

FIRST JUDICIAL DISTRICT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next  
friend of her minor children AN. MARTINEZ,  
AA. MARTINEZ, AR. MARTINEZ, and AD.  
MARTINEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

Consolidated with

WILHELMINA YAZZIE, individually and as next  
friend of her minor child, XAVIER NEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

**MOTION AND MEMORANDUM FOR ENTRY OF ORDER OF  
SATISFACTION OF INJUNCTION AND DISMISSAL OF ACTION**

Defendants herein, by and through their counsel of record, and pursuant to Rule 1-060B(5)  
NMRA, hereby move this Court for relief from the Court's February 14, 2019 Final Judgment and  
Order, which enjoined Defendants as follows:

[T]o take immediate steps . . . to ensure that New Mexico schools have the resources  
necessary to give at-risk students the opportunity to obtain a uniform and sufficient  
education that prepares them for college and career.

. . . .

Reforms to the current system of financing public education and managing schools  
should address the shortcomings of the current system by ensuring, as a part of that  
process, that as soon as practicable every public school in New Mexico would have

the resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students.

The new scheme should include a system of accountability to measure whether the programs and services actually provide the opportunity for a sound basic education and to assure that the local districts are spending the funds provided in a way that efficiently and effectively meets the needs of at-risk students.

Final Judgment and Order at 4-5 (hereinafter the “Final Judgment and Order” or the “Injunction”)<sup>1</sup>.

## INTRODUCTION

In 2018 and 2019, following extensive evidence, the Court issued three (3) opinions that set forth a number of findings regarding the state’s education system and ordered Defendants to take immediate action to remedy the shortcomings identified regarding at-risk students. Specifically, the Court made findings regarding the condition at the time of trial of overall funding, funding for at-risk students, education for English Learner (“EL”)<sup>2</sup> students as codified by statute, education of Native American students, as codified by statute, education of students with disabilities, as codified by statute, as well as supports for general education which also benefit at-risk students such as pre-K, K-3 Plus<sup>3</sup>, extended learning, smaller class size, research-based reading programs, teacher quality, and other educational supports such as instructional materials.

Defendants did not waste any time in addressing the issues highlighted during trial, which concluded in August 2017. Even before the Court issued its first ruling, the Legislature passed a number of pieces of legislation that addressed concerns raised during trial.<sup>4</sup> Governor Michelle

---

<sup>1</sup> Pursuant to NMRA 1-007.1(C)(1) this Motion is presumed to be opposed.

<sup>2</sup> During trial and in the Court’s opinions, EL students were referred to as English Language Learners (“ELL”).

<sup>3</sup> K-3 Plus is now K-5 Plus; after the Court’s ruling it was expanded to include fourth and fifth graders.

<sup>4</sup> Following the conclusion of trial, Defendants filed a Motion for Judicial Notice (filed March 13, 2018) and a Second Motion for Judicial Notice (filed March 23, 2018) which requested that this Court take judicial notice of the provisions of the pertinent 2018 legislation and the 2018 Post-Session Review. The Court denied these motions, stating its belief that its decision should be confined to the evidence elicited at trial. See Order Denying Motions to Take Judicial Notice, entered on July 18, 2018, p. 2. In doing so,

Lujan Grisham, the New Mexico Public Education Department (“PED”), and the New Mexico Legislature saw the Court’s opinions as a call to arms and immediately responded to address the areas subject to the Court’s criticism. Tellingly, within days of taking office, Governor Lujan Grisham signed two (2) executive orders (executed on January 3, 2019) directed at improving the education system. Guided by this administration’s mantra of “EQUITY, EXCELLENCE AND RELEVANCE”, Defendants have systemically reformed the public education system presented to the Court during trial through executive action, such as policy and program changes, as well as executive orders, and joint efforts culminating in legislative action in the form of additional appropriations and new substantive legislation.

As set forth in greater detail below, every topic addressed by the Court’s Injunction has been re-examined and improved since the Court entered its findings. Defendants have taken three (3) general types of action: funding, legislative action, and programmatic change (or executive action). In the area of funding, the state increased the percentage of overall state funding spent on public education to 46.2%, exceeding the percentage at the time of trial by 2.2%. See Findings of Fact and Conclusions of Law, #2117. The increased spending is even more impressive given the decline in enrollment in New Mexico’s schools in recent years. In addition to increasing overall funding, Defendants have also increased the efficacy of state funding for at-risk students by increasing the amount of funding generated by at-risk students, increasing below-the-line funding for specific at-risk programs, and increasing accountability over how this funding is spent. The 2018 and 2019 Legislature passed literally dozens of pieces of legislation aimed at improving the education system, many passed in direct response to the Court’s findings. Defendants have made a significant number of programmatic changes for at-risk students, including increased emphasis

---

(cont.) however, it held that “[i]f liability is found, the Defendants may use evidence that demonstrates their compliance with any court orders at the appropriate time.” Id.

on relationships with Native American nations, tribes and pueblos, identifying gaps in services for EL students, and increasing flexibility regarding services for students with disabilities. In addition to changes targeted to at-risk students, Defendants have also improved general education by addressing teacher quality and retention, class sizes, early childhood education, extended learning, and other academic supports.

Plaintiffs, throughout briefing in this matter, have attempted to alter the requirements of the Injunction. Plaintiffs have claimed Defendants must show a return to 2008 per-pupil funding and teacher salaries, changes in educational outcomes as well as an undisclosed amount of funding as Plaintiffs have simply deemed Defendants' measures inadequate. In fact, Plaintiffs have even been so bold as to claim Defendants have done *nothing* in response to the Court's order. Further, Plaintiffs have adopted the attitude that Defendants are somehow minimizing the importance of education by expecting Plaintiffs to comply with applicable procedural and substantive law. Contrary to Plaintiffs' claims, the Court did not order Defendants to meet a specific benchmark for funding or student outcomes or deem Plaintiffs exempt from the law. Plaintiffs' arguments about the relief ordered to represent two (2) fundamental misunderstandings of the difference between the Court's findings and the relief it actually ordered.

First, Plaintiffs misapprehend the scope of the Injunction. The Injunction addresses "immediate action" within a specific timeframe. A simple review of the timing of the Court's orders and the deadline demonstrates the flaw in Plaintiffs' arguments regarding ultimate outcomes. The Court's first Order came in July 2018 and set a deadline of April 15, 2019 for Defendants to take "immediate steps." See Decision and Order, p. 74. It was obvious from the litigation that the Court contemplated some legislative action would be required. The first legislature that could have addressed the Court's Order concluded in March 2019, one (1) month

ahead of the deadline for compliance. The Court could not have possibly expected legislation passed one (1) month prior to have a demonstrated impact on ultimate outcomes such as student scores, enrollment in programs, and staffing vacancies by the compliance deadline. Similarly, the short deadline and use of the term “immediate” demonstrates the Court did not contemplate all infrastructure, and final program planning would be necessary to demonstrate compliance. Moreover, the Court issued subsequent orders on December 12, 2018 (Findings of Fact and Conclusions of Law) and on February 14, 2019 (Final Judgment and Order). This even shorter turn around between these orders and the deadline for compliance is further evidence of the Court’s intended scope of the Injunction. Therefore, Plaintiffs’ reliance on a lack of data on ultimate outcomes as proof of non-compliance is misplaced.

Second, Plaintiffs misapprehend the specificity of the injunctive relief of the Court. Plaintiffs rely on the mistaken premise that if they can point to a single expert opinion or finding of fact addressed by the Court that Defendants have not wholly adopted or changed, Defendants are non-complaint with the Injunction. The Court, recognizing the deference due to the executive and legislative branches, did not dictate what action must be taken, but instead simply that some immediate action should be taken, leaving it to the other two (2) branches of government to decide the specifics. Additionally, the Court could not have expected Defendants to address/remedy 3200 findings of fact in four (4) months. Further, the applicable Rule 60(b)(5) law shows the Court is charged with determining whether Defendants have complied with the terms of the Injunction, not with assessing whether the state education system is currently constitutional. Thus, Plaintiffs’ arguments regarding whether Defendants’ actions following the Court’s order are “adequate” are irrelevant under the Injunction and the applicable law. Because Defendants’ legislative, budgetary, administrative and programmatic actions have so fundamentally changed the circumstances for at-

risk students in New Mexico’s public education system, the Court should rule that Defendants have substantially complied with the directives set out in the Injunction and enter an order dismissing this case<sup>5</sup>.

### LEGAL STANDARD

It is black letter law that a party is entitled to relief from a final judgment when “the judgment has been satisfied.” Rule 1-060(B)(5) NMRA; see State ex rel. King v. B & B. Inv. Grp., Inc., 2014-NMSC-024, ¶ 28, 329 P.3d 658. Therefore, it is clear that if a party has complied with the requirements of an injunction, they are entitled to relief under Rule 60(B)(5). However, there are no New Mexico cases specifically addressing Rule 60(B)(5) in similar circumstances.

Without any New Mexico cases directly on point, the Court will likely look to other states. In recent years, the State of Kansas also faced claims that aspects of its education funding formula failed to meet state constitutional standards. Montoy v. State, 138 P.3d 755, 757 (Kan. 2006). After a trial on the merits, the state district court ruled that the education funding statute violated the state constitution. Id. On the initial appellate challenge by the state, the Kansas Supreme Court affirmed the district court’s ruling and ordered that the state create a new funding formula that increased funding levels and consider various equities in the distribution of funding. Id. Importantly, the court “did not dictate the manner in which the legislature should amend the financing formula to bring it into constitutional compliance,” given the court’s understanding “that there are literally hundreds of ways the financing formula can be altered to comply with [the constitution].” Id. (internal quotation marks and citations omitted). Over the next three legislative sessions (two regular and one special), the Kansas legislature enacted reform legislation. Id., pp. 757-61. These reforms included a multi-year funding formula that increased total education

---

<sup>5</sup> In Plaintiffs’ Reply, they set forth ten (10) indisputable facts about the State’s action. See Reply, pp. 3-4. As set forth in greater detail below, all of these facts are disputed and/or non-dispositive of compliance with the Injunction.

funding by hundreds of millions of dollars, with nearly one-third of that spending directed at at-risk students.<sup>6</sup>

The parties then briefed (the state supreme court, which retained jurisdiction over its previous order) on whether the funding and other reforms satisfied the court's order, with the state arguing that (1) they had, and (2) the case should therefore be dismissed. *Id.*, pp. 760, 762. The court began its analysis by noting that, "[r]ather than modifying the provisions of [the previous legislation], the legislature materially and fundamentally changed the way K-12 is funded in this state." *Id.*, p. 760. As a result, it noted that "the constitutionality of [the reform legislation] is not before th[e] court" and "[t]he sole issue" now before the court is whether the reform legislation complies with the court's previous orders. *Id.*, p. 762. The court further noted that, because the issue before the court was compliance rather than constitutionality, if the reform legislation complies with the court's previous orders, the "inquiry ends and the case must be dismissed." *Id.*

After reviewing the effects of the reform legislation, the court found that "[t]here is no question that the legislature has substantially responded to our concerns" related to educational funding for at-risk student populations, equitable distribution of that funding and other associated concerns. *Id.*, pp. 763-65. The court continued its analysis, holding that the legislature's efforts had "replaced [the previous system] with a fundamentally different funding scheme" such that the previous system no longer existed, and that the reform legislation "constitute[s] substantial compliance" with its orders concerning the constitutionality of the previous formula. *Id.*, p. 765. The plaintiffs requested that the case be remanded to the district court so that they could challenge the constitutionality of the new funding formula contained in the reform legislation. The court

---

<sup>6</sup> The *Montoy* opinion does not give the percentage increase in educational funding effected by the new legislation. The raw amount was \$755 million over three (3) years. *Id.*, p. 763. Kansas has a population of approximately three (3) million people. For sake of comparison, the New Mexico Legislature has increased educational funding by \$552 million over two (2) years, in a state with a population of approximately two (2) million people.

denied this request and remanded for dismissal, recognizing that “it may take some time before the full financial impact of th[e] new legislation is known, a factor that would be important in any consideration of whether it provides constitutionally suitable funding.” Id., p. 766.

Applying Montoy and general legal principles related to obtaining relief from judgment, Defendants are entitled to a declaration that the Injunction’s requirements have been satisfied and the dismissal of this case, if their actions “constitute substantial compliance” with the directives set out in the Injunction. Id., p. 765. Because Defendants have created a fundamentally different public education system for at-risk students, they have substantially complied with the Court’s order. Id. Further, since the question for Rule 60(b)(5) is compliance with the Court’s Order, this Court should not entertain any arguments about whether the current “scheme” is constitutional.

## LEGAL ARGUMENT

### **I. Defendants have Substantially Complied with the Court’s Orders Regarding Overall Funding**

#### **A. Applicable Court Findings<sup>7</sup>**

The Court found two (2) major issues with overall funding in New Mexico. First, “the overall appropriation is insufficient to fund the programs necessary to provide an opportunity for all at-risk students to have an adequate education.” See Decision and Order, p. 53. To reach this conclusion, the Court looked at prior appropriations as well as the per unit value for State Equalization Guarantee (SEG)<sup>8</sup> funding and determined, adjusting for inflation, overall funding had either remained flat or decreased over the past several years leading up to the 2017 trial. See

---

<sup>7</sup> As discussed above, not every finding by the Court was elevated to a constitutional or statutory requirement. Further, the Court’s injunction did not require Defendants to address every single criticism of the previous system. By summarizing the Court’s criticism or concerns, Defendants do not concede that each comment by the Court represents a constitutional or statutory requirement, or indeed a part of the injunctive relief ordered. Instead, the Court’s findings are presented as a way to demonstrate how the system has changed since trial.

<sup>8</sup> The SEG formula creates units for each student in a particular school with certain types of students receiving different values. See FFCL # 2174-2176.



Findings of Fact and Conclusions of Law (FFCL), #2116-2127. Notably, the Court declined Plaintiffs' request to find fault with the State's process for developing the SEG funding. The Court stated:

[t]he determinative issue for the Court's purposes is whether at the end of the process sufficient moneys have been allocated to provide the necessary programs to provide an adequate education for at-risk students. The process used to get there is of secondary concern. As noted by the Colorado Supreme Court: "The court's task is not to determine whether a better financing system could be devised, but rather [it is] to determine whether the system passes constitutional muster." Lobato v. State, 218 P.3d 358, 374 (Colo. 2009) (internal quotations and citation omitted)."

Decision and Order, p. 58.

Second, the Court found, there may be ways for the districts to effectively and efficiently spend their funds, but PED fails to exercise its authority over the districts to require that the money that is allocated is used for programs known to advance the educational opportunities for at-risk students." Id., p. 57. The Court found the state has the ability to exercise oversight over district spending through its budget approval process and by tracking use of funds ear-marked for at-risk students. See FFCL #2260-2263.

## **B. Action Taken by Defendants**

Defendants have previously outlined the steps taken to improve overall funding in their Response to Plaintiffs' Motion for Court Order, filed on December 16, 2019 (Defendants' Response). See id., pp. 10-11. As set forth in Defendants' Response, "recurring general fund appropriations for public schools in the 2019 GAA total \$3.25 billion, an increase of \$448.2 million, or 16 percent, over the prior year." What was not addressed in Defendants' Response is the FY2020 increases from FY2019 were building off significant increases made in FY2019 itself. In FY2019, "total public school support increased \$104.7 million, or 4%, over FY2018." See New Mexico Legislative Finance Committee's 2018 Post-Session Review, attached as Exhibit A,

p. 19. The most current number reported in the Court’s opinions was from FY2017, a total of \$2,759,000,000 in funding. See FFCL #2127. Thus, between the time of trial and the deadline for compliance, overall public education funding has increased by \$491 million. To put this into perspective, this is an overall increase of 18 percent in education funding since the time of trial. This undeniably significant increase in funding demonstrates substantial compliance with the Injunction.

Plaintiffs have attempted to downplay this significant increase in funding, going so far as to accuse Defendants of misleading the Court. See Reply, filed on February 5, 2020, pp. 4-9. The primary argument propounded by Plaintiffs is that Defendants have not reached 2008 levels of funding. Although Defendants indicated in their Response to Plaintiffs’ Motion, they believed they had reached 2008 levels, nowhere did Defendants assert or concede that the Court ordered Defendants to return to 2008 levels. Further, the Injunction contains no such requirement. Thus, even if Plaintiffs’ assertions about the comparison between 2008 funding and current funding were true, this would not have a bearing on compliance with the Injunction. Assuming 2008 funding is the benchmark for compliance, Plaintiffs are factually incorrect that current funding is less than 2008 funding adjusting for inflation. As an initial matter, Plaintiffs’ expert used an inflation level that is inappropriate for this type of calculation and is over 5% greater than the index that should be used to calculate inflation in this context. See Affidavit of Hipolito J. Aguilar, attached as Exhibit B, ¶¶ 9-18. Under either inflation index, overall education funding is greater currently than in 2008. See id., ¶ 19. Further, per student funding is also greater than 2008 under either inflation index. See id., ¶ 23.

In addition to inappropriately using 2008 funding levels as a proxy for compliance with the Injunction, Plaintiffs also attempt to “shrink” the funding increase made since trial. Plaintiffs

conclude certain funding is only available if schools sign up for certain programs, and therefore “should not count.” Programmatic funding is not a new feature to educational funding. In fact, it is ironic Plaintiffs would criticize particular funds only being available if the schools employ certain programs, because another one of Plaintiffs’ main criticisms of PED is a lack of oversight to ensure dollars allocated for certain programs are actually spent on those specific programs. Further, any unused funds revert, meaning they are still available for education. See NMSA 1978 § 22-8-23.13. Notably, a prior year’s budget allocations still sets the baseline for the next year’s budget, even if some funds were unused. Therefore, it is inappropriate to simply ignore any unused funds. Plaintiffs also claim that because certain programs were moved above-the-line in FY2020, this decreases the amount of funding added to the budget. Defendants’ statements focus on the overall budget, not above or below-the line, thus these shifts do not impact the overall increase in funding identified by Defendants. See Exhibit B, ¶¶ 20-22. Further, Plaintiffs simply cannot rebut that the percentage of the state budget devoted to education has increased over 2008 levels. See Exhibit A to Response, filed on November 15, 2019, p. 2 (noting public school funding accounts for 46.2% of overall budget); see also FFCL #2123 (noting in 2008 education received 43.8% of the state’s budget). Finally, even taking Plaintiffs’ assertions as true, they do not address the increase between 2017 and 2018, and even Plaintiffs admit the increase between 2018 and 2019 was over \$300 million. See Reply, pp. 4-5. While, Plaintiffs characterize this as “only” a 13% increase, this is actually a significant (and immediate) step to ensure provision of education to New Mexico students. See id. Additionally, although Defendants recognize the Court set an April 2019 deadline for compliance, the Court should not ignore the ongoing efforts by PED. In FY2021, the public education budget was again significantly increased although the final official totals are not yet available.

## **II. Defendants have Substantially Complied with the Court's Orders Regarding At-Risk Funding**

### **A. Applicable Court Findings**

As noted previously, the Court found the general education budget was insufficient to provide adequate education to at-risk students. Specific to at-risk students, the Court determined at-risk funding was inadequate. The Court identified some remedies suggested by experts to address at-risk funding adequacy, although the Court did not require that any of these recommendations be implemented. One potential remedy was to increase the at-risk multiplier, which at the time of trial was .106. See FFCL # 2189. Further, the Court found “PED fails to exercise its power to monitor or audit school districts’ use of SEG and federal funds to ensure districts use these funds as required for at-risk students.” FFCL #2261. The Court noted PED could exercise power through budget approval, auditing, or the extreme, takeover function. See FFCL generally, pp. 442-445.

### **B. Action Taken**

In 2018 (FY2019), the at-risk multiplier was increased from .106 to .13. See Exhibit A to Defendants’ Response, filed November 15, 2019, p. 7. This resulted in an additional \$22.5 million in at-risk allocations under SEG funding. See id. In 2019 (FY2020), the at-risk multiplier was again increased, this time to .25.<sup>9</sup> See id. This resulted in an additional \$113 million in at-risk funding allocations under SEG funding. See id. Thus, the at-risk multiplier has more than doubled from .106 at the time of trial to .25 in FY2020 resulting in \$135 million *additional* at-risk allocations under SEG funding. In addition to above-the-line SEG funding, as discussed further

---

<sup>9</sup> Plaintiffs disagree that the Court recommended the at-risk multiplier be increased to .25. See Reply, pp. 8-9. While this assertion has no import because there is no evidence the Injunction required any change to the at-risk multiplier let alone a change to a specific number, Defendants simply ask the Court to refer to its own opinion. See FFCL, #2215. Plaintiffs’ own Reply demonstrates they are asking the Court to consider what the Court’s Order *should* have said, instead of the actual text. See Reply, pp. 8-9.

below in relation to certain at-risk groups, Defendants significantly increased below-the-line funding as well. While Defendants recognize this occurred after the April 2019 deadline, Defendants point out that the at-risk multiplier was again increased to .30 in FY21. See HB 2 (2020 Regular Session), p. 169.

Additionally, the Legislature enacted legislation to ensure improved oversight over districts' use of at-risk funding.<sup>10</sup> First, the Legislature specifically imposed requirements on PED to monitor districts' and schools' use of funds designated for at-risk students. See HB 2 (2019 Regular Session), p. 167. Further, new legislation imposes reporting requirements on schools. SB 1 (2019 Regular Session) requires districts "receiving additional at-risk program units [to] include a report of specified services implemented to improve the academic success of at-risk students." Id., p. 29. Further, HB 5 requires, beginning in FY2021, each district and charter school's educational plan include "a narrative explaining the identified services to improve the academic success of at-risk students." Id., p. 16. HB 5 specifically requires information regarding services provided to at-risk students including EL students, Native American students, and students with disabilities. See id., p. 16-17. These reports are necessary for budget approval. See id., p. 17.

Defendants have substantially complied with the Injunction in regards to at-risk funding. Defendants have significantly increased at-risk funding by more than doubling the at-risk multiplier, which resulted in over \$135 million in additional at-risk funding. Further, Defendants have passed legislation embracing PED's responsibility to monitor use of at-risk funding and to

---

<sup>10</sup> To ensure that PED would have adequate staffing to carry out its new oversight responsibilities the Legislature increased its fund for personal services and employee benefits by \$1.8 million, or 9.3%, over the FY2019 operating budget.

ensure that at-risk funding is actually used to target at-risk students by requiring reporting by schools.

### **III. Defendants have Complied with the Injunction’s Requirements Regarding At-Risk Students**

#### **A. At-Risk Students Generally**

The Court found that the systems in place to address at-risk students at the time of trial were insufficient. See FFCL, p. 395 (heading 9).<sup>11</sup> The Court also referenced a lack of data available to address at-risk students. See e.g., FFCL # 597 (addressing Native American students). Thus, as a preliminary matter, Defendants recognize the Court found the programs and measures in place in 2017 were insufficient. Defendants are not presenting the exact same programs with the same funding as at the time of trial to demonstrate compliance with the Injunction. Instead, Defendants point out the *changes* made since the time of trial to address at-risk students.

An important measure PED took to assist at-risk students generally, was to move away from the PARCC<sup>12</sup> student assessment testing in place at the time of trial. See Executive Order #1 (January 3, 2019), attached as Exhibit C. The Executive Order required PED to immediately move away from using the PARCC and to form a taskforce to “determine the most appropriate and least intrusive tests, in compliance with ESSA, to help measure student learning and provide accountability for New Mexico schools.” Id., p. 2. PED now uses the SAT<sup>13</sup> model for testing with certain students actually taking the SAT itself, paid for by the State. This move was in response to a number of criticisms of the PARCC assessment, as well as the taskforce report. See Affidavit of Gwen Perea Warniment, Ph.D, attached as Exhibit D, ¶¶ 29-30. Using the SAT helps economically disadvantaged students because now students are not precluded from taking this

---

<sup>11</sup> The Court made specific findings as to programs serving certain types of at-risk students, described further below.

<sup>12</sup> Partnership to Assessment of Readiness for College and Careers.

<sup>13</sup> Scholastic Aptitude Test

college entrance exam because of lack of funds. See id., ¶ 32. Further, because PED provides instructional support for taking the exam during the school year, economically disadvantaged students are not excluded from access to SAT preparation because they cannot afford a prep course. See id., ¶¶ 33-34. Additionally, the state has done more than merely adopt new assessments, the state has implemented a balanced assessment system that includes resources and supports for students throughout the school year, at the classroom, school, and district levels. See id., ¶ 36. In fact, the state has relieved a significant amount of financial pressure for both students and local school districts, by now paying for most student assessments, with school districts only bearing partial costs for a few assessments, such as third grade science assessments and English language proficiency assessments. See id., ¶ 37. The department is also working to develop an original Spanish language arts assessment for ELs that is aligned to the Common Core State Standards and is more than a mere adaptation of an English-language exam. See id., ¶ 38. Moreover, in order to ensure all districts and schools are providing adequate services to at-risk students, PED has also instituted the use of equity councils to “provide leadership to create an equity plan [based upon the instant lawsuit] specific to the needs of economically disadvantaged students, Native American students, English Language learners, and students with disabilities.” See Exhibit A to Plaintiffs’ Motion for Court Order, p. 3.

Additionally, new legislation has addressed school attendance, an issue that disproportionately impacts at-risk students who are more likely than their peers to be absent. See Affidavit of Katrina Sandoval, attached as Exhibit E, ¶ 5. House Bill 236 repealed the Compulsory School Attendance Law and replaced it with the Attendance for Success Act. See HB 236 (2019 Regular Session), p. 28. The new Act requires schools to maintain an attendance policy that includes provisions for additional educational opportunities to students struggling with attendance.

See id., p. 8. The Act outlines early interventions for absent, chronically absent, and excessively absent students using language recommended by PED. See id., pp. 8-9. These interventions focus on non-punitive consequences and partnerships between schools and local service providers, businesses, healthcare providers, counselors, civic groups, and Native American tribes, nations, and pueblos to involve the entire community in supporting students' attendance. See id. The Attendance for Success Act will help address disproportionality in student attendance by ensuring at-risk students, including economically disadvantaged students, have the support they need to be in school. See Exhibit E, ¶¶ 6, 8. The Act also requires public schools and school districts to report specific attendance metrics to PED. See HB 236 (2019 Regular Session), p. 10. Further, because the Act focuses on disciplinary strategies that are not exclusionary, fewer students will be out of school for disciplinary infractions that would have, prior to the Act's enactment, been grounds for suspension or expulsion. See Exhibit E, ¶ 9. PED is developing strategies for implementation of HB 236. See Exhibit E, ¶ 7.

Defendants also addressed the Court's criticisms of the school grading system. See FFCL #759-762. Specifically, the Court criticized the lack of transparency in the previous school grading system as well as concerns about adequately measuring school effectiveness and school-level characteristics. See id. In 2019, the state repealed the previous A-F grading system and replaced it with a school dashboard. See SB 229 (2019 Regular Session), p. 4. The new dashboard system requires measurement of certain metrics disaggregated by "each major racial and ethnic group, economically disadvantaged students, English learner status, children with disabilities, gender and migrant status." See id., pp. 4-5. The dashboard also provides information on teacher experience and certification. See id., p. 8. These features of the dashboard are critical improvements over the prior grading system. See Affidavit of Timothy Hand, Ph.D., attached as Exhibit F, ¶ 6. For



example, the dashboard is less punitive than the grading system, because instead of providing a single “grade” indicating either a pass or a fail, the dashboard provides a more holistic picture as well as illustrating specific areas of strength and weaknesses. See id., ¶ 7. In addition to potentially being punitive, use of a single measure, or averaging multiple measures to create a single measure, may hide deficiencies or strengths. See id., ¶ 8. For example, a school may excel in math but have deficiencies in science. See id., ¶ 9. Averaging these scores would hide the need for additional resources for science as well as the school's success in math. See id., ¶ 9. By identifying measures with greater specificity and allowing all schools to see each other measures, the dashboard not only increases transparency, but also enables schools to seek support from schools excelling in a particular area. See id., ¶ 10. This information will also enable PED to meet its obligation for technical support and oversight. See id., ¶¶ 14, 17. When creating the dashboard, PED was mindful of the need for transparency and has already taken and will continue taking steps to ensure both school staff and parents understand the measures used to include making the dashboard available for review and comment by schools and eventually making it available for community comment. See id., ¶¶ 19-21. Further, PED has begun actively working to establish a network of research-stakeholders, including New Mexico’s two (2) research universities, WestEd, and other research and evaluation entities, aiming to provide better responses to research questions. See id., ¶ 24. Additionally, New Mexico’s ESSA<sup>14</sup> State Accountability Plan, which is fully in compliance with federal law, now requires annual measurement of Native American students’ academic growth, proficiency rates, and progress via multiple measures in English language arts, math, science, and school climate. See Affidavit of Kara Bobroff, MA, ED. S, attached as

---

<sup>14</sup> Every Student Succeeds Act.

Exhibit G, ¶ 58. Under the plan, bilingual programs must track data on indigenous language programs and EL programs for Native American students. See id.

Further, House Bill 589 expands the purpose of the Community Schools Act to address the cultural and linguistic needs of students, beginning with early childhood programs and voluntary public pre-kindergarten through high school graduation, by partnering federal, state, local, and tribal governments with community-based organizations to improve the coordination, delivery, effectiveness, and efficiency of services; align and leverage community resources; and integrate funding streams. See HB 589 (2019 Regular Session), p. 1. The Act requires a community school initiative to work with a lead partner agency, conduct an annual assessment of local community needs and assets, and implement a community school framework. Id., p. 2. The Act also requires a community school framework to include integrated student supports, expanded and enriched learning time and opportunities, active family and community engagement, and collaborative leadership and practices. See id. Subject to the availability of funding, the Act authorizes PED to provide planning, implementation, and renewal grants to eligible community school initiative applicants. See id., p. 8.

The community school concept makes the school a hub for social and family services by providing wraparound education and social services for students and families in an attempt to relieve or ameliorate academic, social, and familial pressures created by the lack of access to supports often found in communities with high numbers of at-risk students. See Exhibit E, ¶ 12. “The [community school] framework may include the broader use of public school facilities in which school buildings become hubs for neighborhood events, activities, advocacy, and civic life; a community-based curriculum in which the content of instruction is centered on local knowledge, service learning, and problem-solving around community issues; and federally funded early

childhood services and public prekindergarten that are high-quality, meet the needs of students and families, and provide health, vision, dental, and other supports and services to children before school age.” See LESC Bill Analysis for 2019 HB 589, attached as Exhibit H, pp. 2-3. “However, if early childhood services and supports are indicated as a need for families, a community school site-based leadership team that includes the principal, coordinator, teachers, other school employees, families, and community partners, would be required to prioritize partnerships and integration with childcare providers located on and off the school campus.” Id., p. 3. Research by the Learning Policy Institute found the community school approach meets the evidence-based standard for interventions under the [] ESSA and shows promise in meeting the needs of low-achieving students in high-poverty schools, helping close the opportunity and achievement gaps for students from low-income families, students of color, English learners, and students receiving special education services. Id., p. 4. Significantly, there is funding for community schools. During the 2019 legislative session, the Legislature appropriated \$2 million for the administration of community schools programs provided under Section 22-32-4 NMSA 1978 and \$4 million in 2020. See Exhibit E, ¶ 3.

Similarly, a strong system of career and technical education (“CTE”) is one (1) of the four (4) foundational elements of high performing educational systems according to the National Conference of State of Legislatures’ report *No Time to Lose*. See LESC Bill Analysis for HB 91 (2019 Regular Session), attached as Exhibit I, p. 2. Research has also shown CTE is valuable for re-engaging students who become disengaged and less interested in school, and indicates CTE students have lower dropout rates, higher graduation rates, higher employment rates, and greater earnings than demographically similar, non-CTE peers. Id. Responding to these studies, in 2019, the legislature passed House Bill 91 which establishes a seven-year CTE pilot project to be

administered by PED to fund high quality CTE programs and monitor their effect on student outcomes, including achievement scores, academic growth, remediation rates, and graduation rates. House Bill 91 requires PED to consult with the Higher Education Department and the Workforce Solutions Department as it develops its measures to determine what constitutes a high quality CTE program and what students should know and be able to demonstrate to an employer or to succeed in post-secondary career technical education program. See HB 91 (2019 Regular Session), p. 1. As part of the pilot project, PED will provide grants to selected school districts and charter schools to participate in the project and will also provide professional development to existing CTE teachers and training to new teachers in career technical education. Id., pp. 1-2. PED will also provide annual and final reports to the LESC and the Governor as to the efficiency of the pilot project. Id., p. 3. House Bill 44 provides further support for the CTE project by requiring that professional development be provided to CTE teachers and educational assistants in the same manner as it is to teachers of other subjects for which PED has promulgated standards and benchmarks, and further provides that federal Title II funding be used for that professional development. Also, Senate Bill 576 allows local school boards to establish plans for the establishment of area vocational high schools.

The Court identified hunger as a potential barrier to learning for at-risk students. See FFCL #810. Although even prior to trial, the state operated free and reduced-fee lunch programs, in 2019, Governor Lujan Grisham instituted a hunger initiative aimed at eliminating childhood hunger. See Exhibit E, ¶ 20. The initiative is headed by a Hunger Initiative Coordinator who works across executive agencies to provide at-risk students with access to three (3) meals a day, including on the weekends and over school breaks. See id., ¶ 21.

## **B. EL Students**

### **1. Applicable Court Findings**

As an initial matter, it is important to discuss the services provided to EL students. All EL students are required to receive some special services. However, certain EL students are enrolled in bilingual multicultural education programs (BMEPs). The Court found the EL programs in place at the time of trial were insufficient. See FFCL #297. The Court found “sheltering strategies,” which help students gain access to content material by themselves were an insufficient EL program and instead, EL students required daily separate instruction appropriate to language level, grade and age that specifically addresses language development. See FFCL #320. The Court noted PED had inadequate information regarding services provided to EL students not enrolled in a “full-blown” BMEP funded by PED or through federal funding. See FFCL #422-23. The Court also raised concerns about the adequacy of funding, as well as accountability for use of funding. FFCL #396-399. Additionally, the Court noted there was no below-the-line funding for EL programs. See FFCL #420.

### **2. Action Taken**

Defendants addressed the Court’s concerns by increasing overall funding, above- and below-the-line, improving accountability for use of funding, and making programmatic changes to improve services delivered to EL students, both those who are in a bilingual multicultural education program (“BMEP”) and those who are not. First, in regards to funding, the 2019 Legislature, provided a recurring \$7 million appropriation in SEG funding to expand BMEPs. See Exhibit A to Defendants’ Response, filed on November 15, 2019, p. 9. Additionally, EL programs received \$2.5 million in below-the-line funding. See Exhibit C to Defendants’ Response, filed on December 16, 2019, pp. 3-4. Funding for bilingual education increased again in FY2021. \$30

million in SEG funding was allocated for school districts and charter schools to “purchase culturally and linguistically appropriate instructional materials for eligible students.” HB2 (2020 Regular Session), p. 173. A school district or charter school that does not use the allocation for instructional materials shall provide the public education department a description of how the allocation was used and demonstrate that budgeted spending levels for instructional materials are sufficient to provide a free and appropriate public education to all students.” Id.

Moreover, HB 111 (2019 Regular Session) allows regional education cooperatives (“RECs”) to apply for funding from PED to provide technical assistance and professional development, for teachers’ educational assistants and other instructional support staff, in the educational needs of culturally and linguistically diverse students. The technical assistance and professional development programs must be aligned with state academic content standards, benchmarks and performance standards for ELs and bilingual multicultural education and shall meet school district and charter school educational plans related to bilingual education, Indian education, and Hispanic education. See HB 111 (2019 Regular Session), p. 2. Professional development programs focus on research-based methods and best practices as well as assessments that support academic and language development. Id., pp. 2-3.

Further, as discussed above, HB 2 and SB 1 have increased accountability for districts and oversight by PED regarding use of SEG funds specifically ear-marked for at-risk students. PED has made its own improvements to accountability. “Local school districts and charter schools must confirm to NMPED they have followed the EL-identification process for all of their students and identified those who are ELs in the state Student Teacher Accountability System (“STARS”). They must also report to PED three times during the school year regarding the English Learner programs they are providing to each EL.” See Exhibit G to Defendants’ Response, filed on December 16,

2019, ¶ 37(b). Recently, reports have improved, “bringing total reports of ELs in EL programming from only 59 percent to 98 percent.” See also Affidavit of Kara Bobroff, MA, ED. S, attached as Exhibit G, ¶ 40(b).

In addition to legislative action and funding, PED has made programmatic changes. In January 2018, PED’s Language and Culture Division (“LCD”) formally announced to other divisions in PED that it would take a broader role and “serve as the lead for language, culture and equity within the Teaching and Learning section of PED.” See id., ¶ 33. The LCD also recently created four (4) new positions to better support education of EL students. See id., ¶ 44. PED addressed the Court’s concern about EL students who are not served by a full-blown BMEP or federal program and has emphasized EL students are everyone’s responsibility. “[All] teachers must receive more training and professional learning and development regarding EL students.” Id., ¶ 35. PED has made learning resources available to teachers and administrators. See id., ¶ 40(E). “With this, [PED] has required that EL[L] students who are not in a formal Bilingual Multicultural Educational Program (BMEP) or other federally funded program must still receive adequate instruction within an EL[L] Program in light of their specific needs.” Id., ¶ 33. PED took to heart the Court’s comments regarding the inadequacy of sheltering strategies standing alone as well as the finding regarding the need for specific instruction. “In addition to using the ‘sheltering method’, the LCD now requires that EL students receive at least forty-five minutes of specific English-language development instruction per school day.” See id., ¶ 37. In spring 2019, PED finalized an ELD instructional framework to be used to guide integrated EL instruction, which must be provided for all content courses, with the use of ELD standards that are aligned to state English language proficiency standards. See id., ¶ 40(D).

Further PED has taken steps to ensure more uniform instruction by adopting standards for Spanish language arts and language development. See id., ¶ 40(E). REC-led teacher institutes, postsecondary education institutions, and PED are working with teachers to create and update curricula. PED is collaborating with and providing funds for teacher institutes to work with teachers during the school year and over summer break on projects to increase access to culturally relevant pedagogy. See id., ¶ 40(A). PED will be adopting English language development (“ELD”) instructional materials in its current 2019-2020 adoption cycle. See id., ¶ 40(A).

LCD has also increased oversight over districts and charter schools. All school districts and charter schools are required to administer an annual English language proficiency assessment to each EL and continue monitoring of academic progress of ELs for fully two (2) years after they achieve English language proficiency. See id., ¶ 40(C). Local school districts and charter schools must confirm to PED they have followed the EL-identification process for all of their students and identified EL students in the state Student Teacher Accountability System (STARS). See id., ¶ 40(B). They must also report to PED three (3) times during the school year regarding the English Learner programs they are providing to each EL. See id., ¶ 40(B).

Thus, Defendants increased funding for EL students, passed legislation that improved accountability for funding, conducted technical assistance and focused monitoring visits, and changed its programs to provide better services to all EL students. Accordingly, Defendants have substantially complied with the Injunction’s requirements regarding EL students.

### **C. Native American Students**

#### **1. Applicable Court Findings**

The Court made general findings regarding the insufficiency of funding and programming for Native American students at the time of trial. Specifically, the Court raised concerns over the



state's engagement with tribal leaders. FFCL #588-591. The Court criticized the level of technical support provided to districts serving Native American students. FFCL #592. The Court also made findings regarding lack of oversight to ensure compliance with statutory requirements for Native American education. FFCL #580-83.

## **2. Action Taken**

As with the other areas addressed by the Court's rulings, Defendants' remedies to the issues identified have been threefold: funding, legislative action, and programmatic change. The Legislature passed and the Governor signed several bills directly aimed at improving education services and accountability with respect to the educational needs of Native American students. House Bill 250 requires historically defined Indian-impacted school districts to conduct a needs assessment to determine what supports are needed in public school, at home, and in the community to help Indian students succeed. See HB 250 (2019 Regular Session), p. 1. It further requires those school districts to then meet with the local tribes to prioritize the needs to be addressed. See id., pp. 1-2. It requires those school districts to make meeting the needs of Indian students and closing the achievement gap a priority in the school budget, including applying state and federal funding for Indian students, disadvantaged students, at-risk students, students in poverty, and other categories of state and federal funding to help disadvantaged students. House Bill 250 mandates that PED, when considering the annual budget submissions from districts, consider whether the school district budget is accomplishing the prioritized needs from the Indian students needs assessment. See id., p. 2. Pursuant to the dictates of House Bill 250, the school district must develop and publish a systematic framework for improving outcomes for Indian students and requires PED's Indian Education Division ("IED") to assist the school district as required during the development and implementation of the framework. The school district must also develop an

accountability tool that measures the efforts to implement its systematic framework. See id., p. 3. Finally, this bill requires the school district to hold a public meeting at least twice a year with tribal leaders, parents, and IED to report on the needs assessment and the school district's evaluation of progress. See id., p. 2.

Similarly, Senate Bill 329 requires PED, school boards, and charter schools to consult with tribal leaders and community members when considering opening or closing a public or charter school on tribal land. See SB 329 (2019 Regular Session), pp. 1-2. If planning to open a school, school boards and charter school applicants are required to provide a culturally relevant plan intended to improve educational outcomes for Indian students. See id., pp. 3-4. If planning to close a school, PED, school boards, and charter school authorizers are required to provide a comprehensive rationale for closing the school as well as a transition plan for affected students and facilities. See id., pp. 4-5.

Native American students will also benefit from the passage of Senate Bill 22, which provides for the appointment of an assistant secretary for Native American early education and care within the newly-created Early Childhood Education and Care Department. Among the duties of this assistant secretary is a duty to consult with Indian nations, tribes, and pueblos in New Mexico for delivery of learning guidelines in Native American languages, culture and history designed for tribal and non-tribal students, and to help ensure that Native American languages and cultural considerations are included in programs administered through the department. See SB 22 (2019 Regular Session), pp. 5-7.

In regard to funding, the Indian Education Act Fund for Native American students more than tripled between 2018 and 2019, from \$1.8 million to \$6 million. See Exhibit C to Defendants' Response, filed November 15, 2019, p. 2. Further, the State provided \$1 million in below-the-line

funding for the Indigenous Education Initiative. See id., p. 3. As noted above, new legislation requires reporting on use of funds specifically identified for use for at-risk students, including Native American students. Finally, Senate Bill 280 (2019 Regular Session) specifically functions to recruit and retain teachers of Native American students by appropriating \$10 million for teacher housing support to school districts that receive federal Impact Aid funds for Tribal lands. See SB 280 (2019 Regular Session), p. 34.

Finally, PED has implemented a number of programmatic changes. In addition to those addressed in previous pleadings, IED restructured its staffing organization to better meet the requirements of the IEA. See Exhibit G, ¶ 63. In response to criticism about face-to-face interaction, Deputy Secretary Bobroff personally visited twenty-two (22) tribal Departments of Education in 2019. See id., ¶ 51. Further, PED reviews local school districts' and charter schools' plans and budgets to track their strategies to better serve Native American students. See id., ¶ 54. PED has collaborated with the Higher Education Department ("HED") and local Native American education organizations to focus on the distinct needs of Native students in higher education. See Exhibit G, ¶ 59. IED for the first time is employing a systematic approach to increasing indigenous language teachers which includes five (5) programs geared towards this goal. These programs are in varying stages of implementation. See id., ¶ 61. IED has adopted a process for tribal review and approval of the social studies curriculum that emphasizes ongoing consultation with the Native American nations, tribes, and pueblos in the state. See id., ¶ 60. Ultimately, PED selected the Indian Pueblo Cultural Center's Indigenous Wisdom Curriculum to disseminate to local school districts and charter schools, the department plans to continue reviewing documentaries for potential inclusion in the curriculum, if appropriate. See id., ¶60. Further, all schools must establish a culturally and linguistically responsive ("CLR") multicultural framework for the 2020-

2021 school year. See id., ¶62. PED will monitor adherence to these plans for the twenty-three (23) districts and charter schools that serve high populations of Native American students and receive IEA funding. See id. Finally, the department will review pertinent data to ascertain whether additional school districts and charter schools should be included in the list of those that serve high populations of Native American students. See id.

Plaintiffs have submitted affidavits of a small percentage of Native American leaders who do not feel that enough has been done. See Motion, filed on October 30, 2019. Compliance with the Court's Injunction is not dependent on a sample size survey of whether some parents and leaders are satisfied. Defendants have demonstrated real, statewide initiatives to improve collaboration with tribes and education for Native American students and have provided a significant increase in related funding. Accordingly, Defendants have complied with the Injunction's requirements regarding Native American students, by increasing funding, creating a system of accountability for use of funding and delivery of programs, and through both legislative and programmatic changes improving services to Native American students and tribal relations.

#### **D. Students with Disabilities**

##### **1. Applicable Court Findings**

The Court made general findings regarding the adequacy of special education at the time of trial. Specifically, the Court raised concerns over resources for children who may have autism spectrum disorder. FFCL #2230. The Court also credited testimony that indicated students with special needs were often removed from general education classrooms. See FFCL #2333. The Court also noted the state's own performance report provided to the federal Office of Special Education Programs identified deficiencies in special education. See FFCL #2335. The Court found certain aspects of general education, such as smaller class size (FFCL #2344), extended

learning programs (FFCL #2347), and teacher quality (FFCL #2354) as well as general education as a whole impacted students with disabilities (FFCL # 2355).

## **2. Action Taken**

Special education funding is specifically contemplated under Special Education Division (“SEG”) funding. See FFCL #2174. Thus, although Plaintiffs have criticized a lack of increase in below-the-line funding for special education services, it is untrue to claim that a lack of below-the-line funding means there has been no increase in special education funding since trial. As noted above, SEG funding has significantly increased since the time of trial which includes special education funding. Further, as recognized by the Court, the preference is for inclusion of special education students in general education classrooms. Therefore, the need for specific special education funding will decrease as fewer students are pulled out of general education classrooms.

In addition to funding increases, PED has made a number of programmatic changes. “In response to the deficiencies identified in the Office of Special Education Programs (“OSEP”) compliance report [discussed in the Court’s opinion], the State addressed thirty-two (32) requirements found to be in non-compliance and remedied these issues.” Exhibit G, ¶ 17; see also FFCL #2335. The SED has “instituted and maintained a monthly call with OSEP to discuss areas needing technical assistance.” Exhibit G to Defendants’ Response, filed on December 16, 2019, ¶ 18. “In August 2019, the United States Department of Education issued its annual Results-Driven Accountability Report, which indicated New Mexico’s ranking continued to show improvement, rising nine percentage points since 2018, from 67.7 percent to 76.7 percent.” Id., ¶ 19. Notably, as of March 9, 2020, the SED is fully staffed. See Exhibit G, ¶ 29.

PED has also improved efforts regarding identifying students with disabilities. “SED has implemented ‘Project Autism’ which will support districts statewide using a variety of methods

such as online portals, webinars and other technical guidance.” Id., ¶ 25. SED will use the information from Project Autism to identify areas in need of evaluators qualified to provide an educational diagnosis of autism. Id., ¶ 26. SED currently contracts with the University of New Mexico Health Sciences Center to provide qualified staff to screen children for a medical diagnosis of autism. Id., ¶ 23. Further, Senate Bill 398 requires all first grade students be screened for dyslexia. See SB 398 (Regular Session 2019), p. 3. During implementation of this bill, PED is mindful that dyslexia presents differently in different languages and for language learners. See Exhibit D, ¶ 22. In addition, SED amended the NM Technical Evaluation and Assessment Manual to include a section on Dyslexia and in January 2020 began providing training to educational diagnosticians on the new provisions in the Manual. See id., ¶ 21.

For the 2019-2020 school year, PED has implemented a pilot project for a Multilayered System of Supports (“MLSS”), expecting to implement it statewide next year. See Exhibit E, ¶ 14. MLSS is a holistic framework of interventions that guides educators to intervene quickly when a student needs extra support which is an overhaul of the Response to Intervention (“RtI”) framework in place at time of trial. See id., ¶ 15; see also Executive Summary, attached as Exhibit J. The pilot is meant to create a fluidly tiered system of supports at the classroom level, to be invoked prior to the formal convention of a student assistance team (“SAT”), allowing for more immediate support of a student who might otherwise be required to await a diagnosis for purposes of accessing additional education supports via special education. See Exhibit E, ¶ 16. The intent is to avoid the “wait to fail model” of RtI. See Exhibit J, p.2. The MLSS program emphasizes a general approach to student problems first, followed by whatever specific supports a student may need, such as supports for English learners, by ensuring core instruction requirements include English language development and culturally and linguistically responsive instruction for all students, before

moving on to an SAT's work on an individualized education plan. See Exhibit E, ¶17. The MLSS program also services a greater number of students. For example, some interventions (Tier 3) no longer exclusively serve students receiving special education or gifted services, but instead the MLSS Layer 3 provides intensive supports for any student who needs them. See Exhibit J, p. 2. The MLSS system reduces the need to remove a student from general education, referred to as a "pull out". See id.

The department's focus on CTE, discussed above, is of particular benefit to students with disabilities. Transition planning, required by the Federal Individuals with Disabilities Education Act, is a formal process to assist young people with deciding on their best course of action after high school, and how to best navigate through high school to arrive at that goal. See Exhibit G, ¶ 6. PED has begun a project in partnership with the Department of Vocational Rehabilitation ("DVR") and the Central Regional Education Cooperative ("CREC") to provide individually customized pre-employment transition services to students with disabilities. See id. Federal law requires transition plans to be in place for these students by age sixteen (16), but New Mexico requires them by age fourteen (14) and, in cooperation with CREC, PED has increased focus on establishing transition plans for students at that younger age. See id. Since 2017, CREC has hired two (2) statewide Vocational Transition Coordinators and contracted with the other Regional Education Cooperatives ("RECs") in the state to hire twenty (20) more Vocational Transition Specialists, to provide transition services under the federal Workforce Innovation and Opportunity Act ("WIOA") for special education students and their parents. See id. The project also focuses on other required program elements for students under WIOA, like job exploration counseling, self-advocacy, job readiness skills, counseling for opportunities for postsecondary training, and work-based learning experiences, all to help students with disabilities transition into employment

after their graduation from high school, or their twenty-first birthday. See id. Additionally, because PED now requires school districts to begin the vocational transition process by the time students reach fourteen (14) years old, it is offering school districts additional training including webinars and two in-person meetings per year with special education program directors each year. See id., ¶ 7. Recently, PED offered four (4) additional webinars specifically to new special education directors with less than two (2) years' experience, in an effort to encourage and support longer term retention of high-quality special education directors and increase continuity in this community of education professionals. See id., ¶ 8. DVR will also offer training to special education teachers on navigating the transition between middle and high schools. See id.

In 2018, PED implemented the Advancing Measurement at PED project ("AMP"), as a pilot program, which allocates \$400,000 each year in additional combined support to the Farmington and Deming school districts, where special education students have been graduating at particularly low rates. See id., ¶ 13. SED at PED works closely with the department's Career and College Readiness Bureau on this project. See id., ¶ 13. Notably, in addition to serving students receiving special education students, these programs also serve other types of at-risk students. For example, in Deming, the majority of students in the pilot were Hispanic, while in Farmington, the majority of students in the program were Native American. See id. At both sites, a high number of participants were also living below the poverty line. See id. Additional supports under the program include the purchase of an early warning system for Deming and the hiring of additional social workers while Farmington added three additional transition specialists. See id., ¶ 14. The program has shown great initial success, bringing fifty (50) students with disabilities back to school after they had dropped out, and helping them succeed and graduate. See id., ¶ 15.



Farmington and Deming school districts have shared their success with staff from other schools. See id.

For the 2019-2020 school year, PED has begun its statewide special education review, a comprehensive discussion of special education in the state, engaging with stakeholders to address how best to meet the needs of students with disabilities in New Mexico. See id., ¶ 16. Representatives of SED have already met with school district and charter school special education directors, RECs, and a number of advocacy groups, including Parents Reaching Out, Education for Parents of Indian Children with Special Needs, Disability Rights New Mexico, and the Native American Disability Law Center. Moving forward, SED has meetings planned with the New Mexico Coalition of Education Leaders, tribal governments, and legislators, and is working on a survey for parents. See id. SED staff have been engaged in listening sessions with parents, superintendents, principals, and both general and special education teachers. Finally, the review will culminate in a statewide Summit on Equity, Excellence, and Relevance in the summer of 2020, as the state works on continuous improvement of opportunities for students in special education. See id.

PED strongly believes teaching students with disabilities is the responsibility of all educators, not just special education teachers. This belief is reflected in the guidance provided to districts. Further, this philosophy also supports the assertion that many efforts taken and improvements made regarding delivery of general education have improved services for special education students. Specifically, the overall teacher salary increases significantly reduced vacancies for special education teachers. See Exhibit G to Defendants' Response, filed December 16, 2019, ¶ 16. Plaintiffs chose not to highlight this fact when addressing the NMSU teacher vacancy report. See Reply, pp. 24-25. In fact, the vacancy report showed special education

vacancies dropped by over 100 positions between 2018 and 2019. See Exhibit K, Vacancy Report, p. 4 (“Last year’s Report also identified 267 special education vacancies compared to 151 this year (182 including gifted teachers) for a 32 percent decrease).”

#### **IV. By Improving General Education, Defendants have Substantially Complied with the Injunction**

In its rulings, the Court noted a strong link between the health of the general education system and success for at-risk students. Thus, while Defendants do not dispute that some action targeted towards improved education for at-risk students is necessary, the Court recognized that improving the system as a whole does have an impact on at-risk students. See FFCL #2255-2260. Accordingly, Defendants ask the Court to consider the action taken to address general education when ruling on whether Defendants have substantially complied with the Court’s order to take immediate steps to address education of at-risk students.

##### **A. Teacher Quality**

###### **1. Court’s Findings**

At the outset, the Court repeatedly found and Defendants do not dispute that teacher quality can have an impact on student achievement. The Court noted teacher quality is inextricably linked to teacher retention, as more experienced teachers are generally higher quality. See FFCL #754. The primary concern regarding teacher retention noted in the Court’s opinion was the overall level of teacher compensation. FFCL #698. However, the Court found other factors played into teacher retention. For example, the Court found “[t]he State’s funding formula’s T&E (teacher training and experience) Index is deficient because it does not compensate for staff salary jumps associated with teachers’ transitioning licensure levels.” FFCL #740. Additionally, the Court’s opinion concluded another potential reason for poor teacher retention was the teacher evaluation tool. See FFCL #746. Specifically, the Court criticized the “punitive nature” of the evaluation as well as

the fact the teacher evaluation was tied to student performance on tests, which is “affected by many factors other than teacher performance.” FFCL #748. In fact, the Court discussed a potential link between a lower number of high quality teachers at high needs schools and the teacher evaluation tool. See FFCL #756. In addition to addressing the link between teacher retention and teacher quality, the Court also noted deficiencies in professional development for teachers and administrators who oversee them. See FFCL #3096.

## **2. Action Taken**

Defendants took immediate action to address the Court’s criticisms. Most noticeably, the State mandated and funded teacher salaries increases in both FY2019 and FY2020. See SB 119 (2018 Regular Session) (increasing the statutory minimum teacher salary levels to \$36,000, \$44,000, and \$54,000 from the then-existing statutory levels of \$30,000, \$40,000, and \$50,000 for levels 1, 2, and 3A, respectively); see also Exhibit A to Defendants’ Response to Motion for Discovery, filed on November 15, 2019, p. 7 (noting minimum salary levels were again increased from \$36,000, \$44,000, and \$54,000, to \$40,000, \$50,000, and \$60,000 for levels 1, 2, and 3-A teachers, respectively, with a further requirement that the Secretary of Education enforce a \$41,000 minimum salary level for level 1 teachers in FY2020.”). Further, the Training and Experience (T&E) index was revised to better reflect compensation by licensure. See HB 188 (2019 Regular Session), pp. 10-11. Plaintiffs claim the teacher salaries are still “not-competitive” and do not reach 2008 levels. Again, the Court did not require any specific amount of an increase. Further, the increased salaries have had a demonstrable impact on teacher vacancy rates. The NMSU vacancy report demonstrates a significant decrease in overall teacher vacancies. In fact, the overall number of teacher vacancies decreased by ninety-six (96) positions between FY2019 and FY2020, including as noted above, a significant decrease in special education vacancies. See Vacancy

Report, attached as Exhibit K. However, this report only looks at total vacancies and does not take into account newly created positions. A review of districts and charter schools' budgets demonstrates between FY2019 and FY2020, 317.67 FTE (full time equivalent) teaching positions were added statewide. See spreadsheet of budgeted positions, attached as Exhibit L (showing a total of 22,549.79 budgeted teaching positions in FY2019 and 22,921.46 budgeted teaching positions in FY2020). Thus, considering the 317 *new* positions and the 96 less vacancies, statewide there was a net gain of **413** teacher positions in FY2020. The newly added positions also puts into perspective Plaintiffs claim that there are still a significant amount of vacancies. Moreover, notwithstanding Plaintiffs' assertion, the increases were not enough, they did have an impact.<sup>15</sup>

Moreover, the Legislature passed several bills to address teacher quality. For example, HB 44 requires the PED to develop a framework for professional development and instructional support addressing the Court's concerns regarding professional development of teachers. See generally HB 44 (2019 Regular Session). Notably, this is now a funded mandate. See Exhibit C to Defendants' Response, filed on December 16, 2019, p. 3 (showing \$2.5 million below-the-line funding allocated to Teacher Professional Development and Mentoring). The legislature also passed House Bill 20, which is the "Grow Your Own Teachers Act." House Bill 20 creates a scholarship program for educational assistants who want to become qualified teachers, including scholarships of up to \$6,000 per year. See HB 20 (2019 Regular Session), p. 4. House Bill 20 also provides educational assistants with professional leave in order to pursue their studies. See id., pp. 2-3. Further, House Bill 20 also created a fund for teacher loan repayment. See id., p. 2. The Legislature also passed House Bill 275, which amends the Teacher Loan Repayment Act to

---

<sup>15</sup> Again, Defendants have not stopped improving teacher salaries. In FY21, minimum teacher salaries were increased again to \$41,000.00 for a level one teacher. See HB 2 (2020 Regular Session), p. 169.

specifically target the types of “high-need” teachers who qualify for the program. Teachers who would fill “designated high-need teacher positions,” include bilingual education and early childhood and special education teachers, along with science, technology, engineering, mathematics teachers, and career technical education teachers. See HB 275 (2019 Regular Session), pp. 2-3. Also, within the “high-need” category are teachers who are members of minority groups and teachers working in a public school that is either a low-performing school or has a high percentage of economically disadvantaged students. See id., p. 2. House Bill 275 provides for monetary awards of up to \$6,000 per year to teachers for loan repayments. See id., p. 4. House Bill 275 also enacted the “Teacher Preparation Affordability Act,” which provides for scholarships to students in a PED-approved teacher preparation program. See id., p. 2. Preference for these scholarships is given to qualifying students who are either English language students, members of minority groups, or students who have declared an intent to teach in a high-need teacher position. See id., p. 10. The Legislature also enacted several bills intended to help recruit and retain quality teachers and administrators. House Bill 240 (2019 Regular Session) eliminates barriers for alternatively licensed teachers to obtain a Level 2 license. Senate Bill 593 (2019 Regular Session) eliminates barriers for out-of-state school administrators to obtain a New Mexico level 3B administrative license.

Additionally, Governor Lujan Grisham took action immediately upon taking office to revise the teacher evaluation system by signing Executive Order #2 on January 3, 2019. See Exhibit F to Defendants Response to Plaintiffs’ Motion for Court Order, filed on December 16, 2019, p. 2. Executive Order #2 immediately abolished some of the more concerning elements of the teacher evaluation system including “punitive” measures related to the use of sick leave and “coupling” teacher evaluation with student performance on certain standardized tests. Id., p. 2.

Executive Order #2 called for a taskforce of interested stakeholders to develop a new teacher evaluation system. See id. Further, PED is implementing new professional development programs for teachers working in science, technology, engineering, and math (“STEM”) fields. See Exhibit D, ¶5. The department is collaborating with WestEd, a nonprofit organization focused on equity and excellence in education through evidence-based strategies, to tailor professional development for the New Mexico STEM-Ready Science Standards – the state’s version of the Next Gen Science Standards – adopted by New Mexico in 2018, and promulgated by rule, at Part 10 of 6.29 NMAC. See id. Professional development will include required trainings throughout the year, as well as content-focused professional development sessions to keep the state’s educators current in science content. See id., ¶6.

### **B. Class Size**

Defendants did not renew the prior legislation regarding maximum class size waivers. See NMSA 1978 § 22-1-10 (allowing waivers through the 2018-2019 school years). Further, Defendants have worked to address what the Court identified as the underlying causes of the reliance on class size waivers, teacher retention, and funding, as discussed above. See FFCL #233.

### **C. Instructional Materials**

Funding for instructional materials increased by 352 percent, from \$12.5 million in FY2019 to \$56.5 million in FY2020, with \$30 million appropriated to above-the line SEG funding and approximately \$26.5 million appropriated to non-recurring below-the-line funding. See Exhibit A to Defendants’ Response, filed on November 15, 2019, p. 8. The \$30 million allocation to the SEG gave schools nearly full flexibility to purchase culturally and linguistically responsive materials to help at-risk students. See id. The \$30 million allocated through SEG funding to instructional materials in FY2020. See id. In 2019, the Legislature also appropriated \$26.5 million

in below-the-line funding for instructional materials to address the funding of large materials adoption cycles from prior years. See id. Further, PED has expanded the definition of high-quality instructional materials to include new technologies and electronic platforms that are culturally and linguistically responsive, inclusive of the needs of students with disabilities and ELs, thus, granting school districts and schools additional flexibility in using their instructional materials funding. See Exhibit D, ¶ 39.

## **D. Pre-K**

### **1. The Court's Findings**

The Court found early childhood education, specifically pre-Kindergarten (“pre-K”) can have a significant impact on all children, but can be especially effective for at-risk students. FFCL #7; see also FFCL #25. The Court noted pre-K in New Mexico is jointly administered by the PED and Children, Youth and Families Department (“CYFD”). FFCL #9. The Court mentioned concerns about uniformity between pre-K programs offered by these two (2) separate executive agencies, as well as gaps in the services provided by PED and CYFD. See FFCL #36; 42. The Court found pre-K programs did not have data concerning students who received free or reduced-fee lunch. FFCL #35. The Court found NM TEACH funds, which help teachers and assistants achieve the licenses that are key to a high quality program, are in short supply. See FFCL #37. The Court noted funding for pre-K remained flat at \$21 million from fiscal year 2015 to fiscal year 2017. FFCL #77. In addition, to overall funding, the Court raised concerns about per-pupil funding which resulted in some smaller districts unable to cover the costs of the program. FFCL #73.

## **2. Action Taken**

In an attempt to streamline programming and services for New Mexico's youngest children, Senate Bill 22 created the Early Childhood Education and Care Department ("ECECD"), which is a cabinet-level department tasked with administering early childhood programs including all pre-K programs for three- and four-year olds. See SB 22 (2019 Regular Session). Also, within the purview of the new department, is the responsibility to coordinate and align early childhood education and care systems, and to promote culturally and linguistically appropriate programming and provide equal education and care opportunities to non-English speaking families. See id., p. 4. With respect to accountability measures, the new ECECD must provide a comprehensive annual report to the Legislature and the Governor on outcomes for children and families receiving services through early childhood programs, and prepare and update a four-year early childhood education and care finance plan to provide the Legislature and the Governor with demographic information on at-risk children, data on the efficiency of early childhood education and care programs, and recommendations for financing the early childhood education and care system. See id., p. 11. In addition to simply creating a new cabinet-level department, the State also allocated \$1.5 million in initial start-up funding. See SB 22 p. 54. Notably, this does constitute "a plan" as demanded by Plaintiffs. See Reply, p. 37.

Under the new early childhood education umbrella, there is a working group including CYFD, Department of Health, and PED to address pre-K services. See Exhibit D, ¶ 7. The working group is developing uniform standards for pre-K services using National Institute for Early Education Research ("NIEER") standards as a basis. See id., ¶ 8; see also FFCL #29-31 (discussing NIEER standards). This group is also working to identify geographic areas that lack pre-K services and determine what type of service would most benefit specific communities. See id., ¶ 9. This



group is working to ensure pre-K teachers receive training for bilingual education, education of EL students, and social emotional training. See id., ¶10. The efforts implemented thus far have led to a significant increase in reading scores for pre-K students. See id., ¶11. Information regarding pre-K students enrolled in the free- or reduced-fee lunch program is available through the STARS database. See id., ¶12. Thus, the new ECECD addresses a number of the Court’s concerns regarding uniformity of early childhood education and provision of services to at-risk children.

Pre-K funding increased from \$21 million in 2017 to \$29 million in 2018. In 2019, pre-K funds increased another \$10 million for a 33% increase from 2018 levels. See Exhibit C to Defendants Response filed on December 16, 2019, p.2. Thus, since the time of trial, pre-K funding has increased by **18 million, or 54%**. Notably, “[s]ince the time of trial in 2017, Pre-K enrollment has grown from 5,321 students to 7,048. More importantly, full-day Pre-K program participation has grown from 1,682 students to 4,597 students over the same period.” See Exhibit H to Defendants’ Response, filed on December 16, 2019, ¶ 6. PED also responded to concerns about per-pupil funding by imposing a minimum amount of funding equivalent to seven (7) students or \$70,000.00 to ensure smaller programs could cover the costs of overhead for the program. See Exhibit D, ¶ 14. Additionally, HB 275 addresses the Court’s concerns over scholarships to support pre-K teachers and educational assistants. See HB 275 (2019 Regular Session), p. 1. These changes have led to a significant increase in pre-K sites. Specifically, in 2018, there were 54 school districts with pre-K programs along with 144 school sites and 234 classrooms. See Annual Report 2017-2018, attached as Exhibit M, p. 44. Following these changes, the 2018-2019 school year numbers grew to 65 school districts, 192 school site, and 328 classrooms. See draft Annual Report 2018-2019, attached as Exhibit N.

In addition to additional funding appropriated by the Legislature, in 2019, “New Mexico applied for and received a \$5.37 million preschool development grant from the United States Department of Health and Human Services.” Exhibit H to Defendants’ Response, filed on December 16, 2019, ¶ 7. New Mexico also applied for and received a \$100 thousand preschool development grant in 2018 by the United States Department of Health and Human Services to help create and implement an early education system to support all young children, with particular emphasis on access for at-risk and underserved populations. See Exhibit D, ¶ 15. The grant enabled access to WIDA Consortium Early Years resources, including early education modules. The project focuses on expanding access to high quality opportunities for all young children in the state through a coordinated, collaborative early learning system. See id., ¶ 16.

## **E. Extended Learning<sup>16</sup>**

### **1. Applicable Court Findings**

The Court found extended learning time can have a significant positive impact on at-risk students. FFCL #166-167. The Court found that generally there was insufficient funding for extended learning programs.

### **2. Action Taken**

Through the passage of House Bill 5 and Senate Bill 1, the Legislature added a new extended learning time program factor into the SEG formula. This resulted in an additional \$62.5 million appropriation to the SEG. See Exhibit C to Defendants’ Response, filed on December 16, 2019, p. 2. Because the legislation directly changed the public school funding formula by adding

---

<sup>16</sup> It is first important to discuss the difference between extended learning and K-5 (formerly K-3) Plus. Extended learning refers to a program that adds ten (10) additional instruction days. K-5 Plus on the other hand, provides funding for additional educational time and extends the school year in eligible schools for grades K-5 by 25 instructional days beginning before school starts. The K-5 Plus program has specific requirements and must be rolled-out school-wide for participating schools. The Extended Learning Program is far more flexible and allows districts and schools to implement a program for as large or as small of a group as the school deems necessary.

the new extended learning time program factor, additional funds will be available for extended learning programs in succeeding years. Further, 2019 legislation requires additional pay for teachers who participate in the extended learning program. See Exhibit A to Defendants' Response, filed on November 15, 2019, p. 7. Utilizing that additional \$62.5 million generated for FY2020, PED has established an Extended Learning Time Program, which will see participation by approximately 80 thousand students in the 2019-2020 school year. See Exhibit E, ¶ 10. Early projections for next school year indicate enrollment to more than double to 180 thousand students in FY2021. See id., ¶ 11.

School districts must provide a plan for how the additional SEG funds will be used for extended learning, prior to obtaining this funding. See Exhibit I to Defendants' Response, filed on December 16, 2019, pp. 2-3. Preference was given to schools "serving high percentages of students who qualify for free or reduced-fee lunch, as well as schools designated as Targeted Support and Improvement (TSI) or Comprehensive Support and Improvement (CSI)." See id., p. 1. Thus, not only do extended learning programs generally benefit at-risk students, funding was specifically targeted to at-risk students. Further, districts are required to report participation in extended learning programs, ensuring accountability. See Exhibit J to Defendants' Response, filed on December 16, 2019.

Defendants have continued to improve extended learning even after April 2019. For example in FY2021, the Legislature allotted \$5 million for a pilot program for students in "Indian impacted school districts with a membership of fewer than two hundred". See HB2 (2020 Regular Session).

## **F. K-5 Plus**

### **1. Applicable Court Findings**

The Court found K-3 Plus (now K-5 Plus) had a significant positive impact on at-risk students. FFCL #106-111. The Court found there was insufficient funding for K-3 Plus programs, which was \$21 million at the time of trial. FFCL #114. The Court also found “PED administrative burdens of the K-3 Plus program prevent some districts from participating.” FFCL #118. The Court again criticized the per-pupil funding scheme. FFCL #128.

### **2. Action Taken**

As previously noted, following trial, K-3 Plus was expanded to include fourth and fifth graders and therefore is now known as K-5 Plus. Thus, this program is available to substantially more students than the program discussed at the time of trial. Further, 2019 legislation requires additional pay for teachers who participate in the K-5 Plus program. See Exhibit A to Defendants’ Response, filed on November 15, 2019, p. 7. In FY20, K-5 Plus was provided with approximately \$120 million in funding, an almost **one hundred million dollar** increase from the \$21 million allocated for K-3 Plus at the time of trial. See Exhibit C to Defendants’ Response filed on December 16, 2019, p.2; see also FFCL #138-139. In June 2019, PED promulgated rules for the implementation of the program intended to offer greater flexibility to school districts and charter schools, allowing more of them to participate while still meeting program requirements. See Exhibit D, ¶ 18; see also NMAC 6.30.12.9 (B); (C). The rule allowed a school to participate even if up to two teachers were unable to remain with their original student cohorts from the regular school year through the extended school year offered by the K-5 Plus program. See Exhibit D, ¶ 19.<sup>17</sup>

---

<sup>17</sup> Although the original rule relaxing this requirement expired in 2019, the 2020 Legislature likewise included flexibility for K-5 requirements. See HB 2 (2020 Regular Session), pp. 171-172; see also Exhibit D, ¶19.

Plaintiffs claim that the additional funding made available for this program should not count, because not all of the funds made available were used. However, these measures have led to significantly increased participation. Approximately 23,139 students participated in the newly expanded program in 2019. See Exhibit D, ¶ 17. This is a significant increase from the most recent total reported by the Court, 7,163 students in FY13. See FFCL #156. Combined with the rolled-over balance of any remaining K-5 Plus funds from FY20, PED expects even greater participation in FY21. See Exhibit D, ¶ 20.

## **G. Non-instructor Supports**

### **1. Applicable Court Findings**

The Court found non-instructor supports provide positive impacts on at-risk students. FFCL #271. The Court also found “[w]rap-around services can improve at-risk students’ academic performance.” FFCL #273. The Court found deficiencies in the non-instructor supports available at the time of trial.

### **2. Action Taken**

PED recently filled the newly created position of Behavioral Health Coordinator within the department’s Safe and Healthy Schools Bureau. See Exhibit D, ¶ 18. The position will serve as liaison and technical consultant for school-based health centers for the social and emotional well-being of students through the expansion of wraparound services as part of the community schools framework, although the CLR framework will, itself, require a more holistic approach to addressing student needs. See id. The liaison will be responsible for health-risk reduction technical assistance and professional development related to the attendance initiative, and generally provide a coordinated school-health approach framework through dissemination, professional development, and technical assistance for strategies supporting the link between health and

academic success. See id. As discussed previously, the State has passed legislation and approved additional funding for community schools. Further, as discussed above, the revised legislation regarding school attendance also aims to provide wraparound services for student success. In addition to funding for the community school roll-out, in FY20, the State allocated \$1.3 million for school-based health centers. See Exhibit C to Defendants’ Response filed on December 16, 2019, p. 3.

## **H. Research-Based- Literacy Programs**

### **1. Applicable Court Findings**

The Court found literacy programs yielded substantial positive results for at-risk students. FFCL #240. The Court criticized funding that was awarded based upon the strength of the application rather than the needs of the programs applying. FFCL#251.

### **2. Action Taken**

“PED recently applied for and received a Comprehensive Literacy State Development Grant to support literacy from birth through 12th grade.” Exhibit H to Defendants’ Response filed on December 16, 2019, ¶ 10. “The grant will provide \$40 million over five (5) years, with 95 percent of the funds to be allocated to school districts.” See Exhibit D, ¶ 23. “NMPED will use the remaining five percent to hire a literacy program manager and two literacy experts, who will work to develop a comprehensive system of literacy support, including professional development, with particular emphasis on the birth to kindergarten age span, as well as on targeted high school redesign and integrating subject-matter content with literacy needs and instruction.” See id., ¶ 25. PED also received the Striving Readers grant which provides \$20 million over three years. See id., ¶ 26. PED awarded money from this grant to ten districts and one charter school. See id.,

¶ 27. Applications were assessed in light of need as opposed to solely the strength of the application. See id., ¶ 28.

#### **IV. The Combination of Increased Recurring Educational Funding, Legislative Action, and Programmatic Changes Following the Trial Result in Fundamentally Changed Circumstances that Warrant Dismissing the Case**

As discussed above, this Court clearly recognizes the “tension between giving the Defendants and the legislature sufficient guidance to allow them to comply and usurping the policy-making role that is appropriately the legislature’s function.” Decision and Order at 72. This concern has been recognized by other courts crafting similar remedies in school funding cases. In Campaign for Fiscal Equity, Inc. v. State, 861 N.E.2d 50, 58 (N.Y. 2006), the New York Court of Appeals spoke at length on this topic, stating:

“[I]n fashioning specific remedies for constitutional violations, we must avoid intrusion on the primary domain of another branch of government. We have often spoken of this tension between our responsibility to safeguard rights and the necessary deference of the courts to the policies of the Legislature. . . . Our deference to the Legislature’s education financing plans is justified not only by prudent and practical hesitation in light of the limited access of the Judiciary to the controlling economic and social facts, but also by our abiding respect of the separation of powers upon which our system of government is based. . . . Devising a state budget is a prerogative of the Legislature and Executive; the Judiciary should not usurp this power. The legislative and executive branches are in a far better position than the Judiciary to determine funding needs throughout the state and priorities for the allocation of the State’s resources.”

(Internal quotation marks and citations omitted). The importance of this point cannot be understated where, as here, the Court has determined that previous systemic inadequacies violated the constitutional rights of certain students and has sought to craft an appropriate remedy. Some judges who have directly confronted this issue — how to craft and enforce a judgment while recognizing the inherent inability of a court to solve political and/or legislative problems — appear to understand that the court’s ability to retain jurisdiction should extend only to the point where the legislative and executive branches have substantially acted, thereby changing the

circumstances that justified the court’s involvement. See, e.g., DeRolph v. State, 678 N.E.2d 886, 888 (Ohio 1997) (Moyer, C.J., concurring in part and dissenting in part) (“A review of sixteen other states’ Supreme Court decisions that have declared their systems for funding public education unconstitutional reveals that a majority of those decisions remanded the case to a trial court. However, it is those states that have had the most difficulty producing a plan that met the Supreme Court’s opinion of constitutionality.”).

As noted by Chief Judge Moyer in DeRolph, courts in several states have struggled with judicial enforcement of orders in education funding cases for years. In New Jersey, for example, a 1973 ruling declared the state’s school funding system unconstitutional. Robinson v. Cahill, 303 A.2d 273, 295-98 (N.J. 1973). Even at that early point, the court recognized that “some period of time will be needed” to accomplish the changes the court deemed necessary. Id., p. 298. That prediction turned out to be an understatement. Halfway through New Jersey’s school funding saga to date, the Rhode Island Supreme Court cautioned:

[T]he New Jersey Supreme Court has struggled in its self-appointed role as overseer of education for more than twenty-one years, consuming significant funds, fees, time, effort, and court attention. The volume of litigation and the extent of judicial oversight provide a chilling example of the thickets that can entrap a court that takes on the duties of a Legislature.

City of Pawtucket v. Sundlun, 662 A.2d 40, 59 (R.I. 1995). Over forty (40) years after entering the fray, the New Jersey court has largely abandoned its attempt to preside as a super-legislature over the state’s educational system, recently acknowledging that “we are limited in our ability to order relief in this matter.” Abbott v. Burke, 20 A.3d 1018, 1025 (N.J. 2011); see id., pp. 1050-57 & n.7 (appendix) (summarizing history of New Jersey litigation).

Massachusetts followed a similar course. School funding litigation began there in 1978 and led to a ruling in 1993 that the state was not fulfilling its constitutional duties. McDuffy v. Sec. of Exec. Office of Educ., 615 N.E.2d 516, 518-56 (Mass. 1993). Massachusetts’ highest court



disposed of the litigation in its entirety twelve (12) years later, rejecting a recommendation for further judicial action and terminating its retained jurisdiction, with the justices unable to agree on what role, if any, the court should have in the controversy. Hancock v. Comm’r of Educ., 822 N.E.2d 1134, 1136-37 (Mass. 2005); see id., pp. 1156-57 (Marshall, C.J., and Spina and Cordy, JJ., concurring) (observing that proposals to address needs of at-risk children presented policy choices for the legislature—“Each choice embodies a value judgment; each carries a cost, in real, immediate tax dollars; and each choice is fundamentally political. Courts are not well positioned to make such decisions.”) (footnote omitted). These cases present cautionary tales regarding the importance of separation of powers and the importance, previously recognized by this Court, of deference to the legislative and executive branches. See NM Const. art. III, § 1 (describing the distinct functions of the three (3) branches of government).

Defendants anticipate that in their Response, Plaintiffs will ask the Court to second-guess each and every action taken by Defendants since the Court’s rulings, as Plaintiffs have done in all post-judgment briefings. In fact, in their Motion for Court Order, Plaintiffs ignored overwhelming evidence of action taken by Defendants and boldly represented to the Court Defendants have taken *no* action in response to the Court’s orders. Defendants further anticipate Plaintiffs will ask the Court to determine the adequacy of remedial action taken by Defendants. As discussed previously, the Court’s duty in ruling on a Rule 60(b)(5) is to determine whether Defendants have complied with the Court’s Injunction, not assess the constitutionality of the current system. See supra (discussion of Montoy v. State, 138 P.3d 755).

Even before the Court issued the Injunction, Defendants began endeavoring to fundamentally remake New Mexico’s public education system via changes to: (1) recurring funding levels; (2) the at-risk index; (3) teacher compensation levels; (4) teacher retention

programs; (5) access to early childhood education programming, including the creation of a new cabinet-level agency dedicated to early childhood issues; (6) targeted infrastructure and materials funding; and (as importantly) (7) systems of accountability for at-risk students, specifically including bilingual and/or EL students, and Native American students. As detailed above, it is not hyperbole to say that the legislation enacted during the 2018 and 2019 legislative sessions, executive action, programmatic changes, and funding increases have fundamentally changed the circumstances that existed at the time of the trial in 2017. Although, as in Montoy, it may be too early to fully understand the impacts of the new legislation, it is these overall changes to the public education system during the last two (2) legislative sessions, and the executive agencies' efforts to implement them, that indicate that Defendants have substantially responded to the concerns raised by the Court, and justify the dismissal of this case.

This Court ordered Defendants to “take immediate steps to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career.” Injunction at 74. Defendants have done so. This Court ordered Defendants to create “a system of accountability to measure whether programs and services actually provide the opportunity for a sound basic education and to assure that the local districts are spending the funds provided in a way that efficiently and effectively meets that needs of at-risk students.” Decision and Order at 75. Defendants also have done this. Therefore, this Court should recognize the Defendants' compliance with its injunction and dismiss this case.

## **CONCLUSION**

The public education system currently in place in New Mexico is substantially different from the system in place during trial. Defendants have passed legislation, increased funding, improved accountability, and added and reformed programs aimed at providing an adequate

education system for at-risk students by targeting at-risk students generally and raising up the general education system as a whole for all students. In doing so, Defendants have substantially complied with the Court's Injunction. Having complied with both the spirit and the letter of this Court's Injunction, Defendants respectfully request that this Court recognize this compliance and dismiss this action.

**WHEREFORE**, Defendants respectfully request the Court grant their Motion for Entry of Order of Satisfaction of Injunction and Dismissal of Action, enter an Order of Satisfaction of Injunction, dismiss this Action, and order all other relief this Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Taylor S. Rahn  
Taylor S. Rahn  
Susan Barela  
Attorneys for Defendants  
500 Marquette Ave., NW, Suite 700  
Albuquerque, New Mexico 87102  
(505) 242-2228  
(505) 242-1106 (facsimile)  
[taylor@roblesrael.com](mailto:taylor@roblesrael.com)  
[susan@roblesrael.com](mailto:susan@roblesrael.com)

and

OFFICE OF GENERAL COUNSEL  
PUBLIC EDUCATION DEPARTMENT

By: /s/ Lisa Chai  
Lisa Chai  
Attorney for Defendants  
300 Don Gaspar Ave.  
Santa Fe, NM 87501  
(505) 660-9143  
[Lisa.chai@state.nm.us](mailto:Lisa.chai@state.nm.us)

I hereby certify that the foregoing was electronically filed through the First Judicial District Court and sent via electronic mail on this 13<sup>th</sup> day of March, 2020 to all counsel of record.

/s/ Taylor S. Rahn  
Taylor S. Rahn

# STATE OF NEW MEXICO

## Report of the Legislative Finance Committee to the Fifty-Third Legislature

May 2018  
For Fiscal Year 2019

SECOND SESSION  
POST-SESSION REVIEW



EXHIBIT

A

2018 Post-Session Review

# Public Education

The FY19 budget for recurring public education appropriations in the 2018 GAA totals \$2.8 billion, an increase of \$107.4 million, or 4 percent. Funding discussions during the legislative session focused on proposals for adjusting the funding formula, increasing school personnel compensation, expanding early childhood programs, and restoring funding to sources impacted by FY17 solvency actions.

In light of multiple public school funding lawsuits and a school shooting at Aztec High School, the Legislature passed bills adjusting the public school funding formulas for operational and capital outlay appropriations and earmarked appropriations to improve school security.

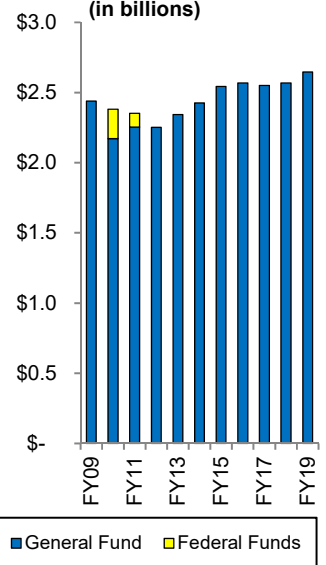
## Public School Support

Projected windfalls in revenue, potential liabilities from the public sufficiency lawsuit, and continued use of nonrecurring supplemental severance tax bond proceeds for ongoing costs prompted the Legislature to appropriate \$2.7 billion for public school support, a \$104.7 million, or 4 percent, increase from the FY18 operating level. This increase includes \$64.2 million in statewide school personnel compensation raises, \$22.5 million for at-risk students in the funding formula, and \$18 million to replace supplemental severance tax bonds for school transportation and instructional materials.

**Funding Formula Changes.** Chapter 55 ([House Bill 188](#)) adjusts components of the public school funding formula to increase the allocation of funding for at-risk students, those with low income, low English skills, and high mobility. The bill further aligns funding formula components related to costs of teacher compensation with the three-tier licensure system and holds public schools partially harmless to these changes over the next few years. The 2018 GAA includes \$22.5 million to fund these formula changes for FY19. These additional appropriations and funding formula changes are in response to arguments made by plaintiffs in the ongoing public school sufficiency lawsuit, who contend the state is not sufficiently funding or appropriately allocating resources to address the achievement gap between low-income, English learner, and Native American students and the statewide average.

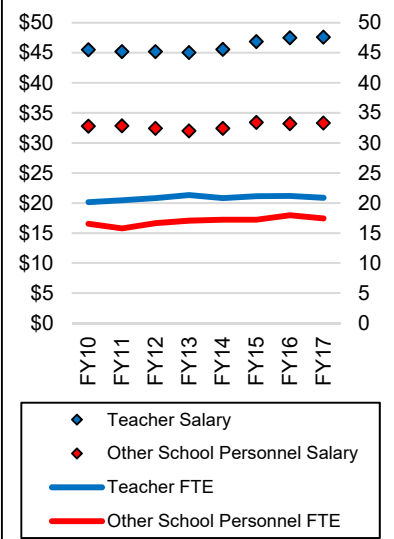
**School Personnel Compensation.** Chapter 72 ([Senate Bill 119](#)) increases the statutory minimum teacher salary level from \$30 thousand to \$36 thousand for level one licensees, \$40 thousand to \$44 thousand for level two licensees, and \$50 thousand to \$54 thousand for level three-A licensees. However, funding provides only an additional \$2,000 at each level because the appropriations in every GAA since 2014 provided for increases above the statutory minimum. Additionally, the 2018 GAA includes a \$31.3 million recurring appropriation to raise all classroom teacher compensation by an average of 2.5 percent, \$15.3 million recurring appropriation to raise all other school personnel compensation by an average of 2 percent, and a \$5 million nonrecurring appropriation for exemplary teacher awards.

**Formula Funding for Public Schools**  
(in billions)



Source: LFC Files

**Average School Salaries and FTE**  
(in thousands)



Source: PED

FIRST JUDICIAL DISTRICT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next  
friend of her minor children AN. MARTINEZ,  
AA. MARTINEZ, AR. MARTINEZ, and  
AD. MARTINEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

Consolidated with

WILHELMINA YAZZIE, individually and as next  
friend of her minor child, XAVIER NEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

### **AFFIDAVIT OF HIPOLITO J. AGUILAR**

After first being duly sworn, Affiant Hipolito J. Aguilar deposes and states as follows:

1. I served as the Deputy Secretary of the Public Education Department for Finance and Operations from February 14, 2011 until October 31, 2017. I further served as the Principal Analyst for the New Mexico Legislative Finance Committee from April 2003 until February 2011 with a focus on Public K-12 Education and Higher Education. I also served as a teacher and building administrator from August 1996 through April 2002.

2. As such, I have significant experience in education finance.

EXHIBIT

B

3. I have classroom teaching experience working with general populations and special populations.

4. I have school level administrative experience.

5. I have large scale organizational experience

6. I have specific knowledge and experience with the New Mexico Public School Funding Formula.

7. I have reviewed Plaintiffs' Reply in Support of Motion for Court Order, filed on February 5, 2020 along with the accompanying exhibits, including the affidavit of Dr. Stephen Barro.

8. Specifically, I reviewed Dr. Barro's claim about inflation as it relates to public education funding.

9. Based upon the conclusions reached by Dr. Barro, it appears Dr. Barro used the Price Index for State and Local Government Consumption Expenditures produced by the U.S. Bureau of Economic Analysis, a bureau of the U.S. Department of Commerce, to calculate inflation.

10. This index is not typically used to calculate inflation rates.

11. This index looks specifically at consumption expenditures of state and local governmental entities, which generally includes current expenditures (e.g. salaries, benefits, goods and services), capital transfer payments, gross investment (e.g. structures plus equipment and software), and net purchases of assets.

12. Therefore, this index looks at a number of expenditures that are not made using the revenue sources under attack in this lawsuit.



13. Capital expenditures, facility investment, and equipment are mostly paid for by locally raised revenue with supplemental revenue from the State and not by state supported funds through the State Equalization Guarantee.

14. In general, economists conducting analyses of inflation rely on data provided by the U.S. Bureau of Labor Statistics.

15. This bureau, an arm of the U.S. Department of Labor, is the principal fact-finding agency for the federal government in the fields of labor, economics, and statistics, and provides data on employment, wages, inflation, and productivity, among other topics. This Bureau of Labor Statistics is responsible for the most common price index used for inflationary analysis: the Consumer Price Index (CPI).

16. The CPI measures expenditures related to food, beverages, housing, apparel, transportation, medical care; recreation; education, communication, and other goods and services, and then calculates the change in cost on a bundle of these consumer goods and services over time.

17. This is a more accurate measure of inflation that aligns better with what school districts and school personnel purchase over time.

18. Using each of these two price indices to calculate the inflation rate from 2008 to 2020 yields an inflation rate of 27.25% for the State and Local Government Consumption Expenditures, and 21.47% percent for CPI, a difference of 5.85%.

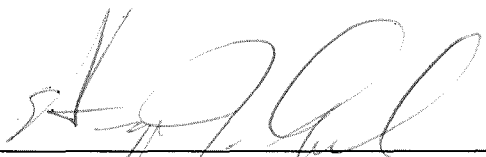
19. Using either inflation index, Plaintiffs incorrectly assert current education funding levels do not meet 2008 funding levels, as demonstrated by the below tables:

Appropriation Assumptions			
	2008	2020	Percent Increase
Program Cost	2,328,883,900	3,137,303,400	34.71%
State Equalization Guarantee	2,272,533,900	3,068,803,400	35.04%
Public Education Recurring Funding	2,491,261,600	3,236,120,900	29.90%

20. Public Education Recurring Funding reflects the total amount of State recurring dollars that are appropriated to education in a given year.
21. It reflects the SEG, the categorical funds, and the below-the-line funds.
22. Therefore, an increase in the Public Education Recurring Funding is not impacted by moving programs above or below the line.
23. Further, the per student (or member (MEM)) funding has likewise increased between 2020 and 2008, even adjusting for inflation, as demonstrated in the table below:

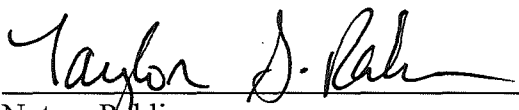
Dollars per MEM			
	2008	2020	Percent Increase
Program Cost	7,154	9,712	35.76%
SEG	6,981	9,500	36.09%
Public Ed Recurring Funding	7,653	10,018	30.91%

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
HIPOLITO J. AGUILAR

COUNTY OF SANTA FE           )  
  ) ss.  
STATE OF NEW MEXICO        )

SUBSCRIBED AND SWORN to before me on this 4<sup>th</sup> day of March,  
2020.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

9/15/2022



OFFICIAL SEAL  
TAYLOR S. RAHN  
NOTARY PUBLIC-State of New Mexico  
My Commission Expires 9/15/22



# State of New Mexico

Michelle Lujan Grisham  
*Governor*

## EXECUTIVE ORDER 2019-001

**DIRECTIVE TO THE STATE PUBLIC EDUCATION DEPARTMENT TO IMMEDIATELY TAKE THE STEPS NECESSARY TO BEGIN TRANSITIONING AWAY FROM USE OF THE STANDARDIZED TEST TERMED THE "PARTNERSHIP FOR ASSESSMENT OF READINESS FOR COLLEGE AND CAREERS" ("PARCC") AND TO WORK WITH STAKEHOLDERS TO IDENTIFY AND IMPLEMENT A MORE EFFECTIVE METHOD FOR ASSESSING SCHOOL PERFORMANCE**

WHEREAS, as Governor, I am committed to making immediate improvements to our Public Education system.

WHEREAS, students throughout New Mexico have been required to take the PARCC, which is a test purported to serve as an accountability measure for New Mexico School Districts and Charter Schools in the areas of English Language Arts and Mathematics. The PARCC test is given to students in grades 3-11.

WHEREAS, PARCC has been widely criticized as being expensive, ineffective, and a poor performance measure for schools and students. For these reasons, many states around the country have discontinued or are in the process of discontinuing the use of PARCC testing. Lt. Governor, Howie Morales, who holds a Ph.D. in Education, has pointed out that "PARCC is a colossal and expensive failure for our State" and that "[t]here are better ways to assess the learning of school-age children." Lt. Governor Morales' observations are consistent with empirical data. PARCC testing accounts for 90% of the ratings and assessments that New Mexico elementary and middle schools receive, and 75% of the ratings and assessments that New Mexico high schools receive. Consequently, teachers and administrators are unreasonably forced to expend excessive resources preparing students to take the PARCC test. The result is that New Mexico students spend too much time being "taught to the test" and not enough time learning.

EXHIBIT

C

WHEREAS, I am committed to implementing a sounder methodology for the rating and assessments of New Mexico schools that complies with the federal law, Every Student Succeeds Act (“ESSA”). To identify, develop, and implement an alternative approach, we must have input from our Public Education Department, teachers, administrators, parents, students, and recognized professionals and experts in the field of student assessments. Through this collaborative approach, New Mexico can develop means for testing and assessment that generate the requisite information necessary for teachers to meaningfully evaluate the areas where students are struggling; to promote innovation in the classroom; and to foster students’ critical thinking skills.

THEREFORE, for these reasons discussed above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, do hereby ORDER and DIRECT:

1. Effective immediately, the Public Education Department shall begin the process of transitioning away from PARCC testing and adopting new ratings and assessments that meaningfully evaluate the areas where students are struggling; promote innovation in the classroom; and foster students’ critical thinking skills.

2. The Public Education Department shall work with interested stakeholders, including teachers, administrators, parents, and students, as well as recognized professionals and experts in the field of student assessments, to determine the most appropriate and least intrusive tests, in compliance with ESSA, to help measure student learning and provide accountability for New Mexico schools.

3. The Public Education Department shall pursue ratings and assessments that will decrease unnecessary pressure on students and teachers, provide more time for instruction, and conserve resources.



4. Consistent with federal requirements, the Public Education Department shall strive to achieve balance in its ratings and assessments by incorporating into its analysis other proven means of measuring student and school achievement, including consideration of data collection on student performance in the classroom and homework assignments.

5. The Public Education Department will proceed with the transition away from PARCC in a methodical manner in order to minimize unnecessary disruption to students, parents, educators, administrators, and other stakeholders.

ATTEST:

*Maggie Toulouse Oliver*  
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 3rd DAY OF JANUARY, 2019

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO

*Michelle Lujan Grisham*  
MICHELLE LUJAN GRISHAM  
GOVERNOR



FIRST JUDICIAL DISTRICT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next  
friend of her minor children AN. MARTINEZ,  
AA. MARTINEZ, AR. MARTINEZ, and  
AD. MARTINEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

Consolidated with

WILHELMINA YAZZIE, individually and as next  
friend of her minor child, XAVIER NEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

**AFFIDAVIT OF GWEN PEREA WARNIMENT, Ph.D.**

After first being sworn, Affiant Gwen Perea Warniment deposes and states as follows:

1. I am Gwen Perea Warniment. I am over the age of eighteen and state the following based on my own personal knowledge.
2. I am the Deputy Secretary of Teaching, Learning and Assessment at the New Mexico Public Education Department ("PED"). In this capacity, I supervise three divisions: (1) Education Quality, (2) Curriculum and Instruction, and (3) Assessment.
3. During the 2019 legislative session, the New Mexico Legislature passed and the Governor signed numerous pieces of legislation, including both the General Appropriation Act

EXHIBIT

D

(GAA) and other targeted legislation affecting programs within my purview. PED has implemented this legislation as follows:

### **Educator Quality**

4. PED is implementing new professional development programs for teachers working in science, technology, engineering, and math (“STEM”) fields.

5. The department is collaborating with WestEd, a nonprofit organization focused on equity and excellence in education through evidence-based strategies, to tailor professional development for the New Mexico STEM-Ready Science Standards – the state’s version of the Next Gen Science Standards – adopted by New Mexico in 2018, and promulgated by rule, at Part 10 of 6.29 NMAC.

6. Professional development will include required trainings throughout the year, as well as content-focused professional development sessions to keep our educators current in science content. For example, five-day trainings have been offered in the areas of energy, water, genetics, and climate change.

### **Early Childhood Education**

7. Under the new Early Childhood Education umbrella, there is a working group including the Children, Youth, and Families Department (CYFD), Department of Health, and PED to address pre-kindergarten (pre-K) services.

8. The working group is attempting to develop uniform standards for pre-K services using National Institute for Early Education Research (NIEER) standards as a basis.

9. This group is also working to identify areas that lack pre-K services, as well as determining what type of service would most benefit the specific community.

10. This group is working to ensure pre-K teachers receive training for bilingual education, English learners (ELs), and social-emotional training.



11. The efforts implemented thus far have led to a significant increase in reading scores for pre-K students.

12. Information on students enrolled in pre-K services who receive reduced-fee or free lunch is tracked through the STARS database.

13. Since the time of trial in 2017, pre-K enrollment has grown from approximately 5,321 students to approximately 7,048. More importantly, full-day pre-K program participation has grown from approximately 1,682 students to approximately 4,597 students over the same period.

14. Addressing some criticisms regarding previous pre-K per-pupil funding, all programs are provided with a minimum of funding for 7 students or \$70,000.00 to cover the overhead costs of the program, regardless of whether the program actually has 7 students.

15. New Mexico applied for and received a \$100 thousand preschool development grant in 2018 by the United States Department of Health and Human Services to help create and implement an early education system to support all young children, with particular emphasis on access for at-risk and underserved populations.

16. The grant enabled access to WIDA Consortium Early Years resources, including early education modules. The project focuses on expanding access to high quality opportunities to all young children in the state through a coordinated, collaborative early learning system.

### **Extended Learning**

17. During the summer of 2019, using over \$38 million of combined FY19 and FY20 funding, PED rolled out the K-5 Plus program, recently expanded from K-3 Plus, in which approximately 23,139 students participated.

18. In June 2019, PED promulgated emergency rules for the implementation of the K-5 Plus program, intended to offer greater flexibility to school districts and charter schools, allowing more of them to participate while still meeting program requirements.

19. The rule allowed a school to participate even if up to two teachers were unable to remain with their original student cohorts from the regular school year through the extended school year offered by the K-5 Plus program. While that emergency rule has expired, language in House Bill 2 (2020) permits schools beginning a K-5 Plus program to receive funding if it has at least 80 percent of participating students remaining with the same cohort and teacher during the regular school year, so long as they meet those requirements beginning in FY 2022. This program element was most reported as chilling participation, as it was sometimes difficult for all teachers in a school to commit to working the longer school year. The flexibility in House Bill 2 (2020) addresses the concerns surrounding the restrictive nature of that particular K-5 Plus program requirement.

20. Combined with the rolled-over balance of any remaining K-5 Plus funds from FY20, PED expects even greater participation in FY21.

### **Student Wellbeing**

21. PED is in the process of implementing the provisions of Senate Bill 398 (2019), which requires that all first-grade students be tested for dyslexia.

22. Dyslexia is expressed differently in different languages, depending on a language's orthography, or spelling structure.

23. PED recently applied for and received a Comprehensive Literacy State Development Grant, to support literacy from birth through 12<sup>th</sup> grade.

24. The grant will provide \$40 million over five years, with 95 percent of the funds to be allocated to school districts.

25. PED will use the remaining five percent to hire a literacy program manager and two literacy experts, who will work to develop a comprehensive system of literacy support, including professional development, with particular emphasis on the birth to kindergarten age span, as well as on targeted high school redesign and integrating subject matter content with literacy needs and instruction.

26. PED received the Striving Readers grant which provides \$20 million over three years.

27. Money from this grant was awarded to ten districts and one charter school.

28. Applications were assessed in light of need as opposed to solely on the strength of the application.

29. On October 11, 2019, the Taskforce for Student Success, created in response to Executive Order 1, issued its finding report including its recommendations.

30. Based upon the recommendations in this report, PED began using an SAT-based model for student assessment.

31. Specifically, the SAT will be administered to all 11<sup>th</sup> grade students, funded by the State.

32. Previously, students wishing to take the SAT had to pay for the test out-of-pocket.

33. Additionally, because the SAT is used as an assessment tool, students have free access to test preparation.

34. Again, previously, preparation for SAT would have been unavailable to those who could not afford commercial programs.

35. By using the SAT, a nationally accepted college entrance exam, PED is ensuring all students have the opportunity to be prepared for and take a college entrance exam paid for by the State.

36. The state's new, balanced assessment system offers resources and supports for students throughout the school year, at the classroom, school, and district levels, including: formative and interim assessments aligned to the SAT and the Measures of Student Success and Achievement (MSSA), accessible to all educators throughout the instructional year; assessments for literacy and professional development; social-emotional learning and school climate surveys for students; and dynamic, online assessment reporting for educators and parents.

37. The department has relieved financial pressure for both students and local school districts, by now paying for most student assessments, with school districts only bearing partial costs for a few assessments, such as third grade science assessments and English language proficiency assessments.

38. PED is developing an original Spanish language arts assessment for ELs that is aligned to the Common Core State Standards that goes beyond merely adapting English language assessments.

39. PED has expanded the definition of instructional materials to include new technologies and electronic platforms and media, such as online services and computer courseware.

FURTHER AFFIANT SAYETH NAUGHT.

Gwen Perea Warniment  
GWEN PEREA WARNIMENT, Ph.D.

COUNTY OF Santa Fe )  
 ) ss.  
STATE OF NEW MEXICO )

SUBSCRIBED AND SWORN to before me on this 4<sup>th</sup> day of March, 2020.

Taylor S. Rahn  
Notary Public

My Commission Expires:

9/15/2022



OFFICIAL SEAL  
TAYLOR S. RAHN  
NOTARY PUBLIC-State of New Mexico  
My Commission Expires 9/15/2022

FIRST JUDICIAL DISTRICT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next  
friend of her minor children AN. MARTINEZ,  
AA. MARTINEZ, AR. MARTINEZ, and  
AD. MARTINEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

Consolidated with

WILHELMINA YAZZIE, individually and as next  
friend of her minor child, XAVIER NEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

**AFFIDAVIT OF KATARINA SANDOVAL, Ed.M**

After first being sworn, Affiant Katarina Sandoval deposes and states as follows:

1. I am Katarina Sandoval. I am over the age of eighteen and state the following based on my own personal knowledge.
2. I am currently the New Mexico Public Education Department's ("PED") Deputy Secretary of Academic Engagement and Student Success.
3. During the 2019 legislative session, the New Mexico Legislature passed and the Governor signed numerous pieces of legislation, including the General Appropriation Act of 2019

EXHIBIT

E

(“GAA”), intended to support New Mexico’s public school students and teachers, particularly students with disabilities and special education students.

4. I supervise a number of programs and initiatives resulting from this new legislation that did not exist at the time of the trial.

### **Student Attendance**

5. Students considered at-risk are more often chronically absent than are their more secure peers.

6. Under House Bill 236 (2019), PED is implementing an Attendance for Success Initiative that requires schools to maintain an attendance policy that includes the provision of additional educational opportunities to students who struggle with regular attendance.

7. Apropos, PED is developing rules to implement the initiative, slated for proposal and adoption in spring 2020.

8. The new initiative will focus on invoking wraparound services to support students and families and involving the entire community in promoting its students’ success.

9. Further, because the initiative focuses on non-exclusionary disciplinary strategies, fewer students will miss school for infractions that previously may have resulted in suspension or expulsion, disciplinary measures to which at-risk students also are often disproportionately subject.

### **Additional Learning Opportunities and Student Support**

10. Utilizing additional funds generated for FY20, PED has established an Extended Learning Time Program, which will see participation by approximately 80 thousand students in the 2019-2020 school year.

11. For FY21, the department anticipates 180 thousand students will participate in extended learning time programs.

12. The community school concept makes the school a hub for social and family services by providing wraparound education and social services for students and families in an attempt to relieve or ameliorate academic, social, and familial pressures created by the lack of access to supports often found in communities with high numbers of at-risk students.

13. For the administration of community schools programs under Section 22-32-4 NMSA 1978, the Legislature appropriated \$2 million in 2019 and \$4 million in 2020.

14. For the 2019-2020 school year, PED has implemented a pilot project for a Multilayered System of Supports (MLSS), expecting to implement it statewide in the 2020-2021 school year.

15. MLSS is a holistic framework of interventions that guides educators to intervene quickly when a student needs extra support.

16. The pilot is meant to create a fluidly tiered system of supports at the classroom level, to be invoked prior to the formal convention of a student assistance team (SAT), allowing for more immediate support of a student who might otherwise be required to await a diagnosis for purposes of accessing additional education supports via special education.

17. The MLSS program emphasizes a general approach to student problems first, followed by whatever specific supports a student may need, such as supports for English learners.

18. PED recently filled the newly created position of Behavioral Health Coordinator within the department's Safe and Healthy Schools Bureau. The liaison will be responsible for health-risk reduction technical assistance and professional development related to the attendance initiative, and generally provide a coordinated school-health approach framework through dissemination, professional development, and technical assistance for strategies supporting the link between health and academic success.



19. The position will serve as liaison and technical consultant for school-based health centers for the social and emotional wellbeing of students through the expansion of wraparound services as part of the community schools framework.

#### **Non-Educational Supports**

20. In 2019 the Governor instituted a Hunger Initiative aimed at eliminating childhood hunger.


21. The initiative is headed by a Hunger Initiatives Coordinator, who works across executive agencies to provide at-risk students with access to three meals a day including on the weekends and over school breaks.

FURTHER AFFIANT SAYETH NAUGHT.

  
KATARINA SANDOVAL, Ed.M

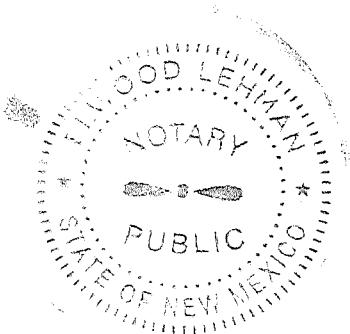
COUNTY OF Santa Fe                    )  
  ) ss.  
STATE OF NEW MEXICO                    )

SUBSCRIBED AND SWORN to before me on this 4 day of March, 2020.

  
Notary Public

My Commission Expires:

May 27, 2020



FIRST JUDICIAL DISTRICT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next  
friend of her minor children AN. MARTINEZ,  
AA. MARTINEZ, AR. MARTINEZ, and  
AD. MARTINEZ; *et al.*,

Plaintiffs;

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

Consolidated with

WILHELMINA YAZZIE, individually and as next  
friend of her minor child, XAVIER NEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

**AFFIDAVIT OF TIMOTHY HAND, Ph.D.**

After first being sworn, Affiant Timothy Hand deposes and states as follows:

1. I am Timothy Hand. I am over the age of eighteen and state the following based on my own personal knowledge.

2. I am currently the New Mexico Public Education Department's ("PED") Deputy Secretary of Policy, Strategy and Accountability. In this capacity, I work closely with the New Mexico Legislature ("Legislature") to create new public policy and legislation, and then direct the implementation of any new public policy or legislation through the promulgation of applicable regulations. I also have oversight responsibilities over various PED initiatives as discussed herein.

EXHIBIT

F

## **PED Regulatory Activity and Initiatives**

3. Since the time of trial, the Legislature repealed the A-B-C-D-F Schools Rating Act, enacting in its stead the School Support and Accountability Act, which replaces the previous system with the newly developed New Mexico Spotlight Dashboard (“the dashboard”). PED was granted special permission from the United States Department of Education to include the dashboard in New Mexico’s updated Every Student Succeeds Act (ESSA) plan.

4. Based on multiple measures of academic performance and school quality, the dashboard will allow PED to better work with school districts, schools, and communities to determine necessary resources to support schools on their path to student success.

5. Additionally, the dashboard will allow PED to isolate and address specific school- and class-level levels through additional support, ameliorative actions, and other measures.

6. When developing the dashboard, PED took steps to cure disadvantages of the prior school grading system. The prior system of using a single measure, or averaging multiple measures to create a single measure, was potentially punitive and may have served to hide deficiencies and strengths.

7. The dashboard is less punitive than the grading system, because instead of providing a single “grade” indicating either a pass or a fail, the dashboard provides a more holistic picture as well as illustrating specific areas of strength and weaknesses.

8. In addition to potentially being punitive, use of a single measure, or averaging multiple measures to create a single measure, may hide deficiencies or strengths.

9. For example, a school may excel in math but have deficiencies in science. Averaging these scores would hide the need for additional resources for science as well as the school’s success in math.

10. Accordingly, the dashboard moves away from aggregation of data and instead shows individual measures in multiple areas.

11. Consistent with the focus on individual data, the new dashboard specifically breaks out measures by at-risk student groups, including, Native American students, students with disabilities, English Learners, and economically disadvantaged students.<sup>1</sup>

12. The dashboard will ultimately house required accountability reports required by recent legislation regarding delivery of services to at-risk students.

13. Based upon my experience in working with school districts, simply identifying these measures will lead to change because it will crystalize the areas where improvement is needed.

14. The dashboard will empower PED to identify areas where schools need additional support and oversight.

15. Having specific measures as opposed to one score will allow PED to focus efforts on the areas in most need of improvement.

16. Further, because the schools can also access other schools' data, schools themselves can use the dashboard information to seek out advice from schools that are doing well in a particular area.

17. The PED is mindful that it is still responsible for technical assistance and oversight even though schools *can* generate their own corrective action using the dashboard data.

18. Specific measures can also highlight areas of strength which is an important factor for morale.

---

<sup>1</sup> Economically disadvantaged students are defined as those who qualify for the free and reduced-fee lunch program.

19. When creating the dashboard, PED was mindful of the need for transparency and has already taken and will continue taking steps to ensure both school staff and parents understand the measures used.

20. To that end, the dashboard went live in February 2020 in “beta mode” which allows all schools to see their own measures as well as measures for all other schools.

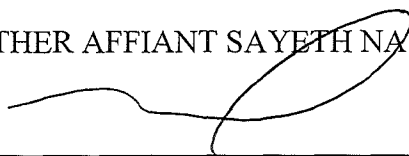
21. PED is engaging in a collaborative discussion during this phase to ensure schools understand the measures and to listen to any concerns.

22. Once PED receives some consensus amongst schools, the dashboard will be made available for a thirty (30) day period to the general public for comments and questions.

23. Using this feedback, PED will revise the dashboard and make a 2.0 version available in fall 2020.

24. Further, PED has begun actively working to establish a network of research stakeholders, including New Mexico’s two research universities; WestEd; and other research and evaluation entities, in order to provide better responses to research questions.

FURTHER AFFIANT SAYETH NAUGHT.



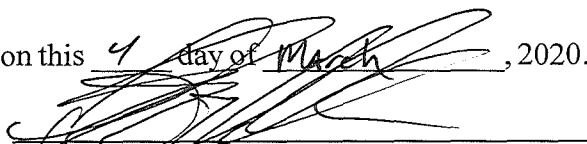
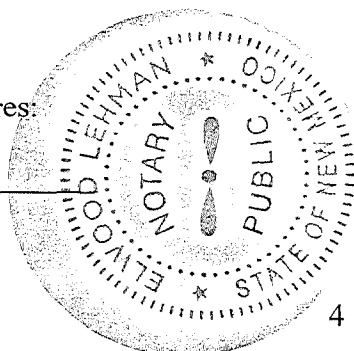
TIMOTHY HAND, Ph.D.

COUNTY OF SANTA FE           )  
  ) ss.  
STATE OF NEW MEXICO        )

SUBSCRIBED AND SWORN to before me on this 4 day of March, 2020.

My Commission Expires:

May 27, 2020

  
Notary Public

FIRST JUDICIAL DISTRICT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next  
friend of her minor children AN. MARTINEZ,  
AA. MARTINEZ, AR. MARTINEZ, and  
AD. MARTINEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

Consolidated with

WILHELMINA YAZZIE, individually and as next  
friend of her minor child, XAVIER NEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

**AFFIDAVIT OF KARA BOBROFF, M.A., ED. S.**

After first being duly sworn, Affiant Kara Bobroff deposes and states as follows;

1. My name is Kara Bobroff. I am over the age of eighteen and state the following  
based on my own personal knowledge.

2. I am the Deputy Secretary of Identity, Equity and Transformation and Acting  
Assistant Secretary of Indian Education for the New Mexico Public Education Department  
(PED).

EXHIBIT

G

## **Efforts Regarding Students with Disabilities**

3. Students with disabilities are served by PED's Special Education Division (SED).
4. The SED falls under my direction as Deputy Secretary.
5. Since the Court's orders in 2018, SED has made a number of changes and improvements to provision of services to students with disabilities.

6. PED has begun a project in partnership with the Department of Vocational Rehabilitation (DVR) and the Central Regional Education Cooperative (CREC) to provide pre-employment transition services to students with disabilities. Federal law requires transition plans to be in place for these students by age 16, but New Mexico requires them by age 14 and, in cooperation with CREC, has increased focus on establishing transition plans for students at that younger age. Since 2017, CREC has hired two statewide Vocational Transition Coordinators, and contracted with the other Regional Education Cooperatives (RECs) in the state to hire 20 more Vocational Transition Specialists, to provide transition services under the federal Workforce Innovation and Opportunity Act (WIOA) for special education students and their parents. The project also focuses on other required program elements for students under WIOA, such as job exploration counseling, self-advocacy, job readiness skills, counseling for opportunities for postsecondary training, and work-based learning experiences, all to help students with disabilities transition into employment after their graduation from high school, or their twenty-first birthday.

7. Because PED requires school districts to begin the vocational transition process by the time students reach 14 years of age, it is offering school districts additional training for teachers, including webinars. In addition to PED's emphasis on support for students' transition, it provides training opportunities for special education program directors, including two in-person meetings with directors each year and monthly webinars.



8. New this year, four additional webinars are being offered specifically to new special education directors with less than two years' experience, in an effort to encourage and support longer term retention of high-quality special education directors, and increase continuity in this community of education professionals. DVR will also offer training to special education teachers on navigating the transition between middle and high schools, which can be difficult for any student, but offers special challenges to students with disabilities.

9. In addition to the webinars, SED offers a significant number of manuals with guidance and other resource information on the PED website.

10. PED implements the Reading Achievement, Math and School Culture (RAMS) program, a collaborative effort between the Title I Bureau and Special Education Division, that aims to increase the percentage of students with disabilities with supports from RAMS who score proficient on their end-of-year reading assessment. This program includes leadership coaching, a Program Sustainability Plan, a Differentiated Implementation Fidelity Assessment, video-based coaching, use of survey data, Regional Principal Professional Learning Communities (PLCs), mini-grants, alignment to the State's Every Student Succeeds Act (ESSA) Plan and a review and revision of evidence-based practices within those school sites.

11. Previously, the program focused on a compliance model, often penalizing school districts and charter schools for failing to follow all requirements of the program with fidelity. Recently, however, a philosophical shift has redirected the program to focus on both compliance and successful student outcomes, and emphasize support over punitive measures. Currently, RAMS includes 88 schools serving more than 15 thousand elementary students in 44 local school districts and charter schools.

12. The program focuses on kindergarten through third grade in Title I elementary schools (elementary schools that educate large proportions of economically disadvantaged students), as well as on schools that serve a higher percentage of Native American students, and has increased the reading proficiency rate of students with disabilities from 33 percent in 2015 to 39.9 percent in 2018. For the 2018-2019 school year, PED particularly focused on schools designated for targeted supports and intervention under the federal Every Student Succeeds Act (ESSA), and set a target proficiency rate of 42.5 percent.

13. In 2018, PED began a pilot project, the Advancing Measurement at PED Project (AMP), under which PED provides \$400,000 each year in combined additional support to the Farmington and Deming school districts, whose special education students have been graduating at particularly low rates. The SED works closely with the department's Career and College Readiness Bureau on this project. Further, it is important to note, special education students in those districts, reflective of their general demography, are more likely than not to also be students of color and economically disadvantaged. Indeed, the majority of special education students at Farmington are Native American, while the majority of those special education students attending school in Deming are Hispanic. In Farmington, 26 percent of children live below the poverty line, while 40 percent of children in the Deming school district do so.

14. Additional supports under the program include the purchase of an early warning system for Deming that identifies students who are at-risk of dropping out of school or failing to graduate, and the hiring of a transition specialist. Farmington was already working with an early warning system, and adapted it to better identify issues relative to students with disabilities. Farmington has also added three additional transition specialists.

15. The program has shown great initial success, bringing 50 students with disabilities back to school after they had dropped out, and helping them succeed and graduate. Due to the success of the program, special education directors at Farmington and Deming have been working with PED to supply training to other school districts on how to best adapt this program and these efforts to the specific needs of their own student bodies. Further, while in the past, such training would have been made available only to special education directors, PED has opened the training up to include other staff.

16. For the 2019-2020 school year, PED has begun its statewide special education review, a comprehensive discussion of special education in the state, engaging with stakeholders to address how best to meet the needs of students with disabilities in New Mexico. Representatives of the SED have already met with school district and charter school special education directors, RECs, and a number of advocacy groups, including Parents Reaching Out, Education for Parents of Indian Children with Special Needs, Disability Rights New Mexico, and the Native American Disability Law Center. Moving forward, SED has meetings planned with the New Mexico Coalition of Education Leaders, tribal governments, and legislators, and is working on a survey for parents. SED staff have been engaged in listening sessions with parents, superintendents, principals, and both general and special education teachers. Finally, the review will culminate in a statewide Summit on Equity, Excellence, and Relevance in the summer of 2020, as the state works on continuous improvement of opportunities for students in special education.

17. The overall salary increase for teachers has helped to significantly reduce vacancies for special education teachers.

18. In response to the deficiencies identified in the federal Office of Special Education Programs (OSEP) compliance report, the state addressed thirty-two (32) requirements found to be in non-compliance and remedied these issues.

19. Further, SED has instituted and maintained a monthly call with OSEP to discuss areas in which the SED needs technical assistance.

20. In August 2019, the United States Department of Education issued its annual Results-Driven Accountability Report, which indicated New Mexico's ranking continued to show improvement, rising nine percentage points since 2018, from 67.7 percent to 76.7 percent.

21. Importantly, the results showed a shift toward the more collaborative mediation process and away from the more litigious due process hearings related to the needs of special education students.

22. PED continues to focus on the rights of parents of students with disabilities. In September and November 2019, SED met with the department's IDEA Advisory Panel. Parents comprise about 50 percent of the panel, which meets at least four times each year to discuss appropriate indicators and target areas for students with disabilities. The panel also includes representation from DVR, RECs, the New Mexico Corrections Department, the New Mexico School for the Blind and Visually Impaired, and Education for Homeless Children and Youth. PED reimburses parents for travel and lodging expenses associated with attending the meetings and provides procedural safeguards for parents at all IEP meetings and evaluations, which are available in four languages: English, Navajo, Spanish, and Russian.

23. SED has also made changes to address practices relating to children with autism.

24. SED contracts with the University of New Mexico Health Sciences Center to provide qualified staff to screen children for a medical diagnosis of autism.

25. SED has implemented “Project Autism,” which will support districts statewide using a variety of methods such as online portals, webinars, and other technical guidance.

26. SED will use the information from Project Autism to identify geographic areas in need of evaluators qualified to provide an educational diagnosis of autism, meaning a determination of whether the student meets regulatory and legal requirements for special education services.

27. SED is supporting a new approach known as Multi-Layered Student Support System (MLSS), which rethinks how to support children with disabilities in a more effective manner.

28. PED has provided technical assistance to districts regarding identifying children who live on reservations and who qualify for services due to developmental disabilities.

29. As of March 9, 2020, all positions in the SED will be filled.

**Efforts regarding Students Who Are English Learners (ELs)**

30. Services for EL students are overseen by the Language and Culture Division (LCD) for PED.

31. The LCD falls under my direction as Deputy Secretary.

32. Since the Court’s orders in 2018, PED has made a number of changes and improvements to services provided to ELs.

33. For example, in January 2018, LCD formally announced to other divisions in PED that it would take a broader role and “serve as the lead for language, culture and equity within the Teaching and Learning section of PED.”

34. LCD has spearheaded a philosophical change within PED that emphasizes that teaching EL students is the responsibility of all teachers, rather than relying solely on specific bilingual programs to address EL students' needs.

35. Thus, all teachers must receive more training and professional learning and development regarding EL students.

36. With this, LCD has required that EL students who are not in a formal Bilingual Multicultural Educational Program (BMEP) or other federally funded program must still receive adequate instruction within an EL Program to address their specific needs.

37. In addition to using the “sheltering method” – an approach to teaching English that integrates the development of English language proficiency and the acquisition of grade-level academic content area knowledge and academic skills – LCD now requires that EL students receive at least forty-five minutes of specific English-language development instruction per school day.

38. Thus, LCD has worked to close the gap identified by the Court between those who need EL services and their peers when those EL students' schools do not have a BMEP or federal program.

39. LCD has worked closely with its federal counterpart, the regional Office for Civil Rights in Denver, Colorado, to obtain technical assistance, including support with district oversight.

40. LCD has put its philosophical change into practice by initiating the following programs:

- a. REC-led teacher institutes, postsecondary education institutions, and PED are working with teachers to create and update curricula. PED is collaborating with

and providing funds for teacher institutes to work with teachers during the school year and over summer break on projects to increase access to culturally relevant pedagogy. PED will adopt English language development (ELD) instructional materials in its current 2019-2020 adoption cycle.

- b. Local school districts and charter schools must confirm to PED they have followed the EL-identification process for all of their students and identified EL students in the state Student Teacher Accountability System (STARS). They must also report to PED three times during the school year regarding the English Learner programs they are providing to each EL. The first of these reporting dates has already passed (40<sup>th</sup> day) and PED is reviewing the provided reports. Further, this reporting has shown improvements recently, showing that the percentage of ELs in EL programming has increased from only 59 percent to 98 percent.
- c. All school districts and charter schools are required to administer an annual English language proficiency assessment to each EL, and continue monitoring the academic progress of ELs for a full two years after the ELs achieve English language proficiency. PED's Charter Schools Division is working to ensure school districts and charter schools are properly and accurately tracking and recording ELs' progress toward proficiency.
- d. School districts and charter schools must provide each EL at least a 45-minute language block every school day, which must be designated for ELD. This time frame is consistent with national guidance. In spring 2019, PED finalized an ELD instructional framework to be used to guide integrated EL instruction,

which must be provided for all content courses, with the use of ELD standards that are aligned to state English language proficiency standards.

- e. Beginning with the current 2019-2020 school year, in addition to on-site regional trainings, teachers and school and district leadership may participate in the World-class Instructional Design and Assessment (WIDA) Consortium-offered eLearning self-paced training modules focused on better serving ELs. The self-paced trainings are aligned to the state's ELD standards and English language proficiency assessment.
- f. PED more closely monitors and supports bilingual programs now than prior to the lawsuit. In 2018, NMPED adopted the World Readiness Standards for Learning Languages, which emphasize effective communication, real world applications, and interaction with cultural understanding. The standards are applicable to all levels of learners, including native and heritage language speakers and ELs. Additionally, PED adopted standards for Spanish language arts and Spanish language development.
- g. Finally, PED is working with five school districts to help determine the sort of guidance school districts and charter schools need for better administration of BMEPs, with the aim of updating detailed guidance documents, to be disseminated at the beginning of the 2020-2021 school year.

41. In 2019, the Legislature provided a recurring \$7 million appropriation for the state equalization guarantee to expand bilingual multicultural education programs (BMEPs).

42. Also in 2019, for the first time, LCD received a recurring \$2.5 million below the line appropriation to support ELs and bilingual and multicultural instruction; help meet



requirements of the Bilingual Multicultural Education Act (BMEA); and provide local professional learning opportunities and resources for students, parents, and school personnel on culturally and linguistically responsive instruction.

43. The 2019 legislative session also saw the enactment of House Bill 111, which authorized RECs to apply jointly for funding to provide research-based, culturally and linguistically responsive technical assistance and professional development as a way to further support bilingual multicultural education.

44. The LCD recently created four additional positions, four (4) positions, three (3) education administrators and one (1) business operation specialists.

#### **Efforts Regarding Native American Students**

45. The final budget for FY20 increased the Indian Education Fund by more than 200 percent – from \$1.8 million to \$6 million – to provide grants to local school districts and tribes to support the implementation of the Indian Education Act (IEA); to improve outreach to and tribal cooperation with school districts with a high percentage of Native American students; and further curriculum development and training and staffing plans for Native American-serving schools.

46. The department has also provided \$1 million for an Indigenous Education Initiative, and has made culturally and linguistically responsive instruction a priority for New Mexico schools, requiring them to complete a multicultural framework for inclusion in their 90-day plans, which local school districts and charter schools must submit to PED.

47. With input from stakeholders, PED's Indian Education Division has created tribal consultation guidance documents for school districts and charter schools, and has disseminated the Navajo Nation's Tribal Consultation Manual to local education agencies (LEAs) throughout the state.

48. The department, in an effort to increase cooperation with tribal and pueblo governments, regularly held formal government-to-government meetings during the 2018-2019 school year, and allocated funds to continue meeting in partnership with Nations, tribes, and pueblos and Native American organizations for the betterment of all the state's students.

49. I, along with the Secretary of Education and representatives from the Governor's office have attended these government-to-government meetings.

50. PED has also instituted monthly calls with tribal education directors.

51. In addition to formal meetings and calls, PED has increased its face-to-face interaction with schools. In 2019, I personally visited 22 tribal Departments of Education, which work directly with school districts and charter schools serving a high population of Native American students.

52. PED's commitment to ongoing engagement with tribes, school districts, and charter schools that educate significant numbers of Native American students has led to a requirement that LEAs and schools sign annual assurances affirming they have consulted with tribes in the review of data and structures of the LEA's annual plans. PED has provided training on consultation at annual government-to-government meetings in 2019 and on-site technical assistance, as needed, to districts directly.

53. During the 2019 legislative session, the legislature passed and the Governor signed legislation ensuring tribes are consulted when schools are opened or closed on tribal lands. PED added this requirement to its form titled, "Application for Establishing, Reorganizing, or Closing Schools. While PED is reviewing whether a rulemaking will be necessary for the implementation of that legislation, the Public Education Commission (PEC), which conducts community input hearings prior to their authorization of state-chartered charter schools, is aware of its duty to

comply with the law's requirements. The department will ensure that other, district-level charter school authorizers also comply with these notice requirements, actively seeking to keep dialogue with Native American communities vital and ongoing.

54. PED reviews local school districts' and charter schools' plans and budgets to track their strategies to better serve Native American students.

55. In September 2019, PED disseminated a memo addressing the Native American students needs assessment required by the enactment of House Bill 250 (2019 regular session). The bill mandated historically defined Indian-impacted school districts and charter schools conduct an assessment to determine what services Native American students need to assist them in graduating from high school and becoming career- and college-ready. Potential rulemaking for the implementation of House Bill 250 (2019 regular session) was presented to tribal governments at the annual government-to-government meeting in November 2020 for notification purposes prior to formal proposal. PED provided regional trainings and working groups to inform implementation guidance for local school districts and charter schools.

56. The bill also required school districts and charter schools to develop and publish a systematic framework for improving these students' educational outcomes. To better implement these requirements, PED proposed the related rulemaking on January 28, 2020, with public comment remaining open until March 16, 2019, to ensure the best and most culturally responsive policies and procedures are promulgated.

57. Further, mindful of the history of criticism levied at the state teacher and administrator evaluation system since its inception, revisiting the system includes a specific focus on academic outcomes and culturally and linguistically responsive instruction for all students.

58. New Mexico's ESSA State Accountability Plan, which is fully in compliance with federal law, now requires annual measurement of Native American students' academic growth, proficiency rates, and progress via multiple measures in English language arts, math, science, and school climate. Under the plan, bilingual programs must track data on indigenous language programs and EL programs for Native American students. Further, the department's new state accountability dashboard will include additional elements focused on particular student subgroups.

59. PED has collaborated with the Higher Education Department (HED) and local Native American education organizations to focus on the distinct needs of Native American students in higher education. Successes from this work emphasize adjusting training for new teachers and education-degree candidates to better support the requirements of the Indian Education Act, such as specific strategies for modifying teacher preparation programs to better address the Court's orders and the needs of Native American groups and tribal colleges.

60. The Indian Education Division (IED) has adopted a process for tribal review and approval of social studies curricula that emphasizes ongoing consultation with the state's Nations, tribes, and pueblos. Ultimately, PED selected the Indian Pueblo Cultural Center's Indigenous Wisdom Curriculum to share with local school districts and charter schools; the department plans to continue reviewing documentaries for potential inclusion in the curriculum, if appropriate. The IED also assesses other, open-source curricula from both local tribes and national sources, to make available to local school districts and charter schools.

61. IED for the first time is employing a systematic approach to increasing indigenous language teachers which includes five (5) programs geared towards this goal. These programs are in varying stages of implementation.

62. As noted, PED's stronger focus on issues important to school districts and charter schools with significant Native American populations has led to requirements that those school districts and charter schools develop a plan and provide a narrative detailing how they will implement IEA. Further, all schools must establish a multicultural framework for the 2020-2021 school year. PED will monitor adherence to these plans for the 23 districts and charter schools that serve high populations of Native American students and receive IEA funding. Finally, the department will review pertinent data to ascertain whether additional school districts and charter schools should be included in the list of those that serve high populations of Native American students.

63. Further IED has restructured its staffing organization to better reflect the requirements of the IEA.


64. PED has launched the Indigenous Education Initiative as one means of increasing access to culturally relevant schools that reflect the culture, language, and contributions of New Mexico's 23 tribes and pueblos. The initiative has thus far provided funding to three local school districts and one charter school, and the funding has gone to hire technical assistance providers to work with the school districts and charter school in addressing vacancy rates and staffing plans. The legislature also appropriated \$1 million for the initiative, to be used to engage a cohort of public schools focused on transforming educational opportunities available to Native American students through the allocation of additional resources, key supports, innovation, and a community-led school engagement process.

65. During the 2019 legislative session, in addition to \$6 million appropriated directly to the Indian Education Fund. Funds might be used to improve outreach to and tribal cooperation

with school districts with a high percentage of Native American students, and further curriculum development and training and staffing plans for Native American-serving schools.


66. PED has made the Culturally and Linguistically Responsive Framework a priority requirement for all New Mexico schools.

FURTHER AFFIANT SAYETH NAUGHT.

  
KARA BOBROFF, M.A., ED. S.

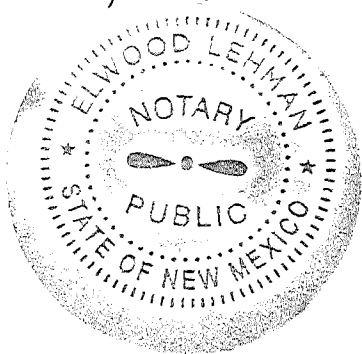
COUNTY OF Santa Fe )  
 ) ss.  
STATE OF NEW MEXICO )

SUBSCRIBED AND SWORN to before me on this 4 day of March, 2020.

  
Notary Public

My Commission Expires:

May 27, 2020



LESC bill analyses are available on the New Mexico Legislature website ([www.nmlegis.gov](http://www.nmlegis.gov)). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

## LEGISLATIVE EDUCATION STUDY COMMITTEE

### BILL ANALYSIS

54th Legislature, 1st Session, 2019

<b>Bill Number</b>	<u>HB589/aHEC/aHAFC/aHFI</u>	<b>Sponsor</b>	<u>Thomson/Trujillo, C./ Garratt/Sariñana/Roybal Caballero</u>
<b>Tracking Number</b>	<u>.213342.2GLG</u>	<b>Committee Referrals</b>	<u>HEC/HAFC</u>
<b>Short Title</b>	<u>Community School, Early Childhood &amp; Pre-K</u>		
<b>Analyst</b>	<u>Terrazas</u>	<b>Original Date</b>	<u>2/20/19</u>
		<b>Last Updated</b>	<u>3/11/19</u>

---

### BILL SUMMARY

#### Synopsis of House Floor Amendment 1

The House Floor Amendment 1 to House Bill 589, as amended by the House Appropriations and Finance Committee and the House Education Committee (HB589/aHEC/aHAFC/aHFI) adds language that clarifies community school initiatives may offer expanded and enriched learning time and opportunities in partnership with community-based organizations. The amendment replaces the term “child care” with “early childhood” where appropriate and indicates a school district is required to bear any “indirect” costs with the establishment and implementation of a community school within the school district.

#### Synopsis of HAFC Amendment

The House Appropriations and Finance Committee Amendment to HB589, as amended by the House Education Committee (HB589/aHEC/aHAFC) would require a community school framework to include integrated student supports, expanded and enriched learning time and opportunities, active family and community engagement, and collaborative leadership and practices. HB589/aHEC/aHAFC clarifies that at the conclusion of an initial three-year grant period, applicants may apply for a renewal grant for one year in an amount determined by the Public Education Department (PED). Within six months of receiving a planning grant, eligible applicants would be required to provide documentation required by PED that the applicant intends to apply for an implementation grant. HB589/aHEC/aHAFC removes the \$5.1 million appropriation carried in the original bill.

#### Synopsis of HEC Amendment

The House Education Committee Amendment to HB589 (HB589/aHEC) changes the effective date of the bill from July 1, 2020, to July 1, 2019.

EXHIBIT

H

### Synopsis of Original Bill

House Bill 589 (HB589) would expand the purpose of the Community Schools Act to address the cultural and linguistic needs of students from early childhood programs and voluntary public prekindergarten through high school graduation by partnering federal, state, local, and tribal governments with community-based organizations to improve the coordination, delivery, effectiveness, and efficiency of services, align and leverage community resources, and integrate funding streams. The bill would require a community school initiative to work with a lead partner agency, conduct an annual assessment of local community needs and assets, and implement a community school framework. PED would need to administer a newly created “community schools fund” to support the development and implementation of community school initiatives. Subject to the availability of funding, the bill would authorize PED to provide planning, implementation, and renewal grants to eligible community school initiative applicants. The provisions of the bill would go into effect July 1, 2020.

### FISCAL IMPACT

The bill does not contain an appropriation.

The House Appropriations and Finance Committee Substitute for HB2 (HB2/HAFC) includes \$62.5 million for extended learning time, \$2.7 million for extended learning time transportation, \$119.9 million for K-5 Plus, \$3.7 million for K-5 Plus transportation, \$39 million for the public prekindergarten fund, \$30.2 million for prekindergarten services for three- and four-year-olds, \$1.45 million for parent and family engagement, \$1.5 million for school-based health centers, and nonrecurring \$40 million for *Martinez* and *Yazzie* lawsuit compliance initiatives. In addition, House Bill 5 includes community schools as an allowable use of at-risk funding and HB2/HAFC includes an additional \$113.2 million in at-risk funding.

PED indicates the bill would have a moderate impact on the department in FY20. Thereafter, PED notes fiscal implications would be minimal.

If a grantee were to receive funding to implement a community school initiative at three or more public school sites, a school district would need to employ a community school director or manager to oversee and coordinate implementation across all of the covered school sites.

### SUBSTANTIVE ISSUES

HB589/aHEC/aHAFC/aHFI defines a community school initiative as the “implementation of the community school framework to provide comprehensive or targeted support and improvement activities pursuant to the federal Every Student Succeeds Act.” A community school is defined as “a public school that partners with families and the community, including tribal partners, nonprofit community-based organizations and local businesses, to provide well-rounded educational opportunities and supports for student success through the implementation of a community school framework.”

**Community school framework.** A community school framework would be required to employ research- and evidence-based strategies “that include culturally and linguistically responsive instruction, programs, and services and restorative practices that focus on building and maintaining relationships,” and must include integrated student supports, expanded and enriched learning time and opportunities, active family and community engagement, and collaborative leadership and



practices. The framework may include the broader use of public school facilities in which school buildings become hubs for neighborhood events, activities, advocacy, and civic life; a community-based curriculum in which the content of instruction is centered on local knowledge, service learning, and problem-solving around community issues; and federally funded early childhood services and public prekindergarten that are high-quality, meet the needs of students and families, and provide health, vision, dental, and other supports and services to children before school age. However, if early childhood services and supports are indicated as a need for families, a community school site-based leadership team that includes the principal, coordinator, teachers, other school employees, families, and community partners, would be required to prioritize partnerships and integration with childcare providers located on and off the school campus.

**Community school grants.** Subject to the availability of funding, three kinds of grants would be awarded to community school initiatives that meet PED eligibility requirements and have demonstrated partnerships with the local community to establish, operate, and sustain the community school framework. The first grant is a one-year, one-time planning award of up to \$50 thousand for each eligible school to conduct an initial school and community needs assessment, identify community supports and services through asset mapping, and establish a site-based leadership team. The second grant is an annual implementation grant of \$150 thousand each year for each eligible school for a period of three years. At the conclusion of the initial three-year grant period, applicants would be able to apply for a renewal grant. A statewide coalition of community school participants, appointed by PED, would assist the department in reviewing applications for grants and making recommendations for awards.

The bill also notes school districts, public schools, and PED may use federal Title I funds to invest in community school initiatives.

**Lead partner agency and community school coordinator responsibilities.** HB589/aHEC/aHAFC/aHFI would require a lead partner agency, the primary agency that works collaboratively with a community school, to hire a full-time community school coordinator. The coordinator would be responsible for leading an annual needs and assets assessment, implementing the community school framework, facilitating communication between partners, guiding data-informed continuous improvement, managing data collection, and using the information collected to align, leverage, and coordinate resources for students and families. A lead partner agency overseeing more than three public schools would need to provide a full-time position to support the community school coordinators at such public schools.

## **ADMINISTRATIVE IMPLICATIONS**

PED would be required to promulgate rules and procedures to distribute funds through a competitive grant program developed and designed in partnership with the coalition for community schools. PED notes it would need to update the annual federal Title I application to include a module for how school districts can use such funds to enhance community schools and provide additional supports and services to students and families.

PED would need to appoint a “coalition for community schools,” a statewide coalition of community school participants responsible for providing advocacy, capacity building, and technical assistance to ensure equitable distribution of resources to all school districts and assist the department in reviewing applications for grants and making recommendations for awards.

PED notes the department would assess the community schools program at least once a year and make adjustments and decisions accordingly based on input from the coalition and data and information received at the state and school level.

## **OTHER SIGNIFICANT ISSUES**

After completing a systematic review of 143 community school research studies, the Learning Policy Institute (LPI), a national education research organization, found there is enough evidence to support the community school approach as an evidence-based intervention under the federal Every Student Succeeds Act. While not all community schools are the same, LPI found most community schools share four key community school pillars, integrated student supports, extended learning time and opportunity, family and community engagement, and collaborative leadership and practice. Each key pillar improves student outcomes, but research shows community schools are most effective when all four pillars are implemented in a comprehensive approach.

In New Mexico, there are 39 community schools across three school districts working with three lead partner agencies responsible for overseeing and supporting the implementation of community schools. There are 28 community schools in Albuquerque Public Schools partnered with the Albuquerque/Bernalillo County Community School Partnership, one community school in Las Cruces Public Schools partnered with the Las Cruces Partnership for Community Schools, and 10 community schools in Santa Fe Public Schools partnered with Communities in Schools of New Mexico. While community school performance is mixed in New Mexico, community school performance data reflect national research findings – the stronger a school aligns to the four key pillars identified by LPI, the stronger the school performs. Although some community schools that have implemented all four key pillars have demonstrated improved student achievement and growth, some schools that have been operating as community schools for many years have struggled to improve school performance and student outcomes, which appears to be linked to a school principal's and community school coordinator's tenure at a school. Community school stakeholders indicate principals and community school coordinators play a significant role in establishing and maintaining relationships with partners that can provide assistance or services that address students' needs, hence strengthening the efficacy of the key pillars.

## **RELATED BILLS**

HB79, Community Schools Act Implementation, appropriates \$400 thousand to PED to implement the Community Schools Act.

HB134, Pre-K in Community Schools Act, similarly amends the Community Schools Act to indicate elementary schools may include prekindergarten and early childhood services and changes the requirements for applications for grants for community school initiatives.

HB145, After-School & Summer Enrichment Programs, appropriates \$2 million to PED for after-school and summer enrichment programs.

- SOURCES OF INFORMATION**
- LESC Files
  - Legislative Finance Committee (LFC)
  - Public Education Department (PED)

LESC bill analyses are available on the New Mexico Legislature website ([www.nmlegis.gov](http://www.nmlegis.gov)). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

**Bill Number** HB91 **Sponsor** Stapleton  
**Tracking Number** .2120022.1 **Committee Referrals** HEC/HAFC; SEC/SFC  
**Short Title** Career Technical Education Pilot Project  
**Analyst** Force **Original Date** 1/21/19  
**Last Updated** \_\_\_\_\_

---

---

**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

**BILL SUMMARY**

Synopsis of Bill

House Bill 91 (HB91) establishes a seven-year pilot project for career and technical education (CTE) to fund high-quality CTE programs and monitor their effects on student outcomes. The pilot is to be administered by the Public Education Department (PED), which may provide grants to qualified applicants for the establishment of CTE programs in public schools and the provision of CTE professional development for teachers. In order to qualify, CTE programs must include a number of elements such as rigorous content aligned with both academic standards and relevant CTE content that align secondary and postsecondary content, the potential for dual credit courses, and the inclusion of science, technology, engineering, and math (STEM) content. The bill directs PED to provide CTE professional development for CTE teachers that addresses, among other elements, project-based learning, pedagogy, and the integration of CTE with core content areas. PED is to promulgate rules for the administration of the pilot project and annually report the pilot's efficacy to the Legislative Education Study Committee and the governor. Finally, the bill creates the "career technical education fund" to be administered by PED for the provision of grants to participating school districts and charter schools.

**FISCAL IMPACT**

HB91 does not contain an appropriation. The bill creates the "career technical education fund," which is a nonreverting fund that consists of appropriations, grants, gifts, and donations. Money in the fund is to be appropriated to PED for the provision of grants, and expenditures from the fund shall be on warrants of the secretary of finance and administration on vouchers signed by the secretary of public education, or their designee.

The House Appropriation and Finance Committee Substitute for HB2 appropriates \$3 million to PED for the pilot project, and an additional \$2 million special appropriation to PED for a CTE pilot to include an online supplemental learning system that integrates algebra and geometry into

career technical education studies, and to teach online workplace soft skills for high school students.

## SUBSTANTIVE ISSUES

In New Mexico, as in many states, CTE lacks a comprehensive, unified focus, with piecemeal efforts being divided among different programs that are not universally available throughout the state. However, according to the National Conference of State Legislatures' report, *No Time to Lose*, a strong system of career and technical education is one of the four foundational elements of high-performing educational systems, with many high-performing countries employing it as a strategy to enhance national and local economies and offer better post-education work options to a larger portion of their populations. In these countries, CTE is not viewed as an option for students who may be weaker academically, but rather as a separate, more practicum-oriented approach to education, focusing on development of skills of immediate value in the job market. Alignment with market needs is emphasized, leading to postsecondary employment that may eventually lead to, rather than preclude, university-level education, as accomplished CTE students may seek professional certification or additional training later.

Research also shows CTE is valuable for re-engaging students who become disengaged and less interested in school, and indicates CTE students have lower dropout rates, higher graduation rates, higher employment rates, and greater earnings than demographically similar, non-CTE peers. A 2016 study from Fordham University found greater exposure to CTE is associated with better student outcomes, with benefits increasing with the number of CTE courses taken. For example, according to the Association for Career and Technical Education, in 2015, the most recent year for which data are available, New Mexico had nearly 60 thousand high school students participating in CTE programs, of which 89 percent of participating seniors graduated. By contrast, in that year, only 69 percent of New Mexico students statewide graduated, representing the lowest graduation rate in the country.

According to Johns Hopkins University, successful CTE programs should incorporate aligned elements of both secondary and postsecondary education that include rigorous academic content and relevant CTE content in a progression of non-duplicative courses. Such programs may also include the opportunity for secondary students to gain postsecondary credit through dual or concurrent enrollment and should lead to an industry-recognized credential or a degree. According to authorities such as the Urban Assembly and the National Center on Education and the Economy, essential elements of CTE programs include permeable career pathways, integration of CTE and core academic content, partnerships with industry and postsecondary institutions, work-based learning opportunities, and teacher recruitment and support strategies. Many of the program requirements of HB91 align with these requirements, including rigorous academic content that is aligned with secondary and postsecondary education, permeable career pathways, partnerships with industry and postsecondary institutions, the opportunity for dual credit, and the possibility of industry-recognized credentials. The bill also requires consultation with both the Higher Education Department (HED) and the Department of Workforce Solutions (DWS), to help keep programs aligned across secondary and postsecondary institutions and focused on high-demand industries.

The bill also includes a section on the provision of CTE professional development to support participating CTE teachers and offer training for new CTE instructors. The training must address project-based learning and integrate CTE curricula with core academic content areas, a key component of successful CTE programming. HB91 also requires professional development to focus on the instruction of employability and soft skills, equally important to students in both

academic and applied learning programs, and includes training in trauma-informed instruction, of particular importance in a state where 70 percent of students in public school are considered at-risk. Finally, CTE professional development must address department standards and benchmarks for CTE.

Currently, the Career and College Readiness Bureau (CCRB) of PED has made available to schools a number of programs of study that are designed to help educate students and parents about available education and career services to help students prepare for the workforce or continued education towards industry credentials or appropriate degrees. These programs are in culinary arts, hotel lodging management, energy and power, innovations in science and technology, biomedical science, engineering, and computer engineering. PED indicates these nationally developed CTE course sequences were selected based on the Department of Workforce Solutions' priority employment sectors and the National Career Clusters Framework. Each of these programs of study include coursework to satisfy state- and local-level graduation requirements, career pathway and elective requirements, and general electives.

PED notes that the bill makes no reference to the federal Carl D. Perkins Career Technical Education Act that provides funding for CTE programs in the states, and which PED administers. PED suggests inclusion of references to the act would allow details of the legislation to evolve as federal law changes; without such reference, PED notes, state law may become out of synch with federal requirements.

### **ADMINISTRATIVE IMPLICATIONS**

HB91 directs PED to promulgate rules for the administration of the pilot program, the collection and analysis of student, program, and instructor data, and required reporting by participating public schools.

HED indicates that consultation with PED on the establishment of performance measures for high-quality CTE programs, as required by Section 1 of the bill, may require additional staffing and resources.

### **OTHER SIGNIFICANT ISSUES**

New Mexico was one of 42 states involved in the development of the Common Career Technical Core (CCTC), a common set of benchmark standards that define what CTE students should know and be able to do to succeed in the global economy. Developed in 2012, the CCTC focus was on alignment between secondary and postsecondary standards. Since 2009, PED has had practice standards for seventh through 12th grade that include strands such as communications, problem solving, and critical thinking each with corresponding content standards. In 2015, PED adopted career clusters, pathways, and standards directly corresponding to the CCTC, which can be found at Part 3 of 6.29 NMAC.

PED notes that the bill makes no reference to the federal Carl D. Perkins Career Technical Education Act.

### **RELATED BILLS**

HB44, Career-Technical Teacher Development, requires professional development for CTE teachers and educational assistants be conducted in the same manner as teachers of other subjects

and requires the use of federal Every Student Succeeds Act Title II funds for CTE professional development.

HB183, Apprenticeship Program for Graduation, allows participation in a registered apprenticeship program to count toward high school attendance and graduation requirements.

HB184, Apprenticeship Program Income Tax Credits, permits employers in registered apprenticeship programs to take a tax credit for a portion of a participating apprentice's wages.

**SOURCES OF INFORMATION**

- LESC Files
- PED
- HED

**RKF/mc**

## **Multi-Layered System of Supports (MLSS)**

### **Introduction**

Multi-Layered System of Supports (MLSS) is the New Mexico Public Education Department's (NMPED) overhaul of the Response to Intervention framework (RtI). MLSS is a coordinated and comprehensive framework that educators use to organize their schools and school systems to support student learning. This support is accomplished by identifying and supporting students' needs and by providing the resources that teachers, health and wellness personnel, and school administrators require for full implementation and long-term sustainability of MLSS. Most importantly, the MLSS framework empowers general education teachers--those closest to the student--to intervene quickly when students need additional supports.

The MLSS framework accomplishes this by:

- Aligning all interventions to Common Core State Standards (CCSS) and student data;
- Being proactive and flexible about addressing student needs; and
- Providing a holistic model of student supports through tapping into the expertise that the family, classroom teacher, school administration, and health/wellness staff offer toward readying students to experience academic and behavioral success in school.

The MLSS framework combines best practices and programs in an easy-to-understand framework that provides districts, schools, and teachers with evidence-based guidance and progress measures to ensure that the academic and behavioral needs of all students are met. New Mexico has identified seven core components for full implementation of MLSS. These core components are broad categories that include evidence-based principles and practices throughout. Core components include data-based decision making and instruction, high-quality core instruction and interventions, informed and effective school leadership and systems, collaboration and processes for providing a layered continuum of supports, positive school culture and climate, student health and wellness, and family/community engagement. Core components are woven through the system's three layers of intervention.

To date, the NMPED has held 26 stakeholder meetings that included teachers, school nurses, counselors, special education directors, SAT coordinators, principals and superintendents. Throughout these stakeholder meetings, participants voiced broad support for MLSS and provided key advisement that has informed updates to the MLSS framework and the planning of future supports.

### **Future Supports for Districts and Schools**

During the 2019-20 school year, the NMPED is working closely with 13 Local Education Agencies (LEA) and 126 school sites through a targeted pilot program. On July 1<sup>st</sup> 2020, all school districts throughout the state will implement the new MLSS framework. The proposed MLSS model of feedback and support provides direct assistance to LEAs throughout the state with onsite and virtual training, robust resources and integrated models of collaboration. With increased funding and support, NMPED will be able to work directly with superintendents, curriculum experts, and special education directors, and will ensure the sustainability of the MLSS framework by:

- Conducting onsite targeted assistance visits;
- Revising guidance and support through a cycled feedback loop;
- Providing increased communications and virtual trainings; and
- Conducting regional and statewide conferences that address comprehensive needs.

## History

The need for revisions to the RtI framework became clear during the Martinez and Yazzie v. the State of New Mexico Consolidated Lawsuit. In her expert testimony, Dr. Margaret McLaughlin noted key concerns with the RtI framework:

- RtI delayed the identification of students in need of special education services;
- RtI contributed to the over-representation of Hispanic, Native American and English Learners in special education;
- RtI did not provide resources and supports to assist in the implementation of evidence-based academic and behavioral interventions;
- Students receiving intensive interventions under RtI were often denied access to universal core curriculum and supports because the established system of interventions required pulling those students out of the general education classroom, often for frequent and/or extended periods; and
- RtI lacks the flexibility that would allow districts to implement new programs or adjust Individual Education Plans (IEP) as student needs change.

Prior to the Martinez and Yazzie case, the PED interviewed teachers and principals from Results Driven Accountability (RDA) schools during school site visits regarding RtI and Student Assistance Teams (SAT). During the interviews it was learned that many students were referred to SAT based on the relationship between RtI tiers and Istation score levels. For example, students who scored “yellow” in Istation had an automatic SAT plan and students who scored “red” were automatically referred for a special education evaluation. These practices overloaded the SAT process and resulted in less time and attention per student because of delayed identification--a “wait to fail” model of intervention.

## Key Changes

In response to the concerns raised in the Martinez and Yazzie case, the NMPED is moving away from the “wait to fail” model of RtI by using MLSS to implement key changes to the processes used to identify students and provide targeted supports. With these key changes, along with the inclusion of wrap-around services, New Mexico’s MLSS framework provides ALL students with layered interventions and supports:

- Tier 3 interventions no longer exclusively serve students receiving special education or gifted services. MLSS Layer 3 provides intensive supports for any student who needs them and a student may be evaluated for a disability or giftedness while receiving any layer of MLSS interventions.
- Special populations of students as defined by the Every Student Succeeds Act (ESSA) are to receive core instruction and interventions and services at all layers, if needed, to attain desirable levels of achievement.
- MLSS allows SAT teams more flexibility to intervene quickly and grants them more freedom to determine the most appropriate targeted supports and interventions. Under MLSS, teachers and health and wellness staff can quickly respond to the needs of the students without rigid timelines and delays. For example, Layer 1 interventions are continued for students receiving Layer 2 targeted interventions and Layer 3 intensive interventions.
- Intensive interventions systems are thereby available to ALL struggling learners, and the number of harmful pullout situations is reduced.





## **SOAR: Southwest Outreach Academic Research Evaluation & Policy Center**

# 2019 New Mexico Educator Vacancy Report

Date Prepared: October 4, 2019

**Prepared by:**

**New Mexico State University College of Education Southwest Outreach Academic Research  
(SOAR) Evaluation & Policy Center**

*Dr. Rachel Boren, Ph.D., Director*

*Data collected by SOAR researchers: Germain Degardin, Ruth Lawson, Samantha Mendoza, and  
Giovanna Perez*

[alliance.nmsu.edu/soar](http://alliance.nmsu.edu/soar)

vacancies this year. Last year's Report also identified 267 special education vacancies compared to 151 this year (182 including gifted teachers for a 32 percent decrease).

Utilizing the same geographic district grouping as prior Vacancy Reports, the central region continues to have the highest amount of vacancies, with 309 this year (compared to 400 last year), and it is important to keep in mind that this region includes Albuquerque and Santa Fe Public Schools. Though there were also decreases in the northeast (27 this year; 58 last year) and northwest (96 this year; 123 last year), there was a **25 percent increase in the southeast** (147 this year; 118 last year) **and a 59 percent increase in the southwest** (65 this year; 41 last year). Table Two below lists the districts and the total number of teacher vacancies in each region.

Region	Districts
Central: 309 Teacher Vacancies	Albuquerque Public Schools, Belen, Bernalillo, Estancia, Los Lunas Schools, Moriarty - Edgewood School District, Mountainair, Pecos, Rio Rancho Public Schools, Santa Fe, Vaughn
Northeast: 27 Teacher Vacancies	Cimarron Municipal Schools, Clayton, Des Moines Municipal Schools, Grady Municipal Schools, House, Las Vegas, Logan, Maxwell Municipal Schools, Mora, Mosquero, Penasco ISD, Questa Independent School District, Raton, Roy Municipal, San Jon, Santa Rosa, Springer, Taos, Tucumcari, Wagon Mound, West Las Vegas
Northwest: 96 Teacher Vacancies	Aztec Municipal Schools, BIE, Bloomfield Schools, Central, Chama Valley Schools, Cuba, Dulce, Espanola, Farmington, Gallup-McKinley, Grants- Cibola, Jemez Mountain, Jemez Valley, Los Alamos Public Schools, Mesa Vista, Pojoaque, Zuni
Southeast: 147 Teacher Vacancies	Alamogordo, Artesia, Capitan Schools, Carlsbad Municipal Schools, Carrizozo Municipal Schools, Cloudcroft Municipal Schools, Clovis Municipal School District, Corona, Dexter, Dora, Elida Municipal Schools, Eunice, Floyd Municipal School District, Fort Summer, Hagerman Municipal Schools, Hobbs, Hondo Valley, Jal, Lake Arthur Municipal Schools, Loving Municipal Schools, Lovington, Melrose, Portales Municipal Schools, Roswell, Ruidoso, Tatum, Texico, Tularosa Municipal Schools
Southwest: 65 Teacher Vacancies	Animas, Cobre Consolidated Schools, Deming Public Schools, Gadsden, Hatch Valley, Las Cruces, Lordsburg Municipal Schools, Magdalena Municipal School District, Quemado, Reserve, Silver, Socorro, Truth or Consequences

*Table Two: District List and Total Teacher Vacancies for Each Region*

Next, looking more closely at the elementary, middle school, high school, and special education teacher vacancies, the **specific subjects that were listed mainly consisted of math (62 vacancies)**, with **science and English language arts** closely behind (46 vacancies each), and music the next highest area of need (34 vacancies). Compared to last year's Report, almost all subjects had an increase in the number of vacancies this year, particularly the three subjects cited above. English language arts saw a 31 percent increase, while math and science demand increased by 15 percent each compared to last year. It is also worth noting that for the core subjects (math, science, English language arts, and social studies), only a handful (less than five total) of vacancies were at the elementary level, indicating that almost all needs in these areas were at the secondary level, with a strong need in special education as well (see next section). Among all subjects that had at least five vacancies, the breakdown can be found in Figure Two below. These figures include job postings that listed "General Education Teacher" without a specific subject specified and 10 vacancies that had multiple subjects attached (e.g. Math and Science Teacher).

Budget Entity	FY19		FY20		Operational Variance	Total Variance
	11000 -	All Other Funds	11000 -	All Other		
	Operational		Operational	Funds		
ABQ Charter Academy	12.00	0	13.00	0	1	1
Academy for Technology and the Classics	25.70	0	25.62	0	-0.08	-0.08
ACE	13.94	2.76	13.72	2.76	-0.22	-0.22
AIMS @ UNM	20.80	0	20.77	0.32	-0.03	0.29
Alamogordo	370.25	26	336.00	34	-34.25	-26.25
Albuquerque	5,415.12	444.57	5,645.76	394.88	230.64	180.95
Albuquerque Collegiate	6.00	0	2.00	0	-4	-4
Albuquerque School of Excellence	31.70	0	43.00	1.5	11.3	12.8
Albuquerque Sign Language Academy	11.00	0	11.00	0.8	0	0.8
Albuquerque Talent Development	12.59	1	12.26	1.65	-0.33	0.32
Aldo Leopold Charter School	14.45	0	16.12	0.7	1.67	2.37
Alice King Community School	31.88	2	32.58	0	0.7	-1.3
Alma D' Arte Charter High School	16.61	0	13.18	0.67	-3.43	-2.76
Altura Preparatory	5.00	0	3.00	0	-2	-2
Amy Biehl Charter High School	21.10	1.7	24.60	3	3.5	4.8
Anansi Charter School	14.50	1	14.94	0	0.44	-0.56
Animas	14.41	1.86	14.58	0.9	0.17	-0.79
Artesia	220.48	8.05	240.47	9.65	19.99	21.59
ASK Academy	30.70	0.36	33.27	0.36	2.57	2.57
Aztec	189.00	7.25	195.00	2.3	6	1.05
Belen	244.80	32.35	240.80	14.25	-4	-22.1
Bernalillo	171.10	26.5	173.65	34.6	2.55	10.65
Bloomfield	202.94	30.38	205.94	11.42	3	-15.96
Capitan	37.62	3	44.00	2.16	6.38	5.54
Carlsbad	394.07	17.2	384.74	18	-9.33	-8.53
Carrizozo	15.94	1.2	16.00	1.28	0.06	0.14
Central	433.60	28	460.00	23	26.4	21.4
Central NM CC		0			0	0

EXHIBIT

L

Cesar Chavez Community School	11.29	0	11.86	0.11	0.57	0.68
Chama Valley	33.10	0.52	32.97	0.57	-0.13	-0.08
Christine Duncan's Heritage Academy	24.00	2	28.00	2	4	4
Cien Aguas International School	27.00	0.48	26.50	0.53	-0.5	-0.45
Cimarron	34.99	0.75	34.11	3	-0.88	1.37
Clayton	34.98	1.63	34.33	4.18	-0.65	1.9
Cloudcroft	28.80	0	28.40	0.6	-0.4	0.2
Clovis	489.04	19.1	486.23	16.8	-2.81	-5.11
Cobre	84.35	14.4	81.10	6.4	-3.25	-11.25
Coral Community Charter	10.80	4	10.95	2	0.15	-1.85
Corona	12.75	0.5	12.75	0	0	-0.5
Corrales International School	19.26	0.34	18.90	0.4	-0.36	-0.3
Cottonwood Classical Preparatory School	46.85	0.44	48.25	1	1.4	1.96
Cottonwood Valley Charter School	12.80	0.5	12.60	0	-0.2	-0.7
Cuba	38.00	10	39.50	12.25	1.5	3.75
DEAP	2.80	0.48	2.60	0.5	-0.2	-0.18
Deming	267.27	31	340.75	21.1	73.48	63.58
Deming Cesar Chavez Charter High School	6.00	0	5.00	0	-1	-1
Des Moines	13.10	0.6	13.10	1	0	0.4
Dexter	52.54	2.49	48.06	1	-4.48	-5.97
Digital Arts and Technology Academy	19.00	3	19.00	2	0	-1
Dora	20.50	0	19.00	0	-1.5	-1.5
Dream Dine'	3.29	0	2.00	0	-1.29	-1.29
Dulce	51.00	4	52.00	5.06	1	2.06
East Mountain High School	0.00	0	23.20	0	23.2	23.2
El Camino Real Academy	16.32	1.25	20.35	1.61	4.03	4.39
Elida	17.00	1.25	18.00	0.75	1	0.5
Espanola	220.29	12	222.20	12.5	1.91	2.41
Estancia	46.83	1	43.51	4.35	-3.32	0.03
Estancia Valley Classical Academy	31.64	0.5	33.50	0.5	1.86	1.86
Eunice	48.91	0.09	54.91	0.09	6	6
Explore Academy	30.00	0	32.00	0.8	2	2.8
Farmington	607.80	13.5	618.15	15.84	10.35	12.69
Floyd	19.75	1.45	20.66	0.5	0.91	-0.04

Fort Sumner	30.50	3	31.00	0	0.5	-2.5
Gadsden	853.04	142.43	883.48	113	30.44	1.01
Gallup	740.25	115.25	702.70	123.25	-37.55	-29.55
Gilbert L. Sena Charter School	12.11	5	11.37	1.3	-0.74	-4.44
Gordon Bernell Charter School	18.39	0	17.48	0	-0.91	-0.91
Grady	16.29	0	16.79	0	0.5	0.5
Grants/Cibola	208.39	35.72	201.89	41.97	-6.5	-0.25
Hagerman	31.00	2.61	33.39	3.39	2.39	3.17
Hatch	67.00	16	70.50	11.5	3.5	-1
Health Leadership High School	7.63	1	11.65	1.24	4.02	4.26
Hobbs	476.00	23	520.00	23.5	44	44.5
Hondo Valley	16.00	0	16.00	0	0	0
Horizon Academy West	26.00	2	26.50	2.25	0.5	0.75
House	14.00	0	14.00	0	0	0
Hozho Academy	11.00	0	10.25	0	-0.75	-0.75
International School @ Mesa Del Sol	26.50	0.4	25.61	2.04	-0.89	0.75
J. Paul Taylor	14.10	0.5	12.99	0.59	-1.11	-1.02
Jal	33.35	0	36.35	0	3	3
Jefferson Montessori Academy	15.71	0	22.96	1	7.25	8.25
Jemez Mountain	12.44	1.5	10.00	1.5	-2.44	-2.44
Jemez Valley	23.00	2	22.62	1.38	-0.38	-1
La Academia de Esperanza	0.00	0	21.00	1	21	22
La Academia Dolores Huerta	8.50	1	9.00	1.62	0.5	1.12
La Promesa Early Learning Center	18.00	2.69	23.00	3	5	5.31
La Resolana Leadership Academy	4.34	0			-4.34	-4.34
La Tierra Montessori School of the Arts & Sciences	7.50	0	6.00	0	-1.5	-1.5
Lake Arthur	13.00	0	13.00	1	0	1
Las Cruces	1,465.97	48.83	1,481.66	71	15.69	37.86
Las Montañas Charter School	14.00	1.5	16.00	1.25	2	1.75
Las Vegas City	96.00	5	102.00	4	6	5
Lindrith Area Heritage Charter School	1.70	0	1.03	0.08	-0.67	-0.59
Logan	21.58	0.53	25.02	0.67	3.44	3.58
Lordsburg	28.22	5	27.41	6.75	-0.81	0.94
Los Alamos	273.80	2.35	284.23	0.8	10.43	8.88

Los Lunas	502.50	38	463.00	39.1	-39.5	-38.4
Los Puentes Charter School	11.82	1.18	10.24	1.06	-1.58	-1.7
Loving	37.00	1	41.00	2	4	5
Lovington	206.16	8	212.85	13.5	6.69	12.19
Magdalena	25.00	3.01	27.14	1	2.14	0.13
Mark Armijo Academy	12.92	1.18	15.05	1.1	2.13	2.05
MASTERS Program	10.00	0	12.00	0.4	2	2.4
Maxwell	13.53	0	13.53	0	0	0
McCurdy Charter School	31.00	0.4	34.50	3	3.5	6.1
Media Arts Collaborative Charter School	20.68	0	20.63	0.5	-0.05	0.45
Melrose	19.24	0.4	19.24	0.55	0	0.15
Mesa Vista	14.90	1.31	14.50	2.4	-0.4	0.69
Middle College High School	3.60	0	4.60	0	1	1
Mission Achievement and Success	73.40	9	78.90	8.5	5.5	5
Monte Del Sol Charter School	29.75	0.6	23.00	1.2	-6.75	-6.15
Montessori Elementary School	23.45	0	22.50	1	-0.95	0.05
Montessori of the Rio Grande	12.00	0	13.00	0	1	1
Mora	34.15	2	35.75	1.7	1.6	1.3
Moreno Valley High School	7.00	0	7.92	0	0.92	0.92
Moriarty	149.46	6	152.86	5	3.4	2.4
Mosaic Academy Charter	11.65	0	11.15	0	-0.5	-0.5
Mosquero	7.86	0	8.86	0.35	1	1.35
Mountain Mahogany Community School	14.45	0	13.35	0	-1.1	-1.1
Mountainair	18.50	2	20.90	2.55	2.4	2.95
Native American Community Academy	24.95	6.95	29.00	2.4	4.05	-0.5
New America School	15.96	1	14.00	0.5	-1.96	-2.46
New America School - Las Cruces	8.80	1	9.00	0.85	0.2	0.05
New Mexico Connections Academy	48.40	0	30.00	8.5	-18.4	-9.9
New Mexico International School	13.25	0	17.90	0	4.65	4.65
New Mexico School for the Arts	12.97	0.55	16.04	0.55	3.07	3.07
New Mexico Virtual Academy	13.00	0			-13	-13
NM School for the Deaf		0		0	0	0
NMSU Doña Ana		2		3	0	1
NMSU Main Campus		0		0	0	0

North Valley Academy	30.10	2.8	28.00	3	-2.1	-1.9
Pecos	38.00	15.1	39.00	4.75	1	-9.35
Pecos Connections Academy	20.50	0	30.00	0	9.5	9.5
Pecos Valley REC #8		1		0	0	-1
Penasco	24.60	5.45	24.52	4	-0.08	-1.53
Pojoaque Valley	195.00	7	102.75	8	-92.25	-91.25
Portales	166.03	13	178.32	15.5	12.29	14.79
Public Academy for Performing Arts	27.64	0.5	28.94	0.5	1.3	1.3
Quemado	19.52	0.63	19.64	0.75	0.12	0.24
Questa	27.10	2	25.50	4	-1.6	0.4
			3.50	0	3.5	3.5
Raton	58.18	6.29	60.71	5.5	2.53	1.74
Red River Valley Charter School	5.87	1.66	5.77	2.23	-0.1	0.47
Regional Education Cooperative #6		0		0	0	0
Regional Education Cooperative #9		4		15	0	11
Reserve	15.50	1.37	14.63	2	-0.87	-0.24
Rio Gallinas School	5.20	0.8	7.17	0	1.97	1.17
Rio Rancho	998.54	100.4	1,032.24	104.9	33.7	38.2
Robert F. Kennedy Charter School	22.27	1.2	21.71	1.5	-0.56	-0.26
Roots and Wings Community School	3.50	0	3.50	0.31	0	0.31
Roswell	578.00	38.5	568.50	46.5	-9.5	-1.5
Roy	10.11	1.28	11.11	0	1	-0.28
Ruidoso	119.00	5.25	122.00	4.65	3	2.4
San Diego Riverside Charter School	14.21	1.35	14.03	3.03	-0.18	1.5
San Jon	13.10	2.72	13.14	1.55	0.04	-1.13
Sandoval Academy (SABE)	6.00	0	10.25	0.5	4.25	4.75
Santa Fe	848.37	52	845.87	55.3	-2.5	0.8
Santa Fe Community College		1.35		0.63	0	-0.72
Santa Rosa	48.00	1	50.22	5	2.22	6.22
School of Dreams Academy	25.70	2	26.70	3	1	2
Sidney Gutierrez Middle School	4.00	0	4.00	0	0	0
Siembra Leadership	6.16	0.5	5.50	1.18	-0.66	0.02
Silver City	168.50	12.75	171.00	9.4	2.5	-0.85
Six Directions Indigenous	7.00	0	5.84	0.74	-1.16	-0.42

Socorro	95.93	14	100.13	9	4.2	-0.8
Solare	0	0	9.50	0	9.5	9.5
South Valley Academy	44.86	3	49.90	2.55	5.04	4.59
South Valley Preparatory School	8.00	0.2	11.44	0.15	3.44	3.39
Southwest Preparatory Learning Center	10.80	0	10.30	0.8	-0.5	0.3
Southwest Secondary Learning Center	11.90	0	11.00	0.89	-0.9	-0.01
Springer	16.75	0.5	13.50	0.51	-3.25	-3.24
Student Athlete Headquarters (SAHQ)	4.50	1.5			-4.5	-6
SW Aeronautics, Mathematics and Science Academy	10.55	0	11.60	0	1.05	1.05
Taos	147.30	9.8	145.10	10.9	-2.2	-1.1
Taos Academy	17.57	1	17.57	0.74	0	-0.26
Taos Integrated School of the Arts	10.40	0.5	11.60	0	1.2	0.7
Taos International School	11.25	0	6.70	1.81	-4.55	-2.74
Taos Municipal Charter School	13.30	1.25	14.82	0	1.52	0.27
Tatum	23.68	0.88	23.79	1.25	0.11	0.48
Technology Leadership	10.30	1	10.54	1.65	0.24	0.89
Texico	36.26	1.83	37.53	1.58	1.27	1.02
The Great Academy	7.00	0	9.70	0	2.7	2.7
Tierra Adentro	22.07	1.3	21.57	2	-0.5	0.2
Tierra Encantada Charter School	21.00	0	15.00	0	-6	-6
Truth or Consequences	87.10	4.4	83.60	4.8	-3.5	-3.1
Tucumcari	62.68	3	65.64	4.29	2.96	4.25
Tularosa	57.35	9.15	57.85	8.4	0.5	-0.25
Turquoise Trail Elementary	32.70	3.5	38.30	4	5.6	6.1
Twenty-First Century Charter	20.80	0	22.30	0	1.5	1.5
UNM Taos	0	2			0	-2
Vaughn	9.80	0.87	8.95	0.84	-0.85	-0.88
Vista Grande High School	9.60	0.4	9.00	0.4	-0.6	-0.6
Wagon Mound	11.43	1.33	12.21	1.72	0.78	1.17
Walatowa Charter High School	3.00	1.5	3.00	2.2	0	0.7
West Las Vegas	92.80	30	96.80	27.2	4	1.2
William W. & Josephine Dorn Charter Comm School	5.25	1	6.00	0.7	0.75	0.45
Working Classroom, Inc	0	0		0	0	0
YMCA of Central New Mexico	0	0		0	0	0



Zuni		91.00	4	93.50	2	2.5	0.5
Grand Total		20,904.64	1645.15	21,332.23	1589.23	427.59	
	<u>Total FY19 vs FY20</u>	<u>22549.79</u>		<u>22921.46</u>			<u>371.67</u>



**2017–2018**  
**School Year**

**NMPED**  
Public Education Department



Children Youth & Families Department

**PULLTOGETHER.ORG**

# Annual Report



**December 2018**

EXHIBIT

M

## NM CYFD Early PreK and PreK Data

The early childhood investment zones are a collaborative effort of the following New Mexico departments:

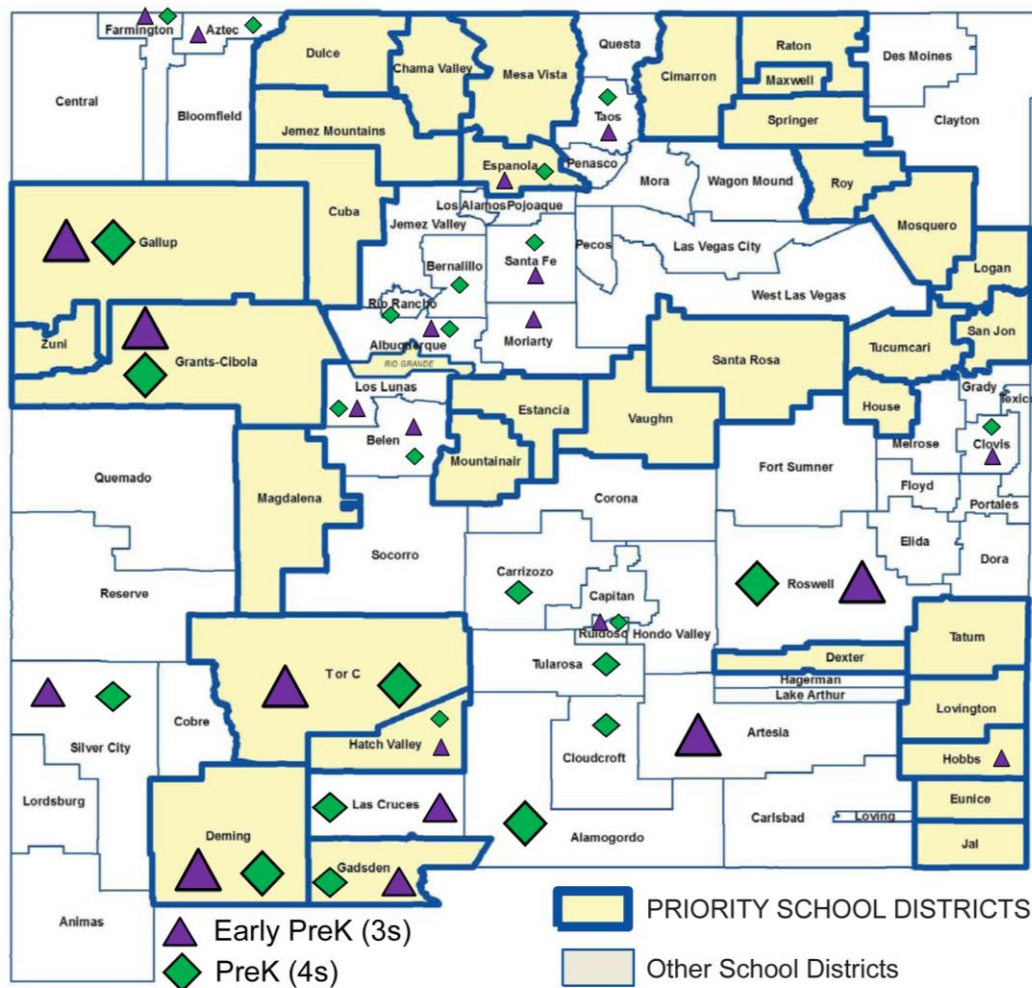
- New Mexico Children, Youth and Families Department
- New Mexico Department of Health
- New Mexico Public Education Department

### Early Childhood Investment Zone Map

Purple Triangles = Sites with CYFD Early PreK Programs

Green Diamonds = Sites with CYFD PreK Programs

- 132 total PreK sites. Of those, 21 are within an Early Childhood Investment Zone
- 53 total Early PreK sites. Of those, 16 are within an Early Childhood Investment Zone



## FY 19 PED PreK Sites with New Mexico Early Childhood Investment Zones

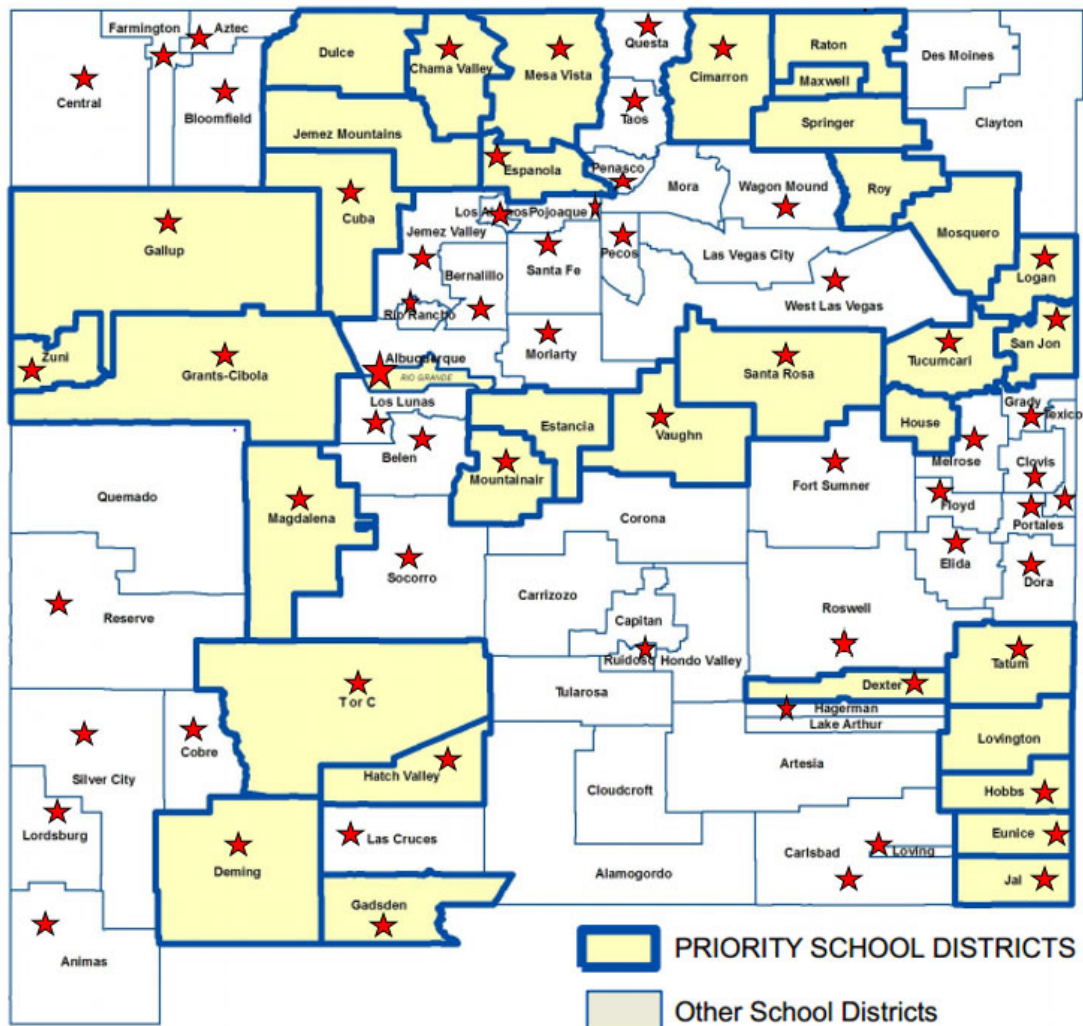
The early childhood investment zones are a collaborative effort of the following New Mexico departments:

- New Mexico Children, Youth and Families Department
- New Mexico Department of Health
- New Mexico Public Education Department

### Early Childhood Investment Zone Map

*Red Stars* = Districts with PED NM PreK Programs

- 65 school districts
- 6 state charter schools
- 192 school sites
- 328 classrooms
- 25 of 35 Priority School Districts in Investment Zones have PED PreK programs



EXHIBIT

N