

BACKGROUND INFORMATION

On July 20, 2018, the 1st Judicial District Court issued an initial decision and order on the consolidated *Yazzie v. New Mexico* and *Martinez v. New Mexico* education sufficiency lawsuit, which found New Mexico’s public education system failed to provide a sufficient education for at-risk, English language learner (ELL), Native American, and special education students. On December 20, 2018, the court released a 608-report detailing its final findings and conclusions of law in the consolidated lawsuits, and on February 14, 2019, the court issued its final judgement and order enjoining the state to “take immediate steps by April 15, 2019, 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.”

Yazzie and Martinez v. New Mexico

The court’s initial decision, findings, and final order in the *Yazzie* and *Martinez* case each reflected testimony where student outcomes, funding levels, financing methods, and department oversight were insufficient. The court used testimony on insufficient educational inputs (instructional materials, reasonable curricula, and teacher quality) and evidence of low and unequal student outputs (PARCC test scores, graduation rates, and college remediation rates) to conclude that New Mexico failed to provide a sufficient and uniform education to at-risk students.

The final order emphasized the duty of the state to provide a constitutionally-adequate education regardless of financial constraints and required reforms of the current public education financing system to ensure “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.” Additionally, the court ordered the state to establish “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.” The court stopped short of prescribing specific funding levels or policy changes but deferred those responsibilities to the legislative and executive branches instead, given their constitutional roles.

Plaintiff Requests. On September 28, 2018, the New Mexico Center on Law and Poverty (NMCLP), representing the *Yazzie* plaintiffs, and Mexican American Legal Defense and Educational Fund (MALDEF), representing the *Martinez* plaintiffs, released proposed remedies to the Legislative Education Study Committee (LESC) to address issues discussed in the court’s initial decision. The proposed remedies called for:

- Increased funding, monitoring, and training for bilingual, multicultural, and ELL programs;

AGENCY: Public Education Department (PED)

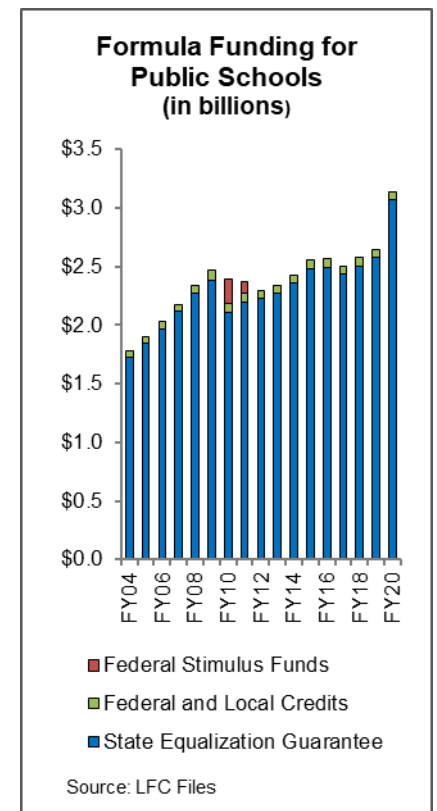
DATE: May 8, 2019

PURPOSE OF HEARING: FY20 School District Operating Budgets – Implementation Plan for Compliance with *Yazzie and Martinez v. New Mexico* Decision

WITNESS: Dr. Karen Trujillo, Secretary, PED

PREPARED BY: Sunny Liu, Senior Fiscal Analyst, LFC

EXPECTED OUTCOME: Informational



Inflation-based Budgeting

NMCLP and MALDEF requests included increased funding to adjust the SEG for inflation, beginning at the 2008 appropriation level. Adjusting prior-year appropriations for inflation sets an unsuitable standard against which to base legislative appropriations for any given year and would pose a significant challenge to effective governance.

Inflation based budgeting does not appropriately account for the incongruence between inflation and state revenues and could impair the state's ability to effectively respond to public needs, federal mandates, and changing circumstances (such as a decreased workload), which would undermine the constitutional responsibility of legislative prioritizing.

- Increased teacher pay, prerequisite qualifications, scholarships for recruitment, and professional development time;
- Changes to the teacher evaluation and school grading system;
- Reduced class sizes and class load waivers;
- Increased funding for prekindergarten, afterschool, K-3 Plus extended school year, and extended learning time programs (ELTP);
- Increased funding and monitoring of expenditures for at-risk and special education students;
- Increased funding and monitoring for culturally and linguistically responsive instructional materials;
- Changes to PED’s organizational structure and leadership qualifications;
- Increased funding to adjust the state equalization guarantee (SEG) for inflation, beginning at the 2008 appropriation level;
- Increased funding for social and health care services; and
- Increased collaboration with Hispanic and Indian stakeholder groups and compliance with the Hispanic Education Act, Indian Education Act, and Bilingual Multicultural Education Act.

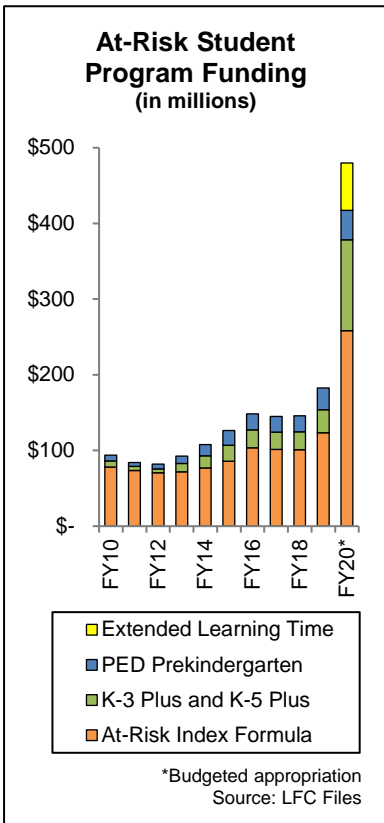
On December 11, 2018, NMCLP requested LFC to increase the FY20 public school budget by \$1 billion for the aforementioned items as well as increased funding for transportation, technology, and rural school costs. The court ruling and plaintiff requests both cited findings from previous LFC and LESC reports and studies, which recommended increased focus and funding for programs and practices that demonstrated evidence of improving educational outcomes.

Legislative Action

Prior LFC and LESC research identified improvements in student performance from early childhood interventions, extended learning time, and systematic reforms. However, outcomes were largely dependent on fidelity of programming and implementation. Additionally, declining student membership and growth of charter schools created inefficiencies in local resource allocation with no evidence of statewide improvement on standardized test scores and post-secondary outcomes. As such, legislative recommendations for statewide education reforms focused on addressing findings from the court, creating accountability for student outcomes, and leveraging all available resources efficiently.

Funding Formula Changes. On January 14, 2019, LFC and LESC jointly endorsed Senate Bill 1 and House Bill 5 (Chapters 206 and 207), which established evidence-based programs and policies to address issues mentioned in the court ruling. The bills increased the share of public school formula funding for at-risk students, expanded K-3 Plus extended school year programs to all elementary schools (K-5 Plus), established new extended learning time programs (ELTP), boosted educator salaries, increased department oversight of school spending and performance, increased funding for schools in rural areas, and culled funding formula components susceptible to manipulation.

Appropriations. During the 2019 legislative session, the Legislature adopted the General Appropriation Act of 2019, which included \$3 billion for the SEG distribution, an increase of \$486 million, or 19 percent, over the prior year. The majority of the SEG appropriation increase was used to fund changes enacted in Chapters 206 and 207, which included doubling the at-risk index factor (\$113 million), quadrupling the capacity of K-3 Plus programs (\$90 million), establishing an ELTP factor (\$63 million), and increasing school personnel pay (\$162 million).



Additionally, the 2019 GAA increased appropriations for instructional materials (\$44 million), teacher loan repayment (\$20 million), school transportation (\$13.6 million), prekindergarten programs (\$24.5 million), bilingual multicultural education programs (\$9.5 million), Indian and indigenous education initiatives (\$5.5 million), career and technical education programs (\$5 million), rural schools (\$5.2 million), community school and school health initiatives (\$3.4 million), accountability systems (\$3 million), and PED’s operating budget (\$2 million) to improve oversight and technical assistance capabilities.

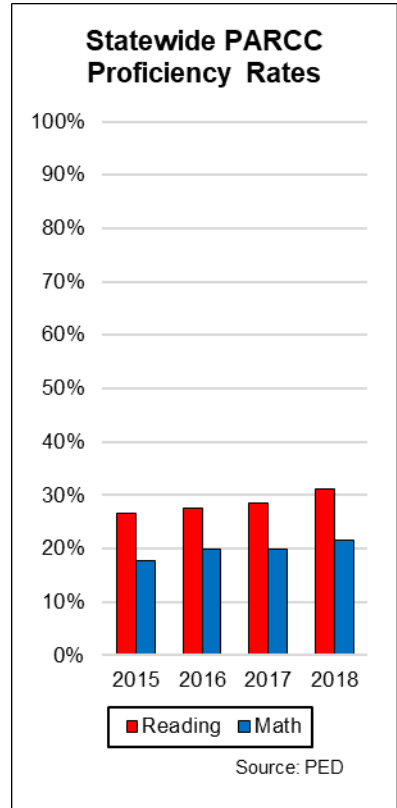
Separately, Chapter 277 (Senate Bill 280) appropriated funds from the public school capital outlay fund (PSCOF) to replace school district-owned school buses (\$33 million), support Impact Aid school district capital outlay projects (\$34 million), and expand prekindergarten classrooms (\$5 million).

Other Legislation. The court ruling on the *Yazzie* and *Martinez* education sufficiency case and guidance from the National Conference of State Legislatures’ report, *No Time to Lose*, fueled many of the education proposals during the legislative session, with multiple bills introduced to adjust the public school funding formula, increase funding for at-risk children, extend learning time, raise school personnel compensation, expand career and technical education programs, change accountability systems, and provide cultural and linguistic supports for students with various needs. The Legislature adopted and the governor signed several new laws relating to public schools, including:

- Chapter 12 (House Bill 227), which prohibits evaluation penalties on teachers for using up to 10 days of sick leave and any personal leave;
- Chapter 16 (House Bill 250), which requires PED to conduct a student needs assessment for Indian students and develop a framework to improve Indian student educational outcomes;
- Chapter 48 (Senate Bill 22), which creates an Early Childhood Education and Care Department to consolidate early childhood programs and jointly administer prekindergarten with PED;
- Chapter 114 (Senate Bill 437), which phases in a new statewide minimum wage of \$9.00 an hour in FY20;
- Chapter 200 (House Bill 111), which authorizes regional education cooperatives to jointly apply for funding to provide culturally and linguistically responsive support and training; and
- Chapter 249 (Senate Bill 229), which replaces the A-F school grading system with a new public school performance dashboard.

Executive Action

Accountability System Changes. On January 3, 2019, the governor directed PED to transition away from use of the PARCC test for student assessment and teacher evaluations. In response, PED announced the state would use the New Mexico Standards Based Assessment of Mathematics and English Language Arts for testing in FY19, a shorter assessment aligned to the New Mexico Common Core standards and delivered on the same testing platform as PARCC. In March and April of 2019, PED held stakeholder discussions across the state and convened a student success task force to gather input for transitioning to a new statewide assessment. This transition will mark the third test change for New Mexico in less than eight years, and a shift from using PARCC scores – which the court used as one determinant for insufficient educational outcomes.



More Rigorous Intervention (MRI)

PED replaced MRI designations from four elementary schools identified at Albuquerque and Dulce with the less-intensive “comprehensive support and improvement” (CSI) rating.

PED noted the change in school status was a departure from the policy position of the previous administration, which proposed school closure interventions for chronically failing schools.

Instead, PED will provide a new opportunity for federal funding at the four schools, allowing CSI schools to build on previously submitted MRI plans to improve school performance moving forward.

Efficacy of K-3 Plus

A 2015 independent evaluation of the K-3 Plus program by Utah State University found students enrolled in the program were more ready for kindergarten and outperformed their peers.

Participants continued to have higher levels of achievement four years later; however, increased gains were most significant when students in K-3 Plus remained with the same teacher during the regular school year.

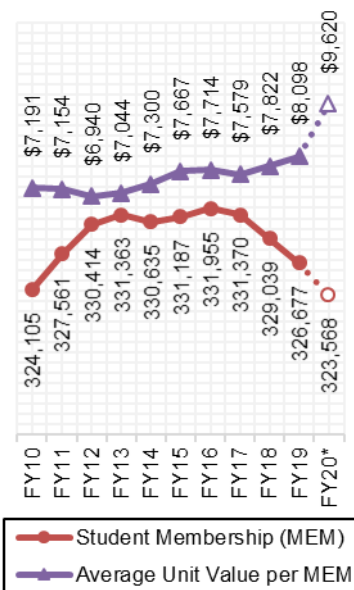
The court findings from the *Yazzie* and *Martinez* case noted that quality K-3 Plus programs could improve the performance of at-risk students but found PED failed to exercise its full authority over districts to require the use of funding for programs known to advance the educational opportunities for at-risk students.

On February 15, 2019, PED began seeking feedback on revisions to New Mexico’s Every Student Succeeds Act (ESSA) plan, which proposed to repeal the A-F school grades, eliminate the PARCC exam, remove school closure as a “more rigorous intervention” (MRI) for low-performing schools, remove value-added modeling for student growth calculations, and establish a new school rating system using school designations and a performance dashboard. PED submitted changes to the ESSA plan to the U.S. Department of Education in March of 2019 and is currently awaiting approval for the changes.

K-5 Plus and ELTP. On March 28, 2019, PED announced an FY20 “planning” unit value of \$4,565.41, a \$374.56 (or 8.9 percent) increase from the FY19 final unit value. This planning unit did not account for K-5 Plus or ELTP funding and units, which schools applied for separately. Effectively, the new planning unit value will allow PED to approve the enrollment of 87 thousand students for K-5 Plus programs (about 60 percent of elementary students) and 124 thousand students for ELTPs (about 38 percent of all students).

In signing Senate Bill 1 and House Bill 5 (Chapters 206 and 207), the governor vetoed the requirement for additional ELTP days to be “instructional”; however, PED informed districts and charters that ELTPs must have a minimum of 10 instructional days beyond their current year instructional day count for approval. In April, PED indicated preliminary requests for ELTPs exceeded the FY20 budgeted level, primarily due to Albuquerque Public Schools’ request to operate an ELTP districtwide. Initial requests for K-5 Plus programs, however, remained relatively flat statewide. School districts indicated the evidence-based provision requiring students to remain with the same teacher and the voluntary nature of the program drove their decision to not apply for K-5 Plus.

Student Membership and Unit Value Trends



*Projected figures.
Source: LFC Files

Policy Issues

To date, no party in the *Yazzie* and *Martinez* case has publicized a report to the court on the state’s efforts to address the final order. Despite efforts by the state to invest in programs and initiatives to remedy the court’s contentions, implementation by school districts and charter schools remains a challenge, and changes to the accountability system will impact determinations on the efficacy of the state’s investments in at-risk programs and interventions. With a heightened emphasis on ensuring improved student outcomes and evaluation of initiatives, questions remain on whether local governance and control over educational programming will continue to be an efficient or effective way to close the state’s student achievement gap.

These issues are further encircled by the challenges of a declining student population, increasing wage competitiveness in other states and professions, and changing state and federal accountability. Without coordinated statewide services and programs to ensure students have the opportunity to succeed from birth to post-education, systemic change may not happen expeditiously. Additionally, the state will need to address the volatility of revenue sources from extractive industries to sustain increased education spending levels and ensure that expenditures in other state sectors (i.e. healthcare, criminal justice, economic development, etc.) are leveraged, rather than reduced, to support the constitutional goal of providing a sufficient and uniform education for all students.