

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

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

Plaintiffs,

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

No. D-101-CV-2014-00793

Defendants.
Consolidated with
WILHELMINA YAZZIE, individually and as next
Friend of her minor child, XAVIER NEZ, *et al.*,

Plaintiffs,

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

No. D-101-CV-2014-02224

Defendants.

**MARTINEZ PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR ENTRY OF
ORDER AND SATISFACTION OF INJUNCTION AND DISMISSAL OF ACTION**

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INTRODUCTION

On July 20, 2018, this Court issued a historic Decision and Order recognizing the fundamental importance of public education, holding Defendants accountable for failing to meet their constitutional obligation to provide all of New Mexico’s public school children with an adequate and equal education, and ordering Defendants to take immediate, concrete measures to improve dramatically the State’s education system. In entering its injunction, this Court recognized that it could not merely hope for the State to change course—rather, it had to hold Defendants’ feet to the fire: “The school children who are now caught in an inadequate system and who will remain there if an injunction is not entered will be irreparably harmed if better programs are not instituted. Neither these children nor the Court can rely on the good will of Defendants to comply with their duty.” Decision & Order (“Decision”), at 74.

This Court’s Decision and accompanying Findings of Fact and Conclusions of Law established both short-term and long-term requirements. First, recognizing that school children need immediate reforms, the Court set a deadline of April 15, 2019 for Defendants “to take immediate steps to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career.” Decision at 74. But, second, to ensure that broad, comprehensive reforms get implemented, the Court retained jurisdiction: “In order to assure not only that the State of New Mexico take the steps necessary to execute the required short-term reforms, but also *to ensure that long-term comprehensive reforms are implemented by the State*, the Court will retain jurisdiction over this case.” Findings of Fact and Conclusion of Law (“FF&CL”) ¶ 3212 (emphasis added).

Not even a full school-year has passed since the new Governor and new administration have assumed office. New Mexico remains in last place in nationwide rankings of how well

States educate their students. *See* U.S. News, 2019 Education Rankings, <https://www.usnews.com/news/best-states/rankings/education> (accessed April 25, 2020). Notwithstanding this lack of change, Defendants now claim “mission accomplished” after merely taking initial steps to provide the constitutionally required resources for at-risk students.

This extraordinary and premature request does a disservice to this Court and the children of New Mexico. This Court and the parties poured years into this monumental litigation, fully recognizing the importance and scope of this case. In issuing its injunction, this Court established a thoughtful and thorough process for holding Defendants accountable for immediate, short-term action in the very next legislative session, while also retaining jurisdiction to ensure that Defendants actually implement required long-term reforms. Defendants, however, attempt to distort the Court’s Order to claim that it requires only modest reforms that could be implemented in a matter of months. This contention is flatly contradicted by this Court’s findings and holdings.

Moreover, while claiming the job is done, the State nonetheless resists Plaintiffs’ efforts to obtain discovery to learn the full scope of what Defendants have actually done. This Court set up a process for a party to request discovery to assess compliance with the Court’s Order. In line with this Court’s ruling, the *Martinez* Plaintiffs have been requesting discovery for months. For Defendants to oppose all of those efforts, while at the same time seeking dismissal of the action in its entirety, is completely contrary to the enforcement process set up by this Court.

Earlier in this litigation, Defendants themselves admitted that education reform takes time. State Defendants’ Post-Trial Brief, at 63 (“New Mexico’s reforms, many only recently implemented, should be given the chance to demonstrate continued success.”). But now that the Court has ruled against them, Defendants claim across-the-board success after only a year. In

reality, however, the bulk of the State’s “reforms” are nothing more than mere promises to act. The children of New Mexico deserve far better. Much more is required before dismissing a ruling aimed at rectifying the State’s monumental deficiencies in educating its students. In issuing its 608-page Findings of Fact and Conclusions of Law, this Court recognized that rectifying the State’s educational problems would not be accomplished through short-term fixes or political posturing. To dismiss this action now, while implementation and compliance are merely in their initial stages, would undermine years of difficult work by this Court and the parties, and leave the children of New Mexico in an educational system significantly below constitutional standards.

What is more, Defendants are pursuing dismissal in the midst of a global pandemic that has thrown the whole world into a state of uncertainty. With the economy having been devastated, it is unclear how educational budgets will be impacted. With schools closing and the State unable to fully transition to remote learning, there is no telling how educational outcomes will be affected. This is hardly the environment in which to make hasty decisions about whether the State has succeeded in reforming its woefully deficient educational system.

Defendants’ Motion should be denied.

BACKGROUND

Martinez Plaintiffs filed this action in 2014. In early 2015, the Court consolidated *Martinez v. New Mexico*, Case No. D-101-CV-2014-00793, with *Yazzie v. New Mexico*, Case No. D-101-CV-2014-02224. After years of extensive discovery and motion practice, these consolidated cases went to trial in the summer of 2017. The trial lasted for eight weeks, during which time the Court heard from dozens of witness including education experts, Public Education Department officials, superintendents, and parents. Following trial, the parties filed hundreds of pages of post-trial briefing.

One year after trial, having carefully considered the voluminous record, this Court issued its watershed ruling on July 20, 2018. This Court entered a declaratory judgment that “Defendants have violated the Education Clause, the Equal Protection Clause, and the Due Process Clause of the New Mexico Constitution.” Decision at 70. In addition, this Court held that “[t]he Public Education Department has failed to meet its supervisory and audit functions to assure that the money that is provided has been spent so as to most efficiently achieve the needs of providing at-risk students with the programs and services needed for them to obtain [an] adequate education.” *Id.* at 70-71. This Court also issued injunctive relief. This Court stated that “Defendants will be given until April 15, 2019, to take immediate steps to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career.” *Id.* at 74. This Court also ordered that this “new scheme should include a system of accountability to measure whether the programs and services actually provide the opportunity for a sound basic education and to assure that the local districts are spending the funds provided in a way that efficiently and effectively meets the needs of at-risk students.” *Id.* at 75. Such a system of accountability to measure the real-world effectiveness of programs enforces the State’s supervisory obligations under New Mexico law. As this Court stated: “[t]he State has an obligation to ‘supervise all schools and school officials under its jurisdiction, including taking over the control and management of a public school or school district that has failed to meet requirements of law or department rules or standards,’ and to ‘determine policy for the operation of all public schools and vocational education programs in the state.’ NMSA 1978 § 22-2-2(C) (2004).” Decision at 20.

On December 20, 2018, this Court issued 608 pages of Findings of Fact and Conclusions of Law. These Findings of Fact and Conclusions of Law include a section specifically addressing injunctive relief. *See* FF&CL ¶¶ 3190-3212. In this section, this Court addressed the importance of retaining jurisdiction. Quoting *Estate of Cummings by & through Montoya v. United States*, No. CV 12-00081 WJ/GBW, 2018 WL 1271279, at *3 (D.N.M. Mar. 9, 2018), the Court stated that “[a]s a general rule, even after a district court has entered judgment, it retains ancillary jurisdiction to enforce its own orders and judgments.” FF&CL ¶ 3192. Then, the Court made clear that it was retaining jurisdiction to ensure *long-term reform*: “In order to assure not only that the State of New Mexico takes the steps necessary to execute the required short-term reforms, but also to ensure that *long-term* comprehensive reforms are implemented by the State, the Court will retain jurisdiction over the case.” FF&CL ¶ 3212 (emphasis added).

On February 14, 2019, this Court issued its Final Judgment and Order. The Final Judgment and Order reiterated this Court’s key holdings, including that “Defendants are hereby enjoined as follows:”

Reforms to the current system of financing public education and managing schools should address the shortcomings of the current system by ensuring, as a part of that process, that *as soon as practicable* every public school in New Mexico would have the resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students.

Final J. & Order, at 4-5 (emphasis added). The injunction entered in this Court’s Final Judgment and Order also includes that the State needs a “system of accountability” to measure the opportunities provided by the programs and services and to “assure that the local districts are spending the funds provided in a way that efficiently and effectively meets the needs of at-risk students.” *Id.* at 5. This Court again echoed the importance of retaining jurisdiction and

laid out the purpose behind retaining jurisdiction: “The Court retains jurisdiction over this matter to issue such orders and take such further actions as may be necessary to timely remedy the determinations set forth in the Decision and Order and Findings of Fact and Conclusions of Law issued by this Court and to effectuate all relief granted in this case.” *Id.* This Court was clear that it was not simply retaining jurisdiction to ensure that the State took the required immediate steps by April 15, 2019, as Defendants argue. This Court has retained jurisdiction “to effectuate *all relief granted in this case.*” *Id.* (emphasis added). And this expressly includes the full “Decision and Order and Findings of Fact and Conclusions of Law issued by this Court.” *Id.* As set forth below, the State has not come anywhere close to satisfying the Court’s judgment. While the Court did set a deadline of April 15, 2019 for immediate steps to be taken, the Court also included, as a part of its injunction, much broader required reforms to be completed “as soon as practicable” and necessary “long-term comprehensive reforms.” And under the thorough and deliberate decisions and orders issued by this Court, there is no question that this Court needs to continue to retain jurisdiction.

Finally, this Court set up a process for any party to seek “discovery needed in aid of enforcing this judgment.” Final J. & Order, at 6. For months *Martinez* Plaintiffs have been requesting discovery to assess the actions taken by the State to comply with this Court’s judgment, and the State has opposed all such efforts. On October 30, 2019, *Martinez* Plaintiffs filed an Opposed Motion for Entry of Schedule for Discovery and Enforcement Proceedings. With this motion pending, the State filed the instant Motion seeking dismissal of this action. Pursuant to this Court’s orders, the clear next step is discovery, not dismissal.

LEGAL STANDARD

Rule 1-060(b)(5) authorizes a court to grant relief from a final judgment or order if, *inter alia*, “the judgment has been satisfied, released, or discharged[.]” Rule 1-060(b)(5) NMRA.

Defendants argue that the Rule's test is whether "a party has complied with the requirements of an injunction." Defendants' Mot. and Memorandum For Entry of Order and Satisfaction of Injunction and Dismissal of Action ("Defendants' Motion for Dismissal") at 6. However, Rule 1-060(b)(5)'s actual standard is far more robust than what Defendants state.

New Mexico courts look to authorities that construe Fed. R. Civ. 60, Rule 1-060's federal analog, in order to interpret Rule 1-060 when there is a dearth of New Mexico case law interpreting the rule. *See Century Bank v. Hymans*, 905 P. 2d 722, 728 (N.M. 1995) (stating "because Rule 1-060 follows the federal rule so closely, authority interpreting Federal Rule 60 can be persuasive in the absence of contrary New Mexico precedent."); *see also Fowler-Propst v. Dattilo*, 111 N.M. 573, 575 (1991) (concluding that when "the issue has not arisen in reported New Mexico decisions, [the court will] examine precedents from other jurisdictions ... [i]n particular, cases interpreting Federal Rule of Civil Procedure 60(b), upon which our Rule 1-060(B) is based, are persuasive.").

Federal law provides guidance to determine whether relief from judgment is warranted under Rule 1-060(b)(5) based on federal Rule 60(b)(5)'s analogous prong that "the judgment has been satisfied, released, or discharged." Fed. R. Civ. P. 60(b)(5). Contrary to what Defendants suggest, relief from judgment under Rule 60(b)(5) is an extreme judicial action "and may only be granted in exceptional circumstances." *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1191-92 (10th Cir. 2018); *see also Bud Brooks Trucking, Inc. v. Bill Hodges Trucking Co.*, 909 F.2d 1437, 1440 (10th Cir. 1990). Nevertheless, the Tenth Circuit suggests that a court should determine whether a judgment has been satisfied according to Rule 60(b)(5) by "focus[ing] on whether the movant has satisfied each obligation set forth in the [order]." *Jackson* at 1201.

According to other federal jurisdictions, whether an order has been satisfied per Rule 60(b)(5)'s first clause may involve an inquiry into: (1) whether there has been a "significant change" in factual and legal circumstances, and (2) whether the objectives of the order have been achieved. *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) ("*Frew III*") (citing *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367 (1992)). This standard is derived from a chain of federal cases that articulate tests for Rule 60(b)(5)'s prongs.¹

The Fifth Circuit provides additional guidance regarding how the Court may apply Rule 1-060(b)(5)'s third clause. In *Frew v. Janek*, a class of children in Texas eligible for a Medicaid program sued Texas state officers arguing that Medicaid program failed to fulfill requirements under federal law. *See Frew v. Janek*, 780 F.3d 320 (5th Cir. 2015). Defendants later filed a Rule 60(b)(5) motion to "terminate [the] consent decree and dissolve corrective-action order" asserting the judgment had been satisfied. *Id.* at 321. Upon appellate review, the Fifth Circuit acknowledged there was little precedent governing Rule 60(b)(5)'s first clause—the satisfaction of judgment clause. *Id.* at 327. However, the court noted "Rule 60(b)(5)'s expansive scope," finding that the Rule should be "construed liberally to do substantial justice." *Id.* (quoting *Laguna Royalty Co. v. Marsh*, 350 F.2d 817, 823 (1965)). For that reason, to determine the Rule 60(b)(5) satisfaction of judgment standard, the Court suggested importing the test the U.S. Supreme Court applied in *Frew III* to interpret Rule 60(b)(5)'s third clause.

Moreover, federal case law shows that, to be granted relief under Rule 60(b)(5)'s first prong, a moving party must provide the court with "conclusive evidence" that the judgment has

¹ There is some federal law interpreting Rule 60(b)(5) using the "substantial compliance" standard that Defendants' assert, but this law suggests that the "substantial compliance" standard applies specifically to consent decrees, which courts treat like contracts. *See, e.g., Jeff D. v. Otter*, 643 F.3d 278, 283-84 (Fed Cir. 2011) (explaining "because ... consent decrees have 'many of the attributes of ordinary contracts [and] ... should be construed basically as contracts' ... the doctrine of substantial compliance ... may be employed."). It's not clear that the substantial compliance standard should apply in the same way to injunctions, which are not contracts.

been satisfied. *See AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc.*, 579 F.3d 1268 (11th Cir. 2009); *see also Tungseth v. Mut. of Omaha Ins. Co.*, 43 F.3d 406 (8th Cir. 1994) (holding that, for a Rule 60(b)(5) motion, a moving party must supply the court with adequate information to determine if the judgment has been satisfied).

Based on guidance provided by federal law, Rule 1-060(b)(5)'s standard is stricter than what Defendants have asserted. To determine, under Rule 1-060(b)(5), whether Defendants have satisfied the requirements of the Court's injunction, the Court may ask whether: (1) there has been a significant change in the legal or factual circumstances, and (2) the injunction's objectives have been met. In addition, federal precedent suggests that a moving party must provide conclusive evidence to demonstrate a judgment has been satisfied. Defendants' standard of "substantial compliance" is too shallow and understates the tests that federal courts typically use to determine whether a judgment has been satisfied.

Looking at the standard that federal law provides for the analogous federal Rule 60(b)(5), Defendants have failed to show under New Mexico's Rule 1-060(b)(5) that there have been significant changes in the legal and factual circumstances underpinning this case since the Court's entry of its injunction on July 20, 2018. *See* Decision at 74. Defendants also have not demonstrated that the injunction's objectives have been satisfied. Moreover, Defendants failed to provide conclusive evidence of the judgment's satisfaction. Discovery is needed to evaluate Defendants' compliance with the injunction. For these reasons, the Court should deny Defendants' Motion for Dismissal.

LEGAL ARGUMENT

I. This Court's Orders Are Far-Ranging and Are Mischaracterized By Defendants

In its Final Judgment and Order, this Court stated that "[t]he decision and the findings of fact and conclusions of law are incorporated and made a part of the judgment." Final J. & Order,

at 2. In incorporating the Decision and Findings of Fact and Conclusions of Law into the final judgment, the Court cited to a New Mexico Supreme Court decision confirming that incorporating these prior orders is “equivalent to remaking the same findings and conclusions, and entering the same judgment.” *Luna v. Cerrillos Coal R. Co.*, 1923-NMSC-073, ¶ 2, 29 N.M. 161, 218 P. 435, 436. The Decision and Findings of Fact and Conclusions of Law, which are a part of the Final Judgment and Order, are far-ranging, encompassing far more than short-term action that could be accomplished in one year.

It is clear that the Court envisioned continuing oversight to ensure that Defendants satisfied this Court’s far-reaching orders, which include mandated funding changes and increases, programmatic changes, increased interventions for at-risk students, and increased student achievement. Defendants have repeatedly argued that it is the Legislature’s role and the Executive’s role, and not the Court’s role, to ensure the provision of a sufficient education. But the Court correctly held that “Courts have a duty to interpret the Constitution, and nothing exempts the courts from applying that duty to Article XII, Section 1 [the Education Clause] of the New Mexico Constitution.” FF&CL ¶ 2913.

A. The Court Found That Current Educational Inputs are Thoroughly Inadequate and At-risk Students Need Numerous Quality Interventions.

The Court’s Findings of Fact and Conclusions of Law made clear that at-risk students need quality interventions: “The obstacles facing at-risk students and their schools, while daunting, can be overcome if at-risk students are presented with the kinds of quality programs and interventions discussed below.” FF&CL ¶ 3. These programs and interventions include quality *full-day* Pre-K. *Id.* ¶¶ 6-103. The Court found that “[i]f full-time PreK were available to all New Mexico students, it would have short and long-term benefits and would improve academic outcomes for economically disadvantaged and [English language learner] students.”

Id. ¶ 26. Yet, the Court found that there is very limited PreK availability, and “[e]ven where PreK is available, there are substantial shortages for full-day PreK in New Mexico.” *Id.* ¶ 80. Another quality program included in the Court’s Findings of Fact and Conclusions of Law is K-3 Plus. The Court found that “[t]he Legislature has the authority and ability to put more money into K-3 Plus to ensure that *every* child who needs the program receives it.” *Id.* ¶ 160 (emphasis added). And the Court also included afterschool, summer school and extended learning time programs, finding that “[e]xtended learning time, like summer school, is valuable to all students, but especially to low-income students.” *Id.* ¶ 162.

With respect to English Language Learners (ELLs), the Court found that “[e]fforts to address the learning needs of ELLs must be made across all age groups, including a focus on early childhood education because ages three to eight are so important for language development.” FF&CL ¶ 319. “Effective programs for English language learner (ELL) students must have qualified teachers—meaning bilingual-certified or TESOL-endorsed teachers.” *Id.* ¶ 304. In addition, “PED fails to monitor and support districts and schools in their education of [English language learner] students” *Id.* ¶ 376. And “PED lacks sufficient monitoring programs to determine if [English language learner] students are receiving adequate assistance.” *Id.* ¶ 425. With respect to Special Education, the Court found that “[t]here is inadequate supervision and oversight of how special education funds are being used in New Mexico.” *Id.* ¶ 2339. In addition, “[s]pecial education classrooms in New Mexico receive very little supply money and receive no curriculum money.” *Id.* ¶ 2343.

The Court also included smaller class sizes as an important intervention, finding that “PED has no programs or initiatives focused on reducing class size even though New Mexico has class size requirements by statute.” FF&CL ¶ 214. With respect to teacher quality, the

Court made several findings including that teacher diversity is important, *id.* ¶ 674, and that “[s]chool districts do not have the funds to pay for all the teachers they need,” *id.* 697. And the Court included research-based reading programs, *id.* ¶¶ 236-65, and counselors, social workers, and other non-instructional staff, *id.* ¶¶ 266-91, as quality programs and intervention.

B. The Court Found that Educational Outputs Measuring Student Achievement Are “Dismal.”

Defendants suggest in their Motion that the Court’s injunction does not require showing improvements in educational outcomes. *See* Defendants’ Motion for Dismissal at 4 (“Plaintiffs have claimed Defendants must show[...]changes in educational outcomes”). Contrary to Defendants’ argument, the Court held that educational outcomes, or “outputs,” are relevant to determining whether the educational system is adequate. *See* Decision and Order at 26. The Court thoroughly cataloged several metrics to measure education outputs, and by all of the metrics, Defendants are failing New Mexico public school students, particularly at-risk students. For example, according to the 2015 NAEP results, 80 percent of New Mexico’s eighth graders did not score at or above proficient in reading and 79 percent did not score at or above proficient in math. FF&CL ¶¶ 837, 841. “According to the 2015 NAEP results, New Mexico had a higher portion of children who scored in the ‘below basic’ reading achievement level than any other state in the country.” *Id.* ¶ 836. And for English Language Learners, less than 2 percent “score at grade level for a given content area” on the assessment of readiness for college and career. *Id.* ¶ 665. These extremely low achievement levels have been largely consistent and in some cases worsening over time. For example, the Court found that “[t]he fact that there is a longitudinal trend of lower performance in math in New Mexico conveys the need for intervention and a concerted effort to raise math achievement in the early grades.” *Id.* ¶ 893. And “[t]hese

standardized test scores support a conclusion that most students in New Mexico are not receiving an adequate education.” *Id.* ¶ 919.

As explained below in section III.D, it is too early to tell whether educational outcomes have improved, and the data that are available currently do not show significant improvements in educational achievement.

C. The Court found that Overall Education Funding is Insufficient

Defendants characterize their enacted changes in school funding as satisfying the Court’s injunction. *See* Motion for Dismissal at 4-5. However, the Court also found that overall education funding in New Mexico is insufficient, pointing specifically to deficiencies in funding for technology, FF&CL ¶¶ 2158-2162, programmatic and staff-related deficiencies, *id.* ¶¶ 2163-2165, and deficiencies in funding for transportation, *id.* ¶¶ 2151-2157. And the Court found that “[f]unding for programs for at-risk students is inadequate.” *Id.* ¶ 293. And at-risk students make up a significant portion of the student population. For example, “[s]tudents who come from low-income families are 71.6 percent of the student population.” *Id.* ¶ 797. In addition to finding funding insufficient, the Court also found that Defendants fail to monitor funding in a way that ensures funding reaches programs advancing the education of at-risk students. *Id.* ¶¶ 2260-2300. The Court held that: “While the Court has determined that insufficient funds have been allocated, the Court has not determined what amount would be sufficient. The Court believes that such a determination is better left to the legislature, *at least in the first instance.*” *Id.* ¶ 2259 (emphasis added).

As described below in section III, Defendants have not shown that enacted changes in funding have been sufficient to achieve an adequate education system for at-risk students and have not shown that such changes will be sustained. This Court has retained jurisdiction to ensure the Court continues to fulfill this important duty and “to assure not only that the State of

New Mexico takes the steps necessary to execute the required short-term reforms, but also to ensure that long-term comprehensive reforms are implemented by the State.” *Id.* ¶ 3212.

II. As Shown by Litigation in Other Jurisdictions, Compliance With Court Orders in Adequacy Challenges Takes Time

Defendants fail to acknowledge that, although the Court ordered “Defendants to take immediate steps” to remedy New Mexico’s school system, that was only one part of this Court’s order. *See* Final J. & Order at 3-4. As this Court recognized, systemic education reform that complies with educational adequacy orders is not an immediate, or even short-term process. Rather, compliance with educational adequacy court orders is often a long-term effort requiring judicial supervision.

Defendants cite the New York educational adequacy case *Campaign for Fiscal Equity, Inc. v. State* to support their motion, but ignore the fact that the matter lasted for thirteen years with close judicial involvement. *See Campaign for Fiscal Equity, Inc. v. State*, 8 N.Y.3d 14 (2006). In one stage of the matter, the Court of Appeals of New York set July 30, 2004 as the deadline for the State to implement “[r]eforms to the current system of financing school funding and managing schools [which] ensur[e] ... resources necessary for ... a sound basic education.” *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 930 (2003) (*CFE II*). The mandate is similar to the injunction this Court ordered, which included a compliance deadline of April 15, 2019 for Defendants to take “immediate steps.” Final J. and Order at 3-4. As a notable point of comparison, after the July 30, 2004 deadline, the Supreme Court of New York did not hastily dismiss the case, but thoroughly evaluated “whether the steps taken by the State brought compliance with [the court’s ruling].” *Campaign for Fiscal Equity, Inc.*, 8 N.Y.3d at 25. After the deadline, the court’s role was to assess whether the State’s reforms “satisfied [judicial] directives” and were “reasonable[.]” *Id.* at 29. This assessment process was not expeditious,

but, rather, involved careful judicial analysis. The court disposed of the matter in 2006, thirteen years after the initial challenge's commencement.

Defendants also rely upon two cases arising from educational adequacy challenges in Massachusetts, namely *McDuffy v. Secretary of the Executive Office of Education*—where the Massachusetts Supreme Judicial Court ruled the State did not fulfill its constitutional duty to provide an adequate education for all students—and *Hancock v. Commissioner of Education*—where the same court evaluated whether the State had met its constitutional duty. *See Hancock v. Comm'r of Educ.*, 443 Mass. 428 (2005); *McDuffy v. Sec'y of Exec. Office of Educ.*, 415 Mass. 545 (1993). But these cases actually undermine Defendants' attempt at premature dismissal by illustrating that full compliance with injunctions that require an adequate education system takes time. In *Hancock*, the court ultimately ruled, following a trial and presentation of evidence, that the State had satisfied its constitutional duty towards public education, but only after twelve years of significant legislative and executive action. The court underscored, however, that State-led education reform that achieves compliance is “long-term, measurable, orderly, and comprehensive.” *Hancock*, 443 Mass. at 435. Contrary to Defendants' assertions, *Hancock* shows that compliance with a court mandate regarding education reform cannot feasibly take place in a short-term, “immediate” way.

Defendants also cite the New Jersey *Abbott v. Burke* to highlight pitfalls of extensive court oversight in education system improvement. *See Abbott ex rel Abbott v. Burke*, 206 N.J. 332 (2011). While the *Abbott* court noted the “long duration of [] litigation” and the limited nature of a “judicial remedy [which] at best [] serves only as a[n] ... incremental measure,” it did not disavow its involvement. *Id.* at 347, 389. Rather, the court recounted critical moments of its oversight in the life of the case. For example, the court reviewed State legislation passed

pursuant to judicial directives—such as the Quality Education Act which failed to ensure equitable education funding between low-income school districts and wealthier school districts—and declared such legislation non-compliant when it was constitutionally inadequate. *See id.* at 387. In several stages of the litigation, the court remanded the case to a lower court for proceedings to expand the factual record. *Id.* The court took care to monitor the State’s efforts to comply with the court’s order and fashioned remedies when those efforts were inadequate. *See id.* at 389-91 (finding the State’s efforts “could not provide students in poor urban districts with a thorough and efficient education [and] the Court was forced to devise a remedy to redress the continued [constitutional] deprivation[.]”).

III. Funding Uncertainties, Programmatic Concerns, and Lack of Long-Term Reforms Necessitate the Continuation of the Court’s Jurisdiction

Martinez Plaintiffs do not deny that Defendants have made some efforts to improve New Mexico’s education system, but it is entirely premature to say that Defendants have fulfilled the mandate imposed by this Court, which requires more. *Martinez* Plaintiffs also have limited information regarding the adequacy of improvements to the education system beyond what Defendants have made public.

Even with the dearth of information, publicly available data and reports show that Defendants have not yet satisfied the Court’s mandate. Many of the State’s supposed “fixes” are really just promises to act and descriptions of forthcoming changes or new regulatory requirements. The affidavits that Defendants submitted from NMPED officials raise more questions than answers because these descriptions involve so many to-be-implemented changes. The next step is discovery. Implementation of the efforts that Defendants describe is key, and the Court needs to retain jurisdiction in order to ensure implementation of these and other necessary measures.

Finally, Defendants’ Motion omits a discussion of changing educational outcomes, or outputs, for at-risk students. Without evidence that New Mexico’s students are attaining academic proficiency and graduating at significantly higher rates than before the Court’s decision, Defendants cannot yet credibly claim to be providing “every student with the opportunity to obtain an education that allows them to become prepared for career or college.” *See* Decision and Order at 25.

Martinez Plaintiffs address specific issues related to particular groups of at-risk students and to particular types of educational inputs below. The Court found that the new educational system “should include a system of accountability to measure whether the programs and services actually provide the opportunity for a sound basic education” and meet the needs of at-risk students. *See* FF&CL ¶ 3211. The Court also found that Defendants violated their constitutional duty to provide adequate instructional materials. *See id.* at ¶ 3090. *Martinez* Plaintiffs address accountability and instructional materials issues in the context of other educational input issues. The following discussion is not meant as an exhaustive description of the outstanding issues, but as a way of demonstrating how dismissal at this juncture would not serve Plaintiffs’ rights and how discovery is necessary.

Defendants’ own public statements concede that they have not remedied the violations found by the Court and that real education reform would take time. PED stated that it is only in the initial stage of education reform, as it is currently in a phase to “[r]efine planning to address the findings from the Court’s Order” and “[c]reate plans for implementation” until June of 2020. *See* Exhibit A, December 2019 PED Presentation to LESC at 15. This same slide says that it will “[s]et up systems to track its progress” with regard to these plans well into 2021. *See id.*

“Creat[ing] plans” and “[s]et[ing] up systems” is a far cry from completing comprehensive reforms.

A. School Funding Changes Are Insufficient to Warrant Dismissal

1. Increased spending may not be sustained and has yet to provide necessary interventions for students

Defendants discuss increases in funding enacted by the New Mexico Legislature, both in terms of SEG funding and other programs and appropriations to the NMPED. Defendants stake their arguments that they “began endeavoring to fundamentally remake New Mexico’s public education system” largely on “recurring funding levels.” *See* Defendants’ Motion for Dismissal at 49-50. Defendants emphasize these spending changes even though the State may soon reverse or curtail them because of rapidly changing economic conditions. Recent reports and comments published by state lawmakers indicate that the New Mexico Legislature may roll back recent education funding increases in a special session due to changes in revenue caused by the COVID-19 public health crisis and the drop in the price of oil.

The New Mexico Legislative Finance Committee (“LFC”) recently described how changing economic circumstances may affect New Mexico’s budget. The LFC published “Legislating for Results: Post-Session Review” in April of 2020 and described the actions taken by the New Mexico Fifty-Fourth Legislature in its Second Session in 2020, as well as coming economic changes caused by the coronavirus pandemic. *See* LFC 2020 Post-Session Review, Legislative Finance Committee, April 2020, available at https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Post_Session_Fiscal_Reviews/April%202020.pdf (accessed April 24, 2020). In the review, the LFC reported that with regard to the December 2019 forecast for FY21, “[p]rojected revenue growth was largely attributed to robust expectations for the oil and gas industry as production set new records and

drove growth in sales and personal income taxes.” *Id.* at 2. The LFC had recommended “reserves between 20 percent and 25 percent of planned spending” because of economic uncertainties before the legislative session. *Id.* However, just after the 2020 legislative session, “the global economy has been rocked by the novel coronavirus, which stands to test the 25 percent reserve levels set by the 2020 legislative actions.” *Id.* The review describes how “the potential for sharp revenue declines in FY21 could precipitate a special session before the end of the calendar year.” *Id.* at 4. The review concludes its fiscal outlook for New Mexico by stating that “even the recurring budget of \$7.6 billion set for FY21 may prove to be unsustainable.” *Id.* at 7.

Statements by public officials to news media suggest that New Mexico’s fiscal changes could affect budgeting, including school funding. The Santa Fe New Mexican reported on March 30, 2020, that Senator John Arthur Smith, the chair of the Legislative Finance Committee, predicted that “state revenue could fall short of projections by \$1.5 billion to \$2 billion.” “Legislators: New Mexico faces up to \$2 billion budget hole,” *Santa Fe New Mexican*, March 30, 2020, available at https://www.santafenewmexican.com/news/coronavirus/legislators-new-mexico-faces-up-to-2-billion-budget-hole/article_c5bdd510-72a1-11ea-97cc-df7892aeb71a.html (accessed April 24, 2020). Regarding the expected shortfalls, David Abbey, the director of the Legislative Finance Committee and expert witness for Defendants at trial, reportedly said, “[w]e are worried about maintaining spending for Medicaid and schools in HB 2.” *Id.* On April 24, 2020, at the end of a week during which crude oil prices went below zero dollars, Senator Smith said with regard to the State’s projected revenue losses that “[w]e’re probably ramping up to the \$2 billion mark now.” See “Oil industry reaching new lows,” *Albuquerque Journal*, April 24, 2020, available at <https://www.abqjournal.com/1447442/oil-industry-reaching-new-lows.html>

(accessed April 24, 2020). On April 24, 2020, Governor Michelle Lujan Grisham reportedly said that she will probably call a special legislative session to be held in June of 2020. “Lujan Grisham fires back at Grants mayor,” *Santa Fe New Mexican*, April 25, 2020, available at https://www.santafenewmexican.com/news/coronavirus/lujan-grisham-fires-back-at-grants-mayor/article_f219e494-8662-11ea-bd4f-e3978b863f47.html (accessed May 1, 2020).

Even if funding remains at its current level, Defendants have not yet demonstrated that funding is at a level necessary for an adequate education. While the New Mexico Legislature increased educational spending in the 2020 session, we have yet to see whether the problems that districts faced going into the current fiscal year still exist. As *Martinez* Plaintiffs indicated in their October motion, the Legislative Education Study Committee reported that districts used most of the new funding to pay for increases in employee pay and benefits in the current school year (Fiscal Year 2020). See *Martinez* Pfs.’ Mot. for Entry of Schedule for Disc. and Enforcement Proceedings at 4-5. Time will tell whether such issues will reappear in districts’ budgets and spending in the next school year.

The potential for reductions in total spending add to *Martinez* Plaintiffs’ concerns regarding whether Defendants will provide funds necessary for a sufficient education system. Diminishing state funding in light of current revenue sources does not excuse Defendants from complying with their constitutional duties. The Court made clear that “the remedy for lack of funds is not to deny public school children a sufficient education, but rather the answer is to find more funds.” Decision and Order at 56. The Court then stated that multiple avenues existed for Defendants to adjust current or raise “new sources of revenue,” including “increase[ing] [the] progressiveness of income tax structure,” adjusting or creating taxes on other industries, and repealing “the capital gains tax deduction.” *Id.* at 56-57. Defendants have pointed to no

evidence that they have considered, much less enacted, legislative or constitutional changes to the way in which the State of New Mexico raises funds for education.

2. At-risk funding increases alone are insufficient to address issues facing at-risk students and economically disadvantaged students in particular

The State Equalization Guarantee (SEG) funding formula still does not account for most economically disadvantaged (ED) students. Defendants point to the 2019 increase in the at-risk index multiplier, but ignore part of the Court’s finding regarding the violation of the Equal Protection clause of the New Mexico Constitution. *See* Defendants’ Motion for Dismissal at 12-13. The Court included in its findings related to Defendants’ denial of a sufficient education to economically disadvantaged students in violation of Equal Protection the following:

The SEG’s use of the Title I allocation for the number of economically disadvantaged students for calculating the at-risk units only accounts for students recognized by the United States Census as being at or below 100 percent of the federal measure of poverty, excluding many ED students whose households earn up to 185 percent of the federal poverty measure and are therefore eligible for FRL.

FF&CL ¶ 2319. The Court went on to find that “New Mexico defines ED students as those who qualify for FRL [free or reduced lunch] for accountability purposes to the federal government, yet does not use this measure when identifying ‘at[-]risk’ students.” *Id.* at ¶ 2320.

Defendants have not addressed the fact that the SEG formula bases its calculation for the number of students who are economically disadvantaged on the poverty line and not on the guidelines for households that qualify for free or reduced lunch, as other state education law identifies economically disadvantaged students. Defendants’ neglect of this finding may become more critical if overall funding decreases because total at-risk funding will also diminish, and the SEG formula will not direct limited resources in a targeted way toward many economically disadvantaged students. Defendants must address the fact that they are leaving thousands of

economically disadvantaged students out of their calculations of how much funding the SEG formula will direct to them.

There remain serious and unanswered questions regarding accountability for use of funds meant to meet the needs of at-risk students. In a report that the Legislative Finance Committee (LFC) published several weeks after Defendants filed their Motion for Dismissal, the committee reported a concern that *Martinez* Plaintiffs share: “schools have provided limited data showing that new at-risk funds are being spent on evidence-based interventions and supports to improve at-risk student outcomes.” LFC 2020 Post-Session Review at 12. In a November 2019 Legislative Education Study Committee (LESC) report regarding use of at-risk funds, the committee reported that PED decided to conduct only 6 technical reviews in the current fiscal year, despite for years having “conducted technical program budget reviews with between 15 and 20 school districts and charter schools” annually. *See* Exhibit B at 3, LESC Report on Districts’ Use of At-Risk Funds in FY20. The Court made clear that obtaining such information and ensuring that districts spend funds in a way that improves education for at-risk students are the responsibilities of Defendants. *See* Decision and Order at 52 (*citing* NMSA 1978 § 22-2-2(C) (2004)) (“This [statutory] authority is broad enough for PED to review and assure that districts are using the money provided by the State to provide programs to assist at-risk students.”). This demonstrates precisely why it is far too early to dismiss this case. Far from being completed, the work is just beginning. Furthermore, *Martinez* Plaintiffs are entitled to discovery to address these unanswered questions regarding accountability.

B. Defendants Have not Shown That They Are Providing a Sufficient Education to English Learner Students, Students With Disabilities, and Native American Students

1. Reforms to English learner education are ill-defined and still uncertain

Defendants fail to address fully how the education system in New Mexico has been failing English learner students. The Court did not simply find that programs in place “at the time of trial” were insufficient and that “PED had inadequate information regarding services provided to [English learner] students not enrolled in” certain Bilingual Multicultural Education Programs (BMEPs). *See* Defendants’ Motion for Dismissal at 21. Rather, the Court found that Defendants were failing to provide for English Learner students as provided for in the state constitution, state statute, federal statute, and in violation of the Equal Protection clause of the New Mexico Constitution. *See* Decision and Order at 31 (citing various authorities providing for programs for English learner students “to assist such students in learning English”); *see also* FF&CL ¶¶ 2947-2948 (citing N.M. Const. Article XII, §§ 8 and 10, New Mexico’s constitutional requirements that teachers be trained to teach “Spanish-speaking pupils” and that children of Spanish descent “enjoy perfect equality with other children in all public schools and educational institutions of the state,” respectively).

There is insufficient evidence that PED’s monitoring of English language acquisition programs has changed. The Court’s findings regarding PED’s monitoring of programming provided to English learners were more extensive than PED simply lacking information. Notably, the Court found that “PED does not monitor what language proficiency programs, if any, are serving [English language learner] students who are not enrolled in BMEPs or Title III programs.” FF&CL ¶ 422. Additionally, the manner in which PED tracked sheltered instruction that was not a part of Bilingual Multicultural Education Programs (BMEPs) or Title III programs included coding that failed to “indicate anything about the model used or even the elements” and did not allow PED to know whether such a district “is also using English language development for that student.” *Id.* at ¶ 394. *Martinez* Plaintiffs have many questions regarding how exactly

PED is tracking these programs that are not part of BMEPs or Title III programs. When Defendants claim that they are requiring each district to “report to PED three times during the school year regarding the English Learner programs they are providing to each [English learner],” and have therefore addressed the issue of ensuring that some English language development (ELD) program is used in addition to sheltered instruction, it is still unclear what exactly districts are reporting to PED. *See* Defendants’ Motion for Dismissal at 22. The affidavit of Deputy Secretary Kara Bobroff does not provide clarification of how these English language development programs are coded. *See* Ex. G to Defendants’ Motion for Dismissal at ¶¶ 37-40.

Questions also remain about the programming that PED has developed for English learner (EL) instruction. Ms. Bobroff states in her affidavit that in “[S]pring 2019, PED finalized an ELD instructional framework to be used to guide integrated EL instruction, which must be provided for all content courses, with the use of ELD standards that are aligned to state English language proficiency standards.” Ex. G to Defendants’ Motion for Dismissal at ¶ 40(d). The affidavit does not elaborate on what is included in this framework other than to say that it aligns with state English proficiency standards. More inquiry is required to determine whether this framework is research-based and adequate for the education of English learners. PED’s recent finalization of the English language development framework (“Spring 2019”) begs additional questions regarding PED’s implementation of English learner programming reforms. *See id.*

Defendants’ framing of its adoption of instructional materials that conform to English language development standards creates similar uncertainty about satisfying the Court’s judgment when they state that “PED *will be* adopting English language development (‘ELD’) instructional materials in its current 2019-2020 adoption cycle.” Defendants’ Motion for

Dismissal at 24 (emphasis added). PED's recent finalization of the ELD framework and its ongoing adoption of ELD instructional materials underscore the premature nature of Defendants' Motion for Dismissal because it is unlikely that districts have uniformly and adequately implemented these reforms.

Finally, Defendants also do not adequately address the issue of professional development for teachers who work with English learners. The Court found that PED failed specifically to monitor the use of Bilingual Multicultural Educational funds for professional development and to monitor the kind of professional development related to English learner education that teachers receive. *See* FF&CL ¶ 388. Defendants describe changes to law that allow districts to provide professional development for teachers who work with ELs and teach bilingual education. *See* Defendants' Motion for Dismissal at 22. However, they do not clarify whether teachers have received such training and how PED is monitoring districts' provision of such training.

2. Serious issues remain concerning the implementation of the Indian Education Act and reforms to Native American education

It is far too early to decide whether Defendants have reformed the education system to provide a sufficient education for Native American students. The record contains a dearth of information in that regard and demonstrates the need to allow *Martinez* Plaintiffs discovery on these issues. As Defendants note in their Motion, the Court found major issues with the State's engagement with tribal leaders. *See* Defendants' Motion for Dismissal at 24-25. But the affidavit of Deputy Secretary Bobroff, to which Defendants cite, does not resolve this; it is largely devoid of specifics regarding interactions with tribal leaders. *See id.* at 24-28; Ex. G to Defendants' Motion for Dismissal at ¶¶ 50-52. Additionally, Defendants' Motion and Ms. Bobroff's affidavit do not address vacancies in the Indian Education Advisory Council and how

those vacancies affect implementation of new laws concerning Native American education. *See* Exhibit C, IEAC Page from PED Website.

Defendants also do not at all address issues that remain with regard to federal Impact Aid funding for districts that serve Native American students. The Court found that Defendants had a duty to monitor use of such funds, and that the PED had insufficient staff to conduct such monitoring. *See* FF&CL ¶ 619. Recent developments show that PED must address some issues with the distribution and use of such aid. *See* “New Mexico Public Education Department directed to stop diverting federal school aid,” *Santa Fe New Mexican*, April 17, 2020, available at https://www.santafenewmexican.com/news/local_news/new-mexico-public-education-department-directed-to-stop-diverting-federal-school-aid/article_7491272e-80ba-11ea-ad9f-e7e0f5c17009.html (accessed April 24, 2020) (“The U.S. Department of Education told New Mexico’s top education official this week the state has failed a ‘disparity test’ and must stop diverting millions of dollars in federal Impact Aid grants designated for specific school districts).

3. Requirements re: Students with Disabilities

This Court found that “[t]here is inadequate supervision and oversight of how special education funds are being used in New Mexico.” FF&CL at ¶ 2339. But Defendants now claim that “SEG funding has significantly increased since the time of trial which includes special education funding,” Defendants’ Motion for Dismissal at 29. Defendants offer no evidence that such funding is reaching programs that serve students with disabilities. Defendants also claim that because “the preference is for inclusion of special education students in general education classrooms[,] . . . the need for specific special education funding will decrease as fewer students are pulled out of general education classrooms.” *Id.* This attempt by Defendants to excuse themselves from funding special education shows their misunderstanding of the Court’s findings regarding students with disabilities.

The Court’s Findings of Fact and Conclusions of Law credited the testimony of Dr. McLaughlin, “a leading expert in special education policy,” that “the special education funding system in New Mexico is overly complex and lacks the flexibility and predictability that allows districts to implement new programs or adjust individual IEPs as student needs change.” FF&CL 2327. If special education students remain in the general education classroom, that does *not* mean there is no need for additional funding to address the needs of those special education students while in the general education classroom. To take just one example, Senator Stewart testified at trial that “[t]here is not sufficient funding in New Mexico allocated for professional development opportunities necessary to have special education students join more in the general education setting.” FF&CL 2346. Increased funding is needed for professional development in order for special education students to join the general education setting and still have meaningful opportunities for learning. This Court found that increased inclusion *requires* increased funding; it is not an excuse for a lack of increased funding.

In addition, PED’s programmatic changes are in the infancy stages, similar to the other programmatic changes discussed above. Defendants fully filled the positions in the Special Education Division only as of March 9, 2020. Ex. G to Defendants’ Motion for Dismissal at ¶ 29. For example, the Special Education Division “has implemented ‘Project Autism,’ which *will* support districts statewide using a variety of methods such as online portals, webinars, and other technical guidance.” *Id.* ¶ 25 (emphasis added). The State continues to explain how the Special Education Division “will use the information from Project Autism.” *Id.* ¶ 26. Training and diagnosis for students with an autism spectrum disorder were part of the Court’s Findings of Fact and Conclusions of Law. FF&CL ¶ 2330. The State’s programmatic change concerning autism is newly implemented. Although this may be a promising initial step, *Martinez* Plaintiffs

are entitled to discovery to understand the full scope of this program and other programmatic changes for students with disabilities.

C. Glaring Uncertainties With Regard to Various Educational Resources Indicate That Dismissal is Premature

1. Defendants' Motion does not address teacher quality and class size issues adequately

The Court found that the availability of quality teachers affected the education of at-risk students in particular. *See* FF&CL ¶¶ 708, 711. The Court found that competition with neighboring states in terms of teacher salary was part of this challenge, and that “[p]aying educators a decent salary is critical to attracting and retaining high quality and well trained teachers.” *See id.* at ¶¶ 714-720.

Defendants discuss expenditures made to increase teacher salaries. *See* Defendants' Motion for Dismissal, at 35-37. But, again, this does not resolve the issue. Defendants do not discuss a concern raised by a recent LFC report card² regarding the issue of still competing with neighboring states. While New Mexico has raised its teacher pay, other states have also raised their average teacher pay levels at similar rates. The LFC reported that at the end of the second quarter of the current fiscal year, “other neighboring states have also increased teacher compensation at a similar rate” and that “average teacher salaries in the region have effectively remained the same, comparatively.” *See* LFC Agency Report Card FY20 Q2 at 60. This means that the issue of competition remains to some degree. More recently, the LFC pointed out that, despite providing raises for all school personnel, the New Mexico Legislature failed in its 2020 session to heed LFC's recommendations for “targeted pay for teachers serving students in special education and bilingual multicultural education programs – areas with high needs, chronic

² Available at:

https://www.nmlegis.gov/Entity/LFC/Documents/Agency_Report_Cards/Complete%20Report%20Card%20Packet%20FY20%20Q2.pdf.

teacher shortages, and poor oversight (as noted in the findings of the *Martinez* and *Yazzie* lawsuit).” *See* LFC 2020 Post-Session Review at 12.

It is also unclear whether new teachers in New Mexico are properly prepared. The LFC recently reported that it is possible that as many as 80% of “new teachers were alternatively certified or hired from out-of-state programs,” rather than trained in New Mexico educator preparation programs. *See* LFC Agency Report Card FY20 Q2 at 60. Discovery is necessary to determine whether such certifications are affecting outcomes for at-risk students. The affidavit of Dr. Gwen Perea Warniment that Defendants offer as evidence of increased professional development states that “[p]rofessional development will include required trainings throughout the year, as well as content-focused professional development sessions to keep our educators current in science content.” *See* Ex.D to Defendants’ Motion for Dismissal at ¶ 6. This affidavit describes incomplete implementation of required professional development with the word “will.” These uncertainties demonstrate why it is inappropriate to dismiss the action at this time.

Defendants report very little about what they have done to address issues related to class size. *See* Defendants’ Motion for Dismissal at 38. However, this discussion elides the importance of this issue to a sufficient education. The concerns with continued funding of teacher salary raises and retention of quality teachers discussed above play into New Mexico’s ability to control class size.

2. Defendants have not made clear that they have implemented high quality, full-day Pre-K programs, and K-5 Plus implementation issues remain

The Court found that investment in full-day Pre-K, would be an important intervention for significantly improving outcomes of at-risk students. *See* FF&CL ¶ 11. The Court specifically rejected “Defendants’ experts’ conclusions that additional resources cannot improve achievement,” citing Pre-K as one of those resources. *See* Decision and Order at 45. Research

shows that because the acquisition of oral language and early literacy skills are two of the most important areas of development for three- and four-year-old children, quality preschool programs can be especially beneficial for English learners and economically disadvantaged children. *See* FF&CL ¶ 11. Furthermore, the Court found that full-day Pre-K would have to be high quality in order to improve such outcomes and narrow the achievement gap between at-risk students and other students. *See id.* at ¶¶ 10-13, 22-25.

Defendants discuss the growth of Pre-K spending in their Motion for Dismissal, including their claim that full-day Pre-K programs have grown. Yet again, however, this does not resolve the issue. Defendants have provided no information as to how significant Pre-K programs have grown and whether the State is taking measures to ensure that Pre-K programs are high quality. The Court credited testimony by Plaintiffs' expert on early education that standards from the National Institute for Early Education Research (NIEER) "identify characteristics of highly effective preschool programs," and that New Mexico's Pre-K programs were not meeting these standards. *See* FF&CL ¶¶ 29-34. Four out of ten of the indicators have to do with the credentials of prekindergarten teachers and the training that they receive. *Id.*

Defendants cite the affidavit of PED's Deputy Secretary of Teaching, Learning, and Assessment, Dr. Gwen Perea Warniment, who declares that a working group that includes PED and various state departments "is attempting to develop uniform standards for pre-K services using [NIEER] standards as a basis." *See* Ex. D to Defendants' Motion for Dismissal at ¶¶ 7-8 (cited in Defendants' Motion for Dismissal at 40). The affidavit does not clarify whether this working group has replaced the evaluation system ECERS, which Children, Youth, and Families Department (CYFD), one of the state agencies administering Pre-K, has ceased using to measure classroom environment and program quality. *See* Exhibit D at 10, LFC 2019 Early Childhood

Accountability Report. The LFC reported to the New Mexico Legislature during this year's regular session that "[q]uality of programming remains a challenge, given increased demand for early childhood educators and appropriately designed prekindergarten space." *See* Exhibit E at 101, LFC Policy and Performance Analysis 2020. Dr. Perea Warniment's affidavit also did not clarify whether the new working group addressed Pre-K teacher quality issues, including PED not ensuring "that Pre-K teachers meet baseline standards" and the fact that "CYFD-run Pre-K programs do not require lead teachers to have a bachelor's degree." FF&CL ¶¶ 35-36. Taking Defendants purely at their word, it is too early to say whether they have implemented high quality, full-day Pre-K programs.

Defendants' arguments with regard to changes to the way in which the State uses K-5 Plus funds also require further examination, in part because current circumstances appear to contradict the supposed facts that Defendants offered. One LFC report indicated that PED figures for K-5 Plus participation were "showing 3,312 fewer students enrolled in programs statewide" at the end of FY20. *See* LFC Complete New Mexico Agency Report Card FY20 Q2 at 59. Additionally, it is unclear whether the Legislature and Governor will maintain funding for K-5 Plus in the next fiscal year.

3. Evidence of implementation of a framework for multicultural education is nebulous

With regard to multicultural education, Defendants report that school districts will be required to develop a culturally and linguistically responsive framework by the 2020-2021 school year. Defendants' Dismissal Motion at 27-28. Similar to other issues on which PED officials report in their affidavits, the development of frameworks has yet to be seen. The trial record is rife with evidence of Defendants' institution or creation of a mandate without actual implementation and guidance for districts in meeting that mandate. This is yet another issue on

which it is premature to say that Defendants have addressed the issues raised in the Court's decision.

D. Student outputs do not yet indicate that Defendants are providing a sufficient education to at-risk students

Defendants fail to demonstrate improvements in educational outcomes for at-risk students in New Mexico. In its initial Decision and Order, the Court held that “[e]ducational inputs and outputs must both be considered when determining whether the education provided is constitutionally adequate.” Decision and Order at 26. The Court defined “outputs” as “test results, graduation rates, and frequency of need for remedial courses in college.” Decision and Order at 37 n.25.

It is too early to tell whether Defendants' current and forthcoming reforms will provide educational opportunity to at-risk students. Firstly, the timing of many of the legislative efforts that Defendants discuss in their brief occurred before or during the 2019 regular legislative session, and Defendants did not implement them until the current school year. *See, e.g.*, Defendants' Motion for Dismissal at 3 (“The 2018 and 2019 Legislature passed literally dozens of pieces of legislation aimed at improving the education system[.]”). A true comparison would require that there at least be a second year's worth of data with which to compare the data from the year in which Defendants implemented their changes to the education system. Secondly, the data that are available do not show significant improvements for students.

While it is encouraging that Defendants plan to move away from the PARCC examination, it means that direct comparisons may not be readily available for a full examination of improvements in student outcomes for a year or two. *See* Defendants' Motion for Dismissal at 14. However, the parties may look to the 2019 results of the National Achievement Educational Performance test (NAEP), which still show little to no improvement for New

Mexico's fourth and eighth graders. The Court included in its findings of fact the outcomes for New Mexico's fourth and eighth graders on the NAEP assessment.

The Court made findings regarding the NAEP scores, with the most recent scores coming from the 2015 assessment, and improvements in proficiency since then are not significant. In 2015, "77 percent of New Mexico's fourth graders who participated in the NAEP did not score 'at or above proficient' in reading." FF&CL ¶ 833. In 2019, just over 76% of New Mexico's fourth graders who participated in the NAEP failed to score at or above proficient in reading. *See* Attachment A to Declaration of Ernest I. Herrera, 2019 NAEP 4th Grader Scores. In 2015, "73 percent of New Mexico's fourth graders who participated in the NAEP did not score 'at or above proficient' in math." FF&CL ¶ 838. In 2019, 71.2% of New Mexico's fourth graders who participated in the NAEP failed to score at or above proficient in math. *See* Attachment A to Declaration of Ernest I. Herrera, 2019 NAEP 4th Grader Scores. Therefore, for math and reading, it is still the case that more than three quarters of New Mexico's fourth graders who took the NAEP are not at or above proficient in reading and mathematics.

Available data for graduation rates also do not show significant improvement. The Court found that in 2017, "New Mexico's public high school graduation rate was 71.1 percent." FF&CL ¶ 1921. According to the most recent available data regarding a 4-year cohort of New Mexico students, that rate has only improved to 73.9% in 2018. *See* Attachment B to Declaration of Ernest I. Herrera, 4-Year Graduation Rates Cohort of 2018. Therefore, more than a quarter of New Mexico's students are still not graduating.

Defendants must provide more signs of progress before dismissal can be considered. Furthermore, Defendants' omission of evidence of improved outputs shows that their Motion for Dismissal is incomplete as well as premature in its analysis.

IV. The COVID-19 Pandemic

That Defendants are pursuing this Motion notwithstanding the havoc wreaked by the COVID-19 crisis further demonstrates that their request is ill-thought-out. As discussed above, the demise of the world economy has had profound effects on New Mexico and created major budgetary problems. With the State's finances in turmoil, it is unclear that Defendants will be able to carry out their promises with respect to putting greater resources into the educational system. Furthermore, with schools having closed and an uncertain timeline for a return to normalcy, the education of the State's children will be negatively impacted. Improving the standards of education will take great action and effort by Defendants. The LFC noted as much in a paper published on April 20, 2020:

Complicating this effort is that K-12 public schools were never structured to educate children remotely, and current efforts to do so have been, for the most part, implemented hastily to varying levels of success. Furthermore, the necessary disruption of the 2020 school year will likely create a need for more instruction (not less) for the current cohort to catch up.

Exhibit F at 10, LFC White Paper: Health and Economic Issues from COVID-19 in New Mexico.

In this environment, it is especially important to maintain Court supervision to ensure that Defendants carry out its mandate to improve the overall education system. In fact, it would be foolhardy to do otherwise given how much work will need to be done just to remedy the effects of this pandemic.

CONCLUSION

Having fought against reforms through years of litigation and then lost after trial, Defendants now attempt to escape the Court's final judgment and injunction by trivializing it. But contrary to Defendants' assertions, this Court's comprehensive order and findings were not about mere promises and half-measures. Rather, this Court recognized the irreparable travesty

befalling New Mexico's children and appropriately ordered the State to create an adequate education system. As courts throughout the United States have recognized, the success of such reforms take time. For Defendants now to declare—after just one legislative cycle—that their work is done is utter folly.

Rather than prematurely end its jurisdiction, what is needed here is oversight. Many questions remain as to the efficacy of Defendants' reforms. Accordingly, as *Martinez* Plaintiffs have requested in their concurrent motion, Plaintiffs should be afforded discovery to gather more information, such that the Court can receive a balanced report as to how the State's efforts at compliance are progressing. Defendants' Motion, which flies in the face of ensuring adequate reforms, should be denied.

DATED: May 1, 2020

Respectfully Submitted,

By: /s/ Ernest Herrera
Ernest Herrera

**MEXICAN AMERICAN LEGAL EDUCATION
AND DEFENSE FUND, INC.**

Ernest Herrera (NM State Bar No. 144619)
110 Broadway, Suite 300
San Antonio, TX 78205
(210) 224-5476
(210) 224-5382 Fax
eherrera@maldef.org

MUNGER, TOLLES & OLSON LLP
*E. Martin Estrada (CA State Bar No.
223802)
* Jessica R. Baril (CA State Bar No.
302135)
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071-3426
(213) 683-9100
(213) 687-3702 (Fax)

Martin.Estrada@mto.com
Jessica.Baril@mto.com
**Pro Hac Vice*

THE LAW FIRM OF DAVID P. GARCIA,
PC

David P. Garcia
1421 Louisa St., Suite P
Santa Fe, New Mexico 87505
(505) 982-1873
(505) 982-8012 Fax
david@garcialawfirmsf.com

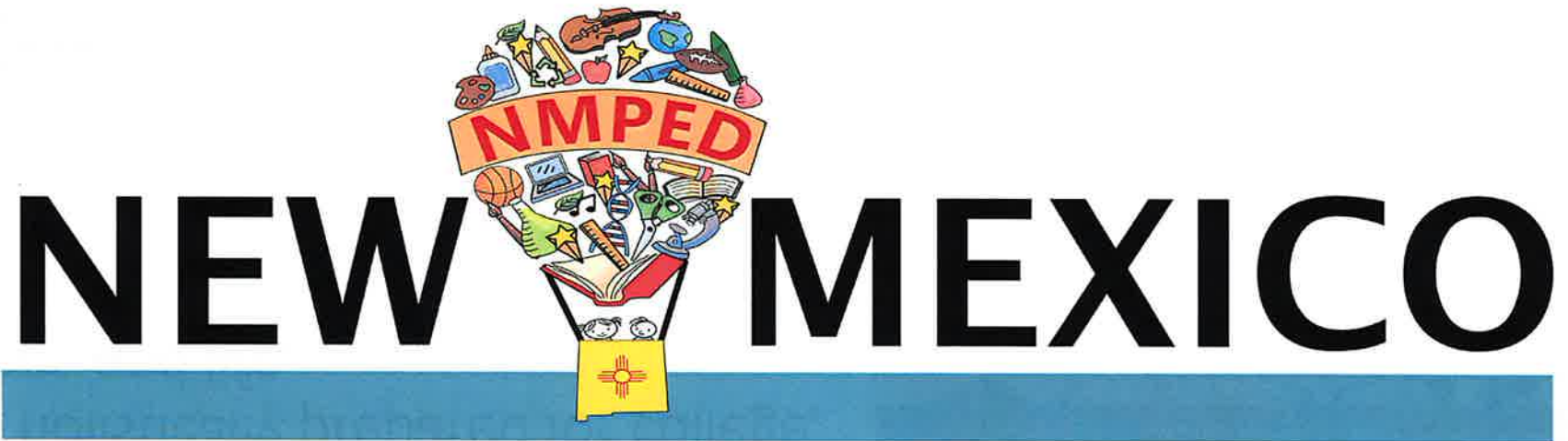
Attorneys for Martinez Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2020 a true and correct copy of the foregoing pleading was e-filed and served through the Court's e-filing system upon all counsel of record.

/s/ Ernest I. Herrera
Ernest I. Herrera

Exhibit A



Public Education Department

Public School Support
FY21

Mission

The New Mexico Public Education Department partners with educators, communities, and families to ensure that all students are healthy, secure in their identity, and holistically prepared for college, career, and life.



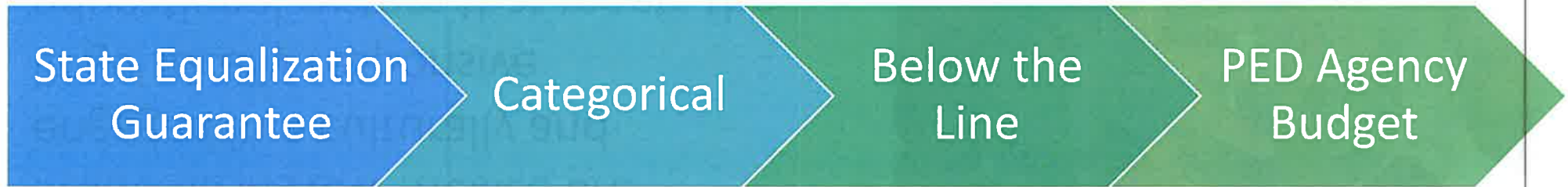
Vision

Rooted in our Strengths

Students in New Mexico are engaged in a culturally and linguistically responsive educational system that meets the social, emotional, and academic needs of all students



Agenda



Increased Spending Under Gov. Lujan Grisham (SEG)

State Equalization Guarantee	Increase over FY19
Educator Compensation	+\$255M
At-Risk Funding	+\$167M
K-5+ and Extended Learning Time	+\$162M
Bilingual Multicultural Programs	+\$7M
Instructional Materials	+\$44M
TOTAL	+\$635M

Includes an FY21 request for \$93 million in additional educator compensation and \$54 million in additional at-risk funding

State Equalization Guarantee

- I. Educator Compensation
- II. At-Risk Funding
- III. K-5+ and Extended Learning Time
- IV. Bilingual Multicultural Education Programs
- V. Instructional Materials

I. Educator Compensation

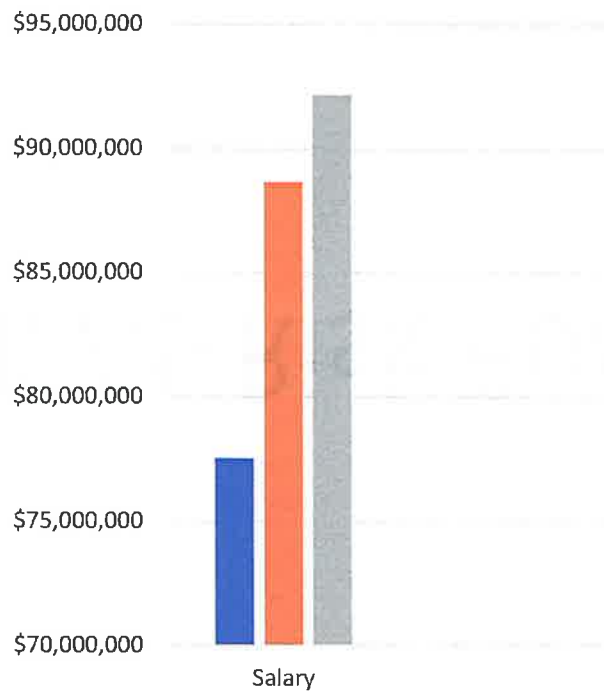
Educator Compensation (\$93M)

Teacher Salary Increases

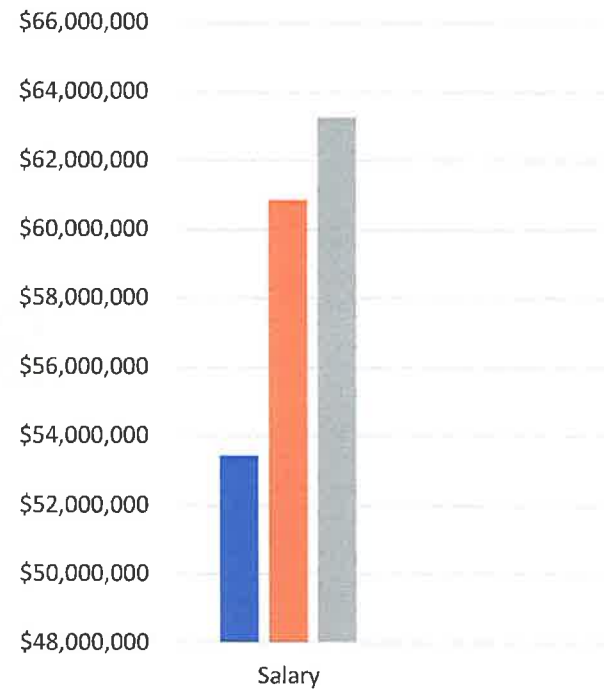


Educator Compensation (\$93M)

EA Salary Increases



Custodian Salary Increases



■ FY19
■ FY20
■ FY21 Request (Represents 4% increase)

■ FY19
■ FY20
■ FY21 Request (Represents 4% increase)

II. At-Risk Funding

Martinez-Yazzie Decision

Summary of Finding

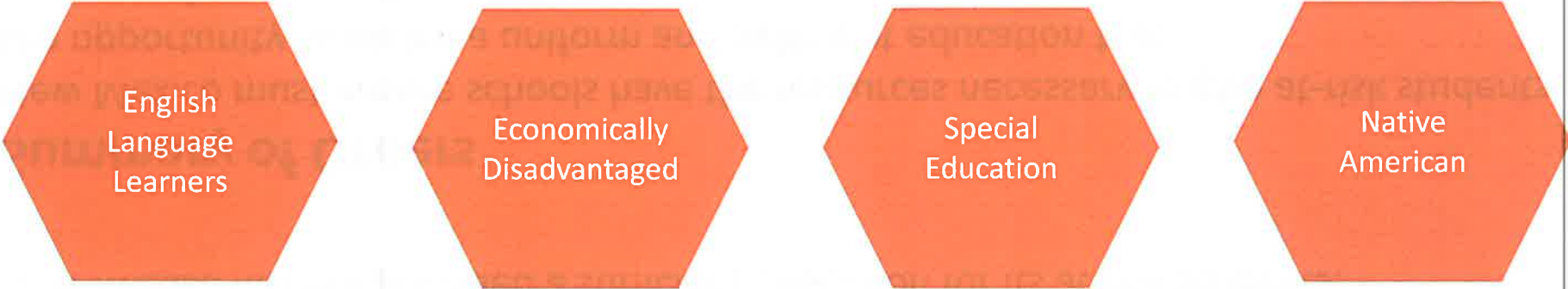
New Mexico has not provided a sufficient education for its at-risk students.

Summary of Orders

New Mexico must ensure schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career; the current system of financing public education and managing schools should be reformed so that every public school in New Mexico has the resources to provide a sufficient education; and there should be a system of accountability in place that measures financial resource allocation toward the education of at-risk students.

Martinez-Yazzie Decision

M/Y Identified At-Risk Student Groups



English
Language
Learners

Economically
Disadvantaged

Special
Education

Native
American

Our Imperatives

Moral Imperative

We must deliver on the right of every student in New Mexico to a high-quality education, especially those students who have been historically underserved.

Legal Imperative

We must increase our investment in supports and programs for at-risk students to a level sufficient to meet their needs and ensure that programs and services are effectively getting to those students.

The State Response



Gov. Lujan Grisham signs key education bills

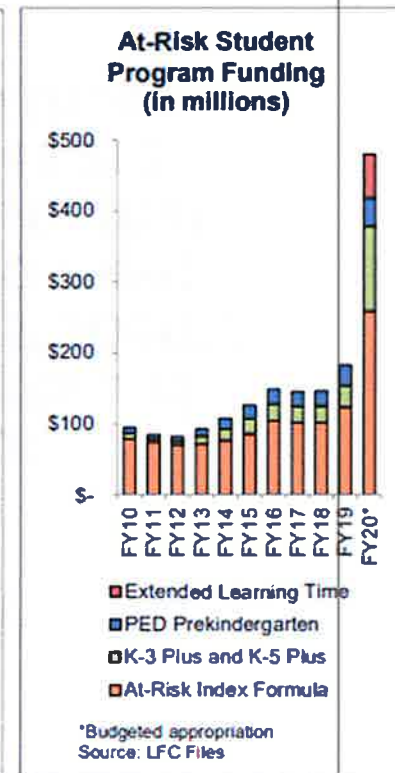
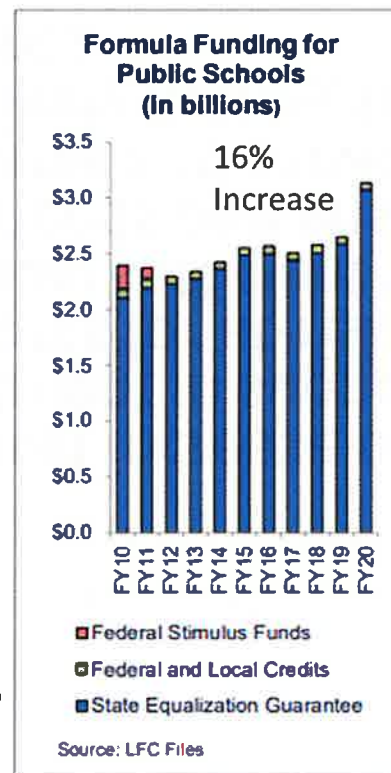
Apr 3, 2019 | Early Childhood Education, Press Releases

SANTA FE — Gov. Michelle Lujan Grisham on Wednesday signed key public education legislation into law, providing significant funding increases for evidence-based programs like K-5+ and extended learning time, raising educator salary levels in the state's three-tier licensure system and establishing a framework for community schools across New Mexico that will provide crucial wraparound health and wellbeing services to children and families in need, among other critical reforms.

Surrounded by students, educators, advocates, legislative sponsors and Public Education Secretary Karen Trujillo at Salazar Elementary in Santa Fe, Gov. Lujan Grisham signed Senate Bill 1, House Bill 5 and House Bill 589.

"New Mexico understands our children are our future; we are clear we will do everything in our power to help them succeed," said Gov. Lujan Grisham. "Perhaps the most significant investment we can make as a state is in our educators and administrators, and we have made a sizable one this year. I'm proud to say this has been a bipartisan effort. There is more we can do, and there is more we will do, and today I'm thrilled to say we have taken a leap forward in New Mexico public education."

"We've been talking about our education moonshot for many, many months," said House Speaker Brian Egolf. "We built the rocket; the rocket is fueled; and now, with the governor's signature, we have hit the ignition. This is a first and important step in a multi-year effort to reform education in New Mexico, because every child, regardless of zip code, deserves the best possible head start."



PED Response

PHASE 0

- Assess the findings from the court
- Seek additional funds
- Develop program options for state
- Build support

Jan '19 – Feb '20

PHASE 1

- Refine planning to address the findings from Court's Order
- Create plans for implementation

Feb '20 – June '20

PHASE 2

- Assess districts and charters
- Set up systems to track progress within PED, districts, and charters
- Disseminate administrative actions

July '20 – June '21

PHASE 3

- Implement regional supports
- Implement continuous improvement cycles

July '21 - Ongoing

Exhibit B



Date: November 20, 2019

Prepared By: Simon and Terrazas

Purpose: Review statutory requirements for the use of funds generated through the at-risk index and state oversight mechanisms to ensure school districts and charter schools are complying with the statutory requirements.

Witness: Ryan Stewart, Ed.L.D., secretary-designate, PED; Adán Delgado, deputy secretary, PED; Joseph Simon and Denise Terrazas, LESC staff

Expected Outcome: Understand state-level processes for ensuring school districts and charter schools are utilizing at-risk funds consistent with state law.

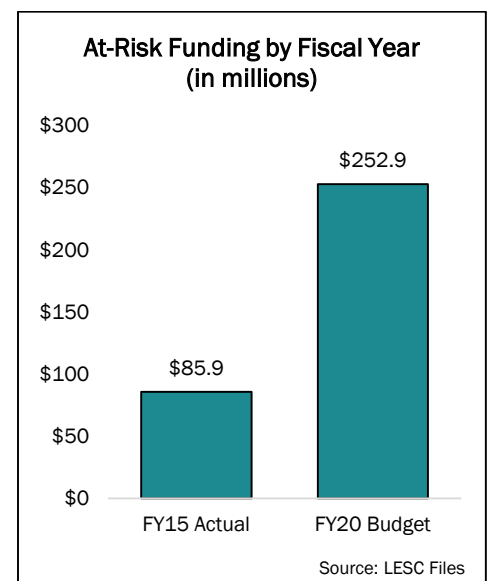
School District Use of At-Risk Funds in FY20

The Public School Finance Act authorizes additional funding through the public school funding formula's at-risk index, for school districts and charter schools that provide extra services to improve the academic outcomes of at-risk students. To generate this funding, statute requires a school district or charter school to report to the state how they use the funds associated with the at-risk index and the outcomes they expect to see from their investment. During the 2019 legislative session, the Legislature appropriated an additional \$113.2 million to increase the at-risk index; however, many school districts have stated that much of the at-risk funding was used to fund increases to educator salaries, rather than expand at-risk services, raising concerns that at-risk funding is not being used as required by statute.

An LFC analysis of budget data submitted to PED by school districts and charter schools statewide indicates returning teacher salaries were increased by \$99.7 million between FY19 and FY20, but it only cost \$79.8 million to raise salaries for those teachers by 6 percent or to the statutory minimum salary.

At-Risk Funding Requirements and Oversight

In recent years, funding generated through the at-risk index has increased substantially, from \$85.9 million in FY15 to an estimated \$252.9 million in FY20. (See **Attachment 1: At-Risk Funding by School District and Charter School** for change in funding between FY19 and FY20.) As the Legislature has approved increases in at-risk funding, the reporting requirements associated with at-risk funding have been improved. Since the addition of the at-risk index in 1997, school districts and charter schools have been required to report specified services to the state, but in 2014 the statute was amended to require school districts and charter schools to identify the ways school districts and individual schools use at-risk funding. In 2019, the law was further amended to require at-risk funds to be used on research-based or evidence-based social, emotional or academic interventions and included examples of such interventions.



The Importance of At-Risk Services

Laws 2019, Chapters 206 and 207 (Senate Bill 1 and House Bill 5) provided additional clarification on which services school districts and charter schools could fund with at-risk dollars, requiring at-risk funds to be used for “research-based or evidence-based social, emotional, or academic interventions,” such as the following (See **Attachment 2: Senate Bill 1 With Amendments in Context**):

- Case management, tutoring, reading interventions and after-school programs delivered by social workers, counselors, teachers or other professional staff;
- Culturally relevant professional and curriculum development, including those necessary to support language acquisition, bilingual, and multicultural education;
- Additional compensation strategies for high-need schools;
- Whole school interventions, including school-based health centers and community schools;
- Educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical education, guidance counseling services, and coordination with post-secondary institutions; and
- Services to engage and support parents and families in the education of students.

Research shows social-emotional learning interventions increase both academic achievement and positive social interactions, while decreasing negative outcomes later in life. According to the Collaborative for Academic, Social, and Emotional Learning, social-emotional learning focuses on improving students' ability to manage emotions, achieve positive goals, make responsible decisions, maintain positive

relationships, and show empathy for others. After reviewing over 213 studies on the impacts of social-emotional learning, researchers found that students who participated in these programs showed 11 percentile-point gains in academic achievement compared with those who were not part of the programs. Participants also demonstrated improved classroom behavior, an increased ability to manage stress and depression, and better attitudes about themselves, others, and schools.

Experts have said students can better respond to the effects of trauma by developing social-emotional competencies. The brain's neuroplasticity makes it possible for repeated experiences to shape the brain and even reverse the effects of chronic stress.

Additionally, research on culturally responsive teaching has shown students learn more effectively when the knowledge and skills taught are presented within the context of their own experiences and cultural frames of reference. Addressing student's needs through school-based health centers or strategies aligned with the community school model, such as parent and family engagement, support student learning by mitigating out-of-school barriers to their education.

Finally, educational programming intended to improve career and college readiness is critical to improving postsecondary success. College- and career-ready graduates should be able to enter and succeed in postsecondary courses without the need for remediation. According to the American Institutes for Research, a lack of preparation forces many students to spend resources, including student loans and scholarships, on remedial coursework in addition to or in place of credit-bearing courses. The lack of preparation at the onset of a student's educational career is indicative of non-matriculation, which leads to fewer opportunities for success and higher quality of life.

Allocation of At-Risk Funding

The state has several options when deciding how to allocate funding for additional services to at-risk students. One option is to increase the amount of at-risk dollars that flow through the public school funding formula by increasing the weight of the at-

risk index. This method allows school districts and charter schools statewide to generate additional funding based on their at-risk populations. However, this method gives significant discretion to school districts and charter schools over how to spend the dollars made available by the state.

The state has also funded some programming designed to improve the outcomes of at-risk students outside the public school funding formula by appropriating funds to the Public Education Department (PED) for special programs, sometimes called “below-the-line” appropriations. However, there are drawbacks with this approach. First, not all school districts and charter schools will necessarily be awarded funding from special program appropriations. Additionally, in previous years, PED has used funding appropriated to special programs to supplement departmental operating expenses, in some instances in a manner inconsistent with legislative intent. For example, in June 2019, PED used \$68 thousand from an appropriation for truancy and dropout prevention programs to purchase computer equipment.

PED’s Budget Review Authority

While school districts and charter schools are generally given discretion over how to budget formula funds received from the state, PED has significant authority to oversee public school spending. The 1st Judicial District Court’s ruling in the consolidated *Martinez* and *Yazzie* lawsuit found PED had failed to exercise its power to monitor or audit school districts’ and charter schools’ use of funds and failed to use its statutory power to ensure school districts and charter schools use their funding to improve outcomes for at-risk students. In defense of the state, PED argued that the department could not control school district and charter school spending or be responsible for their failure to provide programs that would benefit at-risk students. The court rejected this defense, finding that PED has read its authority under state statutes too narrowly and that the department’s authority is broad enough for PED to assure that school districts and charter schools are using funding to provide programs to at-risk students.

For many years, PED has conducted technical program budget reviews with between 15 and 20 school districts and charter schools — for FY18 the department conducted 19 technical reviews — but with significant changes to the public school funding formula for FY20, the department decided to only conduct about six technical reviews. PED leadership indicated the department considered 2019 to be a transition year after the adoption of new accountability requirements in SB1 and HB5, despite the fact statutory requirements for at-risk spending predate this legislation. In response to language included in the General Appropriation Act of 2019, PED technical budget reviews in FY20 were only conducted on school districts and charter schools with lower than average spending on instruction and student services. The department points out budget office analysts and other department staff are engaging in more informal conversations with school district and charter school budget officials as part of the regular budget review process, but staffing limitations impacted the ability of the department to provide the detailed oversight of \$4.3 billion in public school spending the 1st Judicial District Court says the department should be providing.

PED may need to increase personnel to provide robust oversight of school district and charter school at-risk spending. PED staff have indicated it may not be appropriate for budget office staff to conduct program reviews of at-risk programs and new employees may need to be hired to help oversee these programs.

Although statute requires a school district receiving additional at-risk program units to report the ways in which the school district and individual public schools use funding from the at-risk index, it is unclear if PED has ever required reporting at an individual public school level.

For FY20, PED reintroduced program and budget review questionnaires, to help the department identify the school districts and charter schools most in need of support in development of the educational plan, required in SB1 and HB5, beginning with FY21 budget submissions. While not meant as an accountability tool for FY20 budgets, these submissions include some data on how school districts and charter schools budgeted

at-risk funds. The questionnaires ask for a narrative regarding the at-risk services provided by the school district or charter school, as well as an accounting of at-risk spending by the school district or charter school. (See **Attachment 3: Public Education Department 2019-2020 Operating Budget Documentation for Program/Budget Review**). However, the categories presented in the accounting portion of the questionnaire include examples – such as student information systems or security personnel – that are not well aligned with the newly enacted statutory requirements, alongside interventions that are clearly aligned with statute – such as tutoring, after school programs, and support services, including guidance or health services. The detail included in school districts’ and charter schools’ responses varies. Some school districts and charter schools did not provide a detailed accounting of at-risk funds, while others included detailed accounting, including services provided with federal or other sources of funding. In general, most school districts reported spending less than their funding formula allocation for the at-risk index, but in some

Some school districts and charter schools might benefit from considering how much the state allocates for services to at-risk students when creating their annual operating budget. Based on FY20 responses, it appears that some school districts may not have considered this when developing a budget for at-risk programs.

cases, the school district noted an at-risk service in the provided narrative, but does not note that service in the detailed accounting. As a result, FY20 submissions probably do not present a true picture of at-risk spending, something that should be improved in the future. PED staff indicate the department will require additional time and training of local school district and charter school personnel to ensure these are useful tools in assessing school district and charter school budgets.

Conclusion

In recent years, school districts have argued the Legislature should prioritize funding – including funding for services to at-risk students – to the public school funding formula rather than to special department appropriations. Stakeholders have argued that increasing formula funding with state oversight through a program approval process is preferable because it allows school districts and charter schools more flexibility in building at-risk programming that meets the needs of their unique populations.

It is imperative that school districts and charter schools think strategically when building at-risk services, and prioritize funding to services that have been shown to improve outcomes for at-risk students. PED will need to support school districts and charter schools in this, and provide oversight through a robust program approval process. PED must be willing to hold school districts and charter schools accountable in the allocation of at-risk funds and ensure they meet the requirements of statute. To make this possible, the Legislature must ensure the department has sufficient resources to support its budget oversight function. Although the court has made clear that PED has tools to ensure at-risk funds are being used on programs to serve at-risk

students, the Legislature should be prepared to provide PED with additional authority if it is to meet the court's expectations of state oversight.



At-Risk Funding by School District and Charter School

	School District or Charter School	FY19 Final	FY20 Preliminary	Change in Funding FY19 to FY20	
1	Alamogordo	\$1,912,859	\$3,831,767	\$1,918,908	1
2	Albuquerque	\$31,710,859	\$64,131,259	\$32,420,401	2
3	ACE Leadership	\$128,035	\$231,110	\$103,076	3
4	Albuquerque Charter Acad.	\$111,078	\$245,254	\$134,175	4
5	Alb Talent Dev Secondary	\$64,116	\$130,909	\$66,793	5
6	Alice King Community School	\$172,269	\$376,970	\$204,701	6
7	Christine Duncan Community	\$126,865	\$314,949	\$188,084	7
8	Cien Aguas International	\$164,864	\$343,433	\$178,569	8
9	Coral Community	\$80,875	\$173,938	\$93,063	9
10	Corrales International	\$95,099	\$197,171	\$102,072	10
11	Cottonwood Classical	\$282,958	\$579,798	\$296,840	11
12	Digital Arts & Tech Academy	\$112,637	\$216,163	\$103,526	12
13	East Mountain	\$142,455	\$288,484	\$146,028	13
14	El Camino Real	\$117,901	\$254,544	\$136,643	14
15	Gilbert L. Sena	\$65,285	\$141,414	\$76,129	15
16	Gordon Bernell	\$169,348	\$351,920	\$182,572	16
17	Health Leadership Charter	\$68,986	\$183,840	\$114,854	17
18	Int'L School Mesa Del Sol	\$121,991	\$255,759	\$133,767	18
19	La Academia De Esperanza	\$128,814	\$251,718	\$122,904	19
20	La Resolana Leadership	\$27,869			20
21	Los Puentes	\$73,860	\$121,212	\$47,352	21
22	Mark Armijo	\$63,529	\$142,628	\$79,099	22
23	Montessori Of The Rio Grande	\$84,773	\$174,143	\$89,370	23
24	Mountain Mahogany	\$73,273	\$149,494	\$76,222	24
25	Native American Comm Acad.	\$169,151	\$367,274	\$198,122	25
26	New America Charter School	\$120,629	\$225,860	\$105,231	26
27	New Mexico International	\$87,694	\$216,971	\$129,278	27
28	PAPA	\$148,105	\$343,839	\$195,735	28
29	Robert F. Kennedy	\$127,255	\$276,363	\$149,107	29
30	Siembra Leadership	\$32,349	\$96,568	\$64,218	30
31	South Valley Academy	\$240,282	\$495,352	\$255,069	31
32	Technology Leadership	\$70,352	\$176,161	\$105,809	32
33	Twenty First Cent.	\$95,099	\$237,981	\$142,882	33
34	William & Josephine Dorn	\$21,633	\$48,485	\$26,851	34
35	Animas	\$59,489	\$107,397	\$47,908	35
36	Artesia	\$951,931	\$1,887,573	\$935,643	36
37	Aztec	\$658,299	\$1,266,700	\$608,402	37
38	Mosaic Academy Charter	\$41,489	\$84,643	\$43,153	38
39	Belen	\$1,691,842	\$3,483,828	\$1,791,986	39
40	Bernalillo	\$1,465,247	\$2,848,099	\$1,382,852	40
41	Bloomfield	\$924,686	\$1,769,060	\$844,374	41
42	Capitan	\$189,816	\$397,985	\$208,169	42
43	Carlsbad	\$1,983,739	\$4,330,565	\$2,346,826	43
44	Jefferson Mont. Acad.	\$59,812	\$151,699	\$91,888	44
45	Pecos Connections	\$163,980	\$601,287	\$437,308	45
46	Carrizozo	\$72,774	\$120,335	\$47,561	46
47	Central Cons.	\$2,870,187	\$5,922,515	\$3,052,327	47
48	Dream Dine' (Central)	\$12,321	\$17,326	\$5,005	48

	School District or Charter School	FY19 Final	FY20 Preliminary	Change in Funding FY19 to FY20	
49	Chama Valley	\$108,903	\$248,125	\$139,222	49
50	Cimarron	\$108,149	\$215,099	\$106,950	50
51	Moreno Valley High	\$15,389	\$37,646	\$22,258	51
52	Clayton	\$117,176	\$262,032	\$144,856	52
53	Cloudcroft	\$129,548	\$260,164	\$130,617	53
54	Clovis	\$2,879,252	\$6,137,322	\$3,258,070	54
55	Cobre Cons.	\$432,056	\$800,841	\$368,786	55
56	Corona	\$10,004	\$25,324	\$15,321	56
57	Cuba	\$435,639	\$855,261	\$419,622	57
58	Deming	\$2,438,354	\$5,109,584	\$2,671,230	58
59	Deming Cesar Chavez	\$75,963	\$158,191	\$82,228	59
60	Des Moines	\$17,162	\$30,880	\$13,719	60
61	Dexter	\$281,110	\$560,253	\$279,144	61
62	Dora	\$48,379	\$110,748	\$62,369	62
63	Dulce	\$366,657	\$715,628	\$348,971	63
64	Elida	\$30,597	\$73,202	\$42,604	64
65	Española	\$1,511,095	\$3,063,290	\$1,552,195	65
66	Estancia	\$236,188	\$486,202	\$250,015	66
67	Eunice	\$236,037	\$522,575	\$286,538	67
68	Farmington	\$3,873,649	\$8,058,697	\$4,185,049	68
69	New Mexico Virtual Academy	\$176,686			69
70	Floyd	\$61,882	\$136,926	\$75,044	70
71	Ft. Sumner	\$93,737	\$192,473	\$98,736	71
72	Gadsden	\$7,183,821	\$15,493,714	\$8,309,893	72
73	Gallup	\$7,020,160	\$14,294,262	\$7,274,102	73
74	Grady	\$18,084	\$40,404	\$22,320	74
75	Grants	\$1,559,700	\$3,138,395	\$1,578,695	75
76	Hagerman	\$172,160	\$361,343	\$189,183	76
77	Hatch	\$710,538	\$1,474,641	\$764,103	77
78	Hobbs	\$3,300,475	\$7,289,316	\$3,988,842	78
79	Hondo	\$65,331	\$127,831	\$62,500	79
80	House	\$21,545	\$33,560	\$12,015	80
81	Jal	\$117,880	\$244,628	\$126,748	81
82	Jemez Mountain	\$101,033	\$198,321	\$97,288	82
83	Lindrith Area Heritage	\$11,856	\$19,723	\$7,867	83
84	Jemez Valley	\$134,359	\$246,363	\$112,005	84
85	San Diego Riverside Charter	\$43,183	\$91,034	\$47,852	85
86	Lake Arthur	\$42,998	\$91,272	\$48,274	86
87	Las Cruces	\$8,079,791	\$17,034,672	\$8,954,881	87
88	Las Vegas City	\$604,601	\$1,169,033	\$564,431	88
89	Logan	\$56,090	\$104,694	\$48,604	89
90	Lordsburg	\$159,629	\$331,449	\$171,819	90
91	Los Alamos	\$292,031	\$538,974	\$246,943	91
92	Los Lunas	\$2,683,699	\$5,309,960	\$2,626,261	92
93	Loving	\$158,297	\$359,412	\$201,115	93
94	Lovington	\$1,183,915	\$2,476,096	\$1,292,181	94
95	Magdalena	\$161,511	\$325,117	\$163,605	95
96	Maxwell	\$25,702	\$63,952	\$38,250	96
97	Melrose	\$63,881	\$126,188	\$62,307	97

	School District or Charter School	FY19 Final	FY20 Preliminary	Change in Funding FY19 to FY20	
98	Mesa Vista	\$115,965	\$256,430	\$140,465	98
99	Mora	\$119,934	\$244,519	\$124,585	99
100	Moriarty	\$798,747	\$1,558,083	\$759,336	100
101	Mosquero	\$6,131	\$7,999	\$1,867	101
102	Mountainair	\$75,511	\$152,412	\$76,901	102
103	Pecos	\$229,680	\$394,109	\$164,429	103
104	Peñasco	\$143,118	\$252,431	\$109,313	104
105	Pojoaque	\$494,793	\$983,805	\$489,012	105
106	Portales	\$1,014,152	\$2,479,561	\$1,465,409	106
107	Quemado	\$87,421	\$192,149	\$104,728	107
108	Questa	\$143,528	\$245,167	\$101,639	108
109	Raton	\$268,851	\$562,774	\$293,922	109
110	Reserve	\$42,047	\$85,008	\$42,961	110
111	Rio Rancho	\$3,794,505	\$7,512,752	\$3,718,247	111
112	Roswell	\$3,775,725	\$7,774,569	\$3,998,844	112
113	Sidney Gutierrez	\$24,705	\$50,923	\$26,218	113
114	Roy	\$9,555	\$18,599	\$9,044	114
115	Ruidoso	\$674,844	\$1,407,730	\$732,886	115
116	San Jon	\$38,355	\$65,121	\$26,766	116
117	Santa Fe	\$4,711,785	\$8,879,453	\$4,167,668	117
118	Acad For Tech & Classics	\$144,647	\$275,911	\$131,263	118
119	Santa Rosa	\$203,923	\$380,413	\$176,490	119
120	Silver City Cons.	\$761,058	\$1,530,974	\$769,915	120
121	Socorro	\$586,346	\$1,162,682	\$576,336	121
122	Cottonwood Valley Charter	\$67,682	\$138,925	\$71,243	122
123	Springer	\$55,898	\$100,896	\$44,998	123
124	Taos	\$812,157	\$1,592,168	\$780,011	124
125	Anansi Charter	\$70,553	\$143,112	\$72,559	125
126	Taos Charter	\$77,661	\$157,534	\$79,873	126
127	Vista Grande	\$33,363	\$69,152	\$35,789	127
128	Tatum	\$87,170	\$193,135	\$105,965	128
129	Texico	\$166,846	\$326,418	\$159,572	129
130	Truth Or Conseq.	\$503,422	\$1,054,240	\$550,818	130
131	Tucumcari	\$355,363	\$711,766	\$356,403	131
132	Tularosa	\$438,598	\$846,683	\$408,085	132
133	Vaughn	\$29,822	\$70,166	\$40,344	133
134	Wagon Mound	\$54,045	\$102,366	\$48,320	134
135	West Las Vegas	\$562,446	\$1,163,705	\$601,259	135
136	Rio Gallinas Charter School	\$37,014	\$56,072	\$19,059	136
137	Zuni	\$788,643	\$1,588,388	\$799,746	137
138	Albuquerque Insti. Math & Sci.	\$141,479	\$284,042	\$142,563	138
139	Albuquerque Collegiate	\$14,810	\$28,283	\$13,472	139
140	Albuquerque School Of Excellence	\$207,736	\$502,624	\$294,888	140
141	Albuquerque Sign Language	\$38,003	\$77,982	\$39,979	141
142	Aldo Leopold	\$46,866	\$101,854	\$54,988	142
143	Alma D' Arte	\$59,175	\$103,626	\$44,451	143
144	Altura Preparatory School	\$23,775	\$46,467	\$22,692	144
145	Amy Biehl	\$114,004	\$240,405	\$126,402	145

	School District or Charter School	FY19 Final	FY20 Preliminary	Change in Funding FY19 to FY20	
146	Ask Academy	\$110,504	\$230,279	\$119,775	146
147	Cesar Chavez Comm.	\$79,119	\$164,040	\$84,921	147
148	Dzit Dit Lool DEAP	\$16,881	\$51,279	\$34,398	148
149	Estancia Valley	\$160,011	\$363,881	\$203,871	149
150	Explore Academy	\$91,788	\$321,615	\$229,827	150
151	Horizon Academy West	\$181,233	\$367,675	\$186,442	151
152	Hozho Academy	\$78,352	\$180,133	\$101,781	152
153	J. Paul Taylor	\$67,054	\$142,441	\$75,387	153
154	La Academia Dolores Huerta	\$54,649	\$85,464	\$30,816	154
155	La Promesa	\$134,660	\$277,577	\$142,917	155
156	Las Montanas	\$55,152	\$117,158	\$62,006	156
157	La Tierra Montessori	\$42,533	\$66,778	\$24,245	157
158	MASTERS Program	\$76,755	\$152,923	\$76,168	158
159	McCurdy Charter School	\$227,412	\$488,782	\$261,370	159
160	Media Arts Collab.	\$95,685	\$201,618	\$105,932	160
161	Middle College High	\$63,064	\$125,567	\$62,503	161
162	Mission Achievement & Success	\$374,939	\$919,191	\$544,252	162
163	Monte Del Sol	\$125,411	\$250,664	\$125,253	163
164	Montessori Elememtary	\$163,502	\$348,281	\$184,780	164
165	New America School (Las Cruces)	\$84,488	\$144,934	\$60,446	165
166	New Mexcio Connections	\$699,851	\$779,042	\$79,191	166
167	New Mexico School For The Arts	\$82,413	\$153,644	\$71,231	167
168	North Valley Academy	\$182,792	\$380,203	\$197,410	168
169	Raices Del Saber Xinachtli		\$42,732		169
170	Red River Valley (Questa)	\$32,052	\$60,820	\$28,769	170
171	Roots & Wings	\$19,907	\$37,893	\$17,986	171
172	Sandoval Academy Of Bil Ed	\$21,214	\$60,670	\$39,456	172
173	School Of Dreams	\$147,472	\$274,997	\$127,526	173
174	Six Directions	\$46,183	\$88,094	\$41,911	174
175	Solare Collegiate		\$126,060		175
176	South Valley Prep	\$60,218	\$124,850	\$64,632	176
177	Southwest Aer.,Math & Science	\$103,870	\$223,436	\$119,566	177
178	Southwest Preparatory	\$76,198	\$149,494	\$73,296	178
179	Southwest Secondary	\$98,996	\$187,880	\$88,884	179
180	Taos Academy	\$75,657	\$160,492	\$84,835	180
181	Taos Integrated School Of Arts	\$56,149	\$124,622	\$68,473	181
182	Taos International	\$73,650	\$99,106	\$25,456	182
183	The Great Academy	\$62,360	\$146,668	\$84,309	183
184	Tierra Adentro	\$110,106	\$233,133	\$123,026	184
185	Tierra Encantada	\$112,587	\$210,269	\$97,682	185
186	Turquoise Trail	\$173,690	\$373,651	\$199,962	186
187	Walatowa	\$22,061	\$43,349	\$21,288	187
188	Statewide	\$123,607,113	\$252,861,529	\$129,254,415	188

Source: LESC Files

"22-8-6. OPERATING BUDGETS--EDUCATIONAL PLANS--

SUBMISSION--FAILURE TO SUBMIT.--

A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school district and any locally chartered charter ~~[schools]~~ school in the school district for the ensuing fiscal year.

~~[Upon written approval of the state superintendent]~~

B. The date for the submission of the operating budget for each school district and each charter school as

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required by this section may be extended to a later date fixed by the ~~[state superintendent]~~ secretary.

~~[B.]~~ C. The operating budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

~~[C.]~~ D. The operating budget required by this section shall include a budget for each charter school of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

E. For fiscal year 2021 and subsequent fiscal years, each school district's and each locally chartered or state-chartered charter school's educational plan shall include:

(1) information on the instructional time offered by the school district or charter school, including the number of instructional days by school site and the number of hours in each instructional day and the frequency of early-release days;

(2) a narrative explaining the identified services to improve the academic success of at-risk students;

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(3) a narrative explaining the services provided to students enrolled in the following programs:

HAFC→~~(a) bilingual multicultural education programs;~~←HAFC

HAFC→~~(b)~~ ~~(a)~~←HAFC extended learning time programs, including a report of how the extended learning time is used to improve the academic success of students and professional learning of teachers; and

HAFC→~~(c)~~ ~~(b)~~←HAFC K-5 plus programs;

(4) a narrative explaining the school district's or charter school's beginning teacher mentorship programs as well as class size and teaching load information;

(5) a narrative explaining supplemental programs or services offered by the school district or charter school to ensure that the Bilingual Multicultural Education Act, the Indian Education Act and the Hispanic Education Act are being implemented by the school district or charter school;

(6) a narrative describing the amount of program cost generated for services to students with disabilities and the spending of these revenues on services to students with disabilities, which shall include the following:

(a) program cost generated for students enrolled in approved special education programs;

(b) budgeted expenditures of program cost, for students enrolled in approved special education

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programs, on students with disabilities;

(c) the amount of program cost generated for personnel providing ancillary and related services to students with disabilities;

(d) budgeted expenditures of program cost for personnel providing ancillary and related services to students with disabilities, on special education ancillary and related services personnel; and

(e) a description of the steps taken to ensure that students with disabilities have access to a free and appropriate public education; and

(7) a common set of performance targets and performance measures, as determined by the department in consultation with the department of finance and administration, the legislative finance committee and the legislative education study committee.

[D.] F. If a local school board or governing board of a charter school fails to submit [a] an operating budget pursuant to this section, the department shall prepare the operating budget for the school district or charter school for the ensuing fiscal year. A local school board or governing board of a charter school shall be considered as failing to submit [a] an operating budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or charter school or if the budget submitted

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does not comply with the law or with rules and procedures of the department."

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"22-8-23.3. AT-RISK PROGRAM UNITS.--

A. A school district is eligible for additional program units if it establishes within its department-approved educational plan identified services to assist students to reach their full academic potential. A school district receiving additional at-risk program units shall include a report of specified services implemented to improve the academic success of at-risk students. The report shall identify the ways in which the school district and individual public schools use funding generated through the at-risk index and the intended outcomes. For purposes of this section, "at-risk student" means a student who meets the criteria to be included in the calculation of the three-year average total rate in Subsection B of this section. The number of additional units to which a school district is entitled under this section is computed in the following manner:

$$\text{At-Risk Index} \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education, full-time-equivalent membership and special education membership and where the at-risk index is calculated in the following manner:

~~[(1) for fiscal year 2019,~~

~~Three-Year Average Total Rate x 0.130 = At-Risk Index;~~

~~(2) for fiscal year 2020,~~

~~Three-Year Average Total Rate x 0.140 = At-Risk Index; and~~

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~~(3) for fiscal year 2021 and subsequent fiscal years]~~

Three-Year Average Total Rate x ~~[0.150]~~ 0.25 = At-Risk Index.

B. To calculate the three-year average total rate, the department shall compute a three-year average of the school district's percentage of membership used to determine its Title ~~[F]~~ 1 allocation, a three-year average of the percentage of membership classified as English language learners using criteria established by the ~~[federal]~~ office ~~[of]~~ for civil rights of the United States department of education and a three-year average of the percentage of student mobility. The department shall then add the three-year average rates. The number obtained from this calculation is the three-year average total rate.

C. The department shall recalculate the at-risk index for each school district every year. HEC → ~~"~~ ← HEC

HEC → **D. For purposes of this section, "services" means research-based or evidence-based social, emotional or academic interventions, such as:**

(1) case management, tutoring, reading interventions and after-school programs that are delivered by social workers, counselors, teachers or other professional staff;

(2) culturally relevant professional and

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curriculum development, including those necessary to support language acquisition, bilingual and multicultural education;

(3) additional compensation strategies for high-need schools;

(4) whole school interventions, including school-based health centers and community schools;

(5) educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical education, guidance counseling services and coordination with post-secondary institutions; and

(6) services to engage and support parents and families in the education of students."←HEC

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Amendments: new = →bold, blue, highlight←

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School District/Charter School: _____

Person Completing Questionnaire: _____

Date: _____

Please complete answers to the questionnaire below and submit to the Public Education Department (PED) with your operating budget. The questionnaire will be used to guide the program/budget review. Answers will be retained in the district’s/charter school’s budget file as the district’s/charter school’s official response to the questions.

PROGRAM/BUDGET REVIEW QUESTIONS

Please provide specific written responses to the following questions prior to the district’s/charter school’s program/budget review. Attach extra pages as needed.

1. What was your school district’s or charter school’s top three priorities when developing the Operating Budget?

2. What were the top three largest challenges you faced in developing the Operating Budget?

3. Did the district/charter have any financial audit findings in the 2017-2018 independent public audit report (include findings on internal controls)?

Yes ____ No ____

If “yes,” please explain below:

Function/Object	Description	Is this a recurring finding? Yes? No?	Fiscal Impact	Expenditures required to address findings.	Corrective Action
			\$	\$	
			\$	\$	
			\$	\$	
			\$	\$	
			\$	\$	
			\$	\$	

4. Is the district/charter projecting Extended Learning Program Units? Yes____ No____
 Is the district/charter planning on generating Extended Learning Program Units in FY20? Yes____ No____

5. Is the district/charter projecting K-5 Plus Act Program Units? Yes____ No____
 Is the district/charter planning on generating K-5 Plus Act Program Units in FY20? Yes____ No____

If “yes” please list school site information below:

School	Percent Free or Reduced Lunch Program Eligible	Did the School Participate in K-3 or K-5 Plus in FY19?	Projected Membership (MEM)

If applicable, are the additional 25 instructional days shown on the School Calendar? Yes____ No____
 If so, please identify the dates of the program?

If not, when are the proposed dates of the program?

If applicable, please describe additional professional development opportunities you are considering for K-5 plus teachers to promote early reading.

6. Language in §22-2-8.1 NMSA 1978 .requires the district to have regular students be in school-directed programs, exclusive of lunch, for a minimum of the following: (1) kindergarten (K), for half-day programs, two and one-half hours per day or four hundred fifty hours (450) per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours (990) per year; (2) grades one through six (1-6), five and one-half hours per day or nine hundred ninety hours (990) per year; and (3) grades seven through twelve (7-12), six hours per day or one thousand eighty hours (1080) per year. For school year 2019-2020, does/did the district/charter school provide:

- a. the minimum instructional hours as required by law? Yes_____ No_____
 - b. a four-day week? Yes_____ No_____
 - c. a four day week in the 2018-2019 school year? Yes_____ No_____
 - d. a five-day week? Yes_____ No_____
 - e. a school year consisting of at least 180 full instructional days or the equivalent thereof, exclusive of any time for in-service training (professional development).? Yes_____ No_____
 - f. a year-round school year calendar consisting of a minimum number of instructional hours? Yes _____ No _____
 - g. a school year calendar exceeding the minimum requirement of instructional hours established by the state law?
Yes_____ No_____
- By how many hours and/or days? _____

21

7. Please provide the additional information regarding instructional time in your district charter school (please use the definition of instructional day in in §22-2-8.1 NMSA 1978) :

School Site	Grades Served	Number of Instructional Days	Hours Per Instructional Days	Non-instructional Days	Early Release Days	Total Hours

8. Please provide narrative explaining identified services to improve academic success of at-risk student.

9. For school year 2018-2019, did the district/charter school meet class size requirements set forth in §22-10A-20 NMSA 1978? Yes____ No____
- If “no,” did the district/charter school receive waivers for class size exceptions in the 2019-2020 school year? Yes____ No____
 - Does the 2018-2019 program/budget provide sufficient resources to ensure meeting statutory class size requirements? Yes ____ No____
 - Please provide a narrative describing your beginning teacher mentorship programs.

d. Please describe average class and teaching loads below.

Grade Levels	Average Class Load	Daily Teaching Load
K		N/A
1-3		N/A
4-6		N/A
7 - 12	N/A	

10. §22-8-11.C NMSA 1978 requires districts/charter schools to demonstrate that parental involvement in the budget process was solicited. Please provide dates that the local Board of Education and/or charter school Governance Council scheduled time to receive questions, comments, and suggestions from parents. Please describe the methods that demonstrate the district/charter school solicited parental involvement:

11. Please provide the following information regarding 2019-2020 program cost generated:

(a) Amounts generated for students enrolled in approved special education programs (Sum of 3Y/4Y DD, A/B, C, D level MEM):

(b) Amounts generated for personnel providing ancillary and related services to students with disabilities (Funded Ancillary FTE, which excludes caseload 95 staff):

(c) Please provide the following information regarding how these program cost amounts were budgeted for expenditures

23

Students with Disabilities Services Budgeted Expenditures

a. Students with disabilities (use as many lines as necessary)

b. Ancillary /Related Services Personnel (use as many lines as necessary)

Budgeted Amount(s)	UCOA Expenditure Line Item(s)
\$	
\$	

12. Please provide a description of the steps taken to ensure students with disabilities have access to a free and appropriate education.

14. Identify any training needs—or wishes—of the following by category:

	<u>Business Office Staff</u>	<u>Superintendent/ Charter Principal</u>	<u>Local Board Members/ Charter Governing Council</u>
STARS Reporting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Staffing Cost Multiplier Reporting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
School Level Per Pupil Expenditure Reporting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Beginning or Advanced Excel Spreadsheet Application	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Principles of Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advanced Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Governmental Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District's Accounting Information System	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
School Finance (laws, regulations, procedures, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Budget Preparation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Budget Maintenance (Budget Adjustments)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Quarterly/Monthly Financial Report preparation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: Please Identify _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. Do you prefer training be made available:

- ☐ On-Site
- ☐ Regionally
- ☐ Statewide
- ☐ In Conjunction With Other Conferences and Workshops

16. Does the district receive Title VIII, Impact Aid, Indian Set-Aside funds? Yes ____ No ____

(If the answer is "no," please skip to question 15. If the answer is "yes," please answer the following questions *(Add additional pages if necessary)*):

a. Regarding federal Indian Policies/Procedures (IPP) requirements, how did your district verify IPP consultation with parents and tribes?

b. Regarding IPP requirements, what documents are disseminated to parents and tribal offices? (check all that apply)

- | | | |
|--|---|---|
| <input type="checkbox"/> Application | <input type="checkbox"/> Program Overview | <input type="checkbox"/> Program Evaluation |
| <input type="checkbox"/> IPP | <input type="checkbox"/> Program Budget/Funding Support | <input type="checkbox"/> Announcements |
| <input type="checkbox"/> Minutes of Meetings | <input type="checkbox"/> Public Hearings | <input type="checkbox"/> Joint Bylaws of Parent Committee |

17. Does the district/charter school engage in collective bargaining? Yes ____ No ____

20

a. If your answer is "yes," have negotiations been completed for 2019-2020? Yes ____ No ____

b. If negotiations have not been completed, provide a date negotiations are anticipated to be concluded. _____

18. The district/charter school plans to budget the following salary increases in 2019-2020:

- | | | |
|--|-----------------|------------|
| a. Teachers | _____ % average | _____ None |
| b. Superintendent | _____ % average | _____ None |
| c. Other professional staff included in computation of T&E Index | _____ % average | _____ None |
| d. Other Staff | _____ % average | _____ None |

19. If your district/charter school employs School Counselors/Social Workers, please provide the following data:
- (a) Full-time equivalency (FTE) budgeted for 2019-2020: _____
 - (b) Total amount budgeted for 2019-2020 School Counselors/Social Worker salaries: \$_____
20. If your district/charter school employs School Resource/Safety Officer, please provide the following data:
- (a) Full-time equivalency (FTE) budgeted for 2019-2020: _____
 - (b) Total amount budgeted for 2019-2020 School Resource/Safety Officer salaries: \$_____
21. Does the district/charter school have a facilities master plan? Yes ____ No ____
If "no", does your district/charter school have plans to develop such a plan? Yes ____ No ____
22. Does the school district plan to expend Operational funds on capital outlay? (Charter Schools answer N/A) Yes ____ No ____ N/A ____
23. Describe the district's expenditure plan to use any capital outlay funds realized from the provisions of §22-8-25 NMSA 1978. *(Add additional pages if necessary. Note: This is not applicable to charter schools.)*
24. Please provide information on your school district's/charter school's organizational structure by attaching to this document a list that includes the following for the 2019-2020 school year:
- a. The name of each public school and off-site center in your district.
 - b. The actual address (physical location) of each public school and off-site center.
 - c. The mailing address of each public school and off-site center.
 - d. The grades included in each public school and off-site center.

ADDITIONAL COMMENTS
(Attach additional pages if necessary)

Exhibit C

[LICENSURE](#)[ESSA](#)[OFFICES/PROGRAMS](#)[NM PED LEADERSHIP](#)[RFPS, RFIS, RFAS](#)[PED APPS \(IT\)](#)[FAQS](#)[CONTACT US](#)[WORK AT THE PED](#)[HOME](#)[STUDENTS](#) ▾[EDUCATORS](#) ▾[FAMILIES/COMMUNITIES](#) ▾[ADMINISTRATORS](#) ▾

INDIAN EDUCATION ADVISORY COUNCIL



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NEW MEXICO INDIAN EDUCATION ADVISORY COUNCIL:

Pursuant to the [Indian Education Act \(IEA\)](#) [22-23 A-6](#) the "Indian Education Advisory Council" is created and shall advise the secretary and assistant secretary on implementation of the provisions of the IEA.

[IEAC BYLAWS – 2018](#)

[IEAC ADVISEMENT CYCLE](#)

[DRAFT IEAC FORMAL ADVISEMENT 2018](#)

Indian Education

Federal
Laws &
Guidance

Government
to
Government

IE Act &
Rules

IEAC 2018-2019 ADVISEMENT PACKET**INDIAN EDUCATION ADVISORY COUNCIL MEMBERS**

Name	Nation
Vacant	Navajo Nation
Jonathan Hale	Navajo Nation
Dr. Pauletta White	Navajo Nation
Dr. Pandora Mike	Navajo Nation
Claudia Vigil-Muniz	Jicarilla Apache Nation
Berdine Largo	Mescalero Apache Tribe
Vacant	Southern Pueblo
Patricia “Pat” Sandoval	Southern Pueblo
James Lujan Sr.	Northern Pueblo
Jeremy Oyenque	Northern Pueblo
Vacant	Urban Indians
Vacant	Urban Indians
Vacant	Urban Indians
Casey Sovo	Bureau of Indian Affairs – At-Large
Marsha Leno	Head Start – At-Large
Vacant	Non-Tribal – General Public – At-Large
Vacant	Public Education Commissioner

NMIEAC MEETINGS**Indian Education Advisory Council Meeting
Fall Government to Government Meeting**

Santa Ana Star Casino Hotel
54 Jemez Canyon Dam Road
Bernalillo, NM 87004

Sunday November 25, 2018 – Wednesday November 28, 2018
8:00 AM to 5:00 PM

**IED RFP's,
Bids, and
Contract
Positions**

**Indian
Education
Advisory
Council**

**Indian
Education
Staff**

**Indigenous
New
Mexico
Curriculum
Initiative**

**NM Native
American
Language
& Culture**

Programs

Reports

Resources

**School
Districts &
Charters**

Indian Education Advisory Council Meeting

Holiday Inn & Suites
5050 Jefferson St. NE
Albuquerque, NM 87109
Saturday October 20, 2018
8:00 AM to 5:00 PM

**Tribal
Consultation**

**Tribal
Education
Departments**

Indian Education Advisory Council Meeting

Embassy Suites
Albuquerque, NM
Saturday, July 21, 2018
9:00 a.m. to 5:00 p.m.

[Agenda](#)

[Approved Minutes](#)

Indian Education Advisory Council Meeting

Inn of the Mountain Gods
287 Carrizo Canyon Road
Mescalero, NM 88340
Sunday, April 29, 2018
9:00 am to 5:00 pm

[Agenda](#)

[Approved Minutes](#)

Indian Education Advisory Council Meeting

Hilton Santa Fe Buffalo Thunder
20 Buffalo Thunder Trail
Santa Fe, NM 87506
Saturday, February 3, 2018
9:00 am to 5:00 pm

[Agenda](#)

[*Approved Minutes*](#)**Indian Education Advisory Council Meeting**

State Capitol, Room 317

490 Old Santa Fe Trail

Santa Fe, NM 87501

Friday, August 25, 2017

9:00 am to 5:00 pm

[*Agenda*](#)[*Approved Minutes*](#)**Indian Education Advisory Council Meeting**

State Capitol, Room 317

490 Old Santa Fe Trail

Santa Fe, NM 87501

Friday, August 25, 2017

9:00 am to 5:00 pm

[*Agenda*](#)[*Approved Minutes*](#)**Indian Education Advisory Council Meeting**

Santa Claran Hotel Casino

460 N. Riverside Dr.

Espanola, New Mexico 87532

Sunday, April 2, 2017

9:00 am to 5:00 pm

[*Agenda*](#)

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Page last updated October 24, 2019

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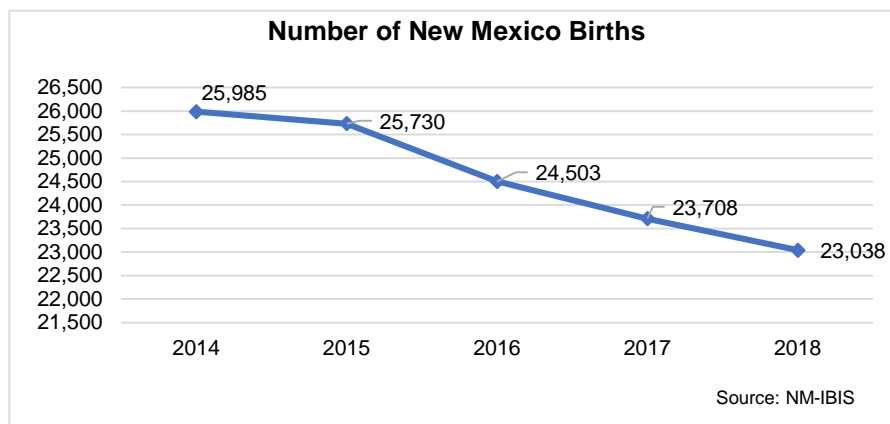
Exhibit D

Quality services for at-risk children can impact their future educational and economic success. Recognizing the importance of such services, early childhood initiatives have remained a priority, even as the Legislature confronted difficult funding decisions in recent years.

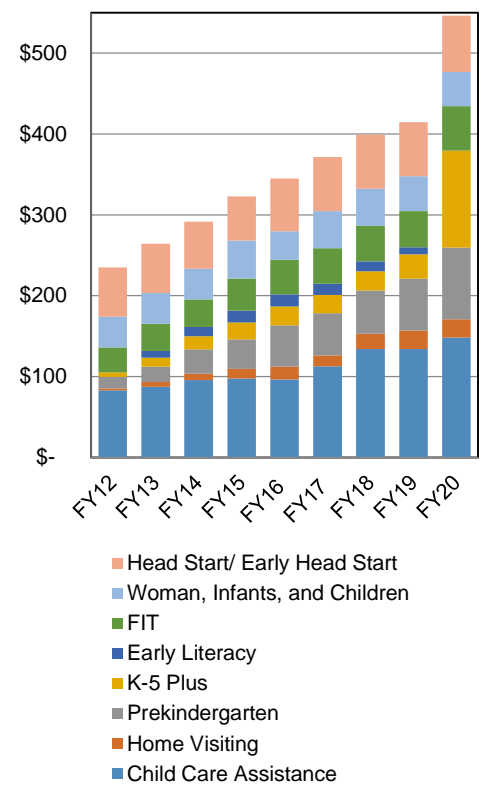
LFC's annual Early Childhood Accountability Report is intended to provide a system-wide look at key early childhood indicators across state agencies and consolidate information regarding expenditures and outcomes. The report provides trend data indicating mixed performance results on measures reported last year.

New Mexico's early childhood care and education system begins prenatally and extends through age 8. Services for improving the health, safety, stability, and education of New Mexico's children span several state agencies, including the Children, Youth and Families Department (CYFD), the Department of Health (DOH), the Human Services Department (HSD), and the Public Education Department (PED). The newly authorized Early Childhood Education and Care Department will consolidate many of these services in FY21. Concerns regarding low or declining performance in key indicators such as the rate of repeat child maltreatment, immunization, and reading proficiency of low-income children have been raised. With this knowledge, the Legislature invested in multiple prevention and intervention strategies over the last several years, such as home visiting and prekindergarten.

Analysis for the 2019 Accountability Report found mixed performance related to programs in all agencies. Approximately 30 percent of New Mexico third grade students demonstrate readiness for the next grade level in reading or math. Health and safety indicators continue to show low performance. Declining birth rates and lack of coordination creates competition issues and quality may be adversely impacted by rapid expansion of programming. Given the state's significant investment in programs to improve early childhood health and educational outcomes, analysis of key indicators is vital to ensure investments are meeting their intended goals.



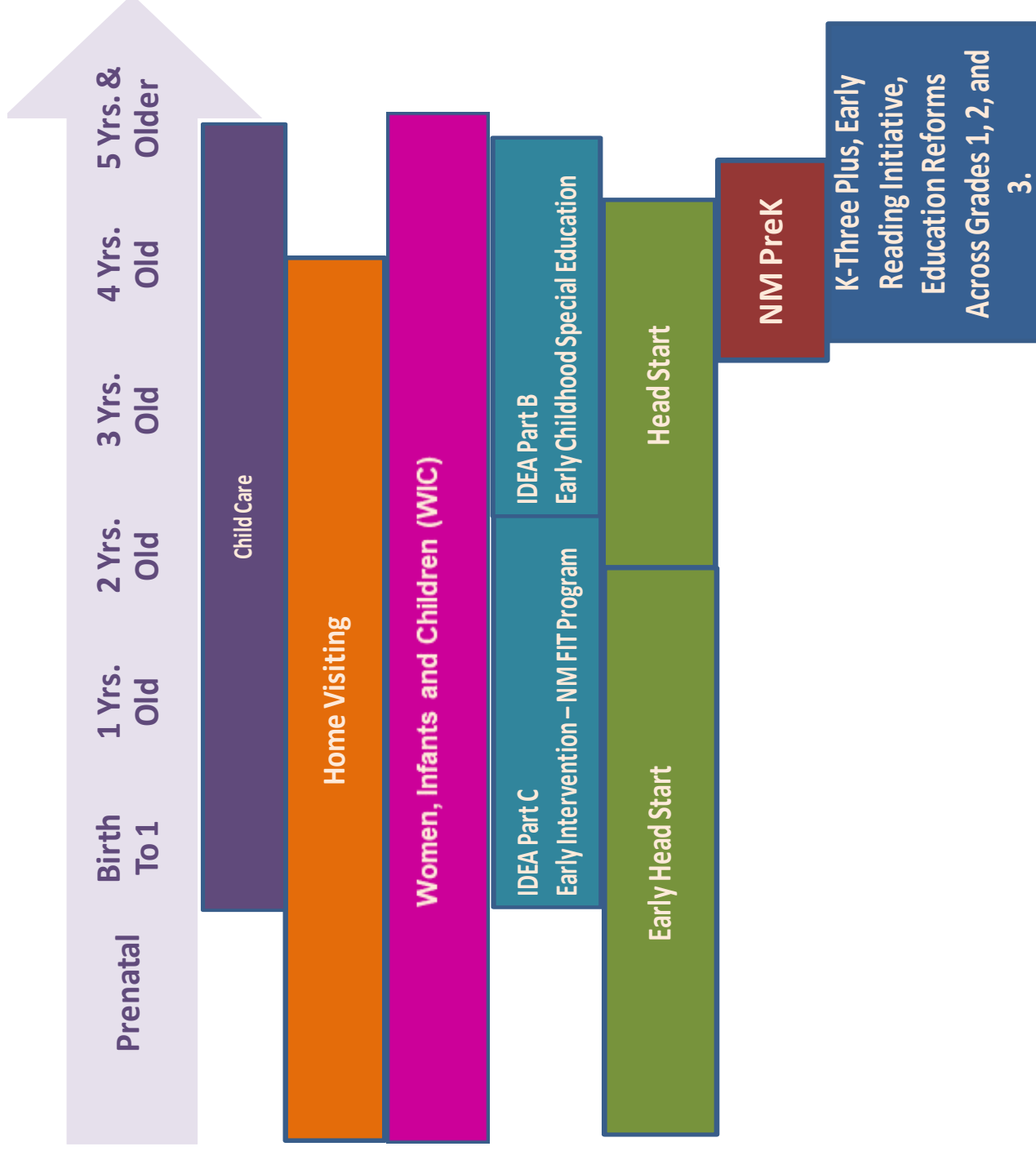
**Recurring
Early Childhood Funding History
FY12-FY20**
(in millions)



Early Childhood Program Issues and Impact

- **Home Visiting** expansion should be better targeted to high risk and high need areas. Medicaid home visiting have delayed expansion. Over last 2 years, there have been \$2.8 million unspent in home visiting dollars.
- **Childcare-** New Mexico pays higher rates for quality than most states without evidence of impact.
- **Prekindergarten** coordination and quality controls are needed to address potential reduced impact.
- **K-3/K-5 Plus** is more effective when implemented correctly.
- **Head Start** enrollment continues to fall and performance on key measures of teacher quality and service delivery are well below the national average and vary by state region.

New Mexico's Early Childhood Care and Education System



Early Childhood Accountability Report- 2019 Update

HEALTHY	Infant Mortality		Low Birth Weight		Immunization Rate		Early Access to Prenatal Care	
	2017		2017		2017		2017	
	6.2		9.5%		72%		64%	
	Per 1,000 children U.S. – 5.8 (2017)		2,241 children U.S. – 8.3% (2017)		U.S. – 70.4% (2017)		23,708 children U.S. – 77% (2017)	
	Same		Worse		Better		Better	
Source:	2016	6.2 CDC	2016	9% DOH	2016	68.5% DOH	2016	63% DOH

SAFE	Child Death Rate: Abuse or Neglect		Rate of Child Maltreatment		Rate of Foster Care Placement		Repeat Maltreatment	
	2017		2017		2017		2019	
	3.28		17.6		3.9		11%	
	Per 100,000 children U.S. 2.24		Per 1,000 children U.S. – 9.1		Per 1,000 children		U.S. Std– 5.4%	
	Worse		Worse		Higher		Same	
Source:	2016	2.24 ACF	2016	15.4 ACF	2016	3.8 ACF	2018	11% CYFD/NCANDS

READY TO LEARN BY KINDERGARTEN	Kindergarten Students Proficient in Reading on Istation Beginning of Year Test		Rate of Children Under 5 in Poverty		Kids Funded to Participate in Early Childhood Programs		Low Income 4-Year-Olds in Day Services	
	FY19		2017		FY19		FY18/FY19	
	18%		33%		78,201		77%	
	Baseline*		Better		children Better		19,779 children Better	
	Source: PED		2016	34% Census	FY18	73,871 LFC Vol. 3	FY17/18	73% CYFD, ACF, & LFC

EDUCATED 3 rd Grade	Reading – All Kids		Reading – Low-Income Kids		Math – All Kids		Math – Low-Income Kids	
	2019		2019		2019		2019	
	27%		22%		32%		26%	
	Worse**		Worse**		Same**		Worse**	
Source:	2018	28.5% PED	2018	25% PED	2018	32% PED	2018	27% PED

* Istation transitioned from three performance tiers to five performance tiers in FY19.

**In SY19 PED used the TAMELA rather than the PARCC as its standardized test.

Capacity and Coordination

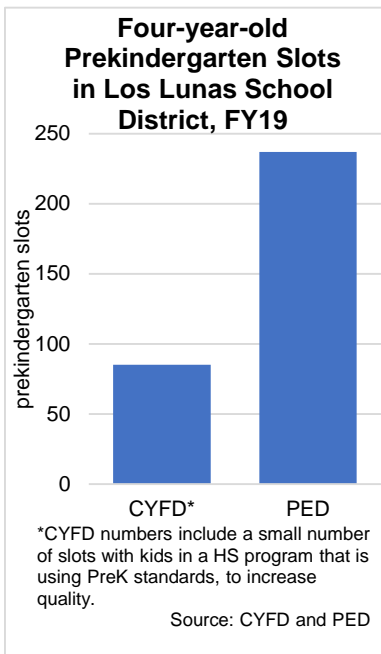
Youth Development Incorporated (YDI) reports asking the Administration for Children and Families (ACF) for assistance in addressing under-enrollment, citing the following:

“The competition for three and four year’s pre-school aged children is a challenge for private child care centers and Head Start programs across New Mexico. The public schools are actively engaging families to enroll into their preschool programs. Many times families will opt out for convenience not understanding the high quality standards of child care.”

Source: YDI board of directors meeting

Case Study: Capacity and Coordination

The Los Lunas Schools district has more slots than 4-year-olds, creating competition between CYFD and PED for prekindergarten. PED has the majority of prekindergarten slots, but most of these are half day creating the need for additional coordination.



Too often in New Mexico the early childhood system reflects competition among providers for children instead of coordination and collaboration. For example, multiple reports over the last several years identified the problem of increasing supply of 3- and 4-year-old slots for multiple programs (prekindergarten, childcare, Early Head Start/Head Start) combined with declining demand due to the dropping birth rate. In response, the Legislature will need to both reorient resources to improve programs and deploy limited state resources in a way that does not:

- Diminish teacher quality/qualifications;
- Decrease program fidelity and effectiveness; and
- Potentially crowd out federal funding.

Unfortunately, the state continues to trail the nation in teacher qualifications, and program performance has also diminished for the most recent prekindergarten cohort. Taxpayers are investing more through increased rates for childcare and prekindergarten with unknown program quality and questionable impact. Previous LFC analysis failed to find educational impacts of childcare, and the 2018 cohort of children receiving prekindergarten saw less kindergarten readiness compared to previous years.

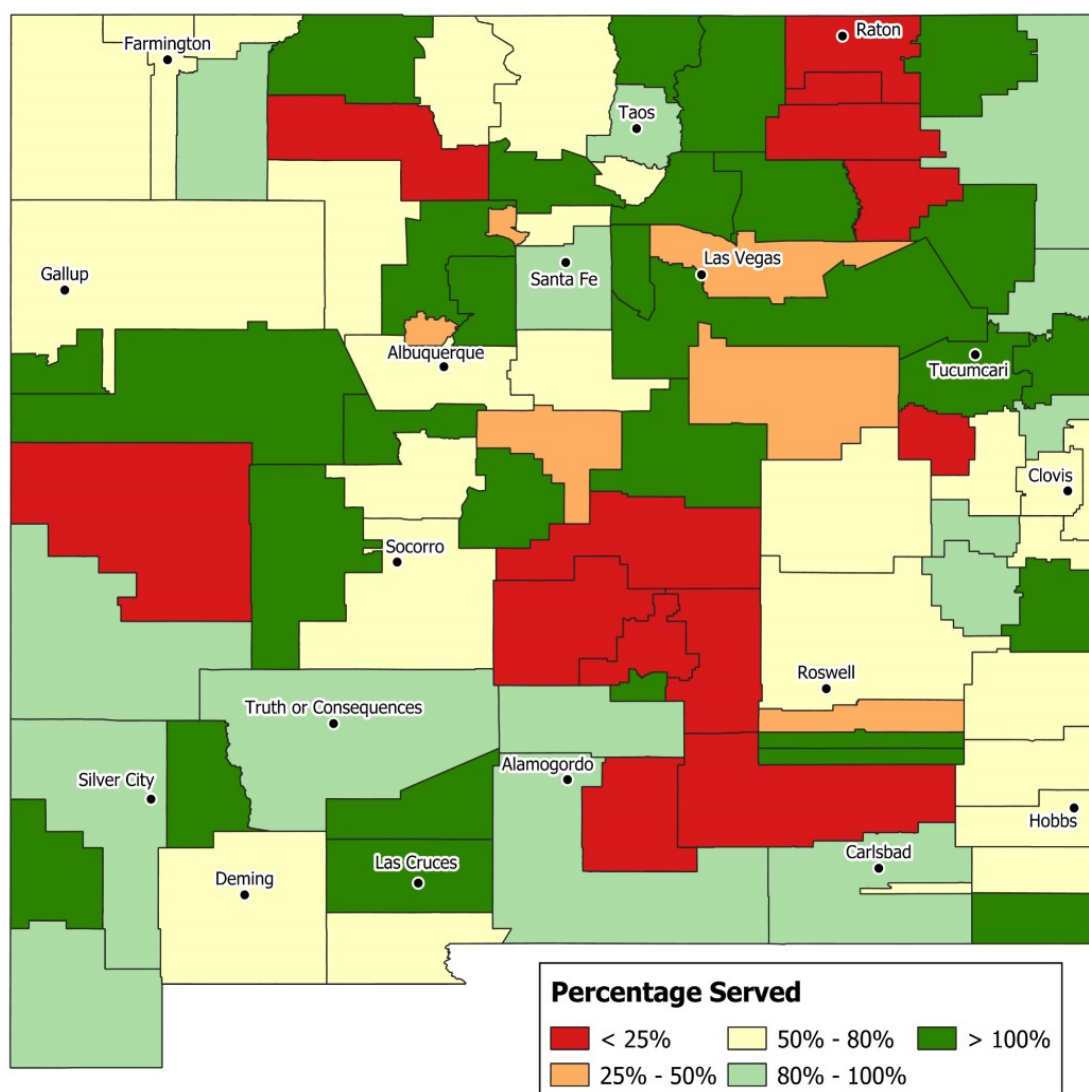
State funding may unintentionally be supplanting federal early childhood funding. In January 2019, the Administration for Children and Families (ACF) notified YDI Head Start, one of the largest Head Start providers in the state, that enrollment for YDI Head Start did not meet required enrolment thresholds for four consecutive months. If a program is chronically under-enrolled, the program can potentially lose existing funding and be disqualified from competing for new funding opportunities. Interestingly, a YDI program that receives a partnership grant from ACF with a focus on collaboration and wraparound services was not under-enrolled, according to ACF.

As Head Start enrollment declines, more Head Start providers are moving to Early Head Start, which creates increased competition for 3 year olds, especially as New Mexico increases the number of state funded early prekindergarten slots. This continued competition also affects childcare providers. Note that as slots for children under 3 are examined, the state continues to have unfilled home visiting slots, with \$2.8 million in unspent home visiting dollars over the last two years.

Although many agree on the existing lack of coordination, efforts to increase coordination have yet to see success on a statewide basis. Entities such as the Children’s Cabinet, the Early Learning Advisory Council (ELAC), and the new Early Childhood Education and Care Department are all administrative structures that could provide coordination support. However, under the previous administration, the Children’s Cabinet activities slowed, and reporting diminished. In 2017, the Legislature passed Senate Memorial 23 requiring ELAC to study how to increase communication, coordination, and collaboration among early childhood service providers with findings and recommendations, however this report was not delivered. The state is also the recipient of a \$5.4 million federal preschool development grant, which is partially funding a needs assessment. Other ongoing multi-agency efforts such as the early childhood integrated data system are behind schedule and not yet fully implemented.

LFC staff examined data from participation in Head Start, childcare, and prekindergarten programs for the most recent year available. Previous LFC analysis estimated the number of slots for 4-year-olds in FY20 would exceed 80 percent of the population when considering all program types. When looking at coverage rates by school district, it becomes evident that some school districts are above even that threshold, with about one-third of districts at or above 100 percent capacity. While some areas of the state have too many slots, others do not have enough or any at all. Oversaturation of certain areas likely contributed to the 30 percent decrease in Head Start slots since 2012. Note that some oversaturated districts may still have difficulties filling slots due to transportation, eligibility, or other issues. Additionally, districts that are high population and/or geographically large might have pockets of oversaturation or gaps in service not reflected in the map. Additional analysis by smaller geographic area using boundaries such as census tracts could yield valuable information regarding capacity.

Percentage of 4-Year-Olds Served in Head Start, Childcare and Prekindergarten Programs by School District, 2018-2020

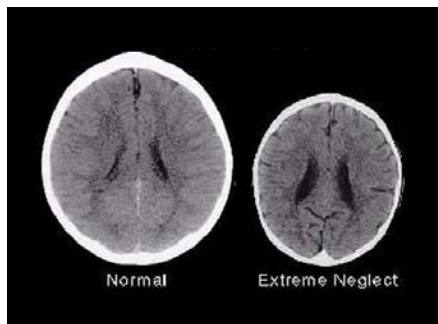


*Note: Analysis assumes each slot is for a unique child. However, previous LFC analysis highlighted there are at least 1,100 duplicate slots.
Source: LFC analysis of CYFD, PED, ACF Files

SAFE UNDER 5 YEARS OLD	Rate of Child Maltreatment-infants	Number of Victims Under 5	Percent of Kids in Foster Care Younger than 5	Child Maltreatment Death Rate
	2017 48.8	2017 3,219	2017 35%	2017 3.28
	Per 1,000 U.S. 25.3		U.S. 35%	Per 100,000 U.S. 2.27
	Worse 2016 42.5	Better 2016 3,298	Better 2016 38%	Worse 2016 2.23
Source:	ACF	ACF	ACF	ACF

Child Welfare

CT Brain Scan of Normal 3-Year-Old Child and Neglected 3-Year-Old Child



Source: LFC Files

With over 40 thousand reports of potential child maltreatment last year, child safety is one of the most important issues facing the state. Most child development happens in the early years (0-5), with much of the critical brain development for sensory information, language, and higher cognitive function occurring in the first five years of life. Young children also tend to be the most vulnerable and the most at-risk for child abuse. Childhood trauma can drastically affect child health, educational outcomes, and well-being, with some of these impacts lasting a lifetime.

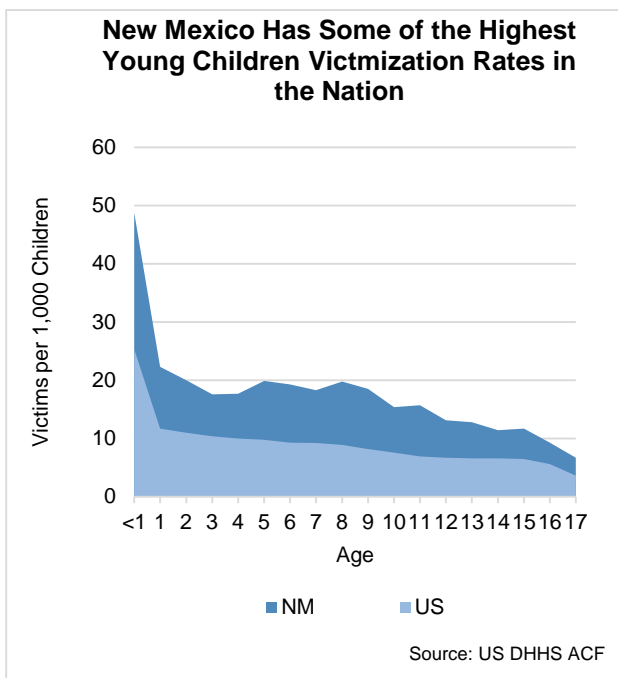
Impact

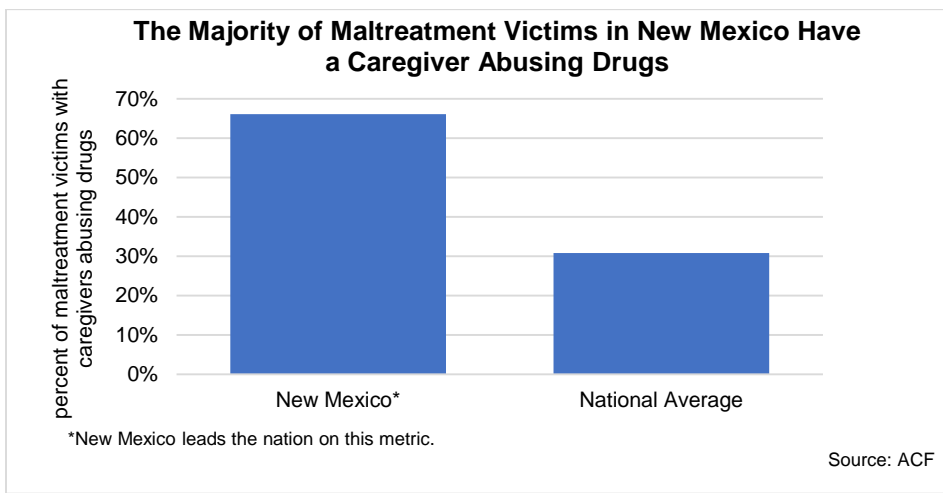
A large body of research finds long-lasting impacts of child maltreatment. Specifically, children exposed to extreme neglect have decreased brain development and emotional regulation. These children are also more likely to have long-term problems such as depression, suicide, substance abuse, and physical health problems. Research shows that three of every five New Mexico citizens has at least one adverse childhood experience (ACE).

Issues

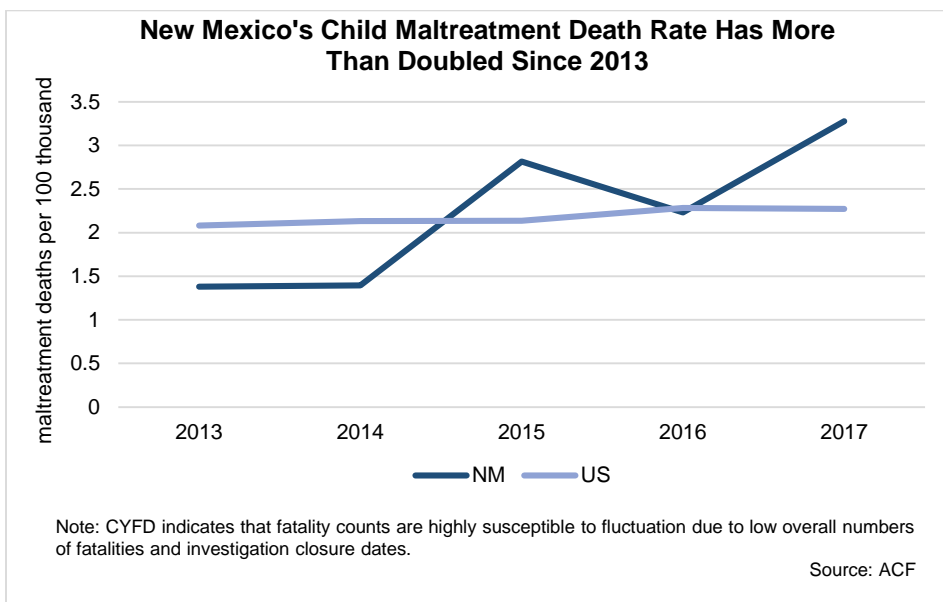
Unfortunately, New Mexico has one of the highest victimization rates in the nation for young children (0-5). In New Mexico, about 1 in 20 children under the age of 1 will be a victim of child maltreatment this year, compared to 1 in 40 nationwide. New Mexico sees significantly higher maltreatment rates for young children, potentially reflecting lagging performance in other key outcome areas including health, education, and well-being. According to ACF, New Mexico's overall victimization rate has increased by 36 percent since 2013, but the victimization rate for young children increased at a faster rate with victimizations, rising by 55 percent for children under one.

Many New Mexico families struggle with social issues such as substance use disorders, inadequate housing, and parental incarceration, potentially contributing to child maltreatment. New Mexico leads the nation in child maltreatment victims with a caregiver who is abusing drugs, yet lags behind the nation in delivering preventative and early intervention services. Our youngest children are the most vulnerable.

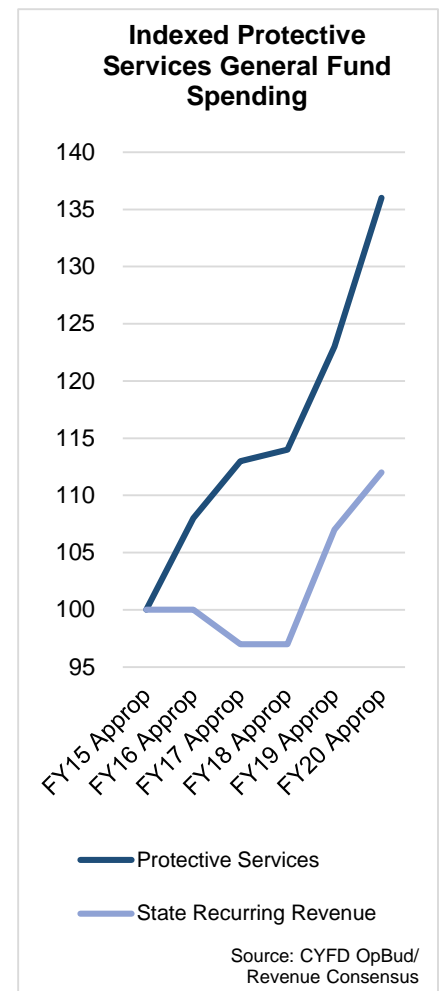




When a family does not receive prevention or early intervention services to address the root causes of child maltreatment they can spiral out of control, leading to adverse outcomes including repeated reports of abuse, removal from the home, termination of parental rights, or even death. Half of child fatalities resulting from maltreatment are children under the age of one. The child fatality rate has risen in New Mexico in recent years and is above the national average. New Mexico reported 16 fatalities from child abuse or neglect in 2017, a 45 percent increase over 2016.



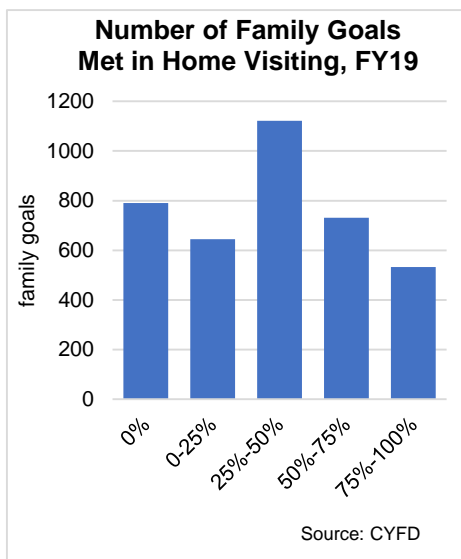
LFC staff have published research on what works to improve child safety. Top programs include different forms of home visiting, evidence-based in home services, and an approach called alternative response, which creates a pathway for families encountering the system to be evaluated and receive services if there is no imminent risk to safety. The Legislature continues to fund home visiting and in 2019 passed legislation creating a framework for alternative response. Additionally, the federal government is creating incentives for states to move money from the back-end of the system to the front-end to fund efforts in prevention and early intervention. However, additional efforts are needed, particularly to prevent abuse and neglect for our most vulnerable population, young children.



HOME VISITING		Average Percent of Family Goals Met	Parents Progressing in Positive Interactions	Average Yearly Number of Home Visits	Well-Child Exams
FY19	FY20	FY19	FY19	FY19	FY19
\$20.1	\$22.4	33%	46%	12	95%
Million	Million	(N= 2,620 families)		(N=5,129 families)	(N= 1,112 children)
5,300	5,900	Better	Same	Worse	Worse
		FY18 26% CYFD	FY18 46% CYFD	FY18 13 CYFD	FY18 96% CYFD

Source:

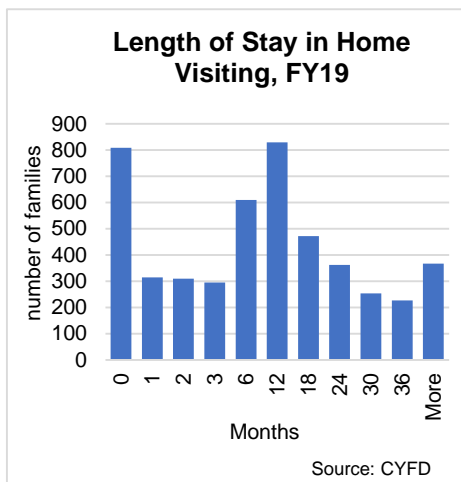
Home Visiting



Home visiting is an intensive parent education program. Some types of home visiting programs, shown to effectively reduce child abuse and improve health. This voluntary program provides family support and basic parenting skills critical to improving childhood outcomes during pregnancy and through the first few years of a child's life.

Impact

Previous reports by CYFD show a higher percentage of children in home visiting receive well-child visits compared to children on Medicaid who do not participate in this program. This is particularly relevant as half the individuals participating in home visiting services are on Medicaid and earn only about \$20 thousand a year. Evidence-based home visiting programs in New Mexico continue to show a positive return on investment and positive child outcomes. This year, more families are succeeding in meeting their program goals and are staying in the program longer.



CYFD recently moved to using a system with varied intensity levels and DOH is implementing a universal light-touch home visiting program in the South Valley. In addition to the above programs, New Mexico recently started Medicaid home visiting services. Currently, two agencies contract with all New Mexico Medicaid managed care organizations to provide Nurse Family Partnership or Parents as Teachers. The two evidence-based early childhood home visiting programs recognized by the U.S. Department of Health and Human Services and available in Bernalillo, Curry, and Roosevelt counties. There are 44 total families enrolled in Medicaid home visiting currently. HSD is awaiting Centers for Medicare and Medicaid Services approval to remove the restriction on the number of counties in which the home visiting project can be implemented, as well as the number of potential members who can be served by home visiting services. As the program continues to expand, CYFD and the Medical Assistance Division are working with Taos Pueblo to expand services to Taos County.

Issues

Implementing Medicaid home visiting has several potential problems delaying expansion. These include: hiring staff; ability of programs to pay startup costs prior to billing for Medicaid services; familiarizing providers with administrative processes; families referred do not always enroll; difficulty referring families during the first trimester of pregnancy; and recruiting providers to do both CYFD and Medicaid home visiting services. Home visiting continues to have unused slots. As shown in the graph of average length of stay, many families do not continue services after their initial visit. CYFD and HSD should work to identify why families leave the program and how to better retain them.

Amount of Home Visiting Dollars Unspent FY16-18

(in thousands)

	FY17	FY18
Total Contracted	\$12,224.34	\$12,003.55
Expenditures	\$10,557.32	\$10,792.82
Unexpended Amount	\$1,667.02	\$1,210.73

Note: FY19 amount is currently being audited and not available.

Source: LFC Files

CHILDCARE ASSISTANCE		Kids Attending 4 or 5 Star Center	4-Year-Olds Attending Childcare	Average monthly copay as percent of monthly income	Low Income Childcare Participants Proficient in Reading by 3 rd Grade
FY19	FY20	FY19	June FY19	FY19	FY19
\$134	\$149	48%	2,694	5%	19%
Million	Million			Federal Rec: <7%	
21,300	TBD*				
		Better	Higher	Same	Better
		FY18 43%	FY18 2,371	FY18 5%	FY18 18%
					All low income students- 22%
		CYFD	CYFD	CYFD	CYFD

*TBD due to proposed rule changes which may effect income eligibility.

Source:

Childcare Assistance

The childcare assistance program is a subsidy program for families with children between the ages of 6 weeks and 13 years whose families make less than 200 percent of the federal poverty level and who work or attend training and education programs. Childcare is not an entitlement program and is funded through a combination of federal block grants (Childcare and Development Fund, and Temporary Assistance for Needy Families) and state appropriations (general fund).

Impact

New Mexico has some of the highest maximum reimbursement subsidy rates in the country, with uncertain outcomes. With such high rates, the state may be less able to serve more children, who could enroll if the income eligibility is expanded.

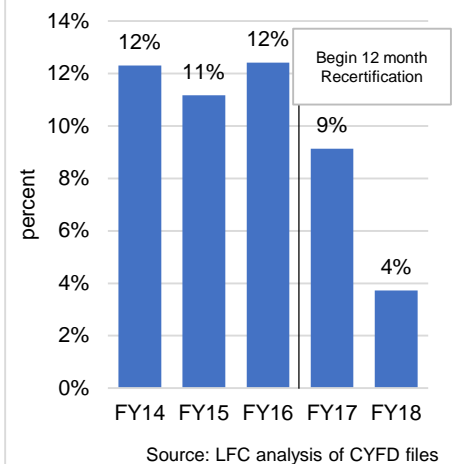
More families are staying in childcare assistance for the full length of their certification, decreasing the churn rate for the state. LFC examined the number of re-entries and case openings by family. It appears that after the change to 12-month recertification in FY17, churn has decreased. In 2015, 88 percent of families entered childcare assistance only once over a 12 month period, while in 2018, 96 percent of families entered only once. This decrease in the churn rate may be partially responsible for the higher enrollment in childcare in 2018.

Issues

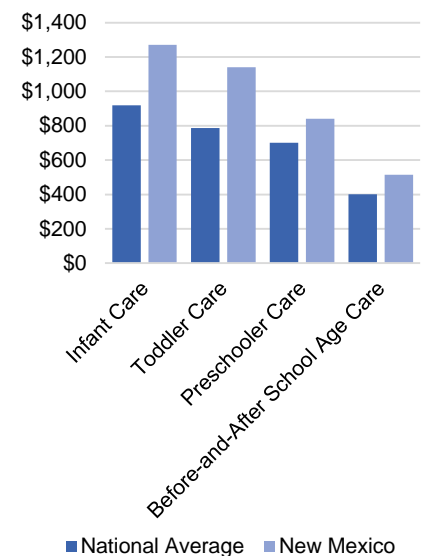
CYFD recently proposed rule changes to allow families to continue to receive subsidy until their income reaches 250 percent of the federal poverty level, rather than having families exit at 200 percent of the federal poverty level. This increase in eligibility could add additional costs to childcare, as more families will be able to stay enrolled in the program. This is expected to cost the state between \$23 and \$26 million. If New Mexico promulgates these rule changes, it will have one of the highest income eligibility rates in the country; according to a 2016 GAO report, only 11 states have income eligibilities above 200 percent of the federal poverty level. However, New Mexico has one of the lower median household incomes in the country, and only 20 percent of eligible children in New Mexico are currently enrolled in childcare assistance. As childcare does not have clear outcomes it is uncertain what the state is getting for this added expense.

In addition to changing eligibility rates for childcare, the proposed rule changes will be discussed in public on August 29. As proposed they would require all licensed and registered childcare providers to check if parents are on sex offender registries. This is not a federal requirement as federal rules focus on background checks for provider staff and residents in childcare homes only.

Churn Rate in Childcare Assistance, FY14-FY18

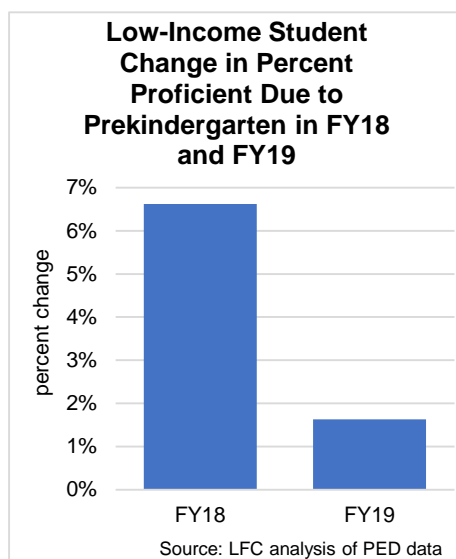
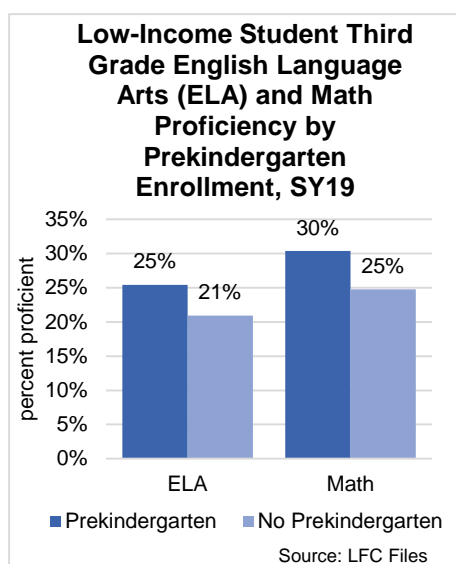


Maximum Full-Time Reimbursement Rates for Childcare, New Mexico versus US Average



NEW MEXICO PREKINDERGARTEN		Low Income PreK Kids Proficient in Reading at Beginning of K	PreK Kids Proficient by 3 rd Grade - Reading	PreK Kids Proficient by 3 rd Grade - Math	4-Year Olds in NM PreK
FY19 \$64 Million 11,300	FY20 \$88.5 Million 12,822				
		FY18 15%	FY18 29% (N=4,728)	FY18 34% (N=4,725)	FY18 38% (N=9,716)
		No PreK: 14%	No PreK: 27%	No PreK: 32%	
			Low Income PreK: 25%	Low Income PreK: 30%	
		Baseline	Better	Better	Better
			FY17 27%	FY17 33%	FY17 34%
		PED/Istation	PED/PARCC	PED/PARCC	PED/CYFD
Source:					

Prekindergarten



New Mexico prekindergarten is an early education program for 3- and 4-year-olds implemented by the Children, Youth, and Families Department (CYFD) and the Public Education Department (PED). The program is available to families for half-day or extended-day services. In FY19, over 11 thousand children received prekindergarten services, including extended day services.

Impact

The LFC has consistently found prekindergarten programs improve math and reading proficiencies for low-income 4-year-olds, lower special education and retention rates, and lessen negative effects of mobility. LFC has also found prekindergarten programs deliver a positive return on investment for New Mexico taxpayers based on improvement in test scores through the 11th grade. Low-income students who participated in prekindergarten performed better on third grade reading and math assessments than peers not participating. Rapidly expanding prekindergarten programs and lack of coordination for early childhood programs may lead to quality issues and oversaturation of services in some areas. Reduced impact on kindergarten beginning of year reading assessment performance seems evident for the most recent prekindergarten cohort. The effect of prekindergarten seems weaker than it has been the last two years. In previous analyses, prekindergarten has had a positive effect on test scores regardless of students' low-income status. However, this year, prekindergarten only had an effect for low-income students. Current analysis does not control for a variety of factors, so while not definitive, this analysis may be a warning sign that focus should be put towards measuring and improving quality.

Issues

Despite significant barriers to expansion, New Mexico is close to providing sufficient funding to ensure all low-income 4-year-olds receive at least some type of early education through childcare assistance, prekindergarten, or Head Start. The state needs to better coordinate programs to prevent oversaturation for one age group while other age groups are underserved. New Mexico could consider shifting more prekindergarten funding to 3-year-olds or encouraging Head Start programs to shift more services to Early Head Start. Additionally, prekindergarten programs must remain of high quality to preserve the positive impact it has on student performance. CYFD is no longer using ECERS to measure the classroom environment, making it difficult to assess program quality.

K-3 PLUS EXTENDED SCHOOL YEAR		Percentage of Students in 20 Day Programs vs. 25 Day Programs	Average Days between End of K-3 Plus and Beginning of School Year	Eligible Students Enrolled	Kindergarten Students who Participated in K-3 Plus at Benchmark on Istation
FY19 \$31 Million Summer 2019 23,155	FY20 \$120 Million (Projected) Summer 2020 23-87 thousand (Projected)	FY18 25 Day: 84% 20 Day: 16% Higher	FY18 14 High: 46 Low: 3 Lower	FY18 32% Better	FY18 25% No K-3 Plus: 17% Worse
Source:		FY17 25 Day: 85% 20 Day: 15% PED	FY17 15 High: 31 Low: 5 PED	FY17 22% LFC Files	Baseline LFC Analysis of Istation

K-3 Plus and 4-5 Pilot

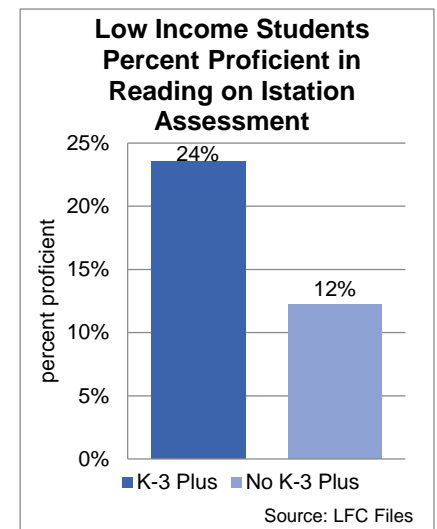
Research has identified “time-on-task,” the time students spend in the classroom actively engaged in learning, as greatly impacting student learning. The state implemented the K-3 Plus program – an extended school year program for kindergarten through third-grade students – in 2007. The Legislature later expanded the program to fourth grade and fifth grade in the form of a four-year K-5 Plus pilot program. Most recently, in 2019, the Legislature made K-5 Plus an ongoing program.

Impact

K-3 Plus is scientifically shown to improve student performance relative to peers when programs are executed correctly. Students who participated in K-3 Plus in FY18 before entering kindergarten the same year were more likely to be at benchmark on the Istation assessment than students who did not attend K-3 Plus. One quarter, or 25 percent, of K-3 Plus students were proficient or above on Istation in the beginning of kindergarten, compared to 17 percent of students who were not in a K-3 Plus program. The benefits of K-3 Plus are even more pronounced for low-income students, where 24 percent of low-income students were at benchmark after participating in K-3 Plus compared with 12 percent of low-income students who did not participate in the program. The kindergarten readiness findings are similar to the Utah State University independent, scientific evaluation of the K-3 Plus program, published in 2015. The evaluation assessed students over four years and found students enrolled in K-3 Plus the summer prior to kindergarten were more ready for school and outperformed their peers.

Recent legislation expanding K-5 Plus and increasing funding and eligibility also requires districts implement the program correctly. LFC analysis shows when students participate in both K-3 Plus and prekindergarten programs, whether or not the K-3 Plus program is implemented correctly, or with fidelity, impacts student achievement. For purposes of this analysis, higher fidelity programs were no less than 25 days, and the K-3 Plus program ended no earlier than two weeks prior to the first day of the regular school year. Medium fidelity programs implemented only one measure of fidelity.

Low-income students in higher fidelity K-3 Plus who were also in a prekindergarten program were more likely to be proficient in reading on Istation



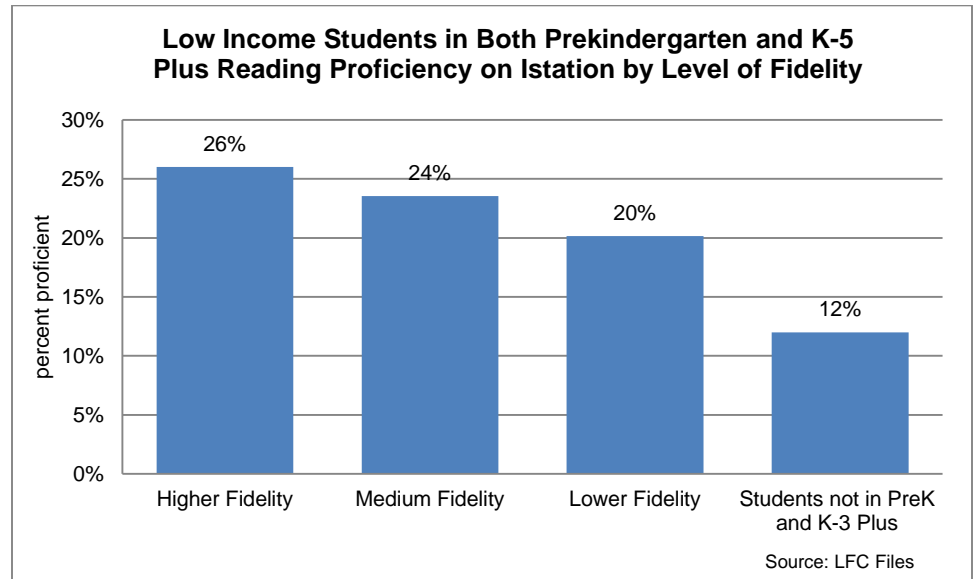
K-5 Plus Levels of Fidelity

Higher Fidelity – programs no less than 25 days and programs that end no earlier than two weeks prior to the first day of the regular school year.

Medium Fidelity – programs implementing only one of the two measures described in higher fidelity programs. Either the program has no less than 25 days or the program ends no earlier than two weeks prior to the first day of the regular school year.

Lower Fidelity – programs not implementing either of the two measures described in higher fidelity programs. The programs are less than 25 days and the programs end more than two weeks before the first day of the regular school year.

than students in lower fidelity programs or programs that did not implement any fidelity measures. Data was not available to measure whether or not K-3 Plus programs kept students with the same teacher they had for the regular school year, which would have been an additional measure of fidelity.



Issues

There is concern the K-3 Plus program may not be implemented correctly at all schools. For increased gains from K-3 Plus throughout the school year:

- Programs must be no less than 25 days long, regardless of the length of the instructional day;
- Programs must end no earlier than two weeks prior to the first day of the regular school year; and
- Programs must keep students with the same teachers they have for the regular school year.

Many school districts indicate it is difficult to keep students with the same teacher in K-3 Plus and the regular school year.

NEW MEXICO HEAD START	4-Year-Old Enrollment	Teachers with Bachelor's Degree	Families Receiving Parenting Services	Well-Child Exams
Federal Funds FY19 \$69.5 Million	FY18 3,297	FY18 36%	FY18 33%	FY18 92%
	Lower	Better	Lower	Better
Source:	FY17 3,486 ACF	FY17 35.1% ACF	FY17 37% ACF	FY17 88% ACF

Head Start

Head Start and Early Head Start are federal programs to promote school readiness of children under age 5 from low-income families by enhancing their cognitive, social, and emotional development. Head Start programs also provide health, nutrition, social, and other services for qualifying children and their families. The services may be provided in a center, school, family childcare home, or a child's own home. Head Start funding is provided directly to providers, bypassing state agencies. CYFD has no administrative role in Head Start but houses one federally-funded staff member to act as the state's Head Start collaboration director. If New Mexico Head Start met the national average or standards, the state could see higher enrollment and increased benefits.

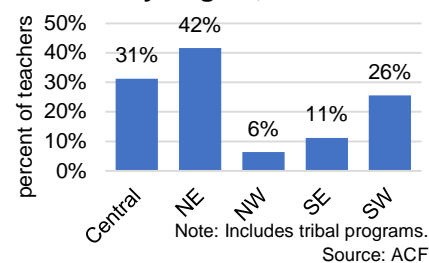
Impact

Federal standards define high-quality Head Start programs partially by teacher qualifications. New Mexico continues to lag behind the nation on Head Start teacher qualifications. Nationally, 75 percent of teachers have a bachelor's degree or higher. However, to date, New Mexico has 36 percent of its Head Start teachers meeting this requirement, a slight increase for the first time in four years. Additionally, teacher qualifications vary depending upon Head Start location in the state, with only 6 percent of teacher in the Northwest region having at least a bachelor's degree while 42 percent of teachers in the Northeast have at least a bachelor's degree. One reason for low bachelor's degree rates is many qualified teachers may prefer to enter into the K-12 system because of higher pay and better benefits, especially after legislated teacher raises authorized in the 2019 session.

Issues

Head Start enrollment has fallen 30 percent since 2012. A 2013 LFC evaluation of early childhood programs noted a lack of coordination among Head Start programs and other early childhood services hurt access to programming in some counties. This lack of coordination continues with the number of Head Start slots decreasing as the number of other early childhood program slots increase. The number of 4-year-olds participating in Head Start decreased for the sixth year, with 12.5 percent of 4-year-olds attending Head Start programs (that number increases to roughly 15 percent when tribal Head Starts are included). As the state increases prekindergarten programs, it may be unintentionally crowding out Head Start programs. Head Start programs should have similar standards to prekindergarten. The state needs increased coordination between Head Start and prekindergarten to ensure New Mexico uses available federal dollars. There continues to be an increase in Early Head Start slots as Head Start slots decrease. Early Head Start capacity is its highest in eight years. Since this federal program serves around 7,500 children each year, and does not use state money, the state should focus on improving the quality of the program using its licensing and oversight powers.

Percent of Preschool Head Start Teachers with at Least a Bachelor's Degree by Region, 2018



Head Start enrollment has fallen 30 percent since 2012.

Head Start and Early Head Start Enrollment, FY12-FY18

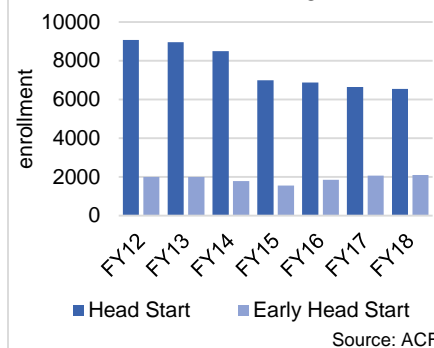
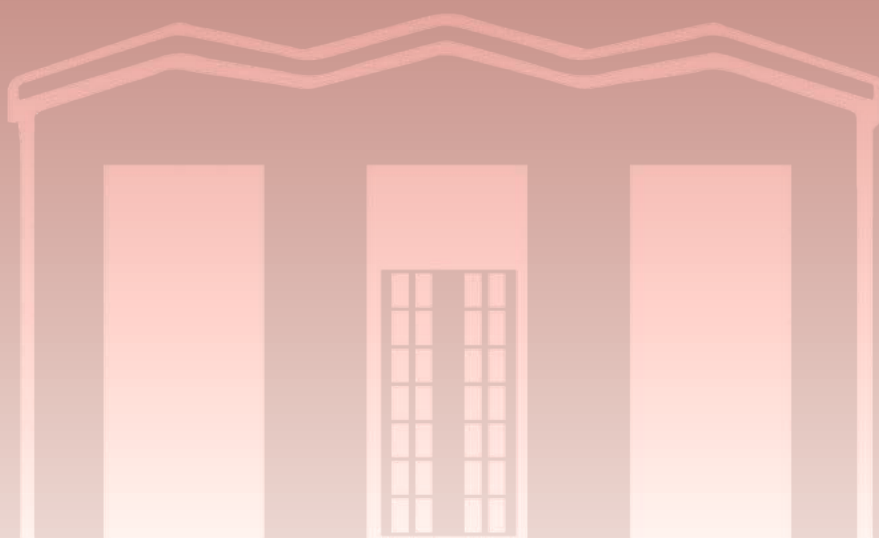


Exhibit E

NEW MEXICO
LEGISLATIVE FINANCE COMMITTEE

LEGISLATING FOR RESULTS: POLICY AND PERFORMANCE ANALYSIS

Report to the Fifty-Fourth Legislature, Second Session
VOLUME I



January 2020 for the 2021 Fiscal Year

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Chairman

Senator William F. Burt
Senator Pete Campos
Senator Carlos. R Cisneros
Senator George K. Munoz
Senator Steven P. Neville
Senator Clemente Sanchez
Senator James P. White

State of New Mexico
LEGISLATIVE FINANCE
COMMITTEE



David Abbey
Director

325 Don Gaspar, Suite 101 • Santa Fe, NM 87501
Phone (505) 986-4550 • Fax: (505) 986-4545

Representative Patricia A. Lundstrom
Vice-Chairwoman

Representative Gail Armstong
Representative Randal S. Crowder
Representative Roberto "Bobby" Gonzales
Representative Jason C. Harper
Representative Javier Martinez
Representative Rudolpho "Rudy" S. Martinez
Representative Candie G. Sweetser

Honorable Members
Fifty-Fourth Legislature, Second Session
State Capitol
Santa Fe, New Mexico 87501

Dear Fellow Legislators:

Pursuant to Section 2-5-4 NMSA 1978, the fiscal year 2021 budget recommendation of the Legislative Finance Committee is provided to you. The committee recommendation for recurring appropriations from the general fund is \$7.549 billion, a 6.5 percent increase from FY20 spending levels. After a year of rebuilding essential programs and restocking funds drained by two economic downturns in 10 years, the committee's recommendation for FY21 emphasizes moderate growth with a focus on smart investment in programs with proven results. The recommendation builds on effective programs in public schools and early childhood services, funds reforms in behavioral health and criminal justice, and expands healthcare services for people with developmental delays and other vulnerable populations.

Reflecting the state's continued reliance on volatile oil and natural gas revenue, the recommendation would leave reserves at 25 percent of planned spending, a level high enough to withstand a recession or a sudden downturn in the energy sector. In further recognition of the risks to state income, the committee recommends building large stabilization funds for important services.

The general fund recommendation for early childhood services includes an additional \$3 million for the intensive parent support program called home-visiting, \$1.5 million for workforce development, \$5 million for early and mixed-age prekindergarten, \$8 million for prekindergarten in public schools, \$1 million for childcare subsidies to low- and middle-income parents, and \$4.5 million for Family, Infant, Toddler services for children at risk of developmental disabilities.

Public schools, under the committee's proposal, would receive \$314 million in new funding, both recurring and nonrecurring, substantially for evidence-based interventions to help struggling students succeed and to address state district court concerns on school quality. The \$210.5 million increase in general fund support is a 6.5 percent increase from FY20 levels. Colleges would get a 3 percent increase from the general fund under the committee recommendation; however, the committee also recommends a \$30 million one-time boost to student financial aid for the lottery tuition scholarship, college affordability fund for nontraditional adult students, and students going into the teaching profession.

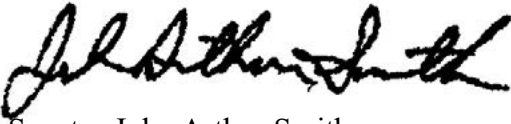
The committee's proposal for human services includes an 8 percent increase in the Children, Youth and Families Department for foster-care costs, kinship care initiatives in the foster care system, and a "differential response" to low-risk child maltreatment cases focused on preserving and strengthening families. It also includes Medicaid provider rate increases to expand services and significant increased support for behavioral healthcare.

In other areas, the committee recommends an 8.5 percent increase in the general fund appropriation for the Health Department primarily to improve services for people with developmental disabilities; a 3.6 percent increase from the general fund for the court system, a 3.8 percent increase for district attorneys, and a 4 percent increase for the Public Defender Department; and 6 percent and 4.4 percent general fund increases for the Corrections Department and the Public Safety Department, respectively.

Finally, the recommendation includes a 3 percent across-the-board increase for all state, public school, and higher education employees. State salaries continue to lag the region and the nation, despite recent increases, making it increasingly difficult to recruit and retain staff, particularly in health and education. Teachers, judges, prosecuting attorneys, and public safety and correctional employees would all get additional pay increases, and many agency budgets would have funding flexibility available for targeted increases.

I would like to thank the membership and staff of the Legislative Finance Committee for their hard work on behalf of the people of New Mexico. Together, we have prepared a responsible budget that prioritizes cost-effective spending on high-priority programs.

Sincerely,

A handwritten signature in black ink, appearing to read "John Arthur Smith". The signature is fluid and cursive, with the first name "John" being the most prominent.

Senator John Arthur Smith
Chairman

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REPORT OF THE
LEGISLATIVE FINANCE
COMMITTEE
TO THE
FIFTY-FOURTH
LEGISLATURE,
SECOND SESSION

VOLUME I
LEGISLATING FOR
RESULTS: POLICY
AND PERFORMANCE
ANALYSIS

JANUARY 2020
FOR
FISCAL YEAR 2021

**SENATOR
JOHN ARTHUR SMITH**
CHAIRMAN

**REPRESENTATIVE
PATRICIA LUNDSTROM**
VICE CHAIRWOMAN

DAVID ABBEY
DIRECTOR

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Public Education

In FY19, public school students showed improvement in reading proficiency and graduation rates but a slight decline in math proficiency. Future measurement of reading and math proficiency will change as the Public Education Department (PED) seeks input this year to revise the statewide assessment and accountability system. These changes come at a critical time when the state must demonstrate progress toward addressing court findings from the *Martinez-Yazzie* education sufficiency case, which found the state failed to address the needs of at-risk students – as evidenced by dismal test scores, substantial achievement gaps, and poor graduation and college remediation rates.

Despite significant investments in public schools to expand evidence-based programs and extend learning time for students and teachers, implementation issues remain. As the accountability system changes, the state must develop methods to measure progress in future years. Additionally, the state should create more consistent ways to holistically measure student outcomes and prioritize funding to programs showing evidence of attaining the goals set forth by the court.

Student Achievement

Reading and Math Proficiency. In FY19, students took the New Mexico Transition Assessment of Math and English Language Arts (TAMELA) test, a shorter assessment that used questions comparable to those on the PARCC test. According to PED, statewide reading proficiency increased from 31 percent to nearly 33 percent, and statewide math proficiency decreased from about 22 percent to 20 percent in FY19. Eighth grade math proficiency dropped 8 percentage points, which significantly contributed to overall declines in performance this year.

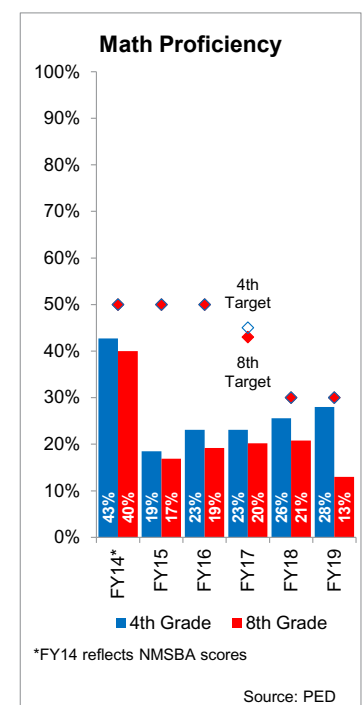
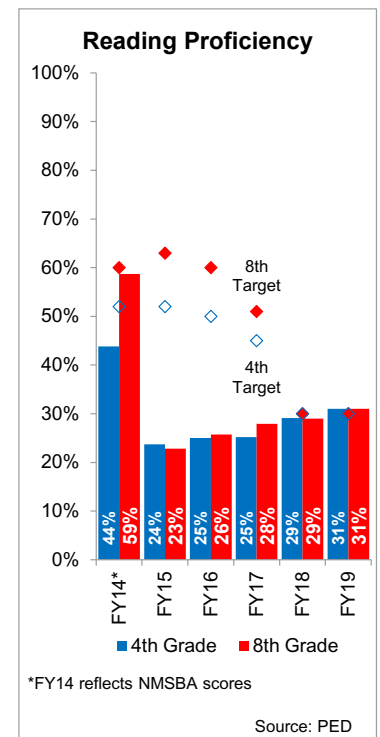
In the last five years, statewide PARCC reading proficiency increased from 26 percent to 31 percent and math proficiency increased from 17 percent to 20 percent. While this improvement was a positive trend, the court did not view these proficiency rates and achievement gaps as evidence of a sufficient education. Over this period, significant disparities in academic performance persisted among student subgroups. For example, English learners and students with disabilities continued to achieve proficiency rates below 10 percent. To address these findings, the state must target academic supports to these low-performing subgroups and consistently measure effectiveness of interventions for these students.

However, measurement of performance will change in the next few years. In 2019, the governor ordered PED to replace the PARCC test and overhaul the state's school grading and teacher evaluation systems. In FY20, a PED-appointed task force recommended phasing New Mexico-developed questions into NM-MSSA, the new assessment, each year until a completely New Mexico-developed assessment is in place by FY23. The task force also recommended using the SAT college entrance assessment to serve as the high school test of math and language arts in 11th grade and providing other optional tests (like short-cycle, interim assessments and college readiness tests) to meet local assessment needs.

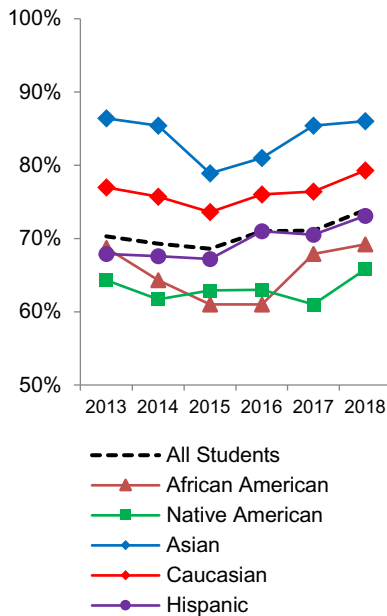
Graduation and College Remediation Rates. The state's graduation rate climbed to nearly 74 percent in 2018, a 3 percentage point increase from the

ACTION PLAN

Submitted by agency?	No
Timeline assigned by agency?	No
Responsibility assigned?	No



Statewide Four-Year Graduation Rates



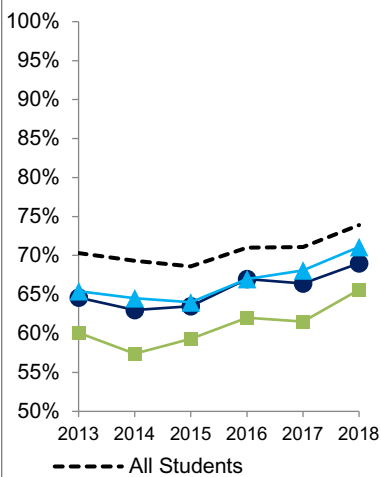
Source: PED

2017 rate of 71 percent. Graduation rates for students classified as Native American or having disabilities improved to 66 percent, a respective 5 percentage and 4 percentage increase in each subgroup from the prior year. However, the court indicated recent graduation rates were at unsatisfactory levels and found disparities among subgroups to be notably inequitable. Additionally, the state's graduation rate remains lower than the national graduation rate, which rose to 84.6 percent in FY17.

The Higher Education Department (HED) did not report college remediation rates for FY18 or FY19. HED last reported statewide college remediation rates for recent New Mexico high school graduates at 33.5 percent in FY17. Although college remediation rates have improved in recent years (from 52 percent in FY12), the decline in reported rates may be more attributable to changes in remedial support structures at colleges than actual changes in the remedial needs of recent high school students.

The court highlighted high college remediation rates, particularly for at-risk students, as a deficient educational outcome of the state's system. Given the court's order to ensure students are college-, career-, and civics-ready, the state should consider using other longitudinal measures to more accurately identify student remedial needs after high school graduation. Additionally, as New Mexico's standardized test transitions away from PARCC, PED should develop ways to compare the new assessment with PARCC to accurately measure student progress and program effectiveness over time.

Statewide Four-Year Graduation Rates



Source: PED

Budget: \$2,699,006.4 FTE: N/A Measure	FY17 Actual	FY18 Actual	FY19 Target	FY19 Actual	Rating
Fourth grade reading proficiency	25.2%	29.1%	30%	31%	G
Fourth grade math proficiency	23.1%	25.6%	30%	28%	Y
Eighth grade reading proficiency	27.9%	29%	30%	31%	G
Eighth grade math proficiency	20.2%	20.8%	30%	13%	R
Recent New Mexico high school graduate college remediation rate	33.5%	Not reported	<35%	Not reported	R
Four-year cohort graduation rate	71.1%	73.9%	75%	Not reported	Y
Program Rating					Y

Student Enrollment

Declining Membership. Statewide student membership has steadily declined by about 1 percent each year since peaking at 332 thousand in FY16. For FY20, initial data shows statewide membership was 323 thousand students, a decline of 3,576 students (or 1.1 percent) from FY19. Schools with declining enrollment – particularly smaller schools that do not strategically adjust operational and facility capacity – will face greater budget constraints and revenue volatility in future years.

In the past decade, public school enrollment has shifted from rural areas to urban areas and from school districts to charter schools. The greatest declines have been in early grades, which causes a ripple effect in later grades. Between FY14 and

FY19, statewide kindergarten membership fell by 3,721 students, or 12 percent, and first grade membership fell by 2,600 students, or 9.6 percent. Declining enrollment may be due to lower child birth rates and more families seeking private options for schooling.

Prekindergarten. As early childhood cohorts continue to shrink, the state must carefully coordinate funding streams and scale up programs to efficiently and effectively provide services for 4-year-olds. For FY19, PED funded 6,732 prekindergarten slots for 4-year-olds, with nearly half, or 3,227 children, participating in full-day programs. This was an increase of 1,532 slots, or 29 percent, from FY18 service levels and nearly a doubling of full-day programs, which totaled 1,790 slots.

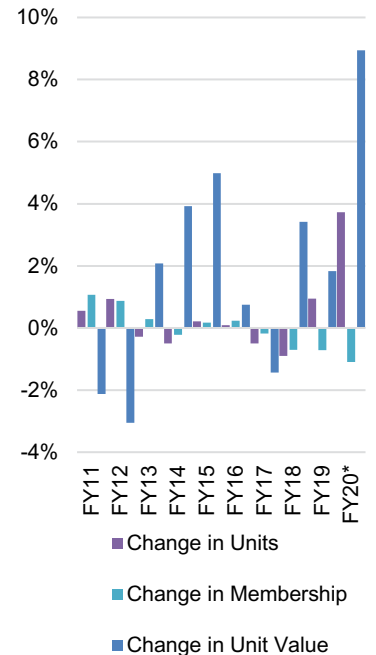
Given the rapid increase in PED prekindergarten programs, some districts are nearing full service levels for 4-year-olds and increasingly competing with other providers (like federal Head Start and Children, Youth and Families Department programs) for participants. Quality of programming remains a challenge, given increased demand for early childhood educators and appropriately designed prekindergarten space. Without strong coordination among agencies to braid funding sources and strategically target service gaps statewide, New Mexico might inadvertently begin crowding out federal funding streams, overbuilding capacity, or diminishing program quality.

K-3 Plus and K-5 Plus. In summer 2018, PED reported 18.2 thousand students participated in K-3 Plus extended school year programs, including pilot programs for students in fourth and fifth grade. Beginning in FY20, K-3 Plus was expanded to K-5 Plus and funded through the public school funding formula. As such, the program transitioned in summer 2019, with the first half operating under the original model in June and the second half operating as the K-5 Plus funding formula program beginning in July. For summer 2019, PED awarded funding for 18.5 thousand students in K-3 Plus programs (including K-4 and K-5 Plus pilots) during the month of June and budgeted 23 thousand students in K-5 Plus programs for FY20 in the public school funding formula.

Despite a budgeted 25 percent increase in K-5 Plus student participation for FY20, schools did not take full advantage of all available funding. Following the court's finding that New Mexico did not make funding available for all students to participate in evidence-based programs like K-3 Plus and prekindergarten, the state provided significant appropriations to serve 87 thousand students – the estimated number of kindergarten through fifth grade students in low-income and low-performing schools statewide. With only 21 thousand students funded to participate in FY20, however, about \$90 million in funding will remain unspent and revert to an education reform fund at the end of the fiscal year. Another estimated \$20 million will likely revert from new extended learning time programs (ELTP) into the reform fund at the end of FY20 as well.

Early Childhood Accountability. The 2019 LFC *Early Childhood Accountability* report found low-income students in K-3 Plus programs that operated the full 25 days and ended closer to the regular school year were more likely to be proficient in reading than students in programs with fewer days or larger gaps with the regular school year. Additionally, the report found the positive effects of prekindergarten

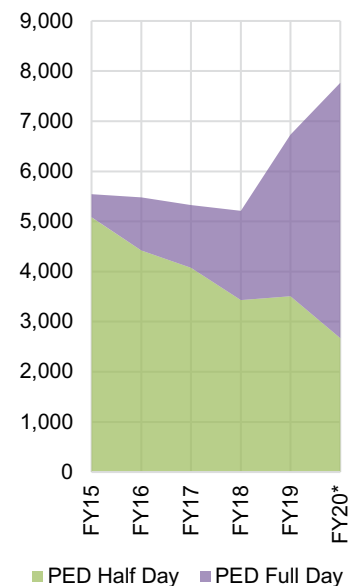
Enrollment Change and Program Units



*Preliminary estimates

Source: PED

4-Year-Old Prekindergarten Slots



*Projected requests

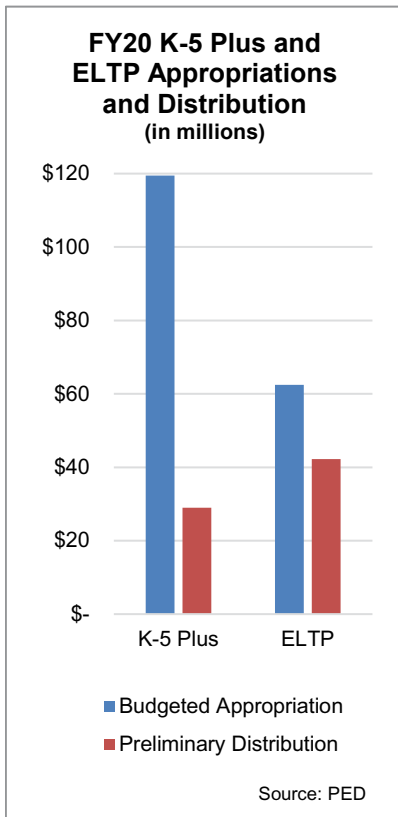
Source: PED

on academic outcomes has weakened in recent years and noted rapid expansion of programs and lack of coordination could have contributed to quality issues and oversaturation of services in some areas of the state.

Public Education Department

In the *Martinez-Yazzie* case, the court found PED did not exercise its full authority over school districts to ensure funding was spent on programs serving at-risk students. PED functions are focused primarily on compliance reporting, as evidenced by the limited number of audits conducted. Most staff are trained to provide some technical assistance, however, the department does not have capacity to provide professional development (relying heavily on regional education cooperatives to operate many events) or analyze performance data, given long processing times and data quality issues.

PED received budget and FTE increases for operations in FY20 to reduce the department's reliance on special program funding ("below-the-line" funding) for administration. The department notes this increase was offset by the shift from K-3 Plus funding to the funding formula, however, PED is working on developing stronger in-house analytical capabilities. The department is seeking a real-time data system to streamline data collection processes so more personnel can be dedicated to program evaluation and support.



Budget: \$11,246.6 **FTE:** 281.2

Measure	FY17 Actual	FY18 Actual	FY19 Target	FY19 Actual	Rating
Eligible children served in state-funded prekindergarten	8,572	8,418	N/A*	9,757	Y
Eligible students served in K-3 Plus**	13,778	18,227	N/A*	23,155	Y
Average days to process reimbursements	18	22.8	24	26.8	R
Data validation audits of funding formula components	21	28	20	28	G
Program Rating					Y

*Measure is classified as explanatory and does not have a target.

**Represents participation by summer program, not fiscal year (e.g. FY17 is summer 2017). The FY18 "Actual" and FY19 figures include 2,251 students participating in the K-5 Plus pilot.

Higher Education

Of the two performance measures reported in the General Appropriations Act, the graduation rate, in theory, should align with performance funding, as measured by the higher education funding formula. As award levels rise, graduation rates should rise. Assuming this alignment, the percentage of New Mexico's adult population with postsecondary credentials should rise. However, the data does not conclusively support this theory of alignment between performance measures and funding formula incentives.

Graduation Rates

Improvement in postsecondary graduation rates in New Mexico has been mixed year-over-year, particularly at the four-year research universities, which comprise the largest volumes of students. Like last year, colleges and universities – with the exception of branch campuses, which underperformed targets – are exceeding their own institutional performance targets for students graduating within three years (for associate's degrees and certificates) or six years (for bachelor's degrees). The targets are too low, not serving as a strategic driver for improved performance. New Mexico still falls far behind the average graduation rates of peer institutions in surrounding states.

Looking at performance by institution type, fewer than 43 percent of four-year universities improved year-over-year performance, and only 52 percent of two-year colleges improved year-over-year performance. Important successes are happening, however: UNM increased its graduation rate from 49 percent to 54 percent, significant given the challenges at the university. Both Eastern New Mexico University and Western New Mexico University are improving graduation rates, significant given the academic focus on teacher and social worker education.

Four-Year Research Universities Six-Year Completion Rates

Completion rates for first-time, full-time degree-seeking students	Fall 2011 to Summer 2017 Actual	Fall 2012 to Summer 2018 Actual	Fall 2013 to Summer 2019 Target	Fall 2013 to Summer 2019 Actual*	Rating
New Mexico Tech	47.8%	55.5%	50%	50.5%	Y
New Mexico State University	45.9%	50.4%	48%	48.2%	Y
University of New Mexico	48.6%	49.9%	50%	53.6%	G
Research Universities Program Rating					G

*preliminary, unaudited

Four-Year Comprehensive Universities Six-Year Completion Rates

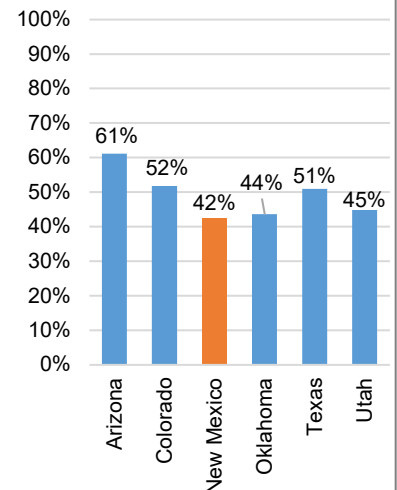
Completion rates for first-time, full-time degree-seeking students	Fall 2011 to Summer 2017 Actual	Fall 2012 to Summer 2018 Actual	Fall 2013 to Summer 2019 Target	Fall 2013 to Summer 2019 Actual*	Rating
Eastern NM University	32.7%	31.4%	34%	32.9%	Y
Highlands University	22.2%	23.8%	20%	22.1%	Y
Northern NM College	22%	25%	25%	21.6%	Y
Western NM University	26.6%	25.7%	25%	32.6%	G
Comprehensive Universities Program Rating					Y

*preliminary, unaudited

ACTION PLAN

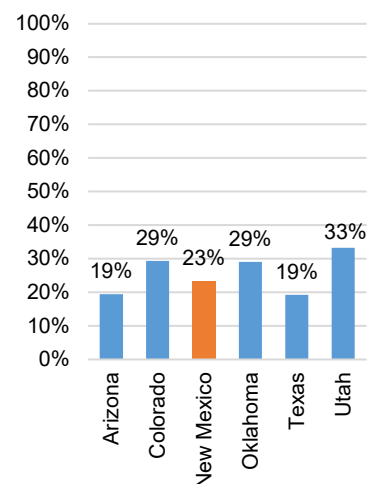
Submitted by agency?	No
Timeline assigned by agency?	No
Responsibility assigned?	No

Four-Year Universities: Graduation Rates



Source: IPEDS, FY17 Graduation Data, Public Institutions

Two-Year Colleges: Graduation Rates

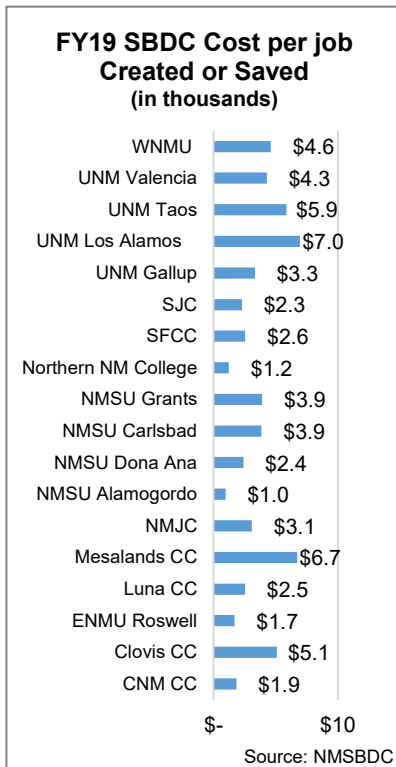


Source: IPEDS, FY17 Graduation Data, Public Institutions

New Mexico Small Business Development Centers

Santa Fe Community College hosts the Small Business Development Center (SBDC), which receives \$4.1 million in general fund support each year to provide confidential consultation for current and future business owners in the areas of business expansion, financing, marketing, and procurement, among other services. In addition to a procurement technical assistance program and an international business accelerator, SBDC oversees 18 service locations housed in higher education institutions throughout the state.

SBDC leverages about \$890 thousand in grants from the U.S. Small Business Administration and the U.S. Defense Logistics Agency. As a condition of these federal grants, SBDC must track certified data indicating the number of jobs created or saved in addition to associated costs.



Community College Three-Year Completion Rates. Two-year branch campuses are struggling, although both UNM Gallup and Valencia showed strong growth in graduation rates. The two-year sector has substantially increased its workload in dual-credit programming and may be losing sight of its mission, which is to prepare students in career and technical education (CTE) or transferring students to four-year universities. The Council of University Presidents report transfers from two-year colleges in New Mexico has decreased by 17 percent from 2014 to 2018.

Branch Campuses

Completion rates for first-time, full-time degree-seeking students	Fall 2014 to Summer 2017 Actual	Fall 2015 to Summer 2018 Actual	Fall 2016 to Summer 2019 Target	Fall 2016 to Summer 2019 Actual*	Rating
ENMU Roswell	13%	24.3%	25%	24.3%	Y
ENMU Ruidoso	19.2%	16.7%	18%	12.2%	R
NMSU Alamogordo	12%	12%	14%	8.1%	R
NMSU Carlsbad	12.9%	15%	10%	15%	Y
NMSU Dona Ana	13.3%	15%	12.5%	12.1%	R
NMSU Grants	19%	23%	14%	13.7%	Y
UNM Gallup	9.9%	10%	12%	15.1%	G
UNM Los Alamos	8.9%	16.6%	12.3%	11%	Y
UNM Valencia	10.7%	10%	10%	13.8%	G
UNM Taos	13%	12.9%	10%	12.9%	R
					Program Rating R

*preliminary, unaudited

Independent Community Colleges

Completion rates for first-time, full-time degree-seeking students	Fall 2014 to Summer 2017 Actual	Fall 2015 to Summer 2018 Actual	Fall 2016 to Summer 2019 Target	Fall 2016 to Summer 2019 Actual*	Rating
CNM	23.8%	27.3%	24%	27.4%	Y
Clovis CC	46.9%	54.5%	30%	35.5%	Y
Luna CC	27.2%	15.6%	35%	20.7%	R
Mesalands CC	48%	43%	40%	50.9%	G
NM Junior College	32.6%	37.9%	34%	47.9%	G
San Juan College	24.1%	23.1%	26%	27.9%	Y
Santa Fe CC	23%	22%	11%	25.4%	Y
					Program Rating Y

*preliminary, unaudited

Student Retention Rates

Retention rates track students who do not return to college after the first year, who present a tremendous cost to the state and to themselves. The importance of understanding why students leave institutions cannot be overstated, and gathering the data directly from those students could be critical to improving retention rates. Beginning in FY21, colleges and universities will begin reporting more current, semester-by-semester data on student performance.

Four-Year Research Universities. Four-year research institutions retained students similar to their historical levels. The research universities range from 70 percent to 80 percent retention; the comprehensive universities range from 50 percent to 65 percent. NMSU has been steadily improving retention, without

the year-to-year fluctuations shown by both UNM and NM Tech. NMSU's Aggie Pathway, a model program designed to help students better prepare for the rigors of a research university by starting at a NMSU branch campus, may be an effective tactic to support students.

The targets remain low, below regional peers. Institutions could develop retention efforts with a sharp focus on improving beyond regional peers with stretch targets.

Retention rates for first-time, full-time degree-seeking students to the third semester	Fall 2016 to Fall 2017 Actual	Fall 2017 to Fall 2018 Actual	Fall 2018 to Fall 2019 Target	Fall 2018 to Fall 2019 Actual	Rating
New Mexico Tech	74.1%	80.8%	77%	76.7%	Y
New Mexico State University	73.9%	73.9%	75%	74.8%	Y
University of New Mexico	78.3%	73.7%	77%	77.3%	G
Program Rating					Y

Four-Year Comprehensive Universities. Four-year comprehensive institutions are improving retention. Each of the institutions in the category implemented programs to focus on retention. Despite a drop in the current year and a low standing relative to its peers, Northern New Mexico College has been improving its enrollment and graduation rate. In particular, Northern seeks out students who have left college and recruits them back to campus, providing a more comprehensive approach to student services.

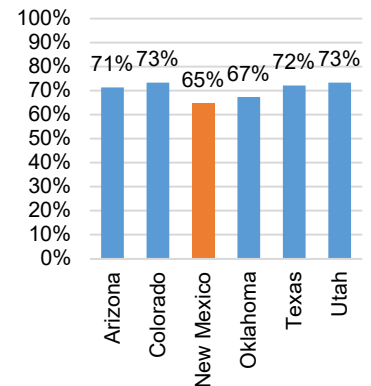
Guided by a five-year strategic plan for enrollment management, New Mexico Highlands University (NMHU) updates its tactics annually to improve student retention, which has been improving the retention rate consistently over the past three years, although it remains below its state peers.

Retention rates for first-time, full-time degree-seeking students to the third semester	Fall 2016 to Fall 2017 Actual	Fall 2017 to Fall 2018 Actual	Fall 2018 to Fall 2019 Target	Fall 2018 to Fall 2019 Actual	Rating
Eastern NM University	63.1%	62.4%	65%	63.1%	
Western NM University	61%	58.9%	57%	59.6%	Y
NM Highlands University	45.2%	51.6%	53%	55.4%	G
Northern NM College	55%	58%	66.5%	53.5%	R
Program Rating					Y

Community College Branch Campuses. At two-year colleges, 42 percent of first-time students leave after the first year. Of the 58 percent of students who persist through their first year, 23 percent of those students graduate within three years. Community colleges continue to experience significant variance in retention rates. Community colleges targets are low, and the results vary by institution and by year-over-year outcomes. Large fluctuations are in part a result of schools with small number of students.

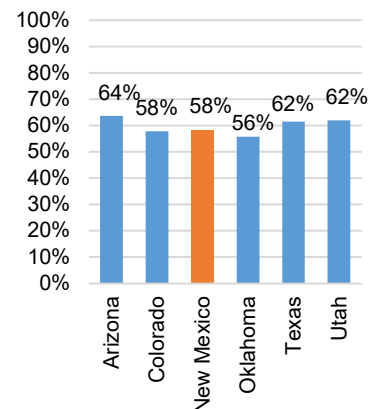
Retention rates for first-time, full-time degree-seeking students to the second semester	Fall 2016 to Fall 2017 Actual	Fall 2017 to Fall 2018 Actual	Fall 2018 to Fall 2019 Target	Fall 2018 to Fall 2019 Actual	Rating
ENMU - Roswell	50.1%	52.1%	54%	49%	R
ENMU - Ruidoso	41%	32.7%	43%	43.8%	Y
NMSU - Alamogordo	48%	52%	55%	54.6%	Y
NMSU - Carlsbad	48.6%	49.7%	57%	50%	Y
NMSU - Dona Ana CC	59.2%	59.1%	60%	62.7%	G
NMSU - Grants	43.5%	52.5%	53%	53.7%	Y

Four-Year Universities: Retention Rates



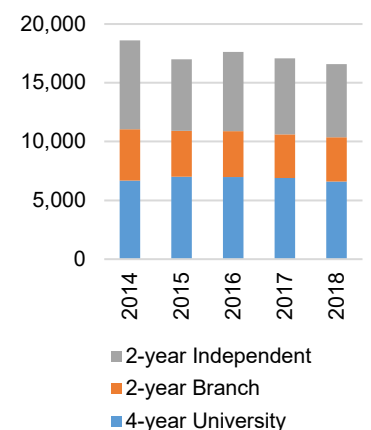
Source: IPEDS, FY17 Graduation Data, Public Institutions

Two-Year Colleges: Retention Rates



Source: IPEDS, FY17 Graduation Data, Public Institutions

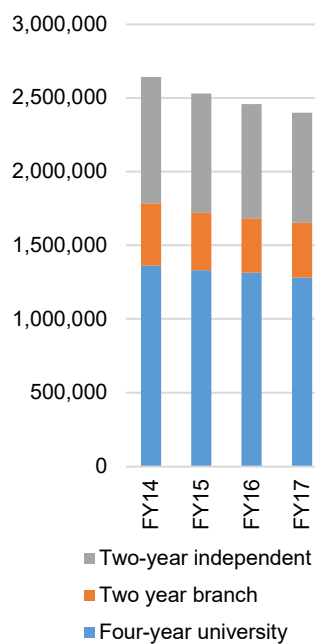
Freshman Enrollments By Sector (headcount)



Source: HED Data

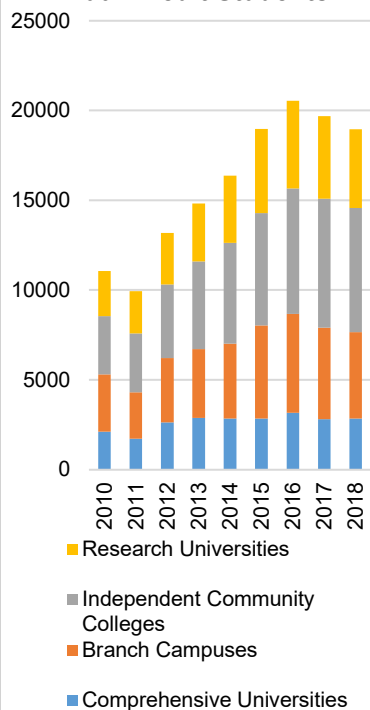
Higher Education

Higher Ed Student Credit Hours



Source: HED Funding Formula

Dual-Credit Students



Source: HED Data

UNM - Gallup	52.8%	57.9%	57.5%	63.1%	G
UNM - Los Alamos	60%	58.8%	56.5%	56%	R
UNM - Taos	45.2%	60%	NR%	NR%	R
UNM - Valencia	60.9%	61.2%	55%	61.2%	Y
Program Rating					Y

Independent Community Colleges. Independent community colleges showed the strongest performance as a group. Clovis Community College exceeded its target but underperformed on retention rate compared with prior years. All of the other colleges improved year-over-year performance.

The sector tends to develop target levels more aspirational than the other higher education sectors in New Mexico. The difference between the independent community colleges and branch campuses may be the level of local communities' financial support and participation. As a group, this sector receives fewer state dollars per student FTE, \$5,266.

Retention rates for first-time full-time degree seeking students to the second semester	Fall 2016 to Fall 2017 Actual	Fall 2017 to Fall 2018 Actual	Fall 2018 to Fall 2019 Target	Fall 2018 to Fall 2019 Actual	Rating
Central NM Community College	62%	63.1%	63.0%	64.5%	G
Clovis Community College	66.1%	67.4%	63.0%	65.0%	Y
Luna Community College	39.7%	41.3%	60.0%	53.7%	G
Mesalands Community College	56.1%	72.1%	65.0%	72.2%	G
New Mexico Junior College	54%	59.6%	60.0%	64.6%	G
San Juan College	60.3%	57.7%	62.0%	58.7%	Y
Santa Fe Community College	63.6%	64.6%	50.0%	67.3%	G
Program Rating					G

College Enrollment

Declining enrollments in higher education in New Mexico threaten the state's ability to be competitive economically and serve the workforce needs of existing and new employers. Shocked by the magnitude of the decline, colleges and universities recently began assessing their enrollment management efforts by focusing on freshman recruitment and enrollment, given the increase in the number of high school graduates in New Mexico; student retention, given the large loss of college-going students in the first two years; and student transfers, ensuring successful transitions from two-year colleges to four-year universities.

- Digging deeper into the data, freshman enrollment trends reveal changes in institutional practices and student choices:
- At four-year research universities, freshman enrollment has been flat. Student choices, however, shifted from UNM (13.4 percent decrease) to NMSU (21.7 percent increase). NMSU has used institutional funding to increase scholarships to incoming freshmen.
- At four-year comprehensive universities, freshman enrollment declined by 5 percent. ENMU experienced the largest decline in freshman enrollment among the four-year comprehensive colleges, but ENMU replaced the decline with high-school students pursuing dual-credit classes.
- At two-year colleges, a 15.9 percent decline in freshman enrollment has been most acute at the independent community colleges, where a 1,942

drop in freshman headcount was offset by dual-credit enrollment, which has increased by the same amount, 1,937 students.

Fewer Students Means Fewer Classes. Over the past five years, faculty workload has declined by 13.1 percent (more than 346 thousand student credit hours) at campuses statewide. While the total enrollment is down, one group has been increasing during the past five years: dual-credit students. The number of dual-credit students increased 16 percent statewide, and dual-credit student credit hours increased by 49 percent. The rate of change for completed dual-credit courses is outpacing the number of dual-credit students, suggesting each student is completing a greater number of courses. The data do not provide a clear picture on the success of dual-credit programs in transitioning students into colleges or universities in New Mexico. The colleges with the most robust dual-credit programs are suffering the highest level of decline in freshman enrollment.

End-of-Course Student Credit Hours Trends. End-of-course student credit hours at four-year universities declined by 10 percent overall. However, lower-level courses (freshman and sophomore level courses) declined by 22 percent at comprehensive universities and by 14 percent at research universities. Two trends could be developing: Dual credit students may be effectively acquiring college credits, which are translating onto college transcripts; and students may be taking greater advantage of 2+2 programs, where a student attends the first two years of college at a community college, then transfers to a four-year university.

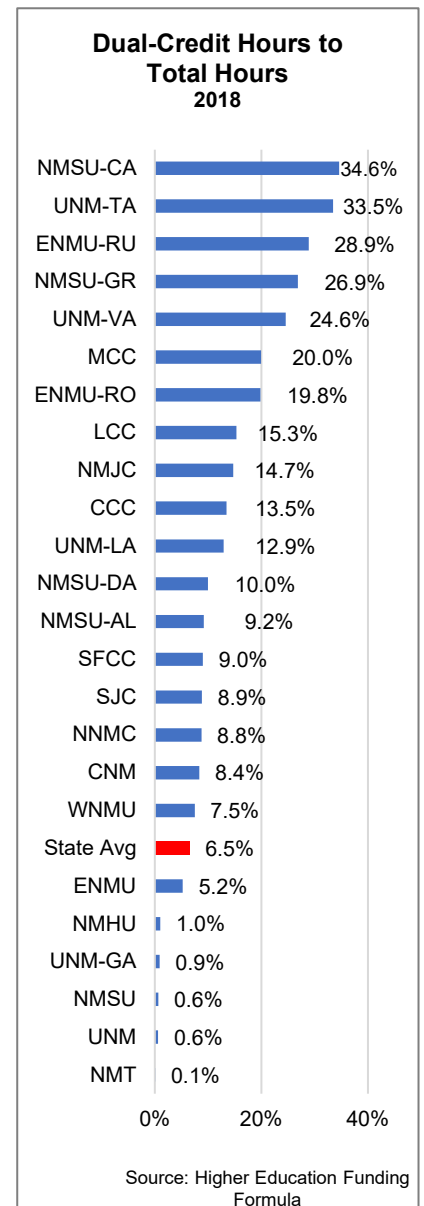
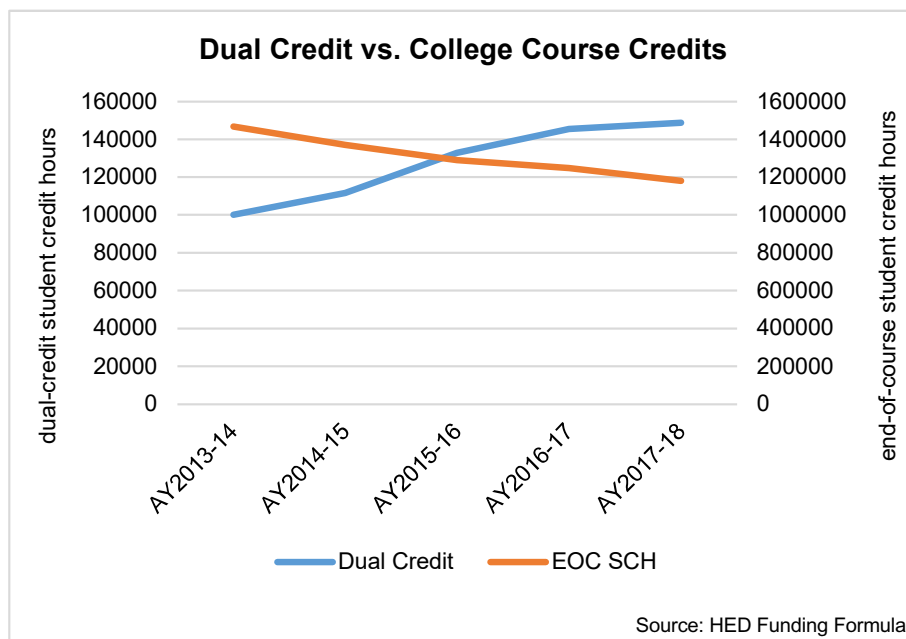


Exhibit F

Health and Economic Issues from COVID-19 in New Mexico

April 20, 2020

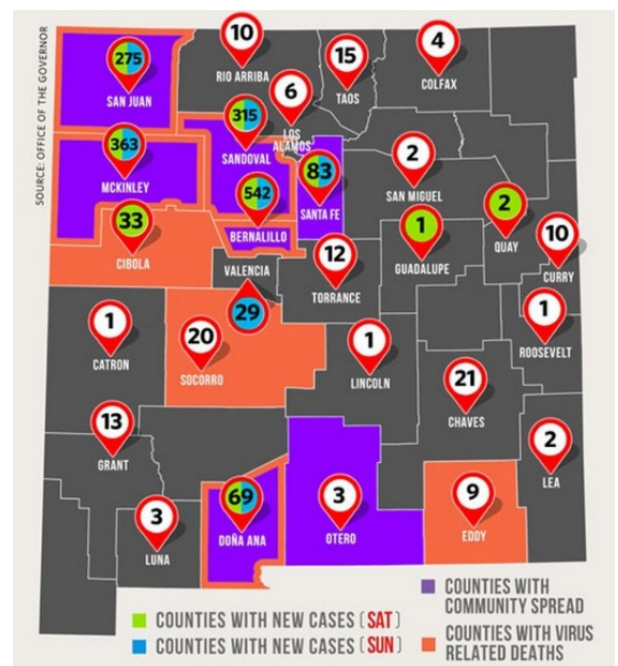
After almost six weeks of increasing numbers of people testing positive for COVID-19, most models indicate New Mexico and many other states have reached peak infection levels, or will do so within the coming weeks. The Centers for Disease Control and Prevention (CDC) is now predicting that up to 20 states with limited COVID-19 impacts will be ready to begin staged reopening in May.ⁱ In many places in the nation, the infection peak will likely be much lower and less severe than initial models predicted – an achievement resulting from hard decisions by state and local leaders to shut down schools and implement travel restrictions and social distancing orders.

Those same leaders throughout the United States are now looking around the COVID-19 corner, asking what milestones their states and cities need to reach to begin the transition from isolation, and forming recovery plans to do so safely. In one example, seven governors of northeastern states are creating a working group of public health, economic, and government officials from each state to develop a regional plan. The governors of California, Oregon, and Washington announced a "Western States Pact," agreeing they would jointly reopen their economies based on certain health outcomes. Other states and countries like Germany, Hawaii, Utah, and Missouri are creating individual plans for reopening. Texas Governor Abbott said he plans to begin reopening different Texas businesses through a series of executive orders starting the week of April 20.

Recognizing New Mexico as a state is likely on the precipice of flattening its statewide infection curve, and that most regions of the state, including Bernalillo, Santa Fe, and Dona Ana counties, are already on the downward trend of new cases, this white paper provides a summary of current guidance about how to move forward. This white paper consists of two parts. First, a review of commonly agreed-on milestones that regions need to meet before beginning to reopen. Second, a review of how other states and countries are planning and prioritizing reopening activities moving ahead.

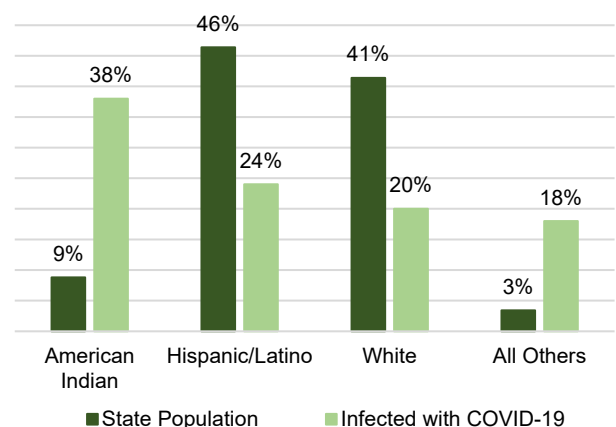
Current Status

As of April 19, the New Mexico Department of Health reports detecting 1,845 positive COVID-19 cases from 37,042 tests. 487 COVID-19 infected people had successfully recovered, 55 had died, and 103 are hospitalized.



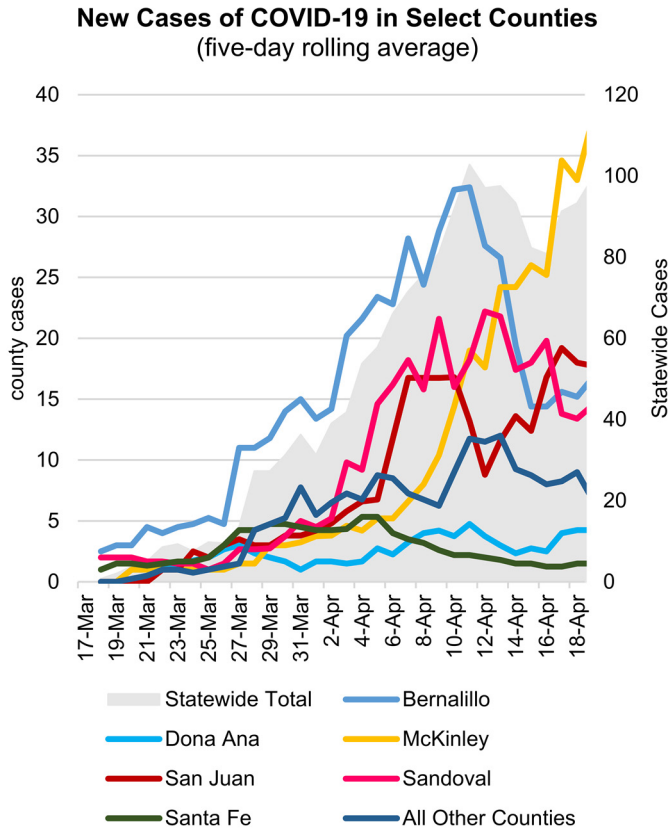
Source: Santa Fe Reporter, April 19, 2020

COVID -19 by Race/Ethnicity (As of April 19, 2020)



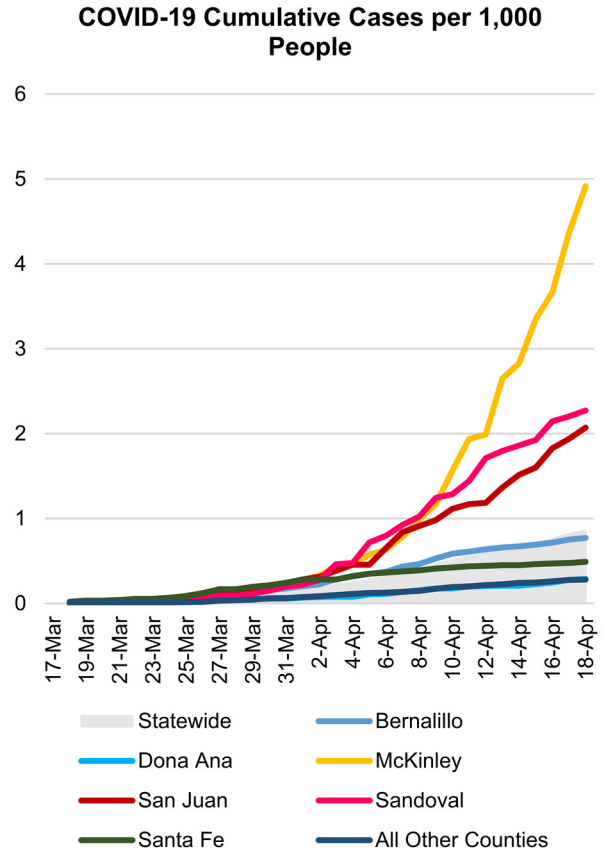
Source: New Mexico Department of Health

With the exception of three counties in the Northwest, New Mexico has mostly "flattened the curve" of New COVID-19 infections.



Sandoval, McKinley and San Juan counties are all "hotspots" in the state, with increasing numbers of infections. Other counties, however, are beginning to flatten their curves. Bernalillo has the most cumulative cases in the state, but the numbers of new cases have generally been lower since the weekend of April 10. Dona Ana and Santa Fe have always had relative low and steady infection rates compared to Bernalillo, indicating their citizens were better able to "flatten the curve" through effective social distancing and other containment measures.

Source: New Mexico Department of Health



The three hotspot counties not only have rising numbers of cases, but they have rates (cases per 1,000 residents) of infection that are much higher than the rest of the state – indicating a more severe outbreak. Moving ahead, the state may be able to think about gradually reopening less affected counties and regions while continuing to focus on infection mitigation efforts in these hotspot counties.

Source: New Mexico Department of Health

While early outbreaks of the virus centered in the Albuquerque metro, since then, the most intense levels of infection have been in the Northwest corner of the state. As of April 18, half the total cases were in three counties (McKinley, Sandoval, and San Juan), despite those counties only accounting for about 16 percent of the total state population. These counties are home to a significant number of Navajo and pueblo people, and Native Americans are infected with COVID-19 at rates that far exceed their proportion of the state population.

There is a recognition of the outsized impact COVID-19 is having on Native Americans in New Mexico, but it is unclear if current shut-down orders are enough to stem spreading infection levels in these counties. The Navajo Nation has mandated the use of masks and instituted a 57-hour weekend curfew for residents. Special, temporary, COVID-specific healthcare operations are actively being built in Gallup by the U.S. Army Corps of Engineers. On April 15, the *Santa Fe New Mexico* reported the governor's office was in talks with Arizona, Utah, and the Indian Health Service to possibly create a joint effort to address impacts of COVID-19 on the Navajo Nation, though no concrete plans have been released by any state. Because of the outsized effect COVID-19 is having in McKinley,

Sandoval, and San Juan counties, recovery efforts there will likely need to be paused until the virus can be better contained. However, while activities in the Northwest will necessarily need to be focused on containment, other regions may be able to gradually move away from shut-down orders to reopen.

Achievements Necessary to Transition From Shutdown to Gradual Reopening

Several publications from the White House, academics, think tanks, and states emerged over the last two weeks with guidance for states and regions on achievements necessary to safely ease current levels of social isolation without sparking new outbreaks. General agreement on milestones among these publications include steadily declining cases, adequate hospital capacity, and sufficient levels of testing and contact tracing, all of which are discussed below.ⁱⁱ

Achievement 1: A Steady Decline in the Number of new COVID-19 Cases

In his March 28 publication, "The Roadmap to Reopening," former Commissioner of the Food and Drug Administration Scott Gottlieb and colleagues noted that to safely move out of strict social distancing measures (i.e., closing schools, nonessential businesses, social gatherings) a state must first have 14 days (the virus incubation period) of declining new COVID-19 cases. The White House guidance from April 16 also suggests a 14-day downward trajectory of new cases (in total or as a proportion of total tests) before regions should relax social distancing requirements. In another think tank publication, staff experts for the Center for American Progress noted "at the height of transmission in South Korea, the country was averaging about 18 new cases per million people per day, and at these levels, South Korea was able to suppress transmission without locking down society."

Guidance for reopening from the White House, April 16, 2020

Before Moving to a phased comeback, states or counties should meet gating criteria, including a 14-day downward trajectory of cases, be able to treat all patients without crises care, and have a robust testing program in place for at-risk healthcare workers, including emerging antibody testing. After that states and counties should move to reopen in three phases, moving between each phase after meeting the gating criteria during each phase.

Phase 1: Schools and senior living facilities remain closed and vulnerable people continue to shelter-in-place. Employees can return to work in phases while limiting person-to-person distance, but telework is encouraged. Elective surgeries can resume and most businesses except bars can open under strict physical distancing protocols.

Phase 2: Schools open. Vulnerable people continue to shelter-in-place but non-essential travel can resume for others. Employers should still encourage telework and make special accommodations for vulnerable people. Physical distancing protocols in public and at work remains in place. Bars can reopen.

Phase 3: Vulnerable people can resume public interaction with distancing precautions. Resume unrestricted staffing of workplaces and limit physical distancing requirements. Visits to senior care facilities and hospitals can resume.

Source: <https://www.whitehouse.gov/openingamerica>

Under any circumstances, New Mexico has not reached these milestones *statewide*. From April 13-18, New Mexico as a whole ranged between 62 and 116 new cases per day. However, New Mexico is a large state, and New Mexican towns and counties have remarkably different levels of infection spread, with some counties yet to have a confirmed case. Therefore, if a county or multi-county region achieved or maintained these low levels of infection, they could move to gradual reopening before more acutely affected regions of the state, especially if temporary travel restrictions in and out of those regions were established.

Achievement 2: Adequate Hospital Capacity to Deal With Surges in Acute COVID-19 Cases

To safely move from extreme social distancing measures, states need to ensure that their hospitals are able to treat all COVID-19 patients requiring hospitalization without resorting to crisis standards of care. Variability in models of COVID-19 infection rates and acuity makes it difficult to know if New Mexico needs to expand its hospital capacity. By some measures, the state should not have a difficult time serving COVID-19 patients, even during peak infection times. Other models, including the state's internal model, show the state running short on beds (though executive agencies have declined to share the assumptions that underlie those estimates with LFC staff.)

Approximate Hospital Capacity

	All Beds	ICU Beds Only
Total Beds	3,460	460
Occupied Rate	60%	59%
Appx. Available Beds	1,384	189

COVID-19 patients hospitalized	103 Hospitalized 22 on a Ventilator
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Source: Harvard Global Health Institute's "Pandemics explained" data set April 14, 2020, Department of Health

Some hospitals are shedding staff rather than ramping up for potential COVID-19 surges.

Facing revenue declines due to the abrupt cessation of elective surgeries and a drop-off in outpatient visits from the governor's moratorium on elective procedures, some hospitals are cutting-back staff where COVID-19 patients have not materialized to make-up the lost workload.

On April 14, Christus St. Vincent in Santa Fe put 300 employees on temporary "low-volume" leave.

The same day, Lovelace Health System reports it will be furloughing, reducing hours and slashing pay for about 630 employees.

The previous day, Memorial Medical Center and Mountain View Regional Medical Center in Las Cruces placed 125 employees on temporary leave and furloughed 67 employees, respectively.

Federal guidance indicated that elective surgeries could resume on an outpatient basis so-long as a region has 14-days of decreasing new cases, can treat all patients without crises care, and has a robust testing program in place for at-risk healthcare workers.

New Mexico has approximately 3,460 total beds and 460 ICU beds available at hospitals around the state. On average, those beds are occupied 60 percent of the time, meaning that somewhere around 1,384 total beds and 189 ICU beds would have been available for COVID-19 patients statewide under average circumstances.ⁱⁱⁱ As of April 19, there are 103 patients hospitalized with COVID-19. Twenty-two of those were on ventilators as of April 16, and models estimate we are one to three weeks away from peak infection levels.

These numbers may underestimate available hospital beds, however. On March 25, the governor ordered hospitals to stop offering elective surgeries, which likely freed up some regular hospital beds for COVID-19 patients, though the exact amount is unknown. Additional emergency treatment facilities are also coming online throughout the state. The federal government has approved a request from the governor for a field army hospital. The Army Corps of Engineers is also outfitting the gym at Miyamura High School in Gallup with 60 hospital beds dedicated to COVID-19 patients.^{iv} The gym-turned-healthcare-facility is expected to be operational by the end of April. The state has also secured the old Lovelace hospital building in Albuquerque to add an additional 200 beds for COVID-19 treatment.

Gottlieb notes that adequate critical care capacity for hospitals should be 30 beds per 10,000 adults. With 1.3 million adults over age 18, New Mexico would need 440 additional hospital beds to meet that benchmark. Unfortunately, other projections for COVID-19 hospital capacity vary considerably, and it is unclear how prepared New Mexico actually is to deal with a potential surge of hospitalizations over the next few weeks. On April 9, Human Services Department (HSD) Secretary Scrase released projections from a hospital-needs model developed specifically for New Mexico with Presbyterian and experts from the national labs. Notably, the New Mexico model anticipates significantly greater need than a model from the University of Washington that has been widely cited nationally. The

Institute for Health Metrics and Evaluation's model provides estimates for the same metrics, but its figures differ from the state's model by up to 30 times. New Mexico officials believe the IHME model is off by a large factor, and other states and localities that have developed their own models have expressed similar skepticism about IHME's estimates, which are generated from inputs from China which were believed to be underreported until recently.^{v, vi}

COVID-19 Projections

	Medical Beds	ICU Beds	Ventilators	Deaths
NM/Presbyterian Model	1,327 to 10,087 at peak	805 to 6,189 at peak	614 to 4,647 at peak	2,110 to 4,367 in next 12 months
IHME Model*	118 at peak	29 at peak	26 at peak	80 by August 2020
Harvard Global Health Institute Model **	1,447 over 18 months	314 over 18 months	Not Modeled	Not Modeled

*IHME is projecting 80 COVID-19 deaths by August but does not offer a 12-month figure. The model also tracks numbers of beds needed at peak infection times rather than over the entire six months.

** Harvard numbers are based on 20 percent of the population becoming infected over 18 months.

Source: Governor of New Mexico and IHME

The IHME model also appears to be more conservative in its assumptions about the efficacy of social distancing policies in reducing transmission. As a result, on top of using hospital need projections, the state will need to be able to monitor and potentially quickly scale-up hospital resources as necessary as the COVID-infection peaks.

Achievement 3: Adequate Testing and Tracing

New Mexico has been testing for COVID-19 at a per capita rate that exceeds most other states,^{vii, viii} but there is little consensus on how much testing is needed for adequate surveillance. Notably, the White House reopening guidance this week was silent on testing levels adequacy. However, some experts believe that expanded testing and tracing capacity must be in place for populations to move away from stay-at-home orders affecting whole populations to a more targeted "identify and isolate" strategy that can rapidly detect new infections and outbreaks.

As of April 19, New Mexico has completed 37,042 tests at five in-state labs, or an average of 477 per million per day. This is well over the national average (of 318 per million per day) and approximately double the gold standard of South Korea which has conducted about 8 thousand tests per million since the beginning of the outbreak (New Mexico is over 17 thousand tests per million). In her April 15 press conference, the governor noted the state has 60 testing sites in 33 counties with the capacity to run 3,500 tests per day, and that number will expand with additional planned private partners including Sandia National Labs and Walmart. Commercial labs nationwide are reporting they have eliminated testing backlogs^{ix} and TriCore lab reports they alone have enough capacity to process up to 1,000 tests per day.^x However, the private lab has also reduced its reduced hours for testing in recent days which may lower their capacity.^{xi} Still, this level of testing puts New Mexico in a favorable position compared to other states – one example, Minnesota, a state with 2.8 times the number of people as New Mexico, has aspirations for testing levels of 5,000 per day—a rate that would be half of what New Mexico already has the capacity for.^{xii}

Authors of the "Roadmap to Reopening" report estimated that a national capacity of at least 750 thousand tests per week would be sufficient to move to case-based interventions when paired with sufficient contact tracing. As New Mexico has 0.6 percent of the U.S. population, a rough estimate of the need for the state could be approximately 4,500 tests per week. In the five weeks since COVID-19 testing began in New Mexico, the state has recorded 37,042 tests, or 7,408 per week – well over the benchmark.

On March 17, researchers from the Harvard Global Health Institute estimated that 500 thousand tests per day nationally, or about 3,000 tests per day in New Mexico, would be enough to adequately track and

Diagnostic vs. Antibody Tests

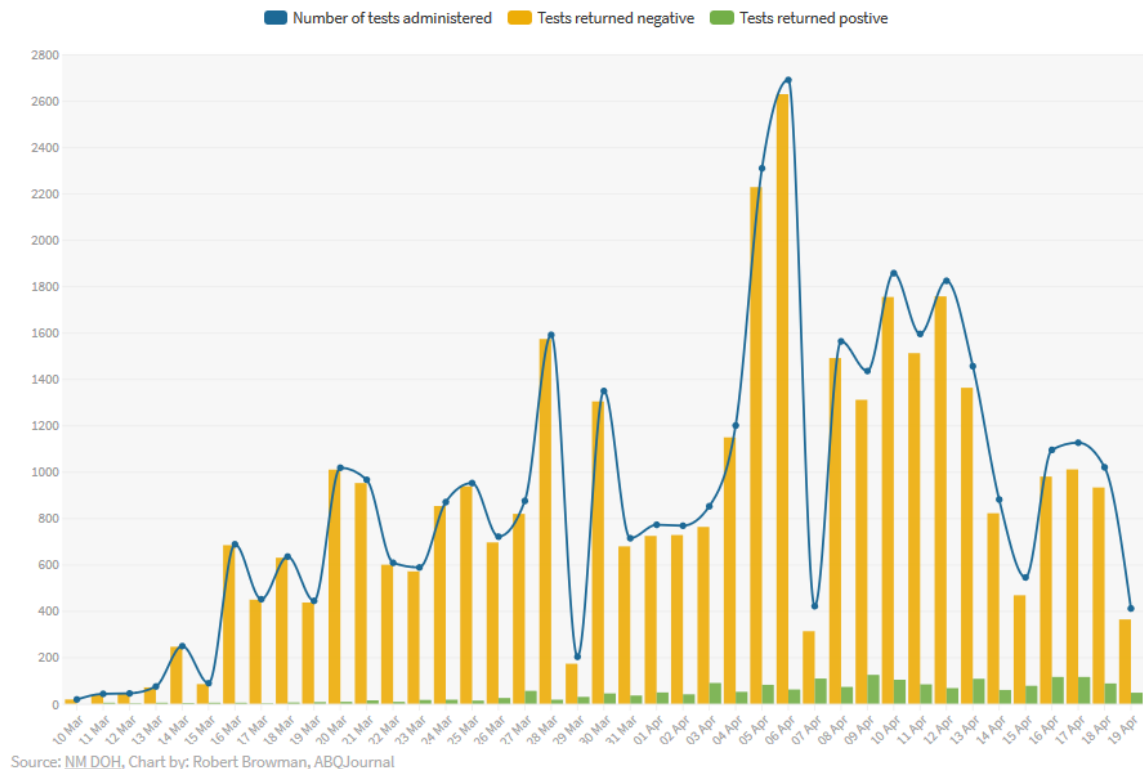
Current tests for COVID-19 are diagnostic in nature, meaning the test identifies people who are actively infected with the virus. They cannot determine if people have been exposed and/or recovered from the virus, however.

Though the understanding of COVID-19 immunity is evolving, it is likely that people who have recovered from a COVID-19 infection will have *some* level of immunity for *some* amount of time.

Researchers are currently developing antibody tests, also called serology tests, to determine past exposure. While these tests are not widely available yet, they will likely become an important tool in determining who can safely move about in public as the economy reopens.

containment strategies to work.^{xiii} Again, the governor has reported a current testing capacity of approximately 3,500 per day, but between April 13-18 there were only approximately one thousand tests administered across the state per day.

Number of NM COVID-19 tests & results



However, different researchers from Harvard (from the Edmond J. Safra Center for Ethics) estimate that this level of testing may be wholly inadequate for any sort of wide-scale loosening of restrictions. Instead, the Harvard experts suggest that between 1 and 10 million tests per day nationally, which would include extensive surveillance testing of asymptomatic people, would "allow a significant return to the workforce." For New Mexico, that would mean testing approximately 60 thousand to 600 thousand people daily.^{xiv}

The level of necessary testing is influenced by the type and level of contact tracing available to the populace. An April 4 story from the Albuquerque Journal reported that the Department of Health has about 60 staff currently dedicated to contact tracing or about 6 cases per staff per week.¹ The department has not released any information on the adequacy of this tracing capacity, but they may soon be aided by technology.

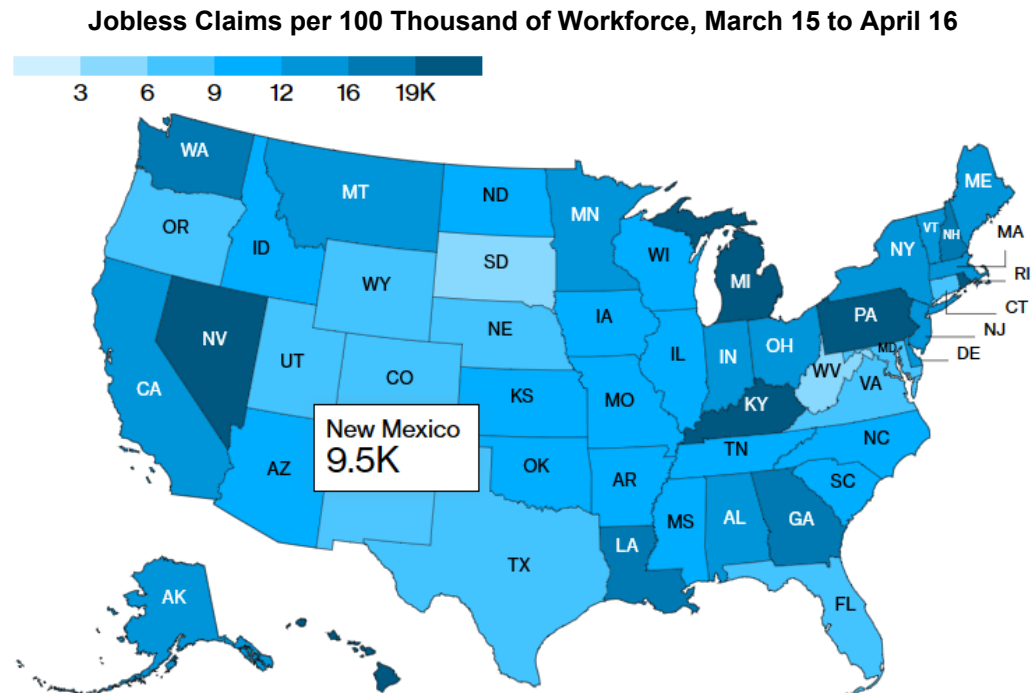
Contact tracing involves a health professional reaching out to all people that have had contact with a newly infected person and directing them to self-isolate to stop the spread of the virus.

On April 10, Apple and Google (Android) announced that by mid-May, they would release an app that would automate contact tracing among any phone owners that opted in, covering up to 3 billion smartphones worldwide. However, some people may have privacy concerns related to using such an app. Wired magazine reports that "to be effective, contract tracing apps need roughly 50 percent to 70 percent of a population to use them" and also that "Singapore introduced such a contact tracing app on March 20. There, in a society considered far more disciplined and with fewer privacy concerns than the U.S., fewer than one-fourth of smartphones have downloaded it nearly a month later."^{xv} Still, any automation of contact tracing will lighten the load of human-driven contact tracing.

Considerations for Reopening

The sudden halt in commerce across the United States due to COVID-19 has placed millions of businesses in jeopardy and tested the capacity of governments at all levels to deliver relief as many sectors of the economy freeze in place.^{xvi} Since then, the nation has seen unemployment soar to over 17 percent, and federal support to keep small businesses afloat has run out in a matter of weeks.^{xvii} Though some more federal funding for business and unemployment is almost certainly on the way,^{xviii} the federal government will not be able to fund businesses to stay closed indefinitely. Moreover, the COVID-19 pandemic has left New Mexico in a perilous revenue situation, severely limiting opportunities for state-support of businesses moving ahead.

"If any state, if any country, were to wait until we could keep everybody safe, we'd have to be closed forever."
— Colorado Governor Jared Polis, April 17, 2020 ¹



Map Credit: Bloomberg <https://www.bloomberg.com/news/articles/2020-04-16/u-s-jobless-claims-total-5-25-million-in-week-four-of-lockdown>

The most cost-effective path forward for the state and federal government is to find a way to swiftly but safely allow businesses to resume operations. However, even with plans and milestones for reopening, no economists are predicting a complete return to business as usual in the next several months. Until a vaccine or effective treatment is in place, precautionary measures such as those outlined by the CDC, will likely accompany any reopening of operations, including social distancing, wearing face coverings, and not having large gatherings. There are also social considerations; reopening the economy too soon could lead to reduced consumer confidence—if people are afraid, they will be unwilling to resume normal activity even if restrictions are lifted. This would hinder the recovery and make the economic downturn last longer.

That said, there are likely some lower-risk avenues the state might consider following to reopen businesses, schools, and other operations. The following is a review of potential avenues for reopening and how they are being considered by experts and leaders in other states and countries.

Consideration 1: Low-Risk Regions and Operations

As illustrated above, the Northwest quadrant of the state is still battling with escalating infection rates and increasing numbers of new COVID-19 cases. However, in the majority of the state, infection levels have either stayed low or are on the downward slope of the infection curve, and most counties are moving toward meeting the achievements listed in the first half of this memo. In some cases, there have been ten or fewer cases in whole counties with little evidence of community spread. In these places, it is reasonable to think that some of the smaller, but economically important nonessential businesses and organizations may be able to open up with little risk to spreading COVID-19, so long as they practice precautions (some of which are suggested in the next section.)

Germany is taking this tack of reopening small businesses, and the country has a plan to allow [bookstores, car dealers, and other shops up to 800 square meters \(about 8,600 square feet\)](#) to open again starting April 20. "But they all have to ensure that the number of customers inside is limited while also avoiding long lines from forming outside."^{xix} The same logic could be considered for a targeted reopening of [healthcare facilities in rural New Mexico](#) where the likelihood of a COVID-19 outbreak remains low. These smaller and rural healthcare facilities are often major economic drivers in their communities and serve an important role in preventative healthcare that may keep down the demand for more serious hospital services in areas that are dealing with COVID-19 impacts.

New Mexico could also consider following Texas, where Governor Abbott is reopening [state parks](#) beginning April 20, as people can often enjoy these spaces while wearing masks and keeping safe distances from one another. State parks in New Mexico could likely also be open under this logic, as could [zoos, outdoor plant nurseries and landscaping businesses, golf courses, and car washes](#). Other businesses could also potentially reopen with a drop-off/pick up model that minimizes human contact – much in the way that many restaurants are currently operating. These businesses might include [pet groomers and veterinarians, florists, computer repair businesses, and other businesses where customers could order online and pick up products at the store](#).

Consideration 2: Space and Hygiene

Some aspects of the economy never completely shut down—essential stores and services, and business where workers can function from home, for example. For most parts of the state, these operations have carried on in ways that have allowed the communities they work in to slow and stop transmission of COVID-19. As large grocery and big-box stores have been able to adapt to operations that inhibit person-to-person contact, it may be reasonable to expect that some smaller businesses with much lower levels of daily person-to-person interaction could also operate so long as they take some suite of precautions. These precautions would likely follow the April 9 CDC guidance for "critical infrastructure workers"^{xx} including the following:

Compulsory use of face masks, especially for public-facing workers: The CDC already recommends cloth face coverings for people in public settings, and Governor Lujan Grisham has strongly urged all citizens to wear masks in public. On April 15, New York Governor Cuomo made wearing faces masks in public compulsory.

Monitoring employee temperatures: The CDC recommends that employers measure employee's temperature and assess symptoms before they return to work and that employees self-monitor their temperatures thereafter.

Ensuring people can stay away from one other: The CDC notes that limiting face-to-face contact with others is the best way to reduce the spread of COVID-19. As such, if and when stay-at-home restrictions are lifted, businesses will need to adapt to allow people to minimize contact with people outside their households, much in the way that essential businesses have. This could mean significantly limiting the number of people in a given space at any point in time (current guidance from the governor limits essential stores to 20 percent capacity). It also suggests that, if feasible, employers should continue to allow employees to work from home whenever possible. For restaurants in particular, New Mexico could consider implementing measures that Singapore (marking every other seat off limits) or Hong Kong has taken (requiring restaurants to operate at no more than half capacity with no more than four people per table and a guaranteed spacing between tables) to minimize risk.

Cleaning: The CDC guidance for essential employees recommends they routinely clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment. This likely means that employers will need to provide extra supplies and staff time to increase the amount and level to which their workplaces are disinfected as a condition of reopening. The CDC also recommends that workplaces develop policies for worker protection and provide training to all cleaning staff on when and how to use protective equipment.

Consideration 3: Protections for Vulnerable People

Some people are more at risk of developing serious complications from COVID-19 than others, and federal guidance indicates vulnerable individuals should continue to shelter in place much longer than others, even during a phased reopening. Of the 1,845 cases of COVID-19 in New Mexico, nearly 90 percent did not require hospitalization. However, people that are elderly and with certain pre-existing conditions are much more likely to need hospitalization as a result of contracting COVID-19. Because of their heightened risk, these more vulnerable people will likely need to remain relatively isolated even as social distancing restrictions are loosened. Gottlieb notes that these vulnerable populations "should continue to engage in physical distancing as much as possible until a vaccine is available, an effective treatment is available, or there is no longer community transmission."

For New Mexico, this may mean continued restrictions on visitors and outings for nursing home residents and non-COVID-19 hospital patients. It also means that some sort of allowance will need to be made for the working vulnerable to stay at home without the risk of losing their income. The methods for doing that will vary circumstance to circumstance but might include some sort of extended paid sick leave requirements.





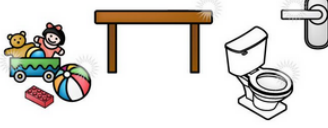
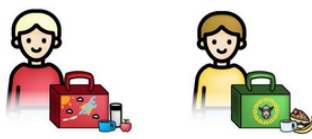


Consideration 4: Schools and Childcare Capacity

Finding some way to reopen schools and childcare facilities will be a crucial component to any economic reopening plan, but few experts agree on how to best go about it. Reopening businesses while school closures remain in effect will almost certainly put an undue burden on workers with children and may require they stay out of the workforce until childcare arrangements can be made.

Complicating this effort is that K-12 public schools were never structured to educate children remotely, and current efforts to do so have been, for the most part, implemented hastily to varying levels of success. Furthermore, the necessary disruption of the 2020 school year will likely create a need for more instruction (not less) for the current cohort to catch up.

This lost education time will almost certainly affect low-income students the most. LFC's program evaluation team have found that even before the pandemic, low-income students face a 6,000-hour learning gap by the sixth grade, compared to their middle- and high-income peers. These low-income students are also much less likely to have the technology, strong broadband, and available parental time necessary to make remote learning effective, leaving the potential for the 6,000-hour learning gap to grow.

Danish Rules for School During Pandemic
Pupils and teachers must follow strict hygiene and distancing rules.

- The Danish Health Authority recommends 65 sq. ft. per child in day care and 43 sq. ft. per child in kindergarten and schools.

- Desks should be 6.5 feet apart.

- Children are to play in small groups of three to five from their same classroom.

- Hand washing and hygiene every two hours.

- Staff members must wash toys at least twice daily. Disinfecting of toilets must be done after use. Tables, door handles and other surfaces also twice a day.

- Food must not be shared.

- Children must sit 6.5 feet apart on school buses. There will be more buses available.

- Dropoff and collection of children will be done at intervals and if possible outside of the day care or school.


Credit: The Wall Street Journal, <https://www.wsj.com/articles/where-schools-reopen-distancing-and-disinfectant-are-the-new-coronavirus-routine-11586971911>

Others have posited methods on how to best move ahead with a more COVID-safe school environment in the fall. The White House guidance from April 16 notes that schools should be able to open in phase two – after regions can demonstrate some loosening of stay-at-home orders without reemergence of new COVID-19 outbreaks. Others have suggested that summer camps and schools could resume on an opt-in basis, noting that some teachers and families would weigh the risk of lost learning time with spreading infections to themselves.^{xxi}

Denmark was the first European country to reopen its schools after lockdown. There, classroom sizes were limited to ten, desks were spaced over six feet away from one another, playgroups were limited, and children with infected family members were asked to stay home. Denmark decided to reopen elementary schools first to help parents return to work with older children not returning until May. Germany is taking the opposite approach, assuming that older students will be more likely to practice hygiene and distancing rules.

Hawaii's state recovery plan notes that when schools restart in-person instruction, administrators will need to make provisions for immune-compromised children and for

older teachers and staff who would be especially vulnerable to a new outbreak of the epidemic among their younger students. They suggest limiting vulnerable teachers to teaching online classes and holding twice-a-day sessions with half of the students attending in the morning and half in the afternoon to allow for increased seat spacing between students.

Consideration 5: Travel Restrictions and the Tourism Economy

Though tourism contributes over \$6 billion to the New Mexico economy annually in normal times, it is unlikely the industry will rebound as quickly as other

industries. For one, in order for regions with low or no infections to remain that way, it is likely that some sort of regulation or restriction of travelers in and out of those areas will need to be in place until a vaccine or treatment is developed. The World Health Organization suggests that in the meantime, regions need to develop ways to rapidly detect and manage suspected cases among travelers, including the capacity to quarantine individuals arriving from areas with community transmission.

These barriers will likely mean that New Mexico's tourism-reliant economic sectors will not be able to recover as quickly as its others, even if all state-mandated restrictions are lifted. Even after restrictions are lifted, travelers may find that limited events make traveling to New Mexico less attractive (for example the closing of Santa Fe's major summer art markets). Further, people may not feel safe traveling, especially if they are older or otherwise more vulnerable to the virus. As a result, if the state is looking to stage business reopenings by sector, it may want to put tourism-related industries behind others that do not have such large barriers to rebounding.

"Next Step" Options

When it comes to COVID-19 containment, the federal government is asking states to chart their own paths forward. Citizens across the country have been critical of COVID-19 responses by state leaders in all directions—some worrying that reopening too soon will result in more infections and unnecessary deaths. At the same time, others feel that the economic liability of closing businesses isn't reasonable in places that have already flattened their infection curve.

These tensions, health risks, and high economic stakes make it incredibly important for states to use data and sound expert guidance in guiding their next steps forward. To do this, many states are forming recovery task forces (TX, UT, AL, AK, LA, MT) and regional coalitions (in the west with WA-OR-CA, northeast with NJ-NY-CT-DE-PA-MA, and midwest with KY-IN-WI-MN-MI-IL) to gather and disseminate the best-vetted directives moving ahead. As of yet, New Mexico has not formed or joined such a task force. But task force or no, some entity at the state level will need to undertake the following activities starting soon.

- Determining necessary actions to control infection spread and health impacts in hotspot counties
- Ensuring testing and healthcare needs are met across regions with different population densities and infection levels
- Setting local criteria and benchmarks counties or regions need to meet to move into a phased reopening
- Outlining the business and social activities allowed under each phase of reopening
- Determining best practices for childcare and k-12 schools as they look to reopen in the fall
- Setting protocols for re-isolation if outbreaks reoccur
- Coordinating with neighboring states on phased reopening to ensure consistency for populations living near state borders

Importantly, COVID-19 recovery task forces might also be the bodies that produce a retrospective on the response to the pandemic. For New Mexico, such a body would ask and answer questions like, *"what did New Mexico do well," "where did the state stumble,"* and *"how do state agencies use the lessons of the last five weeks*

to make up better prepared for emergencies in the future?" With the answers to these questions, the state may actually come out of the COVID-19 crisis operationally stronger than when it began.

ⁱ Chiacu, D. and Heavey, S. April 15, 2020. CDC director says 19-20 U.S. states may be ready to reopen May 1. Reuters. <https://www.reuters.com/article/us-health-coronavirus-usa-cdc/cdc-director-says-19-20-us-states-may-be-ready-to-reopen-may-1-idUSKCN21X1KC>

ⁱⁱ Publications Include: Gottlieb, S. et.al. March 28, 2020. National coronavirus response: A road map to reopening. American Enterprise Institute. <https://www.aei.org/research-products/report/national-coronavirus-response-a-road-map-to-reopening/>; Emanuel, Z. et. al. April 3, 2020. A National and State Plan to End the Coronavirus Crisis. Center for American Progress. <https://www.americanprogress.org/issues/healthcare/news/2020/04/03/482613/national-state-plan-end-coronavirus-crisis/>; Various publications from Siddarth, D., Weyl, E. and others at the Edmond J. Safra Center for Ethics at Harvard University. <https://ethics.harvard.edu/covid-19-response>; Chandra, A., Fishman, M., and Melton, D. April 1, 2020. A detailed Plan for Getting Americans Back to Work. Harvard Business Review. <https://hbr.org/2020/04/a-detailed-plan-for-getting-americans-back-to-work>; The White House. April 16, 2020. Guidelines: Opening up American Again. <https://www.whitehouse.gov/openingamerica/>; April 14 COVID-19 Strategy Update. The World Health Organization. https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

ⁱⁱⁱ Data pulled from the Harvard Global Health Institute's "Pandemics explained" data set April 14, 2020. https://docs.google.com/spreadsheets/d/1XUVyZF3X_4m72ztFnXZFvDKn5Yys1aKGu2Zmefd7wVo/edit#gid=1576394115

^{iv} Abundis, M. April 13, 2020. Miyamura High School transforms into COVID-19 care facility in anticipation of case surge. KOB4. <https://www.kob.com/albuquerque-news/miyamura-high-school-transforms-into-covid-19-care-facility-in-anticipation-of-case-surge/5699857/>

^v Wan, W. and Johnson, C. April 8, 2020. America's most influential coronavirus model just revised its estimates downward. But not every model agrees. The Washington Post. <https://www.washingtonpost.com/health/2020/04/06/americas-most-influential-coronavirus-model-just-revised-its-estimates-downward-not-every-model-agrees/>

^{vi} Barnes, J. April 2, 2020. C.I.A. Hunts for Authentic Virus Totals in China, Dismissing Government Tallies. The New York Times. <https://www.nytimes.com/2020/04/02/us/politics/cia-coronavirus-china.html>

^{vii} Childress, M. March 31, 2020. New Mexico plans increase in daily COVID-19 testing. New Mexico In Depth. <http://nmindepth.com/2020/03/31/new-mexico-plans-increase-in-daily-covid-19-testing/>

^{viii} Kaiser Family Foundation. April 14, 2020. State Data and Policy Actions to Address Coronavirus. <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/#policyactions>

^{ix} Lim, D. April 14, 2020. Coronavirus testing hits dramatic slowdown in U.S. Politico. <https://www.politico.com/news/2020/04/14/coronavirus-testing-delays-186883>

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- ^x Sneed, T. April 8, 2020. How New Mexico Jump Started Aggressive COVID-19 Testing. Talking Points Memo. <https://talkingpointsmemo.com/news/new-mexico-covid-19-testing>
- ^{xi} Wyland, S. and Nott, R. April 15, 2020. Governor: New Mexico 'has a long way to go' in COVID-19 battle. The Santa Fe New Mexican. https://www.santafenewmexican.com/news/coronavirus/governor-new-mexico-has-a-long-way-to-go-in-covid-19-battle/article_94ad04a8-7f4b-11ea-b634-6bd7471b2fbd.html
- ^{xii} Raiche, R. April 13, 2020. Governor wants 5,000 COVID-19 tests a day, but one major issue is getting in the way KSTP. <https://kstp.com/news/governor-wants-5-thousand-covid-19-tests-a-day-one-major-issue-in-the-way/5699761/>
- ^{xiii} Collins, K. April 17, 2020. Coronavirus Testing Needs to Triple Before the U.S. Can Reopen, Experts Say. The New York Times. <https://www.nytimes.com/interactive/2020/04/17/us/coronavirus-testing-states.html>
- ^{xiv} Siddarth, D. and Weyl, E. Why We Must Test Millions a Day. The Edmond J. Safra Center at Harvard University. <https://drive.google.com/file/d/1EhUfmT6ayG3ERxX-wZUmB2wtIEOhRAmP/view>
- ^{xv} Fussell, S. and Knight, W. April 14, 2020. The Apple-Google Contact Tracing Plan Won't Stop Covid Alone. Wired. <https://www.wired.com/story/apple-google-contact-tracing-wont-stop-covid-alone/>
- ^{xvi} Parilla, J., Liu, S., and Whitehead, B. April 3, 2020. How local leaders can stave off a small business collapse from COVID-19. The Brookings Institute. <https://www.brookings.edu/research/how-local-leaders-can-stave-off-a-small-business-collapse-from-covid-19/>
- ^{xvii} Tankersley, J., Cochrane, E., and Flitter, E. April 15, 2020. Small-Business Aid Funds Run Dry as Program Fails to Reach Hardest Hit. The New York Times. <https://www.nytimes.com/2020/04/15/us/politics/coronavirus-small-business-program.html>
- ^{xviii} Werner, E. and Stein, J. April 19, 2020. Trump administration, congressional leaders near deal on virus aid that includes major boost for small businesses. The Washington Post. <https://www.washingtonpost.com/us-policy/2020/04/19/trump-coronavirus-democrats-small-business/>
- ^{xix} Bennhold, K. April 16, 2020. Relying on Science and Politics, Merkel Offers a Cautious Virus Re-entry Plan. The New York Times. <https://www.nytimes.com/2020/04/15/world/europe/coronavirus-germany-merkel.html>
- ^{xx} CDC Interim Guidance. Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19. <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>
- ^{xxi} April 10, 2020. Restarting American means people will die. So when do we do it? The New York Times Magazine. <https://www.nytimes.com/2020/04/10/magazine/coronavirus-economy-debate.html>

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

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

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO;
HANNA SKANDERA, in her official capacity as
Secretary Designate of the New Mexico Public
Education Department; and THE NEW MEXICO
PUBLIC EDUCATION DEPARTMENT,

Defendants.

DECLARATION OF ERNEST I. HERRERA

I, Ernest I. Herrera, pursuant to Rule 1-011(B) NMRA, hereby declare as follows:

1. I am currently a staff attorney at the Mexican American Legal Defense and Education Fund (MALDEF), counsel to Plaintiffs Louise Martinez, *et al.* (“Martinez Plaintiffs”) in this action. I submit this declaration in support of *Martinez* Plaintiffs’ Response in Opposition to Defendants’ Motion for Entry of Order of Satisfaction of Injunction and Dismissal of Action in the above-referenced case.

2. I am thoroughly familiar with the facts and arguments in this proceeding. I have personal knowledge of the statements contained in this declaration and am fully competent to testify to the matters set forth herein.

3. I am attaching to this declaration a document that I downloaded from the website containing achievement data from the National Achievement Educational Performance (NAEP) test. I ensured that I downloaded scores related to the 2019 NAEP results for students in New Mexico. The URL at which I accessed these scores on April 24, 2020, is https://www.nationsreportcard.gov/profiles/stateprofile/overview/NM?cti=PgTab_OT&chort=1&sub=MAT&sj=NM&fs=Grade&st=MN&year=2019R3&sg=Gender%3A+Male+vs.+Female&sgv=Difference&ts=Single+Year&tss=2015R3-2019R3&sfj=NP. The downloaded document is labelled and attached as “Attachment A.”

4. I am attaching to this declaration a document downloaded from the New Mexico Public Education Department (“PED”) website. I ensured that I downloaded the 4-Year Graduation Rates Cohort of 2018 data from the “Graduation Data” page and only included the pages that have statewide graduation rate data. The URL at which I accessed these data on April 24, 2020, is <https://webnew.ped.state.nm.us/bureaus/accountability/graduation/>. The downloaded document is labelled and attached as “Attachment B.”

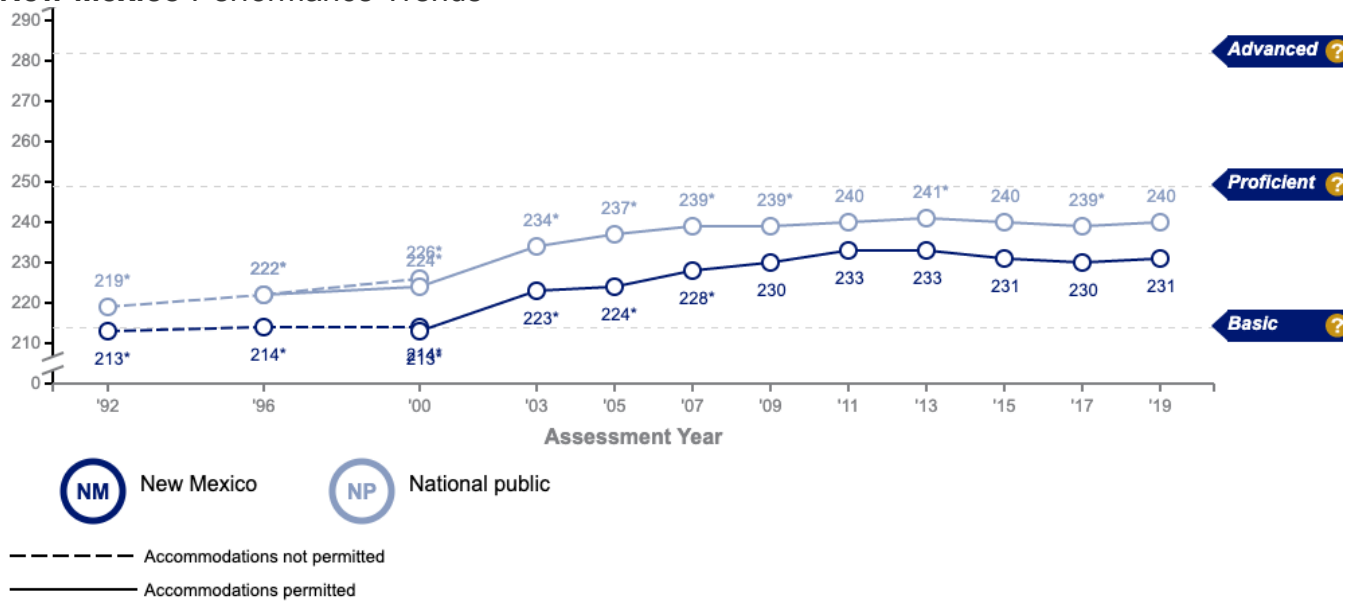
I declare under penalty of perjury pursuant to Rule 1-011(B) NMRA that the foregoing is true and correct to the best of my knowledge. Executed in Los Angeles, California on May 1, 2020.

/s/ Ernest I. Herrera
Ernest I. Herrera

Attachment A

New Mexico Overview

New Mexico Performance Trends



* Significantly different ($p < .05$) from 2019.

NOTE: The NAEP Mathematics scale ranges from 0 to 500. Some apparent differences between estimates may not be statistically significant. Results are not shown for data points where the sample sizes are insufficient to permit reliable estimates or where data are not available.

SOURCE: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 1992, 1996, 2000, 2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, and 2019 Mathematics Assessments.

New Mexico Performance Data
New Mexico Complete Results

ASSESSMENT			AVERAGE SCORE			ACHIEVEMENT LEVELS					
Subject	Grade	Year	Score	SE	Difference from National public (NP)	At or above Basic	SE	At or above Proficient	SE	At Advanced	SE
Mathematics (scale range 0–500)	4	2019	231.11	0.817	-8.89 ▼	72.30	1.202	28.72	1.244	4.40	0.662
		2017	229.70	0.818	-9.46 ▼	69.34	1.308	27.18	1.070	4.12	0.519
		2015	231.17	0.835	-8.69 ▼	73.46	1.311	26.88	1.232	3.18	0.441
		2013	232.78	0.694	-8.40 ▼	73.96	0.995	30.56	1.032	3.90	0.424
		2011	232.84	0.756	-7.27 ▼	74.95	1.009	29.51	1.098	3.83	0.519
		2009	230.03	1.026	-9.06 ▼	71.82	1.572	26.19	1.449	2.93	0.494
		2007	228.06	0.931	-11.00 ▼	70.26	1.377	24.45	1.347	2.16	0.411
		2005	224.03	0.844	-13.07 ▼	64.80	1.470	19.04	1.138	1.73	0.370
		2003	222.52	1.056	-11.43 ▼	62.98	1.800	17.19	1.119	1.17	0.273
		2000	213.48	1.460	-10.73 ▼	50.40	2.071	11.94	1.149	0.75	0.310
		2000¹	213.87	1.484	-12.37 ▼	50.99	1.990	11.97	1.042	0.72	0.221
		1996¹	213.84	1.752	-8.50 ▼	50.73	2.366	12.78	1.188	0.80	0.253
		1992¹	213.30	1.443	-5.29 ▼	49.84	2.006	11.05	1.274	0.61	0.225
Reading (scale range 0–500)	4	2019	207.56	1.156	-11.88 ▼	53.05	1.503	23.72	1.400	4.65	0.662
		2017	207.70	1.136	-13.11 ▼	53.85	1.248	24.83	1.219	5.48	0.716
		2015	207.24	0.979	-14.12 ▼	54.05	1.364	22.91	1.185	3.74	0.497
		2013	205.76	1.144	-14.92 ▼	52.48	1.233	21.46	0.946	3.80	0.574
		2011	208.01	1.039	-12.01 ▼	53.29	1.459	20.61	0.919	3.46	0.462
		2009	207.65	1.367	-11.95 ▼	52.07	1.675	19.83	1.318	3.65	0.478
		2007	211.63	1.284	-8.03 ▼	57.55	1.469	23.96	1.579	4.58	0.734
		2005	206.79	1.272	-10.51 ▼	51.28	1.467	20.46	1.365	3.64	0.478

ASSESSMENT			AVERAGE SCORE			ACHIEVEMENT LEVELS					
Subject	Grade	Year	Score	SE	Difference from National public (NP)	At or above Basic	SE	At or above Proficient	SE	At Advanced	SE
		2003	203.19	1.530	-13.27 ▼	47.29	1.750	18.76	1.323	3.74	0.515
		2002	207.50	1.628	-9.30 ▼	51.78	2.164	21.30	1.272	3.64	0.554
		1998	204.87	1.374	-7.95 ▼	50.50	1.390	20.57	1.203	3.99	0.694
		1998 ¹	205.95	2.022	-9.49 ▼	51.56	2.013	21.90	1.477	3.87	0.916
		1994 ¹	204.54	1.726	-7.80 ▼	49.31	1.645	20.61	1.486	4.49	0.545
		1992 ¹	210.74	1.473	-4.09 ▼	54.55	1.674	22.67	1.672	3.70	0.735
Science (scale range 0–300)	4	2015	142.69	0.936	-10.07 ▼	65.05	1.278	24.58	1.253	#	0.181
		2009	141.67	1.149	-7.07 ▼	63.32	1.527	24.02	1.335	#	0.116
Writing (scale range 0–300)	4	2002	141.93	1.616	-10.74 ▼	77.48	1.564	17.56	1.300	0.83	0.322



Significantly higher than National public

Not significantly different from National public

Significantly lower than National public

Rounds to zero.

¹ Accommodations were not permitted for this assessment.

NOTE: DS = Department of Defense Education Activity (DoDEA). Statistical comparison results for the focal jurisdiction between the nation (public) or the large city (for district profile only) might be different from the similar types of comparisons that include more jurisdictions. See more information about procedures used when

https://nces.ed.gov/nationsreportcard/tdw/analysis/2000_2001/infer_multiplecompare_fdr.aspx making statistical comparisons. Detail may not sum to totals because of rounding. Some apparent differences between estimates may not be statistically significant.

SOURCE: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP) Assessment.

Attachment B

4-Year Graduation Rates

Cohort of 2018

	Number of HS Students Ever Enrolled for One or More Semesters During 4 Years of Cohort	
	N	%
All Students	26,288	100.0
Female	12,934	49.2
Male	13,354	50.8
Caucasian	6,403	24.4
African American	702	2.7
Hispanic	15,823	60.2
Asian	437	1.7
Native American	2,923	11.1
Economically Disadvantaged	16,852	64.1
Students with Disabilities	3,674	14.0
English Learners	8,093	30.8
Homeless	1,449	5.5
Non Hispanic	10,465	39.8
Active Duty	480	1.8
Foster Care	87	0.3
Migrant	86	0.3

To receive a rate a school must have one or more of these grade/year combinations:

9th graders in 2014-15
10th graders in 2015-16
11th graders in 2016-17
12th graders in 2017-18

Rates are masked (blanked) for subgroups with fewer than 10 student records.
District rates include locally-authorized charter schools and non-school locations.

Table is sorted by 1) state, 2) district, and 3) school aggregates.

Code	District	School	Group	Rate (%)
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Code	District	School	Group	Rate (%)
0	Statewide	All Schools	All Students	73.9
0	Statewide	All Schools	Female	77.2
0	Statewide	All Schools	Male	70.6
0	Statewide	All Schools	Caucasian	79.3
0	Statewide	All Schools	African American	69.2
0	Statewide	All Schools	Hispanic	73.1
0	Statewide	All Schools	Asian	86.0
0	Statewide	All Schools	Native American	65.8
0	Statewide	All Schools	Economically Disadvantaged	69.0
0	Statewide	All Schools	Students with Disabilities	65.6
0	Statewide	All Schools	English Learners	71.1
0	Statewide	All Schools	Homeless	52.5
0	Statewide	All Schools	Non Hispanic	75.1
0	Statewide	All Schools	Active Duty	76.5
0	Statewide	All Schools	Foster Care	46.0
0	Statewide	All Schools	Migrant	74.4
1000	Albuquerque Public Schools	Districtwide	All Students	69.6
1000	Albuquerque Public Schools	Districtwide	Female	72.9
1000	Albuquerque Public Schools	Districtwide	Male	66.4
1000	Albuquerque Public Schools	Districtwide	Caucasian	77.2
1000	Albuquerque Public Schools	Districtwide	African American	63.4
1000	Albuquerque Public Schools	Districtwide	Hispanic	67.9
1000	Albuquerque Public Schools	Districtwide	Asian	84.6
1000	Albuquerque Public Schools	Districtwide	Native American	54.2
1000	Albuquerque Public Schools	Districtwide	Economically Disadvantaged	62.3
1000	Albuquerque Public Schools	Districtwide	Students with Disabilities	65.2
1000	Albuquerque Public Schools	Districtwide	English Learners	67.8
1000	Albuquerque Public Schools	Districtwide	Homeless	48.1
1000	Albuquerque Public Schools	Districtwide	Non Hispanic	72.7
1000	Albuquerque Public Schools	Districtwide	Active Duty	69.0
1000	Albuquerque Public Schools	Districtwide	Foster Care	53.8
1006	Albuquerque Public Schools	Native American Community Academ	All Students	73.7
1006	Albuquerque Public Schools	Native American Community Academ	Female	73.6