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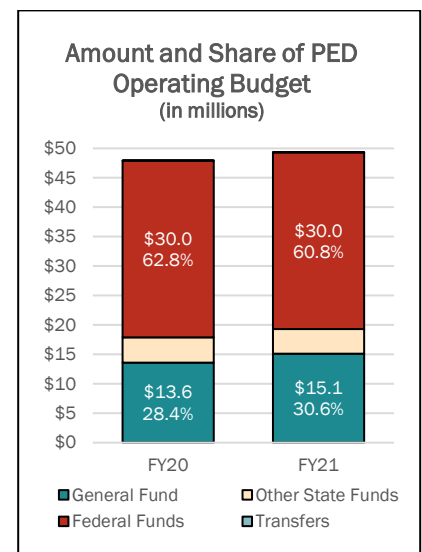
Purpose: Review the budget needs of the Public Education Department and the department's FY21 budget request

Witness: Ryan Stewart Ed.L.D., Secretary-Designate, Public Education Department

Expected Outcome: Understand how the department will utilize resources appropriated by the Legislature to ensure New Mexico students are receiving a sufficient education

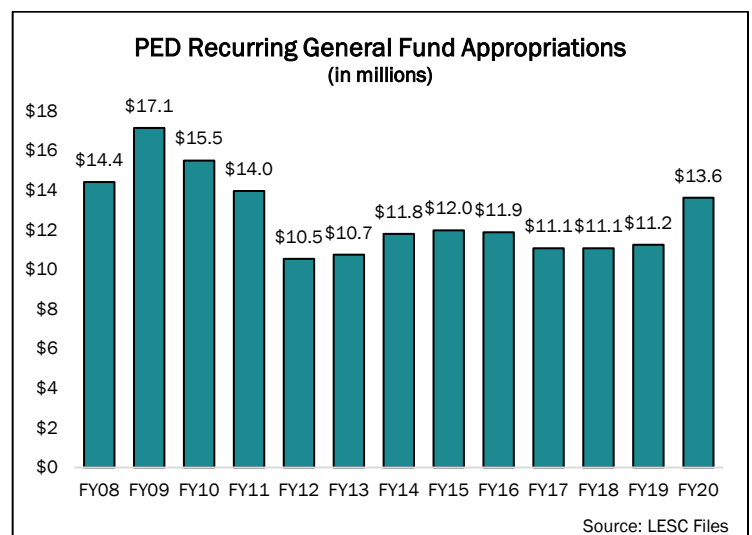
Public Education Department FY21 Operating Budget and Specials Request

As part of an effort to deliver all New Mexico students a constitutionally-guaranteed free and sufficient public education, federal, state, and local taxpayers invest more than \$4.3 billion per year in New Mexico's public schools. Under state law and the Constitution of the State of New Mexico, the Public Education Department (PED) and the secretary of public education are charged with oversight, management, and direction of all public schools in New Mexico. To oversee that system, the department has an operating budget of \$47.9 million in FY20, with more than 60 percent coming from the federal government. Despite an increase for FY20, general fund appropriations to PED's operating budget remain below the level appropriated in FY09. The district court's findings in the consolidated *Martinez* and *Yazzie* lawsuit have placed a renewed focus on the department's role in overseeing the education system to ensure student outcomes, though the department has only requested 10 additional staff for FY21 to improve compliance with state law, leaving the department well below the staffing levels of a decade ago.



Public Education Department Operating Budget Issues

For FY21, the department requested \$49.4 million, an increase of \$1.4 million, or 3 percent, from PED's FY20 operating budget. The request includes \$15.1 million in general fund revenue, \$30 million in federal revenue, and a \$45 thousand interagency transfer from the Human Services Department (HSD) for department staff related to health services and a school-based medical services program. The department projects it will receive \$4.2 million in other state funds, with \$1.6 million coming from educator licensure fees and \$2.6 million from administrative fees for state-chartered charter schools. The department requested a \$1.5 million increase in general fund appropriations, or 10.9 percent over FY20, and



projected a loss of \$58 thousand in other state funds revenue. The department’s request for federal funds and interagency transfer from HSD are flat.

PED’s total general fund request remains below the levels seen between FY08 and FY11. As a result, the department has turned to other revenue sources to fund department operations, including the 2 percent withheld from state-chartered charter schools’ state equalization guarantee distributions and to special program appropriations made to the department.

District Court Findings in the Consolidated *Martinez* and *Yazzie* Lawsuit

The 1st Judicial District Court’s ruling in the consolidated *Martinez* and *Yazzie* lawsuit found that PED had failed to exercise its power to monitor or audit school districts’ use of funds, that the state had failed to ensure the Indian Education Act and Bilingual Multicultural Education Act are being implemented, and that the state does not sufficiently monitor programs that provide services to English learners. In addition, the court found PED had failed to provide school districts with the technical assistance needed to ensure students are sufficiently educated.

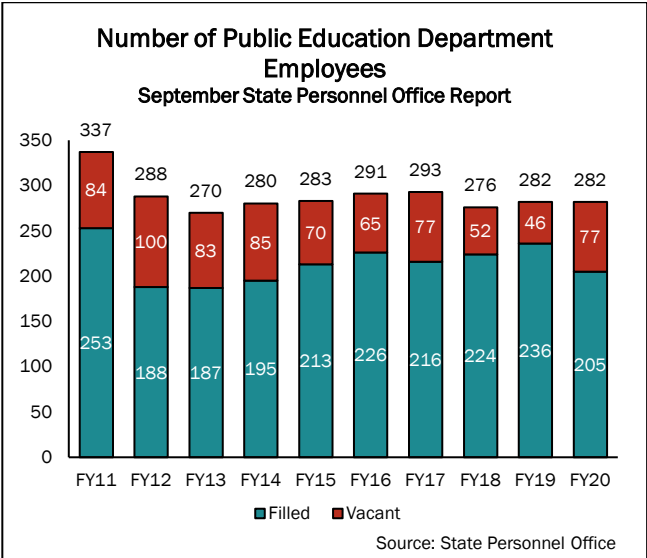
As a result of the court’s opinion, the department will need to prioritize resources to ensure school districts and charter schools are complying with state and federal laws where the court found the state was out of compliance. In defense of the state, PED argued that the department could not control school district spending or be responsible for the 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 are using state funding to provide programs to at-risk students.

The court’s finding also makes clear that state compliance with the state constitution is based on the educational outputs of the state’s education system—the results of student performance on standardized tests, graduation rates, and college remediation

rates. Because of this, PED will need to pay careful attention to the programs and services that have been proven to demonstrate results for students and increase support and oversight to ensure school districts and charter schools implement these programs with fidelity. Laws 2019, Chapters 206 and 207 (Senate Bill 1 and House Bill 5) enacted additional reporting and program review requirements to provide the department with additional tools to ensure school district and charter school compliance; however, the department will likely need additional staff to complete these reviews.

Department Staffing

The department reports it is not staffed at a level that will enable the department to achieve its goals and comply with the requirements of the consolidated



Martinez and *Yazzie* court decision. The number of FTE at PED remains below the number of staff a decade ago, when budget shortfalls led the department to request a 25 percent reduction in their general fund appropriation, which resulted in the department laying off 33 FTE through a self-imposed reduction in force. PED reported an average FTE of 221 in FY18 and FY19, compared with 281 in FY09. As of September 2019, the department's vacancy rate was 27 percent, higher than the 13.5 percent vacancy rate funded in FY20. Despite this drop in personnel, the activities of the department have increased with the creation of new charter schools and the expansion of special programs created outside the public school funding formula and administered directly by the department, often with the costly assistance of regional education cooperatives, due to limited capacity at the department.

PED's request for FY21 includes 10 new positions, which the department indicates are necessary due to new program requirements in the aftermath of the court decision in the consolidated *Martinez* and *Yazzie* lawsuit. However, information included with PED's request implies the department initially requested more than 10 new positions for FY21, but was asked by the Department of Finance and Administration to reduce its request. See **Attachment: Request for Additional Positions Overview**. These 10 new positions are:

- 1 FTE for the information technology division, to integrate financial data collection with student data collection;
- 1 FTE for the transportation bureau, to conduct school bus inspection, provide on-site transportation audits, and provide other technical assistance and training;
- 1 FTE for the audit bureau, to ensure compliance with the district court's finding in the consolidated *Martinez* and *Yazzie* lawsuit;
- 1 FTE for the school budget and finance analysis bureau, to ensure school districts are meeting the minimum statutory requirements of the Public School Finance Act;
- 1 FTE for the identity and transformation division, to provide technical assistance to school districts and promote compliance with the court's findings in the consolidated *Martinez* and *Yazzie* lawsuit;
- 1 FTE for the policy, research, and accountability division, to support research and evaluation projects;
- 1 FTE for the teaching, learning, and assessment division;
- 1 FTE for the academic engagement and student success division, to work to implement extended learning time programs enacted in the 2019 legislative session; and
- 2 FTE for the office of general counsel to perform professional investigative work for the educator ethics bureau.

In recent years, the Public Schools Insurance Authority has reported an increase in the number of claims related to sexual misconduct in New Mexico public schools. Additional resources for the educator ethics bureau could help prevent these incidents and improve the safety and security of public school students.

PED notes that based on the reduced request, the department will have limited capacity to meet some of the goals the department had hoped to meet in FY21.

PED Special Program Appropriations

Appropriations to PED for special programs or department initiatives — sometimes called “below-the-line” appropriations — remain an important source of operational

Although the previous administration did not submit special program appropriation requests with the department's operating budget, legislative staff requested the new administration provide this information with the department's operating budget. The former secretary agreed to submit these as required by law, but these requests were not included in the information received by legislative staff.

funds for the department; however, the department does not submit these requests with their operating budget. Under current law, state agencies must submit annual appropriation request for the succeeding fiscal year no later than the 1st day of September, although there is an exception in law for appropriations to the public school fund, for pupil transportation, and for instructional materials. Special program appropriations do not meet these exceptions, but PED has not typically submitted these requests by the 1st day of September.

Personal Services and Employee Benefits Expenses Not Included in PED's Operating Budget Request

Funding Source	FY19 OpBud	FY19 Actual	FY20 OpBud
Indian Education Fund	\$318,000	\$270,886	\$318,000
Public Prekindergarten Fund	\$220,000	\$190,416	\$230,000
Teachers Pursuing Excellence	\$180,000	\$180,000	\$180,000
Science, Technology, Engineering, Arts, and Math Initiatives	\$15,000	\$15,000	\$22,500
Early Reading Initiative	\$104,000	\$104,000	N/A
K3 Plus	\$176,251	\$176,251	N/A
Truancy and Dropout Prevention	\$165,000	\$165,000	N/A
Teacher and Administrator Evaluation System	\$75,000	\$75,000	
Principals Pursuing Excellence			\$85,000
School Based Health Centers	N/A	N/A	\$50,000
Indigenous Education Initiatives	N/A	N/A	\$164,800
Bilingual and Multicultural Education Support	N/A	N/A	\$298,500
Total	\$1,253,251	\$1,176,553	\$1,348,800

For FY20, the department budgeted \$1 million in special program appropriations for staff salaries and benefits, an increase over the FY19 operating budget. Additionally, the department uses a portion of the appropriation to the Indian education fund for staff in the Indian Education Division. As a result, the \$15.1 million general fund request likely understates the amount of general fund revenue the department will use for department operations.

While often used for the expenses of administering these programs, the department has in the past used some of these dollars to supplement department operations. For example, in June 2019 the department used \$144 thousand in remaining funds from six different special programs to purchase computer equipment for the department and in

Items marked "N/A" were not appropriated in that year.

Source: SHARE

FY19, the department spent \$81 thousand of special program funding on employee travel and training. Based on PED budget documents, this appears to be a significant percentage of the general fund dollars spent for these purposes. Were PED to shift these expenditures to the department's operating budget request, it would free up special program funding for PED to provide services to school districts and charter schools.

Administrative Fee for Charter School Support

Provisions of the public school code allow PED to withhold up to 2 percent of a state-chartered charter school's state equalization guarantee distributions for "administrative services" or "administrative support." Statute implies that these funds should be used to serve the 50 state-chartered charter schools. PED uses some of the administrative fee to fund expenses of the Public Education Commission (PEC), which authorizes state-chartered charter schools, and the Charter Schools Division (CSD), which conducts site visits to state-chartered charter schools and makes recommendations to the PEC. PED, however, indicates some of the funds it collects



are spread throughout the department, funding the work of other divisions that provide services to all public schools. Although these divisions provide services to state-chartered charter schools, PED funds these services for other public schools through the department's operating budget; withheld administrative fees could be prioritized to other areas, such as improving business practices in state-chartered charter school business offices.

State-chartered charter schools could benefit from additional support. In recent years, PED has recommended the closure of several state-chartered charter schools, in part due to financial and operational challenges faced by the schools. According to PED's FY18 audit, the department's independent auditor noted 18 material weaknesses in the financial statements of 11 state-chartered charter schools, with an additional 22 significant deficiency findings and 102 noncompliance findings. Three state-chartered charter schools – Alma D'Arte Charter School, Cariños de Los Niños, and School of Dreams Academy received disclaimed opinions, which means the independent auditor was unable to find evidence that the financial statements provided by the charter schools were accurate. One additional charter school, McCurdy Charter School, received a qualified opinion related to the school's athletics fund.

PED's 2 Percent Administrative Fees by Fiscal Year

Year	Projected	Actual
FY15	\$1,900.0	\$2,212.9
FY16	\$1,900.0	\$2,597.6
FY17	\$2,560.1	\$2,549.3
FY18	\$2,560.1	\$2,605.6
FY19	\$2,560.1	\$2,490.4
FY20*	\$2,639.6	

*Preliminary

Source: LESC Files

For FY21, the department projects \$2.6 million in administrative fees, which is the amount the department expects to receive from state-chartered charter schools in FY20 at the preliminary unit value. Because the amount received by state-chartered charter schools generally increases when the department sets the final unit value in January, it is likely actual FY20 revenue will exceed this projection. If the Legislature increases appropriations for public schools for FY21, it is likely the department will collect revenue in excess of the projected amount for FY21 and this estimate should be increased.

Of the \$2.6 million included in PED's request, the department requests \$2.1 million for PED staff salaries and benefits, \$290 thousand for contracts to support the work of CSD and PEC, and \$106 thousand for costs related to PEC meetings.

Educator Licensure Fund

PED projects it will collect \$1.55 million in educator licensure fees in FY21, down slightly from the \$1.58 million the department collected in FY19. In August, the department adopted a rule that raised individual licensure and endorsement fees by 20 percent or more, and it is unclear why the department is projecting it will receive less income with the higher fees. The department reports the educator licensure fund balance fell from \$1.6 million at the beginning of FY19 to \$1.3 million at the beginning of FY20, but the department expects licensure revenue to cover expenses in FY20 and the fund balance to remain flat at the end of the fiscal year.

Educator licensure fees are used to cover the costs of the PED's licensure bureau. For the past several years the Legislature has appropriated \$1 million in educator licensure fees for the department to provide training for the teacher and administrator evaluation system.

Data Collection and IT Systems

The Higher Education Department has applied for a federal grant to implement a preschool through postsecondary and workforce statewide longitudinal data system. According to the U.S. Department of Education, New Mexico is one of three states that has not received a federal grant to implement a statewide longitudinal data system. In 2009, PED requested \$4.4 million in federal funds for a statewide longitudinal data system, but the project never received federal funds.

In addition to the department's operating budget, PED submitted its FY21 information technology strategic plan. The department is requesting \$2.9 million for three IT projects through the Department of Information Technology's (DoIT) compliance and project management process. The department is proposing to develop a new grants management system, at a cost of \$1.6 million in FY21, improve data collection systems with educator preparation programs, at a cost of \$254 thousand in FY21, and modernize and implement a real-time data management system, at a cost of \$1.1 million in FY21.

For FY20, the Legislature funded \$909.6 thousand in IT projects for PED. The department has not always funded IT infrastructure projects through the DoIT process. Although the last administration applied for funds, the department often diverted money from special program appropriations for IT projects, in addition to private grant funding. PED's IT strategic plan notes that previous IT plans had failed to articulate a complete vision for a modernized data system, settling instead to attempt to implement tools by fitting them within the existing framework.

PED's request of \$1.1 million for its real-time data management system is part of a multi-year project, with \$651.5 thousand in initial planning funding allocated in FY20. PED expects the total project to cost \$4.5 million through FY27. PED's operating budget requested 1 additional FTE to support this project. The department notes the current system for collecting data from school districts and charter schools is labor intensive and the data validation process is prone to error. In addition, maintaining the statewide longitudinal data warehouse, the Student Teacher Accountability Reporting System (STARS), is expensive because PED does not own STARS and must pay annual support and maintenance fees for its use. Data is separated into different systems and stakeholders must sometimes submit duplicative information because finance, education, and licensure data are maintained in separate systems and these departments do not adequately communicate with each other. Stakeholders have long complained about the burdens associated with PED data collection efforts, and the department recognizes the need to modernize IT systems.



Request for Additional Positions Overview

Fiscal Year 2021

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. This request for additional outlines the resources necessary to bring this essential vision to reality for New Mexico's students and schools.

Rationale: The PED is undergoing a fundamental shift from a compliance organization to a leadership and support organization. This shift is occurring in the context of substantial new requirements for program development and oversight as a result of the Yazzie-Martinez lawsuit.

Goals by Department	
Department	Goals
Teaching, Learning, and Assessment	<ul style="list-style-type: none"> ● Become a national leader for innovative student assessment ● Ensure access to rigorous, culturally-relevant instructional materials for all students ● Create a thriving educator ecosystem to recruit, develop, and retain top educators
Academic Engagement and Student Success	<ul style="list-style-type: none"> ● Empower schools to serve as hubs of service and engaged community connections ● Provide students in need with the extended services needed to be academically successful ● Provide students with holistic behavioral health and social-emotional learning services
Identity, Equity, and Transformation	<ul style="list-style-type: none"> ● Support districts and charters to successfully implement support services for at-risk youth ● Develop robust systems for the effective and efficient monitoring of the significant programmatic investments being made for at-risk youth
Finance and Operations	<ul style="list-style-type: none"> ● Support districts and charters to align local resources with the state's vision and requirements for serving all students, especially those most at-risk ● Develop robust systems for the effective and efficient monitoring of the significant financial investments being made for at-risk youth ● Provide accurate and efficient financial processing services to school districts and charters ● Create robust workflow processing and data collection and reporting systems ● Enhance student transportation safety measures and training programs ● Ensure effective and efficient purchasing and spending practices at PED ● Enhance PED's talent recruitment, development, evaluation, and HR processing capabilities
Policy, Research, and Accountability	<ul style="list-style-type: none"> ● Develop a national model for the use of research and data to drive continuous improvement
General Counsel	<ul style="list-style-type: none"> ● Ensure compliance with the mandates of Yazzie-Martinez ● Develop robust systems for the efficient management of office workflow needs ● Actively ensure compliance with laws, rules, and regulations through efficient and through professional investigations

Currently, we are not staffed at a level that will enable us to achieve the goals above with the level of urgency required for our students. The people hired to fill positions requested here will be instrumental leaders in the accomplishment of each of the above goals.

Tradeoffs from Reduced FTE Request

At the request of DFA, PED is submitting a reduced request for additional positions. Based on this reduced request, the department will have limited capacity to effectively meet the goals listed in light gray below.

Goals by Department	
Department	Goals
Teaching, Learning, and Assessment	<ul style="list-style-type: none"> ☐ Become a national leader for innovative student assessment ● Ensure access to rigorous, culturally-relevant instructional materials for all students ☐ Create a thriving educator ecosystem to recruit, develop, and retain top educators
Academic Engagement and Student Success	<ul style="list-style-type: none"> ☐ Empower schools to serve as hubs of service and engaged community connections ● Provide students in need with the extended services needed to be academically successful ☐ Provide students with holistic behavioral health and social-emotional learning services
Identity, Equity, and Transformation	<ul style="list-style-type: none"> ☐ Support districts and charters to successfully implement support services for at-risk youth ☐ Develop robust systems for the effective and efficient monitoring of the significant programmatic investments being made for at-risk youth
Finance and Operations	<ul style="list-style-type: none"> ☐ Support districts and charters to align local resources with the state's vision and requirements for serving all students, especially those most at-risk ☐ Develop robust systems for the effective and efficient monitoring of the significant financial investments being made for at-risk youth ☐ Provide accurate and efficient financial processing services to school districts ☐ Create robust workflow processing and data collection and reporting systems ● Enhance student transportation safety measures and training programs ● Ensure effective and efficient purchasing and spending practices at PED ● Enhance PED's talent recruitment, development, evaluation, and HR processing capabilities
Policy, Research, and Accountability	<ul style="list-style-type: none"> ☐ Develop a national model for the use of research and data to drive continuous improvement
General Counsel	<ul style="list-style-type: none"> ☐ Ensure compliance with the mandates of Yazzie-Martinez ☐ Develop robust systems for the efficient management of office workflow needs ● Actively ensure compliance with laws, rules, and regulations through efficient and through professional investigations