

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

LOUISE MARTINEZ, et al.,

Plaintiffs,

v.

No. D-101-CV-2014-00793
Judge Matthew Wilson

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

Defendants.

Consolidated with

WILHELMINA YAZZIE, et al.,

Plaintiffs,

v.

No. D-101-CV-2014-02224
Judge Matthew Wilson

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

Defendants.

**PLAINTIFFS' JOINT NON-COMPLIANCE MOTION
AND REQUEST FOR REMEDIAL ACTION PLAN**

**UNOPPOSED BY DEFENDANT STATE OF NEW MEXICO,
REPRESENTED BY THE NEW MEXICO ATTORNEY GENERAL, WHO "AGREES
WITH PLAINTIFFS THAT THERE HAS BEEN INSUFFICIENT COMPLIANCE AND
DOES NOT OPPOSE THE COURT ORDERING THE DEVELOPMENT OF A
REMEDIAL ACTION PLAN"**

**OPPOSED BY DEFENDANT PUBLIC EDUCATION DEPARTMENT, REPRESENTED
BY PRIVATE COUNSEL**

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The Yazzie and Martinez Plaintiffs (“Plaintiffs”) hereby move this Court for an order compelling compliance with the Court’s Final Judgment and Order and Decision and Order, and Order Granting Yazzie Plaintiffs’ Expedited Motion for Further Relief Concerning Defendants’ Failure to Provide Essential Technology to At-Risk Public School Students. In support of this joint motion, the Plaintiffs state the following:

I. INTRODUCTION AND PROCEDURAL HISTORY

In 2014, two groups of parents and students, and six school districts filed two lawsuits against the State of New Mexico alleging that public school students, particularly Native American students, English language learner students, students with disabilities, and students from low-income families (“at-risk students”) were being denied their right to a sufficient and uniform public education, a right guaranteed by the New Mexico Constitution. After being consolidated by the Court, these cases collectively came to be known as *Martinez-Yazzie, et al. v. State of New Mexico, et al.*

In 2018, this Court ruled that New Mexico’s system of education violates the New Mexican Constitution by failing to provide a system of public education that allows all at-risk students the opportunity to be ready for college or career. This Court made detailed findings about the substantial and systemic educational gaps in our current education system, the State’s failure to implement several, critical state laws, the deficiencies in the educator workforce and other areas, and inadequate educational outcomes of at-risk students in New Mexico. *See* Decision and Order and Findings of Facts Conclusions of Law [hereinafter FFLC]. The Court’s Orders require a substantial overhaul and transformation of New Mexico’s school system.

Specifically, in its 2019 Final Judgment and Order, this Court ordered that the State be “given until *April 15, 2019*, to take immediate steps to” create a constitutionally sufficient public

education system 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.” Decision and Order at 74 (emphasis added). It has been six years since the Court-ordered date for immediate steps, and it is now evident that the State cannot and will not take the necessary steps to comply with the Court’s Orders.

As outlined in the following sections, the State has failed to comply with the Court’s Order requiring that all at-risk students have the resources necessary so that they are ready for college or career, and enjoining the State as follows:

- A. 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.
- B. 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.
- C. The Defendants must comply with their duty to provide an adequate education and may not conserve financial resources at the expense of our constitutional resources.

This Order became final on March 18, 2019. Final Decision and Order at 4-5.

The Court also retained jurisdiction over this matter to issue such orders and take such further actions as may be necessary to timely remedy the rulings set forth in the Decision and

Order and Findings of Fact and Conclusions of Law ... “to effectuate all relief granted in this case.” Final Judgment and Order at 5; *see also* Order Granting Martinez Plaintiffs’ Motion for Entry of Schedule for Discovery and Enforcement of Proceedings at 2.

In 2019, Defendants refused to meet with Plaintiffs about the development of a comprehensive implementation plan¹ and failed to comply with the Court’s Order to take immediate steps by April 15, 2019. Therefore, on October 30, 2019, *Yazzie* Plaintiffs returned to this Court, seeking an order requiring the State to develop, implement and fully fund a comprehensive plan to come into compliance with its constitutional mandate to provide all at-risk students with a sufficient education, that is aligned with this Court’s extensive findings, in the form of further injunctive relief. On October 30, 2019, *Martinez* Plaintiffs filed a Motion for Entry of Schedule for Discovery and Enforcement Proceedings. The Court denied *Yazzie* Plaintiffs’ motion and granted *Martinez* Plaintiffs’ motion allowing the parties to take further discovery as to the status of compliance. Order Denying Without Prejudice *Yazzie* Plaintiffs’ Motion at 2; Order Granting Martinez Plaintiffs’ Motion Discovery at 2.

In response to the State’s Motion seeking Entry of Order and Satisfaction, the Court found that Defendants had not substantially satisfied this Court’s Final Judgment and Order regarding all at-risk students. “The Court’s Final Judgment and Order requires comprehensive educational reform that demonstrates substantial improvement in student outcomes to ensure at-risk students are college and career ready ... Defendants must not only take immediate steps to execute short-term reforms, but must also ensure long-term, comprehensive reforms.” Order Denying

¹ In July 2019 the *Yazzie* and the *Martinez* Plaintiffs met with several of the deputy secretaries of the Public Education Department and the Governor’s in-house counsel to discuss the contours of a potential comprehensive implementation plan. After two general meetings, the Governor directed PED not to meet with Plaintiffs anymore. Since then, despite repeated requests to restart these meetings, PED and the Governor have refused to do so.

Defendants' Motion for Entry of Order of Satisfaction of Injunction and Dismissal of Action at 2.

In 2020, *Yazzie* Plaintiffs sought further relief regarding Defendants' failure to provide essential technology to at-risk students, and in 2021, the Court issued an order affirming at-risk students' right to access technology as part of a sufficient education. Order Granting *Yazzie* Plaintiffs' Expedited Motion for Further Relief Concerning Defendants' Failure to Provide Essential Technology to At-Risk Public School Students. This Court found that "students who are lacking access to high-speed internet and technology for remote learning are not getting much of an education, if at all, let alone one that is sufficient to make them college and career ready." *Id.* at 2. The Court ordered Defendants to immediately provide dedicated digital devices and access to high-speed internet at home to at-risk students, and sufficient funding to school districts for information technology staff to support these and other remote learning needs. *Id.* at 2-3.

The *Yazzie* and *Martinez* Plaintiffs spent considerable time and effort conducting discovery as to the status of Defendants' compliance with the Court's Orders. The evidence shows that while Defendants have made some effort in response to the Court's Orders to achieve compliance with constitutional requirements, six years after the Court's Decision and Order Defendants still have not achieved compliance with the constitutional requirements established in this case, including the long-term comprehensive reforms ordered by the Court, nor have they provided the comprehensive plan repeatedly requested by Plaintiffs. Most importantly, as set forth in this Motion, Defendants' failure to develop and implement a comprehensive remedial plan has had catastrophic consequences for at-risk students across the state. Student outcomes (proficiency in reading, math and science) today are as bad or worse than they were in 2017 at the trial in this case.

Fixing the broken New Mexico system of public education is a doable, but complex,

undertaking. As explained herein, it is multifaceted, with many moving, interconnected parts. Without a comprehensive remedial plan, Defendants cannot achieve compliance with their constitutional mandate and New Mexico's at-risk students will continue to suffer. Plaintiffs have repeatedly asked Defendants to work collaboratively on a remedial plan, however, Defendants have refused. Plaintiffs seek an Order from the Court requiring Defendants to develop and implement a comprehensive remedial plan through a thorough and professional process described in Section III below. Because of the evidence gathered of Defendants' failure to comply with the Court's Orders to date, the relief sought in this Motion is reasonable and justified.

Defendant State of New Mexico, represented by the New Mexico Attorney General, agrees with Plaintiffs that the State has not sufficiently complied with the orders of the Court, and does not oppose the Court ordering the development of a remedial action plan. Defendant New Mexico Public Education Department, represented by private counsel, disagrees with Plaintiffs' motion that Defendants have not complied with this Court's orders and opposes it.

II. FACTS CONCERNING DEFENDANTS' NONCOMPLIANCE

A. Student Outcomes & Proficiency Scores

There have been grave consequences to Defendants' failure to develop and implement a comprehensive plan to fulfill their constitutional duties. By all relevant measures most elementary and secondary schools in New Mexico continue to fail the State's at-risk students. The most recent available statewide data show dismal attendance and proficiency rates have continued since the Court issued its rulings in 2018. See Table 1, below.

**TABLE 1. Statewide Proficiency Rates for School Year 2022-2023
by Subgroup & Achievement Gaps² and Attendance Rate**

Chronic Absenteeism	39.2%	
Reading	38% - All Students ³ 26% - Econ Disadvantaged 23% - Native Americans 17% - English Learner 12% - Students with Disabilities	48% - Non-Econ. Disadvant. 40% - White 43% - Non-English Learners 44% - Students w/out a Disability
Math	24% - All Students 15% - Econ Disadvantaged 13% - Native Americans 11% - English Learners 8% - Students with Disabilities	32% - Non-Econ. Disadvant. 25% - White 28% - Non-English Learners 28% - Students w/out a Disability
Science	34% - All Students 21% - Econ Disadvantaged 20% - Native Americans 11% - English Learners 11% - Students with Disabilities	N/A 35% - White 39% - Non-English Learners 39% - Students w/out a Disability
Four-Year Graduation Rate	76.2% - All Students 72.4% - Econ Disadvantaged 71.8% - Native Americans 75.8% - English Learners 67.0% - Students w/ Disabilities	N/A

² According to the National Assessment of Educational Progress, an “achievement gap occurs when one group of students [e.g., students who are not deemed economically disadvantaged, white students, non-ELs, and students without a disability] outperforms another group [e.g. at-risk students] and the difference in the average scores for the two groups is statistically significant (i.e. larger than the margin of error).” See <https://nces.ed.gov/nationsreportcard/studies/gaps/>.

³ The Legislative Finance Committee and Legislative Education Study Committee noted since this was only the second iteration of the State's newly adopted assessment, the State has yet to determine whether improvements in reading are a trend and making comparison to pre-pandemic proficiency rates is problematic. See Leg. Fin. Comm., *Report to the Legislature Volume 1: Policy & Performance Analysis*, LFC website, 98 (Jan. 2024), https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Budget_Recommendations/FY25%20Volume%201%20Policy%20and%20Performance.pdf [hereinafter *LFC Report to the Leg. 2024, Vol. 1*]; see also Leg. Educ. Study Comm., *Spring 2023 Assessment Results & Assessment & Accountability in New Mexico*, LESC website, 5 (Nov. 16, 2023), <https://www.nmlegis.gov/handouts/ALESC%2011523%20Item%2010%20.1Analysis%20of%20Spring%202023%20Assessment%20Results.pdf>.

Sources: Leg. Educ. Study Comm., *Annual Report to the Legislature and Data Reference Guide*, LESC website 89, 107-180 (Jan. 2024) [hereinafter *LESC Annual Report*];⁴ Leg. Fin. Comm., *Program Evaluation No. 24-03, Student Attendance and Performance*, 4 (June 13, 2024) [hereinafter *LFC Attendance and Performance Report*].⁵

According to the LFC Attendance and Performance Report “[g]rowing absenteeism has been a problem nationwide since the pandemic, but New Mexico saw one of the largest increases. From school year 2019 to 2023, the state saw a 119 percent increase in chronic absenteeism,

⁴ https://www.nmlegis.gov/Entity/LESC/Documents/Reports_To_The_Legislature/LESC%202024%20Annual%20Report%20Final_Web_Full%20Page.pdf.

⁵ https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Program%20Evaluation%20-%20Student%20Attendance%20and%20Perfromance.pdf.

These are the measures of student performance that were endorsed as the key measures by then Secretary Steinhaus in his deposition taken in this case.

Q.·[R]ight now my understanding from your testimony is that the Accountability System that the Department has is to review and approve the Ed Plans and the annual budget, and then to track the achievement, or the change in achievement levels for at-risk students after they've spent a year under these Ed Plans. Is that a fair description of what you've said?

A.·It's a fair description of the examples of Accountability I was trying to give you, but I was not trying to portray that as the universe of Accountability that we use.

Q.·Is there anything else you would like to tell me about what you employ as part of your Accountability to determine whether things are improving for these children?

A.·I'm glad you're asking about it. I think there are additional items that I'm not going to remember off the top of my head, but one would be graduation rates. We will not only look at student achievement, but we'll look at graduation rates by school according to the subcategories of Martinez/Yazzie. The other area we'll look at is attendance. That's not achievement, but we'll look at the Martinez/Yazzie categories and look at their attendance rates, because in the Attendance for Success Act there is a requirement for that.

Deposition of Kurt Steinhaus (Steinhaus Dep.) 258:13-259:25, Jul. 29, 2022, attached hereto as Exhibit 6.

compared to an average increase of 71 percent nationally. The state’s chronic absenteeism rate increased from 17.9 percent to 39.2 percent of students and was the second highest of the 31 states reporting for school year 2023.” *Supra* p. 7 and note 3, at 4.

New Mexico students perform well below the national average for reading, math and science. In 2022 New Mexico students performed from 12 to 14 percent below the national average in reading and math at the Fourth Grade and Eighth Grade levels. *See LESC Annual Report, supra* p. 7 and note 2, at 109. In addition, the gap between New Mexico students’ proficiency and that of students in the United States has widened since 2017. *Id.*

From the perspective of the at-risk students whose rights and educational needs are addressed in this litigation, the achievement gap suffered by economically disadvantaged students in New Mexico has remained essentially unchanged since 2017. Economically disadvantaged students remain 22 percent below their peers in reading proficiency and 18 percent below their peers in math proficiency. *Id.* at 108.

Finally, one-fourth of all students do not finish high school. And, as the data set forth above show, the majority of New Mexico students who do supposedly finish high school leave school illiterate in reading, math, and science.

These data dramatically show there is a desperate need for the Court to now order Defendants to create and implement a comprehensive plan to address the constitutional violations documented by the Court in 2018.

B. Deficiencies Within the Public Education Department

1. Defendants Lack an Implementation Plan

After two years of discovery, and several years of additional data and analysis on the piecemeal efforts of the State to implement this Court’s order, sufficient evidence demonstrates

Defendants’ on-going lack of compliance and failure to “implement[] long-term, comprehensive reforms” that provide “the necessary programs and reforms” ... “to all at-risk students to ensure that they have the opportunity to be college and career ready.” Order Denying Defendants’ Motion for Entry of Order of Satisfaction of Injunction and Dismissal of Action at 2. The weight of the evidence supports Plaintiffs’ request for an order for a remedial action plan, as at-risk student outcomes remain woefully inadequate and the New Mexico Public Education Department (PED) continues to experience high leadership turnover, insufficient numbers of experienced staff, and inadequate accountability systems. Despite increased funding, the programs and services for at-risk students remain largely as deficient as they were ten years ago when this lawsuit began (see below). Critically, Defendants also continue to lack a clear, long-term vision and goals for the education system that are aligned with this Court’s findings. *See LESC Annual Report, supra* p. 8 and note 4, at 50.

In 2019, Defendants opposed *Yazzie* Plaintiffs’ motion for Defendants to develop, implement and fund a plan. But since then, Defendants seemingly recognize the need for a comprehensive plan, because on May 9, 2022, the PED released a draft Action Plan. *See* Pub. Educ. Dep’t, *Discussion Draft – Action Plan: Decisions about Martinez/Yazzie v. State of NM*, PED’s website (May 2022) [hereinafter *Action Plan*].⁶ Unfortunately, Defendants did not consult the Plaintiffs, the Legislature, or Tribal governments in the development of the Action Plan. It is woefully insufficient, and falls far short of what the *Yazzie* Plaintiffs sought in 2019 and request

⁶ <https://webnew.ped.state.nm.us/wp-content/uploads/2022/05/Martinez-Yazzie-Discussion-Draft-2022.05.09.pdf>. Notably, this was more than five months after the PED “promised to release the draft in December [2021], before the State Legislature’s annual meeting that determines education funding[.]” Cedar Attanasio, *State Releases Draft to Address Yazzie/Martinez Lawsuit*, *The Paper* (May 12, 2022). In addition, Tribal leaders were expecting to be invited to comment on a draft in October 2021, ahead of a public release of the plan, but that did not happen.

the Court order today.

The PED sought public feedback on the Action Plan, and received a substantial response, outlining the significant weaknesses of the Action Plan and the need for more. While reserving the right to address the shortcomings of the Action Plan, the *Martinez and Yazzie* Plaintiffs submitted feedback, summarizing the shortcomings of the Action Plan including, the lack of goals that are aligned with this Court's Orders and Findings, short- and long-term action steps to meet these goals, the responsible entity (*i.e.*, PED, HED, ECECD, districts, the Legislature, etc.), a timeline for implementation, overall and year-to-year funding estimates including methods to raise revenue if necessary, increases to staff and improvements to processes at PED in order to ensure implementation and accountability, necessary statutory and regulatory changes, and measures of how these actions are actually preparing at-risk students for college or career. *See* Exhibit 1.

Plaintiffs' comments also addressed the Action Plan's deficiencies with respect to each of the four student groups, and yet again, correct PED's erroneous attempt to blame districts and misstate their own authority by stating:

[t]he Action Plan reverts to the language that NMPED and the State used in their defense at trial, which says, "[a]fter school districts and charter schools receive their share of at-risk funding, it is the responsibility of local school boards and governing councils to ensure that the funding is allocated for its intended purpose." *See* Action Plan at 12.

The Court rejected this defense and reaffirmed NMPED's broad statutory authority to ensure that districts use the money provided by the State to provide the programs and services that at-risk students need. Decision and Order at 52. As a result, it is critical that NMPED clearly acknowledge that it is the primary entity responsible for ensuring that every school in New Mexico is serving its at-risk students sufficiently and include details of a monitoring and accountability system for reforms and ongoing use of at-risk funds. As explained above regarding services for specific at-risk student groups, there are large gaps in monitoring that NMPED and the State have yet to bridge.

See id. at 5. Other stakeholders, including Tribal government and education advocates submitted feedback on the Action Plan to address deficiencies related to addressing the specific needs for at-

risk student groups. For example, the All Pueblo Council of Governors expressed deep concerns at the Action Plan's insufficient response to improve education for Native American students, and identified that

The draft plan does not yet present a forward-looking strategy for transforming New Mexico's failed education system and meeting the constitutional rights of Native children. The draft plan is **not an action plan** in the usual sense; rather, it is largely a list of past and current projects that are not connected to goals and outcomes. Many of these projects emerged from tribal advocacy efforts, not from NMPED's own initiative. Very little information is forward facing. The draft includes few strategies, no future budgets, and no accountability mechanisms. This illustrates NMPED's ongoing piecemeal approach, which consists of disconnected projects and short-term grants.

See Exhibit 2, at 3.

Likewise, Disability Rights New Mexico provided feedback that addressed the significant lack of detail to address the educational deficiencies for students with disabilities, stating in part

The plan as it relates to SWD collects largely unrelated discreet accomplishments, efforts or projected efforts by the Department. It does not acknowledge or recognize areas of unmet need and propose solutions in a systematic way. And it does not demonstrate that the Department has sufficient expertise and capacity to transform special education on the school, District, and especially Department level.

See Exhibit 3, at 6.

The State admitted it had not done a cost analysis to determine the amount of funding that would be necessary to achieve the targets for the educator workforce listed in the Action Plan. Specifically, it had not assessed the costs to reduce statewide teacher vacancies, close the teacher diversity gap, increase new teacher retention, ensure the average statewide class size continues to remain below the statutory maximums, and examine opportunities for class size reduction in schools and secondary content areas that skew toward the higher end of the class size range. *See Deposition of Angelo Gonzalez (Gonzales Dep.) 210:13-212:1-9, May 25, 2022, attached hereto as Exhibit 4.*

In addition, the State admitted that the PED had not determined the amount of funding

needed to increase the proficiency rates in reading and math among all at-risk students, or for increasing English-language proficiency among ELL students. *Id.* at 233:3-15, 243:2-16, 245:7-246:2, 250:22-251:8. Nor had it determined the amount of funding needed to increase graduation rates among at-risk students. *Id.* at 233:16-23, 243:17-24, 246:3-11, 251:9-16. The PED also admitted it was unclear whether the State has sufficient funds currently to achieve the targets listed in the Action Plan. *Id.* at 246:12-247:1.

In September of 2022, the PED provided an update on the status of its “Action Plan,” during which it stated review of public input and rewriting was underway, and by September 30, completion of the next version of the Action Plan would be released with stakeholder and inter-agency feedback incorporated. *See* Pub. Educ. Dep’t, *Martinez and Yazzie Lawsuit Update: Prepared for the Leg. Educ. Study Comm.*, LESC website, 4 (Sept. 8, 2022).⁷ Now, two years later, PED has yet to release the second draft it promised by September 30, 2022, let alone adopt a final plan.

Notably, during the 2021 legislative session, the New Mexico House of Representatives unanimously passed House Memorial 26, titled “Develop Education Plan for the Yazzie Lawsuit.” *See* HM 26 (2021 Regular Session). In this memorial, the House recognized that the State had not developed a plan to “to show how it intends to fix the educational system, and the multiyear funding needed to guide resource investment.” *Id.* at 3. HM 26 called for the PED to collaborate with Plaintiffs to jointly develop a comprehensive plan by September 30, 2021, that addressed the systemic inequities and deficiencies identified by this Court and fully comply with the State’s constitutional duty to provide all students with a sufficient education and resolve this case. *Id.* The

⁷ https://www.nmlegis.gov/handouts/ALESC%20090722%20Item%207%207.1%20PED%20Martinez_Yazzie%20Update%20VB.pdf.

plan called for by HM 26 was to include specific action steps, timelines, staffing estimates, accountability measures, and the amount of projected funding necessary to meet the needs of at-risk students. *Id.* at 3-4. Additionally, the PED was required to submit an annual report to the Legislature, the Legislative Finance Committee [hereinafter LFC], and the Legislative Education Study Committee [hereinafter LESC] on the State's progress in implementing the plan and achieving constitutional compliance. *Id.* at 4. Despite the unanimous support of the House and a formal request for an update on the State's implementation of HM 26 by the *Yazzie* Plaintiffs in July 2021, the State took no action. Moreover, the State did not consult with the Legislature in developing the Action Plan, as noted above.

Without the involvement of the Legislature, Plaintiffs, Tribal governments and other stakeholders to develop a comprehensive remedial plan to transform the education system – one that contains all the necessary elements detailed below – the State will continue to operate as it has for years. Developing budgets based on the prior year, rather than the unmet needs of at-risk students, making few adjustments, with minimal, piecemeal progress, and all the while at-risk students will continue to be caught in an inadequate system.

2. Turnover and Vacancies Disrupt the Department

This Court's Decision and Order in 2018 identified systemic problems at the PED that contribute largely to the failures by the State to provide at-risk students a constitutionally adequate education. In 2019, the Court mandated the State to take immediate steps to fix the deficiencies identified in the Court's decision.

Since 2019, however, the State has lacked sufficient capacity and leadership to ensure statewide accountability and oversight over programs and funding for at-risk students. Consequently, educational outcomes and opportunities for students have not improved. Most

public schools suffer from the same issues identified at the time of trial. New Mexico’s education system still ranks dead last among all fifty states. *See* Annie E. Casey Foundation, *2024 Kids Count Data Book: State Trends in Child Well-Being*, AECF website, 27 (2024).⁸ Until the State is ordered to do more, the same systemic problems will continue to deny future generations of at-risk students their right to a sufficient education.

a. High leadership turnover at PED impedes the State’s ability to fulfill its duties to make education sufficient for at-risk students

Contributing to the State’s inability to correct the deficiencies identified in the Court’s Decision and Order is the high attrition among PED leadership. In fact, every single PED leader appointed by the Governor from 2019 to 2024 is gone. Karen Trujillo, the PED secretary appointed in early 2019, lasted six months before her termination and replacement by Ryan Stewart, who then vacated the role almost two years later. Stewart’s successor, Kurt Steinhaus, served as secretary for 1.5 years before his resignation and replacement by Arsenio Romero in 2023. Romero then resigned in August of 2024. ***Four PED secretaries gone in five years.*** And PED will have to bring on a new interim secretary, and another one after the current New Mexico governor’s term ends in 2026. In addition, all four deputy secretaries appointed by the Governor in 2019 resigned by 2022, abandoning many crucial plans and PED initiatives in their early stages such as the State’s strategic plan. Gonzales Dep. 30:13-24. Many of their replacements have since come and gone as well, including one deputy secretary who lasted a mere eight days, in 2023, before her resignation.⁹

⁸ <https://assets.aecf.org/m/resourcedoc/aecf-2024kidscountdatabook-2024.pdf>.

⁹ *See Governor Lujan Grisham announces PED leadership*, Jan. 24, 2019, <https://www.governor.state.nm.us/2019/01/24/governor-lujan-grisham-announces-ped-leadership>; *see also Lujan Grisham Ouster of Trujillo Raises Questions*, July 25, 2019, <https://nmindepth.com/2019/lujan-grisham-ouster-of-trujillo-raises-questions/>; *Stewart Steps Down as Education Secretary, Steinhaus Appointed*, July 29, 2021, <https://www.lcsun-news.com/story/news/local/new-mexico/2021/07/29/ryan-stewart-steps-down-steinhaus-bowie-appointed-cabinet-education/541>

The volume and scope of critical work to be conducted by the PED divisions and bureaus – as overseen by PED’s deputy secretaries – cannot be overstated. Among the many oversight and administrative duties held by the Identity, Equity and Transformation (IET) Division, for example, a singular PED unit covering all eighty-nine school districts and state-charter schools, include: “Indian Education; Special Education; Language and Culture; Hispanic Education; Black Education; At-Risk Intervention Response Team; Safe & Healthy Schools Bureau; Student Success & Wellness; and Title I: Student, School and Family Support Bureau,” and “leadership and oversight of all state and federal education acts[.]” See PED website.¹⁰ Yet, the deputy secretary appointed in 2019 to oversee the IET resigned in 2020 and has since been replaced by two more deputy secretaries in succession.¹¹

Also plagued by continual leadership turnover is the Indian Education Division’s (IED) Assistant Secretary, a leadership role crucial for implementing the New Mexico Indian Education Act (“NMIEA”) (2003). In essence, the IED lacked a full-time Assistant Secretary from 2019 to 2020 and again from 2022 to 2023. Deposition of Rebecca Reyes (Reyes Dep.) 88:2-89:16, Jul.

[7986001/](https://searchlightnm.org/turmoil-at-ped-deputy-cabinet-secretary-resigns-after-only-eight-days/); *Turmoil at PED: Deputy Cabinet Secretary Resigns After Only Eight Days*, Feb. 3, 2023, <https://searchlightnm.org/turmoil-at-ped-deputy-cabinet-secretary-resigns-after-only-eight-days/>; *NM Education Chief Retires as Cabinet Turnover Continues*, Jan. 28, 2023, https://www.abqjournal.com/news/local/nm-education-chief-retires-as-cabinet-turnover-continues/article_69639a48-84fa-5b39-b8b4-0b1c5b1b086d.html; *Arsenio Romero Named Head of New Mexico Public Education Department*, Feb. 21, 2023, https://www.abqjournal.com/news/local/arsenio-romero-named-head-of-new-mexico-public-education-department/article_bf95df72-6d3d-56f2-937b-03b74ccca659.html.

¹⁰ <https://webnew.ped.state.nm.us/bureaus/identity-equity-transformation/>.

¹¹ See *Former Interim Secretary Leaves Public Education Department*, July 6, 2020, https://www.santafenewmexican.com/news/education/former-interim-secretary-leaves-public-education-department/article_2d1d0e20-bf04-11ea-a599-cbad91ae723a.html; see also *New Mexico Public Education Department Names New Leadership Team*, May 11, 2023, https://www.abqjournal.com/news/local/new-mexico-public-education-department-names-new-leadership-team/article_a62c78c6-4ce3-5a43-9cc3-1fca3296a731.html.

25, 2022, attached hereto as Exhibit 5.¹² Currently, aside from numerous NMIEA statutory duties, the Assistant Secretary is also tasked with the implementation of solutions for Yazzie/Martinez and monitoring progress and coordinating activities and initiatives with other agencies, including the New Mexico Indian Affairs Department. *See* PED website.¹³ However, there currently are no plans in place to ensure NMIEA funding and IED staffing capacity are sustainable long enough to impact learning and academic achievement among Native American and ELL students, despite increased legislative funding.

The dire nature of public education statewide cannot be fixed when PED lacks consistent leadership to plan action steps and execute those plans in a timely manner. One disastrous victim of the repeated exodus of PED leaders is the State’s incomplete, multi-year Strategic and Action Plan, which the PED had not begun drafting as of 2021. Gonzales Dep. 310:20-312:3. In 2022, the goals of PED’s Action Plan were admitted by PED to be aspirational at best (*id.* at 180:14-181:3), while the cost to achieve them remained unknown. *Id.* at 210:13-212:9, 233:3-23, 243:1-24, 245:7-247:1, 250:22-251:16. Even then, PED had no plans to audit or otherwise ensure that district funds are spent efficiently and effectively (*id.* at 280:1-9), or to ensure that PED’s own staffing is sufficient to measure program effectiveness for at-risk students (*id.* at 194:3-22; 195:4-196:13, 281:10-19) – despite the Court’s Order “to establish an accountability system that can measure the efficacy of programs and assure that local districts are spending funds in a way that efficiently and effectively meets the needs of at-risk students.”

b. High PED vacancy rates impede the State’s ability to fulfill its oversight and accountability duties

¹² *See id.* at note 10; see also *Lashawna Tso Joins PED as Assistant Secretary of Indian Education*, Oct. 14, 2020, <https://losalamosreporter.com/2020/10/14/lashawna-tso-joins-ped-as-assistant-secretary-of-indian-education/>.

¹³ <https://webnew.ped.state.nm.us/bureaus/indian-education/staff/>.

Relatedly, high vacancy rates throughout PED compound the high attrition problem among PED leadership. PED’s vacancy rate hovered between 22-25 percent from FY21 through FY23,¹⁴ while PED’s 2023 budget request to the Legislature states that “current staffing levels are not sufficient to meet findings from the *Martinez* and *Yazzie* case.” Leg. Fin. Comm., *Report to the Legislature Volume 2: Appropriations Recommendations*, LFC website, 390 (Jan. 2022).¹⁵ In fact, a 2023 performance review by the U.S. Department of Education shows PED fell short on dozens of federal guidelines, finding at least 60 areas where the State was noncompliant, and action needed to be taken within 60 business days. *See* U.S. Dep’t of Educ., *New Mexico Consolidated Performance Review Report FY 2023*, U.S. Dep’t of Educ. website (March 18, 2024).¹⁶ Most recently, the 2024 LFC’s Report to the Legislature found that, “the influx of federal aid, expansion of state initiatives, and **high turnover in leadership** have slowed PED operations. [PED] has delayed reporting on school accountability measures and fallen behind on other key functions, such as processing reimbursements and completing formula and program compliance audits,” concluding that “PED must quickly improve data collection and fiscal management capabilities to execute basic operating procedures.” Leg. Fin. Comm., *Report to the Legislature Volume 2: Appropriations Recommendations*, LFC website, 43 (Jan. 2024) [hereinafter *LFC Report to the Leg. 2024, Vol. 2*].¹⁷

In addition to failed oversight, high PED vacancy rates also directly impact student

¹⁴ *See* New Mexico Sunshine Portal for years 2020, 2021 and 2022, <https://ssp3.sunshineportal.nm.com/#employees> (follow “Data Year” hyperlink; then follow “Employees” hyperlink; then follow “Executive” hyperlink; then follow “Public Education Department” hyperlink).

¹⁵ https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Budget_Recommendations/2023RecommendVolII.pdf.

¹⁶ <https://oese.ed.gov/files/2024/03/New-Mexico-2023-Performance-Report-Final-1.pdf>.

¹⁷ https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Budget_Recommendations/FY25%20Volume%20%20Appropriations%20Recommendation.pdf.

outcomes. In 2022, PED’s then chief of staff and interim Deputy Secretary for School Transformation and Innovation, Angelo Gonzales, testified that PED lacked sufficient staff to achieve the targets listed in the State’s Action Plan (Gonzales Dep. 277:12-18, 180:1-13) while its plans to hire five new staff in 2022 were aspirational. *Id.* at 180:1-13. In his dual PED roles, Gonzalez oversaw both PED’s Human Resources department – *e.g.*, hiring, discipline, retention and recruitment – and PED’s Research, Evaluation, and Accountability (REA) Division. Notably, the REA Division is critical for monitoring and ensuring statewide compliance with federal reporting requirements, evaluating student outcomes, and conducting data analysis and collection, *Id.* at 61:18-62:21, 68:8-17, 94:5-25, 173:23-174:1. The Division, he testified, requires “full staffing” and people with “extremely specialized” skills who have “full-time focus” to achieve every one of its goals. *Id.* at 81:1-15, 166:17-167:15. Evaluation, for example, is a “rigorous, formalized approach to [...] measure outcomes in programs.” *Id.* at 81:16-22. It applies “statistics and really rigorous research designs, to be able to make inferences about the impact of specific programs and interventions on student outcomes.” *Id.* at 83:6-13. The PED’s evaluation work, he admitted, is “necessary” for improving student outcomes in New Mexico. *Id.* at 84:1-10.

In 2022, the REA Division was half-vacant. Gonzales Dep. 70:20-71:5. Gonzales testified that the REA Division must fill the vacancies to achieve its objectives but lacked sufficient funds to do so, including increasing pay. *Id.* at 63:12-20, 71:22-73:9, 81:1-15, 163:6-164:13. Thus, Gonzales could not determine when, if ever, the Division would be fully staffed. *Id.* at 76:25-77:6. Due to its need for highly specialized skills, however, more funding alone would not resolve the issue. *Id.* at 166:17-167:20. A year later, Gonzales vacated his role, along with the now former REA Division director, Matt Goodlaw, who lasted a mere 10 months. *Id.* at 30:21-24; 61:18-21.¹⁸

¹⁸ Online resources indicate Goodlaw left PED in Jan. 2023, and Gonzales left in Sept. 2023.

By 2024, the REA Division was reduced from eight positions to four and currently suffers from two vacancies. *See* PED's website.¹⁹

Due to inadequate staffing and inconsistent leadership, PED has failed to ensure that school districts prioritize budget funds and operate programs in a way that supports at-risk students. Since 2019, the overall actions taken by the State to improve education are scattershot and inconsistent. Consequently, the State is nowhere near satisfying the Court's Orders. Public education will remain in crisis mode until the State creates a plan to oversee implementation of the Court's Orders along with action steps to improve education for at-risk students.

3. The State Lacks a System of Accountability for School Districts

New Mexico continues to lack a system by which it can track the expenditure of funds allocated to each school district to determine whether funds intended to be spent on programs for at-risk students are actually being spent on these programs and whether these funds are resulting in improved proficiency for at-risk students. Moreover, the State does not require school districts to spend the funds allocated for at-risk students on these students and has not implemented a mechanism to address districts that fail to spend their allocation accordingly. Without such an accountability system, Defendants have no way of knowing how all the money appropriated by the Legislature is being spent and no way to enforce spending requirements.

To remedy these serious deficiencies, six years ago this Court ordered:

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 every public school in New Mexico would have the resources 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.

¹⁹ <https://webnew.ped.state.nm.us/bureaus/accountability/staff/>.

Decision and Order at 74-75. In reaching this remedy, the Court specifically found:

2299. On the subject of PED oversight over the alignment of district spending with student need, the 2011 LSC/LESC joint study found, —the implementation of performance-based budgeting for public schools starting in FY14 would be of great benefit.¶ Ex. P-87 at 38.

2300. Mr. Sallee testified that PED is already vested with sufficient budgetary authority to withhold approval of a school district’s SEG allocation if PED determined that the district was not spending its money in accordance with the educational mandate of the New Mexico constitution. Sallee, 7/21/17-a.m. at 115:21-116:25, 121:11-122:8.

FFCL, and Order re Final Judgment.

But progress on tracking use of State funds has languished since 2018:

New Mexico continues to struggle with poor student outcomes and an inconsistent use of educational data. New Mexico’s progress toward improving its use of data has been hampered by significant turnover in the Public Education Department leadership as well as the lack of a coordinated long-term vision of education.

LESC Annual Report, supra p. 8 and note 4, at 39.

Moreover, PED’s leadership is not committed to and has not implemented a system for tracking and ensuring that the districts are properly spending the funds the Legislature has appropriated for the education of at-risk students. Through the State Equalization Guarantee (SEG) the Legislature directs the bulk of state education appropriations to the school districts. For school year 2024 the State appropriated \$4.17 billion (94 percent of all state education funding) to districts through the SEG.²⁰ The remainder of state annual education funding is appropriated through so-called categorical programs (“... programs with a statutory distribution mechanism that differ from the SEG, including the transportation distribution, out-of-state tuition, emergency supplemental funding, standardized assessments, and the Indian education fund.”), and “below-the-line” (BTL)

²⁰ Notably, this was between \$11 million and \$243 million less than requested by the Executive, the LFC or the LESL, respectively. *See* Leg. Educ. Study Comm., *2024 Quick Guide to New Mexico Education Laws and Budget*, LESL website, 15 (2024).

programs (“... programs over which PED has broad authority to decide how to best expend funds; generally, these programs do not have a specific statutory distribution mechanism[,] and are either ... semi-recurring ... [or] one-time nonrecurring appropriations.”). Leg. Educ. Study Comm., *2024 Quick Guide to New Mexico Education Laws and Budget*, LESC website, 14 (2024).²¹ For school year 2024 the State allocated \$299 million in categorical appropriations, \$68 million in “semi-recurring” BTL appropriations, and \$138 million in non-recurring BTL appropriations. *See Id.* at 14-17.

In the deposition of then-PED Secretary Kurt Steinhaus he testified

Q.·BY MR. YOHALEM:·I'm asking you, as the head of education for the State of New Mexico, whether PED has the authority today to require school districts to spend the at-risk portion of the SEG on supplemental programs serving at-risk students?

A.·The PED has the authority to require school districts to tell us how they are addressing the needs of at-risk children.·We do not have the authority to make them spend money that's in the SEG on something specific.

Steinhaus Dep. 208:9-19.

Q.·BY MR. YOHALEM: Once you have approved the Ed Plans²² for -- let's be specific -- the Ed Plans that have been approved for all 89 school districts for the 2022/2023 school year, what effort will PED make to track the expenditures laid out in the Ed Plan to determine whether those expenditures are being made on at-risk children through the programs set forth in the Ed Plans?

A.·Yeah, you're describing something that doesn't exist.·There isn't a direct connection from what's stated that a school district is planning to do versus a budget allocation for that specific thing, unless it's a categorical appropriation.

Id. at 251:10-24

Q.·BY MR. YOHALEM:·What will happen if, for school district A, you determine that

²¹ <https://www.nmlegis.gov/Entity/LESC/Documents/2024%20Quick%20Guide%20to%20New%20Mexico%20Education%20Laws%20and%20Budget.pdf>.

²² In 2021, legislation was enacted to amend the requirements of district Educational Plan, which are submitted for approval to PED, to identify the programs and services necessary to improve academic success of at-risk students based on the amount of funding generated in a district through the at-risk index. *See* NMSA § 22-8-6(E). However, districts are not *required* to spend funding on these programs and services, nor does the PED even require districts to *report* how the funding for these purposes, as identified in the Educational Plan, was actually spent.

the Ed Plan's description of the expenditure of their SEG money is different from their actual expenditure of the SEG funds?

A. (No audible response.)

Q. I mean is the Department, A, looking at that; and B, will the Department do anything about it?

THE WITNESS: Again, I think you're describing something that doesn't exist. You're describing a review of SEG spending by category, and that does happen in categorical and below-the-line funding. In the SEG, what the State of New Mexico has had in place since, I think, 1974, when the funding formula was established, was local control around money that's appropriated in the SEG.

Id. at 253:3-23.

BY MR. YOHALEM: ... Do you track -- not can you now, but do you track, or does PED track how the SEG funds for at-risk students are expended by school districts as set forth in their Ed Plans?

A. Okay. I think I've answered that question about a dozen times.

Q. And the answer is no.

A. No.

Id. at 255:13-21.

In its Decision and Order, the Court forcefully rejected PED's excuses for failing to monitor and enforce the districts' expenditure of state funds:

PED also defends against any claim that it is responsible for failure to provide programs that would ameliorate the education gap suffered by at-risk students by claiming that it cannot control the districts' spending. In making this claim, PED reads its authority under the statutes too narrowly, and it forsakes its oversight role.

PED has a statutory obligation to —supervise all schools and school officials coming under its jurisdiction, including taking over the control and management of a public school or school district that has failed to meet requirements of law or department rules or standards, and to —determine policy for the operation of all public schools and vocational education programs in the state. NMSA 1978 § 22-2-2(C) (2004).

This authority is broad enough for PED to review and assure that districts are using the money provided by the State to provide programs to assist at-risk students. PED approves the annual budget for each district and it approves federal grants to the districts. Deputy Director Charles Sallee testified that PED has budgetary authority under the SEG to withhold approval of a district's SEG allocation if the PED determined that the district was not spending its money in accordance with the State Constitution. ...

PED is also required to monitor or audit the use of these SEG and federal funds, but it fails

to exercise this power sufficiently to determine that districts are using these funds as required for at-risk students. As the LFC and the LESC have reported, PED has failed to monitor or audit the districts' spending of their annual funding.

Decision and Order at 52-53 (testimony citations omitted). And the Court concluded: "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.* at 53-54.

C. The Lack of a Comprehensive Remedial Plan Has Resulted in Inadequate and Piecemeal Programmatic Remedies which have Caused a Catastrophe for At-Risk Students and the Continued Violation of Their Constitutional Rights

Although the Legislature has appropriated a significant increase in funding for education since the Court's Decision and Order, PED and many of the school districts failed to utilize large amounts of this funding and failed to direct the funds they did use to programs essential to ensure a sufficient education for at-risk students. In each of the sections below, Plaintiffs set forth how PED's failure to develop and implement a comprehensive remedial plan to address the Court's findings has resulted in money appropriated by the Legislature for at-risk students not being used effectively to meet these students' educational needs. While the Legislature is an essential partner in remedying the constitutional violations in this case because it controls the purse strings and can mandate policies and programs, the executive branch, with PED in the lead, has the unique responsibility for implementing the Legislature's mandates and for ensuring that the State's funds are being used as part of a comprehensive plan to provide all at-risk students the constitutionally sufficient education to which they are entitled.

A comprehensive multi-year remedial plan must be developed for another reason as well: to ensure that the Legislature continues to meet its constitutional obligation to supply funds and policy mandates directed at bringing at-risk students up to the level of their peers. There must be coherent guidance as to which programs are serving these students' needs so that these programs

can be mandated and funded on a recurring, rather than sporadic, basis. And there must be a coherent plan to address gaps in programming and services so the Legislature can mandate and fund new or expanded programs and services. In addition to its annual SEG appropriation, the Legislature funds specific educational programs through its more targeted, and often non-recurring, BTL appropriations. But, as the Court found: “BTL funding may vary annually and may be terminated for a fiscal year. These grants are generally not available to all districts. The uncertainty surrounding this funding makes it difficult to use it for programs that should be sustained year-after-year.” Decision and Order at 49-50 (testimony citations omitted).

Finally, there must be a comprehensive multi-year remedial plan with budget commitments to protect at-risk students from the inevitable economic downturns that will cause reductions in overall state revenue and challenge the State’s commitment to following through on remedies for these students’ constitutional deprivation. As this Court has ruled, the State cannot balance its budget on the backs of at-risk students:

First as a legal matter, lack of funds is not a defense to providing constitutional rights. ... Federal courts have repeatedly held that financial constraints do not allow states to deprive persons of their constitutional rights. ... A sufficient education is a right protected by the New Mexico Constitution. As such it is entitled to priority in funding. Supporting an opportunity for a complete, proper, quality education is the legislature's paramount priority; competing priorities not of constitutional magnitude are secondary, and the legislature may not yield to them until constitutionally sufficient provision is made for elementary and secondary education. ...

Second the remedy for lack of funds is not to deny public school children a sufficient education, but rather the answer is to find more funds. PED or the legislature may find ways to have the funding already allocated spent more efficiently, but the weight of the evidence present in the trial suggests that more money will have to be allocated to education.

Decision and Order at 54-56 (testimony, internal quotation marks, and case citations omitted). In short, a comprehensive remedial plan with annual budget commitments must be developed through the process set forth in this Motion, and then ordered by this Court, and then implemented by the

State to protect at-risk students from suffering from budget fluctuations in the future.

1. The State Continues to Violate the Constitutional Rights of Native American Students to a Sufficient Education

Six years ago, the Court ruled that Native American students have a constitutional right to a sufficient education, one that “prepares them for both college and career opportunities and to serve within the various roles of their tribal communities and tribal governments.” FFCL #512 (testimony citations omitted). The Court found that Native American students, comprising 10 percent of the total student population in public schools statewide, come from strong tribal communities inherently grounded in their Indigenous values, histories, and languages. Native students’ cultural assets, the Court found, should be recognized and supported by the State and the public school system to ensure their access to, and success in, a balanced education. FFCL ##458, 461. Today, however, the State continues to deny Native American students the necessary educational inputs that lead to improved outcomes and overall well-being, violating their right to a sufficient education under the State Constitution.

Further, the Court recognized that over 100 years of federal policies, starting in the 1800s, have resulted in long lasting negative impacts on Native children, their families, and tribal communities. *See generally*, FFCL ##497-511. That is why the Court ruled that the New Mexico Indian Education Act (NMIEA) “sets forth the legislative determination of what constitutes a constitutionally adequate education for Native American children [and] failure to comply with it amounts to a violation of the State Constitution’s adequacy clause.” FFCL #538. *See also* FFCL ##3067, 3131. The Court recognized that the NMIEA was “meant to mitigate the impact of historical trauma by ensuring that public schools in New Mexico are meeting the unique cultural and linguistic needs of Native American students.” FFCL #530. The State, however, is still far

from fulfilling its obligations under the NMIEA and ensuring that education for Native students meets the standards ordered by the Court.

a. Native American Students Outcomes are Dismal

At the time of trial, Native students suffered from deep educational disparities, language loss, and poor social-economic outcomes. Since then, all state education indicators still show that nothing much has changed. Native American student proficiency in reading, math, and science was significantly lower than students not at-risk (*see* Section II(A), *supra*). Despite improvements in the graduation rates of Native students (71.8 percent for the 2022 cohort), Native students still graduate at much lower rates than non-Native students. *See LESC Annual Report, supra* p. 8 and note 4, at 15. Even worse, recent data shows that Native students have the highest absenteeism rate among all other students. *See LFC Attendance and Performance Report, supra* p. 8 and note 5, at 44.

b. The State fails to meet the mandates of the New Mexico Indian Education Act

The evidence below shows that the State fails to meet its duties to comply with the NMIEA and lacks plans for how it will comply with the Court’s Orders.

i. PED fails to create culturally and linguistically relevant education for Native American students

Among the numerous NMIEA mandates is the duty to ensure Native students have “access to a curriculum and pedagogy that is culturally relevant and responsive” to their needs. This in part requires the Indian Education Division (IED) to assist districts and Tribes “to plan, develop, implement and evaluate culturally and linguistically relevant curricula in native languages, culture, and history and conduct indigenous research [...] and evaluation of effective curricula for tribal students.” FFCL #527. *See also* §§22-23A-5(E)(2) and (5).

Oddly, in 2022, the former interim Assistant Secretary for the IED testified that research and evaluation of culturally and linguistically relevant curriculum was not within her purview, but rather, rests with the Curriculum and Instruction Division's Indian education curriculum specialist, a position that has been vacant for six or more months. Reyes Dep. 71:18-72:15, 21-25. She also admitted that the PED neither conducts indigenous research (*id.* at 73:21-74:2), nor does it "develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to tribal students in pre-K through sixth grade," as required under NMSA § 22-23A-5-E(3). Reyes Dep. 69:14-25. As of today, a culturally and linguistically relevant curriculum inclusive of the histories and cultures of *all* New Mexico Tribes, Nations, and Pueblos does not exist; and thus, no such curriculum has been implemented statewide or in the districts with a majority of Native American students. Reyes Dep. 69:14-25, 70:13-17.

Further, Native students today do not have access to culturally relevant instructional materials despite the State's duty to ensure that such materials are available to all districts serving Native students, as well as training for teachers to use them effectively. In fact, the Assistant Secretary for the IED testified that this duty falls under the Teaching and Learning Division and not the IED. *Id.* at 74:3-17. However, the Director of the Language and Culture Division admitted that PED is unaware of, and does not track, districts' plans or strategies for implementing culturally and linguistically relevant instruction. Deposition of Mayra Valtierrez (Valtierrez Dep.) 350:16-351:5, Jul. 26, 2022, attached hereto as Exhibit 7. Thus, it is safe to presume that the PED has not and will not make culturally and linguistically relevant curricula and instructional materials available anytime soon.

Despite the IED's duty to provide culturally and linguistically relevant professional development for educational assistants, teachers, and principals serving Native American students,

the State does not require school personnel to take the professional development trainings once available. Reyes Dep. 67:3-10; see also NMSA § 22-23A-5.

Defendants have much work to do to ensure a culturally and linguistically relevant education is made available to Native students in all school districts. To do so, it is imperative that the State develop a systemic and cohesive strategy for institutionalizing all components of a culturally relevant education in collaboration with Tribes, Nations, and Pueblos and local Indian education experts. The State has not done this. *See* Exhibit 2. A comprehensive plan must include targets related to implementing culturally relevant curricula, instructional materials, instruction, and evaluation, and dates by which such targets must be met. Without a plan to meet the NMIEA's mandate of a culturally relevant education for Native American students, Defendants will remain out of compliance with this Court's orders.

ii. PED Fails to Ensure Native Language Programming at District Level

Under the NMIEA, the Assistant Secretary is responsible for ensuring "Native language bilingual programs are part of the school districts' professional development plan." FFCL ## 459, 2991. However, in 2022, the interim Assistant Secretary admitted that this duty did not belong to the IED but rather the Language and Culture Division (LCD). Reyes Dep. 91:19-92:14.

To fulfill the NMIEA's intent, public schools statewide will need a larger pool of certified 520-certified teachers, a specialized Native language and culture certificate for tribal members to teach Native language and culture in public schools. In an effort to increase 520-certified teachers, the Legislature at the request of Tribal leaders enacted House Bill 60 in 2022, which increased salary payments to 520-certified teachers to be in parity with Level 1 general education teachers. Despite that legislative mandate, however, no money has been allocated since that time specifically

for 520-certified teachers. *See* Leg. Educ. Study Comm., 2024 Post-Session Review, LESC website 53 (April 2024).²³

iii. PED Does Not Ensure Districts Conduct Native American Student Assessment and Reporting

The 2019 amendments to the NMIEA require school districts, in part, to conduct a needs assessment to determine the supports and services Native American students need to graduate and be college and career ready. Importantly, the needs assessment requires, in part, school district officials to meet with local Tribes to prioritize the needs to be addressed; commit to meeting Native student needs and closing the achievement gap in the district's budget; develop a systemic framework for improving Native student outcomes; and, develop an accountability tool that measures public school efforts to implement the necessary interventions and supports identified in the systematic framework. *See* NMSA §§ 22-23A-9-11. The IED must also work with school districts to develop and publish an annual Tribal Education Status Report (TESR) and to share it with all Tribes in New Mexico. *See* NMSA § 22-23A-7. The Assistant Secretary, in 2022, conceded however that the PED does not ensure districts comply with these statutory mandates.

Q. And so what does PED do to ensure that schools and school districts are implementing HB 250?²⁴

A. Unfortunately there is nothing in the policy that states, if they do not complete it, that we can do anything. There are still some that have not completed a Student Needs Assessment or a Systemic Framework. We can continue to reach out and ask them for it, but there is nothing in the rule that states that we can do anything to hold them accountable for a TESR, Needs Assessment, Systemic Framework, or Accountability Tool.

Reyes Dep. 105:14-106:2, 137:7-14.

²³ <https://www.nmlegis.gov/Entity/LESC/Documents/LESC%202024%20Post-Session%20Report%20-%20Web%20Version.pdf>.

²⁴ Enacted in 2019, H.B. 250, Native American Student Needs Assessment, amended the NMIEA to add new requirements for a needs assessment and systematic framework, among other requirements. *See* NMSA § 22-23A9-11.

c. The State Does Not Target Funding to Support Native Student Needs

Despite the Court’s ruling that Native students are deemed at-risk and require greater interventions, funding and resources, the State has not created a funding or accountability mechanism to ensure Native student needs are prioritized. Rather, the State simply increased appropriations to the general education of all students through the State Equalization Guarantee (*see* Section II(B)(3) *supra*). Closing the gap in educational opportunities and outcomes for New Mexico’s Native American student population at large will require targeted and equitable state funding to support culturally and linguistically relevant programming and services to meet the needs of Native students in the classrooms and in the tribal communities where they live.

Although the Legislature increased appropriations to the NMIEA Fund, the only targeted funding source for Native students, it is awarded to selected districts and Tribes, and arrives in the form of small, short-term grants after the school year has started.²⁵ The Court found in 2018, “[u]ncertainty surrounding [IEA grant] funding makes it difficult to plan for continuing programs and [funding] should be sustained year-after-year.” Decision and Order at 50. In fact, multiple state legislative committee reports have found that the lack of timely, reliable and consistent funding is a substantial challenge for Tribes and districts that serve Native students to build and sustain their capacity. *See e.g., LESC Annual Report, supra* p. 8 and note 4, at 81; *see also* Leg. Educ. Study Comm., *Hearing Brief: Understanding Tribal Education Sovereignty*, LESC website,

²⁵ Appropriations for the Indian Education Act: \$2.5 million in FY15; \$20.5 million in FY25 (over half of the funding goes to special projects designed by PED). *See* Leg. Fin. Comm. & Leg. Educ. Study Comm., *Update on Martinez-Yazzie Lawsuit and Outcomes*, LESC website, 8 (July 16, 2024), <https://www.nmlegis.gov/handouts/ALESC%20072424%20Item%207%20.2%20-%20Updates%20on%20the%20Martinez%20Yazzie%20Lawsuit%20LFC%20Presentation.pdf>.

11, 14 (June 26, 2024).²⁶ These reports identify the need for the PED to improve the efficiency of its process for distributing NMIEA funding to allow Tribes and districts to implement programming and spend down grant awards promptly. *See, e.g.,* Leg. Fin. Comm., *Program Evaluation: Martinez-Yazzie Sufficiency*, LFC website, 19, (Sept. 23, 2022).²⁷ As evidenced throughout this Motion, such a system must address the unique needs of Native students, as required by the NMIEA. Such a specific tracking process necessitates a governance and accountability framework that involves Tribes in the school districts' spending decisions. This system does not now exist.

d. Conclusion as to Defendants' ongoing violation of the constitutional rights of Native American students

The examples provided above highlight the State's failure to remedy the system inequities that impede Native students' success and to comply with the New Mexico Indian Education Act. Defendants continue to act without a comprehensive plan. Native American students will continue to pay a high price for the many deficiencies of New Mexico's public education system unless the State engages in strategic planning with Tribes, Nations, and Pueblos to determine clear goals, benchmarks, targeted and sustained staffing, and multi-year funding sufficient for school districts and tribal communities to provide a high quality education to Native American students that prepares them for college, career, and civic engagement, on par with their non-Native peers.

2. The State Continues to Violate English Language Learner Students' Constitutional Right to a Sufficient Education

In 2018, the Court ruled the State is violating the constitutional rights of English Language

²⁶ <https://www.nmlegis.gov/handouts/ALESC%20062624%20Item%205%20.1%20-%20Understanding%20Tribal%20Education%20Sovereignty%20LESC%20Brief.pdf>.

²⁷ https://www.nmlegis.gov/Entity/LFC/Documents/Early_Childhood_And_Education/Martinez-Yazzie%20Education%20Note.pdf.

Learners (“EL” or “ELL”) students by providing them insufficient funding and programming, and not adhering to the State’s duties to ensure that they are adequately prepared for college or career. FFCL ## 297, 3032. Defendants had not met any of their duties under federal or state law. FFCL ## 3055– 3059. The Court ordered Defendants to take immediate steps to fix these problems by April of 2019. Decision and Order at 74.

In its Decision and Order, the Court cited Sections 8 and 10 of Article XII of the New Mexico Constitution, in addition to state statute regarding bilingual and EL education. *See* Decision and Order at 20–22. Section 8 of Article XII requires New Mexico to train teachers “to qualify them to teach Spanish-speaking pupils and students in the public schools and educational institutions of the state,” and Section 10 requires that students of Spanish descent—or Latino students—shall “enjoy perfect equality with all other children in all public schools and educational institutions of the state.” *Id.*

According to figures from PED released after the 2022–23 school year, more than 18% of New Mexico public school students are English learners. *See* Pub. Educ. Dep’t, *Bilingual Multicultural Education Program Annual Report 2022-2023*, PED website, 8 (Jan. 2024) [hereinafter *PED BMEP Annual Report*].²⁸ Of New Mexico’s students enrolled in Bilingual Multicultural Education Programs (BMEPs), 78% are Latino students and 16% are Native American students. *See id.*

A recent LFC study shows that ELL proficiency scores in reading and math fare no better in 2024 than in 2017. *See* Leg. Fin. Comm. & Leg. Educ. Study Comm., *Update on Martinez-Yazzie Lawsuit and Outcomes*, LESC website, 13 (July 16, 2024).²⁹ Much worse are ELL students’

²⁸ <https://webnew.ped.state.nm.us/wp-content/uploads/2024/07/22-23-BMEP-APR.pdf>.

²⁹ <https://www.nmlegis.gov/handouts/ALESC%20072424%20Item%207%20.2%20-%20Updates%20on%20the%20Martinez%20Yazzie%20Lawsuit%20LFC%20Presentation.pdf>.

English-language proficiency scores. PED data for both school years 2020-2021 and 2021-2022 shows that *0 percent of all ELL students* – including those enrolled in BMEPs – achieved proficiency in the English language. Data for 2023-24 has yet to be reported. *See PED BMEP Annual Report, supra* at 10. These horrible academic and language proficiency scores are directly tied to PED’s failure to ensure that all ELL students statewide receive adequate ELL programming and funding.

Court Findings from 2018 showed that the poor academic outcomes were the result of Defendants’ failure to carry out their duties under state law, the state constitution, and federal law, “to provide appropriate guidance, monitoring, and oversight to school districts to ensure that all ELLs receive adequate language assistance programs.” FFCL #3042. Most problematic was PED’s failure to “ensure and oversee that language programs provided to ELL students [...] are compliant with both state and federal laws” and that “New Mexico school districts that do not have either a [BMEP], or stand-alone Title III program, are providing English as a Second Language (ESL) and English language development (ELD) services for [ELL] students.” FFCL ## 3035-3036; *see also* FFCL ##3032, 3034, 3036-3038, 3060–3062.

Evidence from 2022 to the present proves that Defendants’ actions have not addressed the findings provided above and have not created systemic changes or improved educational opportunities and outcomes for ELL students. Testimony of PED’s director of the Language and Culture Division (“LCD”), in 2022, responsible for ensuring state and federal obligations to ELL students are met, proves that the same problems from 2018 persist. Namely, the PED “... fails to monitor and support districts and schools in their education of ELL students,” FFCL # 376; “... has never evaluated whether the funding that school districts receive is enough to implement effective programs for ELLs,” FFCL ## 382-383; “[does] not monitor how districts are spending their non-

categorical funding to support the needs of ELL students,” FFCL # 391; “...does not know if those students – who are not in BMEPs – are being served in language proficiency programs to help them learn English; ...does not monitor what language proficiency programs, if any, are serving ELL students who are not enrolled in BMEPs or Title III programs; [has not] conducted any analysis to determine the effectiveness of ELL programs in the State that are not BMEPs; ... has never evaluated the quality of the guidance it provides to school districts on implementing ELL programs that are not BMEPs.” FFCL ## 421-424.

In January of 2019, the PED’s Bilingual Multicultural Education Bureau was elevated to become the Language and Culture Division (“LCD”), a role within PED that carries more responsibilities for ELL students and officially serves as “the lead for language, culture, and equity[.]” Deposition of Mayra Valtierrez (Valtierrez Dep.) 162:19-163:7, Apr. 4, 2022, attached hereto as Exhibit 7. At its core, the LCD is responsible for overseeing ELL education in New Mexico public schools, including: “implementing state-funded BMEPs” and “meeting federal obligations to [ELL students] by providing EL[L] programs that support students in becoming proficient in English and achieving academically.” See PED website.³⁰ These responsibilities require LCD, specifically, to monitor district-compliance and provide them with adequate technical assistance on ELL and bilingual programs and services. *Id.*; see also Valtierrez, 140:10-25.

PED, however, does not ensure school districts that receive Title III and state-bilingual funding abide by state and federal requirements to ELL students. Districts that are suspected of non-compliance with such requirements should trigger PED to conduct a “focused monitoring” or “technical assistance” visit. Valtierrez Dep. 115:16-116:10. PED admits, in fact, that it cannot

³⁰ <https://webnew.ped.state.nm.us/bureaus/languageandculture/>.

assess the quality of an ELD program without conducting an on-site, technical assistance visit. *Id.* at 152:16-21. Such visits allow PED to review student files and conduct interviews and classroom observations. *Id.* at 101:3-16. However, as of 2022, no focused monitoring visits have occurred “since 2019 or prior” (*i.e.*, “pre-pandemic”), (*id.* at 96:22-98:24, 100:12-17, 101:3-102:19, 102:25-103:4) and only one site visit was conducted in school year 2021-2022 to determine if a school district had met federal requirements to monitor for two years the ELL students who exited ELL status. FFCL # 333; Valtierrez Dep. 112:12-19, 145:1-15. Even worse, the LCD director cannot recall the number of visits – beyond “maybe two or three” – or any names of districts that PED visited from 2018 to 2020. Valtierrez Dep. 136:24-137:7. Beyond mere desktop monitoring – done three times a year – PED does nothing to determine if programs are appropriately serving ELL students across the State. *Id.* at 154:2-17. This Court’s findings, summarized in part above, show that this lack of monitoring of the content and quality of English learner programs existed at the time of trial, and Plaintiffs’ discovery shows that those problems persist. *See supra; see also* FFCL # 383–398 (findings that coding of EL programs did not provide for monitoring of quality of English Language Development programs).

Adding insult to injury, the LCD director admitted in 2022 that, for districts that do not receive federal Title III or state bilingual funds, “it is up to them to decide how they are meeting [certain] obligation[s] to English Learners.” Valtierrez Dep. at 129:3-18, 131:22-132:18. This admission flies directly in the face of PED’s duties to ensure that all school districts statewide are compliant with federal and state obligations to ensure ELL students are provided adequate ESL and ELD services. And due to the severe shortage of on-site visits (*id.* 136:3-10), PED has no way to know if any district’s ELL program complies with federal standards.

An additional federal requirement is for districts to monitor high turnover among staff

serving ELL students. LCD’s director, however, who testified that high turnover “absolutely” affects the quality of ELL Programs, admitted that LCD does not track that information. She testified that, even if a district’s high turnover had affected the quality of an ELL program, “I wouldn’t have that data.” She further admits that high turnover would trigger an on-site visit by the LCD “if we were informed of it.” *Id.* at 147:1-148:7, 148:16-149:16.

Despite poor academic outcomes among ELs and the failure to ensure districts are compliant with state and federal requirements, the PED, as of 2022, had no plans in place to otherwise improve outcomes and opportunities for ELL students statewide. Per the LCD director’s testimony, PED has no plans to increase BMEP participation among ELs -- despite a five-year trend from 2016-2020, showing decreased participation by ELs enrolled in BMEPs. *Id.* at 190:19-191:16, 193:16-195:17. PED had no concrete plans for conducting on-site visits during the 2022-2023 school year and, thus, no plans to assess whether ELD programs among New Mexico school districts meet the standards contained in its own ELD instructional framework. *Id.* at 262:18-263:25. While PED claimed that its newly-hired English Language Specialist would “lead” the review of English learner programs – presumably across the State – as of 2024, that position is vacant. *Id.*; *see* also PED website.³¹

3. The State Continues to Violate the Rights of Students with Disabilities

In 2018, the Court ruled that the State is failing to meet its obligations to students with disabilities under the Individuals with Disabilities Education Improvement Act, the Secondary Education Act (Every Child Succeeds Act) and the education clause of the New Mexico Constitution. Decision and Order at 24-25. The Court held that the State must comply with federal education statutes concerning students with disabilities in order to comply with the New Mexico

³¹ <https://webnew.ped.state.nm.us/bureaus/languageandculture/staff/>.

Constitution's Education Clause. *Id.* at 24-25. The Court found that school districts do not have the necessary resources to provide students with disabilities a sufficient education, and that the State lacks adequate accountability measures and adequate expertise to ensure students with disabilities students receive a sufficient education to which they are entitled. *Id.* at 65-66. The evidence below shows the State's continued failure to ensure that students with disabilities receive sufficient programs, services, and supportive resources to prepare them for career or college.

a. Educational Outcomes for Students with Disabilities

All educational indicators reveal that students with disabilities cannot read or do math at grade level. The 2022-2023 school year data shows that only 12 percent of special education students were proficient in reading while 38 percent of students without disabilities reached proficiency, and only 8 percent were proficient in math in contrast to 11 percent of nondisabled students (*see also* Section II(A), *supra*). The Court held that the poor educational outcomes reflect a systemic failure of the State to provide an adequate education to students with disabilities. Decision and Order at 46. This is the foremost reason why the U.S. Department of Education (USDE) has consistently found New Mexico as “needs assistance” to meet the requirements of the federal Individuals with Disabilities Education Act. In 2023, the State again received a “needs assistance” designation by the USDE. *See* Leg. Fin. Comm., *Progress Report: Special Education*, LFC website, 8 (Nov. 14, 2023) [hereinafter *LFC Special Education Report*].³²

b. Inadequate Services for Individualized Education Plans (IEPs)

In 2022, the State admitted that it does not provide IEP training to school districts. Deposition of Deborah Dominguez-Clark (Dominguez-Clark Dep.) 67:16-20, 68:5-10, Jul. 8,

³² https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/SPED%20Progress%20Report%202023-11-14%20FINAL.pdf.

2022, attached hereto as Exhibit 8. Nor does it evaluate or monitor districts to ensure students with IEPs are receiving the necessary services or supports. *Id.* at 176:19-177:8. Where a student with a disability requires a service not available in their district, the State does not provide assistance to the districts leaving districts solely responsible for acquiring that service. *Id.* at 177:9-15.

According to the LFC Special Education Report, 92 percent of PED’s complaint resolution reports over the past three years identified non-compliance with special education requirements, necessitating corrective action at the local level. *Id.* at 13. Most of the complaints from families of students with disabilities related to subpar local IEP processes. *Id.* Despite the overwhelming concerns of families, of which PED is undoubtedly aware, the PED has yet to require or implement a standardized statewide IEP process to ensure uniform implementation of special education services. *Id.* The Legislature appropriated funding to PED in FY25 for special education initiatives, including implementation of a statewide individualized educational program process. *See* Leg. Educ. Study Comm., *2024 Quick Guide to New Mexico Education Laws and Budget*, LESC website, 23 (2024).³³ However, there is no deadline for PED to accomplish this goal, and, given the State’s repeated failures to meet even its own deadlines, it is doubtful that PED can meet this goal without a concrete implementation plan.

c. Lack of Accountability and Oversight

The Court also found that “[t]here is inadequate supervision and oversight of how special education funds are being used in New Mexico.” FFCL # 2339 (internal citations omitted). In 2022, the State admitted that it still does not monitor state funding for special education, instead leaving it entirely up to districts with absolutely no oversight. Dominguez-Clark Dep. 40:23-41:24;

³³ <https://www.nmlegis.gov/Entity/LESC/Documents/2024%20Quick%20Guide%20to%20New%20Mexico%20Education%20Laws%20and%20Budget.pdf>.

49:3-50:25. The State also admitted that the Division of Special Education does not monitor restraint and seclusion cases and districts are not required to report on instances of restraint or seclusion for students with disabilities. *Id.* at 109:19-22, 273:17-19, 280:23-281:8.

The only tool of purported oversight is PED’s meager requirement for districts to report how they planned to spend funding for students with disabilities in their Educational Plans in 2021. The State admitted, however, that it did not review how districts *actually* spent this funding, whether the funds spent aligned with the reported Educational Plan, and had no plans to hold districts accountable with respect to their expenditures for students with disabilities. Notably, the State acknowledged that it did not have sufficient staff to provide this oversight. *Id.* at 52:13-17, 63:18-64:11, 252:16-20. Several state legislative reports have highlighted the significant concerns about whether school districts are adequately using funds allocated for special education. *See LFC Special Education Report, supra* p. 38 and note 32, at 13.

d. Conclusion as to Defendants’ ongoing violation of the constitutional rights of students with disabilities

The persistent deficiencies within the New Mexico special education system leaves students with disabilities without the necessary positive interventions, resources, and supports they require to be college and career ready, as mandated by this Court. Notably, the LESC staff is planning to implement a five-year plan to study special education and “recommend incremental, coordinated policy proposals in response to both research and stakeholder input” after conducting nine statewide listening sessions on this topic in 2023. *See LESC Annual Report, supra* p. 7 and note 3, at 38.

4. The State Continues to Violate the Rights of Students from Low-Income Families, and Continues to Fail to Provide the Programs and Services Necessary for All At-Risk Students

The Court found that New Mexico failed students from low-income families and in

doing so has failed the vast majority (about 70 percent) of our students. Four out of five students from low-income families are not proficient in reading or math, and not surprisingly, four out of five students from low-income families who attend college need remedial classes because they are not prepared for college or career. *See* Section II(A), *supra*; *see also* Decision and Order at 43. The Court ruled that children from low-income families are constitutionally entitled to the opportunity to be college or career ready, just like their non-low-income peers.

Despite this ruling, the State still has not provided the districts with the resources and supports required to implement necessary programs and services to all students from low-income families, and the State continues to violate the rights of New Mexico's low-income students.

"Children from families of lower socioeconomic status face serious challenges at greater rates than their peers. In New Mexico, this problem is particularly concerning because the State consistently has the first or second highest percentage of poverty in the country." FFCL #1. "Children from low-income families can and do learn and achieve at high levels if given the proper support and intervention." FFCL #2. "The obstacles facing at-risk students and their schools, while daunting, can be overcome if at-risk students are presented with [certain] quality programs and interventions." FFCL #3. "These include quality full day pre-K, which addresses the issue of at-risk students starting school behind other children; summer school which addresses the loss of skills over the school break; after school programs, small class sizes, and research-based reading programs." FFCL #4 (citations omitted). "Defendants, however, have failed to provide students with educational inputs that are adequate to provide students with an education that prepares them for college and career. The State has recognized the efficacy of programs that can provide at-risk students with proper support but the State has

not funded these programs to the extent that all at-risk children can participate in such programs." FFCL #5 (citations omitted).

a. Early Childhood Education

"Early childhood education for 3 and 4 year olds (PreK) is an important component of a sufficient education system." FFCL #6. Pre-K programs "are crucial to address the achievement gaps between low income and non-low-income students, as well as with students of color and ELL students." FFCL #7. "One of the key recommended practices for a rigorous, articulated early learning policy is that programs should be at least a full school day to ensure that the program is intensive enough to achieve desirable cognitive outcomes." FFCL #31 (citations omitted). "Full-day pre-K is more beneficial for children than half-day Pre-K as they receive more instructional time." FFCL at #49; *see also* ##51-56. Further, "[i]t is more difficult for low-income children to attend half day pre-K programs rather than full day programs because working families have a difficult time finding transportation and childcare after the half day program ends." FFCL #50. Neither the CYFD nor PED Pre-K programs in New Mexico offer all the necessary elements of a high-quality Pre-K program, such as transportation, highly qualified direct service staff, and full day. FFCL # 57 (citation omitted).

"[M]any eligible students in New Mexico receive no Pre-K services because of insufficient slots and funding." FFCL #69. PED Pre-K classrooms "are funded by below the line funding that requires school districts to put in a grant application to PED for money for pre-K education." FFCL #71. "The per pupil Pre-K funding is inadequate to cover all the costs of Pre-K services... and districts have to supplement Pre-K funding with operating and/or Title I funds." FFCL #73. "Some districts do not participate because they cannot afford to subsidize the program with their operational budget or other funding sources." FFCL #79. In

FY 17, out of the 27,000 four-year-olds in New Mexico, only about 3,600 students had access to a full-day program and about 9,000 four-year-olds did not have access to any type of Pre-K program. FFCL #90. “New Mexico PED PreK, New Mexico CYFD PreK, Head Start, and Title I and IDEA preschool programs are not funded the same way, are not all monitored by the same entities, have different requirements in terms of teacher qualifications, and vary in terms of eligibility requirements. FFCL #48. PED does not monitor the availability of preschool or PreK to children who attend school in school districts that have not applied for New Mexico PreK funding. FFCL #42. Despite the effectiveness of Pre-K, the Legislature has adopted no plan to ensure all four-year-olds have access to a full-day program. FFCL ##102-103.

Unlike k-12 educational programs, pre-k relies on a mix of public school and community-based programs that are funded with public funds administered by ECECD and PED. Despite changes to pre-k funding and program administration and oversight (*e.g.* increases to funding, the passage of distribution from the Land Grant Permanent Fund for early childhood education, and the establishment of the Early Childhood Education and Care Department (ECECD)), the fact remains that the State has yet to reach its own estimated funding need to provide sufficient slots for all unserved four-year-olds in New Mexico to attend high-quality, full-day pre-k. Actual enrollment demonstrate that between 8,000 and 12,000 four-year-olds continue to lack access to these programs, and the State continues to lack oversight of program quality and a sufficient number, high-quality educators.

- i. Insufficient Number of Funded Pre-K Slots for Four-Year-Olds

In November 2021, the Early Childhood Education and Care Department (“ECECD”)

released its Four-Year Finance Plan 2023-2026.³⁴ In it, the State estimates the number of slots needed to provide NM PreK (pre-k offered in community-based and school-based programs, funded and monitored by ECECD) to all three- and four-year-olds and four- and five-year-olds for fiscal years 2023-2026 (minus the children served by Head Start). Early Childhood Educ. and Care Dep't, *Four-Year Finance Plan 2023-2026*, ECECD website, 15 (November 2021) [hereinafter *ECECD Finance Plan*].³⁵ For FY 2023, the estimated unmet need for program slots for three- and four-year-olds was 18,170 and for four- and five-year-olds was 19,316. However, the State funded only 11,188 slots for four-year-olds, leaving between 6,982 and 8,128 unfunded slots in fiscal year 2023, which is between 36 and 45 percent according to the State's own estimates. *See id*; *see also* Early Childhood Educ. and Care Dep't, *Annual Outcomes Report – Fiscal Year 2023*, ECECD website, 24 (July 2, 2024) [hereinafter *ECECD Annual Outcomes Report FY23*].³⁶ In 2022, the State admitted that there were insufficient pre-k slots for 4-year-olds statewide, and that "there is a growing deficit in the budget to really meet the [projected] needs of the [NM Pre-K] program" Deposition of Sandy Trujillo-Medina (Trujillo-Medina Dep.) 51:4-13, 121:13-122:4, Aug. 5, 2022, attached hereto as Exhibit 9. Furthermore, the National Institute for Early Education

³⁴ <https://www.nmececd.org/wp-content/uploads/2021/12/ECECD-Four-Year-Finance-Plan-12.9.2021.pdf>.

³⁵ <https://www.nmececd.org/wp-content/uploads/2021/12/ECECD-Four-Year-Finance-Plan-12.9.2021.pdf>.

³⁶ https://www.nmececd.org/wp-content/uploads/2024/07/Annual-Outcomes_April_16_2024_ECECD_Comms_rev1.pdf. Plaintiffs recognize that there are likely 4-year-olds in community-based mixed age program slots, but the ECECD has not disaggregated this number by age. *See id*. The ECECD reported 17,533 funded slots for fiscal year 2024, but has not disaggregated this number by age, or released enrollment data necessary to make yearly comparisons. *See also Floreecer Progress and Accountability Report*, ECECD website, 2 (Dec. 2023), https://www.nmececd.org/wp-content/uploads/2023/12/Floreecer-Progress-Report-2023_final.pdf. Nevertheless, *ECECD's Finance Plan* estimates the number of funded slots necessary in FY24 is 19,325 (3-4 year-olds) and 18,170 (4-5 year-olds), so the number of slots funded in FY24 also falls short. *See supra*, p. 44 and note 35, at 15.

Research (“NIEER”) estimated that in 2023, the State had a spending gap of more than \$6,000 per child between the needed spending and current per child spending. Nat’l Inst. For Early Educ. Research, *The State of Preschool 2023*, NIEER website, 8 (2023) [hereinafter *NIEER Report – 2023*].³⁷ NIEER also found that New Mexico needs more than \$65 million in additional funding to provide a high-quality, full-day program for 4-year-olds currently enrolled, and more than \$124 million additional funding to provide universal access to high-quality, full-day pre-k for 4-year-olds not currently enrolled. *Id.*

ii. Insufficient Actual Enrollment of 4-Year-Olds

In addition to the gap between funding need and actual funding, NM Pre-K is only reaching an unacceptably low number of age-eligible children. Actual enrollment data for four-year-olds in full-day pre-k reveal on-going deficiencies in the NM Pre-K program. The ECECD reported 10,446 four-year-olds were enrolled in 2023 (6,817 in public school settings and 3,629 in community-based programs). *ECECD Annual Outcomes Report FY23*, *supra* p. 44 and note 36, at 21. Notably, the ECECD does not indicate whether these programs are full-day or half-day, so it is possible the number of four-year-olds enrolled in full-day programs is actually lower. *See id.* Nevertheless, almost 750 funded slots were unfilled³⁸ and between 7,700 - 8,900 four-year-olds were not enrolled in pre-k at all (between 43-46 percent).³⁹ The State is well aware that pre-k programs are not available in all communities or in all districts (or that travel time to the nearest program is prohibitive), and that waitlists for programs remain. Early Childhood Educ. and Care

³⁷ https://nieer.org/sites/default/files/2024-08/2023_nieer_yearbook_8-9-24.pdf.

³⁸ Plaintiffs arrived at this number by subtracting 10,446 (4-year-olds actually enrolled) from 11,188 (the number of funded slots for 4-year-olds). *See ECECD Finance Plan*, *supra* p. 4 and note 35, at 21, 24.

³⁹ NIEER estimates 55 percent of four-year-olds in New Mexico were not enrolled in NM PreK in 2023. *See NIEER Report – 2023*, *supra* p. 45 and note 37, at 116.

Dep't, *Findings from the New Mexico Early Childhood Education and Care Department's 2023 Family Engagement and Satisfaction Survey*, ECECD website, 26 (July 2023).⁴⁰ Yet in 2022, the State admitted that while ECECD makes funding available for community-based programs to provide transportation services, it is insufficient to pay for “the cost of a bus or to sustain the cost of transportation” for small programs, nor does it monitor the availability of transportation funding beyond these grants. Trujillo-Medina Dep. 111:13-112:21. In addition, the State admitted it does not track waitlists for students to access existing NM Pre-K programs in school- or community-based settings that are full, nor does it track communities seeking to establish a new NM Pre-K program. *Id.* at 42:11-43:2.

iii. Inadequate Program Quality

Not only are Defendants failing to fund sufficient pre-k slots for all the children who need them, Defendants are not ensuring that the programs that exist are of sufficient quality to serve children's needs. NIEER identifies 10 quality standards that are research-based benchmarks of highly effective pre-k programs. *See NIEER Report – 2023, supra* p. 45 and note 37, at 29-30. Every year, it issues an evaluation of public pre-k programs in every state, and whether these quality standards are explicitly required by state policy. *Id.* at 29. Importantly, NIEER does not assess or report on the actual implementation of these policies within each state. Their evaluation is solely based on the existence of state policies that align with the identified quality standards. *Id.* NIEER quality standards emphasize the need to ensure programs are not just available, but high quality; and that meeting all 10 standards does not necessarily guarantee that a program is of high-quality. *Id.* at 29-31. Rather, meeting the standards checklist is a “set of minimum criteria required

⁴⁰ https://www.nmeccd.org/wp-content/uploads/2023/09/2023-Family-Engagement-Survey-Findings-Report_Final.pdf.

by state policy, needed to ensure the effectiveness of preschool education programs, especially when serving children who are at-risk for school failure.” *Id.* at 29.

iv. Inadequate Data Collection and Monitoring

Here, the ECECD is required to oversee NM Pre-K programs to ensure they are high quality across settings (school- and community-based) and measure whether programs are actually preparing students for kindergarten and improving outcomes. *See* NMSA 1978 § 32A-23-4. In 2020, the LFC evaluation of the New Mexico pre-k program found it lacked effective quality metrics. *See* Leg. Fin. Comm., *Program Evaluation: Prekindergarten Quality and Educational Outcomes*, N.M. Leg. Website (June 20, 2020).⁴¹ Four years since the LFC’s evaluation, the State continues to lack effective methods to measure and monitor program quality. *See* Leg. Fin. Comm., *2023 Accountability Report: Early Childhood Education*, N.M. Leg. Website, 6 (Aug. 23, 2023) [hereinafter *LFC Early Childhood Accountability Report – 2023*].⁴² In 2022 and 2023 the ECECD **failed to comply with the requirements of the Pre-Kindergarten Act** to report certain data, such as “student retention in grades K-3 after participation in NM PreK[,] ... students entering kindergarten developmentally prepared, needing special services, and those proficient in reading and mathematics ...” Early Childhood Educ. and Care Dep’t, *Annual Outcomes Report – Fiscal Year 2022*, ECECD website, 7 (Jan. 13, 2023);⁴³ *see also* *ECECD Annual Outcomes Report FY23*, *supra* p. 44 and note 36, at 4; NMSA 1978 § 32A-23-4(B)(1).

In addition, Defendants’ failure to capture, track and analyze critical data pertaining to the

⁴¹https://nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Prekindergarten%20Quality%20and%20Educational%20Outcomes.pdf.

⁴²https://nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Early%20Childhood%20Accountability%20Report%202023.pdf.

⁴³https://www.nmeccd.org/wp-content/uploads/2023/08/ECECD-Annual-OutcomesFinalReport_Aug2023_ECECDComms.pdf.

educator workforce remains on-going and is also in violation of statutory requirements. Despite the requirement for the ECECD to report on “retention rates, wages and certification and education levels of ... programs’ staff members” in its annual reports, Defendants have failed to provide staff retention data for any NM pre-k programs (school- or community-based), or wage data for community-based pre-k teachers in any of its annual reports since the creation of the Department in 2020. NMSA § 9-29-11(B)(9); *see also ECECD Annual Outcomes Report FY23, supra* p. 44 and note 36, at 5. The Legislature recognized the importance of the ECECD in “develop(ing) and manag(ing) effective data systems” as necessary to support the functions of a coordinated program. NMSA § 9-29-8(M). Such data is also foundational to the ECECD fulfilling other duties to “conduct biennial assessments of ... early learning service gaps and needs and establish plans to address those service gaps and needs[,] and to develop an aligned system of workforce development for early childhood professionals,” as required by statute. NMSA §§ 9-29-8(B), (N).

These failures demonstrate that Defendants lack strong monitoring systems to ensure pre-k programming offered in both public schools and community-based settings are of sufficient quality to meet these students’ constitutional rights. In addition to failing to track required data, the data systems ECECD has in place are inadequate. According to the LFC’s Early Childhood Accountability Report from August 2023, the purpose of ECECD’s Early Childhood Integrated Data System (ECIDS) has not been realized. *See LFC Early Childhood Accountability Report – 2023, supra* p. 47 and note 42, at 6. “The original purpose of ECIDS was to allow for the integration of data from multiple early childhood data systems to analyze longitudinal outcomes in real time. Instead, ECIDS provides a snapshot of data on only educational outcomes, making *long-term outcome analysis difficult.*” *Id.* (emphasis added). The data reported to the LFC on NM Pre-K classroom quality, measured through the Classroom Assessment Scoring System (CLASS)

observation tool, was inconsistent and could not be compared across programmatic settings (*i.e.* public school and community-based). *Id.* Public-school program data was broken out by domain, while data for community-based programs was averaged. *Id.* The LFC recognized that “[r]eporting averages hinders understanding of which areas may need improvement and hinders direct comparisons on each domain between public and private prekindergarten providers.” *Id.*

v. Persistent Early Childhood Teacher Vacancies

Finally, Defendants have failed to address this Court’s findings concerning the substantial lack of well-trained, qualified and experienced teachers generally (*see* Section II(C)(5), *infra*), and specifically within early childhood and pre-k education. Although the State has the authority and duty to measure and monitor the number of early childhood and pre-k teachers needed within the education system, it fails to do so. Instead, the State relies on the annual New Mexico Educator Vacancy Report produced by the Southwest Outreach Academic Research and Policy Center at New Mexico State University [hereinafter *SOAR Report*]. Notably, the SOAR Report does not capture the true unmet need for early childhood and pre-k teachers in New Mexico, because it only accounts for school district job postings; it does not measure the need of districts with insufficient pre-k slots or those without any school-based pre-k programming, nor does it measure the unmet need within community-based programs. Nonetheless, the SOAR Report offers some insight into the persistent demand for early childhood and pre-k teachers, although its scope is notably limited.

In 2019, one year after this Court issued its Decision and Order, there were at least 26 vacancies for early childhood and pre-k classroom teachers within school districts. *See SOAR Report – 2019*, NMSU website, 3 (Oct. 2, 2019).⁴⁴ In the most recent SOAR Report, this number

⁴⁴ <https://alliance.nmsu.edu/publications/2019-New-Mexico-Educator-Vacancy-Report.pdf>.

had **increased** to 32 vacancies. *See SOAR Report - 2023, NMSU website*, 3 (Oct. 2, 2023).⁴⁵ In 2022, Defendants admitted they did not know how many early childhood teachers were needed in New Mexico, and it is unclear whether the State tracks the race and ethnicity of Early Childhood teachers. Trujillo-Medina Dep. 176:10-16, 200:1-6. The shortage of teachers has impacted the ability of pre-k programs to expand and new programs to open to full capacity, or at all, without sufficient staff. *Id.* at 170:15-24.

This Court found that the quality of teaching for at-risk students is inadequate and made significant findings related to teacher quality (*see* Section II(C)(5), *infra*). *See* FOF #670. This is equally as true for pre-k as it is for K-12 students, and NIEER’s quality standards reflect the importance of well-qualified pre-k teachers. *See NIEER Report – 2023, supra* p. 45 and note 37, at 30-31. To meet NIEER’s “teacher degree” benchmark, state policy must require lead teachers in every classroom to have a bachelor’s degree, at a minimum. *Id.* To support the inclusion of this benchmark, NIEER “found no examples of programs that have produced large persistent gains in achievement without well-qualified teachers.” *Id.* at 30.

Despite this, New Mexico does not have a statutory or regulatory requirement for all pre-k teachers to hold a bachelor’s degree. Lead pre-k teachers in public school settings are required to hold bachelor’s degrees and teaching licenses. *See* NMSA § 22-10A-6. However, lead teachers in community-based programs are only “expected to possess a high school diploma and demonstrate annual progress towards obtaining a bachelor’s degree.” Leg. Fin. Comm., *Ensuring High Quality Early Childhood Services & Educator Development*, LFC website, 2 (July 20, 2023).⁴⁶ To that end, the number of lead teachers in community-based pre-k programs with a

⁴⁵ <https://alliance.nmsu.edu/publications/2023-New-Mexico-Educator-Vacancy-Report.pdf>.

⁴⁶ https://nmlegis.gov/Entity/LFC/Documents/Early_Childhood_And_Education/EC%20Workfoce.pdf.

bachelor's degree or above has significantly **decreased** since the 2018-2019 school year when 26.1 percent of lead teachers had these degrees. Pub. Educ. Dep't, *PreK Annual Report: 2018-2019 School Year*, PED website, 63 (Feb. 2020).⁴⁷ For fiscal year 2023, 18.8 percent of lead teachers in community-based pre-k programs held bachelor's degrees or above. *ECECD Annual Outcomes Report FY23*, *supra* p. 44 and note 36, at 21.

The variation in educational requirements for teachers makes oversight of NM Pre-K quality difficult and leads to significant disparity in pay between pre-k teachers in school-based and community-based settings. *See LFC Early Childhood Accountability Report – 2023*, *supra* p. 47 and note 42, at 1. Pre-k teachers in public-school settings are licensed by PED and are required by statute to earn the same salaries as K-12 licensed teachers – a minimum of \$50,000 per year. NMSA § 22-10A-4. However, pre-k teachers in community-based settings serving at-risk students with state funding have no minimum salary requirement, and pay for workers in this setting tends to be low. Trujillo-Medina Dep. 166:4-17. The State has failed to implement policy to require the same educational requirements for all NM Pre-K teachers (school- and community-based), which can only be achieved by providing sufficient funding to meet this requirement *and* for comparable pay once it is achieved.

Further, to meet the mandates of this Court's Orders, the State must also prioritize the diversity, experience, and bilingualism of community-based pre-k educators to help ensure that pre-k is culturally and linguistically responsive, equitable, and effective for at-risk students.⁴⁸ Until

⁴⁷ <https://webnew.ped.state.nm.us/wp-content/uploads/2020/08/PreK-2018-19-Annual-Report.pdf>.

⁴⁸ *See* FFCL#65 (“Providing a multicultural and bilingual education to preschoolers is an important part of preparing a child to be successful. (internal citation omitted);” FFCL#66. (“Prekindergarten provides economically disadvantaged, ELL students, and students of color with educational opportunities that enhance cognitive and social development and enable these

these reforms are made and funding allocated, the State continues to see detrimental impacts on program quality and workforce, such as reduced and inconsistent quality of pre-k programs, difficulty in retaining teachers in community-based settings, and barriers to expanding community-based programs due to lack of sufficient staff. *Id.* at 170:15-24. National research supports the need for the State to fund pre-k programs at a level to attract and retain qualified diverse, experienced and bilingual staff. See Learning Policy Institute, *State Preschool in a Mixed Delivery System: Lessons from Five States*, LPI website, 9 (March 2023).⁴⁹

In July 2023, the ECECD adopted standards for lead teachers in community-based programs in which they are “expected to possess a high school diploma and demonstrate annual progress towards obtaining a bachelor’s degree.” Leg. Fin. Comm., *Ensuring High Quality Early Childhood Services & Educator Development*, LFC website, 2 (July 20, 2023);⁵⁰ see also Early Childhood Educ. & Care Dep’t, *The New Mexico PreK Program Standards*, ECECD website, 9 (July 2023).⁵¹ However, without funding to support adequate pay in a community-based setting commensurate with public schools, this standard has served as yet another barrier to expanding community-based programs because teachers will leave these programs for higher-paying public school jobs as soon as they achieve their bachelor’s degree. Trujillo-Medina Dep. 163:7-21.

children to start kindergarten ready to learn and on more equal footing with their non-disadvantaged peers.”). See also The Institute for College Access & Success & the Georgetown Uni. Center on Poverty & Inequity, *Centering Quality, Centering Equity: Lessons Learned in Increasing Early Childhood Educator Credentials*, CPI website (July 25, 2024), <https://www.georgetownpoverty.org/wp-content/uploads/2024/07/Centering-Quality-Centering-Equity-report-July2024.pdf>.

⁴⁹ https://learningpolicyinstitute.org/media/3990/download?inline&file=State_Preschool_Mixed_Delivery_System_BRIEF.pdf.

⁵⁰ https://nmlegis.gov/Entity/LFC/Documents/Early_Childhood_And_Education/EC%20Work_force.pdf.

⁵¹ <https://api.realfile.rtsclients.com/PublicFiles/d4a60d4c4e7149c9830debd01dbe554/935cf520-da1e-4bc5-abe1-3a4b97b6383d/NM%20PreK%20Program%20Standards%20FINAL%20FY24.pdf>.

ECECD has initiatives that are intended to address the pre-k teacher workforce issues but have failed to remedy the systemic shortages, nor did the State know how many pre-k teachers these initiatives would generate in 2022. *Id.* at 175:24-176:9. The first of these is a scholarship program for existing pre-k teachers to earn bachelor's and master's degrees. *See* ECECD website.⁵² However, these initiatives have been piecemeal and have not resulted in increases in the early childhood/pre-k teacher workforce. It is unclear if the State tracks whether teachers who receive these scholarships and obtain a bachelor's or master's degree remain in New Mexico and teach as early childhood educators. *Id.* at 174:21-175:1. During the 2022-2023 school year, 274 students were admitted to a four-year early childhood education preparation program in New Mexico, but only 150 students graduated from these programs. *See* NMSU Southwest Outreach Academic Research Evaluation and Policy Center, *2023 New Mexico Educator Vacancy Report*, NMSU website, 8 (Oct. 2, 2023).⁵³ If extrapolated to the number of admitted students during the 2022-2023 school year, only 55 percent of this cohort would graduate. Nonetheless, this is not a sufficient number of pre-k teachers to fill the current shortages. The second incentive program offered by ECECD is the pre-k pay parity program, which offers grants to early childhood educators in community-based programs to increase their pay comparable to pre-k teachers in public school settings. *See* ECECD website.⁵⁴ According to ECECD, this program provided pay parity to 165 educators in 2023. *See* Early Childhood Educ. & Care Dep't, *Florencer Progress & Accountability Report*, ECECD website, 3 (Dec. 2023)⁵⁵ But again, this initiative has only impacted a fraction of the early childhood workforce, and falls far short of remedying shortages.

⁵² <https://eceedscholarship.org/scholarship-information/>.

⁵³ <https://alliance.nmsu.edu/publications/2019-New-Mexico-Educator-Vacancy-Report.pdf>.

⁵⁴ <https://eceedscholarship.org/wage-parity-information/>.

⁵⁵ https://www.nmeccd.org/wp-content/uploads/2023/12/Florencer-Progress-Report2023_final.pdf.

vi. Conclusion as to Defendants' failure to provide high quality pre-k to at-risk 4-year-olds

The complexity of these overlapping issues within the early childhood and pre-k teacher work, and the pre-k program as whole, underscore the need for the State to develop, implement and fully fund a comprehensive plan that ensures all at-risk pre-k students are receiving the programs and services necessary to be ready for college or career.

b. Extended Learning Time

"Extended learning time, like summer school, after school tutoring, and an extended school year are valuable for low-income students, because they help close the achievement gap between low income and non-low income students." FFCL ##161-186. "Summer learning programs can reduce summer learning loss and close the achievement gap for low-income students." *Id* #161. "Extended learning time through longer school days, longer school years, and tutoring have a positive causal effect on student achievement." *Id* #166. "[I]nvestment in an extended school year is one of the best ways to increase graduation rates in New Mexico." FFCL #172. "Students who participate in after-school programs achieve higher grades in school and engage in less risky behaviors." *Id* #174.

"Districts across the State severely limit extended learning opportunities because the districts do not have the funds to provide after-school programs, tutoring, summer school, and similar opportunities to all students who need such services." FFCL #187. "[S]ummer school for elementary students used to be free, but the Legislature is not giving the districts enough money for summer school programming and therefore there is no elementary summer school in the State anymore." FFC. #189. The State also does not provide funding for after school tutoring. *Id* #200. "The State does not provide sufficient funding statewide for credit recovery programs for high school students." *Id* #209. "Even when districts do have a summer or

afterschool program, it is limited due to funding." *Id* #194. The State does not pay for transportation for after-school programs and the districts cannot afford to cover the additional transportation costs. *Id* #197. This Court found that K-3 Plus is an effective program for at-risk students but that not all students have the opportunity to participate in the program. Decision and Order at 29-30. Lack of funding and structural barriers have prevented districts, schools, and students from accessing the K-3 Plus program in the past. FFCL ##118-128.

i. Failure of the K-5 Plus and Extended Learning Time Programs: 2019-2023

Since 2019, the State's response to extending learning time has been inconsistent and in flux, resulting in constant changes to calendar regulations every year, wide variation in the number of days or hours students are in school across the State (in some cases, these changes have resulted in *fewer* days or hours), and no measurable impact on student outcomes. In order for the State to successfully implement calendar reforms that result in improved student outcomes, it will require coordinated planning to generate community buy-in, with consistent regulatory requirements for districts, predictable and sufficient funding, and also address interrelated issues, such as educator workforce and improvements to quality (*see* Section II(C)(5), *infra*).

During the 2019 Legislative session, the State expanded the K-3 Plus program to K-5 Plus, a voluntary initiative to extend the school year by 25 days, and appropriated enough funding for most at-risk students in grades K-5 to participate; however, it was a meaningless gesture since many school districts were unable to meet the strict statutory requirements to access the funding, and administrative barriers prevented districts from applying.⁵⁶ PED has

⁵⁶ See *Yazzie* Plaintiff's Motion for Court to Order Defendants to Meet Constitutional Mandate to Ensure all New Mexico Public School Students Have the Opportunity to be College and Career Ready, at 25-26.

made *ad hoc* exceptions for some districts, which circumvented the statutory requirements. In addition, because so many districts-especially small districts-are, in essence, precluded from participating in K-5 Plus due to the funding scheme, it created a non-uniform system, favoring larger districts with the capacity and numbers to provide the program to some at-risk students. Overall and ironically, the statutory requirements of the K-5 Plus program resulted in fewer children having access to this extended learning program in many districts and hundreds of millions of dollars were left on the table unspent because so many districts did not opt in to the voluntary program.

That same year, the Extended Learning Time Program (ELTP) was also created as a voluntary program that allowed districts to add 10 calendar days, afterschool programming, and professional development hours, but with more flexibility than K-5 Plus. ELTP was more popular with districts, but participation in both initiatives fell short of the funding appropriated for them.

The PED canceled both programs for summer 2020 due to the covid-19 pandemic, and the Legislature made significant reductions to funding for these programs during the Special Session in June 2020. *See* Leg. Educ. Study Comm., *Hearing Brief: Extended Learning Time and K-5 Plus Programs in FY20 and FY21*, LESC website, 1 (Aug. 24, 2020);⁵⁷ *see also* H.B. 1 (2020 1st Special Session) at 9, 22-23. The appropriation for K-5 Plus was reduced by \$40 million, and \$30 million for K-12 Plus pilot programs and \$5 million for districts with substantial Native American student populations and micro districts were eliminated for fiscal

⁵⁷ <https://www.nmlegis.gov/handouts/ALESC%20082420%20Item%206%20.1%20-%20Brief%20-%20K-5%20Plus.pdf>.

year 2021.⁵⁸ *Id.* In 2021 legislation was enacted to increase flexibility in the implementation of both programs, and would have temporarily mandated statewide participation in K-5 Plus or ELTP, but this mandate was removed by amendment in committee. *See* S.B. 40, 55th Sess., § 6 (as reported by H. Educ. Comm., March 17, 2021).

Despite the increased flexibility, participation in K-5 Plus continued to decrease, and by fiscal year 2023, only 3 percent of K-5 students were in K-5 Plus programs. *See* Leg. Fin. Comm. *Hearing Brief: Extended Learning Time Proposals*, LFC website, 13 (July 21, 2022).⁵⁹ Participation in ELTP peaked in fiscal year 2021, but even then, only 44 percent of students in New Mexico participated, and subsequently decreased in fiscal years 2022 and 2023. *Id.*⁶⁰

ii. Inconsistency and inequity of the K-12 Plus Program: 2023-Present

In response to declining participation in K-5 Plus and ELT programs, the Legislature repealed both programs. Laws June 14, 2019, chs. 206-207, §§ 2, 3, 4, 5, 16, 17, *repealed by* 2023 N.M. Laws ch. 19, § 5 (H.B. 130).⁶¹ In their place, the State enacted the K-12 Plus program, which increases the minimum instructional hour requirements, and allows up to 60 instructional hours in elementary schools and up to 30 instructional hours in secondary schools to be counted as

⁵⁸ Notably, the \$5 million appropriated for this initiative was touted by Defendants in their Motion and Memorandum for Entry of Order of Satisfaction of Injunction and Dismissal of Action, filed on March 13, 2020, as evidence of their effort to “continue[] to improve extended learning” at 43.

⁵⁹ <https://nmlegis.gov/Handouts/ALFC%20072022%20Item%2012%20Hearing%20Brief%20-%20Extended%20Learning%20Time%20Proposals.pdf>.

⁶⁰ Plaintiffs arrived at this number by dividing 141,622 (ELTP students budgeted in FY21) by 318,613 (the number of students enrolled in 2021-2022). *See* Kids Count Data Center, <https://datacenter.aecf.org/data/tables/2168-school-enrollment#detailed/2/any/false/2105/any/4540>.

⁶¹ Participation in these programs was significantly lower than the Legislature envisioned, resulting in almost \$576 million in unused funding. *See* Leg. Fin. Comm., *Hearing Brief – Implementation of K-12 Plus and Extended Learning*, LFC website, 1 (July 19, 2023), <https://nmlegis.gov/Handouts/ALFC%20071823%20Item%207%20Implementation%20of%20K-12%20Plus%20and%20Extended%20Learning.pdf>.

professional work time for educators. See NMSA § 22-2-8.1. Subsequent guidance issued by PED allows districts to count a maximum of 48 hours (or six days) out-of-school hours for the purposes of generating K-12 Plus funding. See Pub. Educ. Dep't, *K12+ Program Guidelines Manual*, PED website, 4 (2023).⁶²

This increase to the minimum number of instructional hours resulted in drastically differing lengths of school calendars across the State, and did not consistently add days or hours. See Leg. Educ. Study Comm., *Hearing Brief: Leveraging Learning Time in New Mexico*, LESC website, 7 (July 27, 2023) [hereinafter *LESC Leveraging Learning Time*].⁶³ While many districts met the instructional hour requirement by increasing the number of calendar days per school year (on average, by two), almost 20 percent of students attended school for **fewer days** in 2023-2024 than the previous school year. *Id.* at 8; see also Leg. Fin. Comm., *Hearing Brief – Implementation of K-12 Plus and Extended Learning*, LFC website, 2 (July 19, 2023).⁶⁴ Concerningly, 46 percent of districts *decreased* instructional time and 7 percent had no change in time. See *LFC Report to the Leg. 2024, Vol 2 supra* p. 18 and note 17, at 479. This means, almost 18 percent of students attended school for **fewer hours** in 2023-2024 school year than the previous year. See *LESC Leveraging Learning Time, supra* p. 58 and note 63, at 8. This data makes clear that at-risk students' access to extended learning time – in hours or days – continues to be deeply inequitable across the State, even shrinking in many places. Without planning to ensure additional learning time is targeted to at-risk students, and a robust accountability system, inequitable learning time

⁶² https://webnew.ped.state.nm.us/wp-content/uploads/2024/02/K12-Manual_Instructional-Hours_K12Plus.pdf.

⁶³ <https://nmlegis.gov/handouts/ALESC%20072623%20Item%207%20.1%20-%20Leveraging%20Learning%20Time%20in%20New%20Mexico%20LESC%20Brief.pdf>.

⁶⁴ <https://nmlegis.gov/Handouts/ALFC%20071823%20Item%207%20Implementation%20of%20K-12%20Plus%20and%20Extended%20Learning.pdf>.

will increase disparities in student outcomes rather than close achievement gaps. *See LFC Report to the Leg. 2024, Vol. 1, supra* p. 7 and note 3, at 40.

iii. The PED’s 180-day rule and ensuing litigation: 2024-Present

In the current iteration of the constantly changing requirements for instructional hours and days, in November 2023, the PED proposed a new rule requiring all public schools to provide at least 180 instructional days per school year, exclusive of teacher professional work hours. *See* NMAC 6.10.5. This prompted the Legislature to amend the General Appropriation Act to include language prohibiting the PED from implementing or enforcing the rule. *See* H.B. 2, (2024 Regular Session) at 132. However, the Governor vetoed this language and on March 14, 2024, the PED adopted NMAC 6.10.5. *Id.* On April 18, 2023, the New Mexico School Superintendents Association (NMSSA) and 57 school districts sued the PED, challenging the rule as unenforceable as it directly conflicts with NMSA § 22-2-8.1 and seeking injunctive relief. *See N.M. Superintendents Ass’n, v. N.M. Public Educ. Dep’t*, No. D-905-CV-2024-167 (N.M. Dist. Ct., filed April 18, 2023). The District Court agreed with Plaintiffs NMSSA, et al., and issued a preliminary injunction, prohibiting the PED from implementing or enforcing the 180-day requirement in NMAC 6.10.5, pending final determination on the merits of the case. *Id.* Thus, districts submitted school calendars for the 2024-2025 school year based on the old instructional hour requirements as required by NMSA § 22-10-8.1. This case is still pending.

iv. The State’s failure to effectively implement additional time in school demonstrates the disconnect between PED, the Legislature and districts.

The State’s mutable response to extended learning time since 2019 demonstrates the disconnect among PED, the Legislature in enacting policy and appropriating funding, and the authority of local school districts, which has “continue[d] to slow progress toward a uniform and sufficient education system.” *See LFC Report to the Leg. 2024, Vol. 1, supra* p. 7 and

note 3, at 40. The success of any initiative – learning time or otherwise – will necessarily require community buy-in, predictability, sustained funding and a robust accountability structure. *See* Leg. Fin. Comm., *Hearing Brief – Implementation of K-12 Plus and Extended Learning*, LFC website, 5 (July 19, 2023).⁶⁵ The State must also monitor and evaluate implementation of extended learning time to inform policy and budget considerations, and to ensure districts are implementing effective programs that improve student outcomes. The LESC staff is currently engaged in such a study to understand how K-12 Plus was implemented across the State and the effectiveness of the various methods. *See LESC Leveraging Learning Time*, *supra* p. 58 and note 63, at 8-10.

v. The State has failed to provide adequate after-school programming, summer enrichment and tutoring to at-risk students

The repeal of the Extended Learning Time Program and K-5 Plus program in 2023, which included funding for after-school programming for participating districts, ended the State’s support for more than 107,000 students participating in after-school programming in the State. NMSU Southwest Outreach Academic Research Evaluation & Policy Center, *New Mexico 21st Century Community Learning Centers Statewide Evaluation End of Year Report: Academic Year 2022-2023*, NMSU website, 34-37 (June 30, 2023).⁶⁶ The ELT program had by far the largest number of participants in the State, serving 104,016 students during the 2022-2023 school year. *Id.* at 35.⁶⁷

Presumably in response to the drastic reduction in after-school funding (state and federal), the Legislature appropriated \$20 million for “out-of-school learning, summer

⁶⁵ <https://nmlegis.gov/Handouts/ALFC%20071823%20Item%207%20Implementation%20of%20K-12%20Plus%20and%20Extended%20Learning.pdf>.

⁶⁶ <https://webnew.ped.state.nm.us/wp-content/uploads/2023/07/SOAR-21st-CCLC-Statewide-Evaluation-End-of-22-23-Year-Report.pdf>.

⁶⁷ Notably, the program with the second highest participation, Community Schools, served only 20 percent of the students ELTP served. *See id.* at 36.

enrichment, and tutoring to address learning gaps” for fiscal year 2024. *See* H.B. 2 (2023 Regular Session), at 220. According to PED, about \$10 million was allocated for out-of-school time programs, and “HB2 OST programming” provided funding to 33 LEAs and 7 community-based organizations to expand access to after-school programs in the State. *See* Pub. Educ. Dep’t, *Spring Budget Presentation: HB2 Out-of-School Time Programs*, PED website, 3-4 (March 22, 2024).⁶⁸ Despite the critical need for on-going support of these programs and additional expansion of after-school programs, the funding for out-of-school learning opportunities was reduced to \$15 million for FY2025, which meant programs expected to see a 25 percent decrease in their budget due to decrease in available funding. *Id.* at 7; *see also* H.B. 2 (2024 Regular Session), at 213. Notably, it is unclear how much of this funding was allocated for HB2 OST programs.⁶⁹ As with extended learning time, the State’s support of after-school has been inconsistent, and have maintained the significant gap in access for at-risk students. *See* Afterschool Alliance, *New Mexico After 3PM Report*.⁷⁰

The \$20 million appropriated in FY24 for out-of-school learning, summer enrichment, and tutoring to address learning gaps, was the first year PED received an appropriation specifically for out-of-school time programs. *See* Leg. Fin. Comm., *Hearing Brief: Status of the Educator Workforce & “Below-the-Line” Accountability Report*, LFC website, 8 (Sept.

⁶⁸ https://webnew.ped.state.nm.us/wp-content/uploads/2024/03/2024_03_18-Spring-Budget-Presentation-Slide-Deck-HB2-approved-3.20.24.pdf.

⁶⁹ Dedicated funding to community schools (a framework through which LEAs can provide after-school) was also reduced in FY25 from \$10 million in FY24 to \$8 million. *See* H.B. 2 (2023 Regular Session), at 219; H.B. 2 (2024 Regular Session), at 211; *see also* NMSA § 22-32-6 (Community school framework).

⁷⁰ <https://afterschoolalliance.org/AA3PM/data/geo/New%20Mexico/challenges>.

28, 2023).⁷¹ And while PED distributed \$7.4 million for out-of-school time programming, the remaining \$9.2 million was budgeted for initiatives outside this scope of the appropriation, including appropriations to RECs for academic acceleration and the educator fellows program. *Id.* The PED has also failed to implement important accountability measures associated with this appropriation, including out-of-school-time programming needs, a program description (funds going to other initiatives), plans for implementation, fidelity of the program, or measurement/evaluation. *Id.*

Out of the \$15 million appropriated for this purpose in FY25, \$8.5 million was for high-dosage tutoring. *See* H.B. 2 (2024 Regular Session), at 213. This amount of funding remains insufficient and as a BTL appropriation, it is not recurring. The LESC staff has identified that pervasive gaps in tutoring, summer programming, and extended learning remain. *See* Leg. Educ. Study Comm., *Roadmap Presentation*, LESC website, 6 (July 25, 2024).⁷² And to that end, the LESC staff includes the need to address systemic supports such as targeted tutoring as part of their vision and framework to improve education in New Mexico (*see* Section III(B), *infra* for additional discussion of the LESC’s framework). *See LESC Annual Report*, *supra* p. 8 and note 4, at 2.

In addition to the unmet need for funding and access to tutoring, Defendants’ implementation of the high-impact tutoring initiative was rife with typical deficiencies within

⁷¹ <https://www.nmlegis.gov/Handouts/ALFC%20092723%20Item%208%20Hearing%20Brief%20-%20Status%20of%20Educator%20Workforce%20and%20Below-the-Line%20Funding.pdf>. This document includes the LFC’s Hearing Brief on the Status of the Educator Workforce (pages 1-6), followed by the Below-the-Line Accountability Report (separately paginated as pages 1-11, starting on PDF page 7). This citation refers to the Below-the-Line Accountability Report.

⁷² https://nmlegis.gov/Entity/LESC/Documents/Reports_To_The_Legislature/LESC%202024%20Annual%20Report%20Final_Web_Full%20Page.pdf.

PED, such as delayed timelines, lack of accountability and questions of effectiveness. While the initiative was originally intended to provide high-impact tutoring for the entire 2023-2024 school year, services did not begin until May 2024, with only weeks left in the school year. See Pub. Educ. Dep't, *Request for Proposals: Statewide High Impact Tutoring for Designated Improvement Schools*, RFP #23-92400-00006, PED website, 1 (May 13, 2023);⁷³ see also Diego Lopez, *Late Launch of High Impact Tutoring Raises Questions on Effectiveness & Accountability*, New Mexico Education (May 31, 2024).⁷⁴ This came after the PED released the Request for Proposal (RFP) to contract with vendors to provide tutoring services, then abruptly canceled it, following complaints from vendors that PED had failed to "evaluate potential vendors equally and accurately." *Id.*

vi. Conclusion as to Defendants' failure to uniformly fund and implement extended learning

Defendants have failed to provide the necessary and uniform funding and oversight of extended learning programs, including K-5 Plus, ELTP, K-12 Plus, after-school and summer programming, and tutoring, which are vital for closing the achievement gap for at-risk students. Defendants' inconsistent approach has resulted in a fragmented and inequitable system, exacerbating the significant gaps in access to extended learning opportunities, particularly for at-risk students.

c. **Research-Based Reading Programs**

"Literacy programs and practices that are based on valid research are essential to ensure that low income students learn how to read at grade level." FFCL #236. "These programs

⁷³ https://webnew.ped.state.nm.us/wp-content/uploads/2023/05/Log-362-RFP_Final.pdf.

⁷⁴ <https://nmeducation.org/late-launch-of-high-impact-tutoring-raises-questions-on-effectiveness-and-accountability/#>.

include intensive professional development for teachers on how to teach reading, 90 minutes of reading instruction per day for students, and additional intervention and time for instruction if students are not successful." FFCL #237. "Teachers must be trained to teach reading with direct, explicit, sequential, and systematic instruction. Additional intervention includes extended learning time and/or additional time with a reading interventionist." FFCL #238. "It is critical that children be proficient readers by the end of third grade in order to be successful for fourth grade and beyond." FFCL #239. "One in four children in New Mexico reads at grade level by third grade." FFCL #244. Districts have not had sufficient funding, either "below-the-line" through the Reads to Lead program, or above-the-line through SEG funding, to pay for reading specialists, to train teachers with the proven strategies needed to teach reading, or to provide them with instructional materials. FFCL ##246-264. "There is a strong correlation between the State's failure to fund programs to teach students how to read and students' proficiency scores." FFCL #245. The PED "need[s] to be doing more to improve New Mexico's reading proficiency rates." FFCL #265.

Despite the State's increased focus on addressing reading proficiency and literacy, significant gaps remain in funding, access, effectiveness, monitoring and outcomes for at-risk students.

i. State funding for reading and literacy remains insufficient and piecemeal

During the 2019 legislative session, the State appropriated no dedicated funding for reading or literacy, and actually eliminated the only funding targeted for reading supports appropriated in prior fiscal years. With the launch of the PED's structured literacy initiative, the State appropriated \$10 million through the SEG in FY21, which was subsequently reduced to \$8 million during the Special Session. *See* H.B. 1 (2020 1st Special Session) at 9. Between FY22 and FY24, the State's

focus has almost solely been on providing funding for a structured literacy professional development program for teachers, known as Language Essentials for Teachers of Reading and Spelling (LETRS) in BTL funding. As the State admitted in 2022, if there is BTL funding to PED to support structured literacy, then there also must be additional funding to districts through the SEG to pay for essential supports that help ensure teachers can successfully complete the LETRS program, such as stipends and substitute teachers. Deposition of Jacqueline Costales (Costales Dep.) 158:2-5, 159:9-20, Aug. 18, 2022, attached hereto as Exhibit 10; *see also* Pub. Educ. Dep't, *Biliteracy and the Science of Reading Presentation*, LESC website, 14 (Sept. 21, 2023).⁷⁵ For FY25, funding in the SEG for literacy programs was bundled with an appropriation for several other initiatives that districts implement at their discretion, including mentorship, educational plans, Career Technical Education. *See* H.B. 2 (2024 Regular Session) at 176. For FY25, PED received a slight increase in BTL funding for literacy (from \$13.5 million to \$14 million), which was \$1 million less than requested, and intended for a summer reading intervention program, training for secondary educators in LETRS (again, less than what the PED requested), and to build a literacy institute. *See* Leg. Fin. Comm., *Post-Session Review*, LFC website, 71 (April 2024).⁷⁶ Notably, no funding has been appropriated specifically for comprehensive reading programs or reading specialists, and the State leaves it up to districts to use SEG funding to support these critical positions/initiatives or not. Yet again, funding specifically for literacy and reading has fluctuated year to year, and without a plan for how much money is necessary to achieve compliance with this Court's order to meet the needs of at-risk students.

ii. Defendants' failure to provide comprehensive funding has resulted in insufficient

⁷⁵ <https://nmlegis.gov/handouts/ALESC%20092023%20Item%208%20.3%20-%20Biliteracy%20and%20the%20Science%20of%20Reading%20PED%20Presentation.pdf>.

⁷⁶ https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Post_Session_Fiscal_Reviews/2024%20Post%20Session%20web.pdf.

impact on at-risk students

The State touts a small increase in student proficiency in reading for the 2022-2023 school year (although proficiency is still unconstitutionally low), but has failed to evaluate whether the investments made since FY21 contributed to this increase (*see* Section II(A), *supra*). *See* Leg. Educ. Study Comm., *2024 Post-Session Review*, LESC website, 31 (April 2024).⁷⁷ The PED monitors students' academic need and the effectiveness of literacy interventions, including LETRS, for students performing below grade level through aggregated statewide achievement data. Costales Dep. 121:10-17, 127:10-22. In 2022, the State admitted it does not conduct a comparison between assessment data and the reading and literacy programs/supports a district is providing. *Id.* at 144:17-24. The test scores the State points to "are only the second iteration of the new Measures of Student Success and Achievement (MSSA) test, the State has yet to determine whether improvements in reading are a trend." *LFC Report to the Leg. 2024, Vol. 1, supra* p. 7 and note 3, at 98.

The vast majority of the State's efforts to implement structured literacy have been through funding for LETRS training for educators and coaching support, and in 2022 the State admitted it had no plans to implement any other professional development on research-based reading programs for teachers. Costales Dep. 130:15-23. However, these resources are not available for every at-risk student in New Mexico. *Id.* at 306:10-22. Defendants promote the number of educators who have completed or are enrolled in this training (9,000 in the 2023-2024 school year and an additional 2,000 in the upcoming school year 2024-2025), and coaching support to another 1,2000 educators. *See LESC Annual Report, supra* p. 8 and note 4, at 31.

⁷⁷ <https://www.nmlegis.gov/Entity/LESC/Documents/LESC%202024%20Post-Session%20Report%20-%20Web%20Version.pdf>.

But by the State’s own calculation, this has impacted less than 20 percent of kindergarten through fifth grade students in the State and is not targeted to at-risk students. *Id.*,⁷⁸ *see also* Costales Dep. 113:5-18 (when asked whether the LETRS training is implemented to target at-risk students the PED admitted in 2022 that it is “targeted” to all students).⁷⁹

Defendants’ structured literacy initiative also includes grants to districts for structured literacy coaching at various levels of support. *See* Leg. Educ. Study Comm., *2024 Post-Session Review*, LESC website, 30 (April 2024).⁸⁰ Schools that receive this funding are deemed either a “literacy model school” or “literacy support school” depending on the number of teachers trained in LETRS and the amount of coaching it receives. *Id.* This grant is also awarded to teachers to become “literacy leaders” who coach two colleagues, among other things, and “regional literacy coaches” who are full-time literacy coaches placed in either a model or literacy support school. *Id.* Despite this Court’s extensive findings about the lack of reading coaches, these initiatives only reach a fraction of at-risk students in New Mexico. For the 2024-2025 school year, there will be only 16 model schools, 128 literacy support schools, 208 literacy leaders, and approximately 50 regional literacy coaches. *See* Pub. Educ. Dep’t, *Biliteracy and the Science of Reading*

⁷⁸ Plaintiffs arrived at this number by dividing 25,000 (students served by educators who received LETRS training and coaching support) by 128,571 (K-5 student enrollment). *See* PED STARS enrollment for school year 2023-2024 at <https://webnew.ped.state.nm.us/bureaus/information-technology/stars/>.

⁷⁹ Defendants admitted in 2022 that reading interventions and programs for at-risk students in grades six through 12 are determined locally. Costales Dep. 276:8-277:2. When asked how they are ensuring necessary resources for at-risk students in these grades achieve reading proficiency, they again admitted these decisions are left to districts to use SEG and other budgets. *Id.* at 290:17-291:1. In 2024, \$5 million was appropriated for training secondary education teachers in reading instruction. *See* H.B. 2 (2024 Regular Session) at 213. This was the first year funding was appropriated specifically to support secondary education teachers in literacy or reading.

⁸⁰ <https://nmlegis.gov/Entity/LESC/Documents/LESC%202024%20Post-Session%20Report%20-%20Web%20Version.pdf>.

Presentation, LESC website, 14 (Sept. 21, 2023).⁸¹

Finally, during the summer of 2024, Defendants used a non-recurring appropriation of \$30 million for the Summer Reading Program. The program ran for two to six weeks, depending on the site, instructors required no educational background or teaching experience, and many areas of the State did not have a program site. *See* Diego Lopez, *New Mexico Summer Reading Program Officially Launched*, New Mexico Education (June 11, 2024).⁸² While approximately 9,500 kindergarten through eighth grade students participated - only 5 percent of kindergarten through eighth graders in the State, and the PED did not target at-risk students. *See* Pub. Educ. Dep't, *Public Education Department Agency Priorities*, LESC website, 10 (July 25, 2024);⁸³ *see also* Diego Lopez, *New Mexico Launches Summer Reading Program to Boost Literacy Statewide*, New Mexico Education (April 10, 2024).⁸⁴

iii. Structured literacy is ineffective for ELL students

In order for the State to provide effective literacy programs and instruction for ELLs, educator professional development must “include[] effective strategies and instructional models for biliteracy ... given [ELLs] are found across most school districts and schools in New Mexico.” Leg. Educ. Study Comm., *Report: Biliteracy and the Science of Reading*, LESC website, 11 (Sept. 21, 2023).⁸⁵ However, the structured literacy initiative adopted by the State, without more, is insufficient for ELL students. Costales Dep. 167:10-14. The State has been aware of this fact since

⁸¹ <https://nmlegis.gov/handouts/ALESC%20092023%20Item%208%20.3%20-%20Biliteracy%20and%20the%20Science%20of%20Reading%20PED%20Presentation.pdf>.

⁸² <https://nmeducation.org/new-mexico-summer-reading-program-officially-launched/>.

⁸³ <https://nmlegis.gov/handouts/ALESC%20072424%20Item%207%20.3%20-%20PED%20Priorities%20Presentation.pdf>.

⁸⁴ <https://nmeducation.org/new-mexico-launches-summer-reading-program-to-boost-literacy-statewide/>.

⁸⁵ <https://nmlegis.gov/handouts/ALESC%20092023%20Item%208%20.1%20-%20Biliteracy%20and%20the%20Science%20of%20Reading%20LESC%20Brief.pdf>.

the adoption of structured literacy. See Dr. Linda Cavazos, *The Science of Reading for Emergent Bilinguals in NM, A Review for the NM Pub. Educ. Dep't*, PED website (Nov. 2021).⁸⁶

Instead of mandating a program that would meet the needs of ELL students, the State has done very little to address biliteracy generally, and specifically within the structured literacy initiative. In 2022, the PED published a biliteracy guidance document for teachers of ELLs on using Structured Literacy in biliteracy settings. See Public Educ. Dep't, *Biliteracy Guidance: The Science of Reading for English Learners*, PED website, 4 (Aug. 1, 2022).⁸⁷ Importantly, educators are not required to use this guidance, and the State admitted in 2022 that it did not monitor whether teachers use the guidance at all. Costales Dep. 167:24-168:3, 169:7-11, 183:5-11, 307:18-22. The State also admitted that it does not know if the LETRS training addresses the additional instruction ELLs require for English literacy development, as outlined by its Bilingual Guidance. *Id.* at 177:4-19. In 2022, the PED had no plan for literacy instruction for ELLs to contain “more” than structured literacy. *Id.* at 181:11-18. In fact, there is no required professional development for biliteracy, and while the PED has optional online trainings, it does not track or monitor how many educators access it. *Id.* at 173:3-174:8. The PED also admitted it did not believe it had the authority to require educators to incorporate the Biliteracy Guidance. *Id.* at 174:9-175:14. In 2019, House Bill 182 was introduced that would have expanded the State’s reading initiative to a culturally and linguistically relevant literacy and biliteracy initiative, but even after passing the House of Representatives unanimously, the Senate failed to take it up for a vote. See H.B. 182 (2019 Regular Session).

⁸⁶ <https://nmlegis.gov/handouts/ALESC%20092023%20Item%208%20.4%20-%20The%20Science%20of%20Reading%20for%20Emergent%20Bilinguals%20in%20NM%20PED.pdf>.

⁸⁷ https://webnew.ped.state.nm.us/wp-content/uploads/2022/12/NMPED-Biliteracy-Guidance_12.4.22.pdf.

(A) **Professional development alone is insufficient to improve reading proficiency for at-risk students**

In addition to this glaring shortfall of the State’s effort to address reading and literacy with the LETRS training, the State’s approach almost solely relies on educator professional development. However, professional development alone is not sufficient to meet the mandates of this Court’s order to improve literacy and biliteracy outcomes. The State has not taken any action to ensure educators have access to curriculum, high quality instructional materials, or assessments aligned with literacy and biliteracy instruction. Nor has it addressed educator workforce issues (*see* Section II(C)(5), *infra*) to ensure there are a sufficient number of teachers who have time for planning and collaboration to “develop a scope and sequence that leverages biliteracy programming.” Leg. Educ. Study Comm., *Report: Biliteracy and the Science of Reading*, LESC website, 11 (Sept. 21, 2023).⁸⁸ Instead, Defendants leave it to districts to do these things, without any monitoring or oversight. The results are obvious from the very poor student proficiency data.

iv. **Defendants continue to lack necessary oversight and accountability over districts**

Defendants continue to fail to exercise their oversight of districts to understand the unmet need for at-risk students, evaluate program effectiveness, and thus ensure districts have sufficient funding for reading and literacy programs and supports. In 2022, Defendants admitted they do not monitor what local programs and interventions are available by district for at-risk students because it is a decision for districts to make at the local level; they do not monitor what local programs and interventions are available by district for at-risk students; and they do not have an adequate mechanism in place to evaluate reading initiatives and literacy and reading programs and

⁸⁸ <https://nmlegis.gov/handouts/ALESC%20092023%20Item%208%20.1%20-%20Biliteracy%20and%20the%20Science%20of%20Reading%20LESC%20Brief.pdf>.

interventions.⁸⁹ Costales Dep. 277:3-6, 297:16-299:3. Defendants also admitted they do not ask districts to report whether they have enough reading interventionists, coaches or reading teachers in their Literacy Plans; they did not know whether a district's Literacy Plan meets the needs of at-risk students; they do not conduct an analysis of whether districts have enough funding to implement their Literacy Plan; that the SEG funding districts receive is intended to fund its needs in this area; and that they do not monitor whether districts spend SEG funding on the initiatives in their Literacy Plans, or whether districts implement their Literacy Plans. *Id.* at 68:22-69:4, 202:4-23, 216:18-217:12, 218:9-219:12. In 2022, Defendants also admitted they do not know how many reading coaches are needed to support all teachers statewide; whether districts have a sufficient number of reading specialists; the number of students served by a reading specialist; and that there were no plans for PED to request funding for reading specialists. *Id.* at 48:11-13, 244:6-22, 246:16-19. Finally, PED admitted its only efforts to make sure at-risk students have access to reading specialists is by reviewing district's student achievement data and leave such decisions up to districts; and they do not ensure all districts have enough funding to provide literacy instruction to all at-risk students. *Id.* at 246:8-15, 246:20-247:18. In light of the State's low reading proficiency, PED's laissez-faire approach is legally insufficient.

- v. PED has abdicated its authority to integrate effective literacy training into Education Preparation Programs, further burdening teachers

Finally, Defendants' reliance almost exclusively on LETRS training for in-service teachers, a 15–18-hour program that spans two years, is unrealistic and problematic. Costales Dep. 80:3-8.

⁸⁹ The Multi-Layered System of Supports framework provides districts with a self-assessment rubric to improve core instruction and implement intensive support systems. PED provides technical assistance, outreach, and optional professional development online courses. The MLSS is not targeted to at-risk students, nor is it required by statute or rule. *See* PED website: <https://webnew.ped.state.nm.us/bureaus/multi-layered-system-of-supports-mlss/>.

Teachers are required to complete this training either during school hours or outside their regular workday, necessitating districts to either cover the cost of substitute teachers or provide stipends for those who train outside their regular hours. *Id.* at 92:9-22.⁹⁰ The State adopted this approach because in-service elementary school teachers” aren't necessarily ready or prepared to teach the science of reading. They are not well-versed in the science of reading, and so they are struggling to teach students to read.” Deposition of Seana Flanagan (Flanagan Dep.) 218:17-219:10, Jul. 22, 2022, attached hereto as Exhibit 11. For many teachers, meeting the requirement of the LETRS trainings is akin to taking/retaking college-level courses after already teaching in the classroom. *See* Leg. Fin. Comm., *Hearing Brief: Status of the Educator Workforce*, LFC website, 4-5 (Sept. 28, 2023) [hereinafter *LFC Status of the Educator Workforce Brief*].⁹¹ At the same time, Defendants have failed to exercise their statutory authority to require that educator preparation programs (EPPs) embed biliteracy and the science of reading as fundamental components of elementary teacher preparation⁹² so that pre-service teachers are not required to complete additional training once they have already entered the profession. *See* NMSA § 22-2-2. The State admitted in 2022 that EPPs were very resistant to re-aligning their curriculum in this way. Flanagan

⁹⁰ PED admitted in 2022 that it did not conduct an analysis of how much money districts would need for substitute teachers or stipends in order to implement LETRS training, or whether the SEG funding districts received was sufficient to meet this need. Costales Dep. 93:13-17. If districts did not have sufficient funding, PED recommended they use Title II or ESSER funds. *Id.* at 94:1-22.

⁹¹ <https://www.nmlegis.gov/Handouts/ALFC%20092723%20Item%208%20Hearing%20Brief%20-%20Status%20of%20Educator%20Workforce%20and%20Below-the-Line%20Funding.pdf>. This document includes the LFC’s Hearing Brief on the Status of the Educator Workforce (pages 1-6), followed by the Below-the-Line Accountability Report (separately paginated as pages 1-11, starting on PDF page 7). This citation refers to the Hearing Brief on the Status of the Educator Workforce.

⁹² As yet another example of the PED’s failure to understand and exercise its own authority, in 2022 the PED testified it had no authority to dictate EPP curriculum. Costales Dep. 134:15-18.

Dep. 219:11-18. Despite its authority to do so, PED admitted in 2022 it does not have a strong process in place to hold EPPs accountable, and reluctance by the Secretary and Executive to exercise its authority. *Id.* at 221:5-222:1-11.

vi. Conclusion as to Defendants insufficient response to addressing reading and literacy for at-risk students

In sum, the State's response to this Court's orders regarding reading and literacy remains inadequate and disconnected from the comprehensive needs identified in this Court's Findings of Fact. Despite some efforts to address literacy through initiatives like the LETRS training, these measures are insufficient to meet the educational needs of at-risk students across New Mexico, as evidenced by the inadequate reading proficiency rates for at-risk students.

d. Smaller Class Sizes

"[S]maller class sizes are associated with higher achievement, higher earnings, higher high school graduation rates, and higher college completion rates." FFCL #215. "Students who are struggling academically or socially benefit from smaller class sizes because they get more differentiated instruction from their teachers." *Id.* #216. "Because districts do not have the money to pay for teachers at the current statutory class size requirements, they are forced to increase class sizes and, in many cases, seek class size waivers from the State and exceed the State's statutory maximum class sizes." *Id.* #222. "The Legislature has granted these waivers to allow districts to 'save money' but students have paid the price: Class sizes are 7 - 10 percent larger, and students get less individualized attention from teachers as a result." *Id.* #223.

i. PED continues to grant class size waivers with no plans to reduce class size

Since the Court's ruling, the State has continued its practice of failing to provide districts with sufficient funding to attract and retain sufficient numbers of teachers and assistants to bring the class sizes down to statutory maximums, let alone to bring them below statutory maximums

for at-risk students who would benefit the most. The PED admitted in 2022 that if the State failed to appropriate sufficient SEG funding and the unit value was too low, districts would not have enough money to pay for all the teachers they need. Deposition of Gwendolyn Perea-Warniment (Perea-Warniment Dep.) 289:4-13, May 23, 2022, attached hereto as Exhibit 12. Instead, PED has continued granting class size waivers when districts cannot meet class size limits. In support of their Motion to Dismiss in 2020, Defendants cite their action taken to address class size as “not renew[ing] [NMSA § 22-1-10] regarding maximum class size waivers” that allowed for class size waivers for the 2016-2017 through 2018-2019 school years for lack of funding.” Defendants’ Motion and Memorandum for Entry of Order of Satisfaction of Injunction and Dismissal of Action at 38 (internal citation omitted). In relying on this, Defendants misconstrue the meaning of the word “action,” because this provision of the statute was obsolete after the 2018-2019 school year. Defendants failed to mention that NMSA §22-10A-20 (“Staffing patterns; class load; teaching load”) was – and remains -- in effect to allow class size waivers. And as such, PED continues to grant class size waivers to districts unable to meet statutory class size requirements. PED granted class size waivers: for seven school districts in school year 2018-2019, three districts in school year 2019-2020, eight districts in school year 2020-2021, four districts in school year 2022-2023, and four districts for school year 2023-2024. *See* Exhibit 13 (Bates Nos. D59293, D59490 and D5941); *See also* Leg. Educ. Study Comm., *Hearing Brief: Supporting Teachers to Improve Student Outcomes*, LESC website, 8 (June 13, 2024) [hereinafter *LESC Supporting Teachers to Improve Student Outcomes Brief*].⁹³ Despite this, in 2022, the PED admitted there were no initiatives in place to address class size

⁹³ <https://www.nmlegis.gov/handouts/ALESC%20062624%20Item%207%20.1%20-%20Supporting%20Teachers%20to%20Improve%20Student%20Outcomes%20LESC%20Report%20.pdf>.

reduction. Flanagan Dep. 136:13-17.

- ii. Defendants continue to base class size maximums on averages, distorting accurate data and perpetuating their ongoing lack of oversight and accountability

Despite statutory class size limits, the PED fails to accurately determine how many classrooms actually exceed these limits, which is necessary information to enforce the statutory limits and to determine the full cost of reducing class size for at-risk students. According to NMSA §22-10A-20, class size maximums are based on the average size of all classes within a particular grade range at a school, rather than actual individual class sizes. As a result, relying on class size averages could lead to significant variation in the size of classes within a single school. This practice also obscures the true extent of classes exceeding the statutory limit. Additionally, although districts are mandated to report class sizes and compositions to PED, the data is reported inconsistently, which exacerbates the problem. *See LESC Supporting Teachers to Improve Student Outcomes Brief, supra* p. 74 and note 93, at 6.

Defendants fail to provide adequate oversight and monitoring as well. Districts are statutorily required to include a plan to achieve compliance with the class size requirements with their waiver request. *See* NMSA § 22-10A-20. However, in 2022 the PED admitted “there is no additional follow-up” after the waiver requests has been reviewed and approved by the Secretary of Education; the PED does nothing to ensure districts are implement their plan. Flanagan Dep. 125:5-20. PED also admitted it was unaware if the Department provides additional funding to districts to meet class size requirements; nor does it know how many teachers the State would need to meet class size maximums, and that until the pipeline for producing more qualified teachers is increased, class size waivers will be necessary. *Id.* at 126:11-15, 128:1-9, 129:14-20. In short, without a comprehensive remedial plan that includes strategies and actions to produce more qualified teachers, at-risk students will continue to be

educated in classes that are too large to provide them a sufficient education.

e. Counselors, Social Workers, and Other Instructional Support Providers⁹⁴

In 2018, the Court found “Defendants have failed to provide sufficient resources for counselors, social workers, and other non-instructional staff that all students, especially at-risk students, need to succeed.” FFCL #266 (testimony citations omitted). The Court also found that “[h]igh-performing schools have strong non-academic supports, including counseling, social workers, nurses, and health clinics within schools.” FFCL #272 (testimony citations omitted). “Wrap-around services can improve at-risk students’ academic performance.” FFCL #273 (testimony citations omitted). “Student counseling, mentoring, and monitoring programs have been shown to reduce high school dropout rates and increase graduation rates to produce fiscal benefits that greatly exceed program costs.” FFCL #270 (testimony citations omitted).

i. At-Risk Students’ Health, Social Service, and Support Needs

Today, at-risk students’ health and well-being remains a significant concern. The recent 2024 Kids Count Data Book relegated New Mexico to 50th in the nation for overall child well-being based on child outcomes in four domains – economic well-being, education, health, and family and community. *2024 Kids Count Data Book, supra* p. 15 and note 8. The report found that poor health impacts critical aspects of children’s lives, such as school readiness and attendance, and can affect their future health and wellbeing. *Id.* Similarly, the LESC found that without adequate social services, health care, and behavioral and mental health resources, students are at great risk of disengagement, dropping out of school, unemployment, risky behaviors, and early

⁹⁴ The role of an Instructional Support Provider (ISP) (formerly referred to as related service or “ancillary providers”) within public schools spans a wide range, including school counselor, school social worker, school nurse, psychologist, speech-language pathologist, physical and occupational therapists, signed language interpreter, educational, alcohol and drug abuse counselor, among other service providers. NMAC 6.63.3.7.

death. *See LESC Annual Report, supra* p. 8 and note 4, at 79.

In 2022, the PED commissioned the Pacific Institute for Research and Evaluation to assess the availability of culturally appropriate social services across New Mexico’s school districts and to identify gaps in these services throughout the State. *See Pacific Institute for Research & Evaluation (PIRE), Culturally Appropriate Social Services for New Mexico Students*, 19, (Nov. 2022) [hereinafter *PIRE Report*].⁹⁵ PIRE’s assessment found that mental health care is a critical unmet need of at-risk students, including mental health prevention and treatment. At-risk students suffer from high rates of anxiety, depression, and suicide. *Id.* at 20. Suicide, suicidal ideation, and suicide attempts among youth have reached crisis levels in New Mexico. *See Leg. Educ. Study Comm., Hearing Brief, Youth Suicide Prevention*, 1, (May 2024),⁹⁶ *see also PIRE Report, supra* at 20.

“The ... PED reports that the state leads the nation in suicide rates among youth between 10-17 years old, with suicide being the second leading cause of death among that age group.” *LESC Youth Suicide Prevention Brief, supra*, at 1. Native American youth and young adults had the highest suicide rate compared to all other races/ethnicities in New Mexico.⁹⁷ Substance abuse prevention and treatment services also continue to be unmet needs. High prevalence rates of substance use among youth and the lack of services for children and adolescents demonstrate this vital need across the State. *See PIRE Report, supra* at 10.

At the time the Court issued its Decision and Order and Findings of Fact and Conclusions of

⁹⁵ <https://southwest.pire.org/wp-content/uploads/sites/10/2023/01/Culturally-Responsive-Social-Services-NM-Students-Report-final-11.15.22.pdf>. “The topics covered in this report are responsive to the NMPED directives and the *Martinez/Yazzie v. State of New Mexico* consolidated lawsuit.” PIRE Report at 4. A total of 59 school districts (66 percent) and 50 charter schools (51 percent) participated in the assessment.

⁹⁶ <https://www.nmlegis.gov/handouts/ALESC%20051524%20Item%205%20.1%20-%20Youth%20Suicide%20Prevention%20LESC%20Brief.pdf>.

⁹⁷ New Mexico Department of Health, Indicator-Based Information System, Suicide Death, <https://ibis.doh.nm.gov/indicator/summary/SuicDeath.html> (last visited Aug. 28, 2024).

Law, the Court did not contemplate a global Covid-19 pandemic and its devastating impacts on New Mexico's students and their families and communities. Trauma from the health pandemic has resulted in increased demand for social and behavioral health services across all school districts, especially after returning to in-person learning. *Id.* at 5, 20. At-risk students continue to struggle with the impacts of the pandemic, including learning loss and school disengagement, social isolation and behavioral challenges, and high absenteeism. *Id.* at 20. Particularly, students from Native American and other communities of color are still dealing with the trauma from the disproportionate loss of relatives and community members to the coronavirus. *Id.* The pandemic also disproportionately impacted students with disabilities, who typically rely on schools to receive in-person therapeutic services and individualized instruction. *LFC Special Education Report, supra* p. 38 and note 32, at 7.

Despite the undeniable and tragic statistics that point to at-risk students' ongoing mental and behavioral health, social-emotional, and health service needs, the State has not met those needs to date.

ii. Defendants have failed to provide sufficient funding for health and social services and ISPs

In 2018, the Court found that "[i]t takes resources to recruit and train skilled special education teachers, psychologist[s], speech and language pathologists, physical therapists, and social workers." FFCL #2352. The Court also found that "[m]ost districts do not have sufficient funding to make social and health services available to all at-risk students[,] [m]any districts have had to eliminate counselors, nurses, and social workers and/or reduce their time in the district due to budget cuts." FFCL #267 (testimony citations omitted). The same is true today.

According to a 2020 inventory of behavioral health services in New Mexico's public schools, districts reported numerous resources that need to be fulfilled to adequately address the

behavioral health needs of students, including: funding (41.1 percent); behavioral health staff (37.5 percent); instructional resources (including curricula and materials) for students, families and schools (32.1 percent); technical assistance (26.8 percent); professional development/training for behavioral health staff (25.0 percent) and teaching staff (19.6 percent); and behavioral health and social services available outside of the school (12.5 percent). *See* N.M. Dep't of Health & Pub. Educ. Dep't, *New Mexico School Behavioral Health Services Inventory*, PIRE website, 1 (Feb. 2021).⁹⁸

New Mexico also has a dire shortage of ISPs to serve at-risk students. The PIRE Report revealed how great this need is in the districts: 61 percent had one or fewer full-time social workers, 84 percent lacked a full-time mental health therapist, 81 percent did not employ a psychologist and none had a psychiatrist, and 29 percent lacked a full-time school counselor. *See PIRE Report, supra* at 45-47. Given New Mexico's diverse students with unique cultural and linguistic identities, the State has an urgent need for behavioral health staff at all levels, with the largest gap being culturally appropriate behavioral health staff and culturally appropriate services. *Id.* at 39.

When asked whether social workers are available to all school districts, the State pointed to the dearth of behavioral health and mental health providers. Deposition of Greg Frostad (Frostad Dep.) 66:21-67:3, May 23, 2022, attached hereto as Exhibit 14. The State's then-Director of the Safe and Healthy Schools Bureau admitted that aside from limited federal grant funding (*e.g.*, Title IV, Part A) that districts can use to support a social worker position, he did not

⁹⁸ https://southwest.pire.org/wp-content/uploads/sites/10/2022/04/NM-School-Behavioral-Health-Services-Inventory_Brief-Report_2.18.21.pdf. The Inventory was developed and administered by PIRE, UNM School of Medicine Department of Pediatrics, NM Department of Health Office of School & Adolescent Health (OSAH), and PED. The results are based on 56 completed inventories, representing two-thirds (63 percent) of NM's 89 school districts and 88 percent of students enrolled in public schools.

“believe there are any state funds that are devoted to funding social workers in New Mexico schools.” *Id.* at 125:10-24.

Regarding school nurses, the Director testified that the National Association of School Nurses recommends a nurse-to-student ratio of 250-to-1; the Director admitted that he did not know of any districts in the State that meet this ratio. He testified that “[i]n general the State is above 600-to-1 students to school nurse [ratio].” Frostad Dep. 115:4-25. The State admitted that other than a \$100,000 grant the PED received to recruit and retain nurses during the pandemic, it was not aware of any state funds that are specifically available to districts to hire school nurses. *Id.* at 100:18-19, 116:12-19, 125:25-126:6. Nor was the State aware of any plans by the New Mexico Department of Health or the PED to work with state institutions of higher education to train more school nurses. *Id.* at 119:9-17. Regarding psychologists, the national recommended ratio of school psychologists to students is 700-to-1; in New Mexico the ratio is **2,834-to-1**. See *New Mexico School Behavioral Health Services Inventory*, *supra* at 1. The State admitted to a chronic shortage of psychologists, especially bilingual psychologists to work with students with disabilities. Dominguez-Clark Dep. 150:12-22, 165:15-22.

The State has failed to make any progress toward remedying the deficiencies found by the Court in 2018. The Court found that “[w]hen school counselors are working at the recommended student-to-counselor ratio, students have fewer disciplinary problems and higher rates of graduation.” FFCL #276. Access to counseling in schools helps low-income children to be successful. FFCL #271. The State’s expert on Indian Education also testified that having social workers and counselors in schools is necessary to address any out-of-school issues that Native American children may face.” FFCL #271 (testimony citations omitted). Despite the

gaps found in 2018 and the Court’s clear discussion of the resources necessary, the Director’s testimony in 2022 demonstrates that progress has not been made. The Director further testified that the National Professional Organization for School Counselors in America recommends a counselor-to-student ratio of 250-to-1. Frostad Dep. 132:15-133:6. He admitted to being unaware of any districts that meet this ratio, but he knew that “[h]istorically across the State, we’ve been about 400 to about 450 in the ratio of students-to-counselors.” *Id.* at 133:7-20.

According to LFC’s 2024 Policy and Performance Analysis of public education, some districts were able to hire staff during the Covid-19 pandemic using short-term federal emergency pandemic-related funds to support students’ academic and social emotional recovery. *See LFC Report to the Leg. 2024, Vol. 1, supra* p. 7 and note 3, at 37. However, the federal pandemic relief funding is set to expire in FY25 and school officials believe that the impending fiscal deadline may force districts to eliminate mental and behavioral health staff, which will leave students once again without access to critical services. *Id.* While there has been some state money for behavioral health supports, it is often below-the-line funding and unpredictable. For example, for the 2023-2024 school year, \$5 million was appropriated for behavioral health supports, including behavioral health curriculum development, training on restorative practices, and wellness rooms. *See* Pub. Educ. Dep’t, *Public Education Department Agency Priorities*, LESC website, 17 (July 25, 2024).⁹⁹ In the following 2024-2025 school year, the State did not appropriate any money to sustain those basic initiatives despite the overwhelming need to ensure at-risk students have the full range of services they need to be college and career ready. *Id.*

When asked about the types of social services that at-risk students need, the Director

⁹⁹ <https://nmlegis.gov/handouts/ALESC%20072424%20Item%207%20.3%20-%20PED%20Priorities%20Presentation.pdf>.

testified that he was not aware of any requirement that districts must provide at-risk students with social services in schools, except for students with IEPs. Frostad Dep. 124:4-12. He also testified that school nurses and counselors are not required and are only considered as “optional services,” while also recognizing that health and behavioral services in schools are important services for students. *Id.* at 105:5-106:5.

iii. Conclusion as to lack of ISPs

Defendants have extensive work to do to address at-risk students’ social services, health care, and behavioral and mental health needs. The State must develop and implement a strategic plan that ensures all at-risk students are receiving adequate social services, health services, and counseling services to support their overall health and well-being and improve educational outcomes. The plan must build the State’s capacity of school social workers, behavioral and mental health professionals, counselors, and other ISPs to reduce the provider-to-student ratios, in collaboration with the state institutions of higher education. Although the PED has begun this work with the Expanding Opportunities Project, this is a short-term grant with limited federal funding. Action Plan at 50. It is unclear how the State will continue and expand this program once federal funding is depleted. A comprehensive state plan must include multi-year, targeted state funding sufficient for districts to attract, hire, and retain ISPs to fill the gap in services for at-risk students.

5. The Lack of a Comprehensive Implementation Plan Has Resulted in Further Deterioration of the Quality and Number of Teachers

"[T]he quality of teaching for at-risk students is inadequate. In New Mexico, high poverty schools have a disproportionately high number of low-paid entry level teachers." FFCL ##670, 707. "Inexperienced teachers are systematically less effective than experienced teachers. Schools with high rates of student poverty or other education needs have persistent,

serious difficulty recruiting and retaining qualified, skilled teachers." *Id* #671. "[A]s one of the most culturally, linguistically and ethnically diverse states in the country, every New Mexico teacher requires an understanding and ability to engage with students of many backgrounds to be effective." *Id* #672. "New Mexico is failing to ensure that at risk students in "high need" schools are exposed to highly effective teachers." *Id* #682. "Policies that create rewards for teaching in high need schools can help address teacher quality problems in these schools and benefit students..." *Id* #683. "School districts do not have the funds to pay for all the teachers they need." *Id* #697. "[N]o effort has been made to evaluate the effectiveness of PED's efforts to achieve equitable distribution of effective teachers or recruitment and retention of teachers in high poverty or low performing schools." Decision and Order at 35. "Low teacher compensation is an impediment to recruiting and retaining teachers in schools with high at-risk student populations." *Id* #714. "[T]he State of New Mexico does not provide districts with sufficient funding to provide professional development for teachers." *Id* ##727, 728. "A central component of closing the achievement gap for at-risk students in New Mexico is effective professional development for ineffective teachers." *Id* #730. There is insufficient funding to provide teachers with adequate mentorship or professional development. *Id* ##707-739.

Although the Court in its Decision and Order emphasized the critical importance of high-quality teaching in providing a sufficient education to at-risk students, including directives to increase teacher training, provide culturally relevant pedagogy, and ensure adequate resources and support for educators working with at-risk populations, Defendants have not adequately addressed the systemic issues that undermine the effectiveness of the teacher workforce. Despite authorizing some financial investments aimed at increasing teacher compensation and

reducing barriers to entry for new educators, the State has not sufficiently improved the recruitment, retention, and preparation of teachers, nor has it provided enough professional development, mentorship, or classroom support targeted to support qualified teachers for at-risk students, which are critical for sustaining high-quality teaching. The State continues to lack standardized methods for collecting and reporting teacher-related data across New Mexico. This has resulted in gaps and inconsistencies in the data, which impede the State's ability to monitor and evaluate the full scope of issues and implement targeted interventions effectively. Instead, Defendants rely heavily on a few disconnected strategies, and as a result, the quality of education for at-risk students remains inadequate, falling far short of meeting their constitutional duty. *See LESC Supporting Teachers to Improve Student Outcomes Brief, supra* p. 74 and note 93, at 16.¹⁰⁰

a. Persistent Teacher Vacancies and Turnover

Defendants have failed to address high teacher vacancies and attrition rates. According to the most recent data from the SOAR Report while the number of statewide teacher vacancies decreased slightly from 2022, the number actually **increased** to 751 in 2023 compared to 740 in 2018.¹⁰¹ *See SOAR Report - 2018*, NMSU website, 7 (Oct. 17, 2018);¹⁰²

¹⁰⁰ According to the LESC, “[t]o achieve better student outcomes, New Mexico must improve the quality of instruction. Within schools, teachers unequivocally have the greatest impact on student achievement ... However, tempting it may be to hope for silver bullet approaches, relying too heavily on a single strategy may create unintended consequences or lackluster results. Simply reducing class sizes may improve working conditions but also substantially increase the number of services and amount of infrastructure required to support more teachers and classrooms. Relying solely on residency programs to prepare teachers ignores the impact that school cultures play on collective efficacy. Increasing salaries alone will not change the existing practices of current teachers. And merely adding hours for professional work does not guarantee time will be used productively.”

¹⁰¹ Teacher vacancies reached 1,048 in 2021. *See SOAR Report – 2021*, NMSU website, 2 (Oct. 4, 2021), <https://alliance.nmsu.edu/publications/2021-New-Mexico-Educator-Vacancy-Report.pdf>.

¹⁰² https://nnmc.edu/document_repository/teacher_ed_docs/major-yearly-reports/2018-New-Mexico-Educator-Vacancy-Report.pdf.

See also *SOAR Report – 2023*, *supra* p. 50 and note 45, at 2. In 2022, Defendants admitted they do not track the annual teacher turnover rates, recruitment rates, or the number of new teachers hired every year, instead relying on the unofficial SOAR Report for vacancy data. Flanagan Dep. 139:6-15, 140:23-141:1; see also Leg. Fin. Comm. & Leg. Educ. Study Comm., *Hearing Brief: Educator Workforce & Teacher Pipeline*, LESC website, 1 (July 21, 2022).¹⁰³

Since FY21, teacher turnover has continued to increase, leading to significant staffing shortages. *Id.*; see also *LESC Supporting Teachers to Improve Student Outcomes Brief*, *supra* p. 74 and note 93, at 2. Each year, approximately 3,000 educators leave the State’s districts and schools, resulting in numerous vacancies that often cannot be filled. See *LFC Status of Educator Workforce Brief*, *supra* p. 72 and note 91, at 1. This issue is particularly pronounced among less experienced and alternatively-licensed teachers.¹⁰⁴ Between FY21 and FY23, only 64 percent of alternative level 1 teachers and approximately 56 percent of traditional level 1 teachers left their school. *Id.* Notably, around 1,500 level 1 teachers leave their classrooms each year, contributing to a decline in both overall teaching experience and the number of educators holding level 2 licenses from FY21 to FY23. See *LESC Supporting Teachers to Improve Student Outcomes Brief*, *supra* p. 74 and note 93, at 2.

This data demonstrates that the State has not provided enough ongoing support to

¹⁰³ <https://www.nmlegis.gov/handouts/ALESC%20072722%20Item%205%20.1%20-%20Educator%20Workforce%20and%20the%20Teacher%20Pipeline.pdf>.

¹⁰⁴ “[T]he proportion of graduates completing alternative licensure programs has grown to nearly 60 percent. Alternatively licensed teachers typically begin teaching immediately, with little to no classroom experience. Some research suggests these teachers may have higher rates of attrition than traditionally licensed teachers who complete substantial coursework and clinical hours prior to becoming a teacher of record.” Leg. Fin. Comm. & Leg. Educ. Study Comm., *Hearing Brief: Educator Workforce & Teacher Pipeline*, LESC website, 2 (July 21, 2022).

retain teachers once they are hired. Without sufficient retention strategies, recruitment efforts will not have a long-term, systemic impact. Meanwhile, ongoing staffing shortages directly impact the quality of education and the ability to provide consistent support to at-risk students. Defendants have not adopted a strategic and comprehensive approach to effectively attract and retain teachers. In fact, because PED does not even collect the necessary data on the teacher workforce, it does not and cannot analyze and address the specific needs of different districts effectively.

b. Insufficient Teacher Pay

Since this Court's ruling, the State has indeed increased recurring funding to raise minimum teacher salaries and provide overall increases. However, the average teacher salary is still significantly below the statewide living wage, and surrounding states are out-competing us for teachers by pursuing their own increases to teacher compensation. *LFC Status of Educator Workforce Brief, supra* p. 72 and note 91, at 4-5. Notably, the Division Director for Educator Quality and Ethics at PED admitted in 2022 that she did not know how the salary minimums were arrived at, or whether they took into consideration inflation. Flanagan Dep. 54:13-55:9, 56:20-22. In addition, teachers are still paid 26.8 percent less compared with other jobs held by college graduates with similar experience in New Mexico. *See* Economic Policy Inst., *Teacher Pay Penalty Still Looms Large*, EPI website, 9 (Sept. 29, 2023).¹⁰⁵ The State admitted in 2022 that several districts lacked sufficient funding to pay for the required increases, and PED responded not by allocating additional funding, but by providing technical assistance. Perea-Warniment Dep. 246:1:14. It is no surprise that despite the State's modest increases to teacher salaries, the State has not alleviated the difficulties in recruiting and retaining teachers.

¹⁰⁵ <https://files.epi.org/uploads/274103.pdf>.

Finally, salary increases alone are insufficient to address issues like workload, instructional practices, strong supports within schools, and the overall teaching environment. Without concurrent improvements in these areas, higher salaries are unlikely to result in sustained staffing changes or improved student outcomes, as demonstrated by the on-going high vacancy and attrition rates, and poor student outcomes. *See LESC Supporting Teachers to Improve Student Outcomes Brief, supra* p. 74 and note 93, at 2. The State has not adequately addressed these broader issues, as mandated by this Court’s order. To do so, Defendants must comprehensively address not just pay but also the working conditions and support systems that impact teacher retention and effectiveness.

c. Insufficient Targeted Recruitment

The State has failed to ensure that experienced teachers are placed in high poverty schools. Children in high poverty schools continue to be taught by new, inexperienced teachers, who have not been effective at closing the educational gaps for children from low-income families. Teachers with a level 2 or level 3 license (*i.e.*, teachers with the most experience and/or education) are unevenly distributed across the State, meaning students who are not at-risk benefit significantly more than at-risk students from access to more experienced teachers. *See LESC Annual Report, supra* p. 8 and note 4, at 5.

Defendants have failed to implement comprehensive, targeted recruitment strategies to attract qualified and experienced teachers to high-need areas, such as rural districts and schools serving economically disadvantaged students. In 2022, PED admitted it made no effort to place experienced teachers in classrooms servicing at-risk students because it is the responsibility of the districts, and more needed to be done to expand the teacher workforce. *Perea-Warniment Dep. 266:2-11; Flanagan Dep. 112:11-13.*

By now it is clear that the impact of the State’s financial incentives has been insufficient and piecemeal. In 2022, PED admitted it does not have an incentive structure to match the most experienced teachers with the highest need students, nor did it provide any funding to districts to recruit teachers with bonuses or stipends. Flanagan Dep. 143:21-24, Perea-Warniment Dep. 250:14-19. While PED left it up to districts to use operational funding or federal funding to do this, it admitted it does not require, track or measure the effectiveness of any incentives provided by districts. Flanagan Dep. 143:24-144:12. Nor has PED conducted a cost analysis to determine the amount of funding required to provide incentives to match experienced teachers with the highest need students. *Id.* at 145:4-13. PED also admitted it does not provide retention incentives to teachers in high poverty schools, or any retention incentives at all. *Id.* at 148:6-9.

The Legislature’s efforts to fund stipends, scholarships and loan repayment programs have not been enough to attract and retain teachers in high-need areas, fill vacancies, or ensure that highly qualified and well-prepared teachers are in classrooms serving at-risk students. No specific funding was appropriated for pay incentives in 2019 or 2021. In 2020, the Legislature appropriated merely \$1 million “[t]o place teachers in hard-to-staff schools and provide on-going support and development.” H.B. 2 (2020 Regular Session) at 204. However, this appropriation was reduced to \$0 during the Special Session in June of 2020. *See* H.B. 1 (2020 1st Special Session) at 21. In 2022, the \$10.1 million the Legislature appropriated through SEG funding to provide targeted salary increases for hard-to-staff positions that provide instructional support or social services to students was insufficient to benefit all teachers who qualified, was not required to be targeted by the districts on teachers serving at-risk students, and all funding for this purpose was discontinued in the years since.

Enacted in 2019, the Grow Your Own Teachers Act established a scholarship program for

educational assistants to cover education expenses necessary to obtain a teaching license, up to \$6,000 per year for up to five years. *See* NMSA §§ 21-21P-1-8. However, in the five years since its inception, the Legislature has allocated only \$1.5 million to this program, and notably, no funding has been appropriated for this scholarship since 2022. *See LESC Annual Report, supra* p. 8 and note 4, at 7.

Also enacted in 2019, the Teacher Preparation Affordability Act provides need-based scholarships of up to \$6,000 per year for up to five years to pay for education expenses for students pursuing teaching licenses. *See* NMSA § 21-22h-1-9. However, in FY23, New Mexico’s Higher Education Department (HED) expended only \$3.7 million of the \$20 million of the funding allocated. *See LESC Annual Report, supra* p. 8 and note 4, at 7-8.

The State has allocated funding for the Teacher Loan Repayment Program, which provides financial assistance to licensed teachers who have completed their degrees and are actively teaching. *See* NMSA § 21-22H-1-9. This program provides up to \$6,000 per year toward outstanding student loan debt. *Id.* While this program has received funding from the Legislature since 2019, the amount of funding has been widely variable (between \$2 million and \$10 million per year), it is not recurring, and falls far short of meeting the need of teachers seeking loan repayment.¹⁰⁶

d. Defendants have failed to increase teacher diversity

Despite state statutes recognizing the need to recruit Native American, Hispanic, Black,

¹⁰⁶ In FY23 and FY24, the Teacher Loan Repayment Fund (TLRF) was funded through a transfer from the Public Education Reform Fund (PERF). However, in FY25, with no surplus remaining in the PERF, the funding for the TLRF became, once again, contingent on allocations from the general fund. And while the Legislature allocated funding for the TLRF, it was half of the amount requested by HED. *See LFC Report to the Leg. 2024, Vol 2, supra* p. 18 and note 17, at 445.

and Bilingual educators, the funding to implement these acts has been totally inadequate to recruit and retain a more diverse teacher workforce. Programs designed to attract new teachers, such as alternative licensure and teacher residency programs, have not adequately focused on ensuring that these efforts include recruiting a diverse teacher workforce. In turn, as of 2023 only 42 percent of teachers were people of color, compared with 79 percent of students. *See* National Council on Teacher Quality, *State of the States 2023: Policies to Increase Teacher Diversity*, NCTC website, 34 (July 2023).¹⁰⁷

The State has not established public goals for increasing the racial diversity of the teacher workforce, and continues to lack adequate mechanisms for tracking progress on meeting these goals.¹⁰⁸ This lack of data and accountability makes it impossible to assess the effectiveness of existing programs and to make necessary adjustments to improve outcomes. New Mexico does not publish data on the racial demographics of the educator workforce, the candidates that complete in-state teacher preparation programs, or the retention rates of educators of color. *See* The Education Trust, *New Mexico Report Card: Is Your State Prioritizing Teacher Diversity & Equity?*¹⁰⁹

The State does not provide funding or guidance for districts to set goals and invest in strategies to increase the racial diversity of their educator workforce, or for meaningful cultural competence and anti-bias professional learning opportunities for school and district

¹⁰⁷ <https://www.nctq.org/publications/State-of-the-States-2023:-Policies-to-Increase-Teacher-Diversity>.

¹⁰⁸ PED's Action Plan (discussed in Section II(B)(1), *supra*) proposes increasing Hispanic teachers by 20 percent, Native American teachers by 7 percent, and African American teachers by 3 percent. Action Plan at 11. However, the PED failed to conduct a cost analysis to determine the amount of funding needed to achieve these goals, nor was this plan ever finalized or adopted by PED.

¹⁰⁹ <https://edtrust.org/educator-diversity/#NM> (last visited Aug. 22, 2024).

leaders. *Id.* The State does not invest in strategies to increase the racial diversity of its educator workforce. *Id.* It does not make targeted, sustained investments in preparation programs that prepare a high number of teachers of color, including minority-serving institutions, nor does it review licensure policies for racial bias and adopt licensure policies that increase diversity while maintaining quality and rigor. *Id.*

Defendants' failure to take comprehensive actions to increase diversity in the teacher workforce is glaring, as a larger diverse teaching workforce is critical to providing an equitable and culturally responsive education for at-risk students in New Mexico.

- i. Defendants have failed to target funding and recruitment to increase the number of bilingual, TESOL endorsed teachers, and Native American teachers

The State has also failed to sufficiently recruit teachers with bilingual or TESOL (Teaching English to Speakers of Other Languages) endorsements, which is a substantial shortcoming given 16 percent of students are ELLs. *See* Leg. Fin. Comm., *Program Evaluation: Bilingual and Multicultural Education Programs*, LFC website, 6 (June 16, 2022) [hereinafter *LFC Program Evaluation: BMEPs*].¹¹⁰ During the 2022-2023 school year, PED issued 170 waivers for teachers lacking a bilingual endorsement to teach in a BMEP. *See LESC Annual Report, supra* p. 8 and note 4, at 14. The proportion of English language learners served by BMEPs has declined from 52 percent in school year 2013-2014 to 38 percent in school year 2022-2023, despite an increase in the number of ELL students. *Id.* A key reason districts opt not to offer a BMEP is due to their inability to hire and retain endorsed teachers. *Id.*

The State's failure to imbed bilingual education/TESOL courses into standard teacher preparation curriculum contributes greatly to this problem. Teacher preparation students are

¹¹⁰ <https://webnew.ped.state.nm.us/wp-content/uploads/2022/06/Program-Evaluation-Bilingual-and-Multicultural-Education-Programs.pdf>.

discouraged from obtaining a bilingual or TESOL endorsement because it requires concurrent coursework, which requires additional time and money. *See LFC Program Evaluation: BMEPs, supra* at 30. The PED admitted in 2022 that it had no plan to help more teachers become bilingual-endorsed to teach in BMEPs. Flanagan Dep. 253:20-23. PED also admitted it did not track how many pre-service teachers in Educational Preparation Programs in state universities and community colleges (“EPPs”) were studying to become BMEP teachers. *Id.* at 254:16-21.

Furthermore, the State has a glaring shortage of bilingual professors at institutes of higher education, who are crucial to training pre-service bilingual teachers. *See LFC Program Evaluation: BMEPs, supra* at 32. In FY22, New Mexico had only six Spanish/English bilingual educator professors and one Native American language professor. *Id.* This embarrassing statistic reflects the State’s systemic failure to prioritize and invest in faculty of bilingual education particularly because this Court found that “teachers who are prepared to become a teacher” in New Mexico are more effective. FFCL # 709; *see also LFC Program Evaluation: BMEPs, supra* at 33.

Just one example of this is in pay for higher education faculty, many of whom earn less than level II and III K-12 teachers in the State. *Id.* at 32. It is no surprise that the systemic failures of State, much like those of the K-12 teacher workforce, result in an insufficient number of bilingual and TESOL endorsed educators that are necessary to provide a sufficient education to ELL students.

The significant shortage is not solely due to a lack of bilingual teachers but also reflects the State's failure to address broader workforce challenges. *Id.* According to the LFC's 2022 evaluation of BMEPs, only 20 percent of bilingual-endorsed teachers were teaching in BMEP programs, demonstrating the State's neglect of critical issues such as lack of administrative support, and the need to create their own materials. *See LFC Program Evaluation: BMEPs, supra* at 28;

see also LESC Annual Report, supra p. 8 and note 4, at 14.

Research indicates that stipends can be an effective tool for recruiting and retaining teachers in hard-to-staff areas, particularly when the stipends are recurring, substantial, and paired with improvements in working conditions. *See id.* However, the State does not track which districts offer stipends to bilingual or TESOL endorsements, or those who teach in a BMEPs. *See LFC Program Evaluation: BMEPs, supra* at 32. A survey conducted by the LESC staff across 30 districts revealed that only nine districts offered stipends to TESOL endorsed teachers and 12 offered stipends to bilingual endorsed teachers. *See LESC Annual Report, supra* p. 8 and note 4, at 14. To help support this critical area of the educator workforce, the LESC recommended \$6.3 million in FY25 for stipends for bilingual teachers in BMEPs, which the Legislature failed to appropriate. In fact, the State has failed to allocate specific funding for this purpose since 2019.

Additionally, the State has a dire shortage of Native American teachers. In 2018, the Court found that only 2 percent of all teachers in New Mexico were Native American. FFCL #326. Notably, PED states that “[i]t is well-established that students thrive when their teachers reflect the community in which they work, and we therefore must prioritize obtaining a more diverse workforce.” Action Plan at 5. Yet, the Defendants have failed to target funding and recruitment to increase the number of Native American teachers, including teachers certified to teach Native language and culture. *See National Council on Teacher Quality, State of the States 2023: Policies to Increase Teacher Diversity*, NCTC website, 34 (July 2023).¹¹¹

“To close the teacher diversity gap and fully reflect the Native student population, New Mexico would have a to hire approximately 1,400 Native teachers.” Anja Rudiger, *Pathways to*

¹¹¹ <https://www.nctq.org/publications/State-of-the-States-2023:-Policies-to-Increase-Teacher-Diversity>.

Education Sovereignty: Taking a Stand for Native Children, Tribal Educ. Alliance website, 41 (Dec. 2020).¹¹² Defendants must develop a plan establishing statewide and district level goals to increase student access to Native American teachers, including targeted investments to adequately support and expand Native teacher, Native language and culture teacher, and Native school leader pipeline programs and tribal community-based initiatives that are important to building New Mexico’s Native educator capacity. The State has not done this.

ii. Defendants have failed to target funding and recruitment to increase the number of special education teachers and ancillary staff

The State has a critical shortage of qualified special education teachers and ancillary providers, especially teachers and providers who are bilingual. Dominguez-Clark Dep. 150:18-22, 165:19-22, 184:15-19. In 2023, there were 268 special educator teacher vacancies (36 percent), the largest of all vacant teaching positions statewide. *See SOAR Report – 2023, supra* p. 50 and note 45, at 5. The highest need was for special education elementary teachers, followed by special education pre-K, middle school, and K-12 teachers. Special education assistants were also in extremely short supply. *Id.* In 2022, the then-Director of Special Education admitted that the Special Education Division does not track the number of special education teachers nor the number of vacancies; instead relying on the Educator Quality and Ethics Division (which in turn relies on the SOAR Report rather than collect this critical data). Dominguez-Clark Dep. 30:5-7, 32:17-21, 184:6-16; Flanagan Dep. 247:13-17. The Director testified that she did not know whether PED has an established mechanism for evaluating whether districts have sufficient special education teachers and ancillary personnel to support students with disabilities, but admitted that the Division does not conduct this type of evaluation. Dominguez-Clark Dep. 146:15-25. Notably, the State

¹¹² https://tribaleducationalliance.org/wp-content/uploads/2023/01/tea-full-report_12-14-20.pdf.

admitted that it had not taken any steps to assist school districts to fill vacancies for special education teachers; instead, yet again, shifted the blame to districts and pointed to its overall recruitment strategies. Flanagan Dep. 249:7-16.

LFC and LESC reports revealed that the special education teacher shortage is attributed, in part, to the State’s inability to attract existing licensed teachers to teach special education, and failure to address key issues driving special educator teacher turnover and burnout, such as “working conditions, complex responsibilities, noninstructional demands, and insufficient support from administrators, colleagues, and assistants.” *LFC Special Education Report, supra* p. 38 and note 32, at 1; *see also LESC Annual Report, supra* p. 8 and note 4, at 14; *LFC Report to the Leg. 2024, Vol. 1, supra* p. 7 and note 3, at 40; Leg. Educ. Study Comm., *Report: Special Education in New Mexico: A Landscape Analysis from Communities and Stakeholders*, LESC website, 11 (Dec. 15, 2023) [hereinafter *LESC Special Education Report – 2023*];¹¹³

The State admitted that it does not offer any professional development to teachers that is specific to educating at-risk students, including students with disabilities. Flanagan Dep. 70:12-16, 72:7-73:7. The working group associated with the 2023 LESC Report on Special Education highlighted additional outstanding needs requiring targeted funding, including better training, support, and resources for special education teachers and ancillary staff to address staffing challenges. *LESC Special Education Report – 2023, supra* at 11-12.

This Court found that “[h]aving ancillary personnel in the classroom is important to meet the needs of special education students and there is not sufficient funding in New Mexico to provide the ancillary personnel for special education students.” FFCL #2341 (internal citations

¹¹³ <https://www.nmlegis.gov/handouts/ALESC%20121323%20Item%2011%20.1%20-%20Special%20Education%20in%20New%20Mexico%20LESC.pdf>.

omitted). In 2022, the State admitted that there is insufficient ancillary personnel to meet the needs of special education students. Dominguez-Clark Dep. 135:7-11. Although the State testified that it was aware of the chronic shortage of *bilingual* psychologists, educational diagnosticians, and special education teachers (*id.* at 150:18-22), it deferred to the Educator Quality Division to answer whether PED has a plan to meet the shortage. *Id.* at 153:1-2. Further, the State testified that districts are responsible for recruiting and hiring bilingual special education personnel while, at the same time, admitting that there is insufficient funding for districts to effectively recruit and hire, especially without any incentives to attract applicants. *Id.* at 151:6-12, 19-25.

The State also admitted that funding is insufficient for school districts to recruit and retain enough special education teachers to fill the gap and there are no incentives for educators to work in this field. *Id.* at 136:13-24, 139:19-23, 151:19-25. The LESC Special Education Report from 2023 pointed to research showing that stipends can be an effective tool for recruiting and retaining teachers in hard-to-staff areas, particularly when the stipends are recurring, substantial, and paired with improvements in working conditions. *See LESC Special Education Report – 2023, supra* at 11. However, a survey conducted across 30 districts revealed that only six districts offered stipends to special education teachers. *See LESC Annual Report, supra* p. 8 and note 4, at 14. To help support the special education teacher workforce, the LESC recommended \$20.4 million in FY25 for stipends for those educators serving students with the most profound disabilities (levels C and D) and an additional \$8.9 million for educational assistances serving these students. *Id.* But in 2024, the Legislature appropriated only \$5 million per year for fiscal years 2025-2027 for stipends and pay differentials to fill hard-to-staff special education positions. *See H.B. 2 (2024 Session)*, at 240, 244, 248. This is \$24.3 million less – per year – than the LESC’s estimated cost to implement a pay differential for teachers and educational assistants who serve students with “extensive to

maximum special education needs, at a rate that research suggests would be effective at reducing vacancies.” Leg. Educ. Study Comm., *2024 Post-Session Review*, LESC website 16 (April 2024).¹¹⁴

e. **Teacher Training and Professional Development Continue to be Insufficient to Train the Number of Teachers Necessary**

i. **Insufficient Educator Preparation Programs (EPPs)**

Defendants have failed to improve EPPs adequately to prepare teachers to teach the state’s diverse student population, or invest in ongoing professional development for teachers, particularly in Culturally and Linguistically Relevant methodology (“CLR”), bilingual education, special education, and Science/Technology/Engineering/Math (“STEM”) subjects. PED recognized its oversight requirements to ensure educator preparation programs “are meeting the requirements for initial teacher licensure for the completers programs.” Flanagan Dep. 175:21-25. Despite its authority in this regard, PED admitted in 2022 it does not have a strong process in place to hold EPPs accountable, and reluctance by the Secretary and Executive to exercise its authority. *Id.* at 221:5-2, 222:1-11.

As such, the State's teacher preparation programs have not been sufficiently aligned with the needs of at-risk students, despite this Court’s emphasis on the need for effective teachers to improve proficiency among at-risk students. Currently, the demand for teachers in New Mexico exceeds the number of graduates from teacher preparation programs and those relocating to the State to teach. *See LESC Annual Report, supra* p. 8 and note 4, at 6. PED admitted it had no plans to increase the number of pre-service teachers in EPPs to teach ELL students. Flanagan Dep. 209:4-10.

¹¹⁴ <https://www.nmlegis.gov/Entity/LESC/Documents/LESC%202024%20Post-Session%20Report%20-%20Web%20Version.pdf>.

ii. Professional Development is Insufficient

Effective professional development is critical for equipping teachers with the skills needed to address the educational needs of at-risk students, but Defendants' efforts have been insufficient in this regard. Research indicates that effective professional development should be content-focused, collaborative, sustained over time, and embedded in teachers' daily work. *See LESC Supporting Teachers to Improve Student Outcomes Brief, supra* p. 74 and note 93, at 15. However, many professional development opportunities in New Mexico have been limited to one-off sessions rather than ongoing, integrated learning experiences that directly impact classroom practice. The lack of such opportunities limits the potential for teachers to continuously improve their teaching practices for at-risk students.

Despite this Court's significant findings on the inadequacy of teacher training and professional development for teachers to effectively educate at-risk students, the PED does not require professional development, whether in terms of annual hours or specific topics, with few exceptions.¹¹⁵ *See, e.g.,* FFCL ## 305, 319, 727-738. In 2022, the State acknowledged its authority to enforce such mandates but failed to do so because there was no justification for imposing additional requirements on teachers already burdened by instructional hour and calendar day constraints. Perea-Warniment Dep. 253:6-254:3.

The State funds professional development through the SEG. *See LESC Annual Report, supra* p. 8 and note 4, at 10. While districts must submit a professional development plan to PED, the allocation of SEG funds for professional development is discretionary. *See* NMSA § 22-10A-19. Therefore, it is unclear how districts actually utilize these appropriations for professional

¹¹⁵ Statutory requirements for structured literacy and 1 hour of anti-racism training can be found at NMSA §§ 22-13-32, 22-10A-19.3.

development. *See LESC Annual Report, supra* p. 8 and note 4, at 10.

In 2022, the PED admitted it does not track professional development that is funded with SEG money or federal funds; nor does it track the type of professional development or the number of teachers who receive it. Perea-Warniment Dep. 287:4-10; Flanagan Dep. 66:24-67:2, 10-18, 23-25, 68:1-19.¹¹⁶ In 2022 the PED admitted it did not have centralized tracking to oversee the professional development that was offered across its own bureaus, such as anti-racism training or training in effectively teaching Native American students; nor does PED offer any professional development specific to educating at-risk students. Flanagan Dep. 70:12-16, 72:7-73:7. PED further admitted it did not monitor the amount of time teachers have for professional development across the State, it does not monitor the effectiveness of professional development, which trainings improved teacher competency, or the number of students served by teachers who have received particular training. *Id.* at 75:3-24. In 2022, PED admitted it does not track whether professional development offerings specific to teaching Native American students or specific to teaching at-risk students are actually improving outcomes for those students. *Id.* at 76:2-25. PED admitted it did not know whether the agency allocated funds to districts to provide professional development that is designed to improve outcomes for at-risk students. *Id.* at 76:24-77:2. PED admitted it does not request data from districts on the amount and impact of professional development. *Id.* at 77:16-23. While professional development should be specific to at-risk students, PED was not planning to require it. Flanagan Dep. 81:14-82:23, 83:4-9, Dominguez-Clark Dep. 167:24-168:5.

The funding allocated for professional development for teachers and principals each

¹¹⁶ The General Appropriation Act passed in 2020 and 2021 also required the PED to monitor and evaluate the way in which districts and schools use funding distributed for professional development. *See* H.B. 2 (2020 Regular Session) at 178; H.B. 2 (2021 Regular Session) at 174.

year between 2019 and 2024 ranged from \$2.5 million to \$5 million per year, falling far short of the funding needed to support teachers with adequate professional development.

iii. Teacher Residencies are Insufficient

The teacher residency program, enacted in 2020, offers a \$35,000 stipend to candidates enrolled in a partner college or university while they complete a year of clinical preparation under the guidance of a mentor teacher within a partnering district. *See* NMSA §10B(1)-(9). In return, residents commit to teaching for three years in schools within the sponsoring district and receive ongoing mentoring and support for one year after completing the program. *See LESC Supporting Teachers to Improve Student Outcomes Brief, supra* p. 74 and note 93, at 9.

Since 2020, the Legislature has allocated approximately \$33 million for the teacher residency program, and \$20 million for each fiscal year 2025-2027 (for a total of \$60 million). *Id.* at 10. Despite these investments, the impact of the teacher residency program remains limited. In FY24, the State supported only 280 teacher residents at a cost of \$13 million, benefiting only a small fraction of pre-service teachers. *Id.* Extrapolating from these figures, the funding available in the upcoming fiscal years would support fewer than 450 teacher residents, falling far short of the broader need. While teacher residency programs have been introduced as a potential solution to diversify the workforce and recruit teachers for high-need areas, in 2022, the PED admitted that it does not monitor or track whether teacher residency programs provide specific training for pre-service teachers pertaining to at-risk students. Flanagan Dep. 105:22-106:13. In addition, teacher residency programs are costly and cover only a fraction of the annual vacancies. *See id.*

The State's oversight and evaluation of teacher residency programs has been insufficient. PED lacks comprehensive data and analysis on the implementation and long-term impacts of these programs on teacher recruitment and retention, diversification of the workforce, effectiveness in

preparing teachers, and student outcomes. *See LFC Status of Educator Workforce Brief, supra* p. 72 and note 91, at 9. Without such oversight, PED cannot assess the effectiveness of the residency programs, and the State does not have a strategic plan to significantly expand these programs.

iv. Teacher Mentorships are Insufficient

State law requires mentorship for beginning teachers during their first three years of teaching, and the PED is required to review, evaluate, and approve districts' teacher mentorship programs annually. *See* NMSA § 22-10A-9. However, Defendants fail to adequately monitor or evaluate the implementation and effectiveness of these programs. *See LESC Supporting Teachers to Improve Student Outcomes Brief, supra* p. 74 and note 93, at 11; *see also* Flanagan Dep. 154:16-155:6 (according to PED, districts report inaccurate data on mentorship programs, and PED does not review it to analyze what the issues are). The PED admitted in 2022 that it did not even begin collecting data on the program at all until the 2022-2023 school year, despite the fact that it had been statutorily required for almost 20 years. Flanagan Dep. 157:1-6; *see also* H.B. 212 (2003 Regular Session) at 71.¹¹⁷ And, even though the PED planned to start tracking some data about the mentorship programs, it did not plan to measure the efficacy of programs. Flanagan Dep. 157:8-17. This lack of oversight means that many new teachers do not receive the necessary support to develop their instructional practices, the lack of accountability undermines the State's obligation to support and retain new teachers through the teacher mentorship program.

Funding for mentorship programs has been inconsistent since this Court's ruling. No

¹¹⁷ The General Appropriation Act passed in 2020 and 2021 also required the PED to monitor and evaluate the way in which districts and schools use funding distributed for mentorship and report to the governor, etc. *See* H.B. 2 (2020 Regular Session) at 177-178; H.B. 2 (2021 Regular Session) at 173-174.

funding was specifically appropriated for teacher mentorships in 2019. The Legislature appropriated funding through the SEG in 2020 and 2023 in the amount of \$11 million and \$10 million, respectively, but this amount was insufficient to fully fund the mentorship programs districts are required to provide. *See LESC Supporting Teachers to Improve Student Outcomes Brief, supra* p. 74 and note 93, at 11; *see also* Perea-Warniment Dep. 273:17-24. For the current fiscal year, PED received funding allocated for professional development (discussed above), “but no longer supports first year teachers [through mentorship programs].” *Id.* Without specific funding through the SEG or otherwise, districts are unlikely to meet their statutory obligations.

v. Teacher Evaluations are Not Tracked

Defendants introduced a new teacher evaluation system called “Elevate” in 2019 that removes student test data from the evaluation rubric, but it was not implemented until the 2022-2023 school year. *See LFC Status of Educator Workforce Brief, supra* p. 72 and note 91, at 3. PED has since failed to track evaluation data or establish a metric for evaluating teacher quality. *Id.*

f. Conclusion as to the Lack of Sufficient Number of Teachers

To address this Court’s extensive findings regarding the teacher workforce, Defendants must address the myriad of interconnected and complex issues by developing and implementing a comprehensive remedial plan that will succeed in building an effective teaching workforce that will meet the needs of at-risk students.

III. DEFENDANTS MUST BE ORDERED TO DEVELOP A COMPREHENSIVE REMEDIAL PLAN TO ADDRESS THE CONTINUING VIOLATION OF AT-RISK STUDENTS’ CONSTITUTIONAL RIGHTS

A comprehensive remedial plan, developed through a collaborative approach to planning is necessary to address Defendants’ constitutional obligations and redress their ongoing failure to

achieve compliance with the Court's Orders. As described above, PED has not adopted a comprehensive action plan. This, coupled with PED's lack of measurable progress in implementing this Court's Orders – *six years* after this Court's Orders – high turnover in leadership and numerous vacancies within PED, the lack of coherent, statewide data systems, and concerns over data timeliness and accuracy, underscore the Department's demonstrated inability to lead a complex, collaborative planning process. This Court previously recognized this possibility and ruled that "[i]f no consensus is achieved and the constitutional mandate is not met, the Court will apply appropriate remedies." Decision and Order at 57 n.36.

A. The relief sought by Plaintiffs' is reasonable and within the Court's authority to identify the constitutional and statutory principles at issue and order the State to fulfill its constitutional duty by developing specific measures necessary to ensure compliance with these requirements.¹¹⁸

Granting this motion is an appropriate remedy, and well within this Court's authority to offer Defendants more detailed remedial directions. A court-ordered plan would provide guidance to the Legislature, particularly when making difficult budgetary decisions, survive political and economic shifts, and withstand the persistent turnover of staff at PED. It is not an extraordinary or unprecedented remedy. *See Hoke Cty Bd of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (N.C. 2004) (upholding the lower court's determination that the State was in violation of the constitutional mandate of *Leandro v. State* (*Hoke* is the continued litigation thereof), which established the right to a sound basic education, and that the State must act to correct those deficiencies. The case was remanded to the trial court for further proceedings and oversight, and in 2015, the trial court ordered the State to "propose a definite plan of action as to how [it] intends

¹¹⁸ See Michael A. Rebell, *State Courts and Education Finance: Past, Present and Future*, 2021 BYU Educ. & L. J. 113, 162-3 (2021), available at: https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1062&context=byu_elj.

to correct the educational deficiencies ...” This directive came after years of delays, significant evidence of the State’s failure to comply, and several subsequent orders, and led to the creation of a “Comprehensive Remedial Plan” with assistance from an education consulting firm, structured around seven components of a constitutionally sufficient education as defined by a prior order. In 2021 (27 years after the *Leandro* case was filed), the trial court ordered the State to implement the plan.); *Abbott v. Burke*, 149 N.J. 145, 693 A.2d 417 (N.J. 1997) and *Abbott v. Burke*, 153 N.J. 480, 710 A.2d 450 (N.J. 1998) (affirming the lower court’s determination that the State’s school financing system was unconstitutional for failing to provide a thorough and efficient education. After decades of litigation over the State’s continued failure to fulfill its constitutional obligation, the New Jersey Supreme Court issued subsequent rulings in 1997 and 1998, that collectively ordered the State to implement a comprehensive set of remedial measures to ensure an adequate and equal education for at-risk students. The Court ordered the State to determine the specific programming needs of at-risk students necessary to achieve a thorough and efficient education, and to implement those measures accordingly. The Court emphasized that simply directing the legislature to revise the funding formula was no longer an effective remedy, declaring that “[o]nly comprehensive and systemic relief will bring about enduring reform.”); *McCleary v. State*, 173 Wash.2d 477, 269 P.3d 227 (Wash. 2012) (upholding the lower court’s ruling that the State had not complied with its constitutional requirement to make ample provision for education). Shortly before the ruling, the Washington State Legislature had enacted a reform package, which if fully funded, the Court found, would remedy the deficiencies in the funding system. However, the Supreme Court retained jurisdiction to monitor the State’s compliance in the implementation of the reform package. Less than a year after the Court’s ruling, it found the State had fallen far short of the necessary actions to implement the reform package, and further ordered the State to develop

and submit a sufficiently detailed plan that addressed funding and benchmarks in all areas of K-12 education, to be implemented by 2018. But in 2014, after the State failed to devise a plan to fully comply with its constitutional duty, the Court found the State in contempt, and imposed a penalty of \$100,000 per day on the State for each day it remained in violation of the Court's order for a compliance plan).

B. The LESC staff is the appropriate body to lead the process to develop a comprehensive remedial plan.

Based on the overwhelming evidence of non-compliance and of at-risk students' woeful lack of proficiency in their academic studies, Plaintiffs seek an order from this Court requiring the development of a plan of action for the prompt implementation of the Court's previous Orders to remedy the continuing violation of the constitutional right to a sufficient and uniform public education in New Mexico for all at-risk students

Creating this comprehensive plan requires a coordinated effort among educational leaders, State and Tribal government officials, education experts and advocates, and other participants in the State's educational system, and of course, the PED. As explained below, Plaintiffs propose to have the staff of the New Mexico Legislative Education Study Committee [hereinafter LESC staff] lead the process of creating a comprehensive remedial plan.

Plaintiffs assert that the LESC staff is the appropriate body because it is essential that the Legislature be involved in the development of a comprehensive plan. Indeed, the Legislature will be responsible, in part, for providing and appropriating funding and enacting policies that are clear, intentional, consistent, and aligned with the goals developed in any remedial plan. This Court recognized the need for executive and legislative cooperation from the outset, stating that "... if the State is to meet its constitutional obligation to provide a sufficient education for all school-age children, the executive branch and the legislative branch will have to work cooperatively to achieve

the constitutionally mandated result.” Decision and Order at 57.

Here, the appropriate leadership of an effective, comprehensive planning process lies in the LESC and its staff. As a bipartisan, bicameral committee of the Legislature, supported by permanent staff (avoiding the challenge of frequent turnover currently existing at PED), the LESC focuses on education research, policy, and funding in New Mexico. *See* NMSA 1978 § 22-10-1 to -3; *see also* LESC website.¹¹⁹ Led by a director, the LESC staff conducts continuous study of the education system, including governing laws, policies and their associated cost to the State. *Id.* The LESC staff utilize local, state, and national resources for data collection, and engage with school districts and other stakeholders. Staff report their findings and make recommendations on funding levels and legislative changes to the LESC, which often are developed into proposed legislation. *Id.* During the legislative session, staff provide analyses of proposed education-related legislation and technical support in budget development. *Id.* Finally, as subject-matter experts and a singular focus on education, the LESC staff serve as a vital resource for legislators, school personnel and districts, and the public. *Id.*

Every year, the work of the LESC staff is consolidated and published in the “LESC Annual Report to the Legislature and Data Reference Guide” to inform the Legislature and the State in making education-related funding and policy decision during the legislative session. *See LESC Annual Report, supra* p. 7 and note 3. The most recent report, published in January 2024, is underpinned by the staffs’ deep understanding of the on-going, systemic deficiencies that continue to persist in public education, including the State’s lack of a coordinated, long-term vision and concrete goals for education. *Id.* With this expertise, the LESC report offers a framework and long-term vision to transform education, including the necessary programs, services and supports

¹¹⁹ <https://www.nmlegis.gov/Entity/LESC/Overview>.

needed to improve outcomes for at-risk students. The LESC report also recommends, consistent with Plaintiffs' position, that "[t]he Legislature should ... work with PED to build shared ownership of a concise set of performance targets." *See id.* at 1-3, 50. The LESC makes clear that its "strong commitment to long-term improvements" in education "provide[s] the [S]tate and the Legislature with a roadmap to address [this] lawsuit and consequently transform public education in New Mexico." *Id.* at 1. In sum, the LESC staff's statutory role, their comprehensive knowledge of education, access to data and researched-based solutions, and recognition of the need for cooperation between State entities makes it a well-positioned bipartisan body to lead the process to develop the comprehensive education plan. The LESC staff have agreed to play the role set forth in this motion.

1. Plaintiffs request the LESC staff to implement a planning process

To ensure the prompt development and implementation of a comprehensive remedial plan, Plaintiffs ask the Court to issue an Order requiring the Parties to work expeditiously and without delay to create and fully implement the following steps:

- a.** By May 1, 2025 the staff of the LESC shall submit to Plaintiffs and Defendants a draft Comprehensive Remedial Plan that addresses each of the components of a sufficient, uniform education set forth below, with the objective of fully satisfying the Defendants' constitutional obligations by the end of 2030. This draft Comprehensive Remedial Plan shall be developed in consultation with the Secretary of the New Mexico Public Education Department.
- b.** By July 1, 2025 the Defendants shall, after negotiation and input from the Plaintiffs, present to the Court, a Martinez-Yazzie Comprehensive

Remedial Plan that is agreed-upon by the Parties and addresses the necessary components that must be included in the Comprehensive Remedial Plan in order to implement the Court's orders, as set forth below, with the objective of fully satisfying the Defendants' constitutional obligations as ordered by the Court by the end of 2030.

- c. If the Parties are unable to reach agreement on any aspect of the comprehensive remedial plan after good faith negotiations, either party may seek a ruling from the Court through motion that explains their positions.
- d. With the leadership of the LESC staff, the Parties shall identify the State and the school district officials, actors, and agencies whose direct involvement, cooperation, and assistance are necessary for the LESC staff to formulate and for the State to implement the specific actions described in the Comprehensive Remedial Plan. The Parties agree to make their best efforts to secure the involvement, cooperation, and assistance of those entities and shall seek the assistance of the Court if cooperation and assistance are not achieved.
- e. The LESC staff and the Parties shall jointly seek input from agreed-on education experts in New Mexico, advocates, and others in the development of the Plan and the short and long-term remedial actions and subsequent Plan revisions.
- f. The LESC staff shall consult and collaborate with the appropriate representatives (*e.g.*, the Tribal Education Department) of the 23 Indian

Nations, Tribes, and Pueblos within the State in the development of the Comprehensive Remedial Plan.

C. The necessary components to implement the Court's orders and for the State to meet its constitutional mandate.

In addition to the concrete milestones set forth above, Plaintiffs request the Court order that the following components must be included in the Comprehensive Remedial Plan as necessary to implement this Court's Decision and Order, Findings of Fact and Conclusions of Law, and Final Judgment and Order, and essential to address the critical deficiencies described herein to ensure that the State will succeed in providing the opportunity for a sufficient and uniform education to each at-risk student in New Mexico:

1. A multicultural and multilingual framework (as set forth in the Court's Findings of Fact and Conclusions of Law) must be created with which districts and schools provide a culturally and linguistically responsive education that supports the assets of at-risk students. In addition, the Indian Education Act, the Hispanic Education Act, the Bilingual Multicultural Education Act, and the Black Education Act must be fully implemented at state, district and school levels. Third, these efforts must include student needs assessments and plans, extensive multicultural and multilingual programming, and anti-racist, inclusive learning environments in which at-risk students are treated equitably, free from discrimination and marginalization.
2. A transparent, cohesive and accountable system of delivering special education supports and services must be created so that students with disabilities receive an inclusive, integrated and equitable education. This includes (a) appropriate and timely identification and evaluation, individualized, evidence-based, and fully funded programs, services, curriculum, and student behavior supports; (b) sufficient and adequately trained teachers, educational assistants, and ancillary personnel; (c) sufficient assistive technology and transportation; (d) full and informed parental participation; (e) adequate and effective safeguards, all of which achieves full compliance with the Americans with Disabilities Act, Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and New Mexico State Standards, as well as standardized measures that accurately report and eliminate the use of removal, restraint and seclusion of students with disabilities, and minimize their removal from school informally and by way of exclusionary discipline.
3. A system of curriculum, instructional programs, and assessment from preschool

through secondary school must be created that is culturally and linguistically responsive; meets the needs of special education students, Native American students, economically disadvantaged students and English language learner students; includes English language development; incorporates social emotional learning, prioritizes heritage language learning, and includes individualized learning support and interventions so that all at-risk students graduate with academic outcomes comparable to their peers, and are equally well-prepared for college, career, and civic engagement.

4. A system must be created of training, recruitment, placement, evaluation, and retention of a sufficient number of high-quality teachers, administrators, and support professionals who are well-prepared and adequately supported; reflect students' demographic diversity, especially Native American and Latino students; receive training in heritage language immersion, CLR pedagogy, special education, bilingual/TESOL, literacy/bi-literacy, trauma informed practices, and anti-racism; and who receive on-going professional learning and competitive pay; and who are placed in classrooms serving all the at-risk students in the State, especially in underserved, rural, and historically Indian impacted school districts and schools.
5. A system of essential technology must be created that provides all at-risk students and their teachers access to broadband services and a dedicated digital device both in school and at-home. Broadband access must be sufficient, sustainable and reliable so that students and their teachers can download and upload assignments; stream instructional videos; participate in individual and/or group video conferencing; and, overall, be able to connect remotely to a constitutionally sufficient education. Digital devices must be computers, not cellphones or other inadequate devices, that are capable of allowing students to connect to the internet, download and upload assignments, and participate in online classes both in school and remotely. Sufficient funding must be allocated to school districts to be able to hire and retain qualified information technology (IT) staff sufficient to support and maintain digital devices, internet access, other remote learning needs, teacher training and IT professional development. When broadband access is not reliable and sustainable to allow working from home remotely, and on an interim basis only, additional funding must be allocated to school districts for special remote learning expenses, including, but not limited to, transportation costs.
6. An adequately staffed system must be created of culturally and linguistically responsive and high-quality student and family support services, enrichment, extracurricular programs, out-of-school-time, and community-based education programs and facilities, especially in underserved, rural, and tribal communities, that support students' holistic development and well-being, and meet their academic, cultural, language, special education, social, and health needs. These services must be delivered through intentional connection to each student's school, family, and community and specifically designed to enable at-

risk students to thrive in their educational setting by assessing and meeting their needs in an equitable and non-discriminatory manner.

7. An equitable finance system must be created that provides sufficient, recurring and predictable funding to school districts and tribal communities that prioritizes and targets the needs of at-risk students; is delivered in a timely manner; is based on student needs and corresponding inputs provided by schools, districts, and tribes, not on the basis of available funds; indexes funding to inflation where appropriate; and closes the gap in student outcomes so all at-risk students are college, career and civic ready upon graduation. The finance system must provide sufficient recurring funds to fully implement the IEA, HEA, BMEA, BEA, and special education as part of each district's general education program, and, it must allocate additional targeted funds to districts based on the numbers of students in each of the four at-risk groups in an amount sufficient to allow districts to provide at-risk students with the necessary targeted inputs, including programs, services, teachers, and staff, and these funds must be spent on at-risk students and the specialized inputs that directly support these students.
8. An accountability and enforcement system that tracks local district expenditure of state and federal funds must be created to ensure these funds are spent in schools on at-risk students; provides oversight and assistance to districts to ensure that at-risk or similar targeted funds are spent on effective programs and other inputs that directly support at-risk students; reliably assesses student outcomes using quantitative and qualitative metrics that are culturally relevant; evaluates the implementation of the IEA, BMEA, HEA and BEA; and develops multi-year budgets that are based on student needs, equity, and transparency.
9. To implement these components the Public Education Department must, among other steps, fill all vacancies and increase its current capacity with high quality, culturally competent staff; streamline funding procedures to speed the delivery of funds to school districts, communities, and grantees; develop consistent, transparent and enforceable tracking and accountability capabilities; develop and implement a meaningful, consistent process to obtain community and other stakeholder input on PED's and districts' progress in meeting the needs of at-risk students; obtain tribal consent when making significant policy decisions affecting Native American students; strengthen and enforce tribal consultation at the state and district levels; and establish a reliable, transparent and appropriate quantitative and qualitative data collection system that allows progress toward implementation of the components set forth above to be measured and reported publicly in real time.

D. A Comprehensive Remedial Plan must include essential elements, such as specific actions, funding estimates, the designated State actor/agency responsible for overseeing implementation, and objective measures of progress in meeting the goals identified therein

Finally, for **each** of the components set forth in the preceding subsection III(C), paragraphs 1 through 9, Plaintiffs ask the Court to require that the developed Comprehensive Remedial Plan include the following specific elements:

1. The specific actions that Defendants must implement and the State actor or agency responsible for overseeing implementation, stated separately for each year 2025 through 2030, to address the issues identified by this Court's Findings of Fact and Conclusions of Law and subsequent Orders, and an analysis of the resources in addition to current funding, if any, necessary to complete those actions.
2. Objective measures that will be used to evaluate the extent of success in meeting the goals set forth in the developed Comprehensive Remedial Plan and the constitutional mandate of a sufficient and uniform education for at-risk students.

Plaintiffs also request that the Court order Defendants to submit quarterly status reports to the Court and the Plaintiffs beginning on September 30, 2025 and at the end of each quarter thereafter until the Court determines that the constitutional violations found by this Court have been remedied. Such reports will assist the Court's efforts to enter a final, enforceable judgment in this case, while promoting transparency in the proceedings. To those ends, the status reports should be set forth in the Comprehensive Remedial Plan and, at a minimum, describe the steps completed and the progress made by Defendants toward achieving each of the benchmarks identified in the Plan. Plaintiffs may submit a response to any of Defendants' reports.

If sufficient progress is not made by Defendants, Plaintiffs may seek further assistance of the Court, including, but not limited to, requesting that the Court appoint a Special Master to ensure that compliance with the Comprehensive Remedial Plan is achieved in accordance with the timetable set forth in the Plan. Plaintiffs request that the Court retain jurisdiction over this matter

and over the Parties to ensure compliance with its Orders.

IV. CONCLUSION

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order encompassing the relief requested in this Motion. The Plaintiffs believe that the processes and timeframes set forth in this Motion are reasonable and should be adopted and mandated by the Court.

Respectfully submitted,

/s/ Daniel Yohalem

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2024, a true copy of this motion was e-filed and served through the Court's e-filing system upon counsel of record.

/s/ Daniel Yohalem
Daniel Yohalem

Exhibit 1



MALDEF

The Latino Legal Voice for Civil Rights in America.

National Headquarters

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Fax: 213.629.0266

Via Email

July 8, 2022

Atlanta

Program Office

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Atlanta, GA 30303
Tel: 678.559.1071
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Kurt Steinhaus
Secretary of Education
New Mexico Department of Public Education
draft.actionplan@state.nm.us

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RE: *Martinez/Yazzie, et al. v. State of New Mexico, et al.* Draft Action Plan.

Dear Secretary Steinhaus:

Sacramento

Program Office

1512 4th Street
Sacramento, CA 95814
Tel: 916.444.3031
Fax: 916.444.7207

The Martinez and Yazzie Plaintiffs (“Plaintiffs”) submit comments regarding the draft Action Plan released by the New Mexico Public Education Department in May of 2022. Collectively, Plaintiffs include parents and their children who are students in New Mexico public schools, and six school districts. Plaintiffs sued the State of New Mexico and the New Mexico Public Education Department in the *Martinez/Yazzie, et al. v. State of New Mexico, et al.* lawsuit.

San Antonio

Regional Office

110 Broadway
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

The Action Plan mentions but does not directly discuss the Court’s rulings or findings of fact. Plaintiffs provide a non-exhaustive summary of those rulings before specific comments on the plan. Plaintiffs reserve the right to address shortcomings in the Action Plan, as well as all other compliance issues, before the Court that retains jurisdiction over the case.

Washington, D.C.

Regional Office

1016 16th Street, NW
Suite 100
Washington, DC 20036
Tel: 202.293.2828

The Court ruled, *inter alia*, that the State of New Mexico, the New Mexico Public Education Department, and the New Mexico Secretary of Education must ensure that public schools

have the resources “necessary for providing the opportunity for a sufficient education for all at-risk students” that prepares those students for college and career. Final Judgment and Order at 4; *see also* Decision and Order at 77; Findings of Fact and Conclusions of Law (“FF&CL”) ¶ 3206. Those at-risk student groups identified in the Court’s orders are English learners, economically disadvantaged students, students with disabilities, and Native American students. The Court identified various aspects of the New Mexico public education system that failed to serve at-risk students, as shown in extensive findings of fact. In order to address these failures, the Court ordered that “[r]eforms 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.” Final Judgment and Order at 4-5. In addition, the Court said that the reformed education system “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 5.

NMPED’s Action Plan falls far short of the Court’s mandates summarized above. In general, the Action Plan merely offers a series of goals, aspirations, and limited initiatives without providing concrete steps, outlining necessary changes, measurable outcomes, or detailing the required commitments—by all state actors, not just the NMPED—to achieve these goals. The children of New Mexico deserve more. A real and effective plan would contain specific commitments by the State such as short and long-term action steps that are aligned to the deficiencies identified by the Court and to the goals they intend to meet, necessary statutory and regulatory changes, estimated increases to staff, a multi-year cost and budget analysis of what would be required to achieve the higher goals of academic achievement and attainment that students so desperately need, and a description of how the State will measure whether these actions are adequately preparing students for college or career. This critique applies to all aspects of the Action Plan. Additionally, we discuss specific issues below.

With respect to economically disadvantaged students, the plan fails to provide a comprehensive roadmap for ensuring that such students receive the educational inputs that would allow them to come to the classroom as prepared as other students. One example of such inputs is research-based programs. At trial, the Court found that research-based programs, such as reading and literacy programs, would be part of an education system that allows economically disadvantaged students to receive an education that prepares them for college and career. FF&CL ¶¶ 4, 236. The Court found that even though the former K-3 Plus Program provided economically disadvantaged and other at-risk students with much-needed additional learning days, many districts could not continue the program because of fiscal constraints and a decline in funding by the State. FF&CL ¶¶ 108-113, 121-131. Plaintiffs fear that inconsistent or incomplete implementation of the new K-5 Plus Program that the Action Plan touts and that was

created after the Court’s decision could have the same results for economically disadvantaged students. See Action Plan at 12.

NMPED itself admits that participation in the program decreased in the last 2 years, but it says that the pandemic was the cause. However, there were issues with the implementation of K-5 Plus immediately after its creation, with many districts not applying for funding. NMPED may be taking a step in the right direction with such programs, but there must be a more detailed plan that explains how the state will ensure full implementation of such programs **in every school district** if economically disadvantaged students are to receive a sufficient education.

NMPED’s Action Plan also fails to address the most serious issues regarding English learners (“EL students”). The Court found that NMPED failed to ensure that school districts provided all EL students with an adequate education. Specifically, the Court found that NMPED did not monitor local education authorities in a manner that allowed it to ensure that schools’ English language development programs meet federal standards and are research-based. For example, NMPED’s data coding did not allow the agency to know about the discrete practices and strategies of certain English language development programs reported by school districts or whether such programs met federal standards. FF&CL ¶¶ 393-394, 396-398. The Court also found that “[t]he State has never evaluated whether the funding that school districts receive is enough to implement effective programs for ELLs.” FF&CL ¶ 383. Additionally, NMPED did not know whether school districts used money generated by EL students through the State Equalization Guarantee funding formula to educate EL students. FF&CL ¶¶ 385-387.

The Action Plan does not clarify whether these monitoring or tracking issues relating to programming and funding for English learners have been or will be resolved. NMPED states that “[i]n addition to using ‘sheltering’ methods in content areas, NMPED’s Language and Culture Division (LCD) now requires that English Learners receive at least 45 minutes of specific English-language development instruction per school day.” Action Plan at 22. However, NMPED does not elaborate on how it will ensure that school districts comply with such a mandate, much less whether school districts currently have the teachers and resources to do so. Similarly, the Action Plan mentions how EL students “are included in the at-risk funding” that school districts receive and that such funding has increased (Action Plan at 12) but does not mention how NMPED will ensure that such funding is used for inputs such as English language development programs.

Plaintiffs welcome new funding and forms of training provided to teachers and other school personnel who teach and provide services to students with disabilities, but the Action Plan does not sufficiently address findings regarding certifications of teachers and diagnosticians raised in the Court’s findings. See Action Plan at 24-31. The Court found that NMPED’s “certification standards for educational diagnosticians are not particularly specific concerning required skills or the types of assessment tools these individuals must be qualified to use.” FF&CL ¶ 2331. The Action Plan does not directly address this issue. It mentions that there have been various views of its new, publicly posted technical assistance manual for special education, but not a systematic tracking of

whether teachers across districts have received training on such materials. *See* Action Plan at 30. The Court also found that “New Mexico educates fewer of its students with [individual education programs (‘IEPs’)] in general education classrooms and is substantially above the national average in placing students outside of general education anywhere from 20-60 percent of the school day.” FF&CL ¶ 2333. While the Action Plan appears to recognize the importance of educating students with disabilities in a general education setting, it does not contain a systemic approach to that issue.

Plaintiffs also see efforts, but lack of a systematic approach, when it comes to multicultural education and the implementation of culturally and linguistically responsive curriculum pedagogy and curriculum. The Action Plan mentions this aspect of education in various places, but there does not seem to be a plan to ensure that multicultural education is mandated and implemented across all districts and schools. For example, the Action Plan describes the training of 500 educators in NMPED’s Culturally and Linguistically Responsive Guidance Handbook. *See* Action Plan at 18. NMPED does not, however, describe how it plans to track actual training in and dissemination of such multicultural education materials across all districts.

With respect to Native American students, the Court found that Defendants have failed to provide Native students with a constitutionally sufficient education (FF&CL ¶ 3073) because the State is not providing Native students an education that “meets their unique cultural and linguistic needs and adequately prepares them for college or career.” FF&CL, pp. 575-576. Further, the Court found that the State has a “constitutional duty to ensure the New Mexico Indian Education Act is fully complied with and enforced and that its purposes are effectuated.” FF&CL ¶ 3066. The Action Plan is devoid of details with regard to the types of programs and services to be afforded Native American students to meet their unique needs, and the concomitant allocations of resources and funds for such programs and services. The Action Plan also fails to delineate a strategy to fund and implement fully the provisions of the Indian Education Act.

In terms of the Action Plan’s general reforms to the education system, Plaintiffs remain concerned about NMPED receiving the proper resources, staffing, and funding to be able to conduct the transformational change needed to comply with the Court’s orders. The Action Plan describes the formation of a Martinez/Yazzie Response Team, which would include various coordinators and directors. *See* Action Plan at 14. It should be noted that the Action Plan shows that such roles have yet to be filled, and such a team has yet to begin its work. Even though Plaintiffs welcome such a coordinated, intentional effort to comply, such efforts come more than three years after the Court’s final judgment and order. Similarly, Plaintiffs are concerned about the benchmarks for outcomes that have been set. For example, in the “Targets for Improvement” section of the English Learners section of the plan, there are several benchmarks and goals that NMPED seeks to reach, such as “[b]y the end of the 2025-26 school year, 75% of English Learners will be on track toward achieving English proficiency within five years.” Action Plan at 23.

However, it is unclear how NMPED developed such benchmarks and targets, and NMPED does not explain whether such targets relate to some research-based goal or are

based on some baseline of outcome metrics from before the Court entered its orders in 2018 and 2019. And, as mentioned above, the plan does not specify any concrete steps to be followed to achieve this goal. In addition, many of the goals are simply inadequate. For instance, increasing competency by 50% when the current competency level stands at a dismal 20% would yield a competency level of only 30% and not satisfy the Court's orders.

Finally, the Action Plan does not provide a fully developed plan for monitoring and accountability, particularly with regard to ensuring that funding allocated for at-risk students actually is used for educating such students. Again, the Action Plan mentions that the yet-to-be-formed Martinez/Yazzie Response Team will be involved in review of at-risk funding usage by school districts. See Action Plan at 14. However, it is not clear how this will happen. The Action Plan reverts to the language that NMPED and the State used in their defense at trial, which says, "[a]fter school districts and charter schools receive their share of at-risk funding, it is the responsibility of local school boards and governing councils to ensure that the funding is allocated for its intended purpose." See Action Plan at 12.

The Court rejected this defense and reaffirmed NMPED's broad statutory authority to ensure that districts use the money provided by the State to provide the programs and services that at-risk students need. Decision and Order at 52. As a result, it is critical that NMPED clearly acknowledge that it is the primary entity responsible for ensuring that every school in New Mexico is serving its at-risk students sufficiently and include details of a monitoring and accountability system for reforms and ongoing use of at-risk funds. As explained above regarding services for specific at-risk student groups, there are large gaps in monitoring that NMPED and the State have yet to bridge.

These comments do not include all of the concerns that Plaintiffs have with the Action Plan. Plaintiffs reserve the right to submit further comments on this and future draft action plans and to address compliance issues before the Court. Plaintiffs object to this Action Plan on the basis that the NMPED did not consult with Plaintiffs before releasing this plan for public review and comment. However, Plaintiffs renew their request to work collaboratively with the State in developing a comprehensive compliance plan that contains all the necessary elements described above, addresses the deficiencies identified by the Court, and resolves the lawsuit.



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/s/ E. Martin Estrada

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Attorneys for Yazzie Plaintiffs



All Pueblo
Council of
Governors

Exhibit 2

Officers:
Mark Mitchell, Chairman
Jerome Lucero, Vice-Chairman
Governor Val Panteah Sr., Secretary

Acoma

July 8, 2022

Cochiti

Dr. Kurt Steinhaus
Secretary of Education
New Mexico Public Education Department
300 Don Gaspar Ave.
Santa Fe, NM 87501

Isleta

Jemez

Re: APCG Comments on PED Draft Martinez/Yazzie Action Plan

Laguna

Dear Secretary Steinhaus,

Nambe

Thank you for granting our request for extending the comment period regarding NMPED's Draft *Martinez/Yazzie* Action Plan. The All Pueblo Council of Governors (APCG) has now reviewed and discussed your draft plan and decided to submit formal comments via this letter. On behalf of APGC, I respectfully transmit the following comments for your consideration and official record. This also includes a table, prepared by the Tribal Education Alliance, which aligns the Court ruling and the Tribal Remedy Framework with tribal suggestions for NMPED's plan.

Ohkay Owingeh

Picuris

Pojoaque

Sandia

APCG welcomes NMPED's long overdue release of a draft plan to respond to the landmark *Martinez/Yazzie* 2018 Court ruling, along with the commitments expressed in the plan. However, it is APCG's position that this draft plan is insufficient. It is insufficient to comply with the Court ruling, it is insufficient to meet the State's constitutional duties toward Native students, and it is insufficient to address and reverse the long history of forced assimilation, discrimination, and inequitable educational opportunities and outcomes suffered by Native children, their families, and our tribal communities.

San Felipe

San Ildefonso

Santa Ana

In the following, APCG offers constructive comments and concrete suggestions for addressing the shortcomings of the current draft. Because tribal involvement in, and control over, the education of our children is essential, as affirmed by the Indian Education Act (IEA), APCG expresses the hope that our recommendations will be carefully considered and that, going forward, we can collaborate on creating a plan that satisfies Native students' rights and needs.

Santa Clara

Santo Domingo

Taos

APCG welcomes NMPED commitments stated in the draft plan:

Tesuque

- Ensuring that tribal consultation is a priority at every level (p.15)
- Preserving Native languages and cultures (p.15)
- Increasing representation of Native teachers by 7% (p.11)
- Improving academic outcomes for Native students (p.21)

Ysleta del Sur

Zia

Zuni



All Pueblo Council of Governors

Officers:
Mark Mitchell, Chairman
Jerome Lucero, Vice-Chairman
Governor Val Panteah Sr., Secretary

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta del Sur

Zia

Zuni

We also recognize that the draft plan includes other valuable commitments (e.g. regarding early education, career and college readiness, and technology), yet these are framed in general terms, not targeted at Native students. In order to close the equity gap, we suggest that NMPED, in all its activities, explicitly analyzes and responds to the disparities faced by each of the at-risk student groups.

APCG requests that key shortcomings of the draft plan be rectified:

- The draft plan **lacks sufficient respect for tribal education sovereignty**, the right of Native Nations, Pueblos, and Tribes to shape their children’s education. The Indian Education Act requires NMPED to increase tribal involvement and control over the education of Native children. Yet NMPED’s draft plan does not offer explicit strategies for increasing tribal involvement in education. Moreover, the tribal response to the Court ruling, known as the Tribal Remedy Framework, is neither mentioned nor incorporated into the draft.
 - NMPED should align its *Martinez/Yazzie* plan with the Tribal Remedy Framework and with the *Martinez/Yazzie* Court ruling (please see the attached table for guidance). Such an alignment should guide investments in Indian Education over the next five to ten years, and proposed investments should be specified in the plan. NMPED, through its new *Martinez/Yazzie* Response Team, should consider establishing joint sub-teams with tribal education advocates to prepare an aligned action plan and guide its implementation in specific subject areas (e.g. governance; holistic student needs & supports; language; teacher pipeline; curriculum, college & career).
 - NMPED should consult and collaborate with Tribes in developing overarching goals and strategies for improving Native students’ educational outcomes and well-being, sustaining and revitalizing Native languages, and advancing equity for Native students.
 - NMPED should require districts and schools to engage in more meaningful consultation and collaboration with Tribal Education Departments (TEDs) to ensure implementation of the needs assessments and systemic frameworks required by the IEA. This should include the development of MOUs/MOAs for shared responsibilities for Native students.
 - NMPED should respect and fund tribal education priorities rather than develop its own Indian Education projects. When state grants are made available that do not align with tribal priorities, needs, and capacities, Tribes are forced to redirect their activities, work to NMPED’s timetables and criteria, or risk that funds revert back into state coffers. Projects designed by state agencies are often based on assumptions rather than explicit tribal consultation and collaboration. For example, NMPED announces that “competitive grants will be issued to five entities for three years to develop Indigenous language programs” (p. 21). What say will Tribes have in this effort? Well-meaning interpretations of tribal needs often miss the point, or,



All Pueblo Council of Governors

Officers:
Mark Mitchell, Chairman
Jerome Lucero, Vice-Chairman
Governor Val Panteah Sr., Secretary

worse, appear paternalistic: State agencies decide on behalf of Tribes and tell Tribes what works best for Native students. We suggest that NMPED replace its piecemeal project and grant-funding approach with a permanent, predictable funding stream for tribal education priorities, as decided by Tribes themselves.

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta del Sur

Zia

Zuni

- The draft plan **lacks sufficient understanding of how to advance equity for Native students**. If NMPED wants to improve outcomes for Native students, it must understand what the barriers are, what disparities exist and why, and what strategies might help with closing gaps. Yet this draft rarely mentions disparities and never analyzes the drivers of disparities. It lacks an analysis of which populations might benefit from certain programs, which populations might be burdened, and why.
 - NMPED should engage in a system-wide effort to understand the United States' systematic attempt to eradicate Indigenous languages and cultures. This should include examining how the assimilation paradigm has worked and continues to work, and how it is embedded in systemic and institutional racism.
 - NMPED should require and implement equity goals, assessments, and strategies, with an explicit focus on Native students, at every level and in every area (e.g. through disaggregated data collection and analysis, needs and impact assessments, and equity training). This includes cross-cutting or "wide-ranging strategies" (p. 32-52), whose equity impacts are not currently considered.
- The draft plan does not yet present a forward-looking strategy for transforming New Mexico's failed education system and meeting the constitutional rights of Native children. The draft plan is **not an action plan** in the usual sense; rather, it is largely a list of past and current projects that are not connected to goals and outcomes. Many of these projects emerged from tribal advocacy efforts, not from NMPED's own initiative. Very little information is forward facing. The draft includes few strategies, no future budgets, and no accountability mechanisms. This illustrates NMPED's ongoing piecemeal approach, which consists of disconnected projects and short-term grants.
 - NMPED should turn this document into an Action Plan based on coherent, forward-looking strategies that explain how actions contribute to overall goals, specific objectives, and measurable outcomes. Costs and budgets must be attached to each strategy and set of actions.
 - NMPED should align actions with the Court findings and decisions to ensure compliance.
 - NMPED should consult and collaborate with Tribes to consider tribal graduate profiles and develop outcome targets for the Native student group that go beyond academic achievement (including targets related to languages and culture, tribal involvement, student well-being, etc.).
 - NMPED should reflect on its own capacity, especially within the Indian Education Division. It should specify what human resources are needed and which staff is responsible for what actions. While the establishment of a *Martinez/Yazzie* Response Team is a step in the right direction, it is unrealistic to designate this team



All Pueblo Council of Governors

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Mark Mitchell, Chairman
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as the only oversight, support and technical assistance body for the transformative change required by the Court. There is likely a need for sub-teams, involving non-PED stakeholders, on specific issues and populations, as well as a need for permanent Indigenous Technical Assistance Centers led by Indigenous education experts in partnership with Tribes.

Suggestions for core elements of a NMPED action plan for Native students:

- **Fully fund and implement the Indian Education Act**, a constitutional mandate. This requires a long-term strategy, accountability at all levels, and permanent, sufficient funding for Native students, Tribal Education Departments, and for Native-led education infrastructure from community to higher education.
 - NMPED should collaborate with tribal education advocates to develop a permanent funding mechanism, possibly in the form of a trust fund, to ensure adequate and sustainable financial resources for tribally determined education priorities, including education capacity, facilities, and programs, that implement the purposes stated in the IEA.
- **Incorporate and fund Tribal Remedy Framework (TRF) proposals**, endorsed by all Pueblos, Nations, and Tribes. The TRF offers three main solutions: shared governance responsibility; community-based education; and creating culturally relevant education systems through assistance from Native-led higher education institutions/programs. APCG has previously shared TRF documents with NMPED. We reiterate here the following key proposals:
 - Ensure school and district-level accountability through involving TEDs in governance decisions, including the development and implementation of needs assessments and frameworks mandated by the IEA,
 - provide recurring, permanent, and flexible funding for tribal education departments and tribal, community-based facilities and programs,
 - develop a Native teacher pipeline by funding Native-led teacher training programs and require districts to adopt goals and strategies for increasing Native teacher recruitment and retention,
 - ensure the development of culturally and linguistically responsive curricula, materials, pedagogy, and trainings through funding Indigenous Curriculum Development Centers operated by Native-led higher education institutions/programs in partnership with Tribes, and
 - establish and fund Indigenous Technical Assistance Centers operated by Native-led higher education institutions/programs in partnership with Tribes, to guide districts, schools, Tribes, and NMPED in the design and implementation of policies, programs, and practices that can effectively support Native students.
- **Adopt an integrated, sequential, and collaborative approach to educating Native children.** This requires NMPED to work with Tribes and across state and federal agencies. NMPED's plan should prioritize a strategy for creating an integrated and balanced education system that supports a continuum of education from family and community to schools to higher education. This should include a strategy for health

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta del Sur

Zia

Zuni



All Pueblo Council of Governors

Officers:
Mark Mitchell, Chairman
Jerome Lucero, Vice-Chairman
Governor Val Panteah Sr., Secretary

and social supports to create an environment where Native children are valued, feel safe, and can learn.

- NMPED should fund community-based education alongside school-based education, as well as Native-led higher education programs to provide assistance to communities and schools.
- NMPED should work with relevant tribal, state, and federal agencies to coordinate, support, and fund an integrated network of holistic social, health, and economic support services for Native students.
- NMPED should consider investing in Native-led programs such as the Center for Native American Health (CNAH), Honoring Native Life (formerly the Center for Native American Suicide Prevention), and the Native American Social Work Studies Institute to build capacity, programs, protocols, and partnerships for holistic, long-term strategies to address social and health issues in schools and communities.

APCG respectfully offers the above comments and suggestions in the hope of opening, not closing, a dialogue with NMPED and other state agencies about the future of Native children, their rights, opportunities, and dreams. Pueblo communities have a vision of an ideal graduate, a graduate grounded in Indigenous values, balanced and centered in their identity, educated in Western and Indigenous knowledge systems, fluent in their Native language, and engaged in the Pueblo community. This is a vision worth pursuing with all our energy and resources, however long it may take. APCG hopes that NMPED will be a partner in this pursuit.

We thank you for your careful consideration of our comments and look forward to a constructive dialogue and collaboration.

Sincerely,

Mark Mitchell, Chairman
All Pueblo Council of Governors

Cc:

Dr. Vicky Bannerman, NMPED Deputy Secretary

Exhibit 3



DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

June 17, 2022

Secretary Kurt Steinhaus
Deputy Secretary Vickie Bannerman
New Mexico Public Education Department
300 Don Gaspar Avenue
Santa Fe, NM, 87501

By Email, draft.actionplan@state.nm.us

RE: Discussion Draft, Action Plan: Decisions about Martinez/Yazzie v. State of New Mexico
("Action Plan")

Dear Dr. Steinhaus and Dr. Bannerman:

Thank you for the opportunity to provide input on the discussion draft of the State's Action Plan intended to address the Martinez and Yazzie consolidated lawsuit. The comments provided here are made on behalf of Disability Rights New Mexico the designated protection and advocacy agency in New Mexico whose purpose is to promote, protect, and expand the rights of individuals with disabilities.

As Dr. Bannerman explained when sharing the discussion draft with stakeholders, it is meant as a companion to the 2022 New Mexico Public Education Comprehensive Plan ("Strategic Plan"). More specifically, NMPED explains the relationship of the two documents as follows:

While the PED strategic plan provides a comprehensive overview of the department's vision, mission, goals, and strategic priorities for the next five years, the Martinez/Yazzie discussion draft provides a more targeted view of the State of New Mexico's past actions, upcoming plans, and performance targets to address specific findings in the Martinez/Yazzie court ruling.

May 9, 2022 Email from Dr. Bannerman to Partners in Education. While the comments that follow reflect generally on and refer to some central tenets in the Strategic Plan, they focus

DRNM is New Mexico's designated Protection and Advocacy System

primarily on the Action Plan. Moreover, DRNM's comments center on the documents as they address our constituents, students with disabilities (SWD).¹

Applying general criteria articulated in the Strategic Plan, the Action Plan presents more questions than answers about how the initiatives or efforts included will be fully implemented, and about why when implemented they will be of benefit to SWD.

I. The Strategic Plan

In January 2021, DRNM commented on an earlier draft of the Strategic Plan, circulated for feedback in December 2020. In that set of comments, we observed that there were two overarching problems with the draft, namely (1) that it was neither "comprehensive" nor a "plan," and (2) that it failed to recognize and incorporate the work of what is now called the Special Education Transformation Team (SETT) and its various work groups. Despite some specific improvements in parts of the document, the Strategic Plan still suffers the same two deficits.

Particularly with respect to the comprehensiveness of the plan, DRNM earlier observed:

First, this draft is not a comprehensive plan, or even a plan at all, without the specific "strategies," "actions," and "metrics" that are forecast but not articulated in the document. There is no way of understanding the resources required to execute the plan, in terms of either funding or staff. And there are no timelines or specific steps that would explain how the articulated goals translate to something beyond aspiration or general vision statements.

Over a year later, the Strategic Plan continues to lack metrics, timelines, and specific information about necessary resources.

Although the Strategic Plan remains generalized and aspirational, there are at least some large ideas that can be extracted from it to guide analysis of the discussion draft. A few of these are discussed in the subsections that follow.

¹ One substantial oversight in both of these plans is their failure to address students with disabilities who are not served under IDEA (and do not have an IEP), but instead have protections, accommodations/modifications, and supports under Section 504 of the Rehabilitation Act of 1973 (and may have a 504 Plan). The Department, and the Special Education Division specifically, could benefit from a far greater understanding Section 504 implementation.

a. 2020 Learning Policy Institute Report—State and Local Capacity (p. 2, Strategic Plan)

Early in the Strategic Plan, there is an excerpt from a 2020 report from The Learning Policy Institute, addressing capacity concerns—on both the state and local level—about New Mexico:

[T]he state must design a system that centers these students and builds the state and local capacity to meet their diverse needs. By capacity, we mean dollars, professional knowledge and expertise, administrative [sic] and oversight and structures, and accountability processes that support improvement.

This definition of capacity, and its clear relevance to reforms that are needed at the department, district, and school levels, provides useful questions for assessing the value of the efforts (and proposed efforts) described in pages 24-31 of the discussion draft, specific to students with disabilities (SWD):

- How does this effort expand funding for large-scale improvements of special education in New Mexico?
- How does it improve accountability measures around that funding?
- How does it bring to our state necessary knowledge and expertise that we have been lacking at the State level? At the district level? At the school level?
- How does it improve tools and structures for oversight?
- How does it improve accountability processes—including meaningful enforcement actions by the Department—that support genuine improvement?

b. Results-Based Accountability (RBA) Framework (p. 13, Strategic Plan)

In the Strategic Plan, NMPED distinguishes between “population accountability” (using a set of indicators referenced generally in relation to New Mexico Vistas) and “performance accountability” (using the Results-Based Accountability (RBA) Framework). The plan explains that the objectives and key performance outcomes are to be measured using three very fundamental RBA framework questions: (1) How much did we do? (2) How well did we do it? (3) Is anybody better off (or did we make a difference)?

While the wording of these three questions could itself be challenged, it is useful to ask how the efforts described in pages 24-31 of the discussion draft stand up to the RBA inquiries.

c. Culture of Continuous Improvement and Data Infrastructure (p. 47, Strategic Plan)

NMPED announces its intent to “significantly expand its data systems infrastructure to support implementation and measurement of objectives and measures in this strategic plan,” and refers to

a plan to (with funding) “establish a [sic] state-of-the-art data warehousing and reporting tools.” (Strategic Plan at 47) It further aspires to “[d]evelop[] a virtuous cycle between data collection, analysis, and action by both local educators and NMPED staff,” which “will require a major shift from viewing data as a compliance exercise toward viewing it as an integral way to drive improvement.” *Id.*

While this is a noble endeavor, it is not clear how the efforts described on pages 24-31 of the discussion draft reflect or even aspire to this “major shift” with respect to data. If there is in fact more robust data to support the efficacy and value of the initiatives listed on those pages, the Action Plan would benefit greatly from its inclusion.

d. *Two other points from the Strategic Plan*

1. Regional Support Structures

As in the earlier draft of the Strategic Plan, the Department again mentions its plan “to build out Regional Support Structures with staff that has extensive expertise in serving at-risk students. Each region will host multiple support positions, including programmatic specialists in English language development and special education, financial specialists with expertise in strategic resource allocation, and experts in systems leadership.”

In DRNM’s comments on the earlier draft of the plan, we asked for more information about these Regional Support Structures:

Regional Support Structures (p. 21): Does NMPED plan to build Department-level resources in different regions of the state, or is this referring to building out already existing regional programs outside the Department (such as REC’s)? If the former, how many programmatic specialists would there be? Would they be permanent, or grant-funded? How will the required funding be ensured?

In the now final draft of the Strategic Plan, these questions are still not addressed, nor does the discussion draft of the Action Plan describe any action that has been taken with respect to building this system.

If the Regional Support Structures PED envisions are simply the RECs already in place, history has shown that this is not a structure with capacity to ensure adequate expertise, technical assistance, and now “monitoring of strategic initiatives.” *See infra* pp. 15-16 (50% funding cut for CREC transition services work).

These regional structures as described, if properly executed (“How well did we do it?”) could be of great benefit to SWD and their teachers, related service providers, and districts/schools

throughout the state. If there is more information the Department could provide about its progress toward the development of these structures, that would be a help to the Action Plan.

2. Special Education Audit/Review

On page 48 of the Strategic Plan, in the section “Addressing Martinez/Yazzie,” the plan lists “[o]ngoing key strategies that will provide adequate NMPED oversight of district and school efforts to address the Martinez/Yazzie findings and support remedies.” Only one of the 10 strategies listed is specific to SWD—Number 7, “Conducting a full audit and review of programs that serve students with disabilities to assess gaps and areas of need.”

First, it is not clear from the Action Plan that this “full audit and review” has begun since the final Strategic Plan was published in February 2022, or what the specific plan is for how it will be conducted.

Second, it is discouraging that the one item in the “ongoing key strategies” list is focused on needs assessment. Respectfully, the Department has been informed about many, many shortcomings in the delivery of special education and related services in the state, resulting in unmet needs of SWD. Some of the sources of this information are:

- The 2019/20 “deep dive” into special education, including listening sessions and surveys
- State Complaints, brought by advocates or attorneys on behalf of families, or by the families themselves
- Due Process Hearing Requests
- United States Department of Education Office for Civil Rights (OCR) complaints and resulting reports
- The IDEA Advisory Council, one role of which is to “advise the State educational agency of unmet needs within the State in the education of children with disabilities.” 20 U.S.C. § 1412(a)(21)(D)(i).
- Public comment at IDEA Advisory Council meetings
- Public comment (annually) on the State’s IDEA Part B applications.
- Public comment on NMPED rulemaking efforts
- Shortcomings recognized in the McLaughlin report and other testimony, evidence, and findings in the Martinez/Yazzie lawsuit
- Gaps identified by investigative reporting in the news media
- Gaps identified by the SETT team
- Gaps identified by the Office of the Special Education Ombud (OSEO)

While it is certainly possible that more targeted needs assessment may be called for with respect to specific programs serving SWD, DRNM would hope that such an effort would not delay actions on the part of the Department to address longstanding, clearly identified unmet needs.

II. The Action Plan

The Action Plan, if it is in fact meant to be “a more targeted view of the State of New Mexico’s past actions, upcoming plans, and performance targets to address specific findings in the Martinez/Yazzie court ruling” and to be read as a companion document to the Strategic Plan, does not adequately explain its efforts with respect to SWD (pages 24-31, mainly) in terms of (1) the findings in Martinez/Yazzie, (2) the four pillars identified in the Strategic Plan (Educator Ecosystem, Whole Child and Culturally Responsive Education, Profiles and Pathways, and Asset-Based Supports and Opportunities) or (3) some of the overarching concepts in the Plan as addressed in pages 3-4 of these comments, namely State and Local Capacity, RBA Framework, and Culture of Continuous Improvement and Data Infrastructure.

The plan as it relates to SWD collects largely unrelated discreet accomplishments, efforts or projected efforts by the Department. It does not acknowledge or recognize areas of unmet need and propose solutions in a systematic way. And it does not demonstrate that the Department has sufficient expertise and capacity to transform special education on the school, District, and especially Department level.

While the comments that follow recognize the value of some of the initiatives described, it is important to note that the Action Plan is not, either alone or in tandem with the Strategic Plan, a reassurance that the State understands and is adequately prepared to fix the system.

The Four Strategies Identified by NMPED as Responding to the Martinez/Yazzie Lawsuit

The Action plan identifies four general strategies that are ostensibly designed to respond to the Martinez/Yazzie lawsuit, with the “overarching goal” being to “increase academic support for students with disabilities:”

1. Academic support, including evaluating dyslexia [*Does “academic support” translate to “specialized instruction” for SWD?*]
2. Educator training, recruitment, and retention
3. Family advocacy and support [*Why such an emphasis on advocacy as the answer?*]
4. Dispute resolution for students with disabilities [*Why is this a “strategy”? Though there may have been some improvements to the dispute resolution system, that does not in itself create an improved system of special education and related services in our state.*]

Action Plan at 24. These strategies are incomplete, and not in all cases responsive to the Martinez/Yazzie lawsuit. Furthermore, particularly with respect to (3) and (4), they seem focused on work that has already been done, not work that has yet to be accomplished. Some

additional (or different) proposed strategies that would focus on work that remains to be done might be:

5. Functional Supports, including positive behavioral supports and improved related service provider capacity
6. Strengthening and expanding transition services/planning for SWD
7. Monitoring, Assessing, Enforcing, and Supporting LEAs
8. Improving Funding and Accountability around Funding, Special Education
9. Culture of Continuous Improvement and Data Infrastructure (see above)

Past and Current Efforts, Funding

Listing its accomplishments to date, NMPED describes several initiatives that are linked with funding. With respect to each of these efforts, it is fair to ask the three Results-Based Accountability Questions—(1) How much did we do? (2) How well did we do it? (3) Is anybody better off (or did we make a difference)? In many of the following instances, the plan describes at least generally “how much” the State has done, but does not provide adequate data about how well it was done, or the specific difference that it has made for SWD.

Nor in most cases does it confront the capacity deficits (dollars, professional knowledge and expertise, administrative oversight and structures and accountability processes) that impact the success of the various initiatives.

a. Structured Literacy New Mexico (p. 25, pp. 39-41)

As much as 15-20% of the United States population has characteristics of dyslexia. <https://dyslexiaida.org/dyslexia-basics/>. Dyslexia is generational, and its economic impact is severe. See, e.g., Boston Consulting Group and UCSF Dyslexia Center, *Whitepaper: The Economic Impact of Dyslexia on California* (July 2020), available at <https://media-publications.bcg.com/The-Economic-Impact-of-Dyslexia-on-California-Whitepaper-Final.pdf> (last visited 6/15/22) (“Dyslexia and its consequences are estimated to cost California approximately \$12 billion in 2020 and \$1 trillion over the next 60 years.”)

By far the most important and promising initiatives for SWD as described in the State’s Action Plan are those centering on evidence-based reading interventions, Structured Literacy (discussed here) and ECLIPSE (discussed below). The Structured Literacy New Mexico segment is also one of the more fully developed single initiatives of the plan, although it still lacks specific timelines and targets in the “Planning for the Future” section, projecting (1) expansion of training to all elementary teachers and administrators (3rd-6th grades), (2) establishment of a statewide literacy institute, and (3) development of model schools. What specifically will be expanded, created or accomplished, and when? (“How much did we do?”). And this is an effort

which, if implemented correctly and expanded appropriately, stands to build capacity in terms of “professional knowledge and expertise” that could make a difference for SWD—at least insofar as the Department simultaneously builds capacity around its own “accountability processes that support improvement.”

Some of the laudable aspects of the structured literacy and related efforts, as they stand to address the needs of students with reading disability, are:

- Adoption of LETRS, which is accredited by the International Dyslexia Association (IDA) and is a revered, evidence-based intervention for students with dyslexia, designed by well-established experts in the field
- Dyslexia screening, to the extent it has been successful to date (and those data should be included in the plan)
- Partnership with the May Center in Santa Fe (discussed in relation to the LEAP program, on p. 28 of the plan), which is itself accredited by IDA

The plan represents that NMPED has trained 5,333 teachers, reading interventionists, and special education teachers, as well as 696 administrators, in LETRS. Additionally, there are apparently 104 LETRS facilitators established in various districts who can in turn train teachers, though the plan does not explain how the Department ensures the consistency and fidelity of this second wave of training by facilitators.

Is there data yet showing that LETRS training is actually being implemented with students, to their benefit? How is NMPED ensuring that teachers, reading interventionists, and special education teachers in districts are in fact implementing LETRS to “teach[] the skills needed to master the fundamentals of reading instruction—phonological awareness, phonics, fluency, vocabulary, comprehension, writing, and language?” (Action Plan at 40) How is the program being incentivized (“How well did we do it?”) Is there data yet reflecting fidelity of LETRS instruction and resulting outcomes with respect to student mastery of these skills, and overall reading proficiency? (“Did we make a difference?”) Relatedly, how successful has the dyslexia screening been to date, in identifying students with dyslexia who require more intensive, research-based multisensory direct reading instruction, possibly as part of an IEP?

Although districts were apparently required to submit literacy plans making “assurances that [they are] using state funds toward research-based curriculum, professional development, and tools or resources that support literacy” there is no information provided about what the specific criteria were for the Department’s approval of these plans. What research-based curriculum, professional development, and tools/resources were considered adequate? Is NMPED rejecting some as plans as inadequate, and if so, how is the Department responding?

For this promising initiative to be successful, NMPED must closely monitor, intervene, and support districts when they are not implementing structured literacy/LETRS and conducting required dyslexia screening. If LETRS is simply a tool in districts' or teachers' toolboxes which they are free to reach around to grab a more familiar, accessible tool, the training provided will be of little help to struggling readers, including students with reading disability/dyslexia.

Another issue that could be addressed in greater detail in the plan is the widespread failure in our state to address the needs of students with dyslexia in middle and high schools in New Mexico. This is a problem DRNM is seeing with frequency, often in cases where students are being suspended or expelled. At p. 41, the plan does mention generally "structured literacy 101 supports and courses specific to adolescent struggling readers," but what are these "structured literacy 101 supports and courses," exactly? Our experience is that districts have a dearth of resources and appropriate, evidence-based curriculum to meet the critical needs of students with dyslexia in higher grades who are many grade levels behind in reading.

In addition to highlighting the need for monitoring and intervention on the present initiatives, and expanding efforts to reach adolescent struggling readers, DRNM also urges NMPED to work toward:

- Greater availability of Certified Academic Language Therapists (CALTs) statewide. (It is possible this is what is being referenced in the discussion of the LEAP initiative on p. 28 as "Dyslexia Practitioners," but if so, that could be better explained. Also, how many such "Dyslexia Practitioners" do we have in New Mexico currently, to be expanded by 15 a year annually?)
- Pre-service preparation of educators to meet the needs of students with reading disability, by establishment of IDA-accredited programs at our New Mexico universities.

b. Class Wallet (p. 25, pp. 30-31)

The Class Wallet initiative holds considerably less promise in addressing the unmet needs of SWD. While the need for special education classroom supply money was mentioned in passing in findings and conclusions in the lawsuit, it was clearly not a central focus of the decision. Nor is it an intervention designed to drive improved outcomes for SWD, rendering them college or career ready consistent with the ruling.

It seems beyond dispute that teachers should not have to use personal funds and should instead be provided "discretionary funds to purchase instructional resources for their classrooms including classroom supplies and materials and other behavioral aids and supplies."

However, the claim that "[t]his funding directly impacts student outcomes because it provides teachers with the tools they need to specialize instruction" is overstated. Providing specialized support clearly requires a great deal more than a supply budget (\$178 per teacher based on

figures provided in the Action Plan). What about appropriate curriculum? What about EA support? What about meaningful professional development, modeling, and coaching?

c. Advocate, Innovate, and Renew (AIR) Conference (p. 25)

Similarly, it is difficult to ascertain the real benefits of the AIR Conference. According to figures in the plan, this virtual conference cost \$750,000, serving 751 parents and educators at a cost of nearly \$1,000 per head. It would be helpful to see in the plan what the breakdown was between parents and educators. Individuals from DRNM and parents who attended the conference reported that often a number of names and faces on the screen were NMPED employees. One parent reported that she noted approximately 56 participants in the keynote speaker presentation, 93% of whom were attending in a professional capacity, and 7% of whom were parents of school aged children. The largest breakout session this parent attended had 23 participants.

Again, the question is how NMPED has measured whether anyone is better off, or whether it has made a difference, by way of this effort. Is there any data, including participant surveys, reviews, or similar information, that would illustrate whether the information shared during the conference was helpful, particularly for SWD themselves?

d. "Stay in School" (Deming/Farmington Pilot) (pp. 25-26)

This initiative seems to be the same project that was referred to as the "Advancing Measurement at PED" (AMP) pilot program in the State's Motion to Dismiss filed in the lawsuit in March 2020. This project, as described in the motion and supporting affidavit, involved coordination of the Special Education Division with NMPED's Career and College Readiness Bureau, focusing supports on two districts with particularly low graduation rates for students in special education, Farmington and Deming. In the March 2020 motion, the Department reported the project saw "great initial success, bringing fifty (50) students with disabilities back to school after they had dropped out, and helping them succeed and graduate." As in the Action Plan, the description back then noted an allocation of "\$400,000 each year in additional combined support" for the two districts.

According to the Action Plan, the project still reports having served 50 SWD "who were contemplating dropping out, [but who] stayed in school and graduated." But two years (at the cost of \$800,000) have passed. Is the data in need of being updated, or is it true that still only 50

SWD have seen improved outcomes as a result of this project? What are the “five evidence-based practices proven to keep students in school”?

Moreover, to the extent this project has been successful, is there a plan to expand the effort to other districts? If so, which districts, and when? If there is a plan to extend the reach of this pilot project, it would be helpful to include that information.

There is also an elephant in the room whenever graduation rates for SWD are addressed in the Action Plan—related to this project, the graduation options study referenced below, and even the overall target for graduation rates of SWD. Without meaningful, successful transition services, consistent with the vision of IDEA, graduation does not necessarily hold the same promise that it does for students without disabilities. For many, it means little more than the end of entitlement to services under IDEA. As one DRNM colleague aptly put it, “Graduation can be like leaping off a cliff, without appropriate transition services and planning.”

e. Maintenance of Effort (MOE) Online Calculator (p. 26)

The MOE calculator is addressed as a funding initiative, but there is no information about what the tool and related training (provided to over 200 LEA participants) cost the state. Given our state’s historical struggles with meeting and demonstrating MOE, it stands to reason that a calculator which “generates real-time data, which is used for reporting purposes and posting MOE determinations and liabilities” is likely a useful and beneficial tool for districts.

The plan reports broadly, “These efforts have enabled districts to submit clear, accurate MOE data and ensure compliance with IDEA.” Does the Department have access to data showing that there is in fact documented improvement in reporting of MOE as a result of LEAs’ use of the calculator? (“How well did we do it?”). And by extension, does this data show that LEAs are in fact achieving better compliance with IDEA with respect to MOE? (“Is anybody better off (or did we make a difference)”? Does the calculator need further refinement or adjustment, or do LEAs need additional training, for the effort to be fully successful?

f. Office of the Special Education Ombud (OSEO)(p. 26)

The creation of the OSEO is one accomplishment of the State, and to the extent a single person with volunteer advocacy support can support widespread advocacy needs, Michelle Tregembo is diligent and intrepid in taking on that work. While the precise range of advocacy services to be provided is seemingly still in development, the office as defined in statute also serves an

important reporting role in identifying, tracking and making recommendations (to NMPED, legislators and others) to address systemic problems and concerns regarding special education. Presumably, there will be data at the end of this first year indicating how many students and families were served, and what difference was made for those students and families.

However, it is also important to that the State not rest on its laurels with respect to the creation of this office. The broken system of special education in New Mexico is far greater than a crisis of advocacy. Efforts like OSEO and other initiatives (old and new, addressed below), which focus so heavily on advocacy, are severely limited in their ability to create the capacity required to transform special education, and again require the State to ask how such advocacy efforts:

- expand funding for large-scale improvements of special education in New Mexico?
- improve accountability measures around that funding?
- bring to our state necessary knowledge and expertise that we have been lacking at the State level? At the district level? At the school level?
- improve tools and structures for oversight?
- improve accountability processes—including meaningful enforcement actions by the Department—that support genuine improvement?

Past and Current Efforts, Non-Monetary

This section groups the Action Plan’s non-monetary efforts (past and current) into several broad categories, as numbered below.

1. Resources for Families

In addition to the State’s creation of the OSEO, NMPED also emphasizes some efforts designed to provide support and resources for families. These efforts, while generally positive, still suffer the limitations already discussed, with respect to the value of advocacy and supports for families.

a. Website to Provide Information and Support to Families (pp. 27-28)

NMPED does not specify which website is referenced in this section of the plan, but presumably it is the Special Education Parent Portal (which was last updated July 2021) located on the Special Education page: <https://webnew.ped.state.nm.us/bureaus/special-education/parent-portal/> Put simply, the parent portal is currently an odd assortment of resources for parents, posted without regard for organization, clear direction, or ease of use. If these resources are, as the plan suggests, “vetted,” there is no indication of who is doing the vetting, and by what process. This

page may be a work in progress, but it is certainly not a robust resource for families as it stands, and this effort fails to provide satisfactory answers to any of the three RBA framework inquiries.

b. Updated Procedural Safeguards Notice (PSN) (p. 28)

One concrete accomplishment from SED in the past two years has been the update and improvement of the Procedural Safeguards Notice, which is required under IDEA to be provided to families of students in special education at least once a year. The revisions to the document mark substantial improvements in its alignment with federal and state law, and in accurately and clearly conveying the rights of students and their families.

However, as in the case of the OSEO and other family supports, this success marks only an introductory level improvement for NMPED. Providing families with knowledge of their rights and with tools for self-advocacy and dispute resolution is only one piece of the puzzle. Here in New Mexico, at its best, the PSN is a handbook for navigating a broken system, doing little to repair or reform that system by building capacity on the State, district, and school level.

c. Parent Liaison (p. 30)

Likewise, it is not clear from the description in the plan how the Parent Liaison is positioned to effect change. The current Parent Liaison, Sbicca Brodeur, also directs the Autism Project. According to the description, the liaison has responded to 520 inquiries since 2020 (approximately 260 per year or 22 per month)—inquiries coming from parents, but also from LEAs, teachers, and other stakeholders “about a variety of concerns, including COVID-related questions,” and requesting information about mediation, facilitated IEP meetings, state complaints, and due process hearing requests. Again, although it is always a positive thing to connect parents with what resources do exist, it is not clear from the plan what this office does to fill the gaps where they do not exist, and need to be created, expanded, or properly implemented.

2. Efforts that Are Neither New nor Self-Evidently Responsive to Martinez/Yazzie

In the plan, NMPED lists several practices or resources that have been in place for many years, namely:

- *Trainings for Special Education Directors (pp. 29-30)*—two trainings annually (about 250 educators), for well over a decade
- *SED Monthly Webinars (p. 30)*—Between 20 to 100 educators for over a decade
- *Technical Assistance Manual Page (p. 30)*

Are there specific ways the Department is targeting or expanding these efforts in response to the Yazzie/Martinez ruling? If so, that could be highlighted in the plan.

It is good to have these supports for educators in place—particularly the monthly webinars designed to support new special education directors “to encourage and support longer term retention of high-quality special education directors, and increase continuity of educational professionals.” But are these meetings and webinars successful in doing this? (“How well did we do it?” “Is anybody better off (or did we make a difference)?”)

As for the technical assistance manual page, it is in dire need of updating. While there are in fact some recent, valuable manuals accessible on the page (for example, the Dyslexia Handbook), there are also some that are well over a decade old, including Primer on the Provision of Extended School Year Services, for Parents and Educators (2006), An Overview of Special Education Transportation (2003), and Student Discipline: A Technical Assistance Manual for Students with Disabilities (2008), to name a few.

Moreover, DRNM’s experience has been that some of the manuals do not align with IDEA or State law, or are inconsistent with other technical guidance from the Department.

3. Autism Resources

The need to better serve students with autism did figure into the *Martinez/Yazzie* ruling. NMPED points to two initiatives to address the specific needs of students with autism.

a. New Mexico Autism Project (p. 27)

Although the plan does not reflect when this effort launched initially, it notes the expansion of the project “to support school districts statewide.” The project, which represents coordination with UNM-CDD and Region IX Education Cooperative, provides “coaching services, staff development opportunities, and modeling for school staff,” and districts statewide have “access to NMAP **by request.**”

b. Autism Portal (p. 28)

Similarly, the Autism Portal collects useful resources and training modules specific to providing services to students with autism. The plan notes, “The SED began contributing funds to expand the portal and contracted with UNM to develop educator trainings as well as family trainings along with the NMAP manager.” But when did this contribution begin? The plan going forward

is to “expand the trainings and create a training library,” but what is the specific plan for this expansion, with targets and timelines?

One problem that has been identified, specific to the Autism Portal, is marketing or publicizing the availability of the resources that can be found there. The portal is located on UNM-CDD’s website and it is currently not very easy to find or navigate to from the NMPED website.

It is unclear with respect to both of these initiatives whether districts and specific educators are actually using the resources. NMAP is accessible “by request,” but how many requests have been received and responded to, over what periods of time? What utilization data do we have to show how many New Mexico teachers, administrators, related service providers, etc. are actually accessing the resources provided by the portal and NMAP? What data do we have that show whether and how the information and interventions accessed on the portal and through NMAP are being implemented in districts, and that students with autism are seeing improved outcomes as a result? (“How much did we do?” “How well did we do it?” “Is anybody better off (or did we make a difference)?”)

4. Efforts Related to Transition and Graduation

a. Career Technical Education (CTE)—Pre-ETS, Transition Plans (p. 27)

The CTE element of the plan was addressed in the State’s Motion to Dismiss in 2020 as 7-year pilot funded by HB91. However, this initiative is listed as a “non-monetary” item, raising the question of whether any of the funding associated with HB91 for CTE has or will be directed to support improved transition services for students with disabilities.

The plan correctly notes that “transition planning” is required by IDEA, and that in fact New Mexico law requires transition plans to be in place for SWD by age fourteen (14), two years earlier than the federal requirement of age sixteen (16). The plan states generally that it has “increased focus on establishing transition plans for students at that younger age,” but fails to explain what this increased focus involves. In April 2021, DRNM submitted an Inspection of Public Records Act (IPRA) request for documents setting forth agreements to provide transition services to students with disabilities. The statements of work are not particularly helpful in explaining whether, and to what extent, the State is placing increased focus on providing better (and earlier) transition services for SWD.

In fact, with respect to the partnership with DVR and CREC “to provide individually customized pre-employment transition services to students with disabilities” (which is, again, explicitly required by IDEA), the records produced to DRNM showed that CREC saw a 50% funding cut in 2020-2021—\$1 million, down from \$2 million in 2019-20—and it is unclear whether that

funding has been restored, or further cut. Reports provided to DRNM by CREC showed that as a result of the decrease in funding, CREC seemingly reduced all three of its Vocational Transition Coordinators to part-time, and reduced its staff of 26 Vocational Transition Specialists (4 of whom were part-time in 2019-20) to 19 (all part-time) in 2020-21 “to stay within budget.”

Is this initiative in fact a success, and if so, why was its funding cut so radically rather than increased to reflect the State’s “increased focus” on improved pre-ETS services? Once again, the plan fails to answer the questions: 1) How much did we do? (2) How well did we do it? (3) Is anybody better off (or did we make a difference)?

b. Training on Graduation Options (p. 27)

This segment of the plan states that in 2021-22, SED provided training to special education directors and transition coordinators about graduation options. However, there is no explanation of what the training involved, and why it was conducted. What did SED conclude that special education directors and transition coordinators needed to know about graduation options for SWD?

The questions apply to the technical assistance the NMPED is receiving from the National Technical Assistance Center on Transition: The Collaborative, in “evaluating graduation options.” Although seeking this national expertise is likely a positive move, what is the purpose of the evaluation? How do we expect that this analysis of graduation pathways to benefit SWD, who again may be facing “the cliff” at graduation in the absence of meaningful transition services, regardless of the type of diploma they receive upon completion of high school.

Once again, all three of the RBA framework inquiries require an answer.

5. Teacher Recruitment and Retention

a. Leading Educators through Alternative Pathways (LEAP) (pp. 28-29)

The description of LEAP is one of the better documented sections of the plan, pointing to the number of special educators trained through the program (400), projected to be trained (200 per year), and licensed in special education (116). Although this may help to fill special education teacher vacancies, have there not been more vacancies created, particularly in the last two years given the impact of the COVID-19 pandemic? Is there a net gain that could be cited in this section? Also, are the teachers who are trained through LEAP familiar with the functional and behavioral needs of students with disabilities? Are they provided tools to meet these needs?

The partnership with the May Center (accredited by the International Dyslexia Association), is an encouraging aspect of this program, and aligns with the Structured Literacy initiative. The description also indicates the intention to measure the impact of this partnership through “post-intervention data collection and analysis” following the conclusion of this school year. Has that analysis begun, and what are the initial findings? Is there similar data collection and analysis that is measuring the effectiveness of the LEAP program overall (in addition to the May Center-specific piece), and if so, what does it show about outcomes for teacher retention and preparation to meet the needs of SWD?

While the LEAP section, as well as other sections of the Action Plan, address special education teacher vacancies, there seems to be no part of the plan that directly addresses the severe shortage of related service providers in our state, including the section where it seems it would naturally be found—Counselors, Social Workers, and Other Non-Instructional Staff (p. 49). Recruitment, training, and adequate compensation of related service providers was a substantial focus in the Martinez/Yazzie findings and conclusions.

b. Special Education Mentorship Program (p. 29)

The Special Education Mentorship Program was seemingly launched in Fall 2021, but the language describing it is in future tense: “Six hundred special education teachers and inclusion partner teachers will be participating in the inaugural program.” Has the program in fact begun in earnest, and how well is it working? Is the help offered by the mentor teacher limited to “navigat[ing] the challenges of teaching during a pandemic?” While mentoring (generally speaking) can be a positive effort, it is unclear how the initiative is specifically targeting improved outcomes for SWD, and how that will be measured.

c. Excellence from Coaching in Literacy for Intensive Preparation in Special Education (ECLIPSE) (p. 29)

The ECLIPSE program claims to be “impacting the literacy success” of 3,936 students (K-3) at 77 schools in 24 districts. Does the program formally align with the Structured Literacy initiative, and if so, how? Is LETRS or some other evidence-based curriculum implemented in this instructional coaching?

Assuming there is data to support the students’ literacy success as a result of ECLIPSE, are there plans to expand the program to other struggling districts and schools? Is there funding to do so? As it stands, the reach is very limited.

d. Universal Design for Learning (p. 29)

The section of the plan addressing UDL does not articulate how the model is intended to benefit SWD. By definition, “universal design” seems antithetical to individualization and specialized instruction, so if there is a vision for how SWD benefit (and data supporting that premise) it would help to provide that. It may be that the program seeks to provide regular education teachers with greater familiarity and expertise with the needs of special education students, so that they can be better supported in their least restrictive environment (LRE), and ideally in inclusion settings. But if so, the description still fails to explain how the “universal” in “universal design” addresses the “individualized” education programs that are designed to map the success of individual SWD with specialized needs. For example, how does UDL apply to instruction of SWD in district behavior programs or alternative educational settings?

Moreover, the data provided does not really address how UDL in practice is improving outcomes for SWD. While the number of teachers given UDL supports in this school year is provided, there is again no data included showing how well it was done, or whether it makes a difference for SWD.

6. Efforts Related to Special Education Transformation Team (SETT) Work Groups

a. Special Education Transformation Team (p. 30)

The plan describes the work of the SETT generally, but fails to describe the recommendations or work of most of these work groups, including but not limited to 1. the special education evaluation rule revision developed by the Rules Team to address longstanding problems with delayed evaluation, 2. the recent recommendations of the Behavioral and Education Training Supports Team around both restraint/seclusion and educator training, and 3. the plan recently developed by the Transitions Team. In fact, in listing the workgroups, it leaves out the Transitions Team entirely, and refers to the Rules Team by its former descriptor, initial evaluation. These are the current names of the work groups, as articulated in February 2022:

- Transitions Team
- Family Advocacy Team
- PED Role Team
- Behavioral and Education Training Supports Team
- Rules Team

b. Restraint and Seclusion (pp. 26-27)

One very concerning part of the plan is its discussion of the ongoing practice of restraint and seclusion, which we know from national data is disproportionately experienced by students with disabilities and students of color. In an issue brief released by the United States Department of Education in October 2020 alongside its Civil Rights Data Collection (CRDC) restraint and seclusion data from SY 2017-18, it reported that of the 70,833 students reported to have been restrained in the United States that year, 56,905 (80%) were students with disabilities served under IDEA; and of the 27,538 students reported to have been secluded, 21,777 (77%) were students with disabilities served under IDEA. *2017-18 CRDC, The Use of Restraint and Seclusion on Students with Disabilities in K-12 Schools*, <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>

The persistent use of restraint and seclusion by New Mexico schools, even in the wake of the passage of legislation in 2017 to address the problem, has been a matter of considerable concern, and was the focus of an investigative report by Searchlight New Mexico in October 2019. See Ed Williams, *Restraint, Seclusion, Deception*. Searchlight New Mexico (Oct. 8, 2019), <https://searchlightnm.org/restraint-seclusion-deception/>. This reality has led to discussions of the need to further curtail restraint and seclusion by legislation and rulemaking.

Within the SETT's Behavioral and Education Training Supports Team in 2020-21, and then another work group formed in mid-2021 at the direction of Secretary Stewart before his departure, various individuals (including representatives of NMPED's Safe and Healthy Schools Division) worked to draft a bill to amend the restraint/seclusion statute, to be introduced during the 2022 legislative session. However, by fall, NMPED announced its decision to hold back on legislation, and instead to tackle the problem by way of rulemaking and training. By that time, though, the Department had already released the July 2021 Memo referenced in the Action Plan, and in 2020 had already made amendments to the rule that were not sufficient to address problems identified by the Behavioral Needs Work Group. If there was any training or rulemaking that occurred following the abandonment of legislative efforts in September 2021, that has not been shared with the SETT, and is not addressed in this plan.

With respect to the restraint/seclusion segment, the plan falls short in several ways:

1. It fails to document the efforts of the Behavioral and Education Training Supports Team.
2. It fails to articulate any commitment to ongoing legislative, rulemaking, training, or other efforts in the forward-facing "Planning for the Future" section.
3. It misstates the legal standard governing restraint in footnote 13 (p. 26) as a response to be used "in extreme situations, such as when a student exhibits dangerous behaviors toward self or others, or when a risk of serious and imminent physical harm or injury is evident." (The actual standard, as set forth in the statute and explained in NMPED's July

2021 memo, is that restraint/seclusion may only be used when “1. The student’s behavior presents an imminent danger of serious physical harm to the student or others; **and** 2. Less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm.”

4. It cites STARS data that is plainly not accurate, claiming no incidents of restraint or seclusion in SY 2020-21, and only 2 incidents of restraint (none of seclusion) in SY 2021-22, through December 2021.

On this last point, reporting such evidently inaccurate data is irresponsible, and suggests that the Department continues not to recognize the ongoing serious harm and trauma suffered by SWD—very often repeatedly, over time—as a result of these practices.

Anecdotally, since this discussion draft was released, DRNM has heard two parents of students with autism, one from within our agency and one other from the advocacy community, who have shared that even in their own families, they have each seen more incidents of restraint than those reported in this discussion draft during the relevant time periods. A conversation among New Mexico special education advocates generated further anecdotal information about cases we have seen involving restraint/seclusion in the past two years that surpass the STARS data significantly. Focusing on Fall 2021 only, a single advocate was able to quickly identify within her agency’s case load at least four students (in three different districts) subjected to restraint, all in fifth grade or younger, three with autism, and one with a history of trauma.

Importantly, we know that restraint and seclusion has historically been underreported in our state. According to United States Department of Education Office for Civil Rights (OCR) data, New Mexico reported 76 restraints of students with disabilities in 2017-18, and 26 seclusions. <https://ocrdata.ed.gov/estimations/2017-2018>. In that same year, Albuquerque Public Schools alone documented **954 physical crisis team calls** in its Review 360 data collection system. Williams, *Restraint, Seclusion, Deception* (link in article to APS data). (APS documented 648 physical crisis team calls in 2018-19, 1,025 in 2015-16, and 962 in 2014-15.). Although these Review 360 reports were not limited by “Special Ed only,” the national data suggests a high percentage of these calls likely involved students with disabilities.

The rule amendment in 2020, referenced in the Action Plan, did put in place some improvements, including the following specific requirements of data collection:

6.11.2.10(E)(6) NMAC:

- (c) Schools shall report to the department, through the department’s data collection and reporting system, the following information on a timeline and reporting frequency established by the department:
 - (i) all instances in which a restraint or seclusion technique is used;
 - (ii) all instances in which law enforcement is summoned instead of using a restraint or seclusion technique;

- (iii) the names of the students and school personnel involved in an incident in which restraint or seclusion was used; and
- (iv) if a student was restrained, the type of restraint, including mechanical restraint or physical restraint, that was used.

It is questionable whether the STARS template for collecting this data really complies with the rule, particularly as it tracks restraint and seclusion as categories of “student infraction response.” *See* Exhibit 1, Student Infraction Response Template. In any event, the STARS data cited in the plan underscores continued LEA failure statewide to report, or report accurately, their use of restraint and seclusion, despite instruction from NMPED by rule and by memorandum/guidance.

If the Department in fact is committed to “a virtuous cycle between data collection, analysis, and action by both local educators and NMPED staff” requiring a “major shift” from mere compliance to driving actual improvement, citing this STARS data is a poor example of that commitment.

NMPED must intervene to address the harm and trauma caused to SWD who continue to be regularly restrained and secluded in New Mexico schools because of disability-related behaviors. The Department may not simply passively cite inaccurate STARS data, suggesting that the problem has been resolved or minimized. Rather, it must monitor and audit this data collection, to insist and ensure that districts comply with the reporting requirements of state law.

It might also consider taking the step that other states have taken, in specifying that restraint and seclusion are matters that can be addressed in a special education State complaint.

Planning for the Future

The section on “planning for the future” for SWD is notably sparse, including only four projected efforts where clearly the task at hand was to set out the Department’s targeted, future-facing vision for addressing Martinez/Yazzie.

The four ideas are:

- (1) Relying on the SETT team’s recommendations.
- (2) Continuing to fund Class Wallet (second distribution of \$1 million with plans to continue project)
- (3) Developing a Special Education Teacher Portal
- (4) Strengthening stakeholder understanding of Part C to B Transition

These comments have already addressed the limitations of Class Wallet funding to teachers to meaningfully impact outcomes for SWD. Again, this is not an effort designed to transform the delivery of special education and related services.

Moreover, while the knowledge base and energy of the SETT team is laudable, and recommendations by the team should be received and implemented by the Department, the SETT team is not responsible for designing the State's comprehensive plan in answer to the Martinez/Yazzie lawsuit.

The special education teacher portal is a good idea, particularly if it centralizes and clarifies the resources available for special education teachers. NMPED states the portal "will support educators with quickly finding vetted resources related to IEP procedures, questions about caseloads, evidence-based instructional practices, IDEA B, and more." However, this does raise the question of where the resources held in this portal will come from, and how/by whom they will be "vetted." And even if these resources are available for teachers, this still is only a collection of resources. It is seemingly not active training (including modeling), nor is it really technical assistance. It is just another portal. Without the pieces that provide appropriate infrastructure, it is not clear whether the portal will increase "capacity" in terms of professional knowledge and expertise.

Finally, while it is no doubt helpful to families of young children with disabilities to strengthen their understanding of Part C to Part B transition, it is not clear how providing greater knowledge (and presumably, by extension, greater self-advocacy skills) is calculated to "ensure seamless transitions" for their students. What this paragraph on Part C to Part B transition fails to address are the gaps (unrelated to stakeholder understanding) that may exist in the system that "must be in place to support the transition process," including "[s]tate and local structures, policies, interagency agreements, personnel development processes, and other mechanisms." Action Plan at 31. For example, DRNM has recently noted in representing preschool aged clients that FIT providers lack knowledge of the extent of their obligations under IDEA to provide services or goods. Furthermore, there are problems noted with Part C students not receiving services in an inclusion setting, alongside typically developing peers.

Importantly, none of these four initiatives or continued initiatives demonstrates a clear commitment on the part of NMPED to building "capacity" in terms of the State's "oversight and structures, and accountability processes that support improvement."

Relatedly, where in these four projected actions is there a recognition of a "culture of continuous improvement," particularly in "[d]eveloping a virtuous cycle between data collection, analysis, and action" to "drive improvement" rather than simply acting as a "compliance exercise"? (Strategic Plan at 47)

Finally, how would the two targets for improvement (focused on increased ELA and math achievement and graduation rate for SWD) relate to these four efforts? The plan fails to make that connection, both with respect to past/current efforts and to future ones.

Targets for Improvement

The Department identifies two targets for improvement:

1. Increase student achievement in English Language Arts and math by 50% for students with disabilities by the end of the 2025-26 school year.
2. Increase the four-year high school graduation rate for students with disabilities by 15 percentage points to 81.4% by 2026.

Importantly, these are the same two targets identified for the three other at-risk Martinez/Yazzie classes of at-risk students (economically disadvantaged, Native American, English learners) except that English learners have a third target involving English proficiency. These targets, while concrete, are incomplete and inadequate. For example, to reference the Martinez/Yazzie lawsuit's central tenet, the targets fail to capture whether SWD are "college or career ready" upon graduation, and specifically whether they have been provided meaningful, quality transition services while still in school. As another example, the targets fail to reflect whether SWD are provided appropriate related services toward functional goals, and whether they receive appropriate academic and behavioral supports to be able to make progress in the general education curriculum, in their least restrictive environment.

Even if these targets were calculated to measure constitutionally adequate education for students in special education, the bar is set awfully low. Based on data from the last available summative assessments in 2019 (Action Plan p. 24), NMPED's target is to bring the number of SWD testing proficient in ELA to 18%, and those testing proficient in Math to 12%, by the end of the 2025-26 school year.

These targets are also not consistent with those articulated elsewhere in the plan, especially with respect to ELA proficiency. Specifically:

p. 42—By the end of the 2025-26 school year, close the achievement gap in English Language Arts so that there is no more than a 10 percentage point difference between the highest and lowest performing subgroups.

According to 2019 data, the highest performing subgroup (Asians) was at 52%, while the lowest (SWD) was at 12%. If the goal is only to bring SWD to 18% ELA proficiency—assuming the same level of proficiency for the highest subgroup—there would still be a 34% gap.)

p. 45—By 2027, close the graduation rate gap among Asian, Caucasian, Hispanic, African American, Native American, and economically disadvantaged students, as well as students with disabilities, so that there is no more than 5 percentage point difference between the highest and lowest performing subgroups.

According to 2020 data, the highest performing subgroup (Asians) saw a graduation rate of 87.1%, compared to 66.4% of SWD. Bringing the SWD to 81.4% by 2026 would still be significantly shy of the target 5% difference by 2027, at 82.1%)

Furthermore, there is a question of whether SWD who are not graduating within 4 years are on the Modified or Ability graduation pathways, with a plan that anticipates longer than 4 years for graduation, and whether this has figured into the State's analysis of SWD graduation rates.

III. Conclusion

Thank you once again for the opportunity for DRNM to provide input on this important plan in response to Martinez/Yazzie. While these comments are admittedly lengthy and overly detailed in places, they are offered in the spirit of assisting the Department in better explaining and documenting the impact of its past initiatives and in formulating a more comprehensive and innovative vision of special education reforms yet to be accomplished.

We are happy to answer questions or to provide further input as needed, toward those ends.

Regards,



Laurel Nesbitt
Senior Attorney

Student Infraction Response Template

Target Table: STUD_INFR_RESP

Data Submission Schedule: 40D, 80D, 120D and EOY. SUMMER is required if new reportable infractions have occurred since EOY.

Grain: One record per district / student / response date / response code / event identifier

Load Sequence/Dependencies

Load Sequence/Dependencies	Optional	Lookup
1. STUDENT	N	N
2. STUDENTINFRAC	N	N

Template Description

This template is used to track student infraction responses. Infractions and incidents are tracked in the Student Infraction template. PED uses the Student Infraction and Infraction Response templates to track information related to Student Discipline and Violence and Vandalism.

One response should be submitted per incident per student in this template. If there are multiple responses to a disciplinary incident, include only the most serious response. For example, a district may initially suspend a student and then later expel him or her. In this scenario, include only one record with the Response Code of 4 (Expulsion (no educational services) – FOR REGULAR ED ONLY).

IN SCHOOL suspensions (response code 2) and OUT OF SCHOOL suspensions (response 3)

Do not report Lunch, Before/After School Detentions as IN SCHOOL or OUT OF SCHOOL suspensions.

The Student Infraction and Student Infraction Response templates must be submitted in a point in time fashion. Please submit in the first reporting period following the incident. Must be submitted at reporting periods: 40D, 80D, 120D and EOY. SUMMER is conditionally required, if a new reportable infraction has occurred.

The Event Identifier field is used to "link" the Student Infraction Response record to the Student Infraction record. Please use the same district-generated value in this field to link the records in these templates together for the same incident.

Changes

New Field – (Field 7) RESPONSE CODE

10 = Restraint

11 = Seclusion

12 = Called police instead of restraining or secluding student

EXHIBIT 1

New Field – (Field 8) ADMINISTRATOR ID

— This field will be conditionally required. Please report all Staff when Response Code (field 7) equals Restraint (10), Seclusion (11), and Called police instead of restraining or secluding student (12).

Student Infraction Response Template Specifications

Field #	Start	End	Length	Data Type	Field Name	R/O/CR	Code	Definition	Business Rules	Valid Values/Example Data
1	1	8	8	C	DISTRICT CODE	R	K,M	PED defined three character district code.		Example: 021
2	9	14	6	C	LOCATION CODE	R	U,R	PED defined three character location code.		Example: 008
3	15	24	10	D	SCHOOL YEAR DATE	R	K,M	Provide the school year in the ISO format: YYYY-MM-DD. The PED standard school year runs from July 1 through June 30.	All dates must be entered in ISO format	Example: YYYY-06-30
4	25	36	12	C	STUDENT ID	R	K,M	State issued student identification number.		Example: 123406847
5	37	46	10	D	RESPONSE DATE	R	K,M	Provide the date of the infraction response.	All dates must be entered in ISO format	YYYY-MM-DD
6	47	49	3					Not Collected		
7	50	53	4	C	RESPONSE CODE	R	K,M	Provide the primary Response Code that indicates the type of response to a discipline violation.	The value used should be the code (e.g. TBD) only. Valid values are case sensitive. The descriptions are for reference only. IN SCHOOL suspensions (response code 2) and OUT OF SCHOOL suspensions (response code 3) do not include Lunch, Before/After School Detentions.	See Response Code Set at the end of this document for a list of the valid values.

Field #	Start	End	Length	Data Type	Field Name	R/O/CR	Code	Definition	Business Rules	Valid Values/Example Data	
8	54	65	12	C	ADMINISTRATOR ID	CR	U	Social Security Number of staff member formatted without dashes.	Please report all primary staff involved when Response Code (field 7) equals Restraint (10), Seclusion (11), and Called police instead of restraining or secluding student (12). Primary staff is staff who initiated the restraint, seclusion, or called police. If other staff was involved, please include in Response Comment (field #12)	Example: 123456785	
9-10	66	85	12		Not Collected						
11	86	95	10	C	EVENT IDENTIFIER	R	K,M	Provide an identifying code for the discipline event. This code enables a district to associate one identifying number or code with an incident that involves multiple students with multiple and possibly varying infractions. This field is critical to relating responses to infractions in the Student Infraction template.	This value must be unique per incident within the school year across all students and incidents. Since this is a key field, a value must be supplied for each record, even if the discipline incident is for a single student with a single infraction.	Example: 1	

Field #	Start	End	Length	Data Type	Field Name	R/O/CR	Code	Definition	Business Rules	Valid Values/Example Data
12	96	350	255	C	RESPONSE COMMENT	CR	K,M	Provide additional information about the response to an incident.	Do not supply a value for this field if there is no relevant additional information. When Response Code (field 7) equals Restraint (10) please include the type of restraint used and provide additional information about the response to an incident of restraint. If more than one staff member was involved in the incident of restraint or seclusion, please report here using Social Security Number of staff member(s) formatted without dashes. Example: Phone call to parent, etc; Mechanical restraint;	Example: Phone call to parent, etc.
13	351	356	6	N(2)	RESPONSE DURATION	CR	U	Provide the length, in school days, of the discipline response. If the response is a fraction of the school day, then use a decimal representation of the school day (e.g. 0.25 for removal for 2 periods of an 8 period school day).	Required if Response Code, field #7 is 2, 3, 4, 5, 6 or 7; and the duration for these response codes must be greater than zero.	Examples: 2.50, 0.50, 15
14-33	357	368						Not Collected		

Response Code (Student Infraction Response Template - Field # 7)

Code	Response Description	Ranking
1	Arrest/referral to justice system	1
2	In school suspension (DO NOT include Lunch, Before/After School Detentions)	7
3	Out of school suspension (DO NOT include Lunch, Before/After School Detentions)	6
4	Expulsion - no educational services – REGULAR ED ONLY; NOT to be used for Special Ed students)	2
5	Modified Expulsion (still receiving some educational services)	4
6	Sent to alternate setting by school personnel	5
7	Sent to alternate setting based on hearing officer determination of likely injury	3
8	Other/Unknown	8
10	Restraint	
11	Seclusion	
12	Called police instead of restraining or secluding student	

Exhibit 4

D-101-CV-2014-00793; D-101-CV-2014-02224
LOUISE MARTINEZ/WILHELMINA YAZZIE, et al., V. THE STATE OF NEW MEXICO, et al.,

Dr. Angelo J. Gonzales
May 25, 2022

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF DR. ANGELO J. GONZALES

Wednesday, May 25, 2022
9:29 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 ultimately called "Key Performance Outcomes"
 2 within the Strategic Plan, as well as refining
 3 actions within the Strategic Plan and making
 4 sure that they were clearly connected to
 5 strategies.

6 As part of the LPI team, the
 7 Learning Policy Institute team, they had
 8 primary responsibility for developing the
 9 literature review, which was really the
 10 research base attached to the strategies in the
 11 Strategic Plan, but I was part of the team that
 12 worked on that as well.

13 Q. Who at PED did you work with when you
 14 were doing that consulting on the Strategic
 15 Plan?

16 A. Our primary point of contact was Dr. Tim
 17 Hand, Deputy Secretary Tim, T-I-M, Hand,
 18 H-A-N-D.

19 John Sena, whom I've already
 20 mentioned, SENA, who is the Policy Director.
 21 Mitchell Herz, M-I-T-C-H-E-L-L
 22 H-E-R-Z. He is no longer at PED, but he was
 23 the Director of Research, Evaluation, and
 24 Accountability.

25 There was an intern that they had

1 has "Matt Goodlaw" at the top of the org chart.
 2 Do you see that?

3 A. Yes.

4 Q. Actually, before we get there, going
 5 back to the first page, I had a question on
 6 that.

7 You will see on the first page most
 8 of the boxes are blue, but five are white,
 9 including yours. Do you know why there is that
 10 difference in color?

11 A. That just represents the five-member
 12 Cabinet, which is the highest level leadership
 13 team within PED.

14 Q. Okay. You're a member of the Cabinet.
 15 A. Yes.

16 Q. Okay. Now let's go to page 4, please.
 17 A. (Witness complies.)

18 Q. We see that "Matt Goodlaw" is the
 19 "Director of Research, Evaluation, and
 20 Accountability"; right?

21 A. Yes.

22 Q. Generally speaking, what are Matt
 23 Goodlaw's duties?

24 A. The biggest -- I talked about the
 25 biggest duty, which is related to the

1 Accountability part of Research, Evaluation,
 2 and Accountability, which is all of the federal
 3 reporting that we do under the Elementary and
 4 Secondary Education Act, which is now known as
 5 the Every Student Succeeds Act. We have a
 6 Consolidated State Plan under that law that
 7 requires us to collect data on certain State-
 8 level indicators.

9 Matt and his team, throughout the
 10 year -- or not throughout the year, but at
 11 certain times during the year, when the data
 12 are ready, they do all of the data cleanup,
 13 meaning they make sure the data is validated
 14 and accurate. It's very technical work that
 15 you have to do to build these data sets, to
 16 conform with the federal requirements, so
 17 that's the biggest part of what they do. It
 18 takes a lot of time, and it's typically at the
 19 beginning of the calendar year, and the
 20 beginning of the calendar year is when a lot of
 21 that heavy work takes place.

22 Matt also has responsibility for the
 23 Research and Evaluation part of the name of
 24 his bureau. That is an emerging part of the
 25 work, which is going to be focused on

1 evaluation. We're currently working together
 2 right now to build a staffing plan for being
 3 able to do evaluations of programs within the
 4 agencies, which are actually formalized
 5 evaluations.

6 What I mean by a "formalized
 7 evaluation" is that there are rigorous
 8 comparisons where we can actually make
 9 inferences about the work, and it's the impact
 10 of the work on specific performance measures
 11 that have been identified.

12 Q. Okay. You labeled Research and
 13 Evaluation as "emerging work."

14 A. Yes.

15 Q. Why do you use the term "emerging"?

16 A. Because we have not yet staffed up with
 17 the people who have the skill set to be able
 18 to do that work. This is a new function that
 19 we're going to be adding to his bureau; it's
 20 not built yet.

21 Q. Okay. Below "Matt Goodlaw" we have
 22 "Alexis Alvarez." She is the "Deputy Director,
 23 Research, Evaluation, and Accountability."

24 A. He. He.

25 Q. Oh, he. Sorry.

1 Q. Sure.

2 Is the analysis of that data done by

3 the Research --

4 A. Yes.

5 Q. -- Evaluation, and Accountability

6 Division?

7 A. I'm sorry. Yes.

8 Q. And is the analysis of data with regard

9 to student achievement done by the Research,

10 Evaluation, and Accountability Division?

11 A. Some of it, but some of that is also

12 done by the vendors that we contract with,

13 they ultimately provide the data sets to us.

14 Before it gets provided to the federal

15 government, under the Consolidated State Plan,

16 our team makes sure that it complies with the

17 technical requirements for submittal.

18 Q. Is the data regarding performance, both

19 in terms of graduation rates, and achievement

20 of English Language Learners, is that done by

21 this Division; the Research, Evaluation, and

22 Accountability Division?

23 A. I don't know. I don't know whose

24 primary on that; if it's Mayra Valtierrez'

25 division, or if it's REA. I know they work

1 Evaluation, and Accountability side, which on

2 the "Accountability" part of that, prepares the

3 data sets for federal submission, but also has

4 the ability to do analytic work around the

5 disaggregated student groups for which we

6 collect data.

7 Q. That analytic work is not done by the

8 IT side; right?

9 A. Depends on what you call "analytics" I

10 guess. I mean their reports disaggregate, but

11 analytics takes the disaggregated data and you

12 can look at trend lines. You can do statistics

13 with it and that sort of thing.

14 You can get disaggregated data out

15 of the IT side of the house with just running

16 a query through the data system, but the higher

17 level analytics are out of the Research,

18 Evaluation, and Accountability Bureau.

19 Q. Okay.

20 If we look at page 4 of Exhibit 2,

21 we see that four of the eight slots within this

22 division, Research, Evaluation, and

23 Accountability, are vacant. Do you see that?

24 A. Yes.

25 Q. So roughly half the division is vacant.

1 A. Yes.

2 Q. How long have those positions been

3 vacant?

4 A. So they've been vacant, I believe,

5 since the fall of 2021.

6 Q. So roughly about eight to ten months.

7 A. What's the math on that? I would say

8 since -- I don't remember the precise month;

9 probably since November of 2021. Whatever

10 that math works out to; that's not quite eight

11 months I don't believe.

12 Q. Have these vacancies impacted the work

13 of the Research, Evaluation, and Accountability

14 Division?

15 MS. RAHN: Object to form.

16 Go ahead.

17 THE WITNESS: I would say no, it hasn't,

18 because our team has been working extra hard

19 and extra hours to get the work done that

20 needs to get done. We have no choice but to

21 meet federal deadlines.

22 Q. BY MR. ESTRADA: You mentioned there's

23 not just the federal requirements, there is

24 also this emerging Research and Evaluation

25 portion. Has the ability to build that work

1 been at all impacted by the fact that half the

2 division is vacant?

3 MS. RAHN: Object to form.

4 Go ahead.

5 THE WITNESS: It has slowed down the

6 timeline that I would have liked to put in

7 place to get that started, yes.

8 Q. BY MR. ESTRADA: In what way?

9 A. Well, the first challenge was we had a

10 vacancy in the Director position, and Matt

11 started with us I believe in -- I'm sorry, I'm

12 forgetting the exact months, but it was either

13 February or March, and it might have been March.

14 Q. Of this year.

15 A. Of this year.

16 Now that he's on board, we're

17 actually moving forward pretty quickly with all

18 of our plans. That vacancy, when Mitchell Herz

19 left, who I mentioned earlier, that was before

20 I started at PED. That position sat vacant

21 for a while. Alexis was serving in an Interim

22 role, but actually some of his team was still

23 there. He was getting the work done, but now

24 that Matt is in place, we are moving forward

25 quickly.

1 We've been doing interviews. This
 2 has been a challenging -- these are challenging
 3 positions to fill because of the very
 4 particular skills that are required.

5 Q. Would you agree, Dr. Gonzales, that in
 6 order for this division to achieve the work
 7 that PED needs it to do, it needs to be fully
 8 staffed?

9 A. Yes.

10 Q. What are the plans in place that PED
 11 has, if any, to make sure that this division
 12 gets fully staffed?

13 A. So first and foremost is continuing to
 14 interview candidates, and trying to hire
 15 qualified people for the positions.

16 We had failed searches, so we were
 17 very close on a few of these positions. One
 18 of the barriers is salary for some of these
 19 positions, because people with Ph.D.s can make
 20 more money at a university, or in a couple of
 21 cases, the cost of living in Santa Fe, from
 22 moving out of state, was one of the barriers.

23 We are in a very competitive job
 24 market right now, and that is challenging
 25 because those positions, the job

1 with trying to fill positions.

2 One last thing that we are doing,
 3 and that we have done, and there is more to do
 4 here, and that's Paola is our Director of
 5 Strategy and Talent Development. I brought her
 6 on board because she has expertise and
 7 experience on not just HR, but on the talent
 8 development side of working with people and
 9 organizations.

10 She's really good at leadership
 11 development. She worked for a recruitment firm
 12 before this, and she knows the recruitment side
 13 of this work really well.

14 Part of the plan moving forward is,
 15 across the agency, trying to do more than just
 16 relying on the State Personnel Office website
 17 to secure candidates for jobs, but actually
 18 being proactive and going out and communicating
 19 to higher education institutions. Letting
 20 upcoming graduates know about jobs, and then
 21 really trying to cultivate the talent that we
 22 need for the various jobs throughout our agency.
 23 It is a combination of things we tried, and
 24 will be doing in the future.

25 Q. So given the challenges of staffing this

1 division, is it fair to say you don't have any
 2 precise estimate as to when this division will
 3 be fully staffed?

4 A. I can't give you a precise estimate
 5 because so much depends on who is in the
 6 talent pool of people who apply for the jobs.

7 I have talked to Matt, and he feels
 8 like there are some qualified applicants in the
 9 pool of people who have applied that we will
 10 be interviewing. Assuming everything works out
 11 in those interviews, and that we find people
 12 that are qualified that we want to hire, and
 13 that they are willing to accept whatever salary
 14 we are able to offer them, we could have the
 15 bureau filled within the next month.

16 If we don't, if all of those
 17 conditions are not met, then it could be longer
 18 before we fill those positions in the bureau.
 19 It's just one of those things where, if you've
 20 worked in HR before, sometimes you don't always
 21 know what kind of talent pool you're going to
 22 get at any given time. We're optimistic, but
 23 I can't give you a precise answer.

24 Q. You can't give me a precise estimate?

25 A. For all the reasons I just said, I can't

1 Are you saying that even though the
 2 division isn't fully staffed, you can still
 3 achieve all your goals in terms of Research
 4 and Evaluation?

5 A. (No audible response.)

6 Q. Is that your testimony?

7 A. No. Let me clarify. No, that is not
 8 my testimony.

9 I think every single goal -- and the
 10 biggest one that we cannot yet get started is
 11 the evaluation part, which I've already said.
 12 That work will require that we have full
 13 staffing, and that we have people on staff who
 14 actually know how to do evaluation, and can
 15 make that their full-time focus.

16 Q. And when you say, "evaluation work,"
 17 what specifically are you referring to?

18 A. Evaluation is different from the
 19 accountability work that I described, in that,
 20 as I said earlier, evaluation is a more
 21 rigorous, formalized approach to how you
 22 measure outcomes in programs.

23 Typically evaluation is rooted in
 24 comparisons, so usually you have -- there's
 25 different ways you can do it, and there's

1 inferences. As we are trying to evaluate
2 whether this program is working, the question
3 becomes where it's serving certain subgroups in
4 a particular way over and above what we might
5 expect from the traditional way of doing things.

6 That's what evaluation is; right?
7 It's applying statistics and really rigorous
8 research designs, to be able to make inferences
9 about the impact of specific programs and
10 interventions on student outcomes.

11 That's something that the agency
12 hasn't really done that I'm aware of; that
13 kind of work. What we have done in the past is
14 we will sometimes contract out to outside
15 researchers, and that will still be a part of
16 the strategy, and that's something Matt and I
17 are looking at right now, the capacity-
18 building approach, and to partner with research
19 institutions that can support our efforts to do
20 this work.

21 We believe this is critical, so
22 that's were we're actually wanting to build an
23 in-house capacity as well, as well as those
24 external partnerships, to be able to support
25 Evaluation.

1 Q. You mentioned the Evaluation work is
2 critical. Do you believe the Evaluation work
3 is necessary in order to improve student
4 outcomes in the State of New Mexico?

5 MS. RAHN: Object to form.

6 Go ahead.

7 THE WITNESS: I think it is, I do.

8 I think evaluation goes one step
9 further than simply looking at performance
10 measures from a program. What evaluation gets
11 you is if you implement a particular program,
12 how do we know that program is doing the heavy
13 lift to improve outcomes, versus any other
14 number of things that could be going on in that
15 school; right?

16 Think about any given school is
17 going to have lots of different things going on.
18 Any given student is going to have lots of
19 different programs that they're part of,
20 they're going to have different teachers,
21 they're going to have different experiences at
22 home and in the community. All of those
23 factors -- right -- are impacting that
24 student's ability to succeed in school.

25 A good evaluation can isolate those

1 schools and districts that are subject to this.
2 Q. Would you say it's critical work of the
3 Public Education Department?

4 A. Yes.

5 Q. You mentioned earlier the Evaluation
6 work that you believe is critical for the State
7 of New Mexico. Would you agree that falls
8 within this Court Order in terms of a system
9 of accountability?

10 MS. RAHN: Object to form; foundation.
11 Go ahead.

12 THE WITNESS: Yeah, I think it is. I
13 think it depends on how the Court defines
14 "accountability."

15 I think "accountability" has a very
16 particular meaning in education policy.
17 Accountability, first and foremost, as I think
18 about it, is the work that we do around federal
19 and state accountability, and reporting the
20 requirements that are required under state and
21 federal law. That's the first level.

22 The second level is really around
23 what I've talked about in terms of Evaluation,
24 which is measuring the kind of impact of
25 programs on student outcomes.

1 Again, it's not just on the
2 Research, Evaluation, and Accountability team
3 to do all this, but we're leveraging support
4 from other parts of the agency where it's
5 appropriate to do so.

6 Q. So you need to fill these positions in
7 order to actually achieve this objective of
8 tracking and collecting the metrics on a
9 regular basis going forward. Is that right?

10 A. Yes.

11 Q. You mentioned some of the difficulties
12 you've encountered in filling these vacancies.
13 One of them you mentioned was salary.

14 A. Yes.

15 Q. Do you have -- "you" meaning PED -- have
16 the funding necessary to increase salaries to
17 fill these positions?

18 A. To a point, yes, but let me answer it in
19 two ways:

20 Within the current job
21 classifications -- the way the State Personnel
22 Office works, every position has a
23 classification and a pay band associated with
24 it.

25 There are two barriers on salary.

1 One barrier, for some people, is the pay band.
2 It may not be high enough, so it may not be
3 comparable. Even if we wanted to increase
4 their salary to a higher level to be
5 competitive, we may not be able to do so if
6 the pay band doesn't allow us to go high enough,
7 because there is a range in the pay band around
8 the salaries we can offer.

9 That is a barrier, in some ways, for
10 higher level researchers, who can go to like
11 the University of New Mexico and make a lot
12 more money if they are Ph.D.-level, experienced
13 researchers.

14 Q. Understood.

15 Do you have the funding necessary
16 to move those vacant positions to a higher pay
17 band?

18 A. Yes. In fact for two of our positions
19 this year, we have budgeted to take two of our
20 statistician supervisors and increase their pay
21 by moving them into a higher pay band, with a
22 new classification that the State Personnel
23 Office created for Data Analysts. That's
24 going to give us the ability now to move from
25 a Pay Band 80 -- in technical State Personnel

1 Greater funding alone is not going
2 to solve the workforce challenge in REA, and I
3 don't know how many more times I can kind of
4 articulate that. It is a larger set of
5 workforce issues to fill these positions,
6 because they are extremely specialized.
7 Finding people with the skill set, in a
8 competitive job market, is the first barrier.

9 More money could help on the
10 margins, but what we really need is just to
11 find people who want to work in this particular
12 field that have the right skills. The
13 alignment with the labor market at any given
14 time is not always where it needs to be to
15 fill positions that are highly specialized.

16 I do think more money could help in
17 terms of bringing more people on board, but
18 then we're still in this position of can we
19 find the people who have the skills needed to
20 do the work; right?

21 Q. Right, but the example you gave with the
22 woman who was moving from out of state, and
23 comparing the salary versus the cost of living
24 in Santa Fe, she ultimately decided it wasn't
25 worth it. The example you gave made it sound

1 enough of a priority that I can make a strong
2 case for why we need to go to a certain level
3 of that pay band range to be able to bring them
4 in.

5 Now that being said, one unique
6 case was a person that we were trying to hire
7 that ultimately turned us down because she was
8 weighing the salary that we could offer with
9 the cost of living in Santa Fe. She was moving
10 from out of state. She did the math with her
11 family, and that was not a good economic
12 decision for her and her family.

13 So every case is unique. We did
14 actually try to meet some of her salary demands,
15 and yet still the outcome was not what we
16 expected.

17 Q. If you had greater funding for your
18 budget overall within PED, do you believe that
19 would help you in terms of recruiting and
20 retaining talent to fill the various vacancies
21 you have not just in this division, Research,
22 Evaluation, and Accountability, but others as
23 well?

24 A. Let me take Research, Evaluation, and
25 Accountability first.

1 and PED staff will provide "accountability."
2 What "accountability" will PED staff be
3 providing?

4 A. Again, I can't speak to how the program
5 staff are going to approach "accountability,"
6 so that would be a question, I think, that
7 Seana Flanagan and her team would best address.

8 Q. The document doesn't describe that;
9 right?

10 A. It does not.

11 Q. Okay. The next bullet --

12 A. Let me clarify, it does explain to some
13 extent. If you read this previous sentence,
14 it's really referencing the Educator

15 Accountability Reporting System, which is the --
16 Q. Educator Preparation Programs; right?

17 A. Yeah. You see where it says:

18 "Following this, the EPPs
19 collaborate and provide data for
20 the Educator Accountability
21 Reporting System?"

22 Q. Yes.

23 A. "Accountability" is about -- I said
24 this earlier. A lot of what "accountability"
25 is about is ensuring that statutory

1 requirements are being met.

2 My understanding, from this

3 paragraph, and the preceding sentence, is that

4 "accountability" is really tied to ensuring

5 that statutory requirements around Educator

6 Prep Programs are being met; that data are

7 being entered into the system and that Educator

8 Prep Programs are actually tracking information

9 about candidates, as it says here: "[F]rom

10 pre-entry to post-graduation."

11 Q. But how will PED staff provide

12 "accountability"?

13 A. I mean there probably needs to be

14 another word there, or a verb that says

15 "ensure accountability." I'm not sure

16 "provide accountability" is the right way to

17 say that.

18 Q. Okay. But to get the details, we need

19 to speak with someone else; right?

20 A. Yeah. I mean I think, as I said

21 earlier, the content was generated by program

22 staff, and they are going to be the experts in

23 the programs that are referenced in this

24 document.

25 Q. Well, how would a member of the public

1 Q. Fair to say that this sentence, where

2 you talk about "hiring five new staff members

3 to support the Licensure Bureau in July 2022,"

4 that's aspirational; right?

5 A. It is our intent to hire by July 2022.

6 If I could change the words "will hire" to

7 "intends to hire," I would be happy to do that.

8 I think -- yeah, I'll just answer

9 your question that is our goal; to try to get

10 that done in July 2022, assuming there are no

11 challenges with finding qualified candidates.

12 Q. It is an aspirational goal; right?

13 A. Sure, yes.

14 Q. And many of the things in this Action

15 Plan are aspirational; right?

16 A. Every goal is aspirational, and we set

17 goals so that we can organize our work and

18 ensure that we have something to work toward,

19 and to be able to define whether we've achieved

20 success in our work or not.

21 Yes, every goal, broadly, is

22 aspirational, but they are still important to

23 set. They are important to ensure that we are

24 using those goals to make sure that work is

25 getting done.

1 Q. The answer to my question is "Yes";

2 right?

3 A. Yes.

4 Q. Let's take a look at pages 8 through

5 10. I won't go through all of it, unless we

6 need to.

7 A. (Witness complies.)

8 Q. There is a heading, "Planning for the

9 Future," which describes various different

10 programs; right?

11 A. Yes.

12 Q. These are also aspirational goals;

13 right?

14 MS. RAHN: Object to form.

15 Go ahead.

16 THE WITNESS: Well, what are you

17 referring to? Which are the aspirational

18 goals you're referring to?

19 Q. BY MR. ESTRADA: Well, it's "Planning

20 for the Future." You have page 9, second from

21 the bottom:

22 "NMPED plans to focus efforts

23 on bilingual students who want to

24 pursue a career in education";

25 right? That's aspirational; correct?

1 That part of it, the plan for that has not yet

2 been developed.

3 Q. Does PED currently have the staffing

4 that they need to measure whether these

5 programs are effective or not?

6 A. I think it depends on the program. I

7 think that for some of these programs, yes, we

8 do have the staffing.

9 A good example is programs under the

10 College and Career Readiness Bureau, including

11 the Educator Rising Career Technical Student

12 Organization. It has a really strong focus.

13 They've got federal resources; they collect a

14 lot of data. A lot of it is actually required

15 by the federal government, so there is a lot

16 of data that they gather, and they have a lot

17 of metrics around the outcomes of programs that

18 they lead.

19 In other cases, I would say we don't

20 yet have the staff in place to be able to

21 gather the data, so it's really program-by-

22 program.

23 But again, what we're doing is

24 making sure that we are clear at the front end

25 of any new initiative about what the data

1 expectations are, and a data collection plan is
 2 part of the work, so that it becomes a regular
 3 part of just actually administering the program.
 4 Q. So just so I understand, on some of
 5 these programs listed in "Planning for the
 6 Future," PED does not yet have the staffing
 7 necessary to measure whether they would be
 8 effective or not. Is that right?
 9 MS. RAHN: Form.
 10 Go ahead.
 11 THE WITNESS: Yes. I think for some of
 12 these, yes, that's the case, but I'm going to
 13 add to that, because I think it's also not
 14 just about staffing. I mentioned earlier that
 15 it is also about, you know, our ability to
 16 contract with outside partners. That's a
 17 strategy that some of our program teams have
 18 used as well; to work with outside partners to
 19 fill that capacity and to be able to measure
 20 the impact of programs.
 21 We do look for the capacity to be
 22 able to assess impact wherever we can find it,
 23 and it's not just about having a PED staff
 24 member. Sometimes it's about having an external
 25 partner we've contracted with who is able to

1 did during the Legislative Session to increase
 2 teacher salaries did actually look at the
 3 current teacher salaries across the state. We
 4 looked at comparisons to other states, and we
 5 looked at what it would cost to actually
 6 increase teacher salaries such that we are
 7 competitive with surrounding states.
 8 That was the way in which we
 9 approached that particular question. That's
 10 one strategy contributing toward this target.
 11 The cost analysis was attached to the strategy,
 12 not to the target.
 13 Q. BY MR. ESTRADA: Has PED done any cost
 14 analysis tied to the targets?
 15 MS. RAHN: Object to form.
 16 Go ahead.
 17 THE WITNESS: Not to my knowledge.
 18 Q. BY MR. ESTRADA: Does PED know how much
 19 it would cost, in terms of PED's budget or
 20 additional funding from the Legislature, to
 21 reduce statewide teacher vacancies by a total
 22 of 75% over three school years?
 23 A. I don't know if we do or not. I don't
 24 think so.
 25 Q. So the next target listed, Number 2 on

1 support data collection and measure the program
 2 efficacy.
 3 Q. BY MR. ESTRADA: Does PED currently have
 4 partnerships with these outside groups or
 5 contractors that would be necessary to evaluate
 6 the effectiveness of all the programs listed
 7 in 8 through 10?
 8 A. Well, we've got partners. In 8 through
 9 10? I don't know. I don't know if they are
 10 planning contracts with -- my sense or
 11 understanding is they are not at the moment,
 12 but I don't know with certainty whether they
 13 are planning to contract the evaluation out.
 14 Q. Okay. Let's look at page 11.
 15 A. (Witness complies.)
 16 Q. There is the header, "Targets for
 17 Improvement," under the large header of
 18 "Educators." It lists different areas in
 19 "Targets for Improvement" here.
 20 Are the targets listed here the
 21 targets that are needed to comply with the
 22 Martinez/Yazzie Order?
 23 MS. RAHN: Object to form and
 24 foundation.
 25 Go ahead.

1 page 11, says:
 2 "By the 2025-26 school year,
 3 close the teacher-to-student
 4 diversity gap by increasing Hispanic
 5 teacher representation by 20
 6 percentage points, Native American
 7 teacher presentation by 7 percentage
 8 points, and African-American teacher
 9 representation by 3 percentage
 10 points."
 11 Has any analysis been done in terms
 12 of how much it would cost to achieve this?
 13 A. No.
 14 Q. Number 3 says: "Increase the retention
 15 rate among newly recruited teacher
 16 by 50% by the 2025-26 school year."
 17 Has any cost analysis been done in
 18 terms of how much funding would be needed, or
 19 what level of budget increase would be needed
 20 to achieve this target?
 21 A. I don't think so; I don't know. That
 22 would -- to my knowledge, no, but I don't know.
 23 Q. And then number 4 states: "Ensure that
 24 the average statewide class size
 25 continues to remain below the

1 statutory maximum (22 for grades
2 1-3, and 24 for grades 4-6) and
3 examine opportunities for class size
4 reduction in schools and secondary
5 content areas that skew toward the
6 higher end of the class size range."
7 Has any work been done to determine
8 the cost to achieve that target?
9 A. Not in -- no.
10 But again, the work that contributes
11 to this target is about recruiting teachers
12 and ensuring that we've got a strong pipeline
13 of teachers, so that our positions are filled
14 in the schools, and that contributes to class
15 size. The strategies that have been rolled out,
16 or that are planned are what is contributing
17 toward these targets.
18 The type of cost analysis you're
19 talking about around targets is not something
20 we've done. For some of these initiatives,
21 and maybe not all, there has been cost analysis
22 done to look at the cost associated with, as I
23 said earlier, increasing teacher pay and
24 ensuring that the workforce becomes more
25 competitive, so we're back to recruiting and

1 A. (Witness complies.)
2 Q. We're now under the section: "'At-risk'
3 Students: English Learners."
4 Starting at page 22, and going on
5 to the top of page 23, it lists: "Non-Monetary
6 Supports."
7 Is this a complete listing of the
8 actions that PED is currently doing to support
9 English Language Learners?
10 A. I don't know. I think that this is
11 what Mayra Valtierrez, who is the primary
12 contributor to this section, provided. I know
13 she's been deposed at length.
14 Mayra would know the definitive
15 answer on that; I'm not as familiar with the
16 details of the programs that she runs.
17 Q. Is PED doing any measuring as to whether
18 the programs listed at page 22 through 23,
19 "Non-Monetary Supports," are efficient and
20 effective?
21 A. PED, to my knowledge, is -- I'm not
22 sure that PED is. I can't speak to -- I know
23 that Mayra has involvement with some external
24 partners, and I'm not sure of the extent to
25 which they are providing support to evaluate

1 A. -- with this Order.
2 That's what I said.
3 Q. Okay. Let's look at page 15, which
4 lists "Targets for Improvement." You will see
5 two are listed there. Number 1 states:
6 "Increase student achievement
7 in English Language Arts and math
8 by 50% for economically
9 disadvantaged students by the end
10 of 2025-26 school year."
11 Do you see that?
12 A. Yes.
13 Q. Has PED done any analysis of what the
14 cost would be to achieve this target?
15 A. No.
16 Q. Number 2 states:
17 "Increase the four-year high
18 school graduation rate for
19 economically disadvantaged students
20 by 15 percentage points by 2025."
21 Has PED done any analysis of the
22 cost it would take to achieve this target?
23 A. No.
24 Q. Is it your view that PED has all the
25 funding and resources it needs to achieve these

1 what you have described?
2 A. I am not aware of any other work at
3 this time, no.
4 Q. If you look at page 23 at the bottom it
5 list "Targets."
6 A. (Witness complies.)
7 Q. There are three listed. The first one
8 reads as follows:
9 "By the end of the 2025-26
10 school year, 75% of English Learners
11 will be on track toward achieving
12 English proficiency within five
13 years."
14 Do you see that?
15 A. Yes.
16 Q. Has the PED done any analysis of how
17 much it would cost to achieve that target?
18 A. Not to my knowledge, no.
19 Q. Target Number 2 reads as follows:
20 "Increased student achievement
21 in English Language Arts and math
22 by 50% for English Learners by the
23 end of the 2025-26 school year."
24 Has any analysis been done by PED
25 to determine how much it would cost to achieve

1 that target?
 2 A. No.
 3 Q. Okay. Number 3 reads as follows:
 4 "Increase the four-year high
 5 school graduation rate for English
 6 Learners by 15 percentage points,
 7 to 85% by 2025."
 8 Has PED done any analysis to
 9 determine how much it would cost to achieve
 10 that target?
 11 A. No.
 12 Q. Does PED currently have the funding it
 13 needs to achieve all of these targets listed
 14 at page 23?
 15 A. My answer is going to be similar to
 16 what I said before:
 17 I don't know if we do fully, but my
 18 sense is...
 19 I don't know. I don't know what
 20 the answer is on that.
 21 Again, I think there are lots of
 22 externalities that are contributing to the
 23 attainment of these targets that make it
 24 difficult to make a general statement about
 25 whether we've got the funding or not. I don't

1 Q. Is there a plan for that to change in
 2 the future?
 3 A. Well, the plan is the plan I described
 4 earlier, which is to work with our Program
 5 Directors to provide the support that's needed
 6 or requested, to help them be able to measure
 7 the performance that they are developing to
 8 describe the impact of their work.
 9 Director Dominguez-Clark is the
 10 Program Director that's been part of the
 11 collaborative cross-functional process that I
 12 described previously.
 13 Q. So yes, there is a plan to change that
 14 in the future; right?
 15 A. Yes.
 16 Q. Okay. Then looking at page 31.
 17 A. (Witness complies.)
 18 Q. You will see listed: "Targets for
 19 Improvement."
 20 Do you see that?
 21 A. Yes.
 22 Q. It list two targets. The first reads
 23 as follows:
 24 "Increase student achievement
 25 in English Language Arts and math

1 know. My sense is we may not, or we don't.
 2 Q. Are there any actions that you believe
 3 you'll need from the Legislature in order to
 4 help achieve the goals listed under "Targets
 5 for Improvement" at page 23?
 6 MS. RAHN: Object to foundation.
 7 Go ahead.
 8 THE WITNESS: This is an area that I
 9 don't know very well, so it's hard for me. I
 10 don't know. I don't know what specifically we
 11 would need from the Legislature in this body of
 12 work.
 13 A lot of this work is funded by
 14 federal funds, and I'm not familiar with how
 15 we are using state dollars to supplement
 16 federal dollars for English Learner support.
 17 That's why this one is one that's not easy for
 18 me to answer in terms of what more we need from
 19 the Legislature.
 20 Q. BY MR. ESTRADA: If you look at page
 21 24, we start with the section: "'At-risk'
 22 Students: Students with
 23 Disabilities."
 24 Do you see that?
 25 A. Yes.

1 by 50% for students with
 2 disabilities by the end of the 2025-
 3 26 school year."
 4 Do you see that?
 5 A. Yes.
 6 Q. Has PED done any analysis of how much
 7 it would cost to achieve that target?
 8 A. Not to my knowledge, no.
 9 Q. Looking at Number 2, it reads:
 10 "Increase the four-year high
 11 school graduation rate for students
 12 with disabilities by 15 percentage
 13 points, to 81.4% by 2026."
 14 Has PED done any work to determine
 15 how much it would cost to achieve that target?
 16 A. No.
 17 Q. Do you know how that precise number,
 18 "81.4%," was arrived at?
 19 A. I believe that's connected to the "Data
 20 Snapshot."
 21 Q. Were you involved in coming up with
 22 that number?
 23 A. Yes, every group has a 15-point increase
 24 across every single subgroup.
 25 Q. So across the board, 15 points.

1 rate of 71, we've actually got 8 new-hires in
 2 the queue, they just have to start. They
 3 haven't started yet. We have 8 that we know
 4 will be coming in, so our vacancies is closer
 5 to 63 at the moment. Some of those vacancies
 6 are related to new positions that have just
 7 been created in recent weeks, so they haven't
 8 been vacant for very long.

9 Q. Okay. So not 50, but 71, and soon to
 10 be 63 vacancies; correct?

11 A. It's a high number, yeah; 22%.

12 Q. Do you believe that currently, with the
 13 level of staffing that PED has, including the
 14 63 vacancies, that it has sufficient staffing
 15 to achieve all the targets listed in the Action
 16 Plan?

17 A. No. That's why we're working to improve
 18 staffing and creating positions.

19 Q. Now we went back to this a little
 20 earlier, but paragraph 3f of the Court's
 21 Order, Final Judgment and Order, which is
 22 Exhibit 3, talks about a system of
 23 accountability for measurements, and to assure
 24 spending. We went over that. Do you recall
 25 that?

1 around measurement and how we are going to be
 2 using Results-Based Accountability as a way to
 3 assess the impact of programs.

4 I think that we do talk about
 5 measurement in the context of both documents
 6 together, which is, as we state in the first
 7 paragraph in here, that these are companion
 8 documents. It's a companion to the New Mexico
 9 Public Education Department's Strategic Plan.

10 Q. But this document is specifically in
 11 response to the Martinez/Yazzie litigation.
 12 At least I didn't see where it talks about
 13 measuring how programs and services will
 14 provide sufficient education, as required by
 15 the Court's Order.

16 Does it say --

17 A. Did we say that explicitly? I don't
 18 think we did in here.

19 The answer is no.

20 Q. Okay. Let me turn your attention to a
 21 different document.

22 (Deposition Exhibit Number 5 was
 23 marked for identification.)

24 Q. BY MR. ESTRADA: Okay. Do you have
 25 Exhibit 5 in front of you?

1 Q. BY MR. ESTRADA: Yet the document
 2 doesn't talk about how PED will conduct audits
 3 in terms of how funds are being spent; right?

4 A. That's correct.

5 Q. It doesn't talk about how PED would
 6 supervise school districts to assure that
 7 moneys are being spent efficiently and
 8 effectively; right?

9 A. That's correct.

10 Q. It doesn't discuss how PED will measure
 11 whether programs and services actually prepare
 12 at-risk students for college and career; right?

13 MS. RAHN: Object to form.
 14 Go ahead.

15 THE WITNESS: I'm not sure I agree with
 16 that statement.

17 Q. BY MR. ESTRADA: Where does it talk
 18 about how PED will measure the programs and
 19 services it provides, which will provide a
 20 sufficient education as required by the Court
 21 Order?

22 A. So it's pretty clear in the front of
 23 this document that this is a companion to the
 24 Strategic Plan. The Strategic plan does
 25 clearly state we researched the strategy

1 A. She was not around before April 15th,
 2 2019.

3 Q. Do you know if anyone was tasked with
 4 doing this work before April 15, 2019?

5 MS. RAHN: Object to foundation.
 6 Go ahead.

7 THE WITNESS: My understanding is yes,
 8 given that there is a lot within the Discussion
 9 Draft Action Plan that dates to the beginning
 10 of this administration.

11 Q. BY MR. ESTRADA: Who was tasked?

12 A. I don't know; I wasn't around.

13 Q. When you say you "believe" there was,
 14 you have no firsthand knowledge of that.

15 A. I have no firsthand knowledge, other
 16 than the fact that we have now documented
 17 specific actions that have been underway
 18 within our agency, some of which date back to
 19 that period of time.

20 Q. Why is it that it took you joining in
 21 August 2021 for this Action Plan to get drafted
 22 and issued?

23 MS. RAHN: Object to form; foundation.
 24 Go ahead.

25 THE WITNESS: I don't know.

1 Q. BY MR. ESTRADA: Why is it that there
 2 wasn't someone else who took over this Action
 3 Plan and had it issued before you even started
 4 at the PED?

5 MS. RAHN: Object to form; foundation.
 6 Go ahead.

7 THE WITNESS: Again, I don't know. The
 8 decisions were made before my time; I have no
 9 idea how to answer that question.

10 Q. BY MR. ESTRADA: When you joined PED
 11 and started working on this document, there was
 12 a prior draft that existed; right?

13 A. Of the Action Plan?

14 Q. Actually I withdraw the question.
 15 When you started at PED in August
 16 2021, and started working on this Action Plan,
 17 did a prior draft exist?

18 A. Not to my knowledge. That is why
 19 Dr. Garcia was contracted; to create a draft.

20 Q. When was the contract to create a draft?

21 A. I think it was September 2019; I don't
 22 know the precise date.

23 Q. Did you say "September 2019," or --

24 A. Sorry; September 2021.

25 Q. Are you aware of any draft of the

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1 Action Plan existing before you arrived at PED
 2 in August 2021?

3 A. No.

4 I mean I told you what I was aware
 5 of was the work I was doing around the
 6 Strategic Plan. You know, as you've seen in
 7 that document, there were efforts to make
 8 reference to Martinez/Yazzie in that document,
 9 but I'm not aware of a specific Action Plan
 10 related to Martinez/Yazzie.

11 Well, let me say that I should take
 12 that back.

13 I believe there is materials on the
 14 PED website, in the Martinez/Yazzie section,
 15 that are about early efforts that were underway
 16 under Kara Bobroff, when she was a Deputy
 17 Secretary, to address Martinez/Yazzie. I'm not
 18 familiar with those efforts in any great detail.

19 Q. That wasn't the question. We were
 20 talking about the Action Plan and the draft.
 21 Were you aware of a draft existing
 22 of the Action Plan at PED prior to when you
 23 arrived in August 2021?

24 A. Yes, the answer is no.

25 Q. You mentioned the Strategic Plan. When

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Exhibit 5

D-101-CV-2014-00793; D-101-CV-2014-02224
LOUISE MARTINEZ, et al., WILHELMINA YAZZIE, et al., V. THE STATE OF NEW MEXICO, et al.

Rebecca Reyes
May 16, 2022

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF REBECCA REYES

Monday, May 16, 2022
9:33 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

<p style="text-align: right;">Page 66</p> <p>1 providing the Professional Development to these 2 folks? 3 A. No. The modules are being put together 4 by IAIA and NAS, and they will be presented to 5 school personnel. 6 Q. Do you know which schools? 7 A. They will be presented to either all 8 Indian Education Act schools, or we can do 9 them for all schools. 10 Q. Who makes that determination? 11 A. I guess me now. 12 Q. Okay. All right. 13 I mean is it fair to say that you're 14 going to choose to do this at all Indian 15 Education Act schools? 16 A. Definitely for sure. 17 Q. And is it fair to say that you're 18 planning to roll this out to all schools 19 eventually? 20 A. Yes. 21 Q. Do you have any time frame for how this 22 will all work out? 23 A. I definitely want to roll one out 24 immediately in May, and then in June I will 25 definitely place it for recording in CANVAS, so</p>	<p style="text-align: right;">Page 68</p> <p>1 the Indian Education Division has with the 2 higher education institutions? 3 A. No. 4 Q. Let me rephrase that: 5 Are there any other higher education 6 institutions that the Indian Education Division 7 communicates with beyond the ones that you've 8 mentioned? 9 A. Not to my knowledge. 10 Q. All right. I want to move on to discuss 11 a few more of your duties as Assistant 12 Secretary under the Indian Education Act. 13 Is one of your duties to: "Develop 14 or Select For Implementation a 15 Challenging, Sequential, Culturally 16 Relevant Curriculum to Provide 17 Instruction to Tribal Students in 18 Pre-K Through Sixth Grade"? 19 A. I believe that is part of the Act, yes. 20 Q. And has this duty been achieved? 21 MS. RAHN: Object to form. 22 THE WITNESS: There is a curriculum 23 that was previously worked on that we were 24 holding off on until the social studies 25 standards were redone. They are currently</p>
<p style="text-align: right;">Page 67</p> <p>1 they can actually receive it on their own time 2 as well. 3 Q. Is this going to be a required 4 training? 5 A. Unfortunately we cannot require anyone, 6 because none of our Professional Developments 7 in the Act are required. 8 I would love to get with somebody 9 to make certain Professional Developments 10 required. 11 Q. How many personnel do you anticipate 12 will receive this training? 13 A. I am hoping we can get at least 500, if 14 not more. 15 Q. And so this may roll out where you 16 expect to deliver this Professional Development 17 to about 500-plus personnel. 18 A. Yes. 19 Q. And where is it going to be held? 20 A. So we are hoping to do the first two, 21 at least, virtually. The next three, because 22 we are ending the pandemic, at least start 23 doing it in person. That I need to obviously 24 discuss with the higher ups above me. 25 Q. Are there any other communications that</p>	<p style="text-align: right;">Page 69</p> <p>1 finished. 2 The Curriculum and Instruction 3 Division is on their second interviews, which 4 they are holding, I believe, this week. Once 5 they are done hiring for that position, that 6 individual will actually be working on that 7 curriculum, to finalize what is completed and 8 what can be aligned to the new social studies 9 curriculum. 10 Also, I do have two individuals 11 within our Division that has worked on 12 curriculum before, so can assist with that 13 curriculum as well. 14 Q. BY MR. SANCHEZ: So up to this point in 15 time, though, there has not been a curriculum 16 developed that matches what is described in 17 this duty. 18 A. Not for the PED, but there has been 19 local curriculum that has been developed, which 20 they work on in collaboration with their 21 Pueblo tribal nations. 22 Q. So the PED has not developed a 23 curriculum up to this point in time. 24 A. There is a curriculum, it just has not 25 been completed.</p>

<p style="text-align: right;">Page 70</p> <p>1 Q. And you mentioned that someone was 2 being hired to help finalize this curriculum. 3 What's your understanding as to when this 4 curriculum might be finalized? 5 A. I am hoping it will be finished within 6 the next two years, as long as it is complete 7 and they are able to get approval from the 8 Pueblos. 9 Q. Got you. 10 Does this curriculum also require 11 the approval of any other tribal nations? 12 A. To my knowledge it was Pueblo-written. 13 Q. And is there going to be a curriculum 14 specific for Navajo and/or Apache nations? 15 A. I believe Navajo Nation has their own 16 curriculum and standards currently. 17 Q. And what about Jicarilla and/or 18 Mescalero Apache Nations? 19 A. On that I do not know. I can double- 20 check, but we also, as part of our Initiatives 21 that we put out, put out an Initiative for 22 Curriculum Instruction and Assessment. I'm 23 not sure if any of the Pueblos or tribes did 24 put out an application for that as well. 25 Q. All right. Moving on, I wanted to</p>	<p style="text-align: right;">Page 72</p> <p>1 <u>Let me start over again, my</u> 2 <u>apologies.</u> 3 <u>The Indian Education Curriculum and</u> 4 <u>Instruction position is now under the</u> 5 <u>Curriculum and Instruction Division, due to</u> 6 <u>their experience and expertise with Curriculum</u> 7 <u>and Instruction. They are in the position of</u> 8 <u>hiring and interviewing for that position, and</u> 9 <u>I believe they are conducting two or three</u> 10 <u>interviews this week. That position will also</u> 11 <u>be responsible for doing research into the</u> 12 <u>curriculum.</u> 13 Q. What's the position title one more time? 14 A. Indian Education Curriculum Specialist 15 I believe. 16 Q. That Curriculum Specialist is not 17 identified on Exhibit Number 2. 18 A. It's not in our Division. 19 Q. Okay. 20 A. It is under Curriculum and Instruction. 21 Q. Okay. 22 Do you know how long this position 23 has been vacant? 24 A. I believe it's been maybe at least six 25 months, if not more.</p>
<p style="text-align: right;">Page 71</p> <p>1 see -- 2 THE CERTIFIED REPORTER: Is now a good 3 time to take a break? 4 MR. SANCHEZ: Yeah, let's take a 5 five-minute break. 6 (The deposition recessed from 11:17 7 a.m. to 11:26 a.m.) 8 MR. SANCHEZ: Okay. We are back on the 9 record. 10 Q. Ms. Reyes, I wanted to return to talking 11 about your duties as Assistant Secretary under 12 the New Mexico Indian Education Act. 13 Now is it one of your duties to: 14 "Conduct Indigenous Research 15 and Evaluation For Effective 16 Curricula for Tribal Students"? 17 A. I believe so. 18 Q. Can you describe to me how the PED is 19 going about achieving this duty? 20 A. I have been in this position for three 21 weeks, and so as I mentioned that they are in 22 the process -- or the Curriculum and 23 Instruction Division is in the process of 24 hiring that position. Under that Division, 25 they have the expertise, and so --</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Was there somebody in that position 2 prior to the vacancy? 3 A. Yes. 4 Q. Do you know who that was? 5 A. Tashana Taylor. 6 Q. And do you know how long Tashana Taylor 7 was employed in that position? 8 A. I don't remember. 9 Q. Did Tashana leave behind any -- strike 10 that. 11 Do you know what Tashana had done 12 up to the point that she was no longer employed 13 with the PED? 14 MS. RAHN: Object to form. 15 Q. BY MR. SANCHEZ: I'm sorry. Let me 16 think of a better question. 17 Tashana's job was to develop the 18 curriculum and do indigenous research. Do you 19 know up to this point what she has done? 20 A. No. 21 Q. Is there anyone else involved in 22 conducting indigenous research at the Indian 23 Education Division? 24 A. No. 25 Q. Anyone else in PED that conducts</p>

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1 indigenous research?
 2 A. Not that I'm aware.
 3 Q. Moving on to another duty, is it one of
 4 your duties, under the New Mexico Indian
 5 Education Act, to:
 6 "Ensure Native American
 7 Students Are Provided Culturally
 8 Relevant Instructional Materials"?
 9 A. No.
 10 Q. That is not one of your duties.
 11 A. There are different departments within
 12 PED that are assigned -- well, it is within
 13 the Indian Education Act, but Instructional
 14 Materials deals with Culturally Responsive
 15 Instructional Materials. There is a division
 16 under Teaching and Learning that currently
 17 deals with Instructional Materials.
 18 Q. Teaching and Learning is a Division?
 19 A. Correct; I believe it's a Division or a
 20 Department.
 21 Like I mentioned earlier, Identity,
 22 Equity, and Transformation is Special Education,
 23 Language and Culture, Indian Education Division,
 24 and Charter Schools. All of those are under
 25 Identity, Equity, and Transformation.

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1 Q. And so you're saying that the Teaching
 2 and Learning Department or Division, whatever
 3 it is, is responsible for developing
 4 Culturally Relevant Instructional Materials.
 5 A. Correct, under Anthony Burns. He is
 6 the Bureau Chief for Instructional Materials.
 7 Q. And who, from the Indian Education
 8 Division, communicates with Anthony Burns about
 9 Culturally Relevant Instructional Materials?
 10 A. Actually I believe he works with
 11 Director Valtierrez, as her department works
 12 with CLR on the pedagogy and the framework.
 13 Q. Are you the person to speak to about
 14 Culturally and Linguistically Relevant
 15 Instructional Materials for Native American
 16 students at each particular school district
 17 served by the Indian Education Division?
 18 MS. RAHN: Object to form.
 19 THE WITNESS: No.
 20 Q. BY MR. SANCHEZ: Who would be the
 21 person to speak to about that?
 22 A. Like I mentioned before, it would be
 23 Instructional Materials. They have a list of
 24 Instructional Materials that has been approved,
 25 and I believe that is on their website as well.

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1 I believe they've created rubrics, along with
 2 what is culturally and linguistically
 3 approvable -- or allowable, sorry.
 4 Q. The Instructional Materials Bureau
 5 has --
 6 A. Correct.
 7 Q. Did you respond to any of the
 8 Plaintiffs' Interrogatories that were sent
 9 regarding Indian Education?
 10 A. No.
 11 Q. Before I enter any new exhibits, I just
 12 want to see if you're familiar with this
 13 document.
 14 Are you familiar with this document?
 15 A. No.
 16 MR. SANCHEZ: I want to reflect on the
 17 record that this is the:
 18 "Fiscal Year '18/'19 School
 19 District Responses to Providing
 20 Culturally and Linguistically
 21 Relevant Instructional Materials As
 22 Part of Their Annual Report."
 23 It's broken down by school district.
 24 MS. RAHN: Was there a Bates number
 25 associated with that?

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1 MR. SANCHEZ: Yeah, I'm sure there is,
 2 I just don't have it on here though. I just
 3 printed it from the Responses that were
 4 provided.
 5 Actually, I might have the
 6 Interrogatory Number though.
 7 It looks like it's Bates number
 8 D024501.
 9 I'm just curious, do you know who
 10 might be the person I can speak to about this?
 11 MS. RAHN: That spreadsheet? I'd have
 12 to look through my notes and see exactly who
 13 provided that to us.
 14 MR. SANCHEZ: I'm guessing it's going
 15 to be Gwen Warniment, given that she's tasked
 16 with speaking to CLR, but you can just let us
 17 know ahead of time.
 18 MS. RAHN: Okay. Well, if it's on her
 19 depo notice, she will be prepared to speak
 20 about it, but it sounds like Instructional
 21 Materials Bureau is most intimately involved
 22 with the curriculum itself, and that's Anthony
 23 Burns.
 24 Q. BY MR. SANCHEZ: Ms. Reyes, you
 25 mentioned that there is a position known as

<p style="text-align: right;">Page 86</p> <p>1 A. Yes.</p> <p>2 Q. Was there anybody from the Indian</p> <p>3 Education Division there?</p> <p>4 A. I was there.</p> <p>5 Q. Do you have regular meetings with the</p> <p>6 Tribal Education Departments?</p> <p>7 A. Yes, we have a standing meeting every</p> <p>8 third Wednesday of the month at 8:30, with the</p> <p>9 Secretary of Education, and the Assistant</p> <p>10 Secretary, to provide any updates and then any</p> <p>11 presentations from either internal or external.</p> <p>12 Q. What do you mean by that?</p> <p>13 A. Like I mentioned, College and Career</p> <p>14 Readiness Bureau will present, and then also</p> <p>15 the Math Division or Bureau will be presenting.</p> <p>16 We've had other divisions that I've mentioned</p> <p>17 that were present.</p> <p>18 Q. When you say "internal," you're talking</p> <p>19 about College and Career and Math Bureau or</p> <p>20 Division. What do you mean by "external"?</p> <p>21 A. For external we've had other entities,</p> <p>22 such as -- I'm trying to think. Other places</p> <p>23 that provide Professional Development, or that</p> <p>24 have opportunities available for Tribal</p> <p>25 Education Departments, such as tutoring</p>	<p style="text-align: right;">Page 88</p> <p>1 provide any updates.</p> <p>2 Q. It seems like there are a lot of</p> <p>3 responsibilities you share as both the Deputy</p> <p>4 Director and the Assistant Secretary.</p> <p>5 A. Yes.</p> <p>6 Q. Are there any plans to hire a new</p> <p>7 Assistant Secretary?</p> <p>8 A. I believe they are in the process, yes.</p> <p>9 Q. Do you know what the plan is?</p> <p>10 A. No.</p> <p>11 Q. Are you part of that planning process?</p> <p>12 A. No, but I did request to be on the</p> <p>13 interview panel.</p> <p>14 Q. Has there been like a job description</p> <p>15 published, or any sort of announcement made to</p> <p>16 the public that they are looking for a new</p> <p>17 Assistant Secretary?</p> <p>18 A. On that I don't know, but I believe</p> <p>19 there is a job description.</p> <p>20 Q. You think they are likely to just hire</p> <p>21 somebody from within PED?</p> <p>22 A. On that I do not know.</p> <p>23 Q. Is it difficult for you to do both the</p> <p>24 PED Director, or Deputy Director position, and</p> <p>25 the Assistant Secretary position?</p>
<p style="text-align: right;">Page 87</p> <p>1 services.</p> <p>2 We had the Film Industry, Rosie --</p> <p>3 I can't even think of his name. He works with</p> <p>4 one of the Representatives, to have students</p> <p>5 from all over New Mexico participate in their</p> <p>6 films present.</p> <p>7 Yes, they are different externals</p> <p>8 that are opportunities for students.</p> <p>9 Q. And then who from the Tribal Education</p> <p>10 Departments are invited to these meetings?</p> <p>11 A. All Tribal Education Departments, so</p> <p>12 Tribal Education Directors. We've had</p> <p>13 Lieutenant Governors attend.</p> <p>14 The Lieutenant Governor from</p> <p>15 Mescalero has attended. She's actually been</p> <p>16 attending for a while. Any tribal leaders are</p> <p>17 welcome to attend.</p> <p>18 Q. And are you now, as the Assistant</p> <p>19 Secretary, facilitating these meetings?</p> <p>20 A. Yeah, this will be the first one this</p> <p>21 Wednesday.</p> <p>22 Q. This coming Wednesday.</p> <p>23 A. Yes.</p> <p>24 We also have HED on there, to</p> <p>25 provide any updates, and ECECD as well, to</p>	<p style="text-align: right;">Page 89</p> <p>1 MS. RAHN: Object to form.</p> <p>2 THE WITNESS: It's a lot of hours, but</p> <p>3 I'll be honest; I was doing the majority of it</p> <p>4 prior, so it's not any different than before.</p> <p>5 Q. BY MR. SANCHEZ: Do you feel like the</p> <p>6 Indian Education Division would benefit from</p> <p>7 having a full-time Assistant Secretary?</p> <p>8 A. I believe it would benefit from</p> <p>9 someone who knows Indian Education, and knows</p> <p>10 how to do programming, and knows how to do the</p> <p>11 job, but also who is here for the right</p> <p>12 reasons.</p> <p>13 I also believe, not knowing if the</p> <p>14 Governor is going to be reelected, there is no</p> <p>15 way someone can learn this job in less than six</p> <p>16 months.</p> <p>17 Q. Do you feel like the person that was in</p> <p>18 the position prior to you being in this</p> <p>19 position fit that description?</p> <p>20 MS. RAHN: Object to form and</p> <p>21 foundation.</p> <p>22 THE WITNESS: I would prefer not to</p> <p>23 answer that.</p> <p>24 Q. BY MR. SANCHEZ: When did they add a</p> <p>25 Deputy Director position overseeing Indian</p>

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1 Education?
 2 A. I believe this position has been in
 3 place for a while.
 4 When I was in Licensure, there was
 5 a Deputy Director in this position, which was
 6 Dee Alva.
 7 Q. How long was the former Assistant
 8 Secretary in that position, if you know?
 9 A. Lashawna Tso?
 10 Q. Yes.
 11 A. She was here a year in October.
 12 Q. She started October 2020, and then --
 13 A. Yes.
 14 Q. So when Lashawna Tso left her role as
 15 the Assistant Secretary, were you involved in
 16 any discussions with her or the PED on a
 17 transition plan?
 18 A. No.
 19 Q. I want to ask you about your role as
 20 Assistant Secretary, continuing in this line of
 21 discussion about what your role is under the
 22 New Mexico Indian Education Act and your duties.
 23 Is one of your duties to:
 24 "Ensure That Native Language
 25 Bilingual Programs Are Part of the

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1 School District's Professional
 2 Development Plan"?
 3 A. "School Districts"?
 4 Q. "Professional Development Plan."
 5 A. So we cannot force a district to have a
 6 bilingual program for the fact that tribes may
 7 not necessarily want their native language in
 8 the school. A school must have a signed MOU
 9 by the tribe agreeing to have their language
 10 in the school.
 11 Q. Okay. So when it's allowable, assuming
 12 the tribe agrees to have their language taught
 13 in a school setting, it is your duty -- is it
 14 your duty to ensure that program is part of
 15 the school district's Professional Development
 16 Plan?
 17 A. So that would actually be overseen by
 18 the Language and Cultural Division.
 19 Q. Are you saying that it's not your duty
 20 as Assistant Secretary to ensure that native
 21 language bilingual programs are part of a
 22 school district's Professional Development Plan?
 23 MS. RAHN: Object to form?
 24 THE WITNESS: So again, that would be
 25 overseen by Mayra's Division, for the fact that

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1 they would actually be receiving bilingual
 2 funding.
 3 We don't actually oversee bilingual
 4 funding, and they actually provide, as well,
 5 Professional Development, and would be making
 6 sure that they are actually in compliance with
 7 the Professional Development Plan as well.
 8 Q. BY MR. SANCHEZ: So that's a no as to
 9 my question.
 10 MS. RAHN: Object to form.
 11 THE WITNESS: Yes.
 12 Once we receive our Native Language
 13 Specialist, they will be working hand-in-hand
 14 with Mayra's Division.
 15 Q. BY MR. SANCHEZ: Is one of your duties,
 16 under the New Mexico Indian Education Act, to:
 17 "Provide School Districts With
 18 Technical Assistance and Support"?
 19 A. Yes.
 20 Q. And does that include Technical
 21 Assistance and Support to school districts
 22 with regard to NMIEA implementation?
 23 A. I have no idea what "NMIEA" --
 24 Q. I'm sorry; the New Mexico Indian
 25 Education Act.

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1 A. Yes.
 2 Q. And how does PED go about providing
 3 Technical Assistance and Support to a school
 4 district with regard to NMIEA implementation?
 5 A. So we provide training on the Indian
 6 Education Act. We also provide training in
 7 regards to our Indian Education Act grants.
 8 We have also provided Professional
 9 Development, as I mentioned, on the culturally
 10 responsive training. We provided it by
 11 Dr. Hollie.
 12 We also have a technical manual
 13 that we provided, and also Professional
 14 Development on the Needs Assessment, the
 15 Systemic Framework, and the Accountability
 16 Tool. We have a technical manual on our
 17 website.
 18 We also have a technical manual for
 19 RFAs, and we'll be providing training for
 20 Tribal Consultation.
 21 Q. Can you tell him what "RFAs" are?
 22 A. Requests for Application.
 23 Q. When was the last time you provided
 24 school districts a training on NMIEA
 25 implementation?

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1 Q. I see. So somebody, from all of the
 2 school districts that receive Indian Education
 3 Act funds, serves in the capacity as the
 4 Director or Representative of Indian Education.
 5 A. Correct.
 6 Q. And what kind of topics do you cover in
 7 these meetings?
 8 A. In the quarterly meetings?
 9 Q. Yeah.
 10 No, I'm sorry. You mentioned a
 11 biweekly meeting with Indian Education
 12 Directors.
 13 A. Some of them have requested to talk
 14 about the Bilingual Seal, so we'll have someone
 15 from Director Valtierrez' team come and talk
 16 about that.
 17 They've asked for information
 18 on -- I'm trying to think what they've asked
 19 about recently.
 20 When we were in the Legislative
 21 Session, they really wanted to talk about the
 22 Bills that were coming through, as to how that
 23 would affect them, because at that time they
 24 were all requesting House Bill 2, and so they
 25 wanted to know how that would affect them if

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1 they didn't receive any funding.
 2 Some of them have had questions
 3 about data, when it was coming closer to the
 4 TESR when we didn't have Assessments, and how
 5 that would be addressed.
 6 Q. And these biweekly meetings --
 7 A. Bimonthly.
 8 Q. Bimonthly. I see. Okay.
 9 So these bimonthly meetings just
 10 began as of this year.
 11 A. Yes.
 12 Q. Do you know when the first meeting was?
 13 A. I believe we had the first meeting in
 14 October.
 15 Q. Of 2021.
 16 A. Yes.
 17 Q. And have you received any requests by
 18 school districts seeking support or help with
 19 Indian Education Program implementation?
 20 A. No.
 21 Q. So school districts just don't reach
 22 out asking for any help, or Technical
 23 Assistance or Support.
 24 MS. RAHN: Object to form.
 25 THE WITNESS: Not to my knowledge.

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1 Q. BY MR. SANCHEZ: Now you mentioned HB
 2 250.
 3 It sounds like you have a
 4 Professional Development training on that
 5 Needs Assessment, which is required under HB
 6 250.
 7 A. Yes.
 8 Q. How does the PED provide Technical
 9 Assistance and Support to the districts in
 10 terms of compliance with the requirements of
 11 HB 250?
 12 A. When I first started, there was a prior
 13 employee who was actually working with Western
 14 Education Equity Center, and I could be totally
 15 wrong on that name. It's like WEEAC. I just
 16 continued working with them, as per the prior
 17 Deputy Secretary, Bobroff. They provided the
 18 trainings for the Needs Assessment, System
 19 Framework, and Accountability Tool.
 20 Those trainings are actually on our
 21 website as well, and then there is also
 22 Technical Assistance Guide Books on there.
 23 Q. And this is all specific to HB 250.
 24 A. Yes, sir.
 25 Q. And have you had any districts reach

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1 out to you about implementation of HB 250?
 2 A. So we have had some districts reach out
 3 in regards to the Accountability Tool, because
 4 this was the first year it was actually due.
 5 That was because it's a year after their
 6 Systemic Framework has been in place, and so I
 7 let them know to reference as to where it was
 8 in the Technical Guide, and let me know if they
 9 had any questions, and all of them say it was
 10 a perfect example as to how to complete it,
 11 and they had no problems. As soon as our RFA
 12 reviews are done, we'll start reviewing those
 13 Accountability tools.
 14 Q. And so what does PED do to ensure that
 15 schools and school districts are implementing
 16 HB 250?
 17 A. Unfortunately there is nothing in the
 18 policy that states, if they do not complete
 19 it, that we can do anything.
 20 There are still some that have not
 21 completed a Student Needs Assessment or a
 22 Systemic Framework. We can continue to reach
 23 out and ask them for it, but there is nothing
 24 in the rule that states that we can do anything
 25 to hold them accountable for a TESR, Needs

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1 Assessment, Systemic Framework, or
 2 Accountability Tool.
 3 Q. Is there any plans to maybe promulgate
 4 a rule that might require that?
 5 A. Our rule is based off the statute, so
 6 if there is nothing in the statute that states
 7 we can hold anyone accountable, a rule is not
 8 going to do anything.
 9 Q. Do you have a list of the school
 10 districts who have not completed the Needs
 11 Assessment or the TESR or the Accountability
 12 Tool?
 13 A. Yeah, we do back in the office.
 14 Q. Do you know, off the top of your head,
 15 which districts those might be?
 16 A. No, not off the top of my head.
 17 Q. And what state resources, including
 18 funding or assistance and support is available
 19 for school districts to be able to implement
 20 HB 250?
 21 A. There are no resources. It's really
 22 them just doing a Needs Assessment of their
 23 district, and saying, "Based on our budget,
 24 this is what we are doing for our needs, based
 25 on community, based on our teachers, based on

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1 our students, to meet the needs of our Native
 2 American students."
 3 Also keep in mind that the Student
 4 Needs Assessment is something they also have
 5 to complete for Title I. They also have to
 6 complete that for community schools, so it's
 7 not anything different than what they are doing
 8 for someone else, it's just stating how they
 9 are meeting the needs of native students, which
 10 also fall into the same group of Title I
 11 students.
 12 Q. Isn't it true, though, that HB 250 goes
 13 a little bit further in that it requires, as
 14 part of the Needs Assessment, cultural and
 15 linguistic programming and services for native
 16 American students?
 17 A. The Systemic Framework does. The
 18 Systemic Framework says, "How did you use your
 19 Student Needs Assessment to complete your
 20 Systemic Framework?" That's going into the
 21 second part of it.
 22 Q. Okay. Maybe I should split this up a
 23 little bit then.
 24 Some districts have not completed a
 25 Needs Assessment.

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1 A. Correct.
 2 Q. Have some districts not completed a
 3 Systemic Framework as well?
 4 A. Correct.
 5 Q. And are those two different things in
 6 terms of how you identify which school
 7 districts are doing what?
 8 A. Yeah, so we have a spreadsheet. We have
 9 one spreadsheet that shows who has completed a
 10 Student Needs Assessment, a Systemic
 11 Framework, and Accountability Tool, and then a
 12 written statement. We're tracking everything
 13 in regards to what goes directly under House
 14 Bill 250.
 15 Q. Got you.
 16 The question I think I have, then,
 17 is about the Systemic Framework and the
 18 Accountability Tool. I'll start with Systemic
 19 Framework.
 20 What state resources are available
 21 for school districts to be able to create a
 22 Systemic Framework?
 23 A. So there are no resources in regards to
 24 the Systemic Framework, in regards to creating
 25 it. The Indian Education Act, though, we have

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1 aligned the RFA to ask what programs and
 2 services they are providing to the students
 3 that actually align with the Systemic Framework.
 4 That way, when we're asking them at the end for
 5 their outcomes, they are very specific and
 6 able to show how they are coming up with their
 7 outcomes related to that Systemic Framework.
 8 Everything aligns at the end.
 9 If they are doing College and
 10 Career, it aligns with that Systemic
 11 Framework. If they are doing Culturally and
 12 Linguistically Responsible Activities, it
 13 aligns. If they are doing tutoring, it
 14 aligns. That was one way of trying to assist
 15 districts to start thinking of that Systemic
 16 Framework from their Needs Assessment, to
 17 start aligning everything to that Systemic
 18 Framework.
 19 Q. And are school districts using their
 20 operational funds to not only do the Needs
 21 Assessment, but to provide the Systemic
 22 Framework?
 23 A. I don't know what they use to complete
 24 them. They will have another Needs Assessment
 25 that is due for the October '22/'23 school year.

<p style="text-align: right;">Page 134</p> <p>1 districts and the one charter school. 2 A. Yes. 3 Q. These numbers reflect those numbers of 4 students that were served in those districts. 5 A. Correct. 6 Q. Okay. Is it a three-year Initiative, or 7 is it -- 8 A. Yeah, it would be a three-year 9 Initiative. 10 Q. Is that going to be true for the next 11 cohort of -- 12 A. Yes. 13 Q. -- school districts? 14 Okay. Can you go to page 18, 15 please. 16 A. (Witness complies.) 17 Q. And I'm looking at the middle of the 18 page where it states: 19 "NMPED created a Culturally and 20 Linguistically Responsive Guidance 21 Handbook." 22 Do you see that? 23 A. Yes. 24 Q. When was this CLC Guidebook published? 25 A. That would have been done by the</p>	<p style="text-align: right;">Page 136</p> <p>1 A. I have not personally. 2 Q. Then I'm looking at the bottom of page 3 18, where it states: 4 "NMPED's IED developed a 5 technical assistance manual..." 6 Do you see that? 7 "[D]eveloped a technical 8 assistance manual for school 9 districts and charter schools to 10 develop a Student Needs Assessment, 11 Systemic Framework, and 12 Accountability tools..." 13 I think you already mentioned this, 14 but I want to make sure that I understand. 15 When was this published? 16 A. I believe it was published -- I have no 17 idea. It was published either in 2020 or 2021. 18 Q. And is it on the PED website? 19 A. Yes, on Indian Education's website. 20 Q. Okay. 21 And then it goes into page 19. 22 A. (Witness complies.) 23 Q. There on that top paragraph, or the top 24 of the page, the last sentence, states: 25 "Finally the Accountability Tool</p>
<p style="text-align: right;">Page 135</p> <p>1 Language and Culture Division, so I wouldn't 2 know. 3 Q. Is it currently available on the PED 4 website? 5 A. I would believe so. Mayra's pretty 6 good about posting everything on the website. 7 Q. You're not sure though? 8 A. No. 9 MS. RAHN: Yep. 10 MR. SANCHEZ: It's on the website. 11 Q. And the second sentence of that same 12 paragraph states: 13 "NMPED's Language and Culture 14 Division has procured training for 15 500 educators since fall of 2018." 16 About how many trainings were there 17 in 2018? 18 MS. RAHN: Object to form; foundation. 19 Q. BY MR. SANCHEZ: Well, let me ask, do 20 you know anything about the trainings as it 21 pertains to this Guidance or Handbook? 22 A. I know that they are provided; we 23 receive all e-mails, to see if we want to 24 attend. 25 Q. With have you attended any?</p>	<p style="text-align: right;">Page 137</p> <p>1 measures the success or failure of a 2 public school's efforts, pursuant to 3 the Systemic Framework." 4 Do you know what measures are used 5 to determine success or failure? 6 A. No. 7 <u>Q. Let me ask you a different question:</u> 8 <u>Who is responsible for assessing</u> 9 <u>the schools' efforts?</u> 10 <u>A. The school is the responsible party for</u> 11 <u>assessing their efforts.</u> 12 <u>Q. And how often are they required to</u> 13 <u>assess their own efforts?</u> 14 <u>A. Yearly.</u> 15 Q. Okay. Further down on page 19, in the 16 middle, there's another paragraph that starts, 17 the first sentence with: 18 "NMPED established a 19 partnership with the Regional 20 Educational Laboratory Southwest to 21 develop and provide training 22 specifically for Native American 23 English Learners." 24 You mentioned this earlier; right? 25 You talked about RELs. Do you know why RELs</p>

Exhibit 6

D-101-CV-2014-00793; D-101-CV-2014-02224
LOUISE MARTINEZ, et al.; WILHELMINA YAZZIE, et al., V. THE STATE OF NEW MEXICO, et al.,

Dr. Kurt Steinhaus
July 29, 2022

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF DR. KURT STEINHAUS

Friday, July 29, 2022
9:35 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 THE WITNESS: Again, the answer to
 2 your question is not simple, but let me try
 3 to be really concise about an answer:
 4 You are asking my opinion. I'm
 5 trying to tell you what's in statute, so
 6 there is a difference between my opinion and
 7 what's in statute.
 8 Q. BY MR. YOHALEM: I'm asking you, as the
 9 head of education for the State of New Mexico,
 10 whether PED has the authority today to require
 11 school districts to spend the at-risk portion
 12 of the SEG on supplemental programs serving
 13 at-risk students?
 14 A. The PED has the authority to require
 15 school districts to tell us how they are
 16 addressing the needs of at-risk children. We
 17 do not have the authority to make them spend
 18 money that's in the SEG on something specific.
 19 That's a local decision, and that's in
 20 statute. It's a local School Board decision.
 21 Q. And from your position as Secretary of
 22 PED, and in your former position as
 23 Superintendent at Los Alamos Schools, can you
 24 tell me whether there has been any change in
 25 the legal situation that you just described

1 have a balance between state requirements and
 2 local control.
 3 Q. BY MR. YOHALEM: What will happen if,
 4 for school district A, you determine that the
 5 Ed Plan's description of the expenditure of
 6 their SEG money is different from their actual
 7 expenditure of the SEG funds?
 8 A. (No audible response.)
 9 Q. I mean is the Department, A, looking at
 10 that; and B, will the Department do anything
 11 about it?
 12 MS. RAHN: Object to form.
 13 Go ahead.
 14 THE WITNESS: Again, I think you're
 15 describing something that doesn't exist.
 16 You're describing a review of SEG spending by
 17 category, and that does happen in categorical
 18 and below-the-line funding.
 19 In the SEG, what the State of New
 20 Mexico has had in place since, I think, 1974,
 21 when the funding formula was established, was
 22 local control around money that's appropriated
 23 in the SEG.
 24 Q. BY MR. YOHALEM: But you are requiring
 25 the school districts to submit Ed Plans that

1 THE WITNESS: Let's see.
 2 We do have criteria that we use to
 3 evaluate those Ed Plans. They did not get
 4 down, because of resources and staffing
 5 capacity, to the level of granularity that you
 6 just asked about.
 7 Q. BY MR. YOHALEM: I think Ernest asked
 8 you this before, but I'm not sure understood
 9 your answer.
 10 Once you have approved the Ed Plans
 11 for -- let's be specific -- the Ed Plans that
 12 have been approved for all 89 school districts
 13 for the 2022/2023 school year, what effort
 14 will PED make to track the expenditures laid
 15 out in the Ed Plan to determine whether those
 16 expenditures are being made on at-risk
 17 children through the programs set forth in the
 18 Ed Plans?
 19 A. Yeah, you're describing something that
 20 doesn't exist. There isn't a direct
 21 connection from what's stated that a school
 22 district is planning to do versus a budget
 23 allocation for that specific thing, unless
 24 it's a categorical appropriation.
 25 If it's a categorical, or a

1 THE WITNESS: (No audible response.)
 2 Q. BY MR. YOHALEM: Is that correct?
 3 A. "You can't track how that's expended."
 4 I think technically, yeah, that
 5 might possible, but that's not the way the
 6 Accountability System is set up.
 7 Q. You don't track it.
 8 MS. RAHN: Object to form.
 9 Go ahead.
 10 THE WITNESS: No, I wouldn't say that.
 11 Q. BY MR. YOHALEM: You're disagreeing
 12 with me; there are double negatives.
 13 Do you track -- not can you now,
 14 but do you track, or does PED track how the
 15 SEG funds for at-risk students are expended
 16 by school districts as set forth in their Ed
 17 Plans?
 18 A. Okay. I think I've answered that
 19 question about a dozen times.
 20 Q. And the answer is no.
 21 A. No.
 22 Q. Right?
 23 A. The answer is we keep track of how
 24 we're meeting the needs of at-risk students by
 25 looking at their achievement levels; it's not

1 at-risk children in the district. Did I
 2 understand you correctly?

3 A. Yes. I would also add that the way
 4 you started that out is you said "the
 5 Department plans to," and the way I would say
 6 it is the Department, if I'm leader of that
 7 Department, plans to do everything possible
 8 to meet Judge Singleton's ruling. If that
 9 means modifying the Accountability System in
 10 the way that you just described a few minutes
 11 ago. We would do that if it was dictated by
 12 the New Mexico Legislature.

13 Q. Right. But right now my understanding
 14 from your testimony is that the Accountability
 15 System that the Department has is to review
 16 and approve the Ed Plans and the annual
 17 budget, and then to track the achievement, or
 18 the change in achievement levels for at-risk
 19 students after they've spent a year under
 20 these Ed Plans. Is that a fair description
 21 of what you've said?

22 A. It's a fair description of the examples
 23 of Accountability I was trying to give you,
 24 but I was not trying to portray that as the
 25 universe of Accountability that we use.

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cumbrecourt@comcast.net

1 Q. Well, you also indicated that there is
 2 more, and I think your term may have been
 3 "granular accountability" around how funds are
 4 spent for categorical programs. That's
 5 another piece of your Accountability. Is that
 6 right?

7 A. Yes.

8 Q. Is there anything else you would like
 9 to tell me about what you employ as part of
 10 your Accountability to determine whether
 11 things are improving for these children?

12 A. I'm glad you're asking about it.

13 I think there are additional items
 14 that I'm not going to remember off the top of
 15 my head, but one would be graduation rates.
 16 We will not only look at student achievement,
 17 but we'll look at graduation rates by school
 18 according to the subcategories of Martinez/
 19 Yazzie.

20 The other area we'll look at is
 21 attendance. That's not achievement, but we'll
 22 look at the Martinez/Yazzie categories and
 23 look at their attendance rates, because in the
 24 Attendance for Success Act there is a
 25 requirement for that.

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Exhibit 7

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF MAYRA VALTIERREZ

Monday, April 4, 2022
10:07 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

TAKEN BY: HENINGER GARRISON DAVIS, L.L.C.
BY: W. LEE GRESHAM, III, ESQ.
ATTORNEY FOR PLAINTIFFS

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 Education Programs?
 2 A. Correct.
 3 Q. Okay. So can this manual be used by
 4 educators or district officials in districts
 5 where there are neither Title III funding or
 6 BMEPs?
 7 A. Yes.
 8 Q. Okay. All right.
 9 Let's look at page 10.
 10 A. (Witness complies.)
 11 Q. Do you see at the top it says: "English
 12 Learner Status and Reclassification"?
 13 A. Yes.
 14 Q. And in the last sentence of that first
 15 paragraph it says: "ELs with the most
 16 significant cognitive disabilities,
 17 who also take the DLM Alternate
 18 Assessment, exit EL status when they
 19 earn a P1" --
 20 Actually, I'm sorry. I'm reading
 21 the wrong sentence. Let's start again.
 22 In the second paragraph, do you see
 23 the second sentence in the second paragraph that
 24 says: "Per 6.29.5.12 NMAC, the former EL's
 25 English proficiency must be changed

1 to reclassified fluid English
 2 proficient..."?
 3 A. Yes.
 4 Q. And then do you see that it says:
 5 "The student must be monitored
 6 for two years, to ensure that he/she
 7 succeeds academically"?
 8 A. Yes.
 9 Q. Do you know what the purpose of that is?
 10 A. The purpose of what?
 11 Q. The purpose of that monitoring for two
 12 years.
 13 A. Oh, yes. It is to ensure that they are
 14 still achieving academically.
 15 Q. Okay.
 16 A. And that even though the English Language
 17 Proficiency Assessment indicates they are
 18 proficient in English, they are still succeeding
 19 academically. We are monitoring for that.
 20 Q. And when you say "we are monitoring," who
 21 is doing the monitoring?
 22 A. Educators. It could be the EL
 23 coordinator; it could be the ELD teacher. It could
 24 be the Bilingual Program staff. It's up to the
 25 district or charter school to decide who would

1 monitor.
 2 Q. Okay. Does the Language and Culture
 3 Bureau monitor how the districts monitor such
 4 students for the two years after they have
 5 exited?
 6 MS. RAHN: Object to form.
 7 THE WITNESS: Yes. If we did an on-site
 8 visit, or some sort of Technical Assistance or
 9 Focused Monitoring Visit, we would ask about
 10 that.
 11 Q. BY MR. HERRERA: And what's an on-site
 12 visit?
 13 A. It is an on-site Technical Assistance or
 14 Focused Monitoring Visit. We would provide
 15 Technical Assistance, or we would monitor
 16 something specific.
 17 Q. And what would trigger monitoring
 18 something specific?
 19 A. A request by the district for Technical
 20 Assistance, or the charter school. It would be
 21 due to some sort of inconsistent reporting during
 22 Desktop Monitoring; odd use of funding. It
 23 would be based on anything we have that would be
 24 Desktop related.
 25 Q. Okay.

1 pandemic put a pause to on-site visits?
 2 A. Anything in person, yes.
 3 Q. Okay. Have you done any virtual on-site
 4 visits to serve --
 5 Let me ask that again, so I can get
 6 the whole question in:
 7 Did you do any virtual on-site
 8 visits pertaining to serving English Learners?
 9 A. I have never done one of those, no.
 10 Q. Okay. No virtual ones.
 11 A. No virtual ones.
 12 Q. When was the last time that the Language
 13 and Culture Bureau did an on-site visit triggered
 14 by monitoring?
 15 MS. RAHN: Object to form.
 16 THE WITNESS: I don't remember. It would
 17 have been before the pandemic.
 18 Q. BY MR. HERRERA: Okay. Does the Language
 19 and Culture Bureau track, or rather keep records
 20 of the on-site visits?
 21 A. Yes.
 22 Q. Okay. And where are those kept?
 23 A. Electronically in the PED system.
 24 Q. Are those publicly available?
 25 A. So like everything at PED, it's available

1 on request, but it's not on the website.
 2 Q. Understood.
 3 Have you ever participated in an on-
 4 site visit triggered by monitoring?
 5 MS. RAHN: Object to form.
 6 THE WITNESS: Yes.
 7 Q. BY MR. HERRERA: Okay. What is involved
 8 in one of those?
 9 MS. RAHN: Form.
 10 THE WITNESS: It should be listed in here
 11 (indicating), although this might not be up-to-
 12 date.
 13 We would ask questions. There would
 14 be interviews. We would review cum files. We
 15 would do classroom observations. That's
 16 generally what we do.
 17 Let me find the page, so that I can
 18 tell you. There is a summary in here of what we
 19 do.
 20 Q. BY MR. HERRERA: I'm looking at the Table
 21 of Contents, and I don't see anything having to
 22 do with visits.
 23 A. Yeah, it would be one of the tools.
 24 Q. I see. "Tool 1" --
 25 A. That's a letter.

1 visits related to serving English Learners, you
 2 or PED has not done one of those on-site visits
 3 since 2019.
 4 A. Since 2019 or prior.
 5 Q. Okay.
 6 Now I want to go back to something
 7 you said a second ago. Let's look on page 2 of
 8 the "Serving English Learners."
 9 A. (Witness complies.)
 10 Q. Do you see where it says: "Revised in
 11 June 2021"?
 12 A. Yes.
 13 Q. Has there been an update of this document
 14 since June 2021?
 15 A. I don't believe so, no.
 16 Q. Okay. Is this the most recent version --
 17 A. I believe it is.
 18 Q. -- that's available?
 19 A. I believe it is, yes.
 20 Q. Okay. Because a second ago you said they
 21 may be out of date.
 22 The tools that you mentioned related
 23 to on-site visits, are those tools being updated?
 24 A. It's considered a living document, so if
 25 we see that something needs to be updated, we

1 It would be Tool 3, and then...
 2 Q. "Tool 3" is: "Teacher Language
 3 Observation Form"; right?
 4 A. Yes.
 5 Q. And I'm looking at the Table of Contents
 6 on page 5.
 7 A. And then "Tool 6," but let me look.
 8 It would be if there was a parent
 9 interview, "Tool 7."
 10 Q. Okay.
 11 A. And then there is a chart in here
 12 somewhere that specifically says what's supposed
 13 to be in a cum file.
 14 Q. Does that stand for Student Cumulative
 15 File?
 16 A. Yes, it is on page 28: "Student
 17 Cumulative Files. The following are
 18 required documents in cumulative
 19 files for ELs."
 20 But this Technical Assistance Manual
 21 is specific to English Learners. There is one
 22 for Bilingual Programs and one for Title III
 23 funding, so this might look different, the
 24 Technical Assistance.
 25 Q. Okay. But just to focus on on-site

1 A. That's the only one.
 2 Q. And what about in 2021, the calendar
 3 year?
 4 A. We would not have done any.
 5 MR. YOHALEM: School year.
 6 Q. BY MR. HERRERA: So why would you not have
 7 done any in that year?
 8 A. COVID.
 9 Q. Okay. So let me backtrack a second,
 10 because I may have confused you with the
 11 question.
 12 Earlier, when I asked how many visits
 13 there were besides Bernalillo this year -- and
 14 let's keep it to the school year -- how many
 15 visits were there in the school year, so 2021/
 16 2022?
 17 A. One.
 18 Q. Okay. And that was just Bernalillo.
 19 A. Yes.
 20 Q. Now in the 2020/2021 school year, how
 21 many visits were there to schools?
 22 A. We would have done visits, but not
 23 Technical Assistance and Focused Monitoring
 24 Visits.
 25 Q. Okay. And what kinds of visits would

1 anything submitted in an Annual Report or an
 2 application.
 3 Q. Okay. Now under the Desktop Monitoring,
 4 who does that within the Language and Culture
 5 Bureau?
 6 A. Mostly the Specialist, the Program
 7 Specialist, me, and my Deputy Director.
 8 Q. Does the Language and Culture Bureau have
 9 any set of triggers or criteria within the
 10 Desktop Monitoring that would lead you to take
 11 action on a district?
 12 MS. RAHN: Object to form.
 13 THE WITNESS: Yes. It would have to be a
 14 triangulation of data. Like I said, it's from
 15 all of those various items.
 16 Q. BY MR. HERRERA: Okay. So let's start
 17 with on-site visits, understanding that you
 18 haven't done one in a while. Are there rules
 19 that the Language and Culture Bureau has that
 20 would trigger an on-site visit through Desktop
 21 Monitoring?
 22 A. Yes, the law.
 23 Q. Okay.
 24 A. The Bilingual Act and all of these laws
 25 and administrative codes, and policies.

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1 "appropriate training."
 2 A. Yes.
 3 Q. Now does the PED do anything to ensure
 4 that definition by the district actually aligns
 5 with meeting federal standards?
 6 MS. RAHN: Object to form.
 7 THE WITNESS: Only for districts who have
 8 Title III, because they would have to use that
 9 funding for Professional Development.
 10 Q. BY MR. HERRERA: Okay.
 11 A. And there are standards within that.
 12 Q. Now what about for school districts that
 13 don't have Title III or BMEPs?
 14 A. It is very flexible.
 15 Q. Okay. And when you say "very flexible,"
 16 what do you mean?
 17 A. It is up to them to decide how they are
 18 meeting that obligation to English Learners.
 19 Q. And PED doesn't do anything to regulate
 20 that.
 21 A. I don't know what you mean by "regulate."
 22 I mean we provide Technical Assistance. We will
 23 do on-site visits if needed. We do data
 24 monitoring on Desktop. I don't know what you
 25 mean.

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1 Q. Okay. And do you have a set of rules or
 2 guidelines for the Language and Culture Bureau
 3 when monitoring that would trigger going and
 4 taking action?
 5 A. Yes, it would be all of this content and
 6 whether it triangulates, or if it doesn't make
 7 sense. If there is a discrepancy.
 8 Q. Okay. So discrepancies. A discrepancy
 9 would trigger an on-site visit.
 10 A. Yes.
 11 Q. What kinds of discrepancies trigger
 12 on-site visits?
 13 A. I provided the example of Bernalillo
 14 looking like they were charging Bilingual for
 15 World Language Instruction.
 16 Q. Okay. Any other kinds of -- strike that.
 17 So perhaps funding not being used
 18 properly. What about anything having to do with
 19 how many English Learners are being served in a
 20 district?
 21 A. No, not with how many English Learners
 22 are being served, no.
 23 Q. Okay. So through Desktop Monitoring, how
 24 does PED ensure that all English Learners are
 25 being served within a district?

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1 Q. -- for example, how would they comply, or
 2 how would PED ensure that district is providing
 3 a program that's appropriate for English Learners
 4 in the frame of Number 7?
 5 A. By what they report. By providing
 6 Technical Assistance. By ensuring that they have
 7 access to the standards and to WIDA.
 8 Q. Okay. And what is the data monitoring
 9 that would allow you to know that EL student is
 10 being served?
 11 A. So it would be the Valid Values that we
 12 see on page 33, and any other data related to
 13 English Learners recorded in STARS.
 14 Q. What are the other types besides Valid
 15 Values?
 16 A. Status of English Learner, and there's a
 17 couple of others I don't recall. They are in
 18 the STARS manual. Then we would look at any
 19 assimilative assessment data to see how students
 20 are doing.
 21 Q. And on Number 7 -- or sorry.
 22 If you're looking at a district that
 23 doesn't have a BMEP or Title III funding, and
 24 they've reported a Valid Value for English
 25 Learners, does PED do anything else to examine

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1 what type of sheltered instruction there is?
 2 A. Not necessarily, no, unless we did an on-
 3 site visit, which we typically do, for example,
 4 for charter schools.
 5 Q. So for non-charter districts, or for
 6 districts as opposed to charter schools, if a
 7 district that is not a charter school does not
 8 have a Title III or BMEP, and they've chosen to
 9 serve certain English Learners with Option 7,
 10 does PED know what kinds of sheltered instruction
 11 are being given?
 12 A. Not necessarily, no. They have
 13 flexibility to decide what that sheltered
 14 instruction would look like.
 15 Q. Okay. The code that's reported wouldn't
 16 necessarily tell you anything else about the
 17 kind of sheltered instruction being offered.
 18 A. No.
 19 Q. Okay. So do you know of some examples or
 20 brands of sheltered instruction that are out
 21 there?
 22 A. I don't. We don't work with those. Those
 23 are decisions that districts make on training or
 24 Professional Development.
 25 Besides WIDA of course; we support

1 Language and Culture Bureau make in the 2019/2020
 2 school year for Technical Assistance?
 3 A. I would say maybe two or three.
 4 Q. Do you remember which districts?
 5 A. I don't.
 6 Q. And then in the 2018/2019 school year.
 7 A. I don't remember.
 8 Q. Okay. When you say they are required, or
 9 that the WIDA English Language Development
 10 Standards for sheltered instruction are required
 11 by law, are you referring to a statute or the New
 12 Mexico Administrative Code?
 13 A. The Administrative Code.
 14 (Deposition Exhibit Number 4 was
 15 marked for identification.)
 16 Q. BY MR. HERRERA: Okay. So let me bring
 17 that up for you.
 18 Okay. Ms. Valtierrez, you have what
 19 has been marked by the court reporter as Exhibit
 20 4. Do you recognize this document?
 21 A. Yes.
 22 Q. And what is it?
 23 A. They are the English Language Development
 24 Standards.
 25 Q. I'll represent to you that one of my

1 instruction; right?
 2 A. Correct.
 3 Q. Okay. So for districts that don't have a
 4 BMEP or a Title III, you don't know if they are
 5 properly implementing WIDA standards for
 6 sheltered instruction.
 7 MS. RAHN: Object to form.
 8 THE WITNESS: Yes, I don't know that for
 9 any of them. I haven't been able to visit during
 10 the pandemic.
 11 Q. BY MR. HERRERA: Okay.
 12 A. Maybe districts, like charter schools
 13 maybe, because the Charter Schools Division has
 14 done site visits, maybe the prior School Bureau
 15 has done something, but as far as my team, no.
 16 Q. Earlier you said that -- well, we've been
 17 talking about how PED recommends that the WIDA
 18 English Language Development Standards be used
 19 for sheltered instruction; right?
 20 A. Yes.
 21 Q. And is that required for sheltered
 22 instruction, or is that just recommended?
 23 A. The Standards are required under law, yes.
 24 Q. Okay. Sorry. Before I jump into that
 25 topic, how many visits to districts did the

1 When students are reclassified as
 2 RFEPP, that student is monitored for two years;
 3 right?
 4 A. Yes.
 5 Q. Okay. So does PED do anything to ensure
 6 that monitoring is actually happening in the
 7 districts?
 8 A. We do when we do site visits. We look in
 9 the cum file to see any evidence of it.
 10 Q. You have not done any site visits that
 11 would have allowed you to do that during the
 12 pandemic; right?
 13 A. We did one at Bernalillo.
 14 Q. Okay. Any others?
 15 A. No.
 16 Q. Okay. Could we go to page 27 of this
 17 same document, Exhibit 3?
 18 A. (Witness complies.)
 19 Q. Sorry. Exhibit 3 is the Serving English
 20 Learners manual.
 21 On page 27, it says: "English
 22 Learner Program Evaluation"; right?
 23 A. Yes.
 24 Q. Okay. And what is this page about?
 25 A. It is recommendations for how districts

1 Let's go down to the middle of the
 2 page, where it says: "In order to ensure
 3 compliance with federal requirements
 4 and prevent violations and further
 5 investigations, districts should
 6 ensure that the following areas of
 7 possible concern are evaluated and
 8 addressed:"
 9 Then there is a number of things
 10 listed here; right?
 11 A. Yes.
 12 Q. Okay. So do you see the one that says:
 13 "High staff turnover" --
 14 A. Yes.
 15 Q. (Reading:) -- "for those serving ELs"?
 16 A. Yes.
 17 Q. How does PED monitor high staff turnover?
 18 A. We do not monitor high staff turnover on
 19 my team. I would imagine it's something maybe
 20 the Teaching, Learning, and Assessment team does
 21 as part of Educator Quality.
 22 Q. Does the Language and Culture Bureau
 23 communicate with that team when there is high
 24 staff turnover issues for those serving ELs?
 25 MS. RAHN: Object to form.

1 data. I would imagine it would be a question
 2 for Educator Quality.
 3 Q. BY MR. HERRERA: Does your Bureau ever
 4 inquire about issues with high staff turnover?
 5 A. No, not specifically to PED internally.
 6 Q. Okay.
 7 A. That would be their purview, and then we
 8 would collaborate with them.
 9 Q. Okay. Could "High staff turnover for
 10 those serving ELs" trigger a site visit by the
 11 Language and Culture Bureau?
 12 A. Sure, if we were informed of it, yes.
 13 Q. Have you ever been informed by any of the
 14 other teams in PED about, "High staff turnover
 15 for those serving ELs"?
 16 A. No.
 17 Q. Now there is another one in here in this
 18 list that says: "Data accuracy and reporting
 19 issues."
 20 A. Yes.
 21 Q. Okay. What does that one mean?
 22 A. It is related to, for example, the Valid
 23 Values. If we see students who are in secondary
 24 being reported in the elementary code, that would
 25 trigger a question of what's happening.

1 THE WITNESS: We wouldn't be aware of
 2 that. We don't have that data on our team.
 3 Q. BY MR. HERRERA: Okay. Is "High staff
 4 turnover for those serving ELs," is that
 5 something that could effect the quality of EL
 6 Programs?
 7 A. Absolutely.
 8 Q. Okay. Who is ultimately responsible for
 9 the quality of EL Programs?
 10 MS. RAHN: Object to form and foundation.
 11 THE WITNESS: I would say Districts and
 12 Charter Schools, and the State Education Agency,
 13 anyone who is receiving federal funding.
 14 Q. BY MR. HERRERA: Okay. Now does PED have
 15 any responsibility -- well, strike that.
 16 If there is a "High staff turnover
 17 for those serving ELs" in a district, how does
 18 PED ensure that such turnover does not affect
 19 the quality of EL Programs?
 20 MS. RAHN: Object to form.
 21 THE WITNESS: I'm not sure, because it
 22 would be a collaboration; Charter Schools would
 23 do some sort of site visit. But as far as
 24 specifically who has high turnover for those
 25 serving English Learners, I wouldn't have that

1 Well, 7 is what's required of all
 2 students. 8 and 9 is flexibility for secondary
 3 and elementary level.
 4 Q. Okay. So what I'm asking is how does the
 5 Language and Culture Bureau know, through Desktop
 6 Monitoring, whether the districts are actually
 7 doing Number 7, as opposed to Number 8 let's say?
 8 A. Because they're reported as such.
 9 Q. And so PED just takes the districts at
 10 their reporting word that they have correctly
 11 reported that program.
 12 MS. RAHN: Object to form.
 13 THE WITNESS: We take what they self-
 14 report and honor it, yes.
 15 Q. BY MR. HERRERA: Okay.
 16 Is it fair to say that PED cannot
 17 determine the quality of an English Language
 18 Development Program without a Technical
 19 Assistance Visit?
 20 MS. RAHN: Object to form.
 21 THE WITNESS: Yes.
 22 Q. BY MR. HERRERA: Okay. Do visits by other
 23 teams in PED, besides the Language and Culture
 24 Bureau, check for quality of English Language
 25 Development Programs?

1 determine --

2 Well, whose job is it to determine

3 which of the English Language Development

4 Programs are appropriate for certain EL students?

5 A. The districts and charter schools that

6 serve the kids locally and know them.

7 Q. Okay. And does PED have anything to do

8 with monitoring which programs are appropriate

9 for those students?

10 MS. RAHN: Object to form.

11 THE WITNESS: So through the Desktop

12 Monitoring, yes, and on-site visits.

13 Q. BY MR. HERRERA: Okay. We've discussed a

14 little bit about the Desktop Monitoring that

15 happens three times a year, right?

16 MS. RAHN: Object to form.

17 THE WITNESS: Yes.

18 Q. BY MR. HERRERA: Okay. And are there any

19 other types, besides the data accuracy issues

20 listed in the STARS manual?

21 A. (No audible response.)

22 Q. Does the Language and Culture Bureau do

23 Desktop Monitoring?

24 MS. RAHN: Object to form.

25 THE WITNESS: That's the only Desktop

1 Q. I've got you.

2 It used to be the Bilingual

3 Multicultural Education Bureau. Is that correct?

4 A. Yes.

5 Q. When did it turn to Division?

6 A. It was elevated under this administration

7 back in 2019.

8 Q. Thank you.

9 I want to go back a little bit to

10 discuss some things that were previously touched

11 on, but maybe not completely or fully fleshed

12 out. I apologize if some of my questions are a

13 little bit redundant, or touch on things that

14 you've already discussed, but it's just the

15 nature of what, you know, happened today with

16 our little cluster of events and me showing up

17 late.

18 The first question I want to ask you

19 about is your professional background. Do you

20 hold any certifications or professional degrees

21 in education?

22 A. What does that mean, in education?

23 Q. Do you have any degrees in the field of

24 education?

25 A. No, my degrees are in anthropology and

1 purpose of the Language and Culture Division.

2 Is that correct?

3 A. Yes.

4 Q. And so is it contained here?

5 A. (No audible response.)

6 Q. As it's contained here, does that look

7 like the Language and Culture Division's purpose?

8 A. Yes. It has been updated compared to the

9 memo previously shared, but yes.

10 Q. Thank you.

11 Just for clarification purposes, I

12 know we've gone about three and a half hours or

13 so with questions about the work that you do,

14 but I want to make a clarification. Because I

15 think we've been talking about the Language and

16 Culture Bureau, but I think it's actually called

17 the Language and Culture Division.

18 A. Yes.

19 Q. Is there a difference between "Bureau"

20 and "Division"?

21 A. A Division reports directly to the Deputy

22 Secretary.

23 Q. And in terms of a Bureau, who do they

24 report to?

25 A. Division Director.

1 Q. Is there any planning for the next 5

2 years?

3 MS. RAHN: Object to form.

4 THE WITNESS: It's in the Strategic Plan,

5 yes.

6 Q. BY MR. SANCHEZ: So the 5-year plan is

7 contained in the Strategic Plan.

8 A. Yes, and we support that.

9 Q. Does it go beyond 5 years?

10 MS. RAHN: Object to form.

11 THE WITNESS: I don't think so.

12 I mean things change with new

13 administrations.

14 Q. BY MR. SANCHEZ: Okay. I want to take

15 you to page 11.

16 A. (Witness complies.)

17 MR. SANCHEZ: Ms. Valtierrez, let me know

18 if you need to take a break at any time.

19 Q. I want to point your attention to the top

20 chart, which is titled: "Student participation

21 in BMEPs by English Language

22 Proficiency."

23 Do you see that?

24 A. Yes.

25 Q. And I'm looking at the entire chart here

1 from School Year '16 to School Year '20.
 2 I also want to point your attention
 3 to the total number of students in BMEPs, which
 4 in School Year '16 was over 52,000, and in School
 5 Year '20 is just around 46,600. Do you see that?
 6 A. Yes.
 7 Q. Okay. And I want to point your attention
 8 to the other columns and rows showing the number
 9 of ELs in BMEPs, and those not in BMEPs. Do you
 10 see that?
 11 A. Yes.
 12 Q. Okay. It appears that the total number
 13 of students in BMEPs has dropped from 2015/'16,
 14 to 2019/'20. Does that look correct to you?
 15 A. Yeah, it is pretty much aligned with the
 16 last chart.
 17 Q. Okay. I also want to inform you that
 18 based on our calculations of percentages --
 19 Because the percentages are not
 20 contained here, I want you to know that we did a
 21 little percentage count, and it looks as if the
 22 percentage of English Language Learner students
 23 not in BMEPs -- sorry.
 24 What we're showing is that there's a
 25 43.14 percent number of ELs in BMEPs in School

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1 Q. BY MR. SANCHEZ: Is that the 1-year
 2 application process?
 3 A. Yes, annually.
 4 Q. Is there any other long-term planning
 5 that the PED has done to increase EL student
 6 participation in BMEPs?
 7 A. No. No.
 8 I have asked repeatedly if there is
 9 a way to make sure that the Bilingual
 10 Endorsement is not just for Spanish. That would
 11 be something under Educator Quality and Teaching,
 12 Learning, and Assessment, which includes the
 13 Professional Licensure Bureau.
 14 Q. How does that increase student
 15 participation?
 16 A. It allows for students who are not
 17 Spanish-speakers to participate in State-funded
 18 BMEPs.
 19 Q. When is that likely to -- let me ask that
 20 question again.
 21 A. I don't know. I've been asking for two
 22 years; that would be a question for them.
 23 Q. And it hasn't happened in the two years
 24 that you've requested it, so is there any plan
 25 to continue to request it?

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1 Q. I'm looking at the number of ELs in BMEPs
 2 out of the total number of ELs.
 3 A. Okay.
 4 Q. Then I'm looking at the number of ELs in
 5 BMEPs in 2019/'20, divided by the number of ELs
 6 at that time.
 7 A. Okay. Got it.
 8 Q. Which is 38.41 percent.
 9 Since there is no percentages in
 10 here, we had to do a little bit of mathematics to
 11 show that there is a decrease in the number of
 12 ELs participating in Bilingual Multicultural
 13 Education Programs. Does that sound accurate to
 14 you?
 15 A. Yes.
 16 Q. And so the question again is does the
 17 Language and Culture Division have any plans to
 18 increase EL student participation in BMEPs?
 19 A. That is always a priority. ELs must be
 20 served first in a State-funded BMEP.
 21 Q. Is there any concrete plans to increase
 22 student participation of ELs in BMEPs?
 23 MS. RAHN: Object to form.
 24 THE WITNESS: Again, that is part of the
 25 application process.

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1 A. Yes. We continue to make that request.
 2 Last week was the last time we reminded them.
 3 Q. And who is the person who can authorize
 4 or make that decision in this situation?
 5 A. I would say whoever is overseeing the
 6 Professional Licensure Bureau, so the Director
 7 of Educator Quality.
 8 Q. The person overseeing the Licensure Bureau
 9 has the authority to create this change that
 10 would allow for more students to participate in
 11 Bilingual Multicultural Education Programs.
 12 A. More students of languages other than
 13 Spanish, yes.
 14 Q. But currently there is no plans to make
 15 that happen right now.
 16 MS. RAHN: Object to form.
 17 THE WITNESS: Not that I'm aware of, no.
 18 MR. SANCHEZ: Okay. Give me one second
 19 real quick; I just want to talk to my co-counsel
 20 real quick.
 21 (Discussion off the record.)
 22 Q. BY MR. SANCHEZ: I want to turn your
 23 attention to the bottom graph there. It's
 24 titled: "Participation in Spanish-language
 25 BMEPs."

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1 Q. Okay. I ask because I saw in the
2 references below, it cites a book or an article
3 by Echevarria: "Making Content Comprehensible
4 For English Learners," the SIOP
5 Model.

6 A. Yes. Like I said, this is absolutely an
7 element of English Language Development. It's
8 definitely a thing to consider for content
9 courses, but definitely for English Language
10 Development.

11 Q. Does the Language and Culture Division
12 have any way of knowing whether districts have
13 reviewed this Instructional Framework?

14 A. We don't track that, no, but it's been
15 provided. I know some districts and charter
16 schools use it, and provide it to their teachers,
17 but I just don't track that data currently.

18 Q. Okay. Does the Language and Culture
19 Division have any plans to assess any English
20 Language Development Programs in school
21 districts, to see if they are meeting the
22 standards discussed in this Instructional
23 Framework?

24 MS. RAHN: Object to form.

25 THE WITNESS: Yes. That would be

1 something that our English Learner Specialist
2 would lead. They would lead -- in partnership
3 with my Deputy Director and myself -- teams to
4 support on-site reviews of English Learner
5 Programs.

6 Q. BY MR. HERRERA: And that would happen
7 only if there was going to be an on-site review.

8 A. Yes. We would do on-site reviews
9 specifically honing in on English Learner
10 Programs.

11 Q. Okay. But are there any plans to do any
12 on-site reviews that would focus on English
13 Language Development Programs right now?

14 A. Yes. That would be for the new school
15 year.

16 Q. Okay. And the new school year being
17 2022/2023.

18 A. Yes.

19 Q. And how many such on-site visits are
20 planned for the next school year?

21 A. I have not planned them yet as far as the
22 number.

23 She is rather new, and so we are
24 onboarding her so she can become a subject
25 matter expert.

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,	)	VOLUME II
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF MAYRA VALTIERREZ

Tuesday, July 26, 2022
9:31 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 Bureau has some guidance on that as well; on
 2 curriculum as well.

3 Q. So you're saying those are -- well, you
 4 mentioned the black students, the Hispanic
 5 students, and the Indian Ed Department. Do
 6 those each offer CLR instruction and guidance
 7 to districts?

8 A. Yes. They might call it something
 9 different, but it's essentially how we include
 10 culture and identity specifically for those
 11 particular students.

12 Q. Okay. Do you know what percentage of
 13 districts have used materials from those
 14 different parts of the PED?

15 A. I don't.

16 Q. Okay.

17 Is it fair to say that right now
 18 PED doesn't know how many districts have a
 19 plan or strategy for implementing CLR
 20 instruction?

21 A. Yeah, I wouldn't know that answer, no.

22 Q. So you wouldn't know whether PED knows
 23 if --

24 A. I would not know.

25 Q. Okay.

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1 Do you know if anyone else, or any
 2 other division within PED tracks whether
 3 districts have some plan to provide CLR
 4 instruction?

5 A. No, not that I'm aware of.

6 Q. And then if we scroll down to page 10
 7 of the Equity Councils Brief, at the bottom
 8 there it says:

9 "Recommendations for the EC
 10 Support Hub"; right?

11 A. Yes.

12 Q. What is the "EC Support Hub"?

13 A. It is a structure that's built to
 14 support Equity Councils moving forward; it's
 15 on one of the pages.

16 Sorry.

17 MS. RAHN: Go ahead.

18 THE WITNESS: The best way to
 19 illustrate it is on the top of page 7. There
 20 is a support team that includes myself and a
 21 couple of other advisees.

22 There are service providers who
 23 are on contract to provide support.

24 There are Equity Facilitators that
 25 are community members that are not PED

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Exhibit 8

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF DEBORAH DOMINGUEZ-CLARK

Friday, July 8, 2022
9:30 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
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<p style="text-align: right;">Page 30</p> <p>1 MS. RAHN: Object to form and 2 foundation. 3 THE WITNESS: When we ask. When we ask 4 her there is sharing. 5 <u>Q. BY MS. FLORES: Who tracks the number</u> 6 <u>of special education teachers within the PED?</u> 7 <u>A. Seana Flanagan's team.</u> 8 Q. Who tracks the number of ancillary 9 staff -- 10 A. Same. 11 Q. -- that the districts have in the PED? 12 A. Her team. 13 Q. As the Director of Special Education, 14 do you review that data that Seana Flanagan 15 has as to the number of special education 16 teachers within districts? 17 A. We do ask her for that information. 18 Q. How often do you ask her for that 19 information? 20 A. In the format that Seana provides to 21 us, it's generally annually that we ask for 22 that. 23 Q. Is there a procedure in place for you 24 to request this information annually? 25 A. No.</p>	<p style="text-align: right;">Page 32</p> <p>1 that data? 2 A. She'll generally send an e-mail with 3 the numbers to us. 4 Q. As you sit here today do you have the 5 data on how many vacancies there are in 6 special education teachers by district? 7 MS. RAHN: Object to form and 8 foundation. 9 THE WITNESS: I don't have those as of 10 today. 11 Q. BY MS. FLORES: Does your division have 12 this information as of today? 13 MS. RAHN: Object to form and 14 foundation. 15 THE WITNESS: I'm not understanding 16 your question. 17 <u>Q. BY MS. FLORES: You don't have the data</u> 18 <u>in front of you today, but does your division</u> 19 <u>have the data on the number of vacancies of</u> 20 <u>special education teachers in your office?</u> 21 <u>A. As of today, no.</u> 22 Q. When is the last time that you 23 requested this data from Seana Flanagan? 24 A. We typically request this information 25 in the fall following the 40th day.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. What triggers your request for this 2 information annually? 3 A. When we're planning for conferences, 4 trainings, and general meetings. It's 5 information that goes out for purchasing 6 something for staff; we like to have the most 7 current numbers as of the 40th day. 8 Q. Does Seana Flanagan also track the 9 number of vacancies in special education 10 teachers or special education ancillary staff? 11 A. You would have to ask her, but I 12 believe so. 13 Q. As the Director of Special Education, 14 you do not have data as to the vacancies of 15 special education teachers within the 16 districts. 17 MS. RAHN: Object to form. 18 THE WITNESS: Once requested I do. 19 Q. BY MS. FLORES: Is this information you 20 also request annually? 21 A. Yes. 22 Q. How do you make this request? 23 A. I call her or I'll follow up with an 24 e-mail asking for the numbers. 25 Q. How does Seana Flanagan provide you</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And do you similarly make a request for 2 vacancies and ancillary staff in the fall 3 following the 40th day? 4 A. Yes. 5 Q. You mentioned before that you will 6 request this information annually for purposes 7 of planning conferences, or trainings, or 8 purchases. Is there any other reason that I 9 have not mentioned just now that you would use 10 this data as the Director of Special 11 Education? 12 A. It's not broken down by districts, so 13 we use it statewide. We look at the 14 information in terms of what other supports 15 we can give new teachers coming in, which 16 would be part of the training; mentorship 17 programs or alternative licensure programs. 18 Q. Okay. How would you use the data on 19 vacancies for special education teachers and 20 vacancies for ancillary staff? 21 A. I use the data to make recommendations 22 to my supervisors in terms of the continuing 23 shortage of teachers within the state. 24 Q. Okay. You mentioned shortages. How do 25 you evaluate the shortages of special</p>

<p style="text-align: right;">Page 38</p> <p>1 Director, special education," and it lists 2 "Deborah Dominguez-Clark." 3 A. Yes. 4 Q. Let me know if you have trouble reading 5 this; we can try to put it on the screen and 6 make it larger. 7 Below the box, "Division Director, 8 special education, Deborah Dominguez-Clark," 9 there are several other boxes with positions 10 and roles. Do you see that? 11 A. Yes. 12 Q. Okay. I'd like to walk through these 13 positions and roles previously; we know there 14 are quite a few. 15 Can you tell me if these are 16 accurate as of today? 17 The first one, under "Deborah 18 Dominguez-Clark," is "Executive Secretary, 19 Administrative Assistant, special education," 20 and it lists "Jennifer Rodriguez" there. 21 A. Yes. 22 Q. Is that still current? 23 A. Yes. 24 Q. And what is Jennifer Rodriguez' duties 25 within the Special Education Division?</p>	<p style="text-align: right;">Page 40</p> <p>1 these staff members, on special education 2 using federal dollars. 3 Q. To make sure I understand, you said 4 "all of these people," so everyone listed in 5 this organizational chart works on only 6 federal programs. 7 A. Using federal dollars. 8 Q. Using federal dollars. 9 A. We're a federal program only using 10 federal dollars, so this staff works with all 11 our federal programs in special education. 12 Q. The Special Education Division does not 13 work with any programs or services or 14 resources using state funds for Students with 15 Disabilities. 16 MS. RAHN: Object to form and 17 foundation. 18 THE WITNESS: We've had limited access 19 to state dollars within the last two years 20 maybe. We haven't received any state dollars. 21 We use federal dollars to manage the special 22 education component for the state. 23 Q. BY MS. FLORES: <u>The Special Education</u> 24 <u>Division does not monitor state funds for</u> 25 <u>students with disabilities.</u></p>
<p style="text-align: right;">Page 39</p> <p>1 A. She is an Executive Secretary, so she 2 answers the phone, makes appointments, helps 3 with travel. 4 Q. Does Jennifer Rodriguez have any duties 5 as it relates to gathering data on special 6 education teachers or special education 7 ancillary staff? 8 A. No. 9 Q. Okay. To the left of "Jennifer 10 Rodriguez," and slightly below, there is, 11 "Deputy Director, special education, Timothy 12 Crum." 13 A. Yes. 14 Q. Is that still accurate? 15 A. Yes. 16 Q. Could you briefly describe Timothy 17 Crum's duties within the Special Education 18 Division? 19 A. He provides support to the education 20 administrators. He supports evaluation of 21 staff. He sits in on meetings with me, the 22 Director. We try and do cross-training as 23 much as possible. 24 He is considered a subject matter 25 expert, meaning he only works, and all of</p>	<p style="text-align: right;">Page 41</p> <p>1 MS. RAHN: Object to form and 2 foundation. 3 <u>THE WITNESS: We have just begun</u> 4 <u>working with the Ed Plan component. But no,</u> 5 <u>that has not been the role; to monitor the</u> 6 <u>state funds.</u> 7 <u>Q. BY MS. FLORES: Whose role has it been</u> 8 <u>to monitor state funds?</u> 9 MS. RAHN: Object to form and 10 foundation. 11 <u>THE WITNESS: State funds are monitored</u> 12 <u>at the local level.</u> 13 <u>Q. BY MS. FLORES: To your knowledge, no</u> 14 <u>division within PED monitors state funds.</u> 15 MS. RAHN: Object to form and 16 foundation. 17 <u>THE WITNESS: The federal grants -- not</u> 18 <u>"grants," but the finance team allocates those</u> 19 <u>dollars using the State Equalization</u> 20 <u>Guarantee, and those roll out to districts.</u> 21 <u>With the Ed Plans, we have begun</u> 22 <u>reviewing the use of those dollars, but the</u> 23 <u>Special Education Division monitors federal</u> 24 <u>dollars.</u> 25 Q. BY MS. FLORES: We may come back to</p>

<p style="text-align: right;">Page 46</p> <p>1 Wright. 2 A. No. 3 Q. To your knowledge, at that time, in 4 the spring of 2021, the person leading the Ed 5 Plan review did not provide instructions to 6 the Special Education Division for its review 7 of the Ed Plan. 8 A. We had instructions and we added 9 another layer for special education. 10 Q. Starting with the instructions, could 11 you tell me what the instructions were, in the 12 spring of 2021, to the Special Education 13 Division? 14 A. Review the Ed Plans. Look at what the 15 districts were asking to use the dollars for. 16 If there were questions, send it back to the 17 districts for clarification. 18 Q. Were there any other instructions given 19 to the Special Education Division in the 20 spring of 2021? 21 A. No. 22 Q. And you mentioned a "second layer" 23 that the Special Education Division added to 24 those instructions to review the Ed Plans in 25 the spring of 2021.</p>	<p style="text-align: right;">Page 48</p> <p>1 towards staffing, so there is very little 2 outside discussion of anything else. 3 Q. In the spring of 2021, how did the 4 Special Education Division review the 5 information submitted by the districts to 6 determine whether that information was in 7 alignment with the funds allocated? 8 A. If we had questions, we would send it 9 back in a written form asking for whatever 10 clarification we needed. We would not, 11 essentially, approve that Plan, we would leave 12 it pending until we had the answers returned 13 to us. 14 Q. You mentioned that the majority of all 15 SEG funds go to staffing. 16 A. Yes. 17 Q. Is that based on your review of the Ed 18 Plans in the spring of 2021? 19 A. Yes, that's what we noticed. 20 Q. Prior to your review, in the spring of 21 2021, were you aware that most SEG funds went 22 to staffing? 23 MS. RAHN: Object to form and 24 foundation. 25 THE WITNESS: I'm not sure about the</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Correct. 2 Q. What is that "second layer"? 3 A. We asked, if they were doing any 4 programming, what those programs were. If 5 they were purchasing materials, what they were 6 specifically. We just modeled it on how we 7 ask for federal dollars. 8 Q. Did the Special Education Division 9 provide any guidance to the districts in 10 submitting the information in the Ed Plans? 11 A. We went over our spreadsheet with them 12 of things that we were going to ask for, if 13 they were going to go outside the scope of 14 teacher hires. 15 Q. How did the Special Education Division 16 go over this spreadsheet with the districts? 17 A. If we saw a district that had anything 18 other than staffing, then we would reach out 19 to them for clarification as to, "You're 20 looking at materials. What materials are 21 those? How are they going to be used? Are 22 you giving them to the special education 23 teachers? Are you giving them to classrooms?" 24 Things like that. 25 The majority of all funds go</p>	<p style="text-align: right;">Page 49</p> <p>1 word "aware." There wasn't a way to look at 2 that. 3 <u>At a district level, I knew that's</u> 4 <u>where the funds would go, but at the state</u> 5 <u>level, we did not review it that way.</u> 6 <u>Q. BY MS. FLORES: At the state level,</u> 7 <u>prior to the spring of 2021, was there a</u> 8 <u>division that monitored the SEG funds that</u> 9 <u>went to districts?</u> 10 <u>A. No.</u> 11 <u>Q. So prior to the spring of 2021, at the</u> 12 <u>state level, once SEG funds were disbursed to</u> 13 <u>the districts, PED had no knowledge of what</u> 14 <u>those funds were used for.</u> 15 MS. RAHN: Object to form and 16 foundation. 17 <u>THE WITNESS: The funds go to the</u> 18 <u>districts and the districts are under local</u> 19 <u>control. They decide how their funds are to</u> 20 <u>be used.</u> 21 <u>Q. BY MS. FLORES: Could you remind me</u> 22 <u>again how long you have been at the PED as the</u> 23 <u>Director of Special Education?</u> 24 <u>A. Five years and several months.</u> 25 <u>Q. And in your five years at the PED as</u></p>

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1 the Division Director of Special Education,
 2 the Special Education Division has not, prior
 3 to the spring of 2021, monitored the use of
 4 SEG funds by the districts.
 5 MS. RAHN: Object to form and
 6 foundation.
 7 THE WITNESS: That's correct. It was
 8 introduced in 2020/2021, sometime in that time
 9 frame. But no, we did not do that, to my
 10 knowledge.
 11 Q. BY MS. FLORES: So prior to its
 12 introduction in the spring of 2021 --
 13 A. No.
 14 Q. -- the Special Education Division did
 15 not monitor the use of SEG funds --
 16 A. No.
 17 Q. -- by the districts.
 18 A. No.
 19 Q. And to your knowledge, prior to spring
 20 of 2021, at the state level there was no
 21 monitoring of the SEG funds by the districts.
 22 MS. RAHN: Object to form and
 23 foundation.
 24 THE WITNESS: I am not aware of any
 25 monitoring like that.

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1 Q. BY MS. FLORES: Okay.
 2 You mentioned earlier a tracking
 3 sheet, or an internal sheet that your division
 4 created in the spring of 2021 to review the
 5 SEG funds.
 6 A. Yes.
 7 Q. Do you still have that sheet?
 8 A. No, we embedded it into our review --
 9 or into the system.
 10 Q. Could you explain what you mean by
 11 "embedded it into the system"?
 12 A. We asked for information to be added so
 13 that we didn't have to keep separate sheets
 14 when we were looking at that. That was new to
 15 our division, because those were state funds,
 16 so that wasn't part of our role.
 17 We added a component in there, if
 18 there was anything outside of staffing that
 19 we needed more information on, and districts
 20 needed to be prepared to give us more
 21 information on that.
 22 Q. The component that was embedded into
 23 the system, are you referring to the Ed Plan?
 24 A. Yes.
 25 Q. So the Ed Plan was...

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1 Your division added specific
 2 questions to the Ed Plan.
 3 A. We added -- well, we asked to have
 4 additional information added to it. We asked
 5 to have information given to districts -- or
 6 stated to districts that we would be asking
 7 for additional information, if it was beyond
 8 the staffing that was coming into our
 9 division.
 10 We had very few questions that came
 11 about for programs or materials; it was always
 12 going to staffing.
 13 Q. Okay. After your division approved the
 14 special education funds, did your division
 15 ever come back, after the funds were used, to
 16 review how those funds were used?
 17 A. No.
 18 Q. Why did the Special Education Division
 19 not go back to determine whether the funds
 20 were used in the manner in which the districts
 21 represented they were going to use those
 22 funds?
 23 MS. RAHN: Object to form and
 24 foundation.
 25 THE WITNESS: I don't know.

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1 Q. BY MS. FLORES: Do you know who would
 2 know the answer to that we within PED?
 3 A. It would have to be under Finance;
 4 probably Scott's team or whoever oversees the
 5 overall finances for PED.
 6 We were asked to do that component,
 7 and we completed what we were asked to do.
 8 Q. What is your understanding of what the
 9 Special Education Division's role was in
 10 reviewing the Ed Plans in the spring of 2021?
 11 A. We were looking at where the funds were
 12 being used -- that was the role -- in the area
 13 of special education. We were looking for
 14 special education use only.
 15 Q. Did your review of the Ed Plans in the
 16 spring of 2021 assist the Special Education
 17 Division in supporting the districts in any
 18 way?
 19 A. I'm not clear on that question in
 20 terms of "support." We reviewed and gave our
 21 feedback if there was something outside of
 22 staffing.
 23 Q. Let me see if I can ask you that
 24 question in a piecemeal fashion:
 25 What is the role of the Special

<p style="text-align: right;">Page 62</p> <p>1 year -- I apologize -- the spring of 2022 for 2 the school year 2022/2023. Is that correct? 3 A. Yes. We just reviewed Ed Plans this 4 spring. 5 Q. Did the Special Education Division 6 receive any instructions from Scott Wright on 7 how to review the Ed Plans? 8 MS. RAHN: Object to form and 9 foundation. 10 THE WITNESS: Yes. 11 Q. BY MS. FLORES: What were those 12 instructions? 13 A. He presented a PowerPoint and reviewed 14 that with staff. 15 Q. Were there any specific instructions as 16 it relates to students with disabilities? 17 A. No. 18 Q. What was the Special Education 19 Division's role in reviewing the Ed Plan? 20 A. Our role was to review what the funds 21 were being used for. 22 Q. Did the Special Education Division's 23 review of the Ed Plan change in any way from 24 the prior year? Spring 2021. 25 A. No.</p>	<p style="text-align: right;">Page 64</p> <p><u>1. review whether districts used the funds the</u> <u>2 way in which the districts described under the</u> <u>3 Ed Plan.</u> <u>4 A. That's correct. I wouldn't say it was</u> <u>5 just the division; that was our training, to</u> <u>6 complete that component.</u> <u>7 Q. So there are no plans, to your</u> <u>8 knowledge, that the PED has to evaluate how</u> <u>9 the dollars were actually used by the</u> <u>10 districts.</u> <u>11 A. I am not aware of plans.</u> 12 Q. I want to go back to Exhibit 3. 13 A. (Witness complies.) 14 Q. This is the organizational chart with 15 a lot of boxes underneath it, with the 16 positions and names that we were reviewing. 17 I think we got as far as Timothy Crum. If we 18 could go back to that; I know there are quite 19 a few positions to go over here. If we could 20 briefly complete this chart. 21 The next one, under "Timothy Crum" 22 to the left, is "Administrative Assistant, 23 special education, Elizabeth Abeyta." 24 A. Yes. 25 Q. Is that still current?</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. So the review done by the Special 2 Education Division of the Ed Plan in spring 3 of 2021 and spring of 2022 was the same. 4 A. I would say the review was the same. 5 We had additional training, or we were more 6 familiar with the format, so it didn't take 7 as long for us to review them. We were only 8 looking for staffing, supplies, and materials, 9 and if anything else came out of that, we 10 would meet on it. We didn't have anything 11 that was different. 12 The first year that we reviewed 13 them, we were still learning the forms and 14 sending things back. The second year we were 15 still learning the forms and sending things 16 back if we felt that something was missing. 17 But these are new plans for us as a division. 18 <u>Q. Does the Special Education Division</u> <u>19 have any plans to review how the funds are</u> <u>20 used by the districts?</u> 21 <u>A. Regarding the Ed Plan?</u> 22 <u>Q. Yes, regarding the Ed Plan.</u> 23 <u>A. Not at this time, no.</u> 24 <u>Q. So at this time there are no plans for</u> 25 <u>the Special Education Division to go back and</u></p>	<p style="text-align: right;">Page 65</p> <p>1 A. Yes. 2 Q. And what are Ms. Abeyta's duties? 3 A. She is our receptionist. 4 Q. Going to the right, slightly below, 5 "Fiscal Supervisor, special education, Sandra 6 Riggs," what is her role? 7 A. She manages the federal budget. 8 Q. And to the right of "Sandra Riggs," it 9 says, "Data Supervisor, special education, 10 Charlene Marcotte." 11 A. "Marcotte." 12 Q. "Marcotte." Thank you. 13 What is Ms. Marcotte's duties? 14 What are her duties? 15 A. She prepares the annual Performance 16 Review. She gathers the 40/80/120/end-of- 17 year. 18 Q. Okay. Let's go down a row. Starting 19 on the left-hand side, "Complaint CAPS, Ed 20 Admin A, special education, Elizabeth 21 Cassel." 22 A. Yes. 23 Q. Is that still current? 24 A. Yes. 25 Q. And what are her duties?</p>

<p style="text-align: right;">Page 66</p> <p>1 A. She monitors all Corrective Action 2 Plans that are issued by the Public Education 3 Department Special Ed Division. 4 Q. And the next one, "PreK (Section 619), 5 special education Coordinator, Ed Admin A, 6 special education Catherine Quick." 7 A. Yes. 8 Q. Is that still current? 9 A. Yes. 10 Q. And what are her roles? 11 A. She supports Part C to B, the 12 preschool, so ages 3 to 5. 13 Q. The next one to the right is 14 "Differentiated Monitoring, Ed Admin A, 15 special education, Corrine Romero." 16 A. Yes. 17 Q. Is that still current? 18 A. Yes. 19 Q. And what are her duties? 20 A. She provides support to school 21 districts with monitoring activities. If we 22 need additional support, we ask Corrine to 23 reach out to those districts and provide 24 whatever they need, if they need additional 25 training. It is within that realm of</p>	<p style="text-align: right;">Page 68</p> <p>1 Johnson; Liz Schweiger; Matthew Kump; Sbicca 2 Brodeur; Lorie Pacheco; Catherine Quick. 3 Catherine Quick would also have 4 access as Preschool. 5 <u>Q. Who is the contractor providing IEP</u> 6 <u>training to districts?</u> 7 <u>A. We have an REC, or it's one of the</u> 8 <u>RECs, the Regional Cooperatives; I can't</u> 9 <u>remember the number right now. I believe it's</u> 10 <u>REC 6.</u> 11 Q. Okay. Going back to the org chart, to 12 the right is, Financial Coordinator A, 13 special education, Clarissa Perea." 14 A. Yes. 15 Q. Is that still current? 16 A. Yes. 17 Q. And what are Ms. Perea's duties? 18 A. She supports Sandra Riggs. She 19 monitors the federal dollars. She looks at 20 one of our more complex components, which is 21 the Maintenance of Effort. She works with 22 Business Managers as needed when they are 23 looking at budgets. 24 Q. Okay. The next one to the right, 25 "Professional Development, Ed Plan A, special</p>
<p style="text-align: right;">Page 67</p> <p>1 monitoring. 2 Q. Okay. Could you expand on Ms. Romero's 3 role? What type of support does she provide 4 to the districts? 5 A. If they need IEP training for Special 6 Ed. If they need -- she supports Corrective 7 Action Plans, as do all the Ed Admins on this 8 roster. 9 Q. Okay. 10 A. Their roles are very similar. 11 Q. Okay. 12 A. They offer support if there is a 13 Corrective Action Plan and are the key point 14 of contact. That's one of roles of the Ed 15 Admins, not just her role. 16 <u>Q. Okay. Is there anyone else on this</u> 17 <u>org chart that provides IEP training in</u> 18 <u>special education for districts?</u> 19 <u>A. We have contracted those out; we don't</u> 20 <u>necessarily do them ourselves.</u> 21 We have an expert team that goes 22 out, so Corrine would have access; Lisa 23 Creecy would have -- actually not Lisa 24 Creecy. 25 Ida Tewa; Mary Chappell; Leah</p>	<p style="text-align: right;">Page 69</p> <p>1 education, Leah Johnson." 2 A. Yes. 3 Q. Is that still current? 4 A. Yes. 5 Q. What are the duties of Ms. Johnson? 6 A. Leah provides support to Professional 7 Development. We contract typically with REC 8 9, and we meet with Special Education 9 Directors two times a year. 10 We were meeting in person, but then 11 we've gone virtual. Then we have a monthly 12 meeting as well. 13 Q. Moving down to the next row, the 14 furthest left, "SSIP & SPDG, Ed Admin A, 15 special education, Lisa Creecy." 16 A. Yes. 17 Q. Is that still current? 18 A. Yes. 19 Q. And what are her duties? 20 A. So Lisa works primarily with Indicator 21 17, and that is one of our federal components. 22 She works with contractors and universities 23 for schools that are low performing. 24 Q. And to the right, "Management Analyst, 25 special education, Crystal Vigil."</p>

<p style="text-align: right;">Page 106</p> <p>1 pandemic, that had gone home to the families. 2 Teachers needed a restart for their 3 classrooms, so we added additional materials 4 and asked for them to expand those pieces to 5 other classrooms. 6 We asked districts to incentivize 7 recruiting special education teachers with 8 additional dollars, as they would for 9 bilingual teachers. That is not something 10 that they currently have to do. 11 I would have to take each section 12 and go through it, to establish what programs 13 we have brought in and established moving 14 forward that is critical to provide support to 15 teachers directly in the classroom. 16 We've increased our training for 17 Special Education Directors. 18 We have a Compliance monitor for 19 Corrective Action Plans that tracks districts 20 that are out of compliance, and that we have 21 cited. We do follow-up. 22 We have redone our dispute 23 resolution, so that parents have a place to 24 go if there are questions. 25 We have a Parent Liaison, and she</p>	<p style="text-align: right;">Page 108</p> <p>1 education and Students with Disabilities. Is 2 that correct? 3 A. Yes. 4 Q. Let's turn to that. 5 A. (Witness complies.) 6 Q. We are looking at page 24. Do you see 7 where it says: 8 "'At-risk' Students: Students 9 with disabilities"? 10 A. Yes. 11 Q. If you would take a look at this, from 12 page 24 to page 31, that is the section on 13 Students with Disabilities. 14 A. Yes. 15 Q. The programs that you were describing 16 earlier, are those the programs that are 17 discussed in this Action Plan? 18 A. Yes. 19 Q. Okay. What was your role in drafting 20 this Action Plan section on Students with 21 Disabilities? 22 A. I did not draft this Plan; this Plan 23 came through Angelo Gonzales' group. I 24 provided information on programs that we were 25 working with to him.</p>
<p style="text-align: right;">Page 107</p> <p>1 runs through the procedural safeguards with 2 them, in order for parents to be able to file 3 a complaint, if they have concerns or 4 complaints about their programs, and that is 5 for every program individually. 6 We have things that we've done on 7 a larger scale, and things that are on a 8 smaller scale. 9 (Deposition Exhibit Number 5 was 10 marked for identification.) 11 MS. FLORES: Let me show you another 12 document. 13 This is Exhibit 5. This was 14 previously marked as Exhibit 4 to Rebecca 15 Reyes' deposition. 16 Q. What you have in front of you is 17 Exhibit 5. This is titled: 18 "Discussion Draft Action Plan 19 - Decisions about Martinez/Yazzie 20 versus State of New Mexico." 21 Do you see that? 22 A. Yes. 23 Q. Are you familiar with that document? 24 A. Yes. 25 Q. This document has a section on special</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Angelo Gonzales drafted this Action 2 Plan. 3 A. He gathered information, I believe. 4 I know that the leadership team 5 reviewed the Plan and discussed that, but I 6 did not write this Plan. I contributed 7 information to support his summary of the 8 Plan, but I did not write this Plan. This 9 would have come through the leadership team, 10 and it was reviewed by Mariana Padilla, and 11 the Governor's office would have reviewed that 12 Plan. 13 Q. Were there others who contributed 14 information to the "Students with 15 Disabilities" section? 16 A. I'm not aware. Perhaps there were 17 pieces of information that would have come 18 out. 19 <u>It looks like maybe something from</u> 20 <u>Restraint and Seclusion would have come from</u> 21 <u>another division that's not in special</u> 22 <u>education.</u> 23 Information was gathered from a 24 variety of people. I know what we submitted 25 were programs or things that we have been</p>

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1 Do you see that?
 2 A. Yes.
 3 Q. And then the next paragraph:
 4 "Dr. McLaughlin found that New
 5 Mexico educates fewer of its
 6 students with IEPs in general
 7 education classrooms that are
 8 substantially above the national
 9 average in placing students outside
 10 of general education anywhere from
 11 20-60 percent of the school day."
 12 Do you see that?
 13 A. Yes.
 14 Q. The next paragraph:
 15 "The Court finds
 16 Dr. McLaughlin's testimony to be
 17 uncontradicted and to be
 18 persuasive. This testimony is
 19 therefore credited by the Court."
 20 Do you see that?
 21 A. Yes.
 22 Q. Let's jump to page 454, paragraph 2341:
 23 "Having ancillary personnel in
 24 the classroom is important to meet
 25 the needs of special education

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1 students, and there is not
 2 sufficient funding in New Mexico to
 3 provide the ancillary personnel for
 4 special education students. "
 5 Do you see that?
 6 A. Yes.
 7 Q. As we sit here today are there
 8 sufficient ancillary personnel in the
 9 classroom to meet the needs of special
 10 education students?
 11 A. No.
 12 Q. Okay. We're going to jump around a
 13 little bit, so bear with me. We're going to
 14 go to page 456, paragraph 2349:
 15 "Special education funding in
 16 New Mexico is not sufficient to
 17 meet the needs of special education
 18 students."
 19 Do you see that?
 20 A. Yes.
 21 Q. Is special education funding now
 22 "sufficient to meet the needs of special
 23 education students"?
 24 MS. RAHN: Object to form and
 25 foundation.

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1 Go ahead.
 2 THE WITNESS: I would say no, but it
 3 depends on what the needs are for the student
 4 according to the IEP.
 5 Q. BY MS. FLORES: Could you tell me why
 6 it depends on the needs of the students and
 7 the individual IEPs?
 8 A. The IEP team determines where the
 9 student is placed and what is happening with
 10 supports and services, and that's discussed
 11 at the school level. That is not discussed
 12 at the state level.
 13 As to the funding component, there
 14 is a funding mechanism. Is it sufficient?
 15 It's the way it is allocated in that there is
 16 not an incentive to have special education
 17 teachers. There are no incentives for them
 18 to take on additional caseloads or classrooms
 19 and things like that. It is a difficult field
 20 for people to go into when they are doing so
 21 much work.
 22 The funding is there, but it's not
 23 sufficient to recruit and retain people to go
 24 into that field.
 25 Q. I want to go back to one of the

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1 paragraphs we just read, 2328.
 2 I apologize I'm having to jump
 3 around; this is on page 452.
 4 A. Okay.
 5 Q. As we just read: "[S]tate funding of
 6 special education is unpredictable"; correct?
 7 A. That's correct.
 8 Q. So if funding is "unpredictable," and
 9 funding depends on the individual needs of
 10 students with disabilities, which may vary
 11 from year to year --
 12 A. That's correct.
 13 Q. -- under the current funding structure
 14 it is difficult to retain teachers for special
 15 education and ancillary personnel for special
 16 education.
 17 MS. RAHN: Object to form and
 18 foundation.
 19 THE WITNESS: I'm not sure if that's
 20 what she's saying here. It says:
 21 "[S]tate funding for special
 22 education is unpredictable."
 23 Q. BY MS. FLORES: Yes.
 24 A. To me that means you may have needs in
 25 one year for an A level or B level student

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1 that receives funding. You may have needs the
 2 next year as a C level or D level student,
 3 which receives more funding.
 4 It doesn't mean that you don't
 5 still need the services if the next year you
 6 go back to the A or B level, it means that the
 7 funding is unpredictable coming in if you've
 8 had 10 kids on A level, and now you have so
 9 many students on another level. It goes back
 10 and forth within that level. That, to me, is
 11 why she is saying "unpredictable."
 12 Where we know that there is the
 13 foundation, and then the points that -- not
 14 "points."
 15 The funding formula has a
 16 calculation, and that calculation can go up
 17 or down depending on student exits, and
 18 students going in and out of services. That
 19 is what's "unpredictable."
 20 That base foundation of the unit
 21 value, and how they times it times the unit
 22 value, that doesn't ever change. The students
 23 themselves change in terms of how much money
 24 would be coming to support them. That's
 25 where I see it's "unpredictable."

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1 If you're asking if there is enough
 2 funding, I don't know if there's ever going to
 3 be enough funding for students with
 4 disabilities.
 5 Q. Does the unpredictability that you just
 6 described impact the districts' ability to
 7 recruit and retain special education teachers
 8 and ancillary personnel?
 9 MS. RAHN: Object to form and
 10 foundation.
 11 THE WITNESS: I think they look at the
 12 number of students who enter and exit.
 13 In terms of how they recruit, the
 14 retention component is in the works as to the
 15 level of students coming in; it's almost
 16 parallel. It does cross over, but I think
 17 we're looking at two different things and what
 18 the needs of the student are.
 19 In terms of bringing in additional
 20 teachers without having some type of
 21 incentivized program is a whole other level
 22 of supports that could be happening for that
 23 student.
 24 Q. BY MS. FLORES: Let's go back to page
 25 456, plaintiff 2352. It says:

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1 "It takes resources to recruit
 2 and retain skilled special
 3 education teachers, psychologists,
 4 speech and language pathologists,
 5 physical therapists, and social
 6 workers."
 7 Do you agree with that?
 8 MS. RAHN: Object to form and
 9 foundation.
 10 THE WITNESS: Yes.
 11 Q. BY MS. FLORES: Does PED currently
 12 have the resources to ensure that school
 13 districts have resources to recruit and
 14 retain, "skilled special education teachers,
 15 psychologists, speech and language
 16 pathologists, physical therapists, and social
 17 workers"?.
 18 MS. RAHN: Object to form and
 19 foundation.
 20 THE WITNESS: It's not the job of the
 21 PED to train special education teachers.
 22 As to the resources to recruit, we
 23 have allocated those funds through our federal
 24 dollars that they can use as an allowable.
 25 Training would be under

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1 Professional Development, which we also have
 2 a component, but it's different because it
 3 depends on what the teacher needs at the
 4 school level. They have funds that flow
 5 through from the federal dollars.
 6 All of those actually end up at the
 7 local level in terms of how they use their
 8 state dollars. We have a broader range than
 9 specifically what each school needs for a
 10 particular student or students.
 11 Q. BY MS. FLORES: Did I understand
 12 correctly that you said it is not the PED's
 13 job to train special education teachers?
 14 A. Right. That comes from them coming in
 15 from their universities.
 16 When they are arriving, we do have
 17 programs for support, so that we can support
 18 them. Training a teacher to be a special
 19 education teacher is not -- like the LEAP
 20 program we have contracted out, so we're not
 21 doing that training, but we are providing
 22 avenues for teachers to get additional
 23 support for alternative licenses and things
 24 like that. For me to have a one-on-one
 25 teacher to come into my office to be trained

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1 with disabilities?
 2 MS. RAHN: Object to form and
 3 foundation.
 4 THE WITNESS: That would be through
 5 the funding formula.
 6 Q. BY MS. FLORES: Does PED currently know
 7 whether school districts are receiving
 8 sufficient funding to provide resources to
 9 school districts for students with
 10 disabilities?
 11 MS. RAHN: Object to form and
 12 foundation.
 13 THE WITNESS: I don't know the answer
 14 to that.
 15 Q. BY MS. FLORES: Do you know whether PED
 16 has a mechanism in place for evaluating
 17 whether students with disabilities, by
 18 district, have sufficient special education
 19 teachers and ancillary personnel?
 20 A. No, I do not know that.
 21 Q. The Special Education Division does
 22 not evaluate whether school districts have
 23 sufficient special education teachers or
 24 ancillary personnel.
 25 A. No.

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1 Q. If the PED were conducting such an
 2 analysis, would the Special Education Division
 3 be aware of that analysis?
 4 MS. RAHN: Object to form and
 5 foundation.
 6 THE WITNESS: Yes.
 7 Q. BY MS. FLORES: Is it fair to say that
 8 the PED has not conducted such evaluation to
 9 determine whether school districts have
 10 sufficient special education teachers and
 11 ancillary personnel to support their students
 12 with disabilities?
 13 MS. RAHN: Object to form and
 14 foundation.
 15 THE WITNESS: I have not seen reports
 16 that address your question.
 17 Q. BY MS. FLORES: I want to go back to
 18 Exhibit 6; we were looking at the Findings of
 19 Fact and Conclusions of Law. If you look at
 20 paragraph 2332, it says:
 21 "There are chronic shortages
 22 of bilingual psychologists,
 23 educational diagnosticians, and
 24 special education teachers."
 25 Is that still the case today?

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1 A. Yes.
 2 Q. Does the state of New Mexico and the
 3 school districts have a requirement under
 4 federal law such that they must evaluate
 5 whether a student has a disability in a
 6 language that will accurately assess the
 7 student's disability?
 8 MS. RAHN: Object to form and
 9 foundation.
 10 THE WITNESS: I'm sorry. Did you ask
 11 whether New Mexico has a law?
 12 Q. BY MS. FLORES: Sorry, that was a lot.
 13 A. Okay.
 14 Q. Is there a federal law requiring that
 15 a student be evaluated for a disability in a
 16 language in which the assessment would be most
 17 accurate?
 18 A. Language must be a consideration for
 19 students.
 20 The evaluation team determines what
 21 evaluations are to be used. That is part of
 22 the 60-day timeline for informed consent. We
 23 do not determine what evaluations are used by
 24 evaluators for any student.
 25 Q. You said, "Language is consideration."

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1 Could you explain what that means?
 2 A. It is a consideration. Just because
 3 you speak a second language doesn't mean
 4 you're going to be eligible for special
 5 education. That should not be -- a second
 6 language is not a disability.
 7 MS. FLORES: Give me one moment.
 8 I'm going to show you another
 9 document; this is Exhibit 7.
 10 (Deposition Exhibit Number 7 was
 11 marked for identification.)
 12 Q. BY MS. FLORES: We're looking at 20
 13 U.S.C. Annotated Section 1414. Are you
 14 familiar with this section --
 15 A. Yes.
 16 Q. -- of the IDEA?
 17 A. -- yes.
 18 Q. Okay. Let's turn to page 5.
 19 A. (Witness complies.)
 20 Q. What we're looking at is evaluations,
 21 parental consent, and reevaluations; right?
 22 A. Right.
 23 Q. On page 5, "Additional Requirements."
 24 It says here that:
 25 "Each local educational agency

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1 shall ensure that:" [And under
2 A(ii)]: "are provided and
3 administered in a language and form
4 most likely to yield accurate
5 information on what the child knows
6 and can do academically,
7 developmentally, and functionally,
8 unless it is not feasible to so
9 provide or administer."
10 Do you see that?
11 A. Yes.
12 Q. As we just read, the Court found that
13 there are chronic shortages of bilingual
14 psychologists, educational diagnosticians,
15 and special education teachers in New Mexico;
16 correct?
17 A. Yes.
18 Q. And you agree there are still chronic
19 shortages of bilingual psychologists,
20 educational diagnosticians, and special
21 education teachers.
22 A. Yes.
23 Q. So for students who need an evaluation
24 to be administered in a different language,
25 and given that there are chronic shortages,

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1 how would that student be evaluated "in a
2 language and form most likely to yield
3 accurate information"?
4 A. The district would need to seek an
5 evaluator that met that criteria.
6 Q. Whose ultimate responsibility is it to
7 ensure that school districts have sufficient
8 bilingual psychologists, educational
9 diagnosticians, and special education
10 teachers?
11 A. The districts are responsible for the
12 recruitment of their staff.
13 Q. And who is responsible for the funding
14 to the districts to hire sufficient bilingual
15 psychologists, educational diagnosticians, and
16 special education teachers?
17 A. It flows through the SEG dollars that
18 the state receives.
19 Q. Would you agree there is insufficient
20 funding for school districts to hire
21 sufficient bilingual psychologists and
22 educational diagnosticians?
23 MS. RAHN: Object to form and
24 foundation.
25 THE WITNESS: Without incentives, yes.

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1 Q. BY MS. FLORES: Are there currently
2 incentives in place?
3 A. No, not consistently across the state.
4 Q. Does the PED know what the shortage of
5 bilingual psychologists currently is?
6 A. No.
7 Q. Does PED know what the shortage of
8 educational diagnosticians currently is?
9 A. No.
10 Q. Does PED know the current shortage of
11 special education teachers?
12 A. That would come through Seana Flanagan;
13 I don't have that, no.
14 Q. If PED knew the current shortages of
15 bilingual psychologists, educational
16 diagnosticians, and special education
17 teachers, would you be aware of what those
18 numbers are?
19 MS. RAHN: Object to form and
20 foundation.
21 THE WITNESS: Yes.
22 Q. BY MS. FLORES: What is PED's current
23 plan to meet the shortage of bilingual
24 psychologists, educational diagnosticians,
25 and special education teachers?

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1 A. It would be Educator Quality, who works
2 with postsecondary institutions.
3 Q. How is PED evaluating whether the work
4 that is currently being conducted is remedying
5 the shortage of bilingual psychologists,
6 educational diagnosticians, and special
7 education teachers?
8 A. I don't have that information.
9 Q. If that information were available,
10 would your division be aware of it?
11 MS. RAHN: Object to form and
12 foundation.
13 THE WITNESS: I would assume I would
14 have to ask for it.
15 Q. BY MS. FLORES: Would your division
16 have a role in ensuring that bilingual
17 psychologists, educational diagnosticians,
18 and special education teachers are being
19 recruited by the school districts?
20 MS. RAHN: Object to form and
21 foundation.
22 THE WITNESS: We currently encourage,
23 as part of their application, to use the funds
24 to do so. We've put in place some programs,
25 that may not be found at schools, which would

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1 determine whether or not they meet the two
2 prongs of having a disability and needing
3 service.
4 Q. You said "PED does not manage."
5 A. No.
6 Q. Does PED supervise --
7 A. No.
8 Q. -- whether school districts are meeting
9 this requirement of the IDEA?
10 A. We do not supervise the assessment
11 tools and strategies, no.
12 Q. What is the PED's role as it relates to
13 the IDEA and ensuring local educational agency
14 compliance with the IDEA?
15 A. We have our Indicators that we look
16 at. We have Assurance Letters submitted to us
17 that are signed by the superintendent, by the
18 Special Ed Director, the Business Manager, and
19 parents regarding this entire section that
20 they will be following all of the rules of
21 IDEA. We gather that information from them.
22 Parents can file a concern or
23 complaint at any time. We have procedures in
24 place for that, but we don't monitor what
25 tools are being used. We don't micromanage

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1 the evaluation because we are not
2 diagnosticians.
3 Oh, I've lost -- we've lost people.
4 Oh, it's reconnecting, sorry.
5 MS. RAHN: You're fine. Thanks for
6 noticing.
7 (The deposition recessed from 2:32
8 p.m. to 2:32 p.m.)
9 Q. BY MS. FLORES: Is there any portion
10 of the IDEA that PED is not required to ensure
11 compliance with?
12 MS. RAHN: Object to form and
13 foundation.
14 THE WITNESS: No, we're required to
15 follow all areas.
16 Q. BY MS. FLORES: So PED is required to
17 ensure compliance with the IDEA as to every
18 section in the IDEA.
19 A. Yes.
20 Q. So PED is required to ensure that local
21 educational agencies use "a variety of
22 assessment tools and strategies to gather
23 relevant functional, developmental, and
24 academic information."
25 A. Yes.

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1 Q. And is there any mechanism in place for
2 PED to evaluate whether local educational
3 agencies are meeting this section of the IDEA?
4 A. We do 40/80/120 day and end-of-year
5 monitoring, and we have Desktop Monitoring.
6 We do on-site monitoring. We have Due Process
7 in place for parents if they feel like they're
8 not getting what they need.
9 We have mediation. We have
10 facilitated IEP meetings for any areas of
11 concern, and we gather the data typically
12 through STARS on our IEPs.
13 Q. Do any of those mechanisms you just
14 described inform PED as to whether districts
15 have sufficiently trained educational
16 diagnosticians that can use "a variety of
17 assessment tools and strategies," as described
18 in this section?
19 A. The districts make the assurances to
20 us regarding staffing. They make assurances
21 to us that they will follow the evaluation
22 procedures. They can always reach out to us
23 if they struggle with finding supports, but it
24 is the LEA's responsibility to use their funds
25 to make sure they are fully staffed.

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1 We don't have a bucket of teachers
2 or evaluators at PED. We give those funds out
3 to the districts, so that they have the funds
4 to do that.
5 Q. Has PED ever found any districts to be
6 out of compliance with this section of the
7 IDEA?
8 A. Yes, and we write citations and
9 Corrective Action Plans for those districts.
10 Q. Do you have a list of districts that
11 were out of compliance with this section?
12 MS. RAHN: Object to form and
13 foundation.
14 THE WITNESS: Yes.
15 Q. BY MS. FLORES: Is there a shortage of
16 educational diagnosticians that can use "a
17 variety of assessment tools and strategies" as
18 described under this section?
19 A. There is a national shortage, and there
20 is a state shortage in all areas of
21 diagnosticians, psychologists, and Special Ed
22 teachers. There is a shortage.
23 Q. Is PED taking any steps to fill the
24 shortage of educational diagnosticians that
25 can use "a variety of assessment tools and

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1 strategies"?

2 MS. RAHN: Object to form and

3 foundation.

4 THE WITNESS: We don't determine what

5 evaluation tools a diagnostician uses; we

6 don't do that.

7 We do have a TEAM manual that's

8 called T-E-A-M, and we train on that manual

9 with diagnosticians and psychologists, and

10 Special Ed Directors mostly. We do train and

11 talk about the expectations in terms of

12 evaluations in the state of New Mexico.

13 Q. BY MS. FLORES: What are the

14 expectations in terms of an evaluation?

15 A. What you just read; to not use one

16 piece of information to evaluate a student.

17 We have a section on language

18 behavior. It's an entire guidance document

19 that's updated by evaluators. We train

20 several times a year, and we keep that

21 training on file, in case somebody comes in

22 midyear during the time we're doing the

23 training.

24 We did a tremendous number of

25 trainings when schools were closed during the

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1 pandemic. We took full advantage of making

2 sure that trainings were afforded to anyone

3 who was working in our state.

4 Q. And is PED measuring the success of

5 the trainings that you've just described?

6 A. I'm not sure in terms of measurement.

7 We have collected data on who has attended

8 trainings, but we are not evaluators. We do

9 not go in and evaluate diagnosticians and

10 their work.

11 Now that work is conducted and

12 provided at an IEP meeting, or provided at an

13 Eligibility Determination team meeting, and

14 accepted through that realm. We do not go in

15 and micromanage any of that part of the IEP

16 process.

17 Q. In what way is PED ensuring that

18 educational diagnosticians are adequately

19 trained?

20 A. They are licensed personnel, so they

21 have had training. We provide additional

22 training in terms of what we expect as a

23 state.

24 It's not mandated that they train,

25 but we offer training. We do not have a

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1 mandatory component that they take every

2 course we offer.

3 Q. So it's not mandatory to engage in the

4 training that PED offers.

5 A. No, but I'm not sure if districts would

6 hire someone who isn't fluent in what they

7 need to be doing for their students.

8 Q. I'm going to refer you back to the

9 Court's Findings of Fact and Conclusions of

10 Law; I believe that was Exhibit 6.

11 A. (Witness complies.)

12 Q. Do you see at the bottom of page 452,

13 paragraph 2331. It says:

14 "Dr. McLaughlin testified the

15 PED certification standards for

16 educational diagnosticians are not

17 particularly specific concerning

18 required skills, or the types of

19 assessment tools these individuals

20 must be qualified to use."

21 Do you see that?

22 A. Yes.

23 Q. Is that still the case today?

24 MS. RAHN: Object to form and

25 foundation.

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1 THE WITNESS: I don't review the

2 certification standards; that's goes through

3 Licensure.

4 Q. BY MS. FLORES: So Licensure would be

5 responsible for requiring specific "skills

6 or... types of assessment tools these

7 individuals must be qualified to use"?

8 A. They issue the license according to

9 what you're applying for. You have to meet

10 the eligibility criteria in order to receive

11 a license in our state, and we don't receive

12 that in the Special Education Division. But

13 you can't practice without a PED license as a

14 diagnostician.

15 I don't know the certification

16 standards; that doesn't come to us.

17 Q. Okay. So to your knowledge, PED's

18 certification standards -- let me withdraw

19 the question.

20 Do you know whether PED's

21 certification standards have changed since

22 the Court's Orders in -- we're looking at

23 December 20, 2018.

24 A. I do not know.

25 Q. Do you know whether PED's certification

<p style="text-align: right;">Page 174</p> <p>1 "The term 'Individualized 2 Education Program,' or 'IEP,' means 3 a written statement for each child 4 with a disability that is 5 developed, reviewed, and revised in 6 accordance with this section, and 7 that includes (1), a statement of 8 the child's present levels of 9 academic achievement and functional 10 performance including..." 11 Then let's jump to (II): "A 12 statement of measurable annual 13 goals, including academic and 14 functional goals..." 15 Do you see that? 16 A. Yes. 17 Q. What is necessary for an IEP Plan to 18 meet all of the requirements under the IDEA? 19 MS. RAHN: Object to form and 20 foundation. 21 THE WITNESS: That's a huge question, 22 but it's all right here. 23 We have an IEP that is step-by- 24 step. We have an IEP guide that we provide. 25 We have teams that provide additional support</p>	<p style="text-align: right;">Page 176</p> <p>1 They receive funding through their IDEA 2 application. Those two areas is where they 3 receive funding right now. 4 Q. In developing an IEP Plan, does the 5 IEP team select what services are available 6 for a student with disabilities? 7 A. The IEP team decides what's needed for 8 the student. 9 Q. If the IEP team decides that what is 10 needed for that student is not available in 11 that district, what would that district do? 12 MS. RAHN: Object to form and 13 foundation. 14 THE WITNESS: They would contract with 15 another district. They would contract outside 16 of the state if necessary. They would have 17 to take action concerning what was needed to 18 support that student. 19 <u>Q. BY MS. FLORES: Does PED evaluate</u> 20 <u>whether districts are doing that; contracting</u> 21 <u>out or using a different resource to provide</u> 22 <u>the necessary support to a student with</u> 23 <u>disabilities?</u> 24 A. Do we monitor the IEPs? No. 25 Q. Does PED monitor whether a district has</p>
<p style="text-align: right;">Page 175</p> <p>1 when needed. It is written out. 2 The IEP team -- we are not part of 3 the IEP team at all. We cannot be; we are 4 not a member of the IEP people. This entire 5 section we have as part of an IEP document 6 that is completed by the family. We do not 7 participate with any IEP. 8 Q. BY MS. FLORES: How does PED ensure 9 compliance with the IEP sections that we just 10 read? 11 A. We do Desktop Monitoring. We'll make 12 random pulls at different times. Now that we 13 can go back out, school-based monitoring 14 instead of Desktop Monitoring, because we 15 weren't allowed to go out to the schools for 16 a bit during the pandemic. 17 An IEP isn't anything that PED is 18 allowed to be involved in. It is a discussion 19 with the family and the school as to the 20 appropriateness of what's needed. 21 Q. How does PED ensure that school 22 districts have the resources necessary to 23 provide for the individualized needs that a 24 student with disabilities might need? 25 A. They receive funding through the SEG.</p>	<p style="text-align: right;">Page 177</p> <p>1 <u>a particular service that has been identified</u> 2 <u>in an IEP plan?</u> 3 A. We wouldn't know; we're not part of 4 that IEP team. That is not something that we 5 would do. That is between the family and the 6 school district. That is not an agreement 7 that anybody has with PED; that is something 8 that the student needs at the LEA level. 9 Q. So if a student needs a service that 10 is not available in that district -- 11 A. Yes. 12 Q. -- that district is responsible for 13 acquiring that service. 14 A. Yes, in the least restrictive 15 environment, yes. 16 Q. Do school districts have funding to 17 assist them in acquiring resources that are 18 not available in their district? 19 A. Yes. 20 Q. What funding is that? 21 A. They get their funding through the SEG, 22 or they can use IDEA funds. 23 If it is a high-cost student that's 24 three times the amount it would cost to 25 educate a student, we have a fund called the</p>

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1 percentage of time in a General Education
 2 classroom?
 3 A. We collect that data through STARS.
 4 Q. You said there are other goals of the
 5 IEP plan. Can you tell me what some of the
 6 other goals are of the IEP plan?
 7 A. I'm sorry. Of the IEP?
 8 Q. Yes.
 9 A. Other goals?
 10 Q. Yes.
 11 What is the purpose of an IEP plan?
 12 A. The parents and the schools look at
 13 where services are going to be provided, any
 14 accommodations that are needed, any
 15 modifications that are needed for the
 16 classroom and for testing. It's called a
 17 Prior Written Notice that's given, and it
 18 summarizes what the discussion was for the
 19 families. They then use their information.
 20 They have representatives from a variety of
 21 teams that are required by IDEA to be at the
 22 table.
 23 I don't know how they come up with
 24 an IEP. There is a specific form that is used
 25 throughout the state, and the data is gathered

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1 that way, but we don't monitor the goals and
 2 objectives on particular students, nor would
 3 we.
 4 Q. Let's go back to the Findings of Fact
 5 and Conclusions of Law, which is Exhibit 6.
 6 A. (Witness complies.)
 7 Q. Let's look at paragraph 2323:
 8 "As defined in the IDEIA, a
 9 student with a disability is
 10 entitled to special education that
 11 is individually designed, and
 12 addresses those areas of a
 13 student's disability that are
 14 adversely impacting learning."
 15 Do you see that?
 16 A. Yes.
 17 Q. Is the IEP plan one tool in achieving
 18 this goal of the IDEIA?
 19 MS. RAHN: Object to form and
 20 foundation.
 21 THE WITNESS: The IEP plan discusses
 22 areas that are needed to support the student
 23 in terms of general access to the General
 24 Education Curriculum.
 25 Q. BY MS. FLORES: And PED would measure

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1 whether students with disabilities are
 2 achieving access through the STARS program.
 3 A. Yes. That goes to location, or where
 4 the student is receiving services. There is
 5 different codes for that.
 6 Q. Going back to shortages in special
 7 education teachers, educational
 8 diagnosticians, and special education
 9 teachers, are these shortages an issue that
 10 needs to be addressed in order for students
 11 with disabilities to gain greater access to
 12 General Education?
 13 MS. RAHN: Object to form and
 14 foundation.
 15 THE WITNESS: The shortages definitely
 16 need to be addressed. If you have more
 17 teachers, you could, perhaps, provide more
 18 support within the General Education classroom
 19 instead of pulling students out all the time.
 20 Q. BY MS. FLORES: And does PED currently
 21 have a plan in place to remedy the shortages
 22 in bilingual psychologists, educational
 23 diagnosticians, and special education
 24 teachers?
 25 A. Yes. The Plan includes the mentoring

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1 program and the LEAP program, which provides
 2 alternative-licensed teacher support. We have
 3 several things that have been put in place to
 4 provide support to staff once they are in the
 5 program.
 6 Q. Is PED measuring the success of these
 7 programs that you just described?
 8 A. Yes. The LEAP program has been running
 9 for more than a year; the mentorship program
 10 started in January of this year. These are
 11 new programs that are up and running, in order
 12 to meet that need.
 13 Q. Other than the LEAP program, is PED
 14 measuring any of its programs to address the
 15 shortages?
 16 A. Seana meets with the universities.
 17 Eastern New Mexico actually has a
 18 dual license program, which would be
 19 beneficial across the state.
 20 There are things that are happening
 21 in different areas, but I know, in terms of
 22 some of the alternative programs, there are
 23 community colleges that work in alternative
 24 programs as well that her division has been
 25 working specifically with for science, math,

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1 Through the state, we still don't
2 have that supervision piece. Our role was to
3 review the Ed Plans, and the majority of the
4 funds are going into salaries.
5 Salaries don't change, typically,
6 over a year, so if they are seeking funds for
7 salaries, it's not encumbered, but that's
8 expectation that we have. We don't have a
9 written follow-up plan from our Finance
10 Division in terms of how they want us to
11 approach that, but we're working with that
12 division.
13 What we do know now that we didn't
14 know then is we know what the funding amounts
15 are that are going out, but there is not a
16 written plan for coming back in a year, so to
17 speak, to go through those. That would have
18 to be, at this point, independent of just our
19 division doing that; it's with PED.
20 Q. BY MS. CANDELARIA: You mentioned how
21 much money is going out to the districts now.
22 Where is that information captured aside from
23 just the Education Plan?
24 A. That's it.
25 Q. So there is no mechanism otherwise;

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1 for example, STARS? We keep hearing STARS as
2 a principal mechanism.
3 A. I don't know. I would say it would be
4 through the OBMS system, which is where they
5 generate those numbers. That is the Fiscal
6 financial system that PED uses and the school
7 districts have access to.
8 The budgets that they receive, I
9 also believe that's on the PED web page; the
10 total amount of dollars that each school
11 district gets. The broken-down amount, I
12 don't know where that's located.
13 Q. With regard to the state, we're talking
14 about SEG dollars; correct?
15 A. Yes.
16 Q. Do you know whether LEAs are required
17 to submit reports on how they expend SEG
18 dollars allocated for students with
19 disabilities?
20 A. I don't know if it's broken down that
21 way, but that would be a better question for
22 Scott Wright in terms of how he's going to
23 collect the data. I'm sorry, I just don't
24 know.
25 Q. Okay. Thank you.

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1 MS. CANDELARIA: Can you give me a
2 second?
3 THE WITNESS: Sure.
4 (The deposition recessed from 4:56
5 p.m. to 4:56 p.m.)
6 Q. BY MS. CANDELARIA: Again, you
7 mentioned that you do track and monitor
8 federal dollars.
9 A. Yes.
10 Q. Okay. You don't monitor or track state
11 SEG dollars for students with disabilities.
12 MS. RAHN: Object to form and
13 foundation.
14 THE WITNESS: We do not track after we
15 review the Ed Plans.
16 Q. BY MS. FLORES: Okay. Would you say
17 you have enough staff within your division to
18 conduct that tracking and monitoring
19 currently?
20 A. No.
21 Q. Are there plans to add people to your
22 staff in order to engage in this function?
23 A. We have a request to add additional
24 staff, because the Ed Plan is an additional
25 duty that was added to staff this year.

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1 Q. Okay. With the staff that you have
2 now, are you able to provide any sort of
3 training to school districts on how to track
4 and monitor the use of state dollars for
5 students with disabilities?
6 MS. RAHN: Object to form and
7 foundation.
8 THE WITNESS: We don't. We haven't
9 been provided that guidance for state dollars;
10 we track federal dollars.
11 Q. BY MS. CANDELARIA: In terms of added
12 positions on your staff, how many do you need
13 for this function?
14 MS. RAHN: Object to form and
15 foundation.
16 THE WITNESS: I don't know. We're
17 asking for one additional full-time person for
18 Finance, to assist with that. Right now,
19 that's what we've requested based on what we
20 saw this year.
21 Q. BY MS. CANDELARIA: Okay. Did you say
22 you submitted that request to Finance?
23 A. We submitted that request for
24 additional staff to Dr. Bannerman.
25 Q. Dr. Bannerman.

<p style="text-align: right;">Page 270</p> <p>1 could go to the classroom and not monitor and 2 evaluate from somewhere else. We needed 3 somebody actually on-site, so we changed the 4 program to an on-site support role. 5 And we have contracts with a few 6 of the Regional Centers. Region 9 has our 7 autism team, and they go out to the classrooms 8 when needed. 9 Q. Region 9. You mean REC 9. 10 A. Yes. 11 Q. Since the establishment of this project 12 10 years ago, has there been an analysis of 13 the effectiveness of the project? 14 A. There was when we got it; that's why 15 we changed it. We asked directors how it was 16 working, and their biggest complaint was they 17 could have done that, too, from afar and not 18 being on site. But they need somebody who 19 comes on site to provide support for their 20 staff. 21 We have Sbicca Brodeur, who is our 22 Autism Lead, and she took those contracts and 23 had them rewritten. We recut all the 24 contracts and started over. One of the 25 parameters is that you have to go on site to</p>	<p style="text-align: right;">Page 272</p> <p>1 autism specialist on campus, and they will 2 make recommendations for that. We don't pay 3 for that; we go out and provide support. 4 If it is additional support that's 5 needed, more than what we can give, then we 6 make the recommendation to the district that 7 they need to start contracting, and get with 8 our contacts at UNM CDD, and we take it from 9 there. We have also agreements with UNM CDD 10 for support. 11 Q. And what specific support does your 12 division provide to the districts when they 13 request it? 14 A. There is a team that goes out 15 comprised of specialists. They meet with the 16 principal and they meet with the teacher. 17 They meet with the Special Education Director 18 and discuss issues/concerns/what's happening, 19 and then the team reviews it. 20 What they do is sit in the 21 classroom and look at behavior. They give 22 support to the teacher in the form of training 23 and strategies, and make a recommendations to 24 the team by saying things like, "I think you 25 need to increase your behavior support and</p>
<p style="text-align: right;">Page 271</p> <p>1 provide support. 2 Q. Okay. If you look at that, continuing 3 in that paragraph at the very end, I think 4 the sentence says: 5 "Districts have statewide 6 access to NMAP by request." 7 What does that mean? 8 A. If they call and they say they are 9 struggling with a student with autism, they 10 know that we have this support mechanism in 11 place through the RECs. 12 They would call and, you know, say, 13 "We have a student" or "we have" -- not "a 14 student," -- "a teacher that needs additional 15 support. She has a child with autism in the 16 classroom and needs support." We would say, 17 "Okay." We don't ask any other questions, we 18 just send a team out. 19 Q. Okay. How is PED measuring the success 20 of this project? 21 A. One is we don't have a return call. 22 Our group does go out and starts to track 23 that. We get information back from the Autism 24 Project team. If they feel they need to -- 25 they'll recommend if they need to hire an</p>	<p style="text-align: right;">Page 273</p> <p>1 your deescalation strategies." They will say 2 "Here's our contact with UNM CDD; please go 3 through them." You know, "You need a whole 4 other level of support for a particular 5 student." 6 We're there to support the 7 classroom, not the student. 8 Q. I see. 9 On the point about deescalation, 10 let's briefly talk about the Action Plan 11 where it discusses Restraint and Seclusion. I 12 believe that's on page 26 of the Action Plan. 13 A. (Witness complies.) 14 Q. Do you see where that paragraph under 15 "Non-Monetary Supports"? 16 A. Yes. 17 Q. <u>Does your division monitor Restraint</u> 18 <u>and Seclusion cases?</u> 19 A. <u>No.</u> 20 Q. Who is responsible for monitoring that? 21 A. That comes through Safe and Healthy 22 Schools. 23 Q. And who is in charge there? 24 A. It was Greg Frostad, who has now been 25 moved to another position. Her name is</p>

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1 A. Are you're asking my opinion, or are
2 you asking what was submitted to us?
3 Q. Yes.
4 A. Well, what was submitted to us was this
5 data.
6 Q. Based on your opinion, do you believe
7 that this data is accurate?
8 MS. RAHN: Object to form and
9 foundation.
10 THE WITNESS: I do not believe that
11 this data is accurate.
12 Q. BY MS. CANDELARIA: Okay. If the data
13 is not accurate, why do you think PED chose
14 to put this in the Action Plan?
15 MS. RAHN: Object to form and
16 foundation.
17 THE WITNESS: I think to demonstrate
18 that this field represents the data that we're
19 getting from the school districts.
20 Q. BY MS. CANDELARIA: Okay. Tell me
21 again whether your division -- well, let me
22 just ask you:
23 Does your division provide training
24 to districts on how to understand the rules
25 for Restraint and Seclusion per the memo

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1 referenced on page 26?
2 A. Our division is not in charge of this
3 component, the documentation on Restraint and
4 Seclusion. However, we did send out a letter
5 in support of the need to have appropriate
6 documentation, and our expectation of
7 notifying families within a certain period of
8 time.
9 The reason I don't believe that the
10 data is current or correct is because I have
11 no knowledge if it is or not. On occasion, a
12 parent will call and say something occurred,
13 but we would not go out and investigate. We
14 didn't investigate those components. That
15 goes through a Complaint, and that's separated
16 from our division.
17 Restraint and Seclusion does not
18 come through our division, it comes through
19 Safe and Healthy Schools. That's for all
20 students. That's not just for students with
21 disabilities; that's for every student in the
22 state.
23 Q. If you get a call about, say, a
24 Restraint Complaint; right? A student was
25 restrained on campus. Is it fair to say that

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1 your division is not documenting those calls
2 based on what you just stated?
3 A. No. If we get a call that is not
4 within our division, we reach out to the
5 division that it belongs to and encourage them
6 reach out to the family.
7 We do provide dispute resolution
8 options, if they want to file a Complaint, if
9 they feel that their IEP was violated.
10 Restraint and Seclusion does not
11 mean Special Education. Restraint and
12 Seclusion is for any student in the state of
13 New Mexico that could be restrained for a
14 variety of reasons; it is not a Special Ed
15 function at all. But if we learn something,
16 we would reach out to other divisions and we
17 would give our families their procedural
18 safeguards and what needs to happen next.
19 This is not something that is a
20 Special Ed role. It is for any student that
21 is restrained or secluded across the state of
22 New Mexico.
23 Q. Okay. In that document, or the new
24 template, is there a section in the reporting
25 template that asks specifically about

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1 Restraint and Seclusion cases regarding
2 children with disabilities?
3 A. It's for any student; it doesn't
4 delineate.
5 Q. It doesn't disaggregate --
6 A. It doesn't state that. That is
7 Discipline, and I don't manage the Discipline
8 section.
9 As far as Discipline, that
10 information is provided by the LEAs, and they
11 input that into STARS. Restraint and
12 Seclusion is managed by the LEAs. They input
13 Restraint and Seclusion in STARS. That
14 information goes to another division; that's
15 were this data came from.
16 Q. Thank you.
17 You mentioned some of these
18 complaint calls that you received, in sort of
19 going down that line. Can you tell me your
20 knowledge of cases filed by parents against
21 the Public Education Department? Parents of
22 students with disabilities.
23 MS. RAHN: Object to form and
24 foundation.
25 THE WITNESS: Every case is different.

Exhibit 9

D-101-CV-2014-00793; D-101-CV-2014-02224
LOUISE MARTINEZ, et al.; WILHELMINA YAZZIE, et al., V. THE STATE OF NEW MEXICO, et al.

Sandy Marie TrujilloMedina
August 05, 2022

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF SANDY MARIE TRUJILLO-MEDINA

Friday, August 5, 2022
9:30 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 Q. Do you know what "universal access"
2 means in this sentence?

3 A. "Universal access" means that anyone
4 who is age-eligible has access to a quality
5 PreK Program funded through the State of New
6 Mexico.

7 Q. And right now is there "universal
8 access" to programs for all 3- and 4-year-olds
9 in New Mexico?

10 A. No.

11 Q. And does ECECD track the wait list or
12 waiting lists in various districts with regard
13 to PreK programs?

14 A. No, ECECD does not track wait lists.

15 Q. And just for clarification, are you
16 aware of what a "wait list" is?

17 A. Yes.

18 Q. Okay. And can you explain what it is?

19 A. A wait list is a list of students or 3-
20 and 4-year-olds wanting access to a PreK
21 Program who may be full at the moment, and do
22 not have any available slots.

23 It could also be a wait list in a
24 community where they have eligible children
25 wanting access to a PreK Program, and there

1 may be no PreK Program available within their
2 community.

3 Q. Okay. And does ECECD in any way
4 communicate with school districts about its
5 wait lists?

6 A. Yes.

7 Q. Okay. What does that communication
8 consist of?

9 A. ECECD monitors the funded enrollment,
10 so they may be funded for 20 slots. Through
11 our monitoring process, we check and see if
12 they have filled all of those slots.

13 Oftentimes they haven't, and there
14 may be a justified reason for that.

15 Oftentimes they are full, and the
16 communication during that monitoring process
17 would then lead to, "We do have a wait list of
18 10 children," which could prompt discussion
19 for the need to expand.

20 Q. If ECECD does not track the number of
21 children who are on wait lists within the
22 school districts for PreK programming, how
23 does ECECD know about the needs, or rather
24 the gaps in need for students in those
25 districts?

1 are needed, and if it's needed. It helps us
2 to determine what type of funding is needed
3 to support the expansion of those slots.

4 Q. And what is the most recent evaluation
5 of those data regarding the need for 4-year-
6 old children who do not have access to a PreK
7 Program?

8 MS. RAHN: Object to form.

9 Go ahead.

10 THE WITNESS: Right now the trend is
11 telling us that there is still a need for
12 PreK, or availability for PreK slots
13 throughout the state.

14 Q. BY MR. HERRERA: Okay.

15 Let's go back to Rebecca Reyes
16 Exhibit 4, the Action Plan, page 32.

17 A. (Witness complies.)

18 Yes.

19 Q. Can we look at Paragraph 3 of the
20 "Data Snapshot"?

21 A. Yes.

22 Q. It says:

23 "The number of part-day PreK
24 slots for 4-year-olds decreased
25 from 48% in 2018-19, to 13% in

1 Q. Can we look at the last page, or the
2 third page of Exhibit 5?

3 A. (Witness complies.)

4 Q. The question is:

5 "Is there bus transportation
6 for Pre-K, as there is for K-12
7 students?"

8 It says: "Unfortunately there is
9 no bus transportation for Pre-K at
10 this time."

11 Do you see that?

12 A. Yes.

13 Q. Is that common for PreK programs to
14 have no bus transportation?

15 MS. RAHN: Object to form.

16 Go ahead.

17 THE WITNESS: From my observation, not
18 necessarily within the school-based PreK
19 Program.

20 School-based programs or school
21 districts have access to buses, and can
22 transport those PreK children. We, ECECD,
23 also does fund transportation services. When
24 a school district or a community-based
25 program applies, they can request funding to

1 support transportation.

2 On the community-based side, you
3 will not see as many programs having access to
4 transportation, because oftentimes those
5 programs are so small that they can't afford
6 the cost of a bus, and to sustain the cost for
7 transportation.

8 Q. BY MR. HERRERA: Do you know if it is
9 the case in APS that there is no bus
10 transportation for New Mexico PreK?

11 A. No, I do not.

12 Q. Okay.

13 Besides receiving funding
14 applications and granting funding, does ECECD
15 know about the availability of bus
16 transportation in the various counties with
17 regard to PreK students?

18 A. Only to the extent that we have
19 provided funding to support transportation
20 would ECECD have that information documented
21 and tracked.

22 MR. HERRERA: Okay. I think I'm at a
23 good point for a break, maybe probably break
24 for lunch. We'll go off the record.

25 MS. RAHN: Okay.

1 A. It hasn't yet. It still needs to be
2 voted upon and approved via the vote before
3 we have any ability to access any type of
4 funding that would support Early Childhood
5 Education programming.

6 Q. And if the voters --

7 It would be voters who pass it;
8 right?

9 A. Correct.

10 Q. Okay. Do you know when that election
11 takes place?

12 A. I do not.

13 Q. Okay. Well, let's assume, for purposes
14 of the deposition, that the election is this
15 November on that amendment to access the Land
16 Grant Permanent Fund, has ECECD undergone
17 financial planning to account for that funding
18 if that amendment passes?

19 MS. RAHN: Object to form.

20 Go ahead.

21 THE WITNESS: Through the Four-Year
22 Finance Plan, ECECD has considered that, with
23 all of the considerable data and factors in
24 play, and projected what our budget would
25 look like over the next four years.

1 If you look at that Finance Plan,
2 you will see that there is a growing deficit
3 in the budget to really meet the needs of the
4 program. Opportunities like the Land Grant
5 Permanent Fund could potentially pick up that
6 deficit, to ensure that we're able to continue
7 to provide the services that are needed.

8 Q. BY MR. HERRERA: What is the plan to
9 fill that deficit or resolve that deficit if
10 the Land Grant Permanent Fund constitutional
11 amendment does not pass?

12 A. Well, we also receive funding from the
13 Early Childhood Trust Fund. Outside of that,
14 we have been trying to maximize any available
15 funding that has been accessible via the ARPA
16 funding, and Stabilization Grant funding,
17 which we also know are non-recurring funding
18 streams.

19 We are optimistic that the trust
20 fund will be approved. Ultimately, if the
21 funding isn't available, that would obviously
22 put us back in a position to reevaluate what
23 programs are being provided and where we would
24 need to make necessary modifications or
25 shuffle things around.

1 we have observed -- and of course we're
2 speaking in regard to the community-based
3 programs, which include Head Start programs,
4 who actually receive funding to fully cover
5 the cost of their workforce obtaining a
6 degree.

7 Typically what that trend
8 demonstrates is these community-based programs
9 support and eventually get their staff to the
10 requirement of having a Bachelor's Degree.

11 They typically then get absorbed by the public
12 school system, because these community-based
13 programs don't have the funding to support
14 the rate of pay for a Bachelor's-Degreed-
15 level teacher that the public school system
16 can support.

17 It essentially has become a
18 revolving door for these community-based
19 programs who work so hard to meet that
20 criteria, and then lose that teacher and have
21 to go back to square one.

22 Q. BY MS. DIEHL: So in what ways does
23 your Department support community-based
24 programs in retaining those teachers once they
25 meet that qualification?

1 stations, advertising the Scholarship Program,
2 the PreK Parity Program, and the Wage
3 Supplement Program.

4 Q. What's your opinion about the barriers
5 to the Wage Supplement Program?

6 MS. RAHN: Object to form and
7 foundation.

8 Go ahead.

9 THE WITNESS: Based on my observation
10 just in the Early Childhood Education industry
11 alone, many of the providers that work for
12 these community-based programs are getting
13 paid low wages. They oftentimes are single
14 parents, so they have young children
15 themselves, and it's really difficult for them
16 to work full-time and go to school. That's
17 one of the primary barriers.

18 Prior to the scholarship,
19 obviously funding and, you know, having the
20 finances to support that would have been a
21 barrier.

22 At this point it is also just the
23 affect of the pandemic and a workforce that
24 just really doesn't seem to be interested or
25 have a desire to go pack to work yet at this

1 A. Outside of the Four-Year Finance Plan,
2 none that I'm aware of.

3 MS. DIEHL: Okay. Is it okay if we
4 take a short break?

5 THE WITNESS: Yes, absolutely; I just
6 need to get a cough drop.

7 (The deposition recessed from 2:45
8 p.m. to 3:00 p.m.)

9 MS. DIEHL: All right. We are back on
10 the record.

11 Q. All right. Ms. Trujillo-Medina, before
12 we went off the record we were talking about
13 teacher workforce issues, and I want to stay
14 on that topic for another minute.

15 Can you describe how the lack of
16 Early Childhood teachers has impacted the
17 ability of PreK programs to expand or new ones
18 to open?

19 MS. RAHN: Object to form.

20 Go ahead.

21 THE WITNESS: My observation has been
22 that these programs may not be able to open
23 all of their PreK classrooms if they do not
24 have sufficient staff to staff them.

25 I have seen that aspect, but I can

1 actual budget -- and of course I think that
2 number would fluctuate depending on what
3 educational institution each student is
4 attending. Tuition rates are going to differ;
5 cost for books are going to differ.

6 Q. BY MS. DIEHL: How does ECECD track the
7 effectiveness of the Scholarship?

8 A. Well, obviously the effectiveness of
9 the Scholarship would be a student reaching
10 that goal and obtaining their degree.

11 Q. Right.

12 A. Once a candidate is a recipient of the
13 Scholarship, we would definitely track that
14 student's progress and what they document in
15 terms of completing their degree with support
16 of that funding opportunity.

17 Q. Is that happening?

18 A. Are we documenting it?

19 Q. Yes.

20 A. Yes.

21 Q. Is your Department also documenting
22 whether those teachers who have received the
23 Scholarship and completed the program remain
24 in New Mexico and teach as an Early Childhood
25 educator?

1 A. I cannot verify at this time if that's
2 a specific data point they are documenting.

3 Q. Are there plans to do that do you know?

4 A. Not that I'm aware of.

5 Q. All right. We covered the Wage
6 Supplement; we covered the PreK Parity
7 Program. I want to touch on the stipend you
8 mentioned.

9 Am I correct that's \$2,000 a
10 semester that's available?

11 A. Yes.

12 Q. When did that program begin?

13 A. It is effective this semester.

14 Q. Okay. How much funding is available
15 for that program?

16 MS. RAHN: Object to form.

17 Go ahead.

18 THE WITNESS: Again, I do not have the
19 budgeted amounts.

20 Q. BY MS. DIEHL: Is ECECD tracking the
21 effectiveness of that stipend?

22 A. ECECD will track the effectiveness of
23 that stipend.

24 Q. Between the four initiatives we have
25 discussed, which is the Scholarship that's

1 specific for Early Childhood, the Wage
2 Supplement, the PreK Parity Program, and the
3 stipend, how many teachers do you think these
4 incentives will generate?

5 MS. RAHN: Object to form and
6 foundation.

7 Go ahead.

8 THE WITNESS: Again, I can't project
9 that at this time.

10 Q. BY MS. DIEHL: Do you know how many
11 Early Childhood teachers are needed in this
12 state?

13 MS. RAHN: Object to form and
14 foundation.

15 Go ahead.

16 THE WITNESS: No, not at this moment.

17 Q. BY MS. DIEHL: How will the state
18 implement the Court's Orders with regard to
19 Early Childhood teachers and the shortages
20 without that kind of information?

21 MS. RAHN: Object to form and
22 foundation.

23 Go ahead.

24 THE WITNESS: Can you clarify what
25 specifically you're asking?

1 Does your Department track the race
2 and ethnicity of Early Childhood teachers?

3 MS. RAHN: Object to form.

4 Go ahead.

5 THE WITNESS: I cannot verify that at
6 this point.

7 Again, what I can tell you is that
8 in our plans to implement that Professional
9 Development Information System, there are
10 plans to gather that information specifically.

11 If we are reporting it elsewhere,
12 it may not be as accurate of a data pool as we
13 would like. With this new system that is in
14 the works, the goal is to be able to capture
15 that information collectively across the board
16 through PreK programs, Head Start programs,
17 tribal programs, private child care, from
18 anyone that is an educator in Early Childhood
19 Education.

20 MS. DIEHL: I would like to mark this
21 as Exhibit 9.

22 (Deposition Exhibit Number 9 was
23 marked for identification.)

24 Q. BY MS. DIEHL: All right. You have
25 before you Exhibit 9, which I'll represent to

Exhibit 10

D-101-CV-2014-00793; D-101-CV-2014-02224
LOUISE MARTINEZ, et al.; WILHELMINA YAZZIE, et al., V. THE STATE OF NEW MEXICO, et al.

Jacqueline Costales
August 18, 2022

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF JACQUELINE COSTALES

Thursday, August 18, 2022
9:30 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 Is that right?

2 A. Yes.

3 Q. If the 20 Reading Coaches regionally

4 support 25 to 28 schools, is it fair to say,

5 then, that a number of Reading Coaches would

6 be needed to ultimately support all teachers

7 in all schools statewide?

8 MS. RAHN: Object to form and

9 foundation.

10 Go ahead.

11 THE WITNESS: Yeah, I think that more

12 Reading Coaches would be needed; I don't know

13 how many.

14 The intent is not necessarily a

15 one-to-one ratio, like one coach to one

16 school. Some schools, like micro schools,

17 are very small; there would be more of a

18 regionalization.

19 Over time, there would be, you

20 know, one coach to some number, if you will,

21 but I think as we build it, and as schools

22 choose to come on board with that level of

23 support, we would determine, based on the

24 teachers, the classrooms, the students, what

25 is needed in that area.

1 would be specifically targeting information

2 back to the districts about what we saw or

3 didn't see, and asking them additional

4 questions if they didn't, you know, score

5 well on the rubric.

6 There is, for lack of a better

7 term, a cut score, so they would ask to look

8 at that, and we would receive that

9 information.

10 If, by "analysis," you mean are we

11 reading what the districts provide, the

12 answer is yes. What are we doing with that

13 information? They get a feedback report from

14 us.

15 Q. Just so I understand, that's in their

16 Plan about the use of the funding. Is that

17 right?

18 A. Yes.

19 Q. So after that funding has actually

20 been expended by the districts, is there an

21 analysis by PED of those expenditures?

22 A. I think you're asking me whether we

23 gone in and checked their cost accounts to

24 see if they spent it on that.

25 O. Right.

1 A. No, because that money flows into the

2 SEG formula, and really districts and school

3 boards have the discretion to allocate their

4 SEG money as they choose.

5 Q. So they could lay out a Literacy Plan

6 for you, but they are not required to spend

7 their SEG money on implementing that Plan.

8 Is that right?

9 MS. RAHN: Object to form.

10 Go ahead.

11 THE WITNESS: I can't answer that for

12 a district, or for any district. What I can

13 tell you is that we keep track of the

14 Attendance Data and Participation Data from

15 the training.

16 If teachers are going to training,

17 then there has been some provision, I would

18 assume, that they've given in the Plan. The

19 teachers are coming and attending the

20 training, and so there would be some

21 provision in the district's Plan to support

22 that.

23 If they use their SEG money, or

24 they use their Title I money, which could be

25 used to support reading, we would have no

1 LETRS training is and what it consists of?

2 A. Yes.

3 In terms of sort of the framework

4 and structure, it is eight units over two

5 years. Each unit takes about, depending on

6 the content, I think somewhere between 15 and

7 18 hours, so they do that over the course of

8 several months. It includes printed materials

9 that have to be read and interacted with for

10 the teacher in training.

11 It also includes online work in a

12 cohort. It includes what is called "Bridge to

13 Practice," where they learn it, they go back

14 to their classroom, and they give it a shot

15 and they come back during that module and work

16 on implementing whatever those objectives are.

17 That is spread out over the course

18 of approximately two years. It goes over the

19 specifics of Structured Literacy, which is

20 why, when I said I'm not an expert and I gave

21 you a short, you know, few-minute explanation,

22 I wouldn't be able to give you an in-depth

23 explanation of either a trainer or somebody

24 who has gone through the training.

25 They do that in a cohort over those

1 something outside of a teacher's contract.
 2 But I also think there are districts that, you
 3 know, set schedules, and it worked out pretty
 4 well for them.

5 I think there is a whole array,
 6 because each local agency is a little bit
 7 different in how they create this kind of
 8 environment and infrastructure.

9 Q. Sure.
 10 Have you heard of teachers having
 11 to do the training outside of their regular
 12 workday, or not getting a sub and doing it
 13 during classroom time, but after work, for
 14 example?

15 A. I think that's where the stipends
 16 would come in.

17 Q. Okay. So that is happening in some
 18 cases.

19 A. Yes. There are districts who are
 20 availing themselves both in terms of subs and
 21 stipends, to support their teachers in doing
 22 this.

23 I would also say that there are
 24 also districts that are figuring it out in
 25 their schedule, right, in terms of a

1 collaborative period where everybody in the
 2 same cohort could get together and talk about
 3 it, or work on whatever.

4 I think that's one of the powers
 5 of supporting educators, while not
 6 micromanaging, if you will, something like
 7 how they're going to implement a training
 8 schedule. We've worked quite a bit with
 9 districts and the vendor to find a training
 10 schedule that works and will make sense for
 11 the teachers who are going through the
 12 training.

13 Q. Did PED conduct any kind of analysis in
 14 terms of the funding districts need for
 15 stipends or substitute teachers, and whether
 16 the amounts were sufficient?

17 A. We did not do an analysis. I think we
 18 have anecdotal data that, in some cases, their
 19 share of the SEG that was for literacy
 20 development was pushed to the limit,
 21 especially because one of the things we did to
 22 do first and second in the same year, rather
 23 than a grade a year, is we used some of our
 24 state-level ESSER money to be able to afford
 25 the other grade level; right?

1 I think, in the year that we did
 2 that, some districts said, "I only have enough
 3 SEG for one grade level, so now you're pushing
 4 us on our end."

5 I wouldn't say we sat down and did
 6 an analysis to see which districts were
 7 struggling, but it's anecdotal as to which
 8 districts felt like they didn't have enough
 9 in that year to support the 2nd grade level
 10 if you will.

11 Q. Okay. In those cases would districts
 12 then be forced to use operational dollars to
 13 provide stipends to both grades?

14 A. I would think that "operational
 15 dollars" is synonymous with "SEG dollars."

16 If you are asking if they used
 17 other kinds of money, I think some
 18 recommendations would have been, "You can look
 19 at your Title II funds, which is specifically
 20 for professional development support, and you
 21 can look at your ESSER money that the district
 22 received. You can look at various supports
 23 that your district may have," for that year
 24 where we started two grade levels, if there
 25 wasn't enough with what flowed through their

1 Mexico over 70 percent of the students --

2 Q. BY MS. DIEHL: I understand that.

3 A. -- qualify in one of those four
 4 targeted Martinez/Yazzie subgroups.

5 Q. I understand that. I'm asking if there
 6 is a requirement that implementation is
 7 targeted to at-risk student groups, yes or
 8 no.

9 A. Implementation of --

10 Q. The LETRS training.

11 A. I would have to say yes, it's targeted
 12 to all students.

13 Q. I'm not asking about "all students."
 14 I'm asking about specific at-risk student
 15 groups.

16 A. It is targeted to all students. All
 17 students. So yes, does it include the four
 18 Martinez/Yazzie at-risk student groups? Yes.

19 Q. Okay.

20 How is PED ensuring that the LETRS
 21 training is being implemented with fidelity
 22 at the classroom level?

23 MS. RAHN: Object to form.

24 Go ahead.

25 THE WITNESS: I think we've talked

1 technical assistance and professional
 2 development meetings, and interacting with
 3 us, and we are providing that coaching and
 4 support to help them implement the Guidance
 5 that we have on Multilayer Systems of Support,
 6 which is how, in New Mexico -- or is the
 7 expectation in New Mexico for using targeted
 8 intensive interventions when a student is not
 9 performing at grade level.

10 Q. How does PED then track the
 11 effectiveness of those interventions?

12 A. What do you mean?

13 That would be related -- I think
 14 if I understand your question, that would be
 15 related to how students are performing on
 16 student assessments, such as Interim
 17 Assessments and Summative Assessments.

18 Because you're asking me how we
 19 track student achievement, or their need,
 20 their academic need -- I think that's what
 21 you're asking me. I would say that we take a
 22 look at those Assessment Data to see how
 23 students are performing.

24 Q. So PED connects a particular student or
 25 students within a district, who are receiving

1 status of compliance with the statute.

2 A. If you're asking me if we ask them to
 3 tell us if they are compliant, the answer is
 4 no.

5 MS. DIEHL: Just a few more questions
 6 on this topic, and then I suggest we break
 7 for lunch if that's okay with you,
 8 Ms. Costales.

9 THE WITNESS: Okay. That sounds great.

10 Q. BY MS. DIEHL: We have talked a little
 11 bit about PED's plans to monitor student
 12 achievement once they have received
 13 instruction from a teacher who has completed
 14 LETRS training; right?

15 A. Yes, sorry. Thank you for the prompt.

16 Q. Remind me again when that monitoring
 17 is anticipated to start.

18 A. Okay. So we consistently look at the
 19 Summative Achievement Data in the aggregate
 20 for students each year; okay? I would
 21 characterize that as a continuation of seeing
 22 how our students are performing in reading.

23 Q. Sure.

24 A. In terms of how the teaching cohorts
 25 are being trained and when their training is

1 CANVAS.

2 Q. And those online courses, how long are
 3 those?

4 A. They also probably have six or seven
 5 modules, but they can probably do that in a
 6 couple of sittings. They are not anywhere
 7 near as extensive as LETRS training.

8 Q. So actually grouping those two, or I
 9 should say combining those two groups of
 10 educators who have completed LETRS training
 11 versus online training, and to say that they
 12 have all been trained is a little misleading.

13 A. We probably should have separated them,
 14 yeah.

15 Q. Okay.

16 One final clarification question,
 17 because I realize LETRS is the big focus or
 18 push right now. Just making sure I understand
 19 the landscape, are there plans to implement
 20 any other professional development on
 21 Research-Based Reading Programs for teachers,
 22 other than what we've discussed at length?

23 A. Specific to reading, no.

24 That's really hard to say, but I
 25 think that this has been our major push; to

1 A. Yes, there may be a couple of
 2 institutions that are doing that; that's what
 3 I said earlier.

4 Q. Other than the one you mentioned, yes.

5 A. I think those are "plans."

6 Q. "Plans" outside of the one you
 7 mentioned.

8 A. I think we are developing or having
 9 those conversations; I feel like I've answered
 10 you.

11 Q. But you haven't; a "conversation" is
 12 not a "plan," is it?

13 MS. RAHN: Object to form.

14 Go ahead.

15 THE WITNESS: I think that the Public
 16 Education Department does not have the
 17 authority to tell universities what their
 18 curriculum is.

19 Q. BY MS. DIEHL: That wasn't my question.

20 A. We are in conversations and developing
 21 awareness, and hopefully a vision towards
 22 Teacher Prep Programs utilizing Structured
 23 Literacy in their programs, so that teachers
 24 have training when they come out.

25 Q. I understand.

1 is how are our students performing based on
2 Assessment Data.

3 Q. BY MS. DIEHL: So you utilize the
4 statewide Assessment Data in reading for
5 example.

6 A. Yes in various formats, yes, such as
7 the Summative data.

8 Q. Does PED analyze that data by district?
9 A. The Summative Data?

10 Q. The Assessment Data in any form.
11 A. That would be a question for our
12 Accountability team.

13 I think when we get the Summative
14 Data, the Accountability team can drill down
15 district-by-district and how they are doing,
16 including all of the subgroups.

17 Q. Okay. And then does PED conduct a
18 comparison between that Assessment Data and
19 the programs and supports a district is
20 providing for reading and literacy?
21 A. Yeah, no. I think that would become
22 part of the evaluation that I talked about
23 earlier, once we know that the teachers have
24 their complete training.

25 Q. Okay.

1 A. (No audible response.)

2 Q. Is it your opinion there could be
3 additional funding available for those
4 educators in terms of increasing reading
5 proficiency?

6 A. In my opinion, here's how I can answer
7 that, or what I can say about that:

8 If we had double the funding in a
9 fiscal year, then we would be able to provide
10 double the supports; right? But knowing that
11 we have the funding that has been provided for
12 Structured Literacy in particular, it was from
13 zero, you know, up to about \$1.6- for a couple
14 years, and now it's at \$11-, and we're putting
15 in for \$14 million.

16 I would say that with additional
17 funding, we would be able to accelerate our
18 schedule of support; right? Maybe we would
19 start with secondary sooner if we had
20 additional funding. But right now we're doing
21 it to the limit of the funding we have, on a
22 schedule that has us, you know, bringing
23 additional cohorts or phases on board.

24 Q. Got it. Okay. Thank you.
25 Turning back to the Action Plan on

1 page 41, I would like to direct your
2 attention to the next two -- I'm sorry -- the
3 next paragraph regarding PED's partnership
4 with Dual Language Education of New Mexico
5 and the Guidance for Structured Literacy for
6 biliteracy instruction.

7 Do you see that paragraph there?
8 A. Yes, uh-huh.

9 Can I say one thing that I didn't
10 say for the last question?

11 Q. Of course.

12 A. Yeah, if PED receives below-the-line
13 funding to support Structured Literacy, and
14 it would be an additional amount, then there
15 would also need to be additional SEG funding,
16 so that districts could put in place the
17 infrastructure that we talked about.

18 Q. Okay.

19 A. Those two things would have to go
20 together.

21 Q. Interesting. Thank you for that
22 clarification.

23 A. Okay.

24 Q. Is that part of the Legislative package
25 or Budget Request; that the two rise together?

1 "The Structured Literacy in
2 New Mexico initiative should drive
3 literacy and biliteracy instruction
4 for [English language learners].
5 It should serve as a foundation to
6 build upon for biliteracy
7 instruction, with the understanding
8 that more is needed for [English
9 learners]."

10 Q. Okay. Taking that into account, I
11 guess I'm just curious again if, without more,
12 Structured Literacy is enough for English
13 language learners.

14 A. No. In fact, I think this acknowledges
15 that teaching students to read in Spanish is
16 different than teaching students to read in
17 English. This document was meant to support
18 the field in those areas that they were
19 required to have training in, according to
20 state statute in Structured Literacy, where
21 that alignment is, and where they may need to
22 continue to utilize the research that is
23 specific to English language learners.

24 Q. Sure. I understand this Guidance is
25 just that; Guidance for educators. It is not

1 or does not contain requirements for
 2 educators. Is that right?
 3 A. Yes.
 4 Q. Okay. Let's talk a little bit about
 5 the role of the Language and Culture Division
 6 and your understanding of how kind of their
 7 role in helping create this document.
 8 Did the Language and Culture
 9 Division, that you know of, work with Dual
 10 Language Education of New Mexico?
 11 A. I believe there were people from
 12 Language and Culture that worked with Director
 13 Severo Martinez in the rewrites. I think
 14 there was a certain amount of interfacing, but
 15 as to how in-depth that was, I don't know.
 16 Q. Then once the draft came from Dual
 17 Language Education of New Mexico to PED, did
 18 the Language and Culture Division have a role
 19 in making the changes that were made to the
 20 draft?
 21 A. I think there was interfacing; I don't
 22 know the depth of that.
 23 Q. Okay. Just so I'm clear, what is your
 24 definition of "interfacing"? I just want to
 25 make sure I know what you mean when you say

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1 that we have in place to support Structured
 2 Literacy in particular.
 3 Q. BY MS. DIEHL: Right. I understand
 4 that.
 5 What professional development are
 6 teachers receiving, then, in literacy for
 7 English language learners, or second language
 8 learners?
 9 A. They would be receiving -- when I spoke
 10 about some of the work that's happening in
 11 Dr. Bannerman's Division, support for English
 12 language learners, whatever that professional
 13 development is, is also available.
 14 Q. Is that specific to literacy?
 15 A. As I said before, I can't speak to
 16 that; that's not in my portfolio of practice.
 17 Q. Okay. Is that professional development
 18 required?
 19 A. I don't know.
 20 Q. Is there any other professional
 21 development, other than that, that you know
 22 of?
 23 A. That I know of? I don't know what all
 24 the districts are providing for Structured
 25 Literacy, or literacy specific to English

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1 that.
 2 A. Sure.
 3 I think there was discussions; I
 4 think there may have been some cross-team
 5 meetings. But to what depth, I don't know.
 6 Q. Okay.
 7 I guess we've established that
 8 these are not required practices for teachers
 9 to use. Is there a requirement that teachers
 10 review this Guidance?
 11 A. No.
 12 I do want to point out, on page 29,
 13 you were asking me what are the units in those
 14 CANVAS modules, and they are listed here.
 15 Q. Excellent. Good. Thank you.
 16 Do you know why these practices are
 17 not required?
 18 MS. RAHN: Object to form.
 19 Go ahead.
 20 THE WITNESS: I think the statute
 21 requires training in Structured Literacy, and
 22 implicit in that means implementation of
 23 Structured Literacy.
 24 This document was put together to
 25 support teachers that teach reading in

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1 language learners. There may being other
 2 things that are being provided in the Agency
 3 that I am unaware of.
 4 Q. So within your purview, you don't know
 5 of any other professional development
 6 regarding literacy for English language
 7 learners.
 8 A. Yes.
 9 Q. In your opinion does PED have the
 10 authority to require educators to incorporate
 11 this Guidance for English language learners?
 12 MS. RAHN: Object to form and
 13 foundation.
 14 Go ahead.
 15 THE WITNESS: That's a really
 16 interesting question.
 17 The Public Education Department
 18 takes a look at and is responsible for putting
 19 into place anything that is statutorily
 20 required by the State of New Mexico, or is
 21 required by the federal government, since we
 22 accept Title moneys.
 23 Q. BY MS. DIEHL: Right.
 24 A. We utilize rule to put that into
 25 practice, and we utilize Guidance to put that

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1 into practice.

2 Do we have the authority to require

3 whatever we want because we think it's a good

4 idea? I would say we probably don't. We are

5 responsible for helping the LEAs enact state

6 statute which results in some rule, or federal

7 law requirements or expectations, or anything

8 that falls under OCR or IDA. It is our job

9 to help districts put those lawfully enacted

10 expectations into place.

11 I guess I would say we don't have

12 statutory authority, or authority from any

13 other place, to just decide what we want to

14 require. I think we do that based on what is

15 expected in those federal and state

16 requirements.

17 Q. How does the State ensure, then, that

18 teachers receive training in teaching reading

19 to English language learners?

20 A. There is components of LETRS -- again,

21 not my area of expertise -- that address the

22 needs of English language learners as part of

23 the pedagogical approach and systematic

24 teaching of reading.

25 I want to be careful that, you

1 elements to teaching English language learners

2 to read reflected in this Guidance?

3 A. Do I have any reason to think --

4 Q. Are there any plans within PED --

5 A. To require this to be used?

6 Q. To require the elements contained in

7 Exhibit 3 for teaching reading to English

8 language learners.

9 A. This is guidance; it's not something --

10 guidance is not -- guidance is guidance.

11 Q. I guess what I'm asking is are there

12 any plans within PED to require literacy

13 instruction for English language learners

14 contain more than Structured Literacy, as this

15 Guidance says there needs to be?

16 A. I don't know what Dr. Bannerman's

17 Division is doing. I would say at the

18 moment, there is no plans in my Division.

19 Q. Okay. Do you think there should be?

20 MS. RAHN: Object to form and

21 foundation.

22 Go ahead.

23 THE WITNESS: I don't know that I can

24 answer that question straight out, because I

25 think you're making assumptions that LETRS is

1 I just don't have the expertise to tell you

2 that, as I have not taken that training

3 myself.

4 Q. Okay. The LETRS training, though, is

5 a method of Structured Literacy; right? It

6 falls under that umbrella.

7 A. Yes.

8 Q. Okay. But you're not aware of whether

9 it includes the "more," to use the language

10 from the Guidance document of Exhibit 3, page

11 29, that is needed for English language

12 learners.

13 MS. RAHN: Object to form.

14 Go ahead.

15 THE WITNESS: I do not know the

16 specifics regarding the supports for English

17 language learners that would be incorporated

18 into the pedagogical approach, and if it

19 addresses the "more" or not.

20 Q. BY MS. DIEHL: If it did, this Guidance

21 document wouldn't be necessary; right?

22 MS. RAHN: Object to form.

23 Go ahead.

24 THE WITNESS: No, I can't agree with

25 that.

1 you're anticipating where each other is going,

2 but you're speaking over her question.

3 THE WITNESS: Okay. Thank you.

4 MS. RAHN: Thank you.

5 Q. BY MS. DIEHL: Does PED monitor

6 whether educators review this document?

7 A. No.

8 Q. Are there plans to do that?

9 A. No.

10 Q. By "this document," I meant Exhibit 3.

11 A. Thank you.

12 Q. How does PED monitor whether teachers

13 of English language learner students are

14 implementing teaching strategies that are

15 described in Exhibit 3?

16 A. The New Mexico PED -- I think this

17 goes back to that supervisory role that we

18 were talking about before.

19 The New Mexico PED does not monitor

20 teachers. Principals are in a supervisory

21 relationship with teachers, and they monitor

22 teachers. Whether or not implementation of

23 anything, regardless of what is being

24 discussed, is happening in a classroom is a

25 discussion between the supervisor and the

1 Q. Actually, let's just go a few more
2 minutes and take an actual formal break if
3 you would.

4 Under Section IV, or any section
5 of the Literacy Plan, are districts required
6 to indicate whether they have enough Reading
7 Interventionists, Reading Coaches, or Reading
8 Teachers, whatever you want to call them?

9 A. No, we do not ask them for a number.

10 Q. Okay. Other than looking at this Plan,
11 how else does PED ensure schools have
12 sufficient resources to provide these things?

13 A. I think that the districts' SEG is
14 intended to fund the needs of the district,
15 the students, and the educators. I mean they
16 use their SEG money to build the program that
17 they need to meet the needs of their local
18 community.

19 Q. Okay. So PED doesn't do any analysis
20 of whether they have enough funding to
21 implement the Literacy Plan that they give
22 you.

23 A. We do not do analyses; that's related
24 to budget in Teaching, Learning, and
25 Assessment. Somebody maybe doing that in our

1 be action planning and goal setting around
2 students in their district, including the
3 Martinez/Yazzie subgroups.

4 Q. BY MS. DIEHL: Sure. You're saying the
5 districts make those determinations. I'm
6 saying on the PED's side, the reviewers
7 aren't conducting that analysis themselves,
8 are they?

9 MS. RAHN: Object to form.
10 Go ahead.

11 THE WITNESS: Probably, without the
12 rubric, I can't specifically speak to that.

13 Q. BY MS. DIEHL: If I understand you
14 correctly, PED doesn't determine if a district
15 actually implements its Literacy Plan, other
16 than knowing about teacher professional
17 development, which you testified to earlier;
18 right?

19 A. No.

20 Q. Just so we have a clean record, your
21 answer...

22 MS. DIEHL: Mr. Lee, could you read
23 back that last question?

24 (Record read as follows: "If I
25 understand you correctly, PED

1 professional-based research studies have a
2 really hard time because of the amount of
3 variables that could be impacted. It could
4 be the parent got the student a tutor. It
5 could be that this one went to after-school
6 tutoring and this one didn't.

7 It could be because the teacher
8 changed pedagogical approaches. It could be
9 that interventions were put in at exactly the
10 right space, depending on what the Formative
11 Assessment Data said.

12 There is a lot of variables that
13 impact that, so considering how that could be
14 done and how you trace it back is part of the
15 conversation with the Accountability team.

16 Q. Okay. We can start to sum up this
17 topic area and move on.

18 Just so I understand, PED does not
19 determine whether a district's Literacy Plan
20 meets the needs of at-risk students in that
21 district; right?

22 MS. RAHN: Object to form.
23 Go ahead.

24 THE WITNESS: I think, based on what
25 is expected in the Literacy Plan, there would

1 doesn't determine if a district
2 actually implements its Literacy
3 Plan, other than knowing about
4 teacher professional development,
5 which you testified to earlier;
6 right?")

7 THE WITNESS: No, I think we look at
8 their Plans.

9 Q. BY MS. DIEHL: Right, but PED doesn't
10 know if a district actually implements the
11 Plan; right?

12 A. Are you asking if we're doing site
13 visits to see if their Plan is in place?
14 Because the answer would be no.

15 Q. Okay.

16 A. What are you asking?

17 Q. I think that answers it.

18 A follow-up to that would be PED
19 doesn't look at a district's expenditures at
20 the end of the year, to confirm they align
21 with their Literacy Plan; right?

22 A. No.

23 Q. Is there any other ways, in fact, that
24 PED could monitor whether a Plan was
25 implemented, other than site visits or

1 expenditures on a Literacy Program?
 2 MS. RAHN: Object to form.
 3 Go ahead.
 4 THE WITNESS: There are probably other
 5 ways; I can't think of any off the top of my
 6 head.
 7 Q. BY MS. DIEHL: Okay. And PED doesn't
 8 do anything else that you're aware of.
 9 MS. RAHN: Object to form.
 10 Go ahead.
 11 THE WITNESS: I don't know everything
 12 that they're doing in other Divisions.
 13 I think, you know, we have the
 14 MLSS Coaches that could be working with a
 15 district on their Plan, if that's what they
 16 are targeting and if that's what the district
 17 is looking for.
 18 There is an array of ways in which
 19 we could be interacting with a district. Do
 20 we do it for 100 percent of the districts?
 21 No, we do that based on customization and how
 22 districts, you know, request that we engage
 23 with them related to their Plan.
 24 Q. BY MS. DIEHL: I understand.
 25 Are you aware of any plans that

1 and it is a general practice, because Title I
 2 funding is there to support literacy and math
 3 development.
 4 Q. Okay.
 5 A. They potentially could use that, and
 6 that's one example. There may be others that
 7 they are utilizing.
 8 Q. Can you describe PED's efforts to make
 9 sure at-risk students have access to Reading
 10 Specialists?
 11 MS. RAHN: Object to form.
 12 Go ahead.
 13 THE WITNESS: I think that's based on
 14 their Student Achievement Data, and that's a
 15 district-level decision.
 16 Q. BY MS. DIEHL: Are there any Plans for
 17 PED to request funding that's specific for
 18 districts to hire Reading Specialists?
 19 A. No.
 20 Q. Okay.
 21 How does PED ensure all districts
 22 have enough funding to provide literacy
 23 instruction to all at-risk students?
 24 MS. RAHN: Object to form.
 25 Go ahead.

1 familiar with the Finding by the
 2 Court in this case about there
 3 being an insufficient number of
 4 Reading Interventionists/Reading
 5 Specialists for students?")
 6 Q. BY MS. DIEHL: Ms. Costales, talking
 7 about whether districts have a sufficient
 8 number of Reading Specialists for their
 9 students, are you aware of whether they do or
 10 not?
 11 A. I do not know, LEA by LEA, whether or
 12 not they have enough Reading Specialists.
 13 Q. Okay. Is it fair to say PED doesn't
 14 monitor how many students are served by a
 15 Reading Specialist?
 16 A. Yes.
 17 I mean there's probably information
 18 being fed to us through STARS regarding, you
 19 know, caseloads. But whether or not my
 20 Division has ever pulled that down to see if
 21 there is a good match between the number of
 22 specialists to a district, no.
 23 The other thing I want to say is
 24 that districts receive their SEG allocation,
 25 and they are able to determine how they want

1 THE WITNESS: I am not a financial
 2 expert, but we do have an at-risk index in
 3 the SEG that creates a multiplier for at-risk
 4 students.
 5 Q. BY MS. DIEHL: Okay.
 6 A. There is money generated in their SEG
 7 to support specifically at-risk students.
 8 Q. Okay. I think as we've talked about,
 9 right, districts have discretion in how they
 10 use their SEG money; right?
 11 A. Yes.
 12 Q. And currently PED does not track how
 13 that money is expended; right?
 14 A. The Fiscal Department might do some
 15 tracking, I mean in terms of budget spend-
 16 down, but we don't do fiscal tracking related
 17 to Structured Literacy in Teaching, Learning,
 18 and Assessment.
 19 Q. All right. Great. Thank you.
 20 How does PED ensure that funding
 21 for literacy specifically targets the lowest
 22 performing schools?
 23 A. So again, this is not in my Division,
 24 but we have the Priority Schools Bureau, who
 25 supports and identifies schools in need of

1 through 12 to achieve reading proficiency.
 2 MS. RAHN: Object to form and
 3 foundation.
 4 Go ahead.
 5 THE WITNESS: I'll answer the same
 6 way, yes, but that may not be all that's
 7 needed.
 8 Q. BY MS. FLORES: Thank you.
 9 Could you list for me today the
 10 reading interventions and reading programs
 11 that are available for at-risk students in
 12 grades six through 12?
 13 A. Reading programs are a local
 14 determination, so they are based on the
 15 Assessment Data they have for their students
 16 to address that.
 17 You said "programs" and what other
 18 thing?
 19 MR. YOHALEM: Reading interventions.
 20 Q. BY MS. FLORES: Reading interventions.
 21 A. I may say that intervention may speak
 22 a little bit more to pedagogy. That's, again,
 23 a local decision on how districts would use
 24 intervention, along with some of the other
 25 things that I mentioned a moment ago, to help

1 needs of their students.
 2 Q. Okay. I'm asking a slightly different
 3 question. It is how is PED ensuring that all
 4 at-risk students, in grades six through 12,
 5 have the resources they need, whatever those
 6 resources are determined to be, as decided by
 7 the local district, to ensure the resources
 8 are available for at-risk students to achieve
 9 reading proficiency?
 10 A. How districts use their SEG dollars is
 11 determined by districts; I don't think that
 12 changes my answer.
 13 Q. Okay. Is it your testimony that PED
 14 does not have a mechanism in place for
 15 ensuring that at-risk students, in grades six
 16 through 12, have the resources they need to
 17 achieve reading proficiency?
 18 MS. RAHN: Object to form.
 19 Go ahead.
 20 THE WITNESS: I don't think that is a
 21 question I can answer with a yes or a no. I
 22 am not sure what other Divisions and
 23 Bureaus -- for example, what the Financial
 24 Division might be asking for. I don't do
 25 those reviews; that's not part of my scope of

1 reading programs and initiatives there
 2 currently are for at-risk student groups in
 3 grades six through 12?
 4 A. Programs are selected or initiated at
 5 the district level, so every program that is
 6 being used I would not be able to list. They
 7 choose at the local level based on the needs
 8 of their students.
 9 Q. Okay. As you have said before, PED
 10 does not track what those local programs or
 11 initiatives are for at-risk students in grades
 12 six through 12.
 13 A. We do not have a list that says what
 14 districts are using specifically. We do have
 15 their MLSS Self-Assessments, as we have
 16 already discussed.
 17 Q. Okay. And how is PED ensuring that
 18 students, in grades six through 12 -- at-risk
 19 students in grades six through 12 -- have the
 20 resources necessary to achieve reading
 21 proficiency?
 22 A. Again, those are local-level decisions
 23 based on their SEG and other budgets that they
 24 generate, to determine the instructional
 25 program design that is necessary to meet the

1 the curriculum that is on the list for
 2 Adoption can be identified as high quality.
 3 "Student enrollment," I'm assuming
 4 that means programming by subgroup, or by the
 5 Martinez/Yazzie subgroups.
 6 MS. FLORES: David, could you read my
 7 question again.
 8 Q. You know, Ms. Costales, I'm not asking
 9 about every single piece of this.
 10 MS. FLORES: David, if you could --
 11 THE WITNESS: That's my mistake then,
 12 since you referred me to that sentence, so...
 13 Yes, ask again.
 14 MS. FLORES: David, you don't have to
 15 read it again.
 16 Q. I am asking very specifically about
 17 evaluation of "reading initiatives and
 18 literacy and reading programs and
 19 interventions."
 20 In the evaluation of those
 21 "reading initiatives and literacy and reading
 22 programs and interventions," is there
 23 currently a mechanism in place to evaluate
 24 "reading initiatives and literacy and reading
 25 programs and interventions"?

1 A. Yes. They submit their Literacy Plan,
 2 and yes, they submit an MLSS Self-Assessment.
 3 That's all related to the support of reading.
 4 If you're asking me if we have
 5 contracted with an external evaluator, like
 6 Rand -- just picking one off the top of my
 7 head -- to do an evaluation of literacy
 8 materials, then the answer would be no.
 9 Q. Thank you.
 10 Other than the Literacy Plans and
 11 the MLSS, is there anything else that is
 12 currently in place to evaluate programs?
 13 A. Not in Teaching, Learning, and
 14 Assessment. I can't speak for the entire
 15 Agency on that question.
 16 Q. You are here to testify about, "reading
 17 initiatives and literacy and reading programs
 18 and interventions," not the other bureaus. I
 19 understand you're saying that there may be
 20 other things in place at others bureaus that
 21 you are not aware of. You are here as the
 22 person most knowledgeable on "reading
 23 initiatives and literacy and reading programs
 24 and interventions."
 25 To your knowledge, is there

1 a sufficient education such that students can
 2 be proficient in reading, or any academic
 3 area.
 4 Q. BY MS. FLORES: The targeted resources
 5 and interventions that you have described
 6 throughout today, those are areas that fall
 7 under your Division. Is that correct?
 8 A. The ones that I described in depth,
 9 yes.
 10 Q. Okay. Thank you.
 11 As far as those resources go, what
 12 falls under your Division, the reading
 13 programs and the targeted interventions and
 14 the technical support, and everything else you
 15 have listed, are those resources available for
 16 every at-risk student in every public school
 17 in New Mexico?
 18 A. No. I've already testified that we
 19 are having to scale in. We are having to
 20 scale in based on the resources we have. We
 21 started at 1st grade because of Senate Bill
 22 398, and we are moving up the grades.
 23 Would I prefer to train every
 24 single one of New Mexico's, you know,
 25 20-something-thousand teachers today? Yes, I

1 anything else, other than Literacy Plans and
 2 the MLSS?
 3 A. No.
 4 Q. Thank you.
 5 Earlier we reviewed some of the
 6 proficiency rates for grades six through 12.
 7 For at-risk students in grades six through
 8 12, are there any other "reading initiatives
 9 and literacy and reading programs and
 10 interventions" that you are aware of at the
 11 PED level?
 12 A. No.
 13 Q. Are there any plans to develop or
 14 implement "reading initiatives and literacy
 15 and reading programs and interventions" for
 16 at-risk students in grades six through 12?
 17 A. Yes. As I mentioned earlier, the ones
 18 that we have created is a tiered approach, or
 19 a phased-in approach to get teachers trained
 20 in literacy. We have gone through and
 21 supported that training for all elementary
 22 teachers, and then we will move to secondary.
 23 Q. And you may have testified about this
 24 earlier, so I apologize if this is a repeated
 25 question:

1 would. I would prefer to do that, but that
 2 is not the reality if you would.
 3 Q. Okay. Thank you.
 4 David, could you tell us how much
 5 more time we have?
 6 THE CERTIFIED REPORTER: I'm going to
 7 go off the record.
 8 (The deposition recessed from 5:21
 9 p.m. to 5:21 p.m.)
 10 Q. BY MS. FLORES: I would like to touch
 11 again on English language learners and the
 12 biliteracy initiatives and the dual program
 13 you were discussing with Alisa earlier. I
 14 want to make sure I understand.
 15 This is Guidance; it is not
 16 mandatory. Is that correct?
 17 A. It's a Guidance document.
 18 Q. Okay. Is PED monitoring how many
 19 teachers access both the Guidance and the
 20 modules that are available on PED's website?
 21 A. For modules, we would have a count;
 22 Guidance we would not.
 23 Q. Okay. Through the Literacy Plan is PED
 24 monitoring whether teachers, who are teaching
 25 reading to English language learners, are

Exhibit 11

D-101-CV-2014-00793; D-101-CV-2014-02224
LOUISE MARTINEZ, et al.; WILHELMINA YAZZIE, et al., V. THE STATE OF NEW MEXICO, et al.,

Seana Colleen Flanagan
July 22, 2022

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF SEANA COLLEEN FLANAGAN

Friday, July 22, 2022
9:31 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 A. I know that with the Draft Action Plan,
 2 our goal was to obtain feedback from the
 3 communities, to gather their thoughts on the
 4 Targets that we had set. From there, I
 5 believe it is our intention to conduct further
 6 review of that data, to determine what would
 7 be needed to achieve those goals.
 8 Q. But that further review has not begun
 9 yet. Is that right?
 10 A. That is correct.
 11 Q. Okay. All right. Thank you,
 12 Ms. Flanagan.
 13 Moving on, I would like to talk
 14 about teacher salaries.
 15 I direct your attention again to
 16 Exhibit 4 of the Rebecca Reyes deposition on
 17 page 5. The paragraph under funding that's
 18 titled, "Teacher Salaries."
 19 Of course this addresses the 7%
 20 pay increase, and the changes to base salary
 21 that was passed by the Legislature in the
 22 2022 Legislative session.
 23 Are you familiar with that?
 24 A. Yes.
 25 Q. Okay.

1 Can you tell me how that 7% was
 2 determined?
 3 A. I can't; I don't have knowledge of
 4 that.
 5 Q. Okay. That's okay.
 6 And what about the increases to the
 7 base minimums; do you know how that decision
 8 was made?
 9 A. I don't.
 10 Q. Do you know who made those decisions?
 11 A. Within the Department that would have
 12 been made by the Cabinet team at the time,
 13 along with members of the Governor's team.
 14 That would have been Deputy Secretary Katarina
 15 Sandoval, Deputy Secretary Gwen Perea
 16 Warniment, Policy Director John Sena, and the
 17 Secretary.
 18 Q. I want to back to the 7%. Who would
 19 know how that decision was made?
 20 A. Those same folks that I named.
 21 Q. Okay. I just wanted to be sure.
 22 Do you know whether the Fiscal
 23 Year '23 teacher salaries are competitive
 24 with surrounding states?
 25 A. I do know that they are competitive

1 with surrounding states, and I do know that we
 2 will ask again this year for another increase.
 3 Q. What is the increase that you
 4 anticipate requesting?
 5 A. I don't know that. Early
 6 conversations have started; I don't know
 7 numbers.
 8 Q. How do you know that Fiscal Year '23
 9 salaries are competitive with the surrounding
 10 states?
 11 A. This is information that has been
 12 shared with the executive leadership team from
 13 Secretary Steinhaus and Dr. Gonzales.
 14 Q. Did that information take into account
 15 those salary increases that those other states
 16 have implemented?
 17 A. That's a question I don't know the
 18 answer to.
 19 Q. Okay.
 20 Do you know whether that analysis
 21 took into consideration inflation?
 22 A. I don't, no.
 23 Q. How will PED monitor whether these
 24 increases help to recruit teachers?
 25 A. Well, there is a couple of different

1 That money is from the federal government,
 2 and is specifically targeted towards teacher
 3 and school leader Professional Learning and
 4 Professional Development.
 5 I'm most familiar with the Title
 6 II piece of it. Each district has to complete
 7 an application to get their funding. That's
 8 reviewed by the team that is headed up by
 9 Candice Flint.
 10 While Professional Development
 11 isn't the only thing that they can spend their
 12 money on through that, that's where we look
 13 for them to target spending that money.
 14 Our check on that is we compare
 15 their application and approve that. We also
 16 approve, on the back end, all of the Requests
 17 for Reimbursements that they make towards that
 18 fund.
 19 Q. And by that do you mean you make sure
 20 there is alignment between what they said they
 21 were going to spend it on in their application
 22 and their Request for Reimbursement?
 23 A. That's correct.
 24 Q. How much Title II funding was available
 25 the last fiscal year?

1 A. The state received just shy of \$16
2 million, and that money runs on an 18-month
3 time frame, the federal funds do. 97% of that
4 is flowing through to the districts, and then
5 the remaining part is held by PED to support
6 the staff that does the work, as well as some
7 additional Professional Learning that we may
8 want to do as an Agency for the State.

9 Q. Okay.

10 Out of that \$16 million, how many
11 teachers receive Professional Development?

12 A. At the LEA level or the district level,
13 I couldn't say.

14 Q. In what areas did teachers receive
15 Professional Development with that \$16
16 million?

17 A. The money that flowed to the LEAs, I
18 couldn't say.

19 I can tell you, for the Title II
20 Bureau, we use the money to support coaching
21 and feedback, and supports around Teacher
22 Evaluations for educators.

23 Q. Okay. So PED doesn't track the
24 Professional Development that comes as a
25 result of that \$16 million.

1 A. We do not.

2 Q. Okay.

3 You also said that there is money,
4 through the SEG, for Professional Development.
5 What funding was appropriated for that in the
6 current fiscal year?

7 A. I don't know.

8 Q. So PED does not track Professional
9 Development that is a result of funding
10 through the SEG.

11 A. We do not.

12 Q. Does PED track the number of teachers
13 that receive Professional Development through
14 that funding?

15 A. We do not.

16 Q. Does PED track the type of Professional
17 Development that is received as a result of
18 that funding?

19 A. We do not.

20 Q. Does anyone else track the teachers
21 who receive the Professional Development and
22 how the money is spent, or the types of
23 training they receive?

24 MS. RAHN: Object to form and
25 foundation.

1 Her team -- and I don't know
2 specifically who on her team, but her team
3 would be responsible for tracking and ensuring
4 that all districts' staff have completed that.

5 Q. Thank you.

6 What about Professional Development
7 that's specific to the Indian Education Act?

8 A. Interim Assistant Secretary Rebecca
9 Reyes and her team would be responsible for
10 tracking those professional learnings that
11 are happening.

12 Currently the Agency or PED does
13 not have one centralized position or bureau
14 tracking or aligning the Professional Learning
15 that's happening across the Agency's different
16 bureaus.

17 However, one of the vacant
18 positions that we spoke to earlier, that will
19 be filled by somebody on Monday, that person,
20 as part of their role, they will be the
21 Professional Learning Coordinator. Part of
22 their role will be to work internally with
23 Department leaders to align Professional
24 Learning that's happening across the Agency,
25 and set up a tracking mechanism, so we can

1 Q. As part of her job description, though,
2 does that actually include specific Action
3 steps that are needed to really get an Agency-
4 wide tracking system step up and running?

5 A. I don't recall.

6 Q. All right.

7 Going back to specific initiatives
8 that PED takes to provide Professional
9 Development, we just discussed the Indian
10 Education Act.

11 Is there training specific to how
12 to teach native students and, you know,
13 infusing that perspective into a teacher's
14 classroom practices?

15 A. Not that I'm aware of. However, that
16 would be led by Rebecca and her team in the
17 Indian Education Division.

18 Q. Okay. What about training that's
19 specific to teachers in schools with high
20 populations of at-risk students?

21 A. Under Deputy Secretary Vickie
22 Bannerman's directorate, they have a staff
23 member who is working closely on the at-risk
24 piece of the work, but I'm not aware of any
25 specific training for that.

1 O. By "at-risk piece of work," that does
2 not include Professional Development.
3 A. Not that I'm aware of.
4 Q. So PED does not provide Professional
5 Development in this area.
6 MS. RAHN: Object to form.
7 THE WITNESS: Not that I'm aware of.
8 Q. BY MS. DIEHL: Can you describe your
9 knowledge of how teachers are compensated, in
10 order to participate in the training that PED
11 does provide?
12 A. For some PED training, stipends are
13 provided to educators to come and participate,
14 especially because these occur outside of
15 working hours. We want to make ensure that
16 educators are compensated for the time away
17 from the classroom.
18 Q. Are stipends always provided for that
19 type of that training?
20 A. Not for every training, no.
21 Q. How much funding is available to
22 provide those stipends?
23 A. Each individual program would have
24 their own funding source that they would set
25 aside for stipends for training. It could

1 Okay. Let's see.
2 Does PED know if the current
3 Professional Development offerings, for
4 serving Native American students, are
5 effective?
6 MS. RAHN: Object to form.
7 THE WITNESS: I don't have knowledge of
8 that.
9 Q. BY MS. DIEHL: Do you know who would?
10 A. That would be Interim Assistant
11 Secretary Rebecca Reyes.
12 Q. Okay. Is it fair to say, then, that
13 PED doesn't track whether the Professional
14 Development that is targeting Native American
15 students actually improves outcomes for those
16 students?
17 A. Not to my knowledge.
18 Q. Ms. Flanagan, I would like to ask the
19 same questions at-risk students generally.
20 It's fair to say that PED does not
21 track whether the trainings have resulted in
22 improved outcomes for at-risk students.
23 A. Currently we do not.
24 Q. Does PED allocate funding to districts
25 to conduct Professional Development that's

1 do it.
2 Q. All right.
3 Does PED monitor the amount of time
4 for Professional Development that teachers
5 have across the state?
6 MS. RAHN: Object to form.
7 THE WITNESS: We do not.
8 Q. BY MS. DIEHL: Does PED evaluate the
9 effectiveness of the Professional Development
10 that is provided?
11 A. Currently we do not; however that will
12 be part of Ms. Marquez' new role.
13 Q. Okay. Does PED track which of the
14 trainings have resulted in improved competency
15 among teachers?
16 A. We do not currently; however that will
17 be part of Ms. Marquez' new role.
18 Q. Okay. Does PED track the number of
19 students who are then served by the teachers
20 who receive this training, particularly in
21 the four student groups addressed in this
22 lawsuit?
23 A. We currently do not, but that will be
24 part of Ms. Marquez' new role.
25 Q. Okay.

1 designed to improve outcomes for at-risk
2 students?
3 A. I don't know.
4 That would be a question for our
5 Fiscal team. I would direct it to Antonio
6 Ortiz, who is the Division Director for
7 Finance and Operations, or Scott Wright, the
8 Director of Operations.
9 Q. Okay.
10 How does PED ensure that teachers
11 receive Professional Development, period?
12 A. Through our individual bureaus and
13 directorates we can ensure that they are
14 receiving training that we are providing that
15 may or may not be required.
16 Once it reaches the district level,
17 we don't have as much -- "control" is not the
18 right word, but we don't have the data
19 reported back to us in a way where we would
20 be able to then look at it and say, "We have
21 this many teachers," and then look at it and
22 say, "This many teachers had an impact on this
23 many students."
24 Q. Okay. So how does PED ensure that
25 teachers receive the trainings that you offer

1 needle. It's going to become just ticking a
 2 box, and there's a lot of box-ticking that
 3 already happens. I think we would need to be
 4 really intentional about how we would do
 5 that, why we would do that, what money would
 6 support it, what outcomes would we want to
 7 see, how would we measure those outcomes.
 8 That's my opinion.
 9 Q. Is PED moving in that direction that
 10 you just described?
 11 MS. RAHN: Object to form and
 12 foundation.
 13 THE WITNESS: Not to my knowledge.
 14 Q. BY MS. DIEHL: Do you believe that one
 15 of the parameters should be Professional
 16 Development that is specific to the student
 17 groups addressed in this lawsuit?
 18 A. Yes.
 19 MS. RAHN: Object to form and
 20 foundation.
 21 THE WITNESS: Yes.
 22 Q. BY MS. DIEHL: So specific to teaching
 23 ELL students for example.
 24 A. Yes.
 25 Q. Specific to teaching students with

1 MS. RAHN: Object to form and
 2 foundation.
 3 THE WITNESS: Repeat that? I'm sorry.
 4 Q. BY MS. DIEHL: As we sit here today do
 5 you believe that is happening?
 6 MS. RAHN: Object to form and
 7 foundation.
 8 THE WITNESS: Not to the extent that
 9 it needs to.
 10 Q. BY MS. DIEHL: Are there any plans to
 11 work with the Legislature to recommend the
 12 statutory changes that we have just been
 13 discussing?
 14 A. We are actually in the process right
 15 now of planning our Legislative ask, and that
 16 is an ask that I will be making to the
 17 Cabinet team to consider.
 18 Q. And what is that ask; can you elaborate
 19 a little bit?
 20 A. Absolutely.
 21 My ask around this would be
 22 specifically around the licensure levels, and
 23 ensuring that at time of renewal, we are
 24 requiring Continuing Education Units or
 25 CEUs --

1 disabilities?
 2 MS. RAHN: Object to form and
 3 foundation.
 4 THE WITNESS: Yes.
 5 Q. BY MS. DIEHL: Specific to teaching
 6 Native American students?
 7 MS. RAHN: Object to form and
 8 foundation.
 9 THE WITNESS: Yes.
 10 Q. BY MS. DIEHL: Specific to culturally
 11 and linguistically responsive pedagogy or
 12 practices?
 13 MS. RAHN: Object to form and
 14 foundation.
 15 THE WITNESS: Yes, I think it's very
 16 important for us, as a State, as we're looking
 17 at our Pipeline and working with our Educator
 18 Preparation Programs, that we're ensuring that
 19 teachers are exiting with, you know, some
 20 basic knowledge around how important culture
 21 and language are in our state, and that we
 22 then continue to support them with that as
 23 they continue to grow in their career.
 24 Q. BY MS. DIEHL: And as we sit here
 25 today, do you believe that is happening?

1 asking for next year for Teacher Residencies?
 2 A. Now knowing that we did not receive
 3 what the ask was from our Institutions of
 4 Higher Ed, what we will do -- and again, we
 5 just started our budgeting process for our ask
 6 for FY24 -- is go back to our Institutions of
 7 Higher Ed, as well as work closely with the
 8 LESC and the LFC on an ask.
 9 Again, they are going to ask us
 10 what the outcomes were, and again, that's the
 11 hard part, because these folks just started.
 12 We have to put a budget request in halfway
 13 through this year, or in the next few months
 14 actually, and then have sessions.
 15 We will have better data to share
 16 with them by the time we get to session,
 17 because by then we'll be able to say, "Here's
 18 how many people who actually entered, and
 19 here is where they are at right now," and all
 20 of that. It is really the measurement of data
 21 along the way, so that we can justify our ask.
 22 Q. Just so I understand correctly, do the
 23 Teacher Residency Programs provide any
 24 specific training for the participants that
 25 are specific to the student groups addressed

1 in this lawsuit?

2 A. Around their curriculum in the program?

3 Q. In any way.

4 MS. RAHN: Object to form.

5 THE WITNESS: I'm not sure if they

6 have specific pull-outs to say, "This is how

7 we're going to address Native American student

8 groups," so I can't answer that.

9 Q. BY MS. DIEHL: Okay. So that's not

10 something PED monitors or tracks; is that fair

11 to say?

12 MS. RAHN: Object to form.

13 THE WITNESS: At this time, yes.

14 Q. BY MS. DIEHL: Is there staff within

15 PED, or specifically the Division of Educator

16 Quality and Ethics, to support Teacher

17 Residency initiatives?

18 A. We do have a position that we have

19 requested that would be solely around Teacher

20 Residency supports. That position has been

21 approved and has been posted, but I don't

22 remember if the list has been pulled or not.

23 Q. Okay. So there is no one in that

24 position currently.

25 A. Right now the person that is working

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1 support educators? Are they looking at

2 additional support staff to add to classrooms

3 in support of those classes that are over the

4 normal size?

5 Q. Okay. And then how, if at all, does

6 PED track those plans and compliance with

7 those plans?

8 A. The waivers are submitted and reviewed

9 by the Educator Quality team, and then they go

10 to the Secretary for final signature. His

11 Administrative Assistant tracks that the

12 Waiver has gone back out to the district.

13 However, there is no additional follow-up

14 after that, except to see if a Waiver is

15 submitted again.

16 Q. So if I understand correctly, you're

17 saying PED does nothing to ensure that

18 districts are complying with those plans.

19 MS. RAHN: Object to form.

20 THE WITNESS: That's correct.

21 Q. BY MS. DIEHL: Does PED provide any

22 kind of support or assistance to districts in

23 terms of compliance with those plans?

24 A. Yes. When we approve a Waiver, we will

25 provide additional guidance and support in any

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1 are ready. We were hoping they would be ready

2 this year with the Residency funds, and they

3 weren't.

4 While these are all good starts, I

5 think there is absolutely still room for

6 improvement, so that we are ensuring that we

7 are strategically identifying and recruiting

8 educators that will meet the needs, and also

9 look like the student groups mentioned in the

10 Martinez/Yazzie lawsuit.

11 Q. So is it fair to say that more needs

12 to be done to grow the teacher workforce?

13 A. Absolutely, yes.

14 Q. Are there recommendations or are there

15 plans to make those recommendations and

16 requests in terms of staffing at PED?

17 A. Staffing at PED, yes, and plans to

18 make requests of the Legislature to not only

19 have staff at PED to support the work, but

20 then the funding to support the people that

21 are participating in the programs.

22 Q. That was my next question; to grow the

23 programs. Is that fair say?

24 A. Absolutely.

25 Q. So what would these efforts cost; has

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1 way that the district might need it. We'll

2 provide suggestions for how they can work on

3 recruiting, or where they may be able to look

4 internally at staff that they already have,

5 and provide guidance on how to move people

6 around.

7 Ultimately their staffing decisions

8 are theirs to make. We can't walk in and say,

9 "You must take Teacher A out of this classroom

10 and put them in with Teacher B."

11 Q. Would PED provide additional sources of

12 funding if that was the issue?

13 MS. RAHN: Object to form.

14 THE WITNESS: I'm not aware. I don't

15 know. That I don't know.

16 Q. BY MS. DIEHL: So in your experience is

17 that ever done?

18 A. Funding to support additional staffing?

19 Q. Right.

20 A. On these waivers, it's never been that

21 they don't have the money. Any Waiver I've

22 reviewed, it isn't that they don't have the

23 money or the funding to hire, it's that the

24 people don't exist to hire. It's all about

25 the Pipeline and not having enough people.

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1 O. BY MS. DIEHL: Is it fair to say then,
2 until the Pipeline issues that we've already
3 discussed today are addressed, Class Size
4 Waivers will be necessary to some extent?
5 A. Yes.
6 MS. RAHN: Object to form.
7 THE WITNESS: Oh, sorry.
8 MS. RAHN: You're fine.
9 THE WITNESS: Yes.
10 Q. BY MS. DIEHL: All right.
11 What are the statutory maximums
12 for class size in New Mexico; can you tell me?
13 A. I don't know them off the top of my
14 head.
15 Q. Okay. How many classrooms were above
16 the statutory maximums last year?
17 A. I don't know.
18 Q. Is that data within your division, or
19 your former division?
20 A. That would be data that could be pulled
21 from STARS, the data system at the Department.
22 Q. And is the data for the 2021/2022
23 school year complete?
24 A. It should be, yes.
25 MS. DIEHL: Okay. That is something,

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1 Do you see where it says that?
2 A. Yes.
3 Q. Can you elaborate on the opportunities
4 that are being examined for class size
5 reduction?
6 A. Because this is a draft document, we
7 are waiting until we receive all the feedback,
8 and have gone through that process, to see
9 what recommendations we receive from others.
10 Then we will have internal conversations about
11 continuing to look at internal opportunities
12 as well.
13 Q. Okay. So as we sit here today, there
14 are not initiatives in place to address class
15 size reduction.
16 A. Not specifically as to class size
17 reductions. However, with our focus on
18 recruitment efforts throughout the state, by
19 creating more teachers to fill these
20 vacancies, that, in turn, would have an impact
21 on class size.
22 Q. Okay. All right.
23 I'm going to move on from this and
24 I'm actually going to return to Exhibit 5 for
25 a moment, please.

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1 Taylor, that you said would be supplemented,
2 just as a reminder.
3 Q. How many classrooms are projected to be
4 above that statutory maximum for the upcoming
5 school year?
6 A. We don't have a projection like that;
7 I wouldn't know.
8 Q. Okay.
9 Based on the number of teacher
10 vacancies, would you expect that your division
11 will continue to see Class Size Waivers at the
12 same level as previous years?
13 A. Yes.
14 Q. How many teachers would the state need
15 to staff schools sufficiently to meet class
16 size requirements?
17 MS. RAHN: Objection to form and
18 foundation.
19 THE WITNESS: I don't have an answer to
20 that.
21 Q. BY MS. DIEHL: Is that data that's
22 collected by anyone?
23 MS. RAHN: Object to form and
24 foundation.
25 THE WITNESS: I think that's data that

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1 Q. BY MS. DIEHL: Let's say for the
2 2021/2022 school year.
3 A. At the end of the 2021/2022 school
4 year, the last number I had was just over
5 20,000 certified teachers.
6 Q. Okay. Does PED track the annual
7 retention and departure rates for teachers?
8 A. Not currently, no.
9 Q. Does PED track how many new teachers
10 are hired every year?
11 A. No.
12 Q. Does PED track, as to new-hires, how
13 many come from in-state programs and how many
14 come from other institutions?
15 A. No.
16 Q. Does PED track how many are in the
17 Pipeline within New Mexico institutions?
18 A. We get data from our Educator
19 Preparation Institutions yearly that allows
20 us to track that data.
21 Q. Okay. Is that data disaggregated by
22 the racial and ethnic makeup of teachers in
23 the Pipeline, to meet the diversity goals that
24 are outlined in the Action Plan?
25 A. Yes.

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1 Q. Okay.

2 Among the vacancies that are

3 identified the Action Plan, do you know how

4 many --

5 Well, I want to talk about the

6 subgroups of teacher that are needed; all

7 right?

8 A. Okay.

9 Q. The Plan looks at some of those things;

10 of course the Findings of Fact address those

11 things as well.

12 When PED looks at the number of

13 vacancies that exist, is PED able to identify,

14 for example, the number of Early Childhood

15 Education teachers that are needed, or the

16 number of Special Education teachers that are

17 needed, or the number of Native American

18 Language and Culture teachers that are needed,

19 or bilingual-endorsed or TESOL-endorsed

20 teachers that are needed?

21 MS. RAHN: Object to form and

22 foundation.

23 THE WITNESS: The vacancy data that

24 the Department receives currently comes

25 through NMSU and their SOAR report. We do

1 not collect data internally.

2 The data that we receive from the

3 SOAR report is based on Human Resources

4 postings from across the state. In looking

5 at that, we can utilize that data to tell what

6 districts are saying in terms of what they

7 need to hire.

8 The Department does not do tracking

9 of that data currently. We don't currently

10 track that data at the Department.

11 Q. BY MR. DIEHL: Are there plans to track

12 that?

13 A. Yes.

14 Q. And when will that begin?

15 A. I don't know.

16 Q. Who will track it?

17 A. It would be part of the data that we

18 collect from our districts during the

19 reporting period. It would be something that

20 would be reported by the districts to us, and

21 then vetted probably by somebody on my team

22 and the Research, Evaluation, and

23 Accountability team.

24 Q. Does PED collect data on which at-risk

25 students have exposure to effective teachers

1 currently in place, which does measure a

2 teacher's effectiveness based on the

3 Observation Rubric that the principal or

4 supervisor of the teacher completes with them

5 throughout the school year.

6 Q. BY MS. DIEHL: Is PED able to then

7 match that data with the student population

8 that teacher, a particular teacher, is

9 serving?

10 A. Yes.

11 Q. That is not done now. Is that correct?

12 A. That is correct.

13 Q. There are plans for it to begin in the

14 future.

15 A. Yes.

16 Q. But you don't know when.

17 A. This school year.

18 Q. This school year?

19 A. Yes, ma'am, the 2022/2023 school year.

20 Q. Okay. Thank you.

21 Does PED have an incentive

22 structure to help match the most experienced

23 teachers with the highest need students?

24 A. We do not. However, districts can

25 incentivize in their own districts using

1 either operational funding, or Title II

2 funding, or other funding sources that they

3 may have available to incentivize teachers to

4 work with different populations or in

5 different schools.

6 Q. Does PED track districts who do that?

7 A. No.

8 Q. Is it fair to say, then, that PED

9 doesn't measure the effectiveness of those

10 incentives in the districts that choose to do

11 so?

12 A. Yes, that's fair to say.

13 Q. Is it fair to say that PED has not done

14 an analysis of how much it would cost to

15 provide experienced teachers in the highest

16 need areas?

17 MS. RAHN: Object to form.

18 THE WITNESS: Again, that goes to

19 hiring practices at districts. We can't tell

20 districts where to put their most experienced

21 teachers. We can provide guidance; we can

22 provide opportunities. We can provide

23 guidance to them; we can show them data. We

24 can do all of those things, but when it comes

25 down to where they want a teacher to work,

1 that's the district, the teacher, and in some
 2 cases the union who are making those
 3 decisions, not the PED.
 4 Q. BY MS. DIEHL: But PED could request
 5 additional funding for incentives. Isn't that
 6 true?
 7 MS. RAHN: Object to form.
 8 THE WITNESS: Yes, we could and have
 9 in the past.
 10 Q. BY MS. DIEHL: But there hasn't been
 11 an analysis of how much funding would be
 12 needed to do that. Is that correct?
 13 A. That's correct.
 14 Q. Okay.
 15 In the current fiscal year is there
 16 funding budgeted for such initiatives?
 17 A. For stipends? No.
 18 Q. Okay. All right. Back to the Action
 19 Plan, please, Ms. Flanagan.
 20 Again, we're on page 11, under
 21 Targets for Improvement Number 3:
 22 "Increase the retention rate
 23 among newly recruited teachers by
 24 50% by the 2025-26 school year."
 25 Do you see where it says that?

1 that they are.
 2 Q. BY MS. DIEHL: And what is the basis
 3 of that understanding?
 4 A. The data that we receive from districts
 5 that's reported in STARS.
 6 Q. That is data that you have personally
 7 reviewed yourself from districts.
 8 A. I have seen the data that has been
 9 reported to us from STARS, yes.
 10 Q. There is definitely kind a disconnect,
 11 wouldn't you think, between this statistic
 12 that I showed you and the data that's reported
 13 in STARS?
 14 MS. RAHN: Object to form and
 15 foundation.
 16 THE WITNESS: I think that as an
 17 Agency, one of the challenges that we have,
 18 as well as with our LEAs, is that the data we
 19 receive is only as good as whatever they
 20 report. There has to be that trust that they
 21 are accurately reporting what's happening in
 22 their districts.
 23 Q. BY MS. DIEHL: Okay. So in your view,
 24 this is a problem with the districts'
 25 reporting information.

1 We will continue to ask for that funding, and
 2 additional funding. I believe that the
 3 Legislature will be open to additional funding
 4 if we are able to provide the data that shows
 5 these programs are working.
 6 Q. Are any of the initiatives specific to
 7 retaining teachers in high poverty schools?
 8 A. No. Right now the initiatives are all
 9 about just retaining teachers.
 10 Q. Okay.
 11 Has there been any analysis done
 12 by PED of how many additional teachers these
 13 initiatives will retain?
 14 A. There has not.
 15 Q. Are there plans to conduct such an
 16 analysis?
 17 A. Yes.
 18 Q. When will that analysis be complete?
 19 Let's start with when it with
 20 begin, and then when will it be complete?
 21 A. Of course.
 22 I think because, again, of the
 23 newness of some of these initiatives and the
 24 amount of funding that we have, data analysis
 25 will begin with this school year and continue

1 MS. RAHN: Object to form.
 2 THE WITNESS: I think it's both. I
 3 think it's a problem with what they are
 4 reporting, and I think it's the challenge that
 5 we have of then going back on the other side
 6 and seeing what's really happening.
 7 Q. BY MS. DIEHL: Has PED done that?
 8 Gone back to see what's happening at districts
 9 on the ground.
 10 A. This is the first year --
 11 MS. RAHN: Object to form.
 12 THE WITNESS: This is the first year
 13 we've collected that data.
 14 Q. BY MS. DIEHL: For FY23, how much
 15 funding is available for teacher mentorships?
 16 A. That depends on the number of first-
 17 year teachers that each district has. They
 18 are allocated a certain amount for each level
 19 and teacher. I would not be able to speak to
 20 the amount; either Antonio Ortiz or Scott
 21 Wright could do so.
 22 Q. Okay. I want to circle back to the
 23 review of Mentorship Plans.
 24 You said that was done by Candice.
 25 Is that right?

1 A. That is why we began collecting the
 2 data, to show who the new teachers are, who
 3 the mentor teachers are, and what the stipend
 4 is. This year we can go back in and follow
 5 up on those. This year was the first year we
 6 collected that data.

7 Q. I understand.

8 Okay. We've talked about the
 9 collection of data that's beginning this year.
 10 Will that include measuring the efficacy of
 11 individual mentorship relationships?

12 MS. RAHN: Object to form.

13 THE WITNESS: That hasn't been planned,
 14 no.

15 Q. BY MS. DIEHL: Will it measure the
 16 efficacy of the program as a whole?

17 A. That hasn't been planned, no.

18 MS. DIEHL: Okay. Let's see. What
 19 time is it?

20 I'm at a good stopping point. I
 21 wanted to consult with my team really
 22 quickly, so let's go off the record.

23 (The deposition recessed from 1:56
 24 p.m. to 2:07 p.m.)
 25 ///

1 who is endorsed to teach English learners
 2 English language development. Is that right?

3 A. Yes.

4 Q. Okay. Is there any plan by PED, or an
 5 existing method by PED to increase the number
 6 of Educator Preparation Programs who are
 7 going to teach English learners specifically?

8 A. Not specifically around increasing
 9 people that are in the Educator Preparation
 10 Programs. However, we did just recently
 11 update the requirements for the TESOL
 12 endorsement, in partnership with Mayra
 13 Valtierrez and her team, as well as the
 14 Hispanic Education Committee and some
 15 additional stakeholders. In doing so we
 16 actually were able to -- "streamline" is not
 17 the word I want.

18 We were actually able to add some
 19 additional pathways that will allow currently
 20 certified teachers to obtain a TESOL
 21 endorsement, taking into consideration what
 22 their first language might already be and
 23 other work that they have done, and not
 24 necessarily just specific coursework.

25 To honor that culture and heritage

1 I will add that with the
 2 implementation of the data dashboard, we are
 3 actually working more closely in conjunction
 4 with the Higher Education Department, in an
 5 effort to bring them into this work that we
 6 have been doing. They are not as well-staffed
 7 as the PED is, so they haven't had somebody
 8 there that can really work with us in these
 9 spaces.

10 Q. I see.

11 I'm going to show you another
 12 document.

13 (Deposition Exhibit Number 7 was
 14 marked for identification.)

15 Q. BY MR. HERRERA: The court reporter
 16 has handed you what he has marked as Exhibit
 17 7 to your deposition.

18 A. Yes.

19 Q. It is just a one-page, one-sided
 20 document.

21 Do you recognize this document?

22 A. Actually, I do not.

23 Q. Okay. At the top it says:
 24 "Educator Preparation
 25 Programs."

1 THE WITNESS: I think that, in general,
 2 I would say these issues with Educator
 3 Preparation Programs are not unique to New
 4 Mexico. Institutions of Higher Education are
 5 not able to change as quickly as the K-12
 6 setting could, so it becomes more difficult
 7 for us to hold them accountable, and for them
 8 to turn on a dime and say, "We are not doing
 9 really well with this and we'll change it
 10 tomorrow."

11 They are not open, nor do they seem
 12 to have the capacity to be able to do that,
 13 specifically some of our larger institutions,
 14 because it just, in my opinion, is the nature
 15 of Institutions of Higher Education, in which
 16 all of our preparation Programs sit.

17 Q. BY MR. HERRERA: When you say that one
 18 issue may be that the institution, or the
 19 EPP, may not change quickly enough to meet
 20 what's changing in the K-12 setting, do you
 21 have an example of that?

22 A. Absolutely.

23 Q. Okay.

24 A. The Science of Reading was a statute
 25 passed several years ago by Senator Stewart

1 most recently within the last couple of years
 2 around the LETRS training. Again, I can't
 3 remember the acronym exactly.

4 We are finding that educators that
 5 are graduating Programs -- and these are full
 6 elementary school teachers -- aren't
 7 necessarily ready or prepared to teach the
 8 science of reading. They are not well-versed
 9 in the science of reading, and so they are
 10 struggling to teach students to read.

11 When asked about that with our
 12 Preparation Programs, they push back and say,
 13 "That's something that we understand has to
 14 happen by a trained facilitator in LETRS," but
 15 there are ways for them to -- we have invited
 16 them into that process, but it isn't something
 17 that's happening necessarily consistently in
 18 their classrooms across the state.

19 That's just one example that I can
 20 give.

21 Q. Are there any other examples that come
 22 to mind in terms of changes that need to
 23 happen, or perhaps may need to happen in an
 24 EPP that may not happen fast enough to address
 25 changes in the K through 12 education?

1 So PED has the duty in statute and
 2 regulation, as we can see, to approve and
 3 monitor EPPs; right?

4 A. That's correct.

5 Q. Okay. How does PED navigate this
 6 reluctance to change that you're talking
 7 about?

8 A. I would say that we don't have a
 9 strong process in place for that at the
 10 Agency. It's something that, I believe, we
 11 started, and then with the pandemic, some
 12 things had to take a step back unfortunately.

13 As we go back into this space of
 14 these in-person visits, and being able to
 15 follow up with the ability to collect the
 16 data, I think that provide us with a little
 17 bit more strength to be able to hold them
 18 accountable.

19 The other challenge, honestly, is
 20 I don't know what the appetite would be for
 21 any administration, Republican or Democrat, to
 22 say, "We're going to totally close your
 23 Program down."

24 O. Okay.

25 A. You know, I just don't know, but that

1 is something that's in here. We can revoke
 2 their approval; it's in here. It was in the
 3 old rule, too, in the previous administration,
 4 but I don't know what the appetite for that
 5 would be. That's the other piece where
 6 sometimes the Department's hands are tied.

7 O. When you say "the Department's hands
 8 are tied," that potential step of revoking the
 9 approval of an EPP to operate, whose ultimate
 10 decision is that within PED?

11 A. The Secretary of Education.

12 Q. All right. Thinking of changes short
 13 of that, I want to go back to some of the
 14 issues here, and perhaps of quality within an
 15 EPP.

16 You mentioned, kind of, change that
 17 can happen faster within K-12 education than
 18 it would within an EPP and its Program. Does
 19 that apply as well to incorporation of new
 20 research on how best to serve at-risk student
 21 groups in this lawsuit?

22 For example, we can take English
 23 learners.

24 A. Yes, I think it is hard for them to
 25 make those changes, in my opinion, and for

1 putting in place and have in place.

2 We partner with our Institutions of
 3 Higher Ed and their Preparation Programs, to
 4 let them know what districts are looking for
 5 as far as number of vacancies for special
 6 education, or any other license.

7 Q. BY MR. HERRERA: Are there steps that
 8 PED has taken within the last year to ensure
 9 that districts fill vacancies for special
 10 education teachers?

11 A. Not to my knowledge, no.

12 Q. Within the last two years has PED taken
 13 any steps to ensure that districts fill
 14 vacancies for special education teachers?

15 A. Again, hiring and how they hire is
 16 their responsibility. However, our
 17 recruitment efforts to attract more people to
 18 the Pipeline and to education should help them
 19 with their hiring practices.

20 Q. That effort you just mentioned, has
 21 that been made with regard to special
 22 education teachers and vacancies?

23 MS. RAHN: Object to form.

24 THE WITNESS: All vacancies. We're
 25 addressing all vacancies, not just special

1 Q. Is that right?

2 MS. RAHN: Object to form.

3 THE WITNESS: That could be the case,

4 yes.

5 Q. BY MR. HERRERA: Could it be the case

6 that teacher is teaching Bilingual Ed outside

7 of a BMEP?

8 A. It could be, yes.

9 Q. Does PED know how many of those cases

10 exist?

11 A. I don't have that data. I don't know

12 if the Department does; that may be a question

13 for Mayra.

14 Q. Is that Mayra Valtierrez?

15 A. Yes, sir.

16 Q. Okay.

17 Does PED have a plan to address

18 the issue of districts, or rather -- let me

19 start again.

20 Does PED have a plan to otherwise

21 encourage or otherwise get bilingual-endorsed

22 teachers to teach in BMEPs?

23 A. Not that I'm aware of.

24 Q. Go down to the third bold heading on

25 page 28.

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1 A. Yes.

2 Q. It says:

3 "The state currently lacks

4 centralized training materials and

5 professional development, and this

6 is sometimes cited as a reason

7 teachers choose not to teach in a

8 BMEP."

9 Do you know if that is the case?

10 A. I don't know; that would be a question

11 for Mayra.

12 Q. Can we skip to page 29?

13 A. Sure.

14 Q. There is a heading on page 29, the

15 second heading in bold that says:

16 "PED does not track how many

17 college students are studying to

18 become BMEP teachers."

19 Does PED have any -- well, first

20 of all I'll ask whether that's true.

21 A. That is true, yes.

22 Q. Okay. Does PED have a plan to address

23 the fact that it is not -- well, I'll ask it

24 more directly:

25 Does PED have a plan to begin

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Exhibit 12

D-101-CV-2014-00793; D-101-CV-2014-02224
LOUISE MARTINEZ/WILHELMINA YAZZIE, et al., V THE STATE OF NEW MEXICO, et al.

Dr. Gwendolyn Perea Warniment
May 23, 2022

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF DR. GWENDOLYN PEREA WARNIMENT

Monday, May 23, 2022
9:39 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 Q. Does PED plan to do that?

2 A. Yes.

3 Q. What steps were taken to ensure

4 sufficient funding was appropriate so districts

5 have enough money to pay for all of the

6 required increases?

7 A. We're doing one-on-one support and

8 Technical Assistance for school districts.

9 There are several school districts

10 that are actually needing a level of support

11 that doesn't fall under me, that's under Deputy

12 Secretary Kata Sandoval. But School Budget

13 teams and School Budget officers are giving

14 lots of hands-on support to districts.

15 I would say probably an analysis

16 after the school year and the School Budget

17 has gone through in June, you would want to do

18 another sort of run-through to look at it.

19 Q. Are there plans to do that?

20 A. Yeah.

21 Q. Okay. Can you describe additional

22 increases that PED may request in the future

23 for teacher salaries?

24 A. I don't know yet, but I know that there

25 is an intention to continue to push for

1 of hours within either of those?

2 MS. RAHN: Object to form.

3 Go ahead.

4 THE WITNESS: Does it say that we are

5 required to provide hours?

6 Q. BY MS. DIEHL: No. I'm saying there are

7 statutory duties regarding Professional

8 Development.

9 Why couldn't that include or require

10 a number of hours?

11 A. Got it. Okay.

12 There is also in the statute the

13 number of instructional hours and calendar and

14 school calendar.

15 Q. Uh-huh.

16 A. The tension there, I think, is about

17 providing the support system and this framework,

18 or all of the Professional Development that we

19 do as a state, versus requiring individuals to

20 actually engage in that Professional Development

21 when there is a contradiction in terms of school

22 calendar.

23 Q. Okay. Under PED's duties, could there

24 be a requirement about certain topics of

25 Professional Development or subject areas, for

1 alternative licensure.

2 Q. How does PED monitor the effectiveness

3 of an initiative like this?

4 A. Because it's small and designed to be

5 sort of descriptive, rather than evaluative, it

6 is less about evaluation and more about

7 learning from them if things were successful.

8 We also knew this was not going to

9 be a recurring funding source, so it was more

10 about allowing them to leverage funding that

11 was at their disposal.

12 Q. PED did not monitor the effectiveness.

13 A. No.

14 Q. What other funding has PED provided to

15 districts to recruit teachers with bonuses or

16 stipends?

17 A. None. There is no -- I don't think we

18 have -- we have not been allocated funding

19 towards that.

20 Q. I know we've talked a lot about

21 Professional Development today, so I'm going

22 to try to just be really brief and put that to

23 bed.

24 A. That's okay.

25 Q. So just so we're very clear, can you

1 example?

2 A. Certainly I think if you had

3 justification.

4 For instance, the example that

5 Preston gave earlier was actually really

6 intriguing to me. I think it was really

7 interesting around Indian Education and

8 Culturally and Linguistically Responsive

9 instruction, because you could justify that;

10 right? Similarly Structured Literacy;

11 obviously that's an easy one.

12 It would be less justifiable, and

13 also, in some ways, unethical for me to tell

14 all educators, "While you're going through an

15 intense letters training as a third grade

16 teacher this next two years, you're required to

17 do 80 hours of instructional Professional

18 Development. You are also going to be

19 required to do instructional Professional

20 Development in mathematics and early numeracy,"

21 given their bargaining agreement, their

22 collective bargaining agreement that they

23 have, and the instructional hours and calendar.

24 Q. All right. Would the same be true for

25 teaching English Language Learners, for example,

1 probably covered that.

2 I'd like to talk a little bit about

3 PED's efforts to put experienced teachers in

4 classes serving at-risk students.

5 A. Sure.

6 Q. Tell me a little bit about what

7 initiatives or actions PED has taken in this

8 area.

9 A. That is a locally-controlled space;

10 right? We don't have the purview of

11 determining where educators can be located.

12 Q. Does PED provide support districts to

13 do that?

14 A. To address that?

15 Q. Yes.

16 A. The only place where I know that there

17 is actually some guidance for districts and

18 superintendents and charter school leaders to

19 think deeply about that -- it's probably going

20 to be more for superintendents than charter

21 leaders, maybe through our Priority Schools

22 Bureau with Elisabeth Peterson.

23 Q. Okay. Are you familiar with what kind

24 of supports are offered to those districts in

25 the Priority Schools Bureau?

1 school district to determine how of that

2 Professional Development will be fulfilled.

3 A. Yes, correct.

4 Q. And PED does not systematically monitor

5 every district to determine whether the

6 Professional Development provided by that

7 district is what is necessary to provide

8 qualified trained teachers to each at-risk

9 student. Is that right?

10 A. Correct.

11 Q. You said before, in answer to a

12 question, I think, that Alisa asked you that

13 the State has appropriated, in your view,

14 enough money to pay for all the teachers

15 necessary to meet class size requirements. Do

16 you remember saying something to that effect?

17 A. Yes, uh-huh.

18 Q. What's the basis for that testimony?

19 A. The State is required to pay for the

20 number of educators that the districts submit

21 per their TNE and their budget request.

22 Q. But that payment is made through the

23 SEG; correct?

24 A. Correct, the Budget request.

25 Q. And if the SEG is not providing

1 THE WITNESS: Describe what you mean by

2 "limitations." I'm not sure.

3 Q. BY MS. DIEHL: Do you have any reason

4 to believe this is not accurate?

5 A. No. I would say of course not. I

6 would think that the survey data is probably

7 very accurate.

8 I think that any survey data --

9 right -- is going to be representative of the

10 group that was surveyed.

11 Q. So if that's the case, then 23% of new

12 teachers --

13 A. That were surveyed.

14 Q. -- have not been provided with a mentor

15 teacher.

16 A. That's correct.

17 Q. Okay.

18 In terms of funding for mentoring,

19 has there been any kind of cost analysis or

20 estimates done by PED as to what it would take

21 to fully fund mentorship programs?

22 A. We did actually, but I'm not recalling

23 off the top of my head. I think it's not

24 sufficiently funded; I'll say that.

25 Q. Okay. Would PED's budget in this area

1 to be designed such that there is a submission,

2 and then it funds them, but there may be a

3 discrepancy.

4 Q. BY MR. YOHALEM: If the unit value is

5 not high enough, if the State has not

6 appropriated enough money into the SEG, and

7 the unit value is not high enough, districts

8 are not going to have enough money to pay for

9 all of the teachers and all the programs that

10 they have determined these children need.

11 Isn't that right?

12 A. That would be correct, if there wasn't,

13 uh-huh.

14 Q. We've heard a lot in other depositions

15 about at-risk budget reviews, the budget

16 submissions that address at-risk childrens'

17 needs and the review. We understood this was

18 under Scott Wright's purview. Is that correct?

19 A. Yes.

20 Q. But we also heard that Mayra Valtierrez

21 had something to do with the at-risk review at

22 some point in time. Kata Sandoval has

23 indicated that you have some involvement in the

24 at-risk budget reviews, so can you please tell

25 me what that is?

School District	Superintendent Name	Waiver Name	Date Due	submitted to XXX for analysis:	date analysis received	Rationale for approval/non-approval provided by	Returned to reviewer for corrections	Date Submitted for Secretary Signature	Date Emailed to School	Pending	Approved	Denied
Carlsbad	Greg Rodriguez	ROD11102018-CLASSSIZE	11/30/2018	Julia Anderson	11/28/2018			12/09/18	12/12/18		1	1
Clouderoft	Tana Daugherty	DAU11142018-CLASSSIZE	12/18/2018	Seana Flanagan						Unknown		
Clouderoft	Tana Daugherty	DAU12062018-CLASSSIZE	12/22/2018	Seana Flanagan	12/10/2018			12/17/18	01/03/19		1	
Espanola	Bobbie Gutierrez	GUT10102018-CLASSSIZE	11/1/2018	Julia Anderson	11/28/2018			12/09/18	12/12/18		1	
Loving	Lee White	WHI01232019-CLASSSIZE	2/6/2019	Seana Flanagan						Unknown		
Penasco	Marvin Mac Auley	MAC11052018-CLASSSIZE	11/30/2018	Julia Anderson	11/28/2018			12/18/18	01/03/19		5	
T or C	Randall Pipeer	PIP10232018-CLASSSIZE	11/8/2018	Julia Anderson						Unknown		

School District	Superintendent Name	Waiver Name	Date Due	submitted to XXX for analysis:	date analysis received	Returned to reviewer for corrections	Date Submitted for Secretary Signature	Date Emailed to School	Pending	Approved	Denied
Santa Fe	Dr. Veronica Garcia	GAR09242019-CLASSSIZE	10/09/19	Seana Flanagan					Unknown		
Alamogordo	Jerrett Perry	PER10212019-CLASSSIZE	11/15/19	Seana Flanagan	12/19/2019		01/16/20	01/27/20		1	
Carlsbad	Dr. Gerry Washburn	WAS12092019-CLASSSIZE	01/06/20	Seana Flanagan					Unknown		

School District	Superintendent Name	Waiver Name	Date Due	submitted to XXX for analysis:	date analysis received	Returned to reviewer for corrections	Date Submitted for Secretary Signature	Date Emailed to School	Pending	Approved	Denied
Alamo Navajo Community School	Susan Comiskey	COM10212020-CLASSSIZE	11/05/20	Candace Green	11/22/2020		12/22/20	01/14/21		1	
Alamogordo	Jarrette Perry	PER11062020-CLASSSIZE	11/24/20	Candace Green					Not Completed		
Gallup-McKinley	Mike Hyatt	HYA11122020-CLASSSIZE	12/01/20	Candace Green	4/15/2021		05/11/21	06/01/21		1	1
Jemez	Susan Passell	PAS09252020-CLASSSIZE	10/08/20	Seana Flanagan	10/7/2020		10/26/19	11/03/20		1	
Las Cruces	Karen Trujillo	TRU10212020-CLASSSIZE	11/05/20	Candace Green	11/2/2020		12/07/20	12/09/20		1	
Melrose	Brian Stacy	STA07312020-CLASSSIZE	08/25/20	Seana Flanagan	8/17/2020		10/19/20	10/19/20		1	
Raices del Saber Community School	Julia Rivera-Tapia	RIV07012021-CLASSSIZE	08/10/21	Candace Green			10/26/20	10/26/20		1	
Raices Del Saber Xinachtli	Angela Stock	STO08182020-CLASSSIZE	09/01/20	Seana Flanagan	10/7/2020		10/26/20	11/03/20		1	

Exhibit 14

D-101-CV-2014-00793; D-101-CV-2014-02224
LOUISE MARTINEZ/WILHELMINA YAZZIE, ET AL., V. THE STATE OF NEW MEXICO, ET AL.

Greg Frostad
April 04, 2022

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

LOUISE MARTINEZ, et al.,)	
)	
Plaintiffs,	)	Case No.:
)	
v.	)	D-101-CV-2014-00793
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	
)	
WILHELMINA YAZZIE, et al.,)	
)	
Plaintiffs,)	
)	
v.	)	D-101-CV-2014-02224
)	
THE STATE OF NEW MEXICO, et al.,)	
)	
Defendants.)	
_____)	

ZOOM DEPOSITION OF GREG FROSTAD

Monday, April 4, 2022
10:07 a.m.

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

FOR THE PLAINTIFFS YAZZIE, ET AL.:
LAW OFFICE OF DANIEL YOHALEM
BY: DANIEL YOHALEM, ESQ.

REPORTED BY: DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting, Inc.
2019 Galisteo Street
Suite A-1
Santa Fe, New Mexico 87505
(505) 984-2244

1 student's IEP, like social work services,
2 behavioral health services, those are Medicaid
3 reimbursable. We are working now to expand that
4 out of the IEP realm, so that general education
5 students who may have Medicaid-reimbursable needs
6 such as social work needs, school psychologist
7 needs, behavioral health needs, or nursing needs,
8 those could also be Medicaid reimbursable.
9 Schools could provide those services and be
10 reimbursed not at a hundred percent, but receive
11 reimbursement to support those services to a
12 larger group of students.

13 Q. Let me ask you, kind of taking a step
14 back, could you describe what other services
15 social workers typically provide aside from the
16 counseling that you've mentioned?

17 A. They do a lot of connecting to resources
18 for a student that a student may need. I would
19 say those are the two big responsibilities that
20 a social worker would have.

21 Q. And based on your knowledge, are social
22 workers available to all school districts?

23 A. We do have, I would say, in the state a
24 shortage of behavioral health workers generally,
25 I mean for adults and students alike just in the

1 funds than a lot of Bureaus, but we're nowhere
2 near the big ones; Title I and the Special
3 Education Division.

4 Q. Okay. With regard to State funding --
5 A. Yes.

6 Q. -- how much, for this current fiscal
7 year, did your Bureau get in terms of State
8 funding for overall health and social services?

9 A. Is it okay if I give you approximate
10 numbers, or do you want -- I mean I would need
11 to look at my budget to give you exact numbers.
12 Our Bureau or Department itself gets
13 in the neighborhood of \$20,000, \$15,000 which
14 goes to support a grant to help -- not "support
15 a grant," to support a contract to help review
16 Safe Schools Plans, and that doesn't include our
17 salaries; right?

18 We received \$100,000 this year for
19 helping to recruit and retain school nurses.

20 We received, I think, \$125,000 for
21 out-of-school time or summer school programs and
22 out-of-school programs in Bernalillo County.

23 I think it was about \$653,000 total
24 to support our GRADS Program, which is for
25 Expectant and Parenting Youth.

1 state.

2 There is a dearth of mental health
3 or behavioral health providers. To combat that,
4 we applied and received a \$9 million grant over
5 5 years, and that is our Expanding Opportunities
6 grant. That grant we are using to pay
7 individuals on degree paths that would lead to a
8 behavioral health provider's license, and that
9 also pays for their internships in a rural
10 district in New Mexico.

11 We are also striving to retain and
12 increase the quality of services for providers
13 that are already in the schools. We also are
14 providing salary incentives as well to providers
15 who are already in the schools who are
16 participating in our Expanding Opportunities
17 Project.

18 That grant we have had for a little
19 over a year and a half now, yeah. A little over
20 a year and a half.

21 Q. Okay. You mentioned that there is a
22 shortage of social workers.

23 A. Yes.

24 Q. Are there shortages that are -- strike
25 that.

1 is Student Support and --

2 A. Academic Enrichment.

3 Q. -- Academic Enrichment.

4 A. Yes.

5 Q. Thank you for that clarification.

6 All right. Here we are this
7 afternoon again. I want to thank you for your
8 answers this morning.

9 I would just reiterate that we're
10 here today to learn about what the State has done
11 to provide health and social services to At-Risk
12 students in public schools.

13 With that in mind I want to ask you
14 what kinds of health services do districts need
15 to provide At-Risk students?

16 A. I wonder about the question of need,
17 because there are few requirements for schools
18 to provide social services. For legal
19 sufficiency, I don't think there is much.

20 For instance, school nurses aren't
21 required, and school counselors aren't required.
22 Those are all optional services that schools can
23 provide.

24 However, they do provide important
25 services for students, and we recognize and

1 support districts and charter schools who
2 provide health and behavioral health services in
3 schools as much as they can, because we recognize
4 that they are important services for students in
5 New Mexico.

6 Q. And as you say, while some health and
7 social services may not be required, what kinds
8 of health services have you seen throughout the
9 school districts that are being provided?

10 A. School-based health centers are a common
11 service. School nurses can provide healthcare
12 services.

13 In the area of behavioral health,
14 there are school psychologists and social
15 workers that can provide mental health services
16 to schools as well. Counselors can provide
17 limited behavioral health services as well.

18 Q. All right. I think what we'll do is go
19 through each one that you have identified here
20 in terms of nurses, psychologists, social
21 workers, mental health providers and counselors.

22 If we could kind of complete this
23 piece here on health services specifically, would
24 you say that there are enough health services for
25 each school district?

1 Q. Okay. Based on your collaboration with
2 the Department of Health, do you know how many
3 school nurses are currently working with school
4 districts or are employed by school districts?

5 A. I don't have that number offhand, sorry.

6 Q. Okay. Do you know whether school nurses
7 are usually full-time or part-time?

8 MS. RAHN: Object to form.

9 THE WITNESS: I can't say more than half,
10 but it's my experience it's been that if you're
11 a school nurse, you're a full-time school nurse.

12 Q. BY MS. CANDELARIA: Okay. With regard to
13 this ratio that we talked about, what is PED
14 doing to improve this ratio?

15 MS. RAHN: Object to form and foundation.

16 THE WITNESS: We have the \$100,000 that
17 we are using to provide stipends to nurses who
18 have been employed during the pandemic and will
19 continue services into next year.

20 Q. BY MS. CANDELARIA: You said these are
21 currently-employed nurses.

22 A. Currently-employed nurses; we're working
23 on nurse retention.

24 Q. Okay. Can you explain a little bit more
25 about what that plan for retention is?

1 services" such that if you need a service, there
2 is a provider available to provide the service
3 that you require.

4 Q. Thank you.

5 Under "health services" you noted
6 nurses. Let's talk a little bit about nurses.

7 Based on your experience, what is
8 the appropriate or necessary nurse-to-student
9 ratio? I think I heard you mention that already.

10 MS. RAHN: Object to form.

11 THE WITNESS: Yeah, I don't have the
12 expertise to say what the best nurse-to-student
13 ratio is, but the national recommendation from
14 NASN, which is the National Association of School
15 Nurses, is that the ratio of school nurses be
16 250 to 1.

17 Q. BY MS. CANDELARIA: How many districts
18 would you say meet this ratio?

19 A. I don't know of any districts that might
20 meet that ratio. If there are districts that
21 do, it would be smaller districts.

22 I know that regions -- there are no
23 regions of the state that, as a region, meet
24 that requirement. In general the state is above
25 600-to-1 students to school nurse.

1 have to use this particular money to fund a
2 school nurse."

3 Q. BY MS. CANDELARIA: Okay. Let me ask you
4 this:

5 In your work with the Department of
6 Health on school nursing -- yeah, that was on
7 the list.

8 A. Yeah, that's definitely on the list.

9 Q. In your work with the Department of
10 Health on school nursing, do you know if there
11 are any plans to work with institutions of
12 higher learning on training more school nurses?

13 A. I'm not aware of any Department of Health
14 plans to do that, and the PED has not reached
15 out, to my knowledge, to institutions of higher
16 learning to address school nurses or to train
17 more school nurses.

18 Q. Okay. Who at DOH would be the person to
19 talk with on this particular issue?

20 MS. RAHN: Object to form.

21 THE WITNESS: So the Administrator in
22 charge of those programs would be James Farmer,
23 who goes by Jim, yeah. Then there are School
24 Health Advocates for each region. There is a
25 school nurse, and I can't remember her exact

1 employed by school districts. I have known that
 2 number in the past, but I don't remember what it
 3 is.
 4 Q. Do you know how many school districts --
 5 I'm sorry -- social workers are needed, or where
 6 the gaps are?
 7 MS. RAHN: Object to form and foundation.
 8 THE WITNESS: Again, it's not a
 9 requirement that a school district have a social
 10 worker, except for social worker services for
 11 Students With Disabilities or who have social
 12 work as part of their IEP.
 13 I know that lots of school districts
 14 would like to hire social workers, and there are
 15 not -- even for those with funding and a position
 16 available, they have a hard time finding a social
 17 worker to fill that position.
 18 For instance, in Title IV, Part A,
 19 we often see that they will dedicate part or all
 20 of their grant to supporting a social worker
 21 position, because then they can hire a social
 22 worker that could work with general education
 23 students, and it wouldn't be Special Education-
 24 funded. Then they have a difficult time finding
 25 a social worker to fill the position, and so

1 school nurses?
 2 A. So the \$100,000 that we have devoted to
 3 school retention, those are funds specific to
 4 hiring school nurses. Other than that, I am not
 5 aware of any State funds that are specific to
 6 hiring school nurses.
 7 Those decisions are typically left
 8 to a school district or charter school to
 9 determine what they want, you know. Do they need
 10 a full-time school nurse, or do they need a
 11 social worker? You know, what are the
 12 particular needs of the school or district in
 13 terms of how to use their funds in making those
 14 decisions?
 15 Q. Is your Bureau, or does PED generally
 16 provide Technical Assistance to school districts
 17 in order to identify their highest needs or
 18 priorities?
 19 MS. RAHN: Object to form.
 20 THE WITNESS: I think there is some
 21 Strategic Planning/Technical Assistance that
 22 happens. For instance, Title IV, Part A, and
 23 also for Title I --
 24 I better not speak. I don't think I
 25 can speak for Title I.

1 they end up having to amend their application
 2 because they haven't been able to find a social
 3 worker.
 4 Again, that's why we applied for and
 5 are administering the Expanding Opportunities
 6 Project, to try to increase the number of
 7 providers in the state, so that when a school
 8 district wants to do so and has the money to,
 9 they can find and hire a social worker.
 10 Q. BY MS. CANDELARIA: Does the Bureau
 11 provide any funding to assist school districts
 12 in hiring social workers?
 13 MS. RAHN: Object to form.
 14 THE WITNESS: I am not aware of any
 15 funding that is expressly for social workers,
 16 but certainly a lot of the federal funding that
 17 school districts get can be devoted to social
 18 workers, including Title IV, Part A.
 19 Q. BY MS. CANDELARIA: Are you aware of any
 20 State appropriations specifically going to school
 21 social workers?
 22 A. No, I am not aware. I don't believe there
 23 are any State funds that are devoted to funding
 24 social workers in New Mexico schools.
 25 Q. Are there any State funds devoted to

1 school. There are only about 15, so far,
 2 practitioners in the field who are receiving the
 3 stipend to participate in Professional
 4 Development as part of the Expanding
 5 Opportunities Project.
 6 Q. Okay. Thank you for that clarification.
 7 A. Sure. Sure.
 8 Q. If you wanted to give us numbers --
 9 A. Sure. Sure. I can give you the accurate
 10 numbers.
 11 Q. Please do.
 12 Moving down the list to school
 13 counselors, let's tackle that area here.
 14 A. Sure.
 15 Q. Tell me what is an appropriate or
 16 necessary school counselor-to-student ratio.
 17 MS. RAHN: Object to form and foundation.
 18 THE WITNESS: Again, I'm not aware of any
 19 requirement, either state or federal, for a
 20 school to have any particular number, or even a
 21 single counselor in a school or in a district.
 22 As I mentioned, counselors are an
 23 important part of a school's program, and can
 24 help provide services that can increase the
 25 academic enrichment -- or sorry, can help

1 academic learning by providing the basic needs a
2 student might need.

3 As I mentioned, the National
4 Professional Organization for School Counselors
5 in America recommends a counselor-to-student-
6 ratio of 250 to 1.

7 Q. BY MS. CANDELARIA: How many districts
8 would you say meet this ratio?

9 A. I am not aware of any districts that are
10 meeting this ratio.

11 Again, we don't generally work at
12 the district level that much; right? Or the
13 school level. We look more across the state.
14 Historically across the state we've been about
15 400 to about 450 in the ratio of students-to-
16 counselors.

17 I know APS is right around 400 right
18 now at present. I don't know what the current
19 State figure is, but historically we've been
20 between 400 and 450.

21 Q. And how many school counselors total are
22 currently employed?

23 A. I don't know.

24 Q. You don't know.

25 What is PED's plans to, I guess, fill