades and credit, and a
14 statement of assurance that all distance learning
15 courses meet or exceed state content standards with
16 benchmarks and performance standards and are taught
17 by highly qualified teachers.

18 In this instance, APS has implemented
19 policies and directives regarding distance learning.
20 These policies appear to address distance learning
21 opportunities within APS; but, they do not
22 specifically address how the district will evaluate
23 or accept distance learning courses offered by
24 schools outside of APS.

25 Now, Southwest Secondary's governing

1 documents include reference to the extended learning
2 program. They didn't specify that this program will
3 be available to non-Southwest Secondary students.
4 But the governing documents do include reference to
5 the extended learning program.

6 And according to the Albuquerque Journal,
7 the Southwest Secondary and APS administrators
8 confirmed that APS and Southwest had a verbal
9 agreement that the charter would not enroll any
10 seniors after March 31st. According to data
11 provided by Southwest, 22 seniors enrolled in
12 Southwest's secondary courses after March 31, 2012.

13 Enrollment data shows that the highest
14 number of students enrolled in June 2011, likely for
15 summer school; and in January of 2012, the
16 enrollment spikes again, probably due to first
17 semester grades coming out in December. The chart
18 on Page 4 of your report shows enrollments by month.

19 Mr. Chairman, members of the Commission,
20 Southwest Secondary uses PED-approved instructional
21 materials. Southwest Secondary has provided
22 extended learning students opportunities for nearly
23 a decade. They became a State-chartered school in
24 July of 2010. And, prior to that, Southwest had
25 been a locally-chartered school through APS.

1 Southwest Secondary is one of the first
2 charter schools operating in the state, and they
3 received their original charter in 2000. APS
4 renewed the charter in 2005.

5 Southwest offers online courses using the
6 e2020 materials, as do approximately 50 other
7 districts. In 2008, the Instructional Materials
8 Bureau of PED approved the use of e2020
9 instructional materials. The Instructional
10 Materials Bureau vets and approves instructional
11 materials, resources, and content for alignment with
12 standards. The letter indicating PED approval of
13 e2020 materials is also included as an attachment to
14 your report.

15 Southwest Secondary reports that e2020
16 courses are taught by highly qualified teachers.
17 The extent to which students interact with teachers
18 is not prescribed, but rather dependent on student
19 need. Southwest Secondary reports that staff are
20 available in person or electronically to all
21 extended learning students. Students who want
22 additional assistance from a teacher may seek it
23 out; while other students who do not need this
24 additional teacher interaction are not required to
25 seek it.

1 Excuse me. Mr. Chairman, members of the
2 Commission, I also tried to include some data
3 analysis to give a sense of what's happening in the
4 situation.

5 Data analysis shows that instructional
6 time and results vary for APS students at Southwest
7 Secondary. APS provided information indicating that
8 259 APS students took a total of 399 courses at
9 Southwest. Southwest was able to provide data for
10 376 of these courses. And the data demonstrate
11 that, of the 259 students 176, or 68 percent, were
12 in the twelfth grade. Of the 259, 44, or
13 17 percent, had previously taken the course at APS.
14 And, of those 44 students, 38 of them had failed the
15 course.

16 Of the 38 students that failed an APS
17 course, seven got a D at Southwest. A little under
18 half, or 18, got a grade of C. And a little over a
19 third, or 13, students got an A or a B.

20 And here's a key point, I think; that, of
21 the 38 students, 23 were twelfth-graders. So if we
22 were to be concerned about APS students that were
23 twelfth-graders that failed an APS course and then
24 went to Southwest, of that 259 students, 8.8 percent
25 meet that criteria. The rest were either not

1 seniors or were not seniors who failed an APS
2 course.

3 The most common courses at Southwest that
4 were taken by APS students were government and
5 economics. English 12 was the most common English
6 course taken, and Algebra 2 was the most common math
7 course. The chart on Page 5 of your report shows
8 the courses taken by APS students, and the bullets
9 near the bottom of Page 5 highlight the classes that
10 had the highest and lowest average seat time.

11 Mr. Chairman, these data do not indicate a
12 strong correlation between seat time and final
13 grade. The average seat time for the 376 courses
14 was about 50 hours. For those students that spent
15 less than 50 hours on the course, the average final
16 score was 85.7. And for those students that spent
17 more than 100 hours, the average final score was
18 81.8.

19 The May 17 Albuquerque Journal article
20 made note of a particular student. And while I
21 didn't want to make this review focused on the
22 choices of an individual student that were allowed
23 by adults, and in discussions with Deputy Secretary
24 Aguilar, we knew that there were broader, more
25 global issues that this report could serve as a

1 forum to bring to all your attention, I did want to
2 answer some questions about that individual student.

3 According to Southwest Secondary, this
4 student was in good standing academically at APS,
5 although the student enrolled in, and was failing in
6 advanced placement an AP English course at APS. It
7 is likely that the student acquired some amount of
8 content through the AP English course. At
9 Southwest, once the student had completed enough
10 coursework to achieve a passing grade, the student
11 chose not to complete all of the course essays.

12 Now, back to the Distance Learning Rule.
13 In attempts to address the amount of time a student
14 spends in the course by establishing different
15 log-on requirements for asynchronous versus
16 synchronous courses, the rule defines asynchronous
17 and synchronous instruction as if these were
18 completely discrete concepts.

19 As Dr. Harrell talked about blended
20 learning earlier, online instruction is employed by
21 schools in a variety of ways, creating a continuum
22 between the extremes of strictly asynchronous versus
23 synchronous instruction. Now, regarding
24 asynchronous instruction -- this was a point that
25 was also a concern earlier -- the Distance Learning

1 Rule requires that full-time, online instruction be
2 approved by the applicable governing body. The Rule
3 establishes requirements for credit bearing distance
4 learning programs in states that distance learning
5 technologies may occasionally be used as full-time
6 educational programming for students in unusual
7 circumstances.

8 However, asynchronous distance learning
9 shall not be used as a substitute for all direct,
10 face-to-face student and teacher interaction, unless
11 approved by the local board of education.

12 Mr. Chairman, and members of the
13 Commission, if I could share some other noteworthy
14 observations with you. Assessment data indicates
15 that most APS students who took Southwest -- who
16 took courses at Southwest Secondary achieved
17 proficiency on the SBA at a higher rate than the
18 statewide average. In 2011, the passage of Senate
19 Bill 360 temporarily suspended requirements for
20 students to pass the NMSBA to graduate in 2011-2012.
21 But given that juniors in the 2011-2012 year will
22 need to pass the SBA to graduate in 2013, we thought
23 it would be informative to review the 2012 SBA data
24 for APS students who earn credit at Southwest to see
25 what impact the SBA requirement may have and compare

1 those results to overall statewide averages.

2 Of the 259 students, 68 took the SBA in
3 2012. Of the 68 students that took the SBA,
4 42 students, or 61.7 percent, scored proficient or
5 above in math. Of those 68 APS students that took
6 courses at Southwest and took the SBA, 64.7 percent
7 scored proficient or above in reading. The average
8 math score was 40.7, and the average reading score
9 was 41.7. These students performed relatively well
10 compared to New Mexico as a whole.

11 In 2011, 38 percent achieved proficiency
12 or above in math as the statewide average, and
13 47 percent of the eleventh-graders who took the SBA
14 achieved proficiency or above in reading. In short,
15 on average, this group of students was proficient by
16 roughly 20 percentage points more than the statewide
17 average.

18 The other details about graduation
19 requirements, such as retesting, or the alternative
20 demonstration of competency, are on the PED Web site
21 for your review. But for the purposes of this
22 study, a graduation cutoff, combined math and
23 reading score of 72.5 was used. So 49, or
24 72.1 percent, of the 68 students scored a combined
25 math and reading score of 72.5 or above.

1 Nineteen, or 27.9 percent, did not achieve
2 that combined math and reading score. The statewide
3 four-year graduation rate for 2011 was 63.0 percent.
4 So, again, these students performed well relative to
5 the statewide average. However, had that graduation
6 requirement been in place, 19 of the APS students
7 who took classes at Southwest would not have
8 graduated.

9 The APS students who took courses at
10 Southwest Secondary were not double-counted for
11 state funding. As part of this review, PED staff
12 reviewed STARS membership data to see if these
13 students were submitted in mem reports by both -- in
14 membership reports by both Southwest and APS, and
15 they were not. They were only counted in APS's
16 membership reports.

17 So the recommendations out of this review
18 are -- basically, there's two recommendations. The
19 first is that school districts and charter schools
20 need to work together to insure that the
21 requirements established by the Distance Learning
22 Rule are in place. And if APS and Southwest had all
23 of the required written agreements in place, some of
24 the issues surrounding this situation would have
25 been resolved. APS would have had the assurance

1 that Southwest -- from Southwest that all distance
2 learning courses meet state content standards and
3 were taught by highly qualified teachers. And
4 Southwest would have had verification that the
5 students had permission from APS to take those
6 courses.

7 Also, per the rule, if APS had determined
8 that a student failed to comply with the provisions
9 of the rule, APS could have denied the student
10 credit for the distance learning course.

11 The second recommendation is -- a point
12 that has been raised several times in your meeting
13 today. And that is, basically, that state statutes
14 should be reviewed to make sure that New Mexico is
15 prepared to provide for high-quality, 21st-century
16 learning opportunities for all our students. The
17 demand for virtual learning is increasing, and
18 New Mexico has an opportunity to be a leader in
19 providing virtual learning opportunities to our
20 students.

21 Policy makers, PED, PEC, the legislature,
22 should review the regulatory environment to insure
23 that any statutory gaps are addressed and that the
24 requirements for instructors and course parameters
25 are comprehensive and apparent. Stakeholders could

1 benefit from an evaluation of all the distance
2 learning programs currently being offered to
3 New Mexico students and the outcomes of these
4 programs.

5 And, as I mentioned, PED developed
6 distance learning rules in 2008, I believe it was,
7 which prompted a request for an Attorney General's
8 opinion about whether the New Mexico Open Enrollment
9 Statute applied to distance education and virtual
10 schools; and, if so, whether the new rules violated
11 the statute. The AG answered with an advisory
12 letter in February of 2008, which is included as an
13 attachment to your report.

14 The AG letter basically said that, with
15 the Open Enrollment Statute, the legislature was
16 considering the physical presence of children in
17 school buildings and not the issue of distance
18 learning. Ultimately, the advisory letter concluded
19 that the Distance Learning Rule did not contravene
20 the Open Enrollment Statute. New Mexico's Open
21 Enrollment law does not apply to online schools,
22 and, therefore, does not conflict with the Distance
23 Learning Rule because the relevant statute does not
24 address distance education or virtual schools.

25 Given that many statutes were crafted, or

1 not crafted, with online learning in mind,
2 New Mexico's policy-makers should carefully review
3 how other statutes applicable to brick-and-mortar
4 schools might be applied or adapted to address the
5 challenges and opportunities associated with virtual
6 learning in New Mexico.

7 And, Mr. Chairman and members of the
8 Committee, that concludes my remarks today.

9 THE CHAIR: Thank you. Questions from
10 Commissioners? Commissioner Gant.

11 COMMISSIONER GANT: Mr. Chair, members,
12 Deputy Aguilar, how many of the students -- you
13 know, you talked about the students who were
14 twelfth-graders. And part of the issue was -- in
15 the original letters and all that, were all the
16 athletic -- all the athletes that would go take the
17 courses so they would be eligible to play in the --
18 but I don't see that addressed anywhere. Was any
19 work done on addressing that issue: How many
20 athletes took the courses and how many became
21 eligible and -- for taking those courses, and,
22 et cetera, please?

23 MR. JOHNSON: Mr. Chairman and
24 Commissioner Gant, we're working to address all the
25 questions that the PEC has raised, in addition to

1 the questions that APS asked us to address, which I
2 could -- I could cite the list of questions that APS
3 asked us to address. And the issue you raised about
4 athletics was not included in those. But we are
5 working to address those questions.

6 COMMISSIONER GANT: Well, then, I'll wait
7 for the answer when you send it out. I look forward
8 to that answer.

9 But part of my -- part of my issue in the
10 questions that we asked -- some of us asked -- on
11 this was, the questions were, from us, was dealing
12 what were the impacts to the charter that Southwest
13 Learning had with this -- with this Commission. And
14 until we see those answers to the questions we gave
15 you, what you gave us is an overall view of what
16 should be done by statute.

17 But we do have a charter, which they have
18 to own up to. And we, as the authorizer, must
19 insure they do. So I guess we'll wait for the
20 answers we see from you next week and see how that
21 will impact the charter they have with us.

22 And you talked about statewide averages
23 when it comes to the SBA. But I would find it
24 interesting if we could see what the -- how -- you
25 take the APS averages on the SBA and compare it to

1 what they did in the Southwest Learning Center and
2 see what that would be. I don't know if that data
3 is anywhere or not. You know, your average for the
4 state can be down, and APS could be up compared to
5 the state. So it would be interesting to know how
6 those students that did the Southwest Learning
7 courses compared to the APS SBAs.

8 MR. AGUILAR: Mr. Chairman?

9 THE CHAIR: Deputy Secretary.

10 MR. AGUILAR: Mr. Chairman and Commission,
11 I have taken that down. We'll include that with
12 your answers for next week.

13 COMMISSIONER GANT: Okay. All right. The
14 last bit I have, no, Southwest didn't get the
15 permission. The student didn't get the permission
16 from APS to go take the course, et cetera. Almost,
17 to me, it seems like that's a so-what. So now that
18 they did -- they, being everybody, didn't fulfill
19 the requirements of all of the statutes, so what's
20 going to happen? Anything?

21 MR. JOHNSON: Well, Mr. Chairman,
22 Commissioner Gant, you know, the language of the
23 Rule suggests that if they didn't follow the
24 provisions of the Rule, that the student could be
25 denied credit, and that decision would have lied, in

1 this instance, with APS. But APS chose to grant
2 them credit.

3 So I think -- going forward, I think we
4 really just need to send the message that we expect
5 the provisions of the Rule to be followed.

6 MR. AGUILAR: Mr. Chairman, we'll be
7 issuing guidance to the charter schools early next
8 month regarding the provisions in the Charter School
9 Act for -- and the Distance Learning and the Virtual
10 Learning Acts -- to insure that they at least
11 understand it and what those requirements are. And
12 then I expect that the Charter School Division will
13 follow up with their staff throughout the year to
14 insure that ongoing compliance is in effect.

15 COMMISSIONER GANT: Well, you know,
16 that -- the answer is -- I understand the answer.
17 But, in the long run, let's assume that the -- let's
18 say that APS didn't grant the course completion
19 because they, all the parties involved, didn't
20 follow the statutes. Who suffers? The student.
21 And not APS and not Southwest Learning.

22 So if the answer is the student didn't get
23 the credit, therefore, doesn't get to graduate
24 because everybody didn't follow the rules, it's the
25 student, again, that ends up suffering. Thank you,

1 Mr. Chair.

2 THE CHAIR: Thank you, Commissioner Gant,
3 Commissioner Shearman.

4 COMMISSIONER SHEARMAN: Just -- thank you,
5 Mr. Chairman. Just to follow up on Commissioner
6 Gant's last comments, yes, the student would have
7 been the one who suffered. But let me assure you,
8 it would have been APS that would have gotten the
9 black eye. I can see the headline in the newspaper
10 right now. "APS Refuses to Grant Student Credit and
11 Allow Him To Graduate." So APS was in a lose-lose
12 situation.

13 Just a little bit of clarification,
14 please. On Page 3, where you talk about
15 asynchronous and synchronous, asynchronous distance
16 learning course. "A student in an asynchronous
17 learning course must log on to their distance
18 learning course at least the same number of days per
19 week as the traditional face-to-face classes occur
20 at the schools in which they are enrolled." And
21 then you spoke about blended learning. You're not
22 suggesting that the course this student took was
23 blended, are you?

24 MR. JOHNSON: Mr. Chairman,
25 Commissioner Shearman, I'm just trying to make the

1 point that the rule talks about these two different
2 types of courses as if they're totally distinct.
3 And there's a wide range in between synchronous and
4 asynchronous out there today.

5 COMMISSIONER SHEARMAN: However, in the
6 course this student took, from everything I have
7 read and understood, it was 100-percent
8 asynchronous; is that correct?

9 MR. JOHNSON: Mr. Chairman, Commissioner
10 Shearman, that student would have had the
11 opportunity to go down to Southwest and have
12 face-to-face interaction, just like any other
13 student taking an e2020 course from Southwest, or
14 any other LEA that uses e2020. You could have a --
15 say -- let's say that Deputy Secretary Paul Aguilar
16 and I are both enrolled in the same course, and I'm
17 not picking it up as fast as he is. He may never
18 need to go down, and I may need to go down on a
19 weekly basis.

20 So even within the same course, the two
21 individuals that we are could be running the gamut
22 between asynchronous and synchronous learning.

23 COMMISSIONER SHEARMAN: However, in this
24 particular case, the student took the course over a
25 weekend. They weren't having the course over the

1 weekend in the classroom. So, in this case, for
2 this particular student, this particular course, it
3 was 100-percent asynchronous. So if it was
4 100-percent asynchronous, then he needed to have
5 logged onto that course, in compliance with this
6 rule. And he did not. Am I correct?

7 MR. JOHNSON: Mr. Chairman, Commissioner
8 Shearman, he logged on about 50 hours, I believe it
9 was, over the course of four days. But I agree with
10 your description of it as asynchronous.

11 THE CHAIR: Mr. Brown?

12 MR. BROWN: Excuse me.

13 COMMISSIONER SHEARMAN: While they're
14 discussing that, let me ask you another question,
15 just a definition question. As you were doing your
16 investigation, seat time came into play quite a bit.
17 Define "seat time."

18 MR. JOHNSON: Mr. Chairman and
19 Commissioner Shearman, I think you can think of that
20 as login time, the amount of time they're logged on
21 to the course.

22 THE CHAIR: Commissioners, I'm going to
23 stop the conversation on the particular instance of
24 this student for legal protection. But if there are
25 any other general questions about -- about the

1 asynchronous or synchronous education, we can go
2 ahead and ask those, in general terms; but -- but
3 not about this particular instance of this
4 particular student, who has been identified -- not
5 identified in the media -- but it's been in the
6 media. Commissioner Shearman?

7 COMMISSIONER SHEARMAN: Then, if I may
8 just finish up on my -- I asked the definition of
9 "seat time," and you said login. Okay. But for a
10 non-virtual or a non-distance learning class, for
11 instance, on Page 5, you gave the different hours of
12 classes. You say, for language arts, 114 hours.
13 That's actually seated in a seat; would that be
14 correct? Seated in a seat, if it's not a distance
15 learning class?

16 MR. JOHNSON: Mr. Chairman, Commissioner
17 Shearman, these -- the data cited in this report
18 have to do with the APS students who took the e2020
19 courses at Southwest Secondary. So it's -- if I'm
20 thinking of the same data, it would be like login
21 time.

22 COMMISSIONER SHEARMAN: I'm sorry. I
23 misread that. Thank you for the clarification.

24 COMMISSIONER LOPEZ: Mr. Chair?

25 THE CHAIR: Commissioner Lopez.

1 COMMISSIONER LOPEZ: I just have a
2 clarification, actually. It's not about this. But
3 on our agenda, it shows this as an action item. And
4 this is not an action item. It's just a report,
5 right?

6 THE CHAIR: Well, we can identify any
7 action item we want on any agenda item.

8 COMMISSIONER LOPEZ: But, you know, it has
9 the --

10 THE CHAIR: It has an asterisk. It
11 doesn't mean we're taking action or we have to take
12 action.

13 COMMISSIONER LOPEZ: Okay. Just wanted to
14 know about that. Thank you.

15 COMMISSIONER CARR: Mr. Chair.

16 THE CHAIR: Mr. Carr.

17 COMMISSIONER CARR: I don't have a
18 question, but I just have a general comment. And we
19 look at all the legalities of everything. And when
20 we -- when something like this comes out in the
21 newspaper, about any school -- and Southwest, I
22 think, particularly, has a reputation for being one
23 of the better charter schools in the state -- the --
24 I don't think -- it didn't help. You know, it never
25 helps.

1 And I think this should be a noted lesson
2 for all charter schools. And, you know, as public
3 schools have taken their hard knocks over the years
4 for this, for that, you know, the press always hones
5 in on one negative aspect, because that's news. And
6 if everything is going right, that's not news.

7 But I -- just on the outset, you know,
8 when I read the newspaper, as a teacher, I was -- I
9 was appalled at the aspect that a student would
10 finish a semester class in four days, and -- you
11 know, without having any other additional
12 information. And that negative aspect, of course,
13 stuck in my head, you know. And it will.

14 And -- and we do need additional -- we
15 need to take an additional look at the statutes and
16 all that, of course. And there's a lot of things
17 missing in all that. But in all of this, to me,
18 again, not looking at this as an attorney, because
19 I'm not an attorney -- attorneys look at the law.
20 And a lot of times, the rest of us will look at
21 things in terms of common sense, you know, and say,
22 "Well, the law doesn't say we can do this. But
23 should we do this? You know? Does that make sense?
24 How is the general public going to take a look at
25 that?" You know.

1 And -- and the word that always comes to
2 mind in this is the appearance of impropriety. And
3 it looks like something wasn't right here. So we
4 can't -- we have to always keep that in mind. And
5 that's the reason I asked yesterday in the training
6 that ethics be mentioned as part of all this, that
7 ethics be a -- something to look at. Just because I
8 can do something legally doesn't mean that I should
9 do that. And -- and we can all take that as a
10 lesson and keep that in mind. And -- and I'll be
11 quiet. Thank you. Thank you, Mr. Chair.

12 THE CHAIR: You were scaring me. You get
13 us any more efficient, we're going to lose all our
14 job security. What are you thinking? Any other
15 questions? I just have a couple.

16 Ms. Callahan, do you recall the date that
17 you sent all our questions to Craig Johnson?

18 MS. CALLAHAN: Mr. Chair, Commissioners, I
19 received the questions after the last meeting. And
20 I've been working on them -- he and I met. So I've
21 been working with Mr. Glasrud to answer the
22 questions, and also getting other data that needed
23 to be put together. There were almost 50 questions
24 that had to be addressed.

25 And so I worked in conjunction with

1 Mr. Johnson in compiling that information, and we're
2 getting there. Mr. Glasrud has supplied the
3 necessary documentation, and so we're putting it
4 together into the report. And so Mr. Johnson and I
5 worked together.

6 THE CHAIR: Okay. I really look forward
7 to that report. I almost feel like we're kicking a
8 can down the road. And this thing happened in May,
9 or was reported in the Journal in May. And I don't
10 know that we're going to be able to tackle it
11 without a quorum in -- in the August meetings. We
12 have other work to do. And so this is going to go
13 down to September before we -- we assess our
14 statutory duties as the authorizer of this school.

15 So it is -- it is of concern that this
16 is -- this is -- we're so far down the road. And
17 not to look at -- I'm not going to speculate on what
18 decisions we make. But I want Southwest Learning
19 Center to be the best that they can be, and then to
20 correct what may be -- what may be loopy-goosey.
21 And the same as our part as authorizers, that we fix
22 things, but we do it in a timely manner. Thank you.
23 Mr. Johnson, thank you for your time, sir.

24 MR. JOHNSON: Thank you.

25 COMMISSIONER SHEARMAN: Thank you.

1 THE CHAIR: Deputy Secretary Paul Aguilar
2 is going to go attend some meetings, and we
3 appreciate your attendance and your cooperation with
4 us to cross the T's and dot the I's, sir.
5 Appreciate it.

6 MR. AGUILAR: And, Mr. Chairman, I'm
7 available if you need me. Kelly can text me, and I
8 can come on down.

9 THE CHAIR: Hey. You can text him and
10 he'll come on down.

11 MS. CALLAHAN: Isn't that nice?

12 MR. AGUILAR: Service with a smile.

13 MS. CALLAHAN: Is that going to work
14 tomorrow?

15 MR. AGUILAR: No, not tomorrow.

16 THE CHAIR: Item 10. Mr. Glasrud, thank
17 you.

18 MR. GLASRUD: Mr. Garrison, could I
19 introduce a couple of people real fast?

20 THE CHAIR: Sure.

21 MR. GLASRUD: I know in the past -- and I
22 want to thank all of you for listening to the report
23 and the PED for the report, and I can let you know,
24 we are working on the answers to those questions.
25 They were given to me, and I supplied it to

1 Ms. Callahan. But, at times, I've listened today to
2 all of what's gone on, and I appreciate what you
3 said about who loses out, the kids. And I wanted to
4 introduce a couple of them that we have here.

5 Caylee Woods is my -- I know you met
6 Daniel Washington last year from our school. This
7 is Caylee Woods, our new student body president, who
8 came up today to watch what's going on. She was
9 just elected to be Governor of Girls State for
10 New Mexico. So she has political -- (Applause.)

11 MR. GLASSRUD: Next to her is Mr. Zack
12 Smith, who, yesterday, finished his private pilot's
13 license out at Double Eagle Airport. He is now a
14 private pilot. I wanted to brag about these two,
15 since the adults, myself included, keep screwing
16 some things up. So I wanted to be sure I pointed it
17 out.

18 THE CHAIR: I don't want to see you on
19 YouTube, like those three clowns that dropped their
20 plane into the trees. Congratulations.

21 MR. GLASSRUD: Thank you so much.

22 THE CHAIR: And those two young folks are
23 the reason we're here.

24 Item No. 10 is reports from the PEC
25 Committees. Item Letter A is the Strategic Plan.

1 Commissioner Canfield is not in attendance. And, as
2 we know, the chair of that committee, Commissioner
3 Peralta, he's at a new post as a principal down in
4 Socorro. And so he's not in attendance. So we will
5 table the Strategic Plan. And do I need a vote on
6 that, do you believe? There's no one to give the
7 report. There's no one here to --

8 MR. BROWN: I think you should table it by
9 vote, Mr. Chair.

10 THE CHAIR: By vote? The Chair will
11 entertain a motion.

12 COMMISSIONER BERGMAN: I move that we
13 table it to the next available time.

14 THE CHAIR: Thank you, sir.

15 COMMISSIONER CARR: Second.

16 THE CHAIR: Second by Commissioner Carr.

17 All those in favor say "Aye."

18 (Commissioners so indicate.)

19 THE CHAIR: Item A will be tabled.

20 B is the Legislative Committee report by
21 Public Education Committee Vice Chair and
22 Chairperson of the Commission, Carolyn Shearman.
23 Chair-Chair, Double Chair.

24 COMMISSIONER SHEARMAN: Chair-Chair,
25 Double Chair.

1 Thank you, Mr. Chairman. I think with
2 your agenda, or draft agenda, that Beverly had sent
3 out earlier, you had a draft of this report. And
4 then you have a copy of the report also in your
5 notebooks today.

6 The copy of the report, as presented in
7 your notebook today, has had a few changes. And we
8 can certainly go through those, each one, and you
9 can approve or disapprove them. Or, if you had an
10 opportunity to read and you like the way it is, we
11 can go with it the way it is.

12 Before we get to action on the report, I
13 would appreciate your looking at the page where all
14 of -- where the seal is and all of our names and
15 District numbers and so forth are listed. Chairman
16 Garrison, when we first started this process, asked
17 that we include people's experience, work
18 experience, educational experience, whatever they
19 might like to put here. I was not very thorough in
20 being sure I got all that information from everyone.
21 I have some information from some and none for
22 others.

23 My question to you at this time is do you
24 want to give me that information? Can I include it
25 in the report? Or do we want to take it out? It

1 either needs to be in for everyone or out for
2 everyone would be my thought.

3 THE CHAIR: And let me clarify that I just
4 wanted a professional vocation. I think it's
5 important that folks that we're reporting to, that
6 they know who we are. And I think it's a classy
7 addition, and it's also informative, that we do have
8 educators, professional educators who get paid to
9 educate, on this Commission. That's validity in my
10 book.

11 COMMISSIONER GANT: I will send mine. Do
12 you want it today?

13 COMMISSIONER SHEARMAN: Yes, Commissioner
14 Gant. I -- if we're going to include this
15 information, I would appreciate it if you would get
16 it to me today, and then I can get it included. And
17 any --

18 COMMISSIONER POGNA: Do you want mine
19 today?

20 COMMISSIONER SHEARMAN: Write it out or
21 e-mail it, whichever you prefer to do, and then we
22 can get this thing finalized.

23 COMMISSIONER CARR: Commissioner Shearman,
24 on this particular point, if we're looking at, I
25 think, maybe, what? Adding credibility?

1 COMMISSIONER SHEARMAN: Okay.

2 COMMISSIONER CARR: Is that what we're
3 talking about when we're talking about things
4 like -- I mean, why not add our degrees after our
5 name, too; MA, BA, or something like that as well?
6 And I'll put that down on mine. I think that that
7 would be -- you know, if we're going to do something
8 like that, that's what I would do.

9 COMMISSIONER SHEARMAN: That's up to
10 everybody.

11 COMMISSIONER CARR: I'd say -- well, so,
12 to each individual, you know, we could do that, too.
13 I'll do that. I'm trying to think.

14 THE CHAIR: Repeat what you were going to
15 say.

16 COMMISSIONER SHEARMAN: If you want to
17 include your degrees in your information, I'll be
18 glad to put that in, if you want me to.

19 Okay. Again, I'm asking your pleasure
20 about how to go through this report. Do you want to
21 go page by page, or what do you prefer to do? Do
22 you have --

23 THE CHAIR: I think everyone needs to read
24 it. Who -- I'm not going to call people out.
25 Hopefully, everyone has read the thing. And we

1 should -- we need to vote on it in its entirety.
2 And then I would love to entertain a motion that
3 would allow me, the Chair, to make small additions,
4 if necessary, based on adding -- adding statements
5 of the law, like the 2-percent allocation for a
6 charter school authorizing that we don't have in the
7 report. I need to get that piece and put it in
8 there.

9 Also I'm waiting on a contract to be
10 finalized for Ramon Vigil, and I wanted to send this
11 report through him to see -- he could vet the
12 specifics of the report to see if there's any -- any
13 other references to law that would be beneficial for
14 the LESC to -- to ponder. And so that would take
15 some time.

16 So I don't -- I don't know that we should
17 get a -- I might end up having to make copies
18 myself -- I don't know -- of this report, to get all
19 that done.

20 COMMISSIONER SHEARMAN: Dr. Harrell will
21 do it.

22 THE CHAIR: Dr. Harrell will help us with
23 that, minor changes. But we are voting today on
24 the -- the report in its entirety, generally
25 speaking, with the ability for the Chair to -- to

1 add small items of specificity if needed.

2 COMMISSIONER SHEARMAN: Okay. Well, why
3 don't we do this? As Chair of the -- of the
4 Legislative Committee --

5 THE CHAIR: And, also, with -- with regard
6 to -- with regard to the members, I just -- how -- I
7 would say your elected name. So I have M. Andrew
8 Garrison, Chair. I would just leave -- all I wanted
9 was the professional vocation. I don't want a
10 dissertation up here. It should be clean, but it
11 would be nice to just add what it is that you do. I
12 don't need a list of degrees.

13 COMMISSIONER SHEARMAN: Okay. As Chair of
14 the Legislative Committee, I would move for approval
15 of the report as submitted, with the following
16 additions: Information on each individual
17 Commissioner, as they choose to articulate that and
18 provide it to me; that the Chair be granted
19 permission to add such incidental information as he
20 deems necessary to clarify the report; and, that
21 Ramon Vigil, our legal counsel, approves the report,
22 as we approve it.

23 COMMISSIONER CARR: Second.

24 THE CHAIR: We don't need a second from a
25 Committee motion; correct? General Counsel?

1 MR. BROWN: Well, given that the entire
2 body is voting, I think you would, with those
3 caveats that are being put on there. Because what
4 you're voting on is different than what you're
5 looking at. So I think you need your entire body to
6 understand what they're voting -- even though
7 they're being described as minor changes, it's not
8 what they're looking at.

9 THE CHAIR: I appreciate it. Thank you.
10 We've had a motion. We've had a second by
11 Commissioner Carr, and we will proceed with a
12 roll-call vote.

13 COMMISSIONER GANT: Commissioner Bergman.

14 COMMISSIONER BERGMAN: Yes.

15 COMMISSIONER GANT: Commissioner Lopez.

16 COMMISSIONER LOPEZ: Yes.

17 COMMISSIONER GANT: Commissioner Carr.

18 COMMISSIONER CARR: Aye. Yes.

19 COMMISSIONER GANT: Commissioner Pogna.

20 COMMISSIONER POGNA: Yes.

21 COMMISSIONER GANT: Commissioner Shearman.

22 COMMISSIONER SHEARMAN: Yes.

23 COMMISSIONER GANT: Commissioner Gant

24 votes yes. Commissioner Garrison?

25 THE CHAIR: Yes.

1 COMMISSIONER GANT: We have an
2 all-in-favor vote.

3 THE CHAIR: The motion passes unanimously,
4 and I look forward to giving this report on
5 August 24 to the Legislative Education Study
6 Committee.

7 Thank you, Commissioner Shearman, for all
8 of your hard work, and the Legislative Committee in
9 total, for all the work that you did on this.

10 COMMISSIONER SHEARMAN: Will you identify
11 who those members are, please?

12 THE CHAIR: Absolutely. Vince Bergman,
13 thank you very much. Commissioner Gene Gant and
14 Commissioner Jeff Carr, thank you very much.

15 COMMISSIONER CARR: Mr. Chair, this may be
16 an appropriate time. I didn't talk about this at
17 the committee meetings. But we had discussed it in
18 previous committee meetings, in regards to a
19 constitutional amendment. So I just wanted to add a
20 quick comment that that amendment is going to be
21 voted on by the Central Committee of the Democratic
22 Party to be part of their platform and will also be
23 presented to the State legislature in the upcoming
24 session.

25 And if you want me to explain the

1 amendment again, I will. But I think everybody
2 knows what it is.

3 THE CHAIR: Go ahead and summarize it.
4 And then, also, do you have a historical perspective
5 on it? Was it introduced last session or in
6 sessions prior, anything like that?

7 COMMISSIONER CARR: I know it was
8 discussed among individual legislators who deemed it
9 more appropriate to discuss in the 60-day session
10 rather than a 30-day session. But it wasn't brought
11 up, you know, in the form of a possible -- as a
12 bill, you know, or as an amendment, as the case may
13 be.

14 Quite basically, it's just reverting --
15 keeping a ten-member elected Commission and bringing
16 back the powers of oversight that the State Board of
17 Education had prior to 2003, electing the Secretary
18 of Education instead of having it appointed by the
19 Governor, which was done 20 years ago.

20 When it was changed in 2003, the
21 Superintendent of Education was actually selected by
22 the State Board of Education. So -- so for the most
23 part, it goes back to just prior to 2003, with the
24 exception of the Secretary of Education being an
25 elected official.

1 And the name, really, you know, would have
2 to revert back to Superintendent of Education,
3 because the Secretary is a Cabinet position. So,
4 technically -- but Secretary of State is statewide
5 elected, too. So there's -- you know, the name --
6 you know, not that important.

7 But, anyway, that's -- that's being moved
8 forward where it goes. It will be presented to the
9 legislature as well.

10 I was hoping -- I have not heard -- there
11 were people who -- who were going to try to get this
12 presented to -- as an amendment to the Republican
13 Party's platform as well. So it would be
14 bipartisan. But I hadn't heard anything about that.
15 I don't know how that's going. I don't know if
16 that's going anywhere at all. But I just wanted to
17 give everybody a report on that. That's still
18 happening.

19 THE CHAIR: Thank you, sir.

20 COMMISSIONER CARR: Okay.

21 THE CHAIR: And that pertains, because we
22 are asked, at the LESC, is that we're an independent
23 body.

24 I want to move back to Letter A, and I
25 want to thank Beverly Friedman for saving me on this

1 one.

2 Item No. 10, if you look in your packets,
3 we are collaborating with the PED on the Strategic
4 Plan. And Beverly has resent out the -- what did we
5 call it? A table that we would fill in?

6 MS. FRIEDMAN: A survey.

7 THE CHAIR: A survey. But it's due back
8 to the Public Education Department by September 1st.
9 So if you want to give input on the Strategic Plan,
10 I highly recommend that we do that. I know we've
11 been in frustration for several years about not
12 being involved, even though it's statutorily our
13 duty to -- to be -- be strategically involved in the
14 Strategic Plan, the five-year plan for New Mexico.

15 But I'll take it however I can get it. I
16 want to voice my opinion, and I want to be a part
17 of -- a part of the process. And so September 1st
18 is the deadline. Beverly, do you have any other
19 information?

20 MS. FRIEDMAN: Mr. Chair, I'd just like to
21 mention that it is due to -- PED is due to turn in
22 their Strategic Plan by September 1st. And so any
23 comments from the PEC, I should receive -- I'd like
24 to receive by the 20th, or maybe by the 23rd,
25 something like that, so that I can give those to the

1 Committee, so it can be incorporated into our
2 Strategic Plan for PED.

3 THE CHAIR: Based on what we have going
4 on, Charter Schools would probably want it due
5 August 17. So please give your -- give your input
6 on that. I will definitely do so.

7 MS. FRIEDMAN: And, Mr. Chair, it was sent
8 to all the Commissioners electronically. And you
9 also have a hard copy there in your notebook. So
10 whichever method you would like to return that to
11 me, I will be happy to receive that.

12 THE CHAIR: So it looks like we need to
13 vote on that method here. You have a proposed
14 motion in your -- on your -- what do we call this?
15 Green? Olive? I don't know.

16 MS. FRIEDMAN: Uh-huh.

17 THE CHAIR: To submit comments or
18 suggestions directly to Beverly Friedman, or comment
19 on the PED Strategic Plan and ask the PEC Strategic
20 Plan Committee to begin work on drafting a PEC
21 Strategic Plan. So those are the choices on the
22 Strategic Plan.

23 COMMISSIONER CARR: Where is that?

24 THE CHAIR: It's on Item No. 10, the green
25 page, on the Proposed Motions?

1 COMMISSIONER BERGMAN: Mr. Chair?

2 THE CHAIR: Yes, sir.

3 COMMISSIONER BERGMAN: What would be the
4 purpose of us doing our own PEC Strategic Plan?
5 What legal basis would there be for that? What good
6 would it do? What would it accomplish? The statute
7 says we are supposed to work with the Secretary
8 to -- we were not invited on the last one. We were
9 not included. We were excluded. But I think we'd
10 be better off having a representative from this
11 Commission working with the study group or the
12 committee or however the PED puts together a
13 Strategic Plan. I don't see what the purpose of
14 having a separate plan would do. It could be
15 contradictory to what PED is doing.

16 THE CHAIR: I think we have
17 miscommunication here. I'm not implying that we're
18 doing our own separate Strategic Plan.

19 COMMISSIONER BERGMAN: That's what this
20 bullet on this green thing says. "On drafting a PEC
21 Strategic Plan."

22 COMMISSIONER GANT: The second bullet.

23 COMMISSIONER BERGMAN: As a second part of
24 that motion. The alternative motion is we would do
25 our own plan.

1 THE CHAIR: Beverly?

2 MS. FRIEDMAN: Mr. Chair and
3 Commissioners, I put that motion in there because
4 there was a comment made by one of the Commissioners
5 about creating a PEC Strategic Plan.

6 THE CHAIR: Yes, I recall that. And now I
7 understand why it's in here.

8 But I'm not going to give you my hopes on
9 what we propose. The Chair will entertain a motion.

10 COMMISSIONER BERGMAN: All right. I -- I
11 would move that each Commissioner submit his or her
12 comments or suggestions for the PED's Strategic Plan
13 directly to Beverly Friedman on or before August the
14 20th, 2012.

15 COMMISSIONER SHEARMAN: Second.

16 THE CHAIR: We have a motion on the floor.
17 We have a second by Commissioner Shearman. We will
18 proceed with a roll-call vote on the motion.

19 COMMISSIONER GANT: We will. Commissioner
20 Bergman.

21 COMMISSIONER BERGMAN: Yes.

22 COMMISSIONER GANT: Commissioner Lopez.

23 COMMISSIONER LOPEZ: Yes.

24 COMMISSIONER GANT: Commissioner Carr.

25 COMMISSIONER CARR: No.

1 COMMISSIONER GANT: Commissioner Pogna.

2 COMMISSIONER POGNA: Yes.

3 COMMISSIONER GANT: Commissioner Shearman.

4 COMMISSIONER SHEARMAN: Yes.

5 COMMISSIONER GANT: Commissioner Garrison.

6 THE CHAIR: Yes.

7 COMMISSIONER GANT: Commissioner Gant

8 votes yes. It's 6-1 in favor.

9 THE CHAIR: Six-one, the motion passes.

10 We have a plan.

11 Please, if you do not find that document,

12 that survey, please get hold of Beverly Friedman

13 right away so that she can either resend it or --

14 you do have a hard copy in your books here. So make

15 sure you take that home.

16 Item No. 11, Vote on the Masters Program

17 Charter School Amendment to Change Calendar, Kelly

18 Callahan, Acting Director of CSD. You're not the

19 Director anymore?

20 MS. CALLAHAN: Mr. Chair, some days I

21 wonder who I am.

22 THE CHAIR: And I will leave it at that.

23 Kelly?

24 MS. CALLAHAN: Mr. Chair, Commissioners,

25 thank you. We have one amendment request from The

1 Masters Program Charter School. And you have an
2 executive summary as well as the documents that the
3 school submitted.

4 The Masters Program is requesting an
5 amendment to change the school calendar to reflect
6 171 instructional days. The rationale for this
7 change is that the amendment is necessary to
8 specifically identify the number of instructional
9 days for The Masters Program. The original charter
10 did not specify the number of days, but, rather
11 listed several possible calendar scenarios. The
12 number of days and hours per day equals 1,283
13 instructional hours for The Masters Program. The
14 State regulation requires 1,080 instructional hours.

15 The founder of the school did not have
16 information to adequately determine the way the
17 school's calendar would fall, so the head
18 administrator and governance board wish to correct
19 the charter contract.

20 THE CHAIR: Any questions from
21 Commissioners of Ms. Callahan? Carolyn Shearman?

22 COMMISSIONER SHEARMAN: I think, just
23 clarification, do they -- they have a four days
24 week? Is that it?

25 MS. CALLAHAN: The -- Mr. Chair,

1 Commissioner Shearman, the school has a four-day
2 week, and it goes from 7:30 to 4:00.

3 THE CHAIR: I didn't hear your
4 recommendation, and you probably gave it.

5 MS. CALLAHAN: Mr. Chair, we didn't
6 provide a recommendation at this point in our
7 amendment process. We give the information for your
8 consideration. However, it is a cosmetic change.
9 They do meet the requirements of the -- of the
10 minimums. Their four-day week is there because of
11 the partnership with the Community College. And so
12 the classes that the students are taking, and then
13 their -- the schedule is flexible enough for the
14 students to be able to take those dual-enrollment
15 courses. And so I don't have any problem with
16 the -- with the amendment request.

17 THE CHAIR: Thank you. Any questions from
18 Commissioners? The Chair will entertain a motion.

19 COMMISSIONER LOPEZ: Mr. Chair?

20 THE CHAIR: Commissioner Lopez?

21 COMMISSIONER LOPEZ: I move to approve the
22 amendment presented by The Masters Program.

23 COMMISSIONER BERGMAN: Second.

24 THE CHAIR: The motion has been seconded
25 by Commissioner Bergman. All -- let's go -- let's

1 do a roll-call vote.

2 COMMISSIONER GANT: Commissioner Bergman.

3 COMMISSIONER BERGMAN: Yes.

4 COMMISSIONER GANT: Commissioner Lopez.

5 COMMISSIONER LOPEZ: Yes.

6 COMMISSIONER GANT: Commissioner Carr.

7 COMMISSIONER CARR: Yes.

8 COMMISSIONER GANT: Commissioner Pogna.

9 COMMISSIONER POGNA: Yes.

10 COMMISSIONER GANT: Commissioner Shearman.

11 COMMISSIONER SHEARMAN: Yes.

12 COMMISSIONER GANT: Commissioner Garrison.

13 THE CHAIR: Yes.

14 COMMISSIONER GANT: Commissioner Gant

15 votes yes. Six-oh -- that's a correction. Seven-oh
16 in favor.

17 THE CHAIR: The motion passes unanimously.

18 MS. CALLAHAN: Thank you, Mr. Chair.

19 THE CHAIR: You're welcome. Item No. 12

20 is Village Academy Charter School Progress Report to
21 Fulfill Monitoring Condition of Renewal. Kelly
22 Callahan.

23 MS. CALLAHAN: Mr. Chair, Commissioners,

24 there was a request to have an update on Village

25 Academy Charter School. The progress report, there

1 was some confusion about the way the data was to be
2 calculated, whether there was a baseline. And so
3 what we did is we took the request -- I believe it
4 was Commissioner Shearman who asked for us to take a
5 look at this -- the academic performance of this
6 school.

7 And so in the executive summary, I state,
8 "When Village Academy Charter School was renewed by
9 the PEC in December 2009, the following conditions
10 were imposed regarding academic performance." The
11 first says, "Make no less than an 8-percent gain
12 over the 2009-'10 baseline in School Year 2010-2011;
13 a 12-percent gain over the 2009-2010 baseline in
14 School Year 2011-2012; and a 20-percent gain over
15 the 2009-2010 baseline in School Year 2012-2013, in
16 mathematics proficiency level school-wide, as
17 measured by the NMSBA."

18 The second was, "Make no less than a
19 5-percent gain over the 2009-2010 baseline in
20 reading proficiency, school-wide, for each of the
21 next three years: School Year 2010-'11, School Year
22 2011-'12, and School Year 2012-'13, of the charter,
23 as measured by the NMSBA."

24 And as you know, we don't, of course, have
25 the numbers for the current school year. So we have

1 the baseline from 2009-'10 and the data from
2 2010-'11 and 2011 and '12. And so we've listed
3 this. And this is based on all students at Village
4 Academy for their scores.

5 And so the reading proficiency. In 2010,
6 the students -- 25 percent of the students were
7 proficient on the SBA in reading. In 2011, Village
8 Academy improved 28.7 percent from their 2009-'10
9 baseline. In 2012, Village Academy improved
10 .7 percent from their '09-'10 baseline, but went
11 down 28 percent from 2010 to 2011.

12 In math, in 2010, their baseline was
13 15.4 percent of the students were proficient. In
14 2010-'11, all students, Village Academy improved
15 16.3 percent from their '09-'10 baseline. And in
16 2011-'12, Village Academy decreased 9.7 percent from
17 their '09-'10 baseline, and went down 26 percent
18 from 2010-'11.

19 Please note that Village Academy's total
20 enrollment numbers are under 50. Village Academy's
21 charter expires 6/30/13; therefore, they will be in
22 the renewal class that will be submitting on
23 October 1st, since they had a shortened charter
24 length time in their renewal.

25 The renewal process will have an in-depth

1 data analysis, which will disaggregate and compile
2 data over the life of the charter, both from the SBA
3 and short-cycle assessments, as well as data
4 specific to the charter goals.

5 Village Academy Charter School fulfilled
6 the rest of the conditions outside of the academic
7 conditions required by the PEC during their current
8 term to date.

9 THE CHAIR: Questions?

10 COMMISSIONER SHEARMAN: No. I -- thank
11 you, Ms. Callahan. Thank you, Mr. Chairman. I'm
12 very satisfied with the report. And thank you for
13 the clarity of the presentation.

14 THE CHAIR: We'll move to Item No. 13, PEC
15 Comments.

16 MS. CALLAHAN: Mr. Chair, if I may, just
17 for a moment?

18 THE CHAIR: Oh, yes.

19 MS. CALLAHAN: I'd like to introduce Karen
20 Ehlert, who is the Educational Administrator who
21 serves the Village Academy. And would you like to
22 introduce -- Village Academy has a new principal
23 that just started August 1st. And so I'd like Karen
24 to introduce the new Karen.

25 MS. EHLERT: Mr. Chairman, members of the

1 Commission, this is Karen Mayhew. And since she
2 started -- what? -- two weeks ago, or less than a
3 week ago --

4 MS. MAYHEW: Yes.

5 MS. EHLERT: -- we've had a meeting and
6 have gone over all of the issues that she's facing.
7 And do you have anything to say?

8 MS. MAYHEW: I just would like to say that
9 this school is a very small school in a very small
10 community. However, it has a large impact on the
11 families that it serves. And that we have a big --
12 even though there was a decrease this last year, it
13 was a very large special ed population, unusually
14 large, that has come in.

15 I'm just now digging into everything, and
16 I apologize for my voice, Mr. Chair and
17 Commissioners. Good afternoon. And I think that
18 we're having almost all the students return, which
19 is -- it shows that the community wants this school.
20 So I'm looking forward to working with them and with
21 the teachers and, most importantly, with the
22 students. And I appreciate the opportunity for the
23 renewal. Thank you.

24 THE CHAIR: Thank you. And you don't need
25 to apologize for anything, because you and Karen

1 increased our PEC meeting attendance by
2 33.3 percent. I usually shake Dr. Harrell on the
3 shoulder to wake him up and then turn out the
4 lights, and we're out of here.

5 MS. MAYHEW: It was a learning experience.
6 Thank you for your hard work, all the Commissioners.

7 MS. CALLAHAN: Thank you, Mr. Chair.

8 THE CHAIR: You're very welcome. Thank
9 you for those introductions.

10 Item No. 13, PEC Comments. Level A, the
11 PEC Calendar. I want to thank the New Mexico Public
12 Education Department for the press release and
13 Beverly for getting that out. The community --
14 we'll start with the community input hearings. On
15 August 20th, will be up in Taos. The application is
16 the Taos International School. We'll continue the
17 morning session with the Taos Mountain Charter
18 School.

19 In the afternoon, we'll come down to
20 Santa Fe for New Mexico Connections. It's a virtual
21 school, and then Starshine Lisa Law Peace School.
22 We'll end our day and start in Albuquerque in the
23 morning of Tuesday, August 21 at 8:00 a.m., Indigo
24 Hills Charter School application. Then Health
25 Leadership Academy. The Electus Academy.

1 And then, on Wednesday, August 22, in
2 Deming, we will continue with the Columbus Community
3 School application. Then Academy -- Academic
4 Opportunities Academy -- that's in Deming. So we'll
5 go to Columbus, then to Deming. And then Academic
6 Opportunities Academy in Las Cruces.

7 On Thursday, August 23, we go a little bit
8 south to Gadsden, the Academic Opportunities
9 Academy; in Anthony, the Health Science Academy.
10 And then to Alamogordo for the Academic
11 Opportunities Academy.

12 Finishing Friday, August 24th, in Carlsbad
13 with the Academic Opportunities Academy.

14 So it's -- it's a full slate, as usual.
15 And I want to thank Kelly Callahan and her staff for
16 getting this road show planned, and we knock it out
17 in one week. That's really nice, because I've
18 always dreaded the day where we go into a second
19 week or a Saturday, which we've come close but it
20 hasn't happened yet.

21 As we all know, that we all have different
22 schedules and commitments. And so not all
23 Commissioners are making every meeting. And we do
24 have the required -- by State statute, the three
25 required in attendance. And then other

1 Commissioners who do not attend those particular
2 hearings, you're obviously responsible for reading
3 all the materials pertaining to those applications.

4 Beverly, was your thinking to -- for us to
5 set things beyond -- for 2013? I see the calendar
6 there.

7 MS. FRIEDMAN: No.

8 THE CHAIR: That's just --

9 MS. FRIEDMAN: Mr. Chair, I just put that
10 in there for information.

11 THE CHAIR: Excellent.

12 COMMISSIONER BERGMAN: Mr. Chair?

13 THE CHAIR: Commissioner Bergman.

14 COMMISSIONER BERGMAN: These are the dates
15 we've agreed. I want to make sure these are
16 accurate. I've got some other things I've got to
17 plan. Right now, we're showing September 19 and 20,
18 nothing in October. We're going to meet on
19 November 1 and 2, and then December 13 and 14. Are
20 those the correct dates right now? Thank you.

21 MS. FRIEDMAN: That's correct.

22 COMMISSIONER LOPEZ: What is December 13
23 and 14? That's our regular meeting?

24 THE CHAIR: Renewals.

25 COMMISSIONER LOPEZ: Renewals, okay.

1 THE CHAIR: Commissioner Bergman, run that
2 list down again. I started getting my red pen out,
3 and you beat me.

4 COMMISSIONER BERGMAN: The book shows that
5 we're meeting on the 19th and 20th in September;
6 nothing in October, because we pushed the dates back
7 a week; November 1st and 2nd; and then December 13th
8 and 14th will be the renewal decision meetings.

9 THE CHAIR: And now that I made you do
10 double the work, I see the light little blue --
11 thanks, Beverly, for that.

12 MS. FRIEDMAN: That didn't come out.

13 THE CHAIR: That's okay. It keeps me
14 sharp. PEC Travel, Letter B. Out-of-state travel
15 by Commissioners.

16 I asked Commissioner Gant, our Secretary,
17 to look at what we have in the Public Education
18 Commission Rules of Procedure. And you have your
19 green book -- well, you do have your green books in
20 your binders. And in those books on the last page
21 will be our procedure for out-of-state travel. So,
22 Commissioner Gant, tell me what have you fixed up
23 for us.

24 COMMISSIONER GANT: Mr. Chair, members,
25 basically it's a historical comment. In talking to

1 Ms. Friedman, the Chair has basically been the only
2 one traveling for at least four years, five years.
3 So we're open to rotation, of restarting the
4 rotation based upon the fact the Chair gets the
5 first call, whether they go or not.

6 Then you'll start with District 1, 2, and
7 3. Normally, this is, per the green book, done at
8 the first of the year. But we can start -- you
9 have -- there are some meetings coming up now. So
10 we need to decide who's going to go to these
11 conferences in the next -- what? -- October?

12 MS. FRIEDMAN: Yes.

13 COMMISSIONER GANT: So, you know, I guess
14 the Chair should ask each person here -- of course,
15 we've got -- we've got some people missing here.
16 Michael Canfield -- Commissioner Canfield and
17 Commissioner Peralta, whether they want to travel or
18 not, okay? But I think you're the one that has to
19 lead on asking Commissioners who want to travel,
20 starting with District 1 and moving on through at
21 that point.

22 THE CHAIR: I would -- I would like you
23 to -- to call those folks and see if they plan or
24 not, and just go down the -- go down the order.

25 COMMISSIONER GANT: I can call and see. I

1 can call, Mr. Chair, and see if they want to go or
2 not. But can we take a call today -- I can call
3 these two down here, but -- or send them a note. We
4 might as well just ask today.

5 THE CHAIR: So what we have in the
6 procedure, I don't see that there's a limitation or
7 an identification of how many folks can travel. Do
8 you all see that in there?

9 COMMISSIONER GANT: No, there's no
10 limitation. There's a limitation on the budget.

11 THE CHAIR: Right.

12 COMMISSIONER GANT: The budget; that's the
13 only limitation. I've gone to one, at the very
14 first one. Remember, there was three of us that
15 went. We went back to Savannah, Georgia, for the
16 NASBE conference -- NACSA, I'm sorry. The NACSA
17 conference. That's what we went back for. So it's
18 basically on budget. I mean, if you've got enough
19 budget to send everybody, let them go if they want
20 to go.

21 COMMISSIONER CARR: Mr. Chair, if I
22 remember from the budget -- Beverly's not here right
23 now -- it seemed like she said there was enough
24 for -- to send three?

25 THE CHAIR: That's what I thought.

1 COMMISSIONER CARR: Or two to each
2 meeting? Or was it --

3 THE CHAIR: Three, total, is my
4 recollection. But where did she go?

5 MS. CALLAHAN: She just went to the
6 restroom.

7 THE CHAIR: How dare she?

8 COMMISSIONER GANT: I'd like to make a
9 comment on this, Mr. --

10 THE CHAIR: Hold on. Commissioner
11 Bergman.

12 COMMISSIONER BERGMAN: My recollection in
13 the past is they told us we could probably send two.
14 The budget fluctuates year in and year out. Who
15 knows?

16 COMMISSIONER GANT: Mr. Chair?

17 THE CHAIR: Commissioner Gant.

18 COMMISSIONER GANT: Mr. Chair, members,
19 after yesterday --

20 THE CHAIR: Commissioner Gant has the
21 floor.

22 COMMISSIONER GANT: After the discussions
23 yesterday, members -- Mr. Chair, and Mr. Bergman,
24 Commissioner Bergman, I kind of agree with you that
25 if we're going to send maybe two, because there's

1 going to be more travel coming down based upon what
2 we did yesterday, I believe. And, of course, this
3 budget runs till 30 June. And we might be -- want
4 to be a little cautious, on the cautious side.

5 Yes, it would be great if three of us
6 could go to one meeting and three others to another
7 meeting, and that would pretty much cover the
8 Commission. But we have to be prudent in our
9 dollars that the taxpayer gives us to make sure we
10 do our duties as required to take care of our
11 charter schools and students.

12 That's just a comment I'm recommending --
13 my recommendation, of course. Everybody's got to
14 decide on it. Recommendation is two; that's just my
15 comment.

16 THE CHAIR: So why don't we go down the
17 list from Commissioner Bergman this way to see who
18 wanted to travel and what conference they wanted to
19 travel to. Commissioner Bergman.

20 COMMISSIONER BERGMAN: Thank you,
21 Mr. Chair. This year, I cannot attend either one.
22 But I certainly want to go to one in the future,
23 probably next year. So I'm out of the picture this
24 year, so --

25 THE CHAIR: I have you down for 2019.

1 COMMISSIONER BERGMAN: That's what I was
2 afraid of. Yeah, I'll probably be dead then.

3 THE CHAIR: Whoa, whoa. Easy there.

4 COMMISSIONER GANT: That's pessimism, if
5 I've ever heard it.

6 COMMISSIONER LOPEZ: None, either one.

7 COMMISSIONER GANT: Commissioner Carr?

8 COMMISSIONER CARR: I'm interested in the
9 NASBE conference in Chicago.

10 COMMISSIONER GANT: NASBE? All right.
11 Commissioner Pogna?

12 COMMISSIONER POGNA: I need -- I need more
13 time for healing. Probably next year.

14 COMMISSIONER GANT: Next year?
15 Commissioner Shearman?

16 COMMISSIONER SHEARMAN: If there are funds
17 available, I'd like to attend the NACSA.

18 COMMISSIONER GANT: NACSA?

19 COMMISSIONER SHEARMAN: Uh-huh.

20 COMMISSIONER GANT: Commissioner Garrison.

21 THE CHAIR: I'd like Beverly to register
22 me for the NASBE conference in October.

23 COMMISSIONER SHEARMAN: Do you remember
24 when the next conference is?

25 THE CHAIR: The NACSA date? Do you

1 recall?

2 MS. FRIEDMAN: They're in your book.

3 COMMISSIONER BERGMAN: October 22 through
4 25 -- I'm looking at them right now -- in Memphis,
5 if this information is correct.

6 MS. FRIEDMAN: NACSA is the --

7 MS. CALLAHAN: Mr. Chair, just as an aside
8 for the NACSA conference, yesterday, when we did the
9 training, I was talking about the partnership that
10 we have, the grant that NACSA is doing. The CSD
11 staff will actually be taking part in a round-table
12 sort of discussion with other states that are doing
13 this. So we'll have an opportunity to do some
14 exchange of best practices and networking that may
15 be very pertinent to the -- any of the Commissioners
16 who go.

17 So it's going to be a -- outside of the
18 agenda sessions, but it's going to be the states
19 that are working with NACSA getting together. And
20 they're very, very interested in hearing the
21 New Mexico process for the other states.

22 THE CHAIR: Indulge me. Tell me all about
23 this grant.

24 MS. CALLAHAN: Mr. Chair, Commissioners,
25 in January, Patti Matthews and I wrote a grant for

1 the NACSA organization. And it was an
2 implementation and planning grant for implementing
3 new authorizer practices. And, because we had just
4 put in place this new law, SB 446, that was based on
5 the NACSA principles and the model contract they
6 talked about. We asked for \$125,000 for the grant;
7 that would have been in-kind and actual funds that
8 we would have gotten.

9 And the State committed to the -- the PED
10 committed to a 15-percent match, which was about
11 \$32,000, \$33,000. And so when we did award the
12 grants, we ended up with a \$50,000 in-kind award.
13 So we have a consultant that is working with the
14 State of New Mexico, and -- and I have hired the
15 team members to work with them.

16 And that group -- myself and the group,
17 working with the NACSA consultant, the \$50,000
18 covers the consultant time. She's been to
19 New Mexico a couple of times to meet with the team.
20 We actually met up there during the National Charter
21 School conference. And -- and so we've been
22 mapping, since probably early April, the work that
23 you saw yesterday. That's the development of the
24 frameworks, the development of the contract and
25 everything.

1 There's not actual funds that are
2 exchanged, this consultant and the work that we're
3 doing with other consultants that are helping with
4 the data analysis. And there's, you know, a lot --
5 it's a very complex process that we've been going
6 through. So that grant is covering the expenses of
7 that technical assistance to help us with
8 implementing SB 446.

9 THE CHAIR: So NACSA -- you didn't write a
10 grant for NACSA, but for a grant that NACSA was
11 offering; right? Is that correct?

12 MS. CALLAHAN: Mr. Chair, yes, that's
13 correct.

14 THE CHAIR: Okay, cool.

15 MS. CALLAHAN: So it's been very helpful.
16 We -- a lot of expertise. People who were involved
17 in writing the law actually are helping us put
18 together the frameworks, which, you know, again, as
19 we said yesterday, they provide sort of that generic
20 template that we started from. And what they're
21 doing is they're assisting us in bringing our
22 New Mexico regulation, statutes, requirements, into
23 those frameworks and identifying them to New Mexico.

24 So they've been -- they've been assisting
25 us. And so a lot of work that Lisa, Julia, Rochelle

1 Cherrin, myself, have all been working. And then
2 the rest of the CSD has been helping us with
3 reviewing and vetting. And so yesterday was a
4 pretty good first draft. But we're getting ready to
5 do some of the more final drafts that you'll see in
6 the next couple of weeks that we'll be submitting to
7 you guys.

8 THE CHAIR: Thank you.

9 COMMISSIONER SHEARMAN: Have we got
10 everybody?

11 COMMISSIONER GANT: Not yet. I want to go
12 to NACSA.

13 THE CHAIR: Commissioner Gant.

14 COMMISSIONER GANT: I can read the list
15 here, if you'd like.

16 THE CHAIR: Sure.

17 COMMISSIONER GANT: Commissioner Bergman
18 said he could not go this year. Commissioner Lopez,
19 no. Commissioner Carr, NASBE.

20 COMMISSIONER CARR: Uh-huh.

21 COMMISSIONER GANT: Commissioner Pogna,
22 no.

23 COMMISSIONER POGNA: Next year.

24 COMMISSIONER GANT: Next year.

25 COMMISSIONER POGNA: Hopefully.

1 COMMISSIONER GANT: Commissioner Shearman.

2 THE CHAIR: NACSA.

3 COMMISSIONER GANT: NACSA. I can never
4 say. That and you wanted to go to NASBE.

5 THE CHAIR: NASBE.

6 COMMISSIONER GANT: And I'll go to NACSA.

7 THE CHAIR: Thank you, Commissioners.

8 COMMISSIONER GANT: Now we just need to
9 make a historical record of this. We need to make
10 an historical record of this so we won't have to
11 guess about it next year.

12 THE CHAIR: Right.

13 COMMISSIONER SHEARMAN: Pardon me,
14 Mr. Chairman. There is a time imperative here, I
15 think, if we're going to get registered and make
16 travel arrangements. We do need to decide who's
17 going and who's not this year.

18 THE CHAIR: And so that charge is on the
19 Secretary of the Commission. So Gene Gant will --
20 he's going to follow up with Peralta and Canfield.

21 COMMISSIONER GANT: Right.

22 THE CHAIR: And the order is right here.
23 It's in the procedure that we go from District 1
24 down.

25 COMMISSIONER SHEARMAN: Do we have the

1 money? Do we need to check on that?

2 THE CHAIR: The funding, we talked about
3 three Commissioners being able to travel this year.
4 You're nodding your head?

5 MS. FRIEDMAN: Yes.

6 THE CHAIR: We're still in the same
7 ballpark?

8 MS. FRIEDMAN: Yes, Mr. Chair. That's my
9 understanding, also, and I'll clarify that with
10 Mr. Aguilar.

11 THE CHAIR: Thank you, Commissioner
12 Bergman.

13 COMMISSIONER BERGMAN: I stepped out for a
14 second there. So when you were discussing that --
15 that's unfair to go from District 1 every year. I'm
16 in District 8. I may never get to make a trip.

17 THE CHAIR: I did not say every year. I
18 did not say every year.

19 COMMISSIONER GANT: No, they rotate.

20 COMMISSIONER BERGMAN: Oh, it does rotate?
21 Okay.

22 THE CHAIR: It's in your book.

23 COMMISSIONER BERGMAN: If you start the
24 rotation now, it might be 2019 before I get to take
25 a trip.

1 COMMISSIONER CARR: Yeah, I'm in
2 District 10.

3 COMMISSIONER BERGMAN: That's why you're
4 jumping in this year; right?

5 THE CHAIR: Oxygen, maybe?

6 COMMISSIONER CARR: It's going to cost
7 more because you're going to have to comply with the
8 Disabilities Act.

9 THE CHAIR: So on Item C is the PEC Input
10 to PED Strategic Plan. So, Beverly, I panicked when
11 you handed me that little note. But we're good. We
12 got it all taken care of. Any other PEC comments?

13 COMMISSIONER CARR: Mr. Chair, yeah, just
14 a quick -- I ask that we get the Blue Book -- the
15 new Blue Book is going to come out in a couple of
16 weeks. And when I went across the street, they're
17 wanting to charge everybody about \$11 or \$12 now.
18 But they're giving it to the State Senate. They
19 said they would if they could give me one. But I
20 asked Beverly if she could just get us all one,
21 because it's a directory of all the State offices
22 that we all should have. And we are in it as well.

23 And another quick thing. This was
24 interesting on here. People have been in the
25 military -- you know what ASVAB is; right? That's

1 the Armed Services Vocational Aptitude Battery. I
2 didn't see any reference to the military in this
3 whole packet. That's fine. It's a good test. We
4 offer it every year in Taos, and it's great. But
5 there should be -- if we look at -- if they're going
6 to -- well, it's too late, I think, to put it in the
7 Strategic Plan anyway, like the gentleman requested.

8 But I just wanted to make sure that
9 everybody realized that's what this is, and that
10 this is also a way for the military to recruit, you
11 know, which is fine. But there should be --
12 everybody should be aware of what it is.

13 COMMISSIONER LOPEZ: We should be aware.

14 THE CHAIR: Well, it's not too late.
15 August 17th or 20th. Commissioner Gant?

16 COMMISSIONER GANT: Yes, Mr. Chair,
17 members of the Commission. I have -- the one
18 comment from the last PSCOC meeting -- and those do
19 get exciting occasionally -- occasionally. Coming
20 up in our next few meetings -- because there's been
21 a lot of discussion about charter schools and
22 facilities for charter schools at the PSCOC and
23 where these charter school facilities will be found,
24 the impacts of charter schools on facilities. And
25 another topic is the leases for charter schools.

1 So I think the next meeting or the meeting
2 after that -- I haven't seen the agenda yet so I
3 don't know -- there will be a lot of discussion
4 about charter schools and facilities. You know that
5 we do have a lease assistance program for charter
6 schools. And based upon the comments made at the
7 last one, the lease assistance was at \$10.8 million.
8 With the addition of these ten new charter schools,
9 it will jump by \$3.5 million additionally, okay?

10 So the PSCOC and others, including
11 legislators, are becoming very, very concerned about
12 the impacts of charter schools, leases, et cetera,
13 on the overall budget for education.

14 There's discussion among many that, as you
15 noted in our last go-round with ten charters doing
16 the Certificate of Completion, that each one of the
17 charter leases were different. None of the two --
18 no two of them were the same. And there's
19 discussion about somehow developing a standardized
20 lease agreement, because it's felt by many that
21 the -- the leases out there may or may not be fair
22 to the charter schools.

23 And in some instances, the charter schools
24 are paying a hefty lease, dipping into their
25 operational dollars above what they get in lease

1 assistance; and then, on top of that, having to pay
2 for all the repairs, the internal and external
3 repairs and maintenance on the facilities in which
4 they are located.

5 And those of you that work in the schools,
6 have had work to do with the schools, know how
7 expensive repairs and maintenance can be in these
8 facilities. So there's a lot of discussion about
9 how this can be addressed and what changes, possible
10 changes, we can make.

11 So not only is the LESC looking at this,
12 and -- at the charter schools and what's going on,
13 now the PSCOC, the money people for buildings and
14 renovation of buildings, is looking at it.

15 And my last comment was, with your
16 approval -- I can tell him no, but I said -- but I
17 know I should ask you all. But I got a call from
18 Charles Sallee, LFC, and he would like to sit and do
19 some more discussion with me on charter schools. Is
20 there any problem with that, folks? Since I -- this
21 was based upon the fact I'm in the PSCOC as your
22 representative. Therefore, I believe I have
23 permission to talk to Charles Sallee at the LFC.
24 Correct?

25 THE CHAIR: Yeah.

1 COMMISSIONER GANT: Thank you.

2 THE CHAIR: Yes.

3 COMMISSIONER GANT: Thank you. I have no
4 further comments.

5 THE CHAIR: Any comments?

6 MS. CALLAHAN: Chairman Garrison, I just
7 have a couple of things, if we can request --

8 THE CHAIR: Sure.

9 MS. CALLAHAN: The analysis of the new
10 applications, we're almost finished. I'm requesting
11 if we can send them to you on Monday so we can have
12 one more day to finish, put the final touches on the
13 new application analyses that we're going to be
14 doing, if that would be all right with the
15 Commission so we can make sure we have the most
16 thorough and accurate process that we're going
17 through. The compilations of team things is taking
18 quite a long time.

19 THE CHAIR: Okay.

20 MS. CALLAHAN: And then the second thing,
21 we just received notice day before yesterday. I
22 think we let you guys know that the federal
23 government took away some of our federal grant money
24 last -- last year. They gave us back \$2 million for
25 the schools that are opening this year. We can't

1 apply it to any new schools. It has to be schools
2 that fell into the grant last year.

3 And we have an extension, a year
4 extension -- the grant was supposed to be finished
5 June 30. We received a one-year, no-cost extension
6 until June 30, 2013, and the \$2 million then will go
7 back to this -- the schools. So originally, they
8 were asked to budget \$800,000. They cut the grant
9 significantly. And they ended up with less than
10 \$400,000, because the appealed schools were not --
11 were -- they were -- continued to be denied.

12 Those schools, we handed out that money,
13 and now we'll have another -- there will be close,
14 when it's all said and done, to almost \$500,000,
15 which is better than what they've been receiving.
16 So that was good news. For those schools, it's
17 unfortunate that money can't carry over into the new
18 schools that are opening this year. But the grant
19 is very specific about who the recipients can --
20 separate recipients can be.

21 THE CHAIR: Thank you. That is good news.

22 COMMISSIONER GANT: Mr. Chair, let me get
23 this straight in this old man's head. Is there
24 start-up funds for this year for -- for the schools
25 that are coming online now?

1 MS. CALLAHAN: Mr. Chair, Commissioner
2 Gant, the new applications, the ones that are just
3 coming in that we're reviewing right now?

4 COMMISSIONER GANT: Yeah.

5 MS. CALLAHAN: There is no money, federal
6 start-up money at all, for those schools.

7 COMMISSIONER GANT: Okay. Thank you.

8 THE CHAIR: I just have one quick question
9 for Mr. Brown. As they gave the report earlier on
10 the virtual issues, I was just curious about the
11 Senator Dennis Chavez Academy, as far as the
12 District Court lack of a ruling. It's been three
13 years now. Is that -- or is that just the way it
14 rolls, or is it --

15 MR. BROWN: They are so inundated,
16 Mr. Chair, members of the Commission, with cases
17 that I don't know what their priorities are. But
18 it's not that case.

19 THE CHAIR: I think we know that.

20 MR. BROWN: We had another case that was
21 pending, maybe not -- I think about as long as that
22 one. And consider that we're not the plaintiff.
23 So, you know, if they want to go forward, they can
24 file things to expedite it, move it up ahead,
25 whatever, and they haven't done so. And there is

1 something in the law -- and I shouldn't say it too
2 loud -- where failure to prosecute is grounds to
3 have a case dismissed. And that's what we did in
4 the other case that was pending a little bit longer
5 than that one. And the judge threw it out because
6 one less case.

7 THE CHAIR: Right, right.

8 MR. BROWN: So there's no movement that
9 we're aware of.

10 THE CHAIR: Okay. Thank you so much.
11 Commissioner Shearman?

12 COMMISSIONER SHEARMAN: Can I just remind
13 Commissioner Bergman and Carla Lopez, Ms. Lopez, I
14 need your information for the report.

15 COMMISSIONER BERGMAN: You have my
16 information.

17 COMMISSIONER SHEARMAN: Is it correct?

18 COMMISSIONER BERGMAN: A retired business
19 owner. That's what I am.

20 COMMISSIONER SHEARMAN: Whatever you'd
21 like for me to put, just write it down, and I'll be
22 glad to take it with me. And, Mr. Brown, if I could
23 just visit with you for a minute after the meeting,
24 please?

25 MR. BROWN: That sounds ominous. Okay.

1 You sounded like a principal. I'm trying to finish
2 my homework as we speak.

3 THE CHAIR: Any other comments? Seeing
4 none, the Chair will entertain a motion to adjourn.

5 COMMISSIONER CARR: I move to adjourn.

6 THE CHAIR: So moved. All of the
7 Commission members, say "Aye."

8 (Commission so indicates.)

9 THE CHAIR: Thank you so much, everyone.

10 (Proceedings in recess at 2:40 p.m.)

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