

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

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

Plaintiffs,

vs.

No. D-101-CV-2014-00793

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

Defendants.

Consolidated with

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

Plaintiffs,

vs.

No. D-101-CV-2014-02224

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

Defendants.

MARTINEZ PLAINTIFFS' CLOSING ARGUMENT IN CHIEF

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I. INTRODUCTION

Few state monikers are as apt as New Mexico's—this state is truly a “Land of Enchantment.” From desert to river, from mountaintop to valley, from city to pueblo, New Mexico possesses abundant natural resources and an enormously rich history and heritage. But perhaps New Mexico's greatest asset is its diverse and proud people—New Mexico boasts the highest proportion of Latinos in the country, and one of the nation's largest proportions of Native Americans. About a quarter of its people are under 18 years of age.

But, sadly, New Mexico's public education system is failing to provide the opportunity for all students to learn. New Mexico routinely ranks at the bottom nationally on student performance measures, with the Annie E. Casey Foundation listing New Mexico last among the 50 states in “[e]stablishing the conditions that promote successful educational achievement.” [P-1668 at 27.] This is not surprising, as less than 20% of students meet expectations in Math and less than 30% do so in English, according to the most recent Partnership for Assessment of Readiness for College and Careers (“PARCC”) test results. And approximately 1 in 3 students do not even graduate from high school. The situation is even worse for New Mexico's most vulnerable populations—Economically Disadvantaged (“ED”) students, English Language Learner (“ELL”) students, Native American students, and Students with Disabilities (“SWD”). Indeed, only 14.5% of ED students and 5% of ELL students meet expectations in Math alone. Within the schools, teachers lack the basic resources they need, and many resort to paying for instructional materials and supplies out of pocket. And superintendents, even at school districts that have enjoyed the most success, lack the resources to provide adequately for their students. The current dismal state of education in New Mexico is intolerable.

New Mexico's constitutional mandate to provide its children with a sufficient education—an education that will afford the opportunity to prepare them for success in college

and career—applies to all students, whether well-off or poor, English-fluent or English-learner, Native American or not, with a disability or not. Contrary to the Defendants’ bleak view that nothing can be done due to demographics and economics, this trial proved conclusively and definitively that:

- All students, including those facing disadvantages, can learn and succeed;
- There are educational resources proven by research to improve student learning, including widely available Pre-K instruction, smaller class sizes, extended learning programs, counseling, and effective teaching;
- Defendants have failed to provide the resources needed to afford students the opportunity to achieve college and career readiness;
- Defendants have failed to provide the necessary oversight and monitoring to ensure that students receive the resources and opportunities they need; and
- Defendants are obligated to remedy the constitutional violations they have created.

New Mexico deserves better, its Constitution demands better, and our children cannot afford to wait. Judicial relief is desperately needed to force Defendants to act and provide relief to the children of this State.

II. DEFENDANTS’ PUBLIC EDUCATION SYSTEM VIOLATES THE EDUCATION CLAUSE OF THE NEW MEXICO CONSTITUTION

Martinez Plaintiffs are entitled to a declaratory judgment that Defendants’ system of public education violates Article XII, § 1 of the New Mexico Constitution (the “Education Clause”). To secure a declaratory judgment, a plaintiff must establish: “a controversy involving rights or other legal relations of the parties seeking declaratory relief; a claim of right or other legal interest asserted against one who has an interest in contesting the claim; interests of the parties must be real and adverse; and the issue involved must be ripe for judicial determination.”

State ex rel. Stratton v. Roswell Indep. Sch., 1991-NMCA-013, ¶ 40, 111 N.M. 495 (internal quotation marks omitted). As discussed below, because the evidence shows that Defendants have violated *Martinez* Plaintiffs’ constitutional rights to a sufficient education for all students, *Martinez* Plaintiffs satisfy all of these elements.

A. The Education Clause Requires Defendants To Provide An Education System Sufficient To Provide Students The Opportunity To Be College And Career Ready

The Education Clause, applied to the current needs of New Mexico’s children, requires the State to maintain a system of public school education sufficient to provide each student a meaningful opportunity to acquire the learning necessary to be prepared for college and career. This common sense interpretation of the Education Clause is supported by Defendants’ concessions, the plain text of the provision itself, other constitutional provisions, legislative statutes, and out-of-state cases construing similar constitutional language.

1. Defendants Concede That The State Is Required To Provide An Education System Sufficient To Provide All Students An Opportunity To Be College And Career Ready

Defendants acknowledge that the State is obligated to provide all students with an education sufficient to prepare them for a successful life, including college and career. Not only did Defendants stipulate to that fact, [*see* 5-10-17 Stip. ¶¶ 29, 68, 71, 115], the PED Acting Secretary Christopher Ruszkowski conceded at trial that “all children in New Mexico have a right to an education that makes them college and career ready” and that college and career readiness standards are “essential to a quality education.” [*See* 7-17-17 Tr. 61:4-11

(Ruszkowski).]

2. The Education Clause’s Plain Language Requires An Education System Sufficient To Provide All Students The Opportunity To Be College And Career Ready

When construing the text of a provision of the New Mexico Constitution,¹ “the rules of statutory construction apply” *State v. Boyse*, 2013-NMSC-024, ¶ 8, 303 P.3d 830, 832 (internal quotation marks and citation omitted). These rules require an examination of “the plain language of the statute as well as the context in which it was promulgated” *State v. Nick R.*, 2009-NMSC-050, ¶ 11, 147 N.M. 182 (internal quotation marks and citation omitted). The Court must presume “that the people know the meaning of the words they use in constitutional provisions, and that they use them according to their plain, natural and usual significance and import.” *Baca v. N.M. Dep’t of Public Safety*, 2002-NMSC-017, ¶ 7, 132 N.M. 282. To determine the plain meaning of words used in state educational clauses, courts routinely look to the definitions contained in commonly used dictionaries. *E.g.*, *Conn. Coal. for Justice v. Rell*, 990 A.2d 206, 232 & n.29 (Conn. 2010); *Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238, 1257 (Wyo. 1995); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W. 3d 391, 395 (Tex. 1989); *Pauley v. Kelly*, 255 S.E.2d 859, 874 (W. Va. 1979).

¹ This Court correctly held that “courts do have a duty to interpret the Constitution, and that nothing exempts the courts from applying that duty to Article XII, Section 1” of the New Mexico Constitution Education Clause. [11-14-14 ORD 3-4.] This Court further emphasized that Plaintiffs’ claims were “particularly” justiciable because “the standards by which the Court may judge the State’s conduct may well be gleaned from statutes or legislative enactments or pronouncements that the State has already made, so that the Court is not inserting itself into educational policy as much as it is looking at what the Legislature has already established as educational policy.” [*Id.* at 4.] The soundness of the Court’s ruling on this issue has been confirmed by numerous other courts arriving at the same conclusion regarding provisions similar to the Education Clause. *See, e.g.*, *William Penn School District v. Penn. Dep’t of Educ.*, 170 A.3d 445-57 (Penn. 2017) (discussing and holding that plaintiffs’ challenges to the Pennsylvania Constitution’s Education Clause were justiciable); *Conn. Coal. For Justice in Educ. Funding, Inc. v. Rell*, 990 A.2d 206, 217–26 (same for the Connecticut Constitution’s Education Clause); *id.* at 225 n.24 (noting that “the vast majority of jurisdictions ‘overwhelmingly’ have concluded that claims that their legislatures have not fulfilled their constitutional responsibilities under their education clauses are justiciable).

The New Mexico Constitution’s Education Clause provides: “A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.” N.M. Const. art. XII, § 1. The key words relevant to the parties’ dispute over the meaning of the Education Clause are “uniform,” “sufficient,” and “education.” From 1910–1912, when the Constitution was drafted, proposed, voted on, and approved, “*uniform*” meant “having only one form; consistent with itself; same in form, manner, or character; equable”; “*sufficient*” meant “equal to any end or purpose; adequate; competent”; and “*education*” meant “the act, process, or result of educating; the systematic training of the moral and intellectual faculties” and “[t]he imparting or acquisition of knowledge; mental and moral training; cultivation of the mind, feelings, and manners.” *Webster’s New Illustrated Dictionary* (1911); *Century Dictionary and Cyclopedia* 1845 (1911) [see Exs. A-B, attached hereto]. These definitions establish that the Constitution’s framers and the New Mexico voters who approved the Constitution intended to require the State to provide (1) schools of equitable quality across New Mexico’s cities, towns, and pueblos; (2) schools that are “equal,” “adequate,” or “competent” to fulfilling the intended “purpose” of educating all public school students in the state; and (3) schools that “systematic[ally] train[] [students] in the moral and intellectual faculties,” to allow them to “acqui[re]” “knowledge” and “mental and moral training,” and to “cultivat[e] . . . the[ir] mind[s], feelings, and manners.” *Id.* The plain meaning of the Education Clause is that the Constitution’s framers intended for the State to create a system of public education that would provide *all students*, throughout New Mexico, with the equal opportunity to acquire knowledge and to develop their minds adequately, which in today’s world means success in college and career.

Other provisions in Article XII of the New Mexico Constitution—entitled “Education”—support this interpretation. Sections 2 and 4 of Article XII, for example, assign state funds to provide public education, and assure the availability of adequate public funding for education. Sections 8 and 10 of Article XII require the State to adequately train public school teachers to be able to teach in English and Spanish, and state that students of Spanish descent shall “enjoy perfect equality with other children in all public schools and educational institutions of the state,” thus ensuring that Spanish-speaking students, like their English-speaking peers, receive an education adequate to prepare them for college and career. These provisions show that the Education Clause requires the State to provide opportunities to all students to be prepared for college and career.

3. Implementing Statutes Also Show That The Education Clause Requires An Education System Sufficient To Provide All Students The Opportunity To Be College And Career Ready

Courts routinely look to legislative statements in construing constitutional text. *See McCleary v. State*, 269 P.3d 227, 249-51 (Wash. 2012) (en banc) (citing statutory language to interpret the meaning of “education” as used in Washington’s Education Clause); *Campbell Cty. Sch. Dist.*, 907 P.2d at 1259-63 (citing statutes to interpret what a “proper education” required under Wyoming’s Education Clause), *as clarified on denial of reh’g* (Dec. 6, 1995); *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 317 (1995) (holding that referring to state educational standards to construe New York’s Education Clause was proper).

New Mexico’s statutes confirm that the Education Clause requires the state to provide an educational system that uniformly provides all students with the opportunity to pursue college and career in today’s modern world. In the “Legislative findings and purpose” section of the Public School Code, the Legislature specifically found that “no education system can be *sufficient for the education of* all children unless it is founded on the sound principle that every

child can learn and succeed and that the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal.” NMSA 1978, § 22-1-1.2(A) (emphasis added). The statute’s use of the specific phrase “sufficient for the education of”—also found in the text of the Education Clause—indicates that the Legislature was aware of its obligations under the Education Clause, specifically that it is required to provide the opportunity for “every child” to “succeed.” In the same statute, the Legislature specifically found that the State’s education system, in order to foster “student success,” must provide “a rigorous and relevant high school curriculum that prepares them to succeed in *college and the workplace*.” *Id.* § 22-1-1.2(B)(5) (emphasis added). New Mexico statutes, therefore, further demonstrate that the Education Clause requires the State to provide students with the opportunity to succeed in college and career.²

4. Decisions From Other States Demonstrate That The Education Clause Requires The State To Provide An Education System Sufficient To Provide All Students The Opportunity To Be College And Career Ready

Although the interpretation of the Education Clause is a matter of first impression in New Mexico, state courts across the country have interpreted similar language in their respective constitutions. The vast majority of those cases hold that states are required to maintain an educational system that adequately prepares their students for college and career, and for life as an informed citizen.

For example, in *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989), the Kentucky Supreme Court interpreted Kentucky’s Education Clause, which stated, “The

² The Legislature’s recognition that a key purpose of the State’s education system is to prepare students for college and career is also shown by the State’s “readiness assessment system” intended to “measure the readiness of every New Mexico high school student for success in higher education or career.” NMSA 1978, § 22-2C-4.1.

General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.” *See id.* at 205 (citing Ky. Const. § 183). The *Rose* court concluded:

[A]n efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

Id. at 212. The *Rose* court went on to specify nine factors considered “essential” to an “efficient” educational system; one of those factors is the provision of an “adequate education” having “as its goal the development of the seven capacities” cited above. *Id.* at 212-13. Several states have followed Kentucky’s lead and applied the *Rose* standard to their own constitutions. *See Gannon v. State*, 402 P.3d 513, 518 (Kan. 2017) (*Rose* standards apply to Kansas’s public education system); *McDuffy v. Sec’y of Exec. Office of Educ.*, 614 N.E.2d 516, 554 (Mass. 1993) (adopting the *Rose* standard for Massachusetts’s public education system); *see also Lake View Sch. Dist. No. 25 of Phillips Cty. v. Huckabee*, 91 S.W.3d 472, 488 (Ark. 2002) (recognizing that “[m]any” of the “*Rose* standards” were adopted by Arkansas statute).

Similarly, the Washington Supreme Court in *Seattle School District No. 1 of King County v. State*, 585 P.2d 71 (Wash. 1978) (en banc), interpreted that state’s Education Clause, which states that “[i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color,

caste, or sex,” Wash. Const. art. IX, § 1. The court concluded that the duty to provide an education to Washington’s children “goes beyond mere reading, writing and arithmetic,” but “also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today’s market as well as in the market place of ideas.” *Seattle Sch. Dist. No. 1 of King Cnty.*, 585 P.2d at 94. Noting that “[e]ducation plays a critical role in a free society,” the court opined that the “constitutional right to have the State make ample provision for the education of all (resident) children would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the market place of ideas.” *Id.* at 94-95 (internal quotation marks omitted).

This interpretation was reaffirmed in *McCleary*, in which the Washington Supreme Court stated that the state legislature, in order to comply with its constitutional obligations, “must develop a basic education program geared toward delivering the constitutionally required education.” 269 P.3d at 261. The *McCleary* court incorporated into the Education Clause statutory language stating that the “goal” of Washington’s education system was “to provide students with the opportunity to achieve those skills which are generally recognized as requisite to learning,” including:

- (1) To distinguish, interpret and make use of words, numbers and other symbols, including sound, colors, shapes and textures;
- (2) To organize words and other symbols into acceptable verbal and nonverbal forms of expression, and numbers into their appropriate functions;
- (3) To perform intellectual functions such as problem solving, decision making, goal setting, selecting, planning, predicting, experimenting, ordering and evaluating; and
- (4) To use various muscles necessary for coordinating physical and mental functions.

Id. at 249 (quoting “Basic Education Act,” Laws of 1977, 1st Spec. Sess. ch. 359, §§ 1, 2).

Likewise, the Wyoming Supreme Court, in *Campbell County School District*, held that Wyoming’s Education Clause requires the state to provide a system of education necessary to prepare its students for college, career, and the modern world. 907 P.2d at 1259. The court interpreted two provisions of its state constitution requiring the state legislature to “establish[] and maintain[] [] a complete and uniform system of public instruction” and to “create and maintain a thorough and efficient system of public schools.” *Id.* at 1257 (citing Wyo. Const. art. 7, §§ 1, 9). The court concluded that “the framers intended the education article as a mandate to the state legislature to provide an education system of a character which provides Wyoming students with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.” *Id.* at 1259; *see also Campaign for Fiscal Equality, Inc.* 86 N.Y.2d at 316 (New York’s Education Clause “requires the State to offer all children the opportunity of a sound basic education” consisting of “basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants.”)

These cases support *Martinez* Plaintiffs’ position that the New Mexico Constitution’s Education Clause requires the State to provide students with an opportunity for education preparing them for college and career.

B. Defendants Have Failed To Provide An Education System Sufficient To Provide All New Mexico Students An Opportunity To Be College And Career Ready

There can be no reasonable dispute that, considering all of the evidence, Defendants have failed to provide New Mexico’s children a system of public education that is uniform and sufficient. As summarized below, overwhelming evidence of the education system’s many failures was presented throughout the trial.

1. Student Achievement And Attainment Are Dismal And Demonstrate That The State’s Education System Is Insufficient

(a) Overall Student Achievement Scores Are Unacceptable

Educational achievement is a powerful indicator of a sufficient system of public education because, as the parties agreed, educational achievement is an essential component of college and career readiness. [See **5-10-17 Stip. ¶¶ 30-31.**] A system that fails to meet this basic goal fails to be sufficient. By its own measures, New Mexico’s educational system is woefully insufficient because it fails to prepare students—especially those who are ED, ELL, and SWD—for college and career.

The evidence admitted at trial shows that the State fails to properly educate the vast majority of New Mexico’s children.

- Prior to the State’s adoption of the PARCC standards, from 2007 through 2014, an average of only 50% of New Mexico students statewide were proficient³ in Reading, and an average of only 40% of students were proficient in Math. [*Id.* ¶¶ **41, 46.**] (Proficiency under the PARCC is indicated by earning a score of “4” or higher. [See *id.* at **5, n.1.**] It is undisputed that scoring a 4 or higher reflects achievement of the Common Core Standards and college and career readiness. [See **5-10-17 Stip. ¶¶ 30-32.**].)
- After PARCC was adopted in 2015, these statistics dropped even further: approximately 35% of students were proficient in Reading, while less than 20% were proficient in Math. [**P-2878 at ¶¶41, 46.**]
- By 2016, these numbers remained poor: Less than 40% of students were proficient in Reading, and only 20% of all students were proficient in Math. [*Id.*] This means that approximately 60-80% of students do not have mastery of the Common Core and were not college and career ready.

Defendants cannot and do not dispute that the proficiency data shows that student achievement in New Mexico was below 50% proficiency from 2007-2014, and that scores

³ [See **P-2878 at 5, n.1** (“When the state implemented the New Mexico Standard Based Assessment (‘NMSBA’ or ‘SBA’), prior to 2015, proficiency levels were reported at four different levels: Beginning Step (level 1), Nearing Proficient (level 2), Proficient (level 3), and Advanced (level 4) . . . Under that assessment, students who scored Proficient and Advanced were considered to have achieved proficiency.”).]

dropped significantly in 2015 after adoption of the PARCC. [*See, e.g.*, **4-14-17 Stip. ¶¶ 1-6, 55-60** (stipulating that, for example, between 2007 and 2014, 57.2-64.3% of eleventh graders did not score proficient in Math, and that the same was true in 2015 for 90% of eleventh graders); *see also* **6-20-17 Tr. 15:15-21, 21:3-15, 44:1-8 (Wallin)** (describing New Mexico’s educational outcomes as among the very worst in the country).] This means that Defendants fail to provide a significant majority of its students with the opportunities necessary to be college and career ready.

Defendants’ own witnesses agreed with *Martinez* Plaintiffs that student achievement and college readiness are important aspects of the New Mexico education system. [*See, e.g.*, **7-26-17 Tr. 63:24-65:22 (Lenti)** (agreeing that college and career readiness are part of educational effectiveness and that New Mexico’s education assessment system is related to the State’s constitutional obligation because it measures college and career readiness).] As a result, Defendants were forced to concede that the current state of affairs—with 72% of all students not proficient in Reading and 80% not proficient in Math—is not “sufficient.” [*See* **7-17-17 Tr. 73:14-74:2 (Ruszkowski)**.]

Furthermore, although at trial Defendants made much of their claim that current reforms were working and urged the Court to consider the forthcoming PARCC scores (which Plaintiffs did not oppose), the 2017 PARCC scores only showed the continued failure of the State’s educational system. [*See* **D-5045 at 2-3** (showing, among other things, that only 28.6% of students statewide are proficient in English, and only 19.7% are proficient in Math); *id.* **at 4-5** (showing that only 43.3% of all eleventh graders are proficient in English, a decline of 1.2% from 2015, while only 8.3% of eleventh graders are proficient in Math, a decline of 1.3% from 2015).]

(b) *Student Achievement Results Are Worst for At-Risk Students*

Evidence at trial also showed that New Mexico’s education system is not uniform and that achievement results are even worse for ED students, ELLs, SWDs, and Native American students. For example:

- From 2011-2014, the percentage of ED students statewide scoring proficient in Reading on the SBA hovered around 40%, while approximately 50% of all students statewide achieved proficiency. [**P-2878 ¶ 41**]. In 2015, after adoption of the PARCC, this achievement gap persisted: less than 30% of ED students scored proficient in Reading, while the student average remained above 30%. [*Id.*] Similarly, in 2016, only 30% of ED students achieved proficiency in Reading, while 37% of all students achieved proficiency. [*Id.* at **14, 82.**]
- From 2012 to 2016, fewer than 20% of ELL students performed at a proficient level in Reading, whereas approximately 45% of all students performed at a proficient level. [*Id.* ¶ **41.**]
- During the same time period, from 2012 to 2016, fewer than 20% of all SWDs scored at a proficient level in Reading, as compared to approximately 45% of the total student population. [*Id.*].
- From 2011 to 2014, less than 40% of Native American students scored proficient in Reading, while 50% of the average student population scored proficient in the same assessment. [*Id.*] In 2015, after adoption of the PARCC, nearly 20% of Native American students were proficient in Reading statewide. [*Id.*] In 2016, this figure remained below 30%. [*Id.*]

These poor results highlight the substantial achievement gaps between ED students, ELL students, SWDs, and Native American students compared to other student populations on educational attainment measures across a 10-year period, and support the conclusion that the State’s system is non-uniform. [*Id.* ¶¶ **13-18**; *see also* **5-10-17 Stip. ¶¶ 92-93** (there are achievement gaps between ED and non-ED students and “PED is aware of research showing [such] gaps.”).] The evidence shows that adoption of the PARCC assessment in 2014 has not aided in closing the achievement gap. [**P-2878 ¶ 34.**] For example, performance in Math in 2015 and 2016 dropped for all students statewide, but SWDs, ELLs, and Native American students fared the worst, with less than 10% of students in each of these subgroups scoring at

proficient levels. [*Id.* ¶ 46.] In contrast, approximately 30% of White students and nearly 50% of Asian American students scored proficient in Math in both years. [*Id.*] Similarly, the statewide gap between ELL students and all students on the Science assessment, for example, has grown since 2007. [*Id.* ¶ 48.]

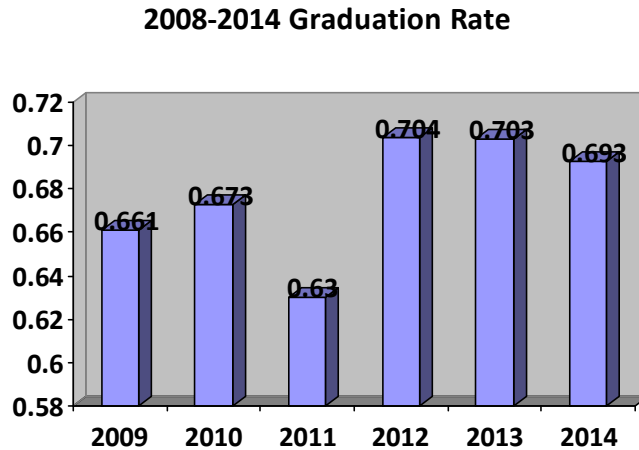
Indeed, Defendants do not dispute that proficiency breakdowns by grade similarly support the conclusion that achievement results are worst for at-risk students, and that an achievement gap has persisted in New Mexico for nearly a decade. [See 4-14-2017 Stip. ¶¶ 7-54, 61-78 (stipulating, among other things, that from 2007-2014, the percentage difference between all eleventh graders and ED eleventh graders scoring proficient in Math ranged from 9.6-12.2%); see also P-2794 ¶ 64 (“statewide data for PARCC in 2016 . . . shows low achievement levels across the years examined for Latino students, American Indian students, [ED] students, and [ELL students] across all grades in Reading, Math, and Science,” and that even where scores improved, such as for third graders in math, “the percentages at Proficient or Above are still low among Latino, American Indian, [ELL students] and [ED] students.”).] The evidence makes clear that the systemic deficiencies in New Mexico’s public education system disproportionately affect at-risk student groups and create a non-uniform system within the State. [See *id.* ¶ 18.]

(c) *Poor Graduation Rates Further Demonstrate That The State’s Education System Is Not Sufficient*

Just as student achievement and proficiency rates are low, student attainment is also troublingly low: The data show that nearly one third of New Mexico’s children do not graduate from secondary education. [See P-3001 at 2 (showing 71% graduation rate for 2016 cohort).] The parties already agree that “[s]tudents who do not graduate from high school have limited opportunities, which is a problem for New Mexico.” [See 5-10-17 Stip. ¶ 56.] Accordingly, this

Court can and should look to New Mexico’s poor graduation rates as evidence of insufficiency.

By this measure alone, Defendants fail a significant portion of New Mexico’s students:



[See 4-14-17 Stip. ¶¶ 995-1001.]

Further, the evidence shows that New Mexico graduates students who do not meet the State’s own standards for proficiency. Under a practice called Alternative Demonstration of Competency (“ADC”), students only need to show competency, not proficiency, through a combination of course work, course exams, acceptance to any college, works of art, job performance, and other factors. [See, e.g., P-1318; P-3002 (NMAC 6.19.7.10).] Indeed, witnesses from several districts, such as Española Public Schools and Magdalena Municipal Schools, described high numbers of students graduating under ADC. [See 6-14-17 Tr. 253:24-254:15 (Martinez) (noting that “many” Española students graduate based on ADC); 6-29-17 Tr. 41:22-42:3 (Perry) (noting that 18.5% of graduating students graduated based on ADC).] Remarkably, then, graduation rates presented by the State are even lower than they appear. [See, e.g., P-1318; P-3002 (NMAC 6.19.7.10).]

(d) *College Remediation Rates Show That New Mexico Students Are Not College and Career Ready*

That New Mexico fails to provide sufficient opportunities for its students to succeed in college and career is further demonstrated by the high proportion of New Mexico’s high school graduates who require remedial education when they reach college. Between 2010 and 2014, the percentage of New Mexico’s high school graduates enrolled in remedial courses during their freshman year in college was between 48% and 52%. [See **4-14-17 Stip. ¶¶ 1024-28.**] This means that, of the low percentage of New Mexico students who both graduate *and* enroll in college, about half of those students are unprepared for higher education. Because students who receive remedial education are less likely to complete a degree or certification program, [see *id.* ¶ **1029**], New Mexico’s education system harms even those who enter college.

2. All Students Can Learn When Provided With Necessary Resources

The trial testimony of experts, superintendents—and the PED itself—establishes that all students are capable of learning.

Dr. Jesse Rothstein testified that the impact of a student’s background characteristics, including ethnicity and socioeconomic status, does not undermine the educational benefits that a system can provide if structured to do so. [See **7-10-17 Tr. 169:13-21 (Rothstein).**]

Superintendents Veronica Garcia and Efren Yturralde both testified that ELL students are capable of learning and, with the right resources, can succeed at the same levels as non-ELL students. [See **6-15-17 Tr. 137:25-138:5 (Garcia)** (“absolutely not” true that ELL students are incapable of learning); **6-29-17 Tr. 113:12-18, 253:25-254:2 (Yturralde)** (“Of course” ELL students can perform at the same level as non-ELL students; “they excel.”).] This experience was echoed by Superintendent Vanetta Perry who testified that “all students can learn” and that “all students could improve their achievement.” [**6-29-17 Tr. 42:20-43:3 (Perry).**]

Even Defendants, when pressed, conceded that all students are capable of learning. Acting Secretary Ruszkowski admitted at trial that all New Mexico students, including ELL students, Latino students, Native American students, and students with disabilities “can learn at high levels.” [7-17-17 Tr. 61:12-62:3, 195:1-5 (Ruszkowski).] Defendants’ expert Dr. David J. Armor similarly testified that a child’s intelligence is malleable and that ED and ELL students are capable learners. [7-31-17 P.M. Tr. at 83:8-24 (Armor).] In the words of PED Deputy Secretary Hipolito Aguilar, the “bilingual mind is a beautiful mind.” [8-04-17 Tr. 59:19-23 (Aguilar).]

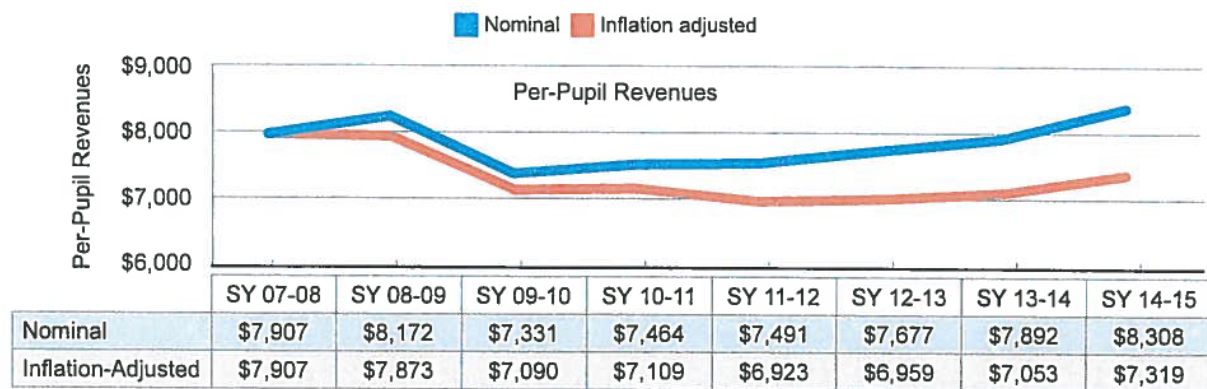
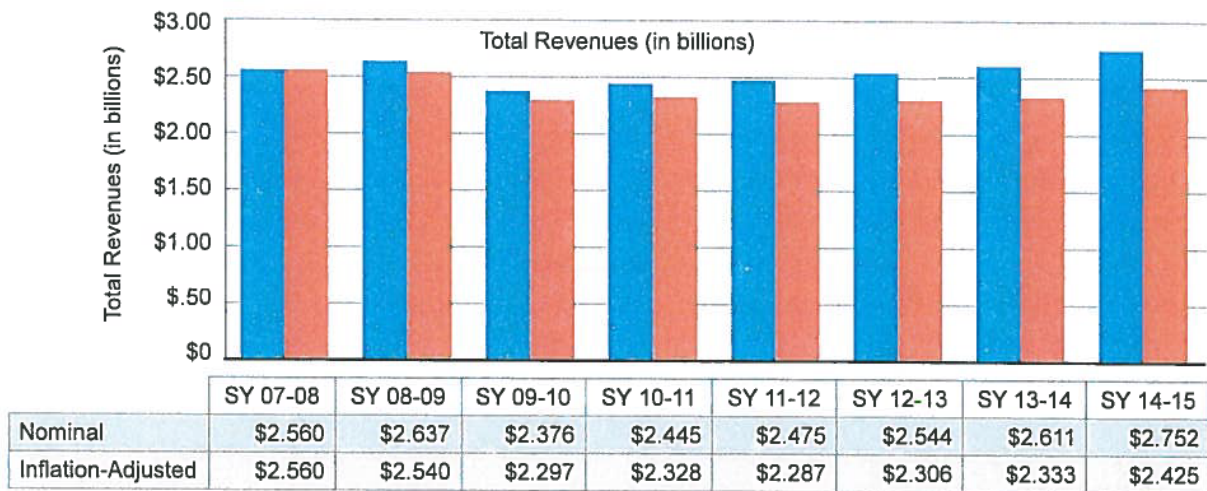
C. The State Has Failed To Provide Adequate Resources and Oversight For All Students To Have The Opportunity To Achieve College And Career Readiness

Defendants have failed to provide sufficient resources, support, and oversight to implement programs to adequately educate students. As a result, Defendants do not provide students the opportunities they need to attain college and career readiness.

1. The State Has Drastically Cut Funding For Education

Since 2008, the Legislature has significantly cut K-12 funding. [P-1683 at 5; *see also* 6-15-17 Tr. 145:21-24 (Garcia).] Adjusted for inflation, school district operational revenue decreased from \$2.560 billion in 2008 to \$2.287 billion in 2012. Since 2012, funding has increased but has not recovered to 2008 levels; in 2015, inflation-adjusted operational revenue was \$2.425 billion:

Operational Revenues, Nominal and Inflation-Adjusted (SY 07-08 to SY 14-15)



Source: NM Public School Finance Statistics, NM Public Education Dept. (inflation calculations by NM Voices for Children based on the Consumer Price Index for Urban Consumers produced by the US Bureau of Labor Statistics)
NEW MEXICO VOICES FOR CHILDREN

[P-1683 at 5.]

The State cut per-pupil funding for K-12 by a striking 8.1% from 2008 to 2015. [P-1679 at 1-3.] From 2008 through 2012, state spending per student declined most drastically, by 12.8% in that four year period. [Id. at 11.] Although New Mexico increased its per-pupil funding by \$124 in fiscal year 2015, the increase did not offset the much larger \$757 cut made between fiscal years 2008 and 2014. [Id. at 4.] These inflation-adjusted figures belie Defendants’ assertions that funding has increased over the years. As Senator Mimi Stewart testified, funding cuts persist to date, with the Legislature steadily cutting both above-the-line and below-the-line

funding year after year. [See **6-20-17 Tr. 142:16-143:24, 156:1-159:3, 212:14-213:2 (Stewart)**;
see also id. at 158-159 (“districts don’t have enough money to pay for their basic programs . . .
[the Legislature has] been starving the public schools for a number of years . . . they don’t have
the money to do the programs that they used to do even ten years ago.”).]

2. Districts Lack Funds And Technical Assistance To Satisfy Student Educational Needs

Ultimately, the State’s funding cuts translate into students not receiving the programs and services they need to succeed. Educators, experts, parents, and teachers testified that the State fails to provide the resources and opportunities that students need to attain college and career readiness. Below are just some of the examples heard at trial:

(a) Pre-K Education

Only 30% of four-year olds and only 3% of three-year olds are enrolled in state Pre-K programs. [**P-2793 ¶ 117.**] Many eligible students receive no Pre-K services because of insufficient slots and funding. [**P-2797 at 41:24-43:2.**] Pre-K does not generate additional units under the SEG, [**5-10-17 Stip. ¶ 14**], so districts supplement Pre-K funding—when they can—with operating and/or Title I funds. [**P-2797 at 17:12-13.**] Even where Pre-K is available, there are substantial shortages for full-day Pre-K. [*Id. at 17:6-14.*] Moreover, despite National Institute for Early Education Research (“NIEER”) standards, the evidence shows that New Mexico Pre-K is “a lot of halfness, half-implemented, half-rolled out, [and] half-designed” programs. [**6-19-17 P.M. Tr. 45:12-23, 100:2-7 (Goetze).**]

PED does not ensure that Pre-K teachers meet baseline standards. [**P-2797 at 28:13-29:20, 43:13-47:2.**] Although the State reports having professional development available for Pre-K teachers, it is essentially an “unfunded mandate.” [**6-19-17 P.M. Tr. 101:9-16 (Goetze).**] In addition, there are a number of administrative and data problems statewide. [*Id. at 67:21-23.*]

Pre-K teachers are not evaluated under NM Teach, for example. [7-28-17 Tr. 139:17-19 (Rebolledo).] Although the State requires that two-thirds of students be from Title I schools, there is no available data documenting the poverty or free and reduced lunch (“FRL”) status of individual Pre-K four-year-olds served in their programs. [6-19-17 P.M. Tr. 47:21-25 (Goetze).]

Even when nominally available, testimony showed that Pre-K availability is limited and many school districts are unable to provide adequate Pre-K services. Lake Arthur Municipal School District, for example, has no Pre-K program. [6-14-17 Tr. 19:6-12 (Grossman).] Moriarty-Edgewood School District only provides Pre-K education to developmentally delayed students, [7-12-17 Tr. 177:19-178:2 (Sullivan)], and Gadsden ISD and Las Cruces Public Schools provide only half-day services. [6-30-17 Tr. 9:17-10:2 (Yturralde); 7-12-17 Tr. 102:22-103:3 (Rounds).] Grants-Cibola County Schools cannot provide any Pre-K services in some parts of the district. [6-29-17 Tr. 170:19-171:10 (Space).] Rio Rancho also does not provide Pre-K for all students because of lack of funds. [7-11-17 Tr. 185:3-8 (Cleveland).]

These failings by the State help explain persistently poor achievement across grades because Pre-K education builds a strong foundation for future learning. Indeed, children who attend high-quality Pre-K education programs do better in school from the first day of kindergarten. [See 5-10-17 Stip. 11; P-2797, at 20:6-21:7]; see also 8-1-17 Tr. 123:17-25 (Rothstein).] It is undisputed that a student’s ability to read at grade level by the third grade is the number one indicator of whether that student will complete high school. [See 4-20-17 Stip. 1105; P-2793 ¶ 117.] As Dr. Linda Goetze testified, high-quality, intensive, and properly implemented Pre-K programs could cut in half the achievement gap between low-income and other children through the end of high school. [See P-2797, at 21:8-23.] Also, effective

preschool programs can be especially beneficial for ELL students. [*See Id.* at **19:20-20:4; 27:19-28:3.**]

(b) *Bilingual Education and ELL Services*

District representatives testified repeatedly at trial that they cannot provide the educational services their ELL students need without funds and trained staff. The former superintendent of the Santa Fe Public Schools, for example, testified that the district cannot provide all ELL students bilingual education, tutoring, and summer school because it lacks the funds to do so. [**6-15-17 Tr. 121:7-16, 125:24-6, 127:1-3 (Garcia).**] The former superintendent of Las Cruces Public Schools likewise testified that the district could not implement a proven ELL program because of insufficient funds. [**7-12-17 Tr. 114:2-117:15 (Rounds).**] The superintendent of Gadsden ISD testified that it requires all teachers to be TESOL-certified, but it cannot pay for TESOL certification. [**6-29-17 Tr. 106:21-23, 108:9-109:6 (Yturralde).**] As a result, only 30% of the district's teachers are TESOL-certified. [**6-30-17 Tr. 10:8-17 (Yturralde).**]

Moreover, the State imposes no specific requirements to ensure ELL program effectiveness, and it does not know, let alone intervene, when districts fail to meet the educational needs of ELL students. Statewide monitoring—to the extent it exists—is extremely limited. For 67% of ELL students, the State's data simply does not capture what language acquisition program the ELL student is enrolled in, if any. [**P-2795 ¶¶ 19, 27e.**] The State's monitoring system completely ignores ELL students who speak neither Spanish nor any Native American language, such as the 68 Vietnamese speakers in Rio Rancho Public Schools. [*Id.* ¶ **15; 7-11-17 Tr. 223:24-224:6 (Cleveland).**] The State does not monitor ELL programs for implementation or effectiveness, [**P-2795 ¶¶ 37a, 45.**], and its on-site review of ELL programs is spotty or nonexistent. [*Id.* ¶ **27e; 6-28-17 Tr. 98:22-25 (Chiapetti).**] The State also does not

track what training or professional development teachers who serve ELL students receive. [7-24-17 A.M. Tr. 94:12-15 (Pelayo).]

The State has also never evaluated which program model is the most effective for ELL students, [*id.* at 90:18-20 (Pelayo)], and it has never calculated the costs to districts associated with implementing an effective ELL program. [*Id.* at 93:11-14; 7-24-17 P.M. 15:21-16:14 (Pelayo).] Districts develop their own programs, trainings, and strategies for ELL education because the State does not provide technical assistance in the form of professional development or support for best practices in its reports and manuals. [P-2795 ¶ 37a; 6-29-17 Tr. 110:8-17 (Yturralde).] In fact, the State failed to adopt standards for Spanish-English Bilingual Multicultural Education Plans (BMEPs) until 2017. [7-24-17 A.M. Tr. 88:9-90:2 (Pelayo).]

Defendants' failures further shed light on the poor performance of ELLs throughout the State. Expert testimony showed that there are a number of necessary components to quality ELL programs that are not provided. Research overwhelmingly supports bilingual programs as the best programs to teach ELL students English and to provide them access to other content areas such as science and history. [P-2795 ¶¶ 18, 29-30; *see also* 6-15-17 Tr. 120:6-121:6 (Garcia).] Effective programs must have qualified teachers—meaning bilingual-certified or TESOL-endorsed teachers. [P-2795 ¶ 37a; 6-27-17 A.M. Tr. 26:25-28:5 (Blum Martinez); *see also* 6-30-17 Tr. 100:15-101:11 (Yturralde).]⁴ Teachers working with ELL students, including

⁴ The federal Equal Educational Opportunities Act (“EEOA”) requires educational agencies to implement ELL programs based on sound educational theories that actually achieve success in overcoming language barriers. *See* 20 U.S.C. § 1703(f); *Castañeda v. Pickard*, 648 F.2d 989, 1009-10 (5th Cir. 1981). Courts have found EEOA violations based on failure to recruit and train qualified teachers. *See, e.g., id.* at 1012–13 (determining qualified teachers to be a critical component of the success of a language remediation program and requiring the state educational agency to devise an improved in-service training program to remedy an EEOA violation); *Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 576 F. Supp. 1503, 1516–17, 1520 (D. Colo. 1983) (finding

teachers in non-language academic subjects, must receive periodic, ELL-specific professional development. [P-2795 ¶ 31; 6-26-17 A.M. Tr. 34:24-35:3 (Escamilla); 6-27-17 A.M. Tr. 33:19-34:18 (Blum Martinez); 7-24-17 A.M. Tr. 93:6-10 (Pelayo).] Quality ELL instruction requires teachers to utilize the most effective teaching strategies in each language of instruction, [P-2795 ¶ 33], and to have access to materials for all subjects, in English and non-English languages. [*Id.* ¶¶ 28, 37c; 6-26-17 P.M. Tr. 111:6-112:7 (Blum Martinez).] An effective ELL program must also be implemented consistently across grade levels and age groups, and quality instruction must be long-term in duration. [P-2795 ¶¶ 28a, 32, 37a; 6-26-17 P.M. 111:6-112:7 (Blum Martinez).]

(c) *Effective Teachers*

Compounding problems, school districts lack funding to pay for all of the teachers and staff they need. Gadsden ISD, for example, cut over 200 staff positions since 2008, [6-30-17 Tr. 23:14-21 (Yturralde), including 53 classroom positions and 15 essential teaching positions. [6-29-17 Tr. 242:19-244:3 (Yturralde).] One high school in that district has only one instructional coach for 1,400 students. [*Id.* at 246:3-10.] Rio Rancho Public Schools had 28 classrooms without teachers last year, [7-11-17 Tr. 228:4-8 (Cleveland)], and had to cut 41 positions because of a decrease in State funding that year. [*Id.* at 221:8-10.] Plaintiff Roberto Sanchez testified that his son did not have a middle-school science teacher, not even a substitute teacher, for part of last year. [6-19-17 P.M. Tr. 20:17-21:17 (Sanchez).] Dr. Ed Fuller also testified that ED and ELL students lack access to effective teachers, which means that those students are at a disadvantage. [See 7-13-17 Tr. at 119:18-120:13 (Fuller).]

EEOA violation for “the lack of adequate standards and testing of the qualifications for bilingual teachers, [English as a Second Language (“ESL”)] teachers, tutors and aides”).

In addition, school districts often cannot attract enough qualified teachers because of low salaries. Districts located near Texas, for example, have to compete with higher Texas salaries. **[6-29-17 Tr. 237:17-23 (Yturralde); 7-11-17 Tr. 169:1-15 (Cleveland); 7-12-17 Tr. 107:14-25 (Rounds).]** It is also particularly difficult to recruit teachers in rural areas and for teachers specializing in special education, STEM, and bilingual education. **[6-12-17 Tr. 95:14-96:12 (Garcia).]** It is similarly difficult for some districts to maintain a sufficient number of TESOL-endorsed teachers because of an inability to compete with neighboring districts. **[6-14-17 Tr. 204:1-24 (Martinez).]** Even when districts can hire teachers, they cannot provide necessary professional development because they lack the funds to do so. Rio Rancho Public Schools, for example, cannot provide minimally effective teachers the training they need to succeed, **[7-11-17 Tr. 225:6-226:2 (Cleveland)]**, and the Española Public Schools district does not have sufficient funding to provide professional development for teachers to meet the needs of SWDs, **[6-14-17 Tr. 211:20-25 (Martinez).]**

Despite causing these shortcomings, Defendants do not dispute that equal access to effective educators “is critical to ensure equitable access to opportunity and advancement for all New Mexico students.” **[5-10-17 Stip. ¶ 71.]** Deputy Secretary Aguilar reinforced this point when he testified that highly effective teachers are “key” to improving proficiency and that these teachers need to be allocated to schools serving the most at-risk students. **[See 8-4-17 Tr. 63:24-64:7 (Aguilar); see also 6-30-17 Tr. 53:7-13 (Yturralde)** (testifying that effective teachers are one of the most important components of a student’s education and can have a positive effect on narrowing the achievement gap).]

(d) Class Size

School districts have been forced to increase class sizes and, in many cases, seek waivers from the state to exceed the State’s statutory maximum class sizes. The Legislature has granted

these waivers to allow districts to “save money,” but students have paid the price: Class sizes are 7-10% larger, and students get less individualized attention from teachers as a result. [See **6-20-17 Tr. at 157:6-158:20 (Stewart)**.] PED itself recognizes that this practice could “have a significant negative impact on student achievement.” [**P-122 at 2**.] And this is happening now—districts such as Rio Rancho Public Schools, Albuquerque Public Schools (“APS”), and Magdalena Municipal Schools have all been forced to increase class sizes. [See **6-22-17 Tr. at 146:16-24 (Coleman)** (describing APS use of class size waivers); **6-29-17 Tr. 18:11-19:2 (Perry)** (describing doubling of class sizes); **7-11-17 Tr. at 221:8-20 (Cleveland)** (describing negative impact on student learning of increased class sizes in the next school year).]

Dr. Clive Belfield explained that “the evidence is pretty clear” that “smaller class sizes are associated with higher achievement, higher earnings,” and increased high school and college graduation rates. [See **6-13-17 A.M. Tr. 46:7-47:19 (Belfield)**; see also **8-1-17 Tr. 123:13-124:11 (Rothstein)** (testifying that reduced class sizes can have positive causal effects on student achievement).] Students with greater needs, such as ELL students, also benefit from class sizes: Dr. Kathy Escamilla testified that there is no support for the proposition that class sizes do not matter for ELL students and explained that a low student-teacher ratio of 15-to-1 is ideal for improved language acquisition. [See **6-26-17 Tr. 35:11-22**.] Simply put, the lack of these inputs, too, shows that Defendants deprive at-risk students of their constitutional right to a sufficient education.

(e) After School And Extended Learning Programs

Districts across the state severely limit extended learning opportunities because the districts do not have the funds to provide after school, tutoring, summer school, and similar opportunities to all students who need such services. Rio Rancho, for example, does not provide after school tutoring, credit recovery, and dual credit for all students because of lack of funds.

[7-11-17 Tr. 185:3-8, 191:18-192:1; 193:22-194:23, 197:23-198:9 (Cleveland).] Magdalena Municipal Schools similarly had to cut all tutoring, except for tutoring offered to high school students due to funding cuts. [6-29-17 Tr. 33:21-34:3 (Perry).] Dr. Veronica Garcia also testified that there are ELL students in Santa Fe Public Schools who need summer school but who do not have access to it, and that overall the availability of summer school is limited due to insufficient funding. [6-15-17 Tr. 127:1-14 (Garcia)]; *see also* [6-20-17 Tr. 173:2-174:11 (Stewart) (testifying that summer 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).]

Martinez Plaintiff parents likewise testified that extended learning opportunities are not available to their children. Plaintiff Rayos Burciaga testified that her daughter struggles with several of her high school subjects, but has not received tutoring and is on the summer school waiting list. [6-15-17 Tr. 246:2-15 (Burciaga).] Plaintiff Roberto Sanchez likewise testified that his sons did not receive tutoring or summer school when they received poor grades over the years. [6-13-17 Tr. 41:17-22, 42:14-19, 50:16-51:4 (Sanchez).]

These failings further evidence Defendants' constitutional violation: as Dr. Rothstein testified, after-school and extended-learning programs "have been convincingly demonstrated to have positive causal effects on student achievement." [8-1-17 Tr. at 123:13-124:11 (Rothstein).] Superintendent Frank Chiapetti similarly testified that after school programs are a "vital need with our [low] proficiency rates," but that PED has stopped funding such programs. [See 7-28-17 Tr. 77:9-78:9 (Chiapetti).] Summer learning programs, such as K-3 Plus, can also reduce summer learning loss and close the achievement gap for at-risk students in the early grades. [See P-2797, at 19:11-13, 63:1-5.]

(f) *Counselors, Social Workers, And Other Non-Instructional Staff*

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. [See **6-28-17 Tr. 89:23-90:10 (Chiapetti)** (testifying that counselors are not funded through PED).] Gadsden ISD Superintendent Yturralde, for example, testified that his district has only 12 of 24 needed social workers, [**6-30-17 Tr. 8:9-21 (Yturralde)**], and 31 of 46 needed counselors, [**Id. at 8:22-9:16.**] In addition, Gadsden administrators juggle multiple roles usually handled by separate administrators. For instance, an Associate Superintendent of Curriculum is in charge of administering technology, bilingual education, and athletics as well. [**Id. at 106:13-23.**] Las Cruces Public Schools has a 600-to-1 counselor-to-student ratio because it cannot afford to hire additional counselors. [**7-12-17 Tr. 103:23-104:15 (Rounds)**]. *Martinez* Plaintiff parents testified that neither they nor their children receive any information from their children's schools on applying to college. [**6-19-17 P.M. Tr. 7:22-25 (Sanchez); 6-15-17 Tr. 235:1-4, 247:1-21, 261:23-262:4 (Burciaga)**]. Gilbert Ramirez, a former social worker, testified that in his experience 90% of the students in his school needed services, but the school could only serve 2-3% of those students. [See **6-21-17 Tr. 216:24-218:23 (Ramirez)**]. Teacher Janet Kimbrough testified that the two social workers in her school only serve SWDs, despite the general population also needing services. [See **7-20-17 Kimbrough-Hartsock Dep. Desig. 75:22-76:3.**]

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. [See **P-2793 ¶¶ 119-20, 123, 127; see also 8-1-17 Tr. 123:17-25 (Rothstein)**]. Indeed, Gilbert Ramirez, a charter school director and former APS high school counselor, testified about his experience with a charter high school that had achieved a graduation rate of 80%. [See **6-21-17 Tr. 230:22-231:15, 233:2-234:6 (Ramirez)**]. He

explained that it was “vital” that counseling and social services be provided side-by-side with teaching, and that the difference between his prior experience in APS and the success of his charter school was “primarily a question of staffing.” *[Id.]*

(g) *Multicultural Education And Indian Education*

The State ignores the specific educational needs of its ethnically and culturally diverse students. In fact, the State recently proposed removing the enrichment program model for bilingual education, which is the one bilingual program model in which students learn about the histories and cultures of the diverse peoples of New Mexico. **[6-21-17 Tr. 29:1-24 (Sleeter).]** More generally, the State provides little guidance on how districts can incorporate multicultural education into the curriculum. The State has no framework for implementing the multicultural portion of the Teacher Training Clause and Children of Spanish Descent Clause of the New Mexico Constitution, **[Id. at 30:18-31:7]**, and PED reports on the Hispanic Education Act do not elaborate regarding what culturally responsive pedagogy means. **[P-2800 ¶ 166.]** Without guidance, districts generally do not implement effective multicultural education and teachers receive little professional development in culturally responsive pedagogy. **[Id. ¶ 255.]** Consequently, nearly half of teachers report that the training they do receive has little or no effect on their instruction. **[Id. ¶ 260.]** Compounding the problem, Native American and Hispanic students have very little with which to identify in the textbooks they use. **[Id. ¶ 226.]**

Providing multicultural education fosters student success. Through multicultural education, ethnic and cultural content is integrated into the subject area; schools promote empowering cultures; and teachers help students understand biases within disciplines, develop positive cultural attitudes, and build on how students learn at home. **[Id. ¶ 20.]** When

curriculum content is culturally relevant to students and linked directly to academic goals, achievement for minority students increases. [*Id.* ¶ 55.]⁵

(h) *Educational Materials*

The State does not provide teachers with even the basic materials they need to educate students. At Española Public Schools, for example, there is a “struggle for enough resources in the classroom,” and the district is sometimes required to make photocopies of textbooks and workbooks. [See **6-14-17 Tr. 179:20-180:10 (Martinez)**.] Many districts struggle to afford textbooks using the meager stipends provided by PED, and instead supplement those expenses with operational funds. [See, e.g., **6-29-17 Tr. 33:11-20 (Perry)**; **6-12-17 Tr. 70:25-72:5 (Garcia)** (testifying that districts across the state supplement PED funds with their own to purchase textbooks and workbooks).] Oftentimes, even these combined funds are not enough, as indicated by the *Martinez* Plaintiff parent testimony that their children at APS and the Zuni Public School District do not have textbooks to bring home. [**10-26-17 Louise Martinez Dep. Desig. 28:13-29:16**; **10-26-17 Edaakie Dep. Desig. 12:1-19**.] The situation is so dire that teachers and administrators resort to purchasing instructional materials with their personal funds. For example, Assistant Superintendent Myra Martinez testified that she, like other Española teachers, purchases school supplies for students from her own pocket. [See **6-14-17 Tr. 179:20-180:17 (Martinez)**.]

3. The State’s “Reform Efforts” Have Exacerbated These Problems

Defendants assert that their “reform efforts” hold the “best hope of raising the achievement of New Mexico’s students.” [See **6-7-17 State Defs.’ Pretrial Br. at 3**.] These

⁵ *Martinez* Plaintiffs also adopt the *Yazzie* Plaintiffs’ arguments about the insufficient education provided to Native American students. See *Yazzie* Plaintiffs’ Closing Brief, § V.A(1)-(2).

reforms have proven either inadequate or counterproductive and are not uniformly provided to all students.

Defendants point to its NM Teach and A-F school grading systems as examples of its positive reforms, but the evidence introduced at trial belies these assertions. Drs. Rothstein and Fuller testified that the State’s teacher and school grading systems systematically disadvantage schools with high proportions of at-risk students and the teachers who teach there. In particular, Dr. Fuller testified that “the New Mexico school accountability system is biased against particular types of schools—particularly schools enrolling lower percentages” of at-risk students—and that the system “appears to lack substantial reliability in identifying school performance.” [See **P-2973-EF ¶¶ 132-34.**] Regarding NM Teach, Dr. Rothstein testified that “the [NM Teach] VAM is indeed biased against teachers in high-need schools” because it fails to properly account for a student’s background characteristics. [See **P-2799 ¶¶ 51-54.**] This is unsurprising because the PED official who created the NM Teach system was unaware of any existing, publicly available analysis of the model’s validity. [See **7-31-17 A.M. Tr. 99:15-100:13 (Goldschmidt)**; see also *id.* at **116:18-24** (admitting that he could not rule out the possibility of bias in the NM Teach model); *id.* at **128:20-25** (admitting that Dr. Fuller’s analysis demonstrated the possibility of bias in the school grading system).]

D. The State Has Failed To Act

The “buck stops” with the State with regard to providing the necessary resources and monitoring to provide opportunities for all students to learn. Defendants are not free to sit idly by while students fail to receive a sufficient education. As discussed above, the Constitution obligates the State to act. *See supra* § II.A. By statute, PED is required 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, until such time as requirements of law, standards or rules have been met and compliance is ensured, the powers and duties of the local school board and local superintendent shall be suspended.” NMSA 1978, § 22-2-2(C) (emphasis added). But Defendants fail to do even this. As a result, each year a new class of children is enduringly harmed, and the critical years in which children can make meaningful educational advances are wasted.

III. DEFENDANTS’ PUBLIC EDUCATION SYSTEM VIOLATES THE EQUAL PROTECTION CLAUSE OF THE NEW MEXICO CONSTITUTION

In addition to its insufficiency, Defendants’ education system also violates the Equal Protection Clause of the New Mexico Constitution (Article II, § 18). The Equal Protection Clause “guarantees that the government will treat individuals similarly situated in an equal manner.” *Breen v. Carlsbad Mun. Sch.*, 2005-NMSC-028, ¶ 7, 138 N.M. 331. Although ED and ELL students are similarly situated to non-ED and non-ELL students, the State’s education system treats them unequally. Defendants have no compelling interest justifying this disparate treatment.

A. Legal Standard For Equal Protection Claim

Because education is a fundamental right, strict scrutiny applies to *Martinez* Plaintiffs’ equal protection claim. [11-14-14 ORD 5-6 (“It is difficult to conceive of a service that the State provides its citizens that is more fundamental than the right to education. . . An educated populace is not only something that is fundamental to our current well-being, it is fundamental to our future well-being.”)]; *Breen*, 2005-NMSC-028, ¶ 12 (legislation that “affects the exercise of a fundamental right” is subject to strict scrutiny) (internal quotation marks omitted). Strict scrutiny also applies because ELL and ED statuses qualify as suspect classifications. *Marrujo v. N.M. State Highway Transp. Dep’t*, 1994-NMSC-116, ¶ 10, 118 N.M. 753 (“Strict scrutiny also

applies under an equal protection analysis if the statute focuses upon inherently suspect classifications such as race, national origin, religion, or status as a resident alien.”); [see also **11-14-14 ORD 6** (“Plaintiffs have satisfied [the *Breen* classification] pleading requirement with respect to economically disadvantaged children.”).] As set forth in the expert testimony of Dr. Phillip B. Gonzales, New Mexico has a history of unequal and discriminatory treatment of Spanish-speakers and Native Americans. [P-2882 ¶¶ 38, 51, 236.] This discrimination was “built into the inner workings of [New Mexico’s] school finance system.” [Id. ¶ 267.]

“[S]trict scrutiny requires the most exacting review by a court.” *Breen*, 2005-NMSC-028, ¶ 12. “If legislation affecting such rights or classifications is challenged, the party supporting the legislation has the burden of proving that the legislation furthers a compelling state interest.” *Id.* The party supporting the legislation must further show that the provision is “closely tailored” to the asserted compelling interest. *Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, ¶ 23. Therefore, Defendants have the burden of proving that their unequal treatment of ELL and ED students is closely tailored to serve a compelling state interest.⁶

Martinez Plaintiffs and Defendants agree that it is not necessary to show discriminatory intent in the equal protection analysis. [See **5-22-17 A.M. Tr. 118:15-19** (Defendants’ counsel conceding that Plaintiffs “are correct” in arguing that it is not necessary to establish purposeful discrimination for *Martinez* Plaintiffs’ equal protection claim).]

⁶ In the event that the Court determines that intermediate scrutiny applies, the Court must examine: “(1) the governmental interests served by the [legislative classification], and (2) whether the classifications under the statute bear a substantial relationship to any such important interests.” *Breen*, 2005-NMSC-028, ¶ 30 (internal quotation marks omitted, alteration in original). Even under intermediate scrutiny, the burden still falls on Defendants to show that “the discriminatory legislative classification is based on a reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions.” *Id.* (internal quotation marks and citation omitted).

B. ED and ELL Students Are Similarly Situated To Other Students, But Are Treated Dissimilarly

Legislation, case law, this Court’s prior order, and stipulations make clear that ED and ELL students are recognizable and discrete classes and are similarly situated to non-ED and non-ELL students. [See **6-5-17 Martinez Pls.’ Pretrial Br. at 20-22.**] At the same time, achievement results are far worse for ED and ELL students when compared to the student population at large. *See supra* § II.B.1(b).

These disturbing statistics are not surprising—ED and ELL students are generally taught by less experienced and less skilled teachers than non-ED and non-ELL students. According to a 2015 presentation from the Legislative Education Study Committee (“LESC”), poor and minority students are more likely to have an inexperienced teacher. [**5-10-17 Stip. ¶ 69.**] There is also a greater need for high-quality professional development in at-risk schools. [*Id.* ¶ **83.**] Furthermore, although the Legislative Finance Committee (“LFC”) in 2015 recommended that the Training and Experience (“T&E”) index incorporate an adjustment factor for effective teachers to work at high-poverty schools, and that the money generated should go directly to the teacher as additional compensation, the State has not followed either recommendation. [*Id.* ¶ **80; 7-21-17 Tr. A.M. 84:20–85:4 (Sallee).**]

The evidence supports the LESC’s and LFC’s findings. Dr. Rothstein testified, “[b]oth high poverty schools and high ELL-share schools have teachers with lower average evaluation scores, and fewer teachers rated effective or better, than do lower poverty or lower ELL share schools.” [**P-2799 ¶ 22.**] Dr. Rothstein concluded that “New Mexico is failing to ensure that students in high-need schools in the focus districts are exposed to highly effective teachers.” [*Id.* ¶ **12(b).**] One cause of this problem is PED’s use of a value-added model (“VAM”) for teacher evaluations. Dr. Rothstein explained that the VAM “is biased against teachers in high-need

schools” and “almost certainly contributes to the teacher quality problems in these schools, and thereby to their students’ poor average achievement.” [*Id.* ¶ 66.] By penalizing teachers at high-need schools through its biased methodology, the VAM “creates an incentive for teachers at these schools to migrate to lower need schools where their evaluations will not be penalized in this way.” [*Id.*] Charles Sallee, the LFC’s Deputy Director, similarly agreed that it is difficult to recruit experienced and highly qualified teachers to teach in high-poverty areas if salaries are the same as in low-poverty areas, and high-poverty schools tend to have a disproportionate number of ineffective teachers. [*See* 7-21-17 Tr. P.M. 12:24-13:4, 13:14-18 (Sallee).]

Data surrounding out-of-school suspension and the gifted and talented program highlight this disparate treatment. As Dr. Frances Contreras testified, Latino students in Albuquerque were overrepresented in terms of out-of-school suspension in 2011. [6-19-17 A.M. Tr. 34:2-25 (Contreras).] This is true for nearly all *Martinez* focus districts who report this data to the United States Department of Education Office of Civil Rights. [P-2794 ¶ 42.] Out-of-school suspensions are the most extreme form of punishment in a school context, and have a major, negative impact on student achievement. [6-19-17 A.M. Tr. 33:15-34:1 (Contreras).]

While Latino students are overrepresented among students subjected to out-of-school suspensions, they are underrepresented in the Gifted And Talented Education (“GATE”) program. In 2011, for all *Martinez* focus districts that report the relevant data, Latino students are underrepresented in the GATE program. [P-2794 at 28.] In Santa Fe in 2011, for example, 70% of the students in the district were Latino, yet Latino students constituted only 23.8% students participating in GATE. [*Id.*]

C. There Is No Compelling State Interest For The State’s Failings

Defendants have no justification—much less a compelling or important state interest—to support withholding the resources ED students and ELLs need to have the opportunity to achieve

on par with their non-ED and non-ELL peers. Dr. Rothstein explained that there is “clear and compelling evidence that a variety of specific resources,” have been “convincingly demonstrated to have positive causal effects on student achievement” and graduation. [P-2799 ¶¶ 4-5; 8-01-17 A.M. Tr. 123:3-124:18 (Rothstein).] He further testified that based on his experience and research, there is evidence that such programs “can reduce the achievement gap.” [8-01-17 A.M. Tr. 127:7-17 (Rothstein).] Dr. Contreras testified that one would not see the persistent gaps in achievement that exist between ED students and non-ED students if PED’s reforms were working, and that state resources should complement federal resources to serve a greater number of students. [6-19-17 A.M. Tr. 150:12-151:15 (Contreras).] Indeed, Defendants have stipulated that “[s]erving all students with equity may require providing different inputs for some students.” [See 5-10-17 Stip. ¶ 39.] Defendants do not provide those inputs, even though the State has the same expectations for ELL and ED students as it does for non-ELL and non-ED students. *See supra* § II.B.2.

For instance, Dr. Goetze testified, “[t]he effects of high quality preschool programs are stronger for more disadvantaged students than for middle and higher income families, although all students show academic and even long-term life benefits from participation.” [P-2797 at 15; *see also* 6-19-17 P.M. Tr. 38:8-10 (Goetze).] And yet, “New Mexico Pre-K does not provide enough half or extended day slots to serve all students who are eligible for them. There is a substantial shortage of extended day Pre-K slots throughout the state as evidenced by extensive waitlists for those services.” [P-2797 at 17.]

The State’s inept funding system, which impairs the State’s ability to provide necessary inputs for ED and ELL students, cannot be justified by any compelling or important state interest. The main source of funding for New Mexico public schools, known as the State

Equalization Guarantee (“SEG”), treats ED students dissimilarly on its face because the SEG formula arbitrarily excludes ED students from its “at-risk index” element. New Mexico does not base its at-risk funding on the number of students eligible for Free or Reduced-priced Lunch (“FRL”) under the National School Lunch Act. [See **4-14-17 Stip. ¶ 1144.**] Rather, the SEG “at-risk index is calculated by using a three-year average of three different school district characteristics: the percentage of membership used to determine its Title I allocation, the percentage of ELL students, and the percentage of student mobility in the district.” [See *id.* ¶ **1145**]; NMSA 1978, § 22-8-23.3. The formula’s use of the Title I allocation only accounts for students recognized by the United States Census as being at or below 100% of the federal measure of poverty, excluding many ED students whose households earn up to 185% of the federal poverty measure and are therefore eligible for FRL. [P-2803 ¶ **115.**] States more commonly use the FRL measure to provide additional funding to ED students, and a number of those states assign extra weights of 25 percent or more to each student qualifying for FRL. [*Id.* ¶ **26.**] Paradoxically, New Mexico defines ED students as those who qualify for FRL for accountability purposes to the federal government, yet does not use this measure when identifying “at[-]risk” students. [P-191.]

Despite the LFC and LESC’s recommendations in their 2011 joint study that the State use eligibility for FRL as the metric for the at-risk index, the State did not make this change. [P-87 at **6; 7-18-17 Tr. 22:14-18 (Burrell).**] As a result, the funding formula on its face prevents many ED students from receiving additional resources needed for a sufficient education. In New Mexico, only 28.5% of school-age children meet Census poverty guidelines, whereas 68.2% are eligible for FRL. [P-2803 ¶ **26.**]

Moreover, the at-risk index's multiplier effect is too small to provide ED students with the additional resources they need. The LFC and LESC recommended in their 2011 joint study that the State change the at-risk index to pay a cost differential of .15 for each percentage point of districts' students identified as eligible for FRL. [**P-87 at 6; 7-21-17 A.M. Tr. 25:9-25, 67:23-68:8, 75:6-10 (Sallee).**] The PED also supported raising the at-risk index to .15 with the assumption that at-risk students require more funding in order to help them be successful. [**8-4-17 Tr. 50:21-51:18 (Aguilar).**] Former PED budget analyst Steve Burrell conceded that he agreed with the LESC recommendation that the at-risk index should be increased to .15. [**7-18-17 Tr. 25:1-24 (Burrell).**] Yet, the Legislature has not increased the at-risk index above its current .106. Deputy Secretary Aguilar admitted that there "always could be something irrational" with the funding formula and its low at-risk index. [**8-4-17 Tr. 211:21-212:17 (Aguilar).**]

Moreover, the State has no compelling or important purpose for the SEG's failure to account for ELL students specifically. Outside of the general at-risk index, the SEG does not have a component for ELL students. [**Id. at 42:12-25.**] The State has failed to examine whether such a component is necessary in order to provide ELL students with a sufficient education. [**Id.**] Dr. Icela Pelayo, PED's former director of the Bilingual Multicultural Education Bureau, admitted that she does not know whether funds generated through the at-risk index are based on actual costs to school districts. [**7-24-17 P.M. Tr. 16:15-17:1 (Pelayo).**]

The State also fails to provide sufficient resources to ED students by not providing adequate additional funds outside of school districts' SEG allocations. These funds, referred to as "categorical" or "below-the-line" ("BTL") funding by State officials, fail to bridge the gap between SEG allocations and funding levels that would actually provide ED and ELL students

with the programs, interventions, and resources they need. The State distributes BTL funding via grants, for which districts must apply in many cases, and districts must use the funding for specific programming. [6-14-17 Tr. at 44:7-45:22 (Grossman).] However, the public education analyst for the LFC noted in 2014 that some BTL programs were not evidence-based, and that the capacity of some programs to achieve results for students was “unknown.” [P-1545; 10-27-16 Rachel Gudgel Dep. Desig. 34:2-35:9, 56:10-57:4.] Additionally, the PED stopped reporting to the Legislature about BTL programs. [6-20-17 Tr. at 148:4-149:15 (Stewart).]

The State also distributes BTL funds inconsistently and at unpredictable times, further limiting its effectiveness for ED students. BTL funding tends to vary from year to year, and the grants are not always available to all districts. District officials testified that fluctuations in funding levels and the sudden termination of funding make it difficult to provide consistent programming for ED students. [6-12-17 Tr. 73:15-16 (Garcia); 6-14-17 Tr. 168:23-170 (Martinez); 6-15-17 Tr. 79:3-80:6 (Garcia).] Indeed, districts are unable to expand successful programs like Pre-K because the BTL funds are not enough. *See supra* II.C.2(a). In the case of the Reads to Lead program, New Mexico Senator Mimi Stewart testified about the difficulties with teacher and staff hiring that funding inconsistency causes. [6-20-17 Tr. at 148:24-150:20 (Stewart).] She also stated that the funding levels and inconsistency limit the effectiveness of the program because of the relatively small number of students it reaches. [*Id.* at 149:25-151:17.]

Accordingly, there is no compelling or important state interest justifying the State’s different treatment of ED and ELL students.

IV. DEFENDANTS' PUBLIC EDUCATION SYSTEM VIOLATES THE DUE PROCESS CLAUSE OF THE NEW MEXICO CONSTITUTION

Martinez Plaintiffs also bring a due process claim under Article II, § 18 of the New Mexico Constitution. The Due Process Clause standard is the same as that described above for the Equal Protection Clause. *Marrujo*, 1994-NMSC-116, ¶ 9 (“The same standards of review are used in analyzing both due process and equal protection guarantees.”); [11-14-14 ORD 4 (“[T]he Court is of the opinion that the equal protection fundamental rights analysis is the same as the substantive due process analysis.”).] Because the Equal Protection Clause arguments applicable to ED and ELL students apply with equal force to the Due Process Clause claim, *Martinez* Plaintiffs rely on their arguments above, and make the following additional arguments pertinent to SWDs.

The evidence shows that Defendants have no compelling state interest for failing to provide the resources that SWDs need for a sufficient education. As Dr. McLaughlin testified PED does not provide “sufficient funding, professional support, technical assistance, or oversight to its local school districts to ensure that they can identify children with disabilities who may require special education and provide a Free Appropriate Public Education to each child eligible for special education as required by law.” [P-2798 ¶ 10.] One example of this is New Mexico’s failure to meet Maintenance of Effort requirements. [P-309.] This failure “triggered a 2015 Special Audit conducted by an independent firm under the auspices of the Office of the State Auditor that revealed a cumulative shortfall of special education funding of about \$111 million.” [P-2798 ¶ 30.] According to Dr. McLaughlin, “[t]here is evidence from the Special Audit and the AIR report that New Mexico does not know the ‘cost’ of providing special education, it only knows what differential units are reported. Further, the [SWD funding system] is overly

complex and lacks the flexibility and predictability that allows districts to implement new programs or adjust individual IEPs as student needs change.” [P-2798 ¶ 32.]

Consistent with Dr. McLaughlin’s expert testimony, Senator Stewart testified to the lack of sufficient funding for SWDs. Senator Stewart, who has decades of experience as a state legislator and as a special education teacher, testified that the Legislature does not allocate sufficient funding for districts to employ the necessary ancillary personnel for SWDs. [6-20-17 Tr. 194:5-10, 195:5-13 (Stewart).] Senator Stewart further testified that the State has taken away all of the professional development money and that, based on her experience, special education funding in New Mexico is not sufficient to meet the needs of special education students. [Id. at 197:10-15, 16-22, 207:21-24.] Through this lack of resources, PED denies SWDs access to the basic educational opportunities they need to acquire a sufficient education irrationally and unreasonably and absent a compelling state interest.

V. DEFENDANTS CANNOT PASS BLAME ONTO OTHERS

The evidence that New Mexico’s educational system has failed students is overwhelming and undisputable. By every measure—national data, state metrics, and the testimony of parents and experts—Defendants fail to provide all of New Mexico’s children with the opportunity to obtain a sufficient education. In the face of the evidence, Defendants attempt to blame others. These attempts are baseless and should be rejected.

A. Students Are Not To Blame For The State’s Poor Educational Results

In an attempt to avoid responsibility for the problems plaguing the educational system, Defendants, in briefing and through witnesses at trial, repeatedly blame the demographics of New Mexico schools. Indeed, in the opening paragraph of Defendants’ Pretrial Brief, for example, Defendants assert that “student outcomes are not *ipso facto* indicative of a failing school system, but are instead correlated to factors over which schools have no control, namely

poverty and a high percentage of students who do not enter school proficient in English.” [6-6-17 Defs.’ Pretrial Br. 3.] Further, defense expert witness Dr. David Armor insisted that poor academic performance is merely “a condition of poverty,” and disagreed with the concession made by Defendants’ expert, Dr. Eric Hanushek, that the achievement gap in New Mexico “is a national embarrassment.” [7-31-2017 P.M. Tr. 102:17-103:16 (Armor).] Any correlation between poverty or language proficiency and student outcomes, however, is neither a defense nor an excuse. New Mexico’s constitutional guarantee of a sufficient education is not limited to middle-class or wealthy students, or students whose first language is English. The demographic makeup of New Mexico’s public school students—rather than being an excuse to justify inadequate action—heightens Defendants’ obligation to act.

As the Court heard at trial, students, particularly those from disadvantaged backgrounds, are ill-served by the education system. For instance, although all parties agree that it is a goal of PED to ensure that students graduate from high school ready for college and career, one *Martinez* Plaintiff parent testified that no one at his son’s high school explained to his son how to apply for college [6-19-17 P.M. Tr. 7:22-25 (Sanchez)], and that there were only approximately four counselors for 1400 students enrolled at his school. [*Id.* at 8:8-10.] Another *Martinez* Plaintiff parent similarly testified that her daughter, who was entering eleventh grade, had not heard from the school counselor regarding opportunities after high school graduation. [6-15-17 Tr. 235:1-4, 247:18-21, 261:23-262:4 (Burciaga).] This parent had not received information from anyone in the district regarding what steps her daughter needed to take to apply to or enroll in college. [*Id.* at 247:1-14.]

Defendants’ own witnesses contradicted Defendants’ attempt to blame students. For instance, when Deputy Secretary Aguilar was asked whether he agreed that “economically

disadvantaged students can achieve at the same rate as other students,” he responded, “I absolutely do.” [8-4-17 Tr. 59:25-60:3 (Aguilar).] Acting Secretary of Education Ruszkowski also admitted that, regardless of a student’s community situation or ZIP code, the same expectations must apply to all students. [7-17-17 Tr. 261:24-262:3 (Ruszkowski).] Therefore, the State cannot avoid responsibility for its deficient education system by blaming its students.

B. School Districts Are Not To Blame For Defendants’ Constitutional Violations

Defendants also repeatedly assert that blame for the education system’s failings lies with the school districts. *See, e.g.*, [6-7-17 Defs.’ Pretrial Br. 4-5 (blaming poor performance on how districts spend money).] This excuse also fails.

First, New Mexico law does not allow Defendants to avoid responsibility by blaming the State’s political subdivisions. Article XII, § 1 imposes on the State as a whole the obligation to establish and maintain a sufficient system of public education. Defendants cannot escape liability by pinning responsibility on another governmental entity. Schools districts in New Mexico are political subdivisions of the State, and the State’s choice to subdivide its power does not relieve it of its constitutional obligations under Article XII, § 1. *See* NMSA 1978 § 22-1-2 (defining “school district” as “an area of land established as a *political subdivision of the state* for the administration of public schools” (emphasis added)). PED approves new school districts, and the powers of districts are expressly delineated in state law. *See, e.g., id.* §§ 22-4-2, 22-5-4.

Second, PED possesses both the authority and responsibility to oversee and control school districts. PED’s statutory oversight is robust and all-encompassing. Indeed, the law *mandates* PED 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,” to prescribe courses of instruction and graduation requirements, assess and evaluate public schools to determine the

adequacy of student gain, and “determine policy for the operation of all public schools and vocational education programs in the state.” *Id.* § 22-2-2. Deputy Secretary of Education Aguilar testified that PED is aware of and has previously exercised its oversight authority, although it has no policies for when and how to exercise it. *See* [**D-5061 at 103:13-20, 105:9-13; 8-4-17 Tr. 109:17-110:25, 113:16-25 (Aguilar).**]

Third, Defendants’ attempt to blame the school districts for the State’s educational woes is belied by the facts. Undisputed evidence shows that the school districts use their resources wisely, but still lack the resources to provide all students the opportunity to attain a sufficient education. [*See* **6-30-17 Tr. 207:20-25 (Lewis)** (testifying that Zuni is not able to provide a sufficient education to its students); **6-28-17 Tr. 230:17-20 (Space)** (testifying that Gallup-McKinley does not have enough funding to provide a sufficient education to its students); **6-14-17 Tr. 76:7-10 (Grossman)** (testifying that Lake Arthur is not able to provide a sufficient education); **6-14-17 Tr. 226:8-15 (Martinez)** (testifying that Española is not currently meeting the needs of its students); **7-12-17 Tr. 208:22-25 (Sullivan)** (testifying that Moriarty is unable to provide a sufficient education to its students); **6-29-17 Tr. 85:14-24 (Perry)** (testifying that Magdalena is unable to provide a sufficient education to its students); **6-29-17 Tr. 168:13-25 (Space)** (testifying that Grants-Cibola is not able to provide a sufficient education to its students).] And despite their sweeping claims, Defendants did not prove that school districts fail to manage their finances properly. To the contrary, school district witnesses repeatedly testified that they take great care to budget their resources responsibly and effectively. [*See, e.g.,* **6-29-17 Tr. 257:10-275:14 (Yturralde); 6-28-17 Tr. 114:25-119:19 (Chiapetti); 6-12-17 Tr. 85:21-86:7 (Garcia).**] Indeed, Deputy Secretary Aguilar could recall only five or six instances in which PED has implemented financial corrective action plans, and agreed that the lack of PED

intervention demonstrates good financial management by districts. [8-4-17 Tr. 92:14-93:6, 94:1-95:7 (Aguilar).]

VI. MARTINEZ PLAINTIFFS HAVE STANDING, AND THEIR CLAIMS ARE NOT MOOT

The *Martinez* Plaintiffs have standing to bring their claims. As the Court observed in its December 27, 2017 order, “standing is determined as of the time the complaint was filed,” and “even one plaintiff with standing is sufficient to bring a claim for injunctive relief.” [12-29-17 ORD 2 n.2 & 3.] There is no dispute that at least one of the *Martinez* Plaintiffs were enrolled in New Mexico public schools when this case was filed, which is sufficient to confer standing with regard to the *Martinez* Plaintiffs’ claims. [See *id.*]

The *Martinez* Plaintiffs’ claims are not moot. As this Court held in its December 27, 2017 Order, “the challenges raised in this case raise issues that will continue to affect future, albeit different, school children unless they are addressed by the Courts,” and “would perpetually evade review” absent review by the courts. [*Id.* at 5.] This case also presents an issue of “substantial public interest,” involving the “fundamental right” to an education under the New Mexico Constitution, meriting this Court’s review. [*Id.* at 5-6.]

VII. DECLARATORY AND INJUNCTIVE RELIEF IS WARRANTED

The *Martinez* Plaintiffs seek: (1) a declaratory judgment that Defendants have violated the Education Clause, Equal Protection Clause, and Due Process Clause of the New Mexico Constitution; and (2) an injunction requiring Defendants to immediately adopt policies to comply with the Constitution’s requirements. For the reasons stated above, *Martinez* Plaintiffs have made the required showing to obtain a declaratory judgment as to Defendants’ obligations under the Education Clause, Equal Protection Clause, and Due Process Clause of the New Mexico Constitution. See *supra* §§ II-VI.

A. Defendants’ Constitutional Violations Require Injunctive Relief

Martinez Plaintiffs have satisfied the factors entitling them to injunctive relief: “(1) the character of the interest to be protected; (2) the relative adequacy to the plaintiff of an injunction, when compared to other remedies; (3) the delay, if any, in bringing suit; (4) plaintiff’s misconduct, if any; (5) the interests of third parties; (6) the practicability of granting and enforcing the order or judgment; and (7) the relative hardship likely to result to the defendant if an injunction is granted and to the plaintiff if it is denied.” *Aragon v. Brown*, 2003-NMCA-126, ¶ 20, 134 N.M. 459 (internal citation omitted).

First, the character of the interest at issue—children’s right to a sufficient public education—is of the utmost importance. As this Court has noted, “it is difficult to conceive of a service that the State provides its citizens that is more fundamental than the right to education.”

[11-14-14 ORD 5.]

Second, no alternative remedy is more adequate to *Martinez* Plaintiffs than an injunction requiring the State to remedy its constitutional violations. Injunctive relief is required to retain the Court’s authority to enforce Defendants’ compliance with the Constitution. Indeed, absent injunctive relief, a finding of liability would lack any teeth.

Third, *Martinez* Plaintiffs did not delay in bringing suit.

Fourth, *Martinez* Plaintiffs have not engaged in any misconduct regarding this case.

Fifth, the interest of third parties—including, for example, all current and future children attending free public schools in New Mexico, their parents, and indeed all New Mexico residents—is paramount and counsels strongly in favor of the injunctive relief sought by *Martinez* Plaintiffs. The rights of those third parties to a sufficient education would be vindicated, not impaired, by an injunction. As this Court wrote, “[a]n educated populace is not

only something that is fundamental to our current well-being, it is fundamental to our future well-being.” *[Id. at 5-6.]*

Sixth, entering and enforcing the injunction is practicable. Courts across the country issue injunctions to enforce the requirements of state constitutions in the area of public education. *See, e.g., McCleary*, 269 P.3d 227 at 261 (directing the legislature to “develop a basic education program geared toward delivering the constitutionally required education, and it must fully fund that program through regular and dependable tax resources.”); *Edgewood Indep. Sch. Dist.*, 777 S.W.2d at 397-98 (directing the legislature, “[i]n setting appropriations,” to “establish priorities according to constitutional mandate; equalizing educational opportunity cannot be relegated to an ‘if funds are left over’ basis.”); *Campbell Cty. Sch. Dist.*, 907 P.2d at 1279 (directing the legislature to “design the best educational system” for Wyoming students, determine “[t]he cost of that educational package” and “take the necessary action to fund that package.”); *Seattle Sch. Dist.*, 585 P.2d at 105 (“[W]e hold that the relief granted herein shall be *prospective* . . . it is the duty of the Legislature to enact legislation compatible with this opinion” by a date certain). Requiring the State to implement reforms to bring the State into compliance with the Constitution would fall well within the mainstream of relief ordered by courts adjudicating constitutional claims involving public education, particularly if this Court retains jurisdiction to oversee the State’s efforts to bring its system into compliance with the Constitution. (*See* § VII.C., *infra*, for the *Martinez* Plaintiffs’ argument why the Court should retain jurisdiction in this case to oversee implementation of the requested injunction.)

Seventh, the relative hardship weighs in favor of *Martinez* Plaintiffs. Under the requested injunction, Defendants would merely be required to take immediate measures to comply with the constitutional mandate—an obligation they are legally incapable of avoiding.

The hardship *Martinez* Plaintiffs would face in the absence of an injunction—continuing to languish in a constitutionally deficient education system—would vastly outweigh any burdens on Defendants.

In short, *Martinez* Plaintiffs’ requested injunction not only is warranted under *Aragon*, it is necessary to ensure that the State takes the required steps to get its system in line with what the New Mexico Constitution requires.

B. *Martinez* Plaintiffs’ Requested Injunctive Relief

Martinez Plaintiffs’ request is straightforward: Defendants should be ordered to take immediate steps to ensure that New Mexico schools have the resources necessary to give all students the opportunity to obtain a uniform and sufficient education that prepares them for college and career. Although *Martinez* Plaintiffs do not ask this Court to dictate specific policies for the State to adopt, this trial demonstrated that there are numerous policies proven to improve achievement and attainment—including widely available Pre-K, smaller class sizes, extended learning programs, counseling, and effective teaching. None of these policies are appropriately implemented in New Mexico. Defendants are responsible for taking necessary action to implement appropriate policies, and *Martinez* Plaintiffs simply ask that the Court order Defendants to take immediate action to fulfill their responsibilities to ensure that *all students* have the opportunity to be college and career ready.

C. The Court Should Retain Jurisdiction To Oversee Compliance

In New Mexico, a district court may retain jurisdiction to enforce an injunction over which the court expressly or impliedly reserves ongoing enforcement authority. *See Allred v. N.M. Dep’t of Transp.*, 2017-NMCA-019, ¶ 27; *cf. N.J. Zinc Co. v. Local 890 of Int’l Union of Mine, Mill & Smelter Workers*, 1953-NMSC-087, ¶ 12, 57 N.M. 617 (settlement does not extinguish “the power and right of the court to punish contempt by proper proceedings”). In case

after case, courts retained jurisdiction to oversee the defendants' efforts to comply with their constitutional obligations in the area of education. *See Campbell Cty. Sch. Dist. v. State*, 181 P.3d 43, 83 (Wyo. 2008) (retaining jurisdiction until the court found that the state had remedied the constitutional deficiencies with its public school system); *Lake View Sch. Dist. No. 25 of Phillips Cty. v. Huckabee*, 257 S.W.3d 879, 883 (Ark. 2007) (same); *Idaho Sch. for Equal Educ. Opportunity v. State*, 129 P.3d 1199, 1209 (Idaho 2005) (retaining jurisdiction to ensure the legislature's compliance with the constitutional mandate); *Brigham v. State*, 692 A.2d 384, 298 (Vt. 1997) (ordering the trial court to retain jurisdiction until the legislature enacted valid legislation remedying the constitutional defects); *Roosevelt Elem. Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806, 816 (Ariz. 1994) (retaining jurisdiction to review legislation passed to remedy constitutional defects in the state's financing system for education). In order to effectuate an appropriate remedy, the Court should do the same here.⁷

Although PED made many aspirational comments at trial regarding reforms they have made and highlighted minor statistical improvements, the fact remains that the current administration has been in place since 2011 and the reforms have yet to bear fruit. Indeed, even though PED spoke repeatedly about the focus on "college and career readiness" and emphasized the importance of the PARCC test during trial, the most recent PARCC results show no notable improvement. [See **D-5045 at 3-4** (showing a .2 percentage point decrease in Math proficiency and only a 1 percentage point increase in English proficiency statewide from 2015-16 to 2016-17

⁷ *Martinez* Plaintiffs' claims arise under the Declaratory Judgment Act. [***Martinez Plaintiffs' Third Amended Complaint ¶ 188*** ("Pursuant to the Declaratory Judgment Act, Plaintiffs assert the following causes of action.")]. This Court may therefore "make an award of costs as may seem equitable and just." NMSA 1978, § 44-6-11. If the Court concludes that an award of attorney's fees and costs is warranted in this case, *Martinez* Plaintiffs respectfully request leave to file a separate brief detailing their fee and cost request.

school year).] It is imperative that the Court retain jurisdiction to ensure that effective steps are taken to cure New Mexico's constitutional violations in its education system.

VIII. CONCLUSION

Martinez Plaintiffs respectfully request that this Court grant them declaratory and injunctive relief as promptly as possible and compel Defendants to immediately provide all New Mexico students the sufficient education to which they are entitled.

DATED: January 9, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with the Court's Order on Post-Trial Briefing and Submissions dated August 4, 2017 and an agreement between the Plaintiffs to evenly divide the applicable limitations, this brief contains 14,560 words, excluding the caption, tables of contents and authorities, signatures, and certificates. This certificate was prepared using the word count feature of Microsoft Word 2010, which was used to prepare this brief.

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CERTIFICATE OF SERVICE

I certify that on January 9, 2018, a true and correct copy of the foregoing was served through the Court's e-filing system on the following counsel of record:

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