

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

FILED
1st JUDICIAL DISTRICT COURT
Santa Fe County
6/28/2019 9:40 AM
STEPHEN T. PACHECO
CLERK OF THE COURT
Victoria Neal

LOUISE MARTINEZ, et al.,
Plaintiffs,

v.

No. D-101-CV-2014-00793

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

Consolidated with

WILHELMINA YAZZIE, et al.,
Plaintiffs,

v.

No. D-101-CV-2014-02224

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

YAZZIE PLAINTIFFS' NOTICE TO THE COURT OF CASE STATUS

On July 20, 2018, after hearing weeks of testimony and considering thousands of pages of evidence, this Court found that Defendants State of New Mexico, the Secretary of Education, and the Public Education Department failed New Mexico's public school students by not providing them with a uniform and sufficient education as mandated by the state constitution. This Court enjoined the Defendants to come into compliance by April 15, 2019, ordering the State:

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. Reforms to the current system of financing public education and managing schools should address the shortcomings of the current system by ensuring, as a part of that process, that every public school in New Mexico would have the resources necessary for providing the opportunity for a sufficient education for all at-risk students. The new scheme should include a system of accountability to measure whether the programs and services actually provide the opportunity for a sound basic education and to assure that the local districts are spending the funds provided in a way that efficiently and effectively meets the needs of at-risk students.

July 20, 2018 Memorandum Opinion and Order at 74 – 75.

Although the State was put on notice of this Order on July 20, 2018 and given until April 15, 2019, the State failed to enact the programs and funding necessary to come into compliance. The Legislature failed to sufficiently fund the education budget to ensure schools had sufficient resources for their at-risk students, and failed to enact the necessary multi-cultural bilingual curriculum, programs, and services found by the Court to be necessary for the State's at-risk students. Finally, it did not enact legislation to ensure that sufficient numbers of experienced, trained teachers are in the classrooms serving at-risk students.

During the 2019 legislative session, the state increased educator salaries a modest amount, increased the at-risk index a modest amount, made funding available for K-5 Plus, and created an extended learning program for some students, while also adding bits of additional money to some lines of the budget and taking it away from others. While this may sound like progress, the fundamental problem is that after paying for the required salary increases—which are still not high enough to compete with other professions within New Mexico or with teacher salaries in our neighboring states—the districts do not have money to provide necessary programs and services to at-risk students. In the end, the State increased total education funding only by an amount that does not even bring us back to 2008 levels when adjusted for inflation.

The Court's July 2018 Memorandum Opinion and Order made clear the broad, basic problems that needed to be addressed: instructional materials and access to technology; access to PreK, summer school, afterschool programs, reading specialists, smaller class sizes, ELL programming; funding to recruit and retain effective teachers, especially for special education, science and bilingual education; teacher training; putting highly effective teachers in schools with large numbers of at-risk students; and compliance with the Indian Education Act, Bilingual Multi-Cultural Education Act, and Hispanic Education Act.

The Court added significant details in its December 2018 Findings of Fact and Conclusions of Law, specifying how the State has not adequately invested in full day PreK, summer school, smaller class sizes, comprehensive reading programs, counselors, social workers, programming for English Learners, compliance with the Indian Education Act and the Bilingual Multi-cultural Education Act, culturally relevant curriculum, culturally competent programming, funding to pay for more teachers, and to address recruitment and retention problems, and funding for students with disabilities, transportation, instructional materials, and technology. The Court was quite clear about what needed to be done. But instead of doing these things, the Legislature again simply followed its old mode of operation: it took last year's budget, made some adjustments, with some steps forward and some steps backwards, and, in the end, left us with a patchwork system of education and inadequate funding that continues to fail our students.

I. Yazzie Plaintiffs' Remedy Platform

Since the Court's July 2018 Decision, the Yazzie Plaintiffs worked with a broad group of educators, tribal members, community groups, and school districts to craft a platform of actions necessary to transform New Mexico's educational system to address the needs of at-risk children in compliance with this Court's orders. *See* Exhibit I. This Platform presents both short-term remedies that the State could have implemented before the April 15, 2019 deadline set by the Court, as well as long-term remedies that the State could incorporate into an implementation plan for the future as the State increases its capacity. Plaintiffs worked with legislators to develop the necessary legislation that would have supported the programs and funding set forth in the Platform. Most of the programs and funding supported by Plaintiffs were blocked by legislative leaders and died in committees.

II. The Outcome of the 2019 Legislative Session

Since the end of the legislative session, the Yazzie Plaintiffs have met with the

superintendents and finance staff of all 23 focus districts. Plaintiffs tracked how each focus district implemented the legislation enacted in the 2019 session. As a result of this extensive research, Plaintiffs have determined that the outcome of the 2019 legislative session was anything but the “moonshot” as claimed by legislative leadership. Instead, after making required raises, districts are left with little or no money to implement additional programming, supports and services for at-risk students. Thus, while districts are pleased to give their teachers and staff much needed raises, they are left in the continued position of not being able to provide their students with a sufficient education as required by the constitution and this Court.

The main pieces of education legislation that passed during the 2019 session were SB 1 and HB 5—identical bills making modest adjustments to the funding formula and teacher salaries—combined with the budget bill, HB 2. Through this legislation, the Legislature made numerous changes to the funding formula and teacher salaries without accurate calculations of how they would play out district by district. While the Legislature changed the at-risk index in the state equalization guarantee (“SEG”) funding formula from a weighting of .13 to a weighting of .25 (which added \$113 million to the SEG and still provides less than 20% additional funding for at risk students), it also set a school age limit of 22 (subtracting money from the SEG), introduced a phase out of the school size adjustment (subtracting money from the SEG), and replaced rural isolation units with rural population units which also caused some districts, like Zuni, to lose money. At the same time, the State miscalculated and appropriated what it called the average amount of money that would be needed to cover a mandated 6% salary raise and an increase to teacher base level pay. But the amount added to the SEG for these salaries was far less than what was needed, resulting in almost all of the 23 focus districts having to spend their entire SEG increase (and in some cases, even more) on teacher salaries, leaving districts either cutting or struggling to maintain programs for at-risk students.

In addition, SB 1 and HB 5 failed to ensure that all students would have access to K-5 Plus and other extended learning time programs. With SB 1 and HB 5, the State funded K-5 Plus with \$119.9 million, which the State claims is enough to serve all Kindergarten through fifth grade students who are low-income or low performing and who are currently eligible for K-3 Plus to participate. The State also funded an Extended Learning Time Program to serve only one third of eligible students. But there were problems with the way both programs were enacted that have denied access to the vast majority of at-risk students. Although both programs are funded “above-the-line” and are part of the SEG, both programs are also voluntary and require districts to apply to PED for funding. By the time the law was passed and signed, districts had little time to consult with teachers and parents to determine whether the districts could apply for the programs. Many districts did not apply for funding because they determined that the money available would not cover the actual cost of the programs; the program requirements as enacted were too strict and inflexible; and the districts did not have time to determine whether they could implement the program, create a new schedule for schools, or receive commitments to participate from teachers and parents. Further, because both programs are funded on a per pupil basis, small districts cannot generate enough funding to implement them. Notably, the State was on notice from PED that only \$31.2 million of the \$119.9 million that the State set aside for K-5 Plus would be spent in FY 2020 since most districts would not be able to apply for or use the money under the requirements and time frame imposed. Thus, another \$88 million could and should have been directed at all the other unfunded programs for at-risk students.

At the same time, programs that used to be funded below-the-line—such as Reads to Lead, and Truancy/Drop-Out Prevention—were eliminated and districts were expected to fund them through their already completely-spent SEG allocation. The Legislature underfunded PreK for PED by about \$20 million (the additional amount necessary if the State were to make full-day

programs available to all four year-olds). Even with the limited money appropriated, many districts applied for full-day slots, resulting in a \$7 million shortfall. PED is unable to fund all of the district applications, let alone fund full-day slots for all four year-olds. No new multi-cultural and bilingual programs were enacted, and existing programs were not fully funded.

While some money was added to transportation and instructional materials, the money added was not based on an analysis of how much money districts actually needed to transport their students or purchase new materials, but instead seemed to be a modest general increase in these two funds. The amounts appropriated were not enough to meet the transportation and instructional materials needs of the 23 focus districts. For example, the State's failure to fully fund instructional materials for the new fiscal year has resulted in many districts being unable to purchase the new science curriculum that was to be adopted this year. And due to the continued lack of funding for transportation, many districts will have to pull money out of their SEG budget to cover transportation costs.

The six plaintiff school districts illustrate these fundamental issues:

1. Rio Rancho – Rio Rancho Public Schools' School Equalization Guarantee ("SEG") for 2019-20 is \$144 million dollars, approximately a \$14.5 million increase over last year's SEG. However, after funding the mandatory salary increases, additional teaching positions to ensure classroom sizes meet the statutory requirements and other mandatory obligations, Rio Rancho will only have approximately \$300,000 left in its 2019-20 SEG. While the district believes that teacher salaries are a priority as it helps recruit highly qualified teachers, the remaining amount is not enough to cover other essential costs. The district will need to continue to cover transportation costs through the operating budget, as the budget is short \$800,000. The district is also waiting to hear on its final allocation for instructional materials—another area in which funding has been insufficient. Rio Rancho is providing

the Extended Learning Program for 3,000 students for the 2019-20 school year but was interested in providing a more extensive program. The timeframe for submitting the plan made it impossible to create a plan that would benefit more students. In addition, Rio Rancho continues to be unable to expand its PreK program and is only able to offer a half-day program with an extensive waiting list, as there is not enough PreK funding to cover additional staff and insufficient facilities. Also, in the past, Rio Rancho had two reading instructional coaches that were covered by Reads to Lead money, but because that fund was cut, those positions also had to be cut. This means that in the end, after providing the Extended Learning Program to some of its students, and after giving the mandated pay raises, Rio Rancho continues to be unable to meet the needs of their at-risk population.

2. Santa Fe – Santa Fe Public Schools has an SEG allocation for 2019-20 of a little over \$111 million. This amounts to \$7.1 million more than last year. However, the mandated teacher salary increases cost \$6.7 million, and the increases in the district's fixed costs (insurance, benefits, etc.) will more than offset the SEG increase, requiring the district to actually have to make cuts to programs that serve at-risk students, such as reading programs and social services. PreK participation will drop from 395 full-day slots to 340 full-day slots. There is no additional funding for new bilingual, multi-cultural programs. Finally, Santa Fe applied for and received some additional funding for the K-5 Plus and Extended Learning Programs, but because of the short time allowed to apply for these funds this year and because of the difficulty in meeting the programs' requirements, not all children who would benefit from these programs will be enrolled in the coming year.
3. Gallup – Gallup will receive an additional \$18 million dollars for operational spending, which includes the funding for both K-5 Plus and the Extended Learning Program. After providing the mandated salary increases, Gallup continues to face massive shortages since

the district will not have any additional money for additional services and programs for at-risk students. Gallup applied for funding for 18 PreK teachers, but was granted enough money for only 10, meaning many children will go without. Likewise, Gallup continues to face large teacher shortages and it cannot recruit and retain teachers without some kind of salary differential to attract teachers to Gallup—a large rural district with many schools on reservation land meaning teachers who are not from the reservation cannot buy housing near the school. Gallup also continues to go without funding for language revitalization and culturally relevant materials and support—both required by the Indian Education Act—in a district where more than 80% of the students are Native American.

4. Cuba – For the 2019-2020 school year, Cuba Independent Schools’ SEG allocation is \$6,336,571.42, an increase of \$741,328.83 from the 2018-19 school year, which includes funding for K-5 Plus and the Extended Learning Program. After paying for mandatory salary increases and fixed costs, however, Cuba is left with about \$250,000 for at-risk students—the majority of whom are low-income, Native American, Hispanic, ELL, and students with disabilities. Making the most of its new revenue, Cuba hired a federal programs director—a position lost years ago due to funding cuts—and an IT staff to train district personnel. The remaining funds paid for developmental staff teams to address the socio-emotional needs of students and teams to revise the district’s curriculum. Cuba, however, still cannot afford to provide or expand at-risk student access to: culturally relevant materials, instructional resources, and professional development; bilingual programs; Indian Education programs; English language learner curriculum and materials; or ancillary services for students with disabilities. Further, for 2019-20, Cuba received only about \$140,000 in state bilingual funds, which is not enough to cover the salaries and benefits of its bilingual instructors—twice that amount is needed to cover K-12 materials in

Spanish and Navajo, bilingual and TESOL stipends, and more Native American Language and Culture instructors. Cuba, once again, must take operational funds from student programs and services to subsidize the basic costs of bus maintenance and gas, and the adoption of some K-12 instructional and supplemental materials.

5. Moriarty – Moriarty-Edgewood received an additional \$2.17 million dollars for its operational budget, going from \$17.8 million to \$19.9 million. Most of that increase is due to the increase in the at-risk unit, with Moriarty's at risk allocation going from \$792,000 to \$1.5 million. However, rather than adding programs, Moriarty is actually having to cut programs. All of the new money is being used to add three teachers—a requirement to work towards meeting statutory class size requirements—and raising salaries. Moriarty has to cut two reading interventionists and one reaching coach because of a loss of Reads to Lead below-the-line funding.
6. Lake Arthur – Lake Arthur only saw an increase in SEG of \$76,000 for the 2019-20 school year, bringing their total SEG for 2019-20 to \$1,847,964. With the increased cost in teacher and employee salaries, the district does not have any extra money to provide new programs or services to its at-risk students. Further, as a very small district, the money generated on a per pupil basis for K-5 Plus and Extended Learning will not cover the cost of the program. Thus, the district cannot provide these opportunities to its students. The district also does not have enough funding to pay for the science textbook adoption and has not adopted new instructional materials since 2016-17.

III. Yazzie and Martinez Plaintiffs are working with PED to develop an implementation plan.

Despite the record of insufficient remedial actions by the Legislature, both sets of Plaintiffs have undertaken to work with the Governor and PED officials to fashion a joint implementation

plan aimed at bringing the State into compliance with its constitutional duties as set forth by this Court. Our first meeting was on June 18, 2019 and the next is scheduled for July 1, 2019. The confidentiality of these discussions prevents us from detailing our joint approach. Plaintiffs will keep the Court apprised of progress by way of another notice to the Court in several weeks. Because of the anticipated cooperation of the parties in these discussions, Plaintiffs do not intend to seek discovery or file remedial motions at this time.

Of course, Plaintiffs will comply with any orders by the Court for additional information.

Respectfully submitted,

/s/ Gail Evans

Gail Evans (gail@nmpovertylaw.org)
1025 ½ Lomas NW
Albuquerque, New Mexico 87102
505-463-5293

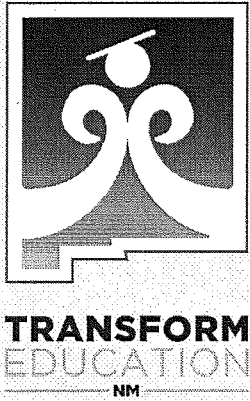
/s/ Preston Sanchez and Lauren Winkler

Preston Sanchez (preston@nmpovertylaw.org)
Lauren Winkler (lauren@nmpovertylaw.org)
New Mexico Center for Law and Poverty
924 Park Ave., SW, Suite C
Albuquerque, NM 87102
505-255-2840

/s/ Daniel Yohalem

Daniel Yohalem (DYohalem@aol.com)
1121 Paseo de Peralta
Santa Fe, NM 87501
505-983-9433

Attorneys for Yazzie Plaintiffs



Proposed Legislation to Transform Education

Platform of Proposed Remedies

To transform education for our students and meet the constitutional mandates of the Yazzie/Martinez education ruling, a Platform of Proposed Remedies and associated proposed legislation were developed by the plaintiffs in the Yazzie lawsuit, the Transform Education NM coalition, and hundreds of education and community leaders including educators, parents, tribal leaders, and experts.

Find the full platform at transformeducationnm.org/our-platform/

A Multicultural, Equitable Foundation

HB 159 – Multicultural Education Framework

Sponsored by Representatives Tomás E. Salazar, Christine Trujillo, and Derrick J. Lente

HB 159 establishes a multicultural, multilingual framework for public education that aligns the duties and powers of the New Mexico Indian Education Act, Hispanic Education Act and Bilingual Multicultural Education Act, to address the unique cultural and linguistic needs of New Mexico students.

HB 111 – Cultural and Linguistic Education Support

Sponsored by Representatives Tomás E. Salazar, Linda M. Trujillo, and Derrick J. Lente

HB 111 builds the capacity for Regional Education Cooperatives (RECs) to provide professional development for educators on culturally and linguistically responsive instruction. HB 111 would provide funding for RECs to contract with local experts to build their capacity to provide professional development in strategies and techniques to most effectively teach culturally and linguistically diverse learners.

HB 120 – Bilingual Teacher Preparation Act

Sponsored by Representatives Tomás E. Salazar, Christine Trujillo, Joy Garratt, and Derrick J. Lente

HB 120 will increase the amount of bilingual and TESOL-endorsed teachers in New Mexico by allowing for the Higher Education Department to provide grants for students seeking degrees and/or endorsements in bilingual/multicultural education or Teaching English to Speakers of Other Languages (TESOL), prioritizing current bilingual educational assistants, Bilingual Seal recipients, and speakers of indigenous languages.

HB 394 – Cultural & Linguistic Appropriate Education

Sponsored by Representative Tomás E. Salazar

Requires all teachers to participate in 10 hours annually of professional development related to culturally and linguistically diverse students. Requires all new teachers beginning in 2024 to obtain a TESOL or bilingual endorsement. Establishes a working group on the TESOL endorsement and associated professional development.

HB 250 – Native American Student Needs Assessments

Sponsored by Representative Derrick J. Lente

Requires a needs assessment to identify the programs and services Local Education Agencies (LEAs) must provide Native American students, including English Language Learners (ELLs), to help them graduate and be college & career ready.

HB 516 – American Indian Education Outcomes

Sponsored by Representatives Derrick J. Lente, Christine Trujillo, Linda Trujillo, Roberto J. Gonzales, Patricia A. Lundstrom

Appropriations to Institutions of Higher Education (IHEs) to improve outcomes for American Indian public school and higher education students and families.

Instruction, Pre-K and Social Service Programs

HB 121 – Social Services as Basic Sufficient Education

Sponsored by Representative Patricia Roybal Caballero

HB 121 provides all students in public schools with access to health, school counseling and behavioral health services. The bill gives the districts and schools flexibility for determining how to provide the services, including leveraging local community organizations, using the community schools model, and investing in school-based health centers.

HB 182 – Reading Initiative Literacy & Biliteracy

Sponsored by Representatives Linda Trujillo, Tomás E. Salazar, and Derrick J. Lente

HB 182 mandates comprehensive literacy and bi-literacy instruction that is culturally and linguistically relevant for all New Mexico students. The bill requires PED to develop a long-term plan for improving and sustaining literacy and biliteracy programs.

Bills for Universal Pre-K, Extended Learning Time and Increased Teacher Pay

Proposals to advance universal Pre-K, the K-5 Plus programs, and other extended learning opportunities must meet sufficiency standards including to provide funding to full capacity, offer culturally and linguistically relevant instruction, and adequate teacher pay, among other standards.

Funding

The public school budget must include sufficient funding for:

Multicultural and multilingual education: Increase funding for programs, curriculum, teacher development, and institutes of higher education to build the capacity of public schools to provide a culturally and linguistically responsive education.

Teacher Pay: Raise teacher salaries to \$45,000/\$55,000/\$65,000 (starting salaries by tier) and provide support for additional professional development days.

At-Risk Students: Ensure at-risk students are funded at 25% above non-at-risk students and base eligibility on the income level used for Free & Reduced Lunch Programs

Pre-K, K-3 Plus and Extended Learning: Increase funding to fully expand access to Pre-K, summer school and other extended learning opportunities.

Small school fund: Create \$10 million supplemental funding stream

Instructional Materials: Increase funding to provide basic materials and technology

Transportation: Increase funding to meet student needs.

www.transformeducationnm.org



/Transform Education NM

Transform Education NM is a coalition of education, tribal and community leaders advancing a new vision for our public education system and holding the state accountable to meeting the constitutional rights of our students.

Our platform is endorsed by:

New Mexico Center on Law and Poverty, College Horizons, Dual Language Education of NM, Native American Community Academy (NACA), NACA Inspired Schools Network (NISN), Learning Alliance NM, American Federation of Teachers New Mexico (AFT-NM), National Education Association NM (NEA-NM), NM School Boards Association, New Mexico Association for Bilingual Education (NMABE), New Mexico Voices for Children, Keres Children's Learning Center, Coalition for the Majority, Native American Budget & Policy Institute, New Mexico Education Action Alliance, CHI St. Joseph's Children, NGAGE NM, NM Dream Team/United We Dream, Southwest Organizing Project (SWOP), The Santa Fe Indian School Leadership Institute, The Sun Project, and current and former superintendents of school districts and plaintiff school districts (Cuba Independent School District, Gallup-McKinley County Schools, Lake Arthur Public Schools, Moriarty Edgewood School District, Rio Rancho Public Schools, Santa Fe Public Schools).

Name: _____

District: _____

Position: _____

Contact (phone/email): _____

What programs/funding does your district need to ensure that all students are college and career ready?

What are the challenges your district faces in securing the programs and funding that your at-risk students need?