



Date: July 14, 2020

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Purpose: Review recent developments in legal proceedings for the consolidated *Martinez* and *Yazzie* lawsuit and hear from PED and education advocates on steps that have been taken or may be needed to meet the court's injunction.

Witnesses: Dr. Ryan Stewart, Secretary of Public Education; Dr. Patricia Jimenez-Lathem, Program Director, Transform Education NM

Expected Outcome: Informational

Consolidated *Martinez* and *Yazzie* Lawsuit Update

Background

On June 29, 2020, the 1st Judicial District Court in Santa Fe heard arguments on three motions filed in the consolidated *Martinez* and *Yazzie* lawsuit. The first motion heard by the court was made by the state and argued the court should find the state had met the requirements of the court's injunction and dismiss the case. The second motion heard, from the *Martinez* plaintiffs, argued the court should reopen discovery and order further proceedings to enforce the court's injunction. The third and final motion heard, from the *Yazzie* plaintiffs, asked the court to order the state to take specific steps to meet the terms of the court's injunction.

Following the district court's decision in the lawsuit, the executive chose not to appeal the court's decision, but the governor said the administration would "litigate aggressively" so that the court would not exercise long-term oversight of the state's public schools.

In response to the motions, Judge Matthew Wilson denied the state's motion to dismiss and the *Yazzie* plaintiffs' motion to compel and granted the *Martinez* plaintiffs' motion to establish a schedule of discovery. Judge Wilson noted there is not sufficient evidence to establish the state's compliance with the injunction or for the court to order the state to take additional steps. Instead, parties will begin a discovery process, which will provide further evidence relevant to the case since the court's ruling in 2018.

***Martinez* Plaintiffs' Motion for Schedule of Discovery and Enforcement Proceedings**

In October 2019, counsel for the *Martinez* plaintiffs filed a motion for the court to establish a schedule of discovery and, if necessary, further proceedings to enforce the Court's injunction. In their motion, the *Martinez* plaintiffs note the court's order allowed any party to file with the court a report about whether it believes the state is in compliance with the court's order. The *Martinez* plaintiffs argue they have reason to believe the state is not in compliance with the court's order; however, they argue the plaintiffs are without sufficient information to analyze whether the state has complied with the order.

The court's initial decision enjoined the state to "take immediate steps, by no later than 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." To ensure the implementation of long-term, comprehensive reforms, the court retained jurisdiction in the case.

In response to this motion, defense counsel, on behalf of the Public Education Department (PED) and the executive, argued that post-judgment discovery is not permitted for cases where the court has entered a final judgment; that the information sought by the plaintiffs is widely and publically available; and that the state is complying with the court's decision.

Following arguments on the motion, Judge Wilson disagreed with the defense that post-judgment discovery was not appropriate in this matter. He granted the *Martinez* plaintiffs' motion and directed the *Martinez* plaintiffs and the defense to submit a proposal for a discovery schedule in July.

***Yazzie* Plaintiffs' Motion to Order Defendants to Meet Constitutional Mandate**

The *Yazzie* plaintiffs have argued the education clause of the New Mexico constitution requires the state to fund programs outside the public education system, such as programs to provide rural broadband or address childhood hunger. For example, the *Yazzie* motion criticizes the failure to pass House Bill 670, which appropriated \$36 million to the Indian Affairs Department for libraries for Indian nations, tribes and pueblos, and House Bill 516, which appropriated \$10.3 million to a variety of programs at institutions of higher education, during the 2019 legislative session.

Also in October 2019, counsel for the *Yazzie* plaintiffs filed a motion for the court to order the state to meet its constitutional mandate. The *Yazzie* plaintiffs argued the state had not taken the immediate steps required by the court's initial injunction and that the state has not put in place a system that allows all students the opportunity to be college and career ready. The *Yazzie* plaintiffs noted the state has not provided the plaintiffs with a plan on how to come into compliance with the court's order, stating the state (i.e. PED) ended negotiations with the plaintiffs in July 2019.

In their motion, the plaintiffs argue the state fails to meet the requirements of the Indian Education Act, meet the needs of English learners, students with disabilities, and low-income students. Where programs were created or expanded by the Legislature in response to the findings of the lawsuit, the motion criticizes these decisions as half measures. Where the Legislature made significant increases, such as \$4 million in additional funding for the Indian Education Fund, representing a 218 percent increase, and \$10 million in additional funding for public school prekindergarten programs, plaintiffs argue these increases were insufficient to meet the court's injunction. The plaintiffs also criticized implementation of the K-5 Plus program, arguing the additional funding for K-5 Plus was a "meaningless gesture" because school districts could not meet the requirement to maintain the same teacher throughout the extended school year, even though research shows this program model leads to the largest student achievement gains. The newly created extended learning time program was called out for only funding a portion of students, rather than every at-risk student.

The *Yazzie* plaintiffs asked the court to require the state to implement specific policy proposals, including an order to, no later than March 15, 2020, increase funding for instructional

Although Judge Wilson scheduled arguments on four motions for the June 29th hearing, he only heard arguments on three motions. The fourth motion, from the *Martinez* plaintiffs, asked the court to strike the state's motion to dismiss. However, once Judge Wilson denied the state's motion to dismiss, the motion to strike became moot.



materials, transportation, technology, teacher professional development, teacher salaries, incentives for teachers to serve at-risk students, services for at-risk students, bilingual multicultural education programs, special education, extended learning opportunities, and prekindergarten programs. In addition, the Yazzie plaintiffs asked the court to order the state to submit, within 60 days, a comprehensive statewide plan that is agreeable to both sets of plaintiffs.

In response to the Yazzie plaintiffs' motion, defense counsel argued that the state had responded to the court's order, citing the significant increase in funding for public education and other policy and programmatic changes. Further, the defense argued that the order requested by the motion far exceeded the court's order. They noted the court found it was required to defer to the Legislature in matters of policymaking and the court had earlier rejected a nearly identical request when crafting its decision and order in 2018. The defense further characterized the requested order as an attempt to grant the plaintiffs' veto power over education reforms policymakers determine are necessary for the state's education system.

Following arguments on the motion, Judge Wilson denied, without prejudice, the Yazzie plaintiffs' motion, saying it was premature for him to decide on this motion. The judge stated that after the discovery period he could consider a similar motion.

Defense Motion for Order of Satisfaction of Injunction and Dismissal of Action

In March 2020, counsel for PED filed a motion for the court to find the state had satisfied the terms of the injunction and dismiss the case. PED's motion to dismiss relies on language in the court's order, which enjoined the state to, by April 15, 2019, "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." The basic argument that PED makes in the motion to dismiss is that the correct procedural decision for the court now is not whether the current education system meets the sufficiency and adequacy required of the Education Clause in the New Mexico Constitution, but rather has the state substantially complied with the injunction, which required immediate steps to have been taken by April 15, 2019. The defense motion argued the court had not intended for all educational programs to show results before determining compliance with the court's orders.

In their response to the motion to dismiss, counsel for the plaintiffs pointed to findings from the court that suggested long-term oversight by the court was required. Quoting the court's decision, the plaintiffs argued that the court cannot "rely on the good will of the defendants to comply with their duty. It is simply too easy to conserve financial resources at the expense of our constitutional resources."

In response to the motion to dismiss, counsel for the plaintiffs argued it is necessary for the court to deny the motion to ensure the state complied with the court's order. Plaintiffs' counsel argued

the state had not complied with the injunction, using arguments similar to those in favor of the other motions heard by the court. In addition, counsel for both sets of plaintiffs noted legislative action from the recent special session, which reduced appropriations for FY21 to ensure the state remained solvent, and responses to the recent public health emergency, which led to the closure of public schools. While defense counsel argued the need to respond to such emergencies demonstrates why the court should not second guess the policymaking branches, attorneys for the plaintiffs said this demonstrated the state did not take the court's injunction seriously. Plaintiffs also argued that to fully implement the court's decision the state needed to adopt a comprehensive statewide plan to ensure at-risk students receive a sufficient education. Counsel for the Yazzie plaintiffs argued that such a plan needed to look beyond the public education system to address the impacts poverty has on at-risk students.

Following arguments on the motion, Judge Wilson denied the state's motion, noting that the court's initial order required the state to take immediate steps but the analysis of the case did not end on the April 15 deadline and the court would retain jurisdiction until all students had access to an education to prepare them for college and career. Judge Wilson noted the state had taken steps to address the court's order; however, he said there was not sufficient evidence before the court for the state to demonstrate it had put in place a system to ensure that all students have access to an education that prepares them for college and career.

In the court's 2018 initial decision and order the court used student proficiency rates, graduation rates, and college remediation rates to determine students did not have access to a constitutionally sufficient system. While it is unclear what level of student test scores and graduation rates the court will accept as evidence New Mexico has a constitutionally sufficient system, the court's comment that it will ensure "all students" have access to a sufficient education raises the potential that the court will retain jurisdiction in perpetuity. Even in the state with the best standardized test scores, less than half of students are proficient in reading and math, according to the National Assessment of Education Progress, a nationally representative standards-based assessment. Further, even in states with the highest graduation rates, 9 percent of students do not graduate. As a result, even if New Mexico's results were to improve to these levels, it is unclear that this will be enough for the court to dismiss the case.