

HOW TO DIRECT FUNDS AND RESOURCES TO AT-RISK STUDENTS

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This paper addresses several issues concerning the allocation and use of funds for New Mexico at-risk students: (1) the need to stipulate that State Equalization Guarantee (SEG) at-risk funds may be used only to support supplemental services for identified at-risk students, (2) the accountability provisions needed to verify that funds are so used, (3) shortcomings of the existing definitions and counts of at-risk students and options for improvement, and (4) implications for the distribution of at-risk funds to districts and schools.

Supplemental Resources for At-Risk Students

The *Yazzie/Martinez* court rulings and court orders of 2018/19 focused almost exclusively on the unmet needs of at-risk students. The court directed the state to improve and augment education services specifically for those students. Its definition of at-risk encompassed children from economically disadvantaged homes, English learners, and Native Americans. (The court also included students with disabilities, but because they are covered by separate legal and financial arrangements, I will not discuss them here.)

The reason for focusing on at-risk students is that being in an at-risk group—poor or with limited command of English—tends to impede learning. If at-risk students receive only the same resources as more-advantaged students, the at-risk students will, on average, learn less each year than their not-at-risk schoolmates, and each year will fall further behind. Even worse, when at-risk students are given inferior resources, such as less-qualified teachers—as too often seems to happen—that amplifies the learning gap. Resource inequality worsened greatly during the past pandemic year, which left many at-risk students with less access than better-off students to online or other alternatives to in-school instruction. The at-risk learning gap almost certainly widened.

The premise that channeling extra resources to at-risk students can compensate, at least in part, for learning impediments provided the rationale for the federal Title I compensatory education program and for the categorical programs or extra funding allotments for the disadvantaged that most states provide. The same premise provides the rationale for the extra weight that New Mexico's SEG school funding formula allows for each at-risk student. The state legislature has raised that extra weight sharply, more than tripling it since the *Yazzie* and *Martinez* lawsuits were filed in 2014. For school year 2021-22, it will yield about a 21 percent add-on to "base" funding for each student counted as at-risk for formula purposes, which adds up statewide to a total of around \$300 million.

The portion of funding generated by this extra SEG weight for at-risk students is often called “at-risk money,” but the label is misleading. This \$300 million is not, in fact, set aside for augmented services, or indeed any services, for at-risk students. Many state and district officials, adhering to long-established tradition, have continued to view all SEG funds, including those generated by the at-risk factor, as general-purpose revenue. Many still believe that each district and charter school should be free to allocate all its SEG funds according to its own priorities and, in particular, to decide how much, if any, to spend on extra services for at-risk students.

Two major developments in New Mexico should have—but have not—broken that tradition and changed perceptions of what at-risk dollars are for. First, of course, the *Yazzie/Martinez* rulings call unambiguously for the state to augment resources specifically for at-risk students. Second, the 2019 state legislature stipulated that money generated by the SEG at-risk factor should be used to support “specified” and “identified” services for at-risk students. It also required each district and school to report annually on how it has used at-risk funds to benefit at-risk students.

Even so, the idea has not yet sunk in that at-risk funds are no longer general-purpose revenue but must be set aside for identified at-risk students.¹ At the beginning of school year 2019-20, some districts openly announced that they would spend their at-risk money on across-the-board salary increases—which means for general purposes. Some state officials, including Public Education Department (PED) and Legislative Finance Committee (LFC) staff, not only condoned but even encouraged such uses of funds. Neither the court’s orders nor the 2019 legislative language sufficed to deter that behavior.

In my *Albuquerque Journal* op-ed of June 30, 2021 (attached), I suggested that we need an explicit statutory provision along these lines:

Funds generated by the SEG formula’s at-risk factor may be spent only for specific supplemental services for identified at-risk students, not for anything else,

“Supplemental” means, in this context, over and above whatever is provided by “regular” school programs for students not at risk. If such a directive were implemented, we would see more resources being provided and more money being spent per at-risk student than per student not at risk—that is, an observable tilting of the resource distribution in favor of the at-risk groups.

The Need for an Accountability System

Realistically, however, not even a strong and unambiguous statutory mandate would be self-enforcing. We all understand that money is fungible. Districts and schools have ample

¹ A major precedent for not treating all SEG money as general revenue was set by the legislature’s creation, in 2019, of the Extended Learning Time Program (ELTP) and the K-5 Plus program. Although both are funded through the SEG formula, districts need to apply for these funds for each participating school and may spend the funds only to lengthen the school year in accordance with each program’s rules.

opportunity to use nominally earmarked at-risk dollars to substitute for, or supplant, general-purpose money that would otherwise have been spent on at-risk students, thereby freeing up general funds for other uses. To ensure that at-risk funds really are *additive*—meaning that they really buy *extra* services for the intended target students—a state mandate would have to be backed up by effective accountability provisions.

That brings me back to *Yazzie/Martinez*. In her final order (February 14, 2019), Judge Singleton enjoined the state to create an accountability system to ensure that at-risk funds are being used to meet the needs of at-risk students. Today, two-and-a-half years later, no such system exists.² A full accountability system would include multiple components, many of which I am not competent to discuss—for instance, assessments of the appropriateness of curricula, materials, and methods that schools apply to their at-risk students and, of course, measurement of educational outcomes. I comment here only on the elements of an accountability system pertaining to funding and resource use.

The 2019 legislature, as I have already mentioned, directed each district and school to report its uses of at-risk funds. PED missed an opportunity to make that reporting requirement the core of a system for establishing accountability for how at-risk funds are spent. Instead, PED’s response was minimalist. Districts and schools were asked to report only how they had distributed their at-risk dollars among several broad “use” categories that had been offered only as examples in the 2019 legislation.³ Among the more detailed and precise items that PED did *not* ask schools to report were the following:

- Which specific at-risk students were served (e.g., 2nd and 3rd graders behind in reading)?
- How many such students were served?
- What specific services were provided (e.g., individual or small-group tutoring)?
- How much service did the students receive (e.g., contact hours per student)?
- Who were the service providers and how much were they paid?
- What other costs were incurred (materials, administrative and support costs, etc.)?
- What were the total costs and total costs per student served--and, especially, what were the net supplemental, or excess, costs of the services?

These are the types of information needed not just to confirm that each school is using at-risk money properly but also to relate educational outcomes (one hopes performance gains) to the treatments provided.

²The following statement about the unmet need for accountability appeared in Judge Singleton’s final order: “The 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, including not having appropriately exercised its statutory authority to ensure that districts are properly prioritizing and funding programs and services for at-risk students....”

³ 2019, HB5, Sec. 15D.

Along with reporting, there would have to be monitoring to verify proper resource use. The PED monitoring function would include reviewing the reports from 800-plus schools, interacting with districts and schools when questions arise, and overseeing corrective actions, including by conducting field visits and audits where necessary. PED does not now have resources to perform these functions. I am not sure it would want the assignment even if the needed additional funds were forthcoming. Ultimately, the legislature has to decide how much effort should be devoted to ensuring that at-risk students are properly served.

Summing up, two items essential to lessening the learning gap between at-risk and more-advantaged students are missing: (1) unambiguous stipulations that at-risk funds may be used only to provide supplemental services for at-risk students, and (2) an accountability system to ensure that the at-risk funds are being used appropriately to serve the intended beneficiaries.

Defining and Counting At-Risk Students

If the \$300 million in at-risk money available this year were used exclusively to provide supplemental services for at-risk students, how much extra support would that provide per at-risk student? The answer obviously depends on how many students are deemed at-risk.⁴ I now discuss how the state currently counts such students, why the counts are exaggerated and otherwise problematic, and how altered measures might improve the targeting of at-risk funds.

New Mexico now has two rival, conflicting definitions of the at-risk student population. One is the statutory definition used for many years in the SEG funding formula. The other is the definition set forth in the *Yazzie/Martinez* decision. The following display shows which students count as at-risk according to each definition. (Numbers in parentheses are the 2020-21 percentages, some estimated, of total student membership included in each category.)

SEG Formula Definition	Yazzie/Martinez Definition
Students from a family with income below the poverty line (28%)	Students from “economically disadvantaged homes,” as represented by eligibility for free or reduced-price lunch (~73%)
English learners (16%)	English learners (16%)
Mobile students (25%)	Native Americans (~10%)
TOTAL (69%, with no adjustment for double and triple counting)	TOTAL (not calculated but would be almost 100% without adjustment for duplication.)

Note that only a single category, English learners (ELs)—which happens to be well defined by state and federal regulations—is common to both definitions. All other categories differ between the two conceptions of “at risk.”

⁴ In my *Albuquerque Journal* op-ed, I offered the example that if at-risk funds were directed exclusively to the 40 percent of New Mexico students most in need (an arbitrary, illustrative percentage), the supplemental outlay for each such student would be about \$2,400, or about 30 percent more than base SEG funding per student not at risk.

The most important difference concerns economically disadvantaged students. The current SEG definition is based on Census Bureau estimates of the number of each district's students from a family with income below the federal poverty line. It is widely recognized as being too narrow, in that it leaves out many students from families with income above the poverty line but still low enough to impede learning. On the other hand, the court's definition, based (loosely) on eligibility for free or reduced-price school lunch (FRPL), is too broad. FRPL was once a usable crude proxy for low income, but it became useless for that purpose when the federal Community Eligibility Provisions (CEP) were introduced.⁵ Those provisions allow a school with at least 40 percent of "categorically eligible" students to count 100 percent of students as eligible, where "categorically eligible" refers to a student from a family enrolled in such means-tested federal programs as SNAP and TANF. Consequently, FRPL substantially overstates the size of the low-income group. The upshot is that neither the Census poverty measure nor the FRPL measure cited by the court provides a good count of low-income students.

Fortunately, two alternative indicators of low income have become available. One is the just-mentioned count of categorically eligible students, which is produced, per federal mandate, for every district and school. The other is the state's new Family Income Index (FII), which is based mainly on data from individual state income tax returns, and which is also available for both districts and schools. The 2021 legislature appropriated a modest sum to be distributed—as a kind of test—to certain schools, based on each school's FII score.⁶ It appears that either of these new indicators would produce more valid estimates of the statewide percentage of low-income students—probably in the 40-50 percent range—than either the Census poverty count or FRPL.

The category in the SEG at-risk definition that has no counterpart in the court's definition is "mobile student." This SEG component—which is almost as large as the poverty count—is conceptually and technically unsound for multiple reasons that I cannot cover here. More important, it has not been treated as a relevant at-risk factor in any of the submissions to the court by *Yazzie/Martinez* plaintiffs and defendants. I have not found any other state with a mobility formula factor like New Mexico's. Eliminating the mobility category should be considered; but if there is a reason to consider mobility when allocating SEG funds, there are better ways of doing it. One method, used in a 2017 LFC study, is to identify a student as mobile based on the number of schools that student has attended.⁷ Another method is not to try to identify individual mobile students at all, but rather to calculate a district or school student turnover rate from enrollment data. Either approach would be preferable to the one now used.

⁵ The shortcomings of FRPL as a measure of low income are discussed in a report of the Legislative Education Study Committee: Joseph Simon, "Alternative methods for including at-risk students in the at-risk index," November 2020, and in an attached Urban Institute report, Erica Greenberg, Kristin Blagg, and Macy Rainer, "Measuring student poverty," December 2019.

⁶ Family Income Index Act, 2021 SB17. School-by-school FII scores are presented in an attachment to the Fiscal Impact Report on SB17, prepared by LFC analyst Sunny Liu, March 9, 2021.

⁷ New Mexico Legislative Finance Committee, *Program Evaluation: Longitudinal Student Performance Analysis—Impact of School, Teacher and Program Interventions*, Report #17-04, November 2017.

The at-risk category included in the court’s definition but not in the SEG definition is Native Americans. Because Native Americans are not now represented in the SEG funding formula, they do not generate any extra SEG funds. Proposals have been advanced to include them in the at-risk count—as, e.g., in the recently issued Tribal Remedy Framework. Questions arise, however, about the kinds of supplemental services that this proposed additional funding would support and by whom such services would be provided and controlled. I touch on some of these in the following section. One thing certain, though, is that adding a Native American at-risk category would produce a great deal of overlap among categories, as many Native American students also are either low-income, English learners, or both.

This mention of overlaps points to a major concern about the total at-risk counts. The 69-percent statewide at-risk total calculated according to the SEG definition is inflated by massive double and triple counting. By law, the students in each at-risk category are counted separately, and the results for the three categories are added together without taking account of duplication. A poor student who is also an English learner and “mobile” will be counted three times. No unduplicated count can be produced with the present indicators because the Census poverty numbers are district-level estimates, not available by school or for individuals. In contrast, because the new low-income measures are available for individual students, they could be used to produce unduplicated counts. An unduplicated statewide count would undoubtedly be much lower than 69 percent—probably in the 40 to 50 percent range (depending on how the mobile category is treated).

The court’s definition yields an exaggerated at-risk total for a different reason—namely, that its main component is the count of FRPL-eligible students. About 73 percent of all New Mexico students are FRPL-eligible under the current CEP rules, so when you add to that figure 16 percent ELs and 10 percent Native Americans, you reach nearly 100 percent. The figure one hears more often, though, is that about 80 percent of New Mexico students are at risk, so whoever came up with the 80-percent number must have recognized that most ELs and Native Americans also are FRPL-eligible. Nevertheless, because FRPL grossly overestimates the low-income count, the 80 percent figure probably is still 20 or more percentage points too high.

I offer this thought concerning the inflated at-risk totals: *Saying that nearly everyone is at risk is essentially equivalent to saying no one is at risk.* An at-risk definition that covers nearly all students—whether 80 percent or nearly 100 percent—is useless for targeting resources. It would make no sense, for example, to suggest that in a supposedly typical district with 80 percent of students at risk, the 20 percent not at risk should receive less service per student than the other 80 percent. An exaggerated at-risk count spreads limited at-risk funds too widely rather than directing them to the places and students most in need.

The flaws in the statutory at-risk factor have been well known for years, but recent developments have highlighted the need for revision. One reason to act is that the statutory definition clashes with the court’s. To my knowledge, there has been no state initiative to resolve this conflict. A

second reason is that we now have better measures of the most important at-risk category, economic disadvantage. A third is that the amount of at-risk money in question has sharply increased. When the *Yazzie* lawsuit was filed in 2014, extra funding per counted at-risk student was only about six percent, so the details of measurement were not consequential. Now at-risk funds have more than tripled, so distributing them appropriately matters more. The time has come, I believe, to devise a formula that corrects old flaws and better reflects the current situation.

Allocation to Districts, Schools, and Students

Apart from the conflict with the court's definition, there are the problems I have mentioned with the individual factors in the current at-risk definition, plus issues concerning the way the factors are combined in the SEG formula. But devising a new formula is not something that can be done in the abstract. The process has to include empirical analysis of the effects of possible changes on overall state funding and the distribution of funds among districts and schools. I do not presume, therefore, to propose a new formula. I do offer below some suggestions about features that an improved formula arguably should have and about alternatives that seem to warrant consideration.

Disaggregation and differential weighting. The existing SEG formula adds together counts of three different kinds of at-risk students and then applies a single extra weight to the resulting total. I do not know what motivated this design, but it does not seem reasonable. Why should we assume that the extra funding required to help a Spanish-speaking student improve her English is the same as that needed to overcome the effects of another student's extreme poverty? It would be better to include each at-risk category separately in the SEG formula, each with its own appropriate weight. Doing so would improve the match between funding and needs and, as a side benefit, make the SEG calculations more transparent.

Replacement of the Census poverty factor. For reasons already discussed, the Census poverty count should be replaced with one of the newly available low-income measures. The Family Income Index, if it proves satisfactory in the ongoing trial run, appears to be the leading candidate. This index lends itself to differential weighting for different degrees of poverty. Also, because the index is available by school, it could support school-level rather than district-level allocation of funds (see below).

Elimination of double and triple counting. Because both the FII data and the data on categorically eligible students pertain to individual students, PED could use them to identify students who fall into more than one at-risk category and thus to arrive at an unduplicated count for each district or school. This does not mean that the extra learning difficulties associated with having multiple at-risk conditions should be ignored. A student who is both poor and an English learner might be assigned, say, a formula weight 25 percent larger—but not double—that of a

student who is only poor. A few formulas used by other states do, in fact, adjust in this manner for students with multiple at-risk conditions.

Differentiation by level of income. The Family Income Index counts the percentages of each school's (or each district's) students who fall into income brackets labelled extremely low, very low, low, moderate, and above-average. Using these data, different at-risk weights could be assigned to, say, students who fall into each of the two or three lowest brackets, with the greatest weight assigned, of course, to those in the "extremely low" category. This would further tilt the distribution of at-risk money towards the most impoverished places.

Addition of a poverty concentration factor. Another way to favor high-poverty places, now used in a few state formulas, is to introduce a poverty concentration factor. Such a factor directs more funding per poor student to districts or schools with high percentages of poor students than to those with lower percentages. For instance, one might set a threshold, say 60 percent poor, above which the SEG allotment per poor student would increase.

Elimination or replacement of the mobility factor. The present mobility factor should be either discarded or replaced with a conceptually sounder measure. One option—the method used in the LFC study I cited—is to identify students who have attended more than the number of schools normal for their grade level—e.g., a fifth grader who is now attending his third elementary school. Another is not to identify individual mobile students at all but instead to use enrollment and membership data to calculate a district's or a school's student turnover rate.

Inclusion of Native Americans. Most Native American students probably qualify as at-risk based on low income and/or being an English learner. An improved low-income measure, especially one with a concentration factor, would direct more resources to districts serving large numbers of Native Americans, such as Gallup-McKinley and Zuni. The question remains, though, of whether there should be an additional funding increment for Native Americans, on top of the allocations based on the other at-risk factors. I am not prepared to offer an opinion on this matter, but I can mention some relevant considerations: (1) the mandates in the court rulings and the Indian Education Act to provide culturally and linguistically responsive services, (2) the challenging geographies of some tribal areas, affecting, e.g., costs of transportation and internet infrastructure, and (3) a possible collaborative role for tribal authorities in designing and even providing services, as the Tribal Remedy Framework proposes. The latter idea seems to imply some direct funding of tribal agencies, which might necessitate adding a special funding channel to the existing SEG mechanism.

Allocation to individual schools. Using an indicator like the FII, the state could allocate at-risk funds directly to individual schools. Would this be a good idea? On the plus side, it would promote fair treatment of all a district's schools and make the allocation of at-risk money transparent. A possible negative is that it could lead to a new form of supplanting. District officials, seeing a school receive a large allotment of at-risk funds, might construe that to indicate less need for general funding and so to cut back that school's "regular" funding

accordingly. Additional accountability provisions would be needed to ensure that each school receives its full and fair share of regular district funding, so that the school’s direct at-risk allotments are truly supplemental. Direct allocation to schools also implies separation of the distribution of at-risk funds from the rest of the SEG funding mechanism. This would make the overall funding system more complex, but, on the positive side, it might underscore that at-risk money is “special” and provided only to support supplemental services for at-risk students.

Allocation within schools. The measures used to allocate at-risk funds among districts and schools generally would not be relevant—with one important exception—for deciding which specific children within a school should receive supplemental at-risk services. The exception concerns English learners, who are supposed to be counted as at-risk and selected for services based on essentially the same criteria. Otherwise, it seems clear that educational criteria—not, for instance, whether a particular child is poor—should control the within-school selection of students for extra services. At the elementary level, this might mean selecting students seriously behind in reading. At the high school level, it might mean selecting students in danger of dropping out. Not all poor students are poor learners and not all better-off students are good learners; so, whether a student is included in a district’s or a school’s at-risk count should not determine what supplemental services that student gets. To my knowledge, the within-school allocation of at-risk resources has received little attention at the state level. I am not aware of statutory or regulatory provisions that stipulate, for example, whether a district must serve all at-risk students, at-risk students at all grade levels, or at-risk students in all its schools, and certainly not which specific learning difficulties should accord a student priority access to supplemental services. Providing districts with guidelines on these matters is one of the tasks PED may want to undertake when (or if) it constructs the accountability system called for by the court.

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Finally, I want to acknowledge an issue I have deliberately avoided addressing thus far: what level of supplemental funding is needed to provide adequate support for New Mexico’s at-risk students. This, of course, is a question that policymakers must answer, and they must do so, unfortunately, with only limited guidance from research. Innumerable studies have been conducted over the last 50 years of relationships between school funding (or resources) and educational outcomes, many of which focus specifically on low-income students. The results have differed widely. Generally, the lower-bound estimates are that 25 percent extra funding might make a significant difference, but some studies have estimated that supplements of 50 to 100 percent would be needed to achieve adequate results. The *Yazzie* plaintiffs, in various submissions to the court and the legislature, have called for setting an SEG at-risk weight that would produce at least 25 percent extra funding for each student counted as at-risk according to the statutory definition. Current SEG at-risk funding falls short of that, but only by about 20 percent. We will have no way of finding out, though, what results a 25-percent or any other funding increment might produce until one condition is met: that districts and schools cease treating at-risk dollars as general revenue and instead spend them exclusively on supplemental services for at-risk students.

Attachment: Albuquerque Journal op-ed of June 30, 2021

NM needs to direct dollars to its most-at-risk students

By [Stephen M. Barro / Retired Public Finance Economist, Expert Witness For Plaintiffs In Yazzie/Martinez School Finance Case](#)

Wednesday, June 30th, 2021 at 12:02am

New Mexico's students suffered immense educational setbacks during this past pandemic year. Most had no in-person schooling from March 2020 until April's reopening, and many had none through all of school year 2020-21. Those with good internet connections and adequate support at home received lessons online, but generally fewer instructional hours and less effective instruction than offered in regular classrooms. The resulting learning losses remain unmeasured, but many students probably have fallen more than a half year behind, while those without internet or other links to school – an estimated one-fifth – will have lost a full year or more.

Whatever the damage may have been on average, it has been more severe for low-income, English-learner and Native American students – the groups deemed “at risk.” Such students likely have had less access to, and less benefit from, online or hybrid schooling than their more-advantaged peers. Consequently, the education gaps between at-risk and not-at-risk students, already large pre-pandemic, have undoubtedly worsened.

Responding to the Yazzie/Martinez court rulings that at-risk students have been denied a sufficient education, the 2019 and 2020 Legislatures sharply increased the extra allotment per at-risk student in the state's school funding formula. Had that at-risk money been devoted to serving the at-risk groups, the performance gap might have started to shrink; but many school districts, financially stressed, chose instead – and were allowed by the state – to use at-risk dollars for such general purposes as across-the-board salary increases. Consequently, the at-risk learning gap was not addressed but was left to widen as the pandemic unfolded.

The dual problems of lost instructional time and relative worsening of conditions for at-risk students call for corresponding dual remedies: making up time and augmenting services for students with extra needs. New Mexico already has two programs for adding instructional time: the Extended Learning Time Program (ELTP), which lengthens the school calendar by 10 days, and K-5 Plus, which supports 25 extra days for participating elementary students. But these programs are optional and have been notably undersubscribed. K-5 Plus will serve only a minor fraction of elementary students in 2021-22. The 2021 Legislature declined to make even the 10-day ELTP extension mandatory. A more potent catch-up strategy – though for now a missed opportunity – would have been to make both the 10-day and 25-day extensions universal, thereby shifting temporarily from a nine-month to an almost eleven-month school year.

But just recouping lost time would not remediate the now-worsened at-risk gap. To reduce that gap, the state would have to direct substantial supplemental services specifically to students at risk – that is, more intensive, better-funded services than regular school programs provide to students not at risk. These extra services might include, for example, extensive individual or small-group tutoring. The already designated at-risk funds could cover the costs of such services if the state, first, stipulated definitively that those funds may be spent only on supplemental services for identified at-risk students, not for anything else; and second, narrowed the present overbroad definition of “at risk,” which embraces 80% of all students, to focus on students with the greatest unmet needs. To illustrate, concentrating the \$300-plus million at-risk dollars appropriated for 2021-22 on, say, the 40% of students most in need would provide over \$2,400 extra, on average, for each such student – more than a 30% add-on to “regular” per-student spending. Such an increment, if sustained, could significantly boost performance in the educationally most challenged groups. Tilting the distribution of resources toward at-risk students in this manner is the key to lessening the learning disparities that preceded and were exacerbated by the pandemic.

The views expressed are solely the author’s and do not necessarily reflect those of the Yazzie/Martinez plaintiffs.