

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

WILHELMINA YAZZIE, Individually and as next friend of her minor child, XAVIER NEZ; and JAMES MARTINEZ, Individually and as next friend of his minor child, MARCOS MARTINEZ; PATRICK BARRETT, Individually and as next friend of his minor child, GENESIS CANUTO; RODNEY BOWE, Individually and as next friend of his minor children, JUSTUS BOWE and SOLOMON BOWE; MARSHA LENO, Individually and as next friend of her minor child, ANDREA LENO; MELANIE PATRICIO, Individually and as next friend of her minor children, FELISHA PATRICIO, KYLIE PATRICIO, JUANITA PATRICIO, TOBIEMAE PATRICIO, and HAILY PATRICIO; GLORIA SANABRIA, Individually and as next friend of her minor children JULIO DELGADO, DANIEL DELGADO, and VERONICA DELGADO; ELIZABETH DOMINGUEZ and ANDREW DOMINGUEZ, Individually and as next friends of their minor children ANTHONY GUAJARDO, JOHNATHAN GUAJARDO, ANDREW DOMINGUEZ and ABLE DOMINGUEZ; LONNIE FRESQUEZ, Individually and as next friend of her minor child, DYLANN SANCHEZ; BERNANRD MADALENA, Individually and as next friend of his minor child, JUSTIN MADALENA; GALLUP/MCKINLEY COUNTY SCHOOL DISTRICT; SANTA FE PUBLIC SCHOOLS BOARD OF EDUCATION; MORIARTY-EDGEWOOD SCHOOL DISTRICT BOARD OF EDUCATION, RIO RANCHO PUBLIC SCHOOLS BOARD OF EDUCATION; CUBA INDEPENDENT SCHOOLS BOARD OF EDUCATION; and LAKE ARTHUR MUNICIPAL SCHOOLS BOARD OF EDUCATION.

Plaintiffs

vs.

D-101-CV-2014-02224

THE STATE OF NEW MEXICO;
HANNA SKANDERA, SECRETARY-DESIGNATE
OF THE NEW MEXICO PUBLIC EDUCATION
DEPARTMENT; and THE NEW MEXICO PUBLIC

EDUCATION DEPARTMENT,

Defendants.

**SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE
RELIEF TO BRING NEW MEXICO'S PUBLIC SCHOOLS INTO
COMPLIANCE WITH THE EDUCATIONAL MANDATE OF THE NEW MEXICO STATE
CONSTITUTION**

Plaintiffs, through their undersigned counsel, bring this action for declaratory and injunctive relief, pursuant to Article XII, §1 of the New Mexico Constitution and the New Mexico Declaratory Judgment Act, NMSA 1978, §§44-6-1 to 44-6-15 (1975), and the Court's inherent power in equity, against the State of New Mexico, the New Mexico Public Education Department, and its Secretary-Designate. Plaintiffs are parents of children of public schools in New Mexico and several New Mexico school district boards. Plaintiffs seek a Declaratory Judgment that the State of New Mexico, the New Mexico Public Education Department ("PED") and the Secretary-Designate of the PED ("Secretary") have failed to provide a uniform system of free public schools sufficient for the education of all the children of school age as mandated by the New Mexico State Constitution. Plaintiffs also seek an order enjoining the Defendants to develop and implement a public school budget that will provide a constitutionally sufficient education to all school age children and ensure that the money is distributed equitably, including expenditures on economically disadvantaged and English language learner students, so as to provide all school age children with a sufficient and uniform education.

INTRODUCTION

Public school education in New Mexico is in crisis. New Mexico's students rank at the very bottom in the country in educational achievement. New Mexico's children have the lowest likelihood of success of all children in the country. For many years, New Mexico's public education system has been the subject of intense discussion, study and scrutiny. On an annual basis, legislative task forces and

committees acknowledge the insufficiency of funding for public education in New Mexico and recommend increases. Additionally, the same legislative task forces and committees acknowledge the outdated and insufficient nature of New Mexico's public education funding formula ("funding formula") which fails to appropriate sufficient levels of funding for students who live in poverty or are identified as English language learners. A recent focus of PED is to advocate for funding controlled by PED outside the New Mexico public education funding formula. This "below the line funding" requested by PED violates the uniformity requirement of the educational mandate of the New Mexico Constitution, and results in "disequalizing" the distribution of school funds. On a recurring basis, proposals to increase the overall levels of funding for public school education in New Mexico to a level of sufficiency have failed. Proposals to correct known deficiencies in the funding formula and weight the funding formula to provide sufficient additional funding for poor children and English language learning students also fail year after year. Conversely, several "below the line" educational funding proposals that violate the uniformity provision of the educational mandate have recently been enacted as law.

PARTIES

1. Wilhelmina Yazzie is an individual, parent and guardian of minor plaintiff child, Xavier Nez, who attends school in the Gallup McKinley County School District, and pays taxes in New Mexico.
2. James Martinez is an individual, parent and guardian of minor plaintiff child, Marcos Martinez, who attends school in the Albuquerque Public Schools, and pays taxes in New Mexico.
3. Patrick Barrett is an individual, parent and guardian of minor plaintiff child Genesis Canuto, who attends school in the Albuquerque Public Schools, and pays taxes in New Mexico.
4. Rodney Bowe is an individual, parent and guardian of minor plaintiff children Justus Bowe and Soloman Bowe, who attend school in the Albuquerque Public Schools, and pays taxes in New

Mexico.

5. Marsha Leno is an individual, parent and guardian of minor plaintiff child Andrea Leno, who attends school in the Grants-Cibola County Schools, and pays taxes in New Mexico.

6. Melanie M. Patricio is an individual, parent and guardian of minor children Felisha M. Patricio, Kylie A. Patricio, Juanita L. Patricio, TobieMae R. Patricio, and Hailey G. Patricio, all of whom attend school in the Grants-Cibola County Schools. Ms. Patricio pays taxes in New Mexico.

7. Gloria Sanabria is an individual, parent and guardian of minor children Julio Delgado, Daniel Delgado, and Veronica Delgado, all of whom attend school in the Gadsden Independent School District. Ms. Sanabria pays taxes in New Mexico.

8. Elizabeth and Andrew Dominguez are individuals, parents and guardians of their minor children Anthony Guajardo, Johnathan Guajardo, Andrew Dominguez, and Able Dominguez, all of whom attend school in the Peñasco Independent School District. The Dominguez's pay taxes in New Mexico.

9. Lonnie Fresquez is an individual, parent and guardian of Dylan Sanchez, who attends school in the Peñasco Independent School District, and pays taxes in New Mexico.

10. Bernard Madalena is an individual, parent and guardian of Justin Madalena, who attends school in Jemez Valley Public Schools, and pays taxes in New Mexico.

11. The above plaintiffs are the family plaintiffs. All of the plaintiff children are low income; some are English language learners, or former English language learners. All are either Native American, African American or Hispanic/Latino. Each individual plaintiff child has been harmed by the denial of a sufficient and uniform education in New Mexico.

12. Plaintiff Gallup-McKinley County School District is a public school district located in McKinley County, New Mexico.

13. Plaintiff Santa Fe Public School Board of Education (SFPS Board) is a local public body, duly elected to oversee the educational programming and interests of the students residing within its geographic boundaries or who are otherwise enrolled in its schools. The SFPS Board is further authorized by statute to engage in legal action to vindicate the interests of the District and its students. The SFPS Board's ability to meet the educational needs of its students is substantially impaired by the Defendants in the form of funding insufficiency, below the line funding controls that create inequality of resources between students, and a funding formula that fails to sufficiently account for the costs of educating at-risk and ELL students.

14. Plaintiff Moriarty-Edgewood School District Board of Education is a local public body, duly elected to oversee the educational programming and interests of the students residing within its geographic boundaries or who are otherwise enrolled in its schools. The Moriarty-Edgewood School District serves students from the counties of Torrance and Santa Fe, including the towns of Moriarty and Edgewood. The Moriarty-Edgewood School District Board of Education is authorized by statute to engage in legal action to vindicate the interests of the District and its students. The Board's ability to meet the educational needs of its students is substantially impaired by the Defendants in the form of funding insufficiency, below the line funding controls that create inequality of resources between students, and a funding formula that fails to sufficiently account for the costs of educating at-risk and ELL students.

15. Plaintiff Rio Rancho Public School District Board of Education is a local public body, duly elected to oversee the educational programming and interests of the students residing within its geographic boundaries or who are otherwise enrolled in its schools. The Rio Rancho School District serves students from Sandoval County and Bernalillo County, including students from the Bernalillo Public School District, Jemez Valley Public School District and the Albuquerque Public School District.

The Rio Rancho School District Board of Education is authorized by statute to engage in legal action to vindicate the interests of the District and its students. The Board's ability to meet the educational needs of its students is substantially impaired by the Defendants in the form of funding insufficiency, below the line funding controls that create inequality of resources between students, and a funding formula that fails to sufficiently account for the costs of educating at-risk and ELL students.

16. Plaintiff Lake Arthur Municipal Schools Board of Education is a local public body, duly elected to oversee the educational programming and interests of the students residing within its geographic boundaries or who are otherwise enrolled in its schools. The Lake Arthur Municipal School District serves students from Chaves and Eddy Counties. The Lake Arthur Municipal Schools Board of Education is authorized by statute to engage in legal action to vindicate the interests of the District and its students. The Board's ability to meet the educational needs of its students is substantially impaired by the Defendants in the form of funding insufficiency, below the line funding controls that create inequality of resources between students, and a funding formula that fails to sufficiently account for the costs of educating at-risk, low-income and ELL students.

17. Plaintiff Cuba Independent Schools Board of Education is a local public body, duly elected to oversee the educational programming and interests of the students residing within its geographic boundaries or who are otherwise enrolled in its schools. The Cuba Independent School District serves students from Rio Arriba, San Juan and McKinley Counties. The Cuba Independent Schools Board of Education is authorized by statute to engage in legal action to vindicate the interests of the District and its students. The Board's ability to meet the educational needs of its students is substantially impaired by the Defendants in the form of funding insufficiency, below the line funding controls that create inequality of resources between students, and a funding formula that fails to sufficiently account for the costs of educating at-risk, low-income and ELL students.

18. Defendant, the State of New Mexico, is the legislative body responsible for appropriating money and enacting laws that together form the New Mexico public school budget and public school system.

19. Defendant, New Mexico Public Education Department, is an executive department of Defendant State of New Mexico established by New Mexico law with its principal place of business in the Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Under Article XII, Section 6 of the New Mexico Constitution and legislation enacted thereunder, the PED supervises schools and school officials and "determine[s] policy for the operation of all public schools." Defendant Public Education Department is the entity to be sued regarding the constitutionality of the public school system under the Declaratory Judgment Act and is a person for purposes of the Declaratory Judgment Act, NMSA 1978, § 44-6-13.

20. Defendant Hanna Skandera, in her official capacity as the Secretary-Designate of Education of the Public Education Department has been designated by Governor Susanna Martinez as the Secretary of Education for the New Mexico Public Education Department and her principal place of business is in the Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Under Article XII, Section 6 of the New Mexico Constitution, Defendant Skandera has "administrative and regulatory duties, including all functions relating to the distribution of school funds and financial accounting related to the public schools to be performed as required by law." Defendant Skandera, as the Secretary Designate of the Public Education Department, is the New Mexico state official broadly charged with administering the public school system and the public school budget in New Mexico and is therefore the official to be sued in this matter under the Declaratory Judgment Act, NMSA 1978, § 44-6-13.

JURISDICTION AND VENUE

21. This Court has jurisdiction of the subject matter of this action pursuant to the New Mexico Constitution, Art. VI, § 13, NMSA 1978 §44-6-2 (1975), NMSA 1978 §44-6-9 (1975), and NMSA 1978 §44-6-13 (1975).

22. Jurisdiction is also proper in this court pursuant to NMSA 1978 §38-3-1.1 because Plaintiffs seek a declaratory judgment and further relief regarding the actions of the State of New Mexico and an executive branch department and its agent.

23. Venue is proper in Santa Fe County pursuant to NMSA 1978 §38-3-1(G) because Plaintiff Santa Fe Public School Board and Santa Fe public schools are located within County. Venue is also proper because Defendants are located in Santa Fe County.

NEW MEXICO'S STATE CONSTITUTIONAL MANDATE FOR SUFFICIENT EDUCATION IN THE FACE OF RANKING 50th IN THE NATION FOR CHILD WELL BEING AND CHILD CHANCE FOR SUCCESS

24. Article XII, Section 1 of the New Mexico Constitution ("the educational mandate") mandates that "a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."

25. The educational mandate is a judicially enforceable constitutional mandate to the State of New Mexico, PED and Secretary to provide an adequate and equitable system of free public education.

26. According to several national studies, New Mexico's children's have the lowest likelihood of success of all children in the country, due, in large part, to their lack of opportunities to succeed at school.

27. Quality Counts, a national organization that grades the condition of education and educational opportunities based on six categories, ranked New Mexico children 50th in the nation in the overall "Chance for Success" category and 48th in "K-12 Achievement" in 2014. These scores were

even lower than the dismal results for 2012, which ranked New Mexico children 49th in the "Chance for Success" category that year, and 47th in "K-12 Achievement." The Chance for Success category measured thirteen different factors including the percentage rates of poverty, parent education, parent employment, language, children enrolled in pre-K, proficiency rates as measured by the NAEP, high school and college graduation rates, income levels, and full-time employment. K-12 achievement is measured by an index of 18 distinct factors related to reading and math performance, high school graduation rates and the results of Advanced Placement exams.

28. Another national study, Annie E. Casey Foundation's Kids Count, which tracks the well-being of children across 50 states using multiple indicators, ranked New Mexico 50th in overall child well-being, along with 49th in education, 49th in economic well-being, 49th in health, and 49th in family and community in 2013. These dismal results were even lower than the previous year, when New Mexico ranked 49th in overall child well-being, 49th in education, 48th in economic well-being, 49th in health, and 49th in family and community.

29. The 2012 Quality Counts results and the 2013 Kids Count results were reported to the New Mexico legislature through a study conducted by the Legislative Education Study Committee in an August 2013 report.

FACTS REGARDING EXTREMELY LOW PERFORMANCE BY NEW MEXICO STUDENTS

30. The National Achievement Educational Performance test (the NAEP), a nationally recognized and used measure of education achievement, shows that New Mexico is tied with Mississippi for the lowest ranking nationally for 4th grade reading achievement scores. According to the most recent data available, in 2013, only one fifth (21%) of New Mexico's 4th graders read at or above grade level. Of those 4th graders who tested below proficient in reading, 48% scored in the lowest category – “below basic” – meaning that these students had the furthest distance to cover in order to meet basic,

minimum proficiency. New Mexico has the highest percentage of 4th grade students in this category in the country.

31. NAEP results for 2013 indicate that less than one third (31%) of New Mexico's 4th grade students are at grade level in math, ahead of only three states – Alabama, Louisiana and Mississippi.

32. NAEP results for 2013 indicate that only one fifth of New Mexico's 8th graders read at grade level (22% proficient or above), putting New Mexico ahead of only Mississippi.

33. NAEP results for 2013 indicate that less than one fourth (23%) of New Mexico's 8th graders are proficient in math (ahead of only Alabama, Louisiana and Mississippi).

34. NAEP results for previous years were very similar to the 2013 results.

35. For example, according to the 2011 NAEP results, 70% of fourth graders were not proficient in math, and 79% of fourth graders not proficient in reading. Also during 2011, 76% of eighth graders were not proficient in math, and 78% of eighth graders were not proficient in reading.

36. Similarly, the 2009 NAEP results show that 74% of fourth graders were not proficient in math, with 80% not proficient in reading, and 80% of eighth graders were not proficient in math, and 78% not proficient in reading.

37. Local measures also show that extremely large numbers of New Mexican students are not proficient in reading or math. The state's local test, the New Mexico Standard Based Assessment (NMSBA) is utilized to determine the level at which New Mexico students achieve the state Content Standards, Benchmarks, and Performance Standards at the school and district level. The NMSBA also serves as the high school exit exam, meaning students must pass the reading, math and science sections by the end of their senior year in order to obtain a high school diploma.

38. The most recent results (school year 2012/2013) of New Mexico's Standards Based Assessment (NMSBA) show that 54% of 4th graders are not able to read at grade level, with 40% still

not testing proficient in reading by 8th grade. Even worse, by 11th grade, 60% of New Mexico's students are not proficient in reading.

39. The NMSBA math results for 2013 show that 55% of 4th graders are not proficient in math, 58% of 8th graders are not proficient in math, and 58% of 11th graders are not proficient in math.

40. The NMSBA science results for 2012-2013 show that 47% of all 4th graders and 60% of all 11th graders are not proficient in science.

41. The NMSBA results for 2013 are similar to results in previous years.

42. Based on the SY 2011-2012 NMSBA reading results, 50% of all 4th graders, 45% of all 8th graders, and 53% of all 11th graders were not proficient readers.

43. Based on the SY 2011-2012 NMSBA math results, 56% of all 4th graders, 58% of all 8th graders, and 60% of all 11th graders were not proficient in math.

44. Based on the SY 2010-2011 NMSBA reading results, 53% of all 4th graders, 46% of all 8th graders and 51% of all 11th graders were not proficient readers.

45. Based on the SY 2010-2011 NMSBA math results, 55% of all 4th graders, 59% of all 8th graders, and 61% of all 11th graders were not proficient in math.

46. Based on the SY 2010-2011 NMSBA science results, 53% of all 4th graders and 60% of all 11th graders were not proficient in science.

47. According to the U.S. Department of Education, New Mexico's overall graduation rate is one of the lowest in the country, with approximately one third of New Mexico's students failing to graduate.

48. New Mexico also has the highest rate of school age children (16-19 year olds) not in school – 9% – of any state in the country (the national average is 5%).

49. New Mexico public schools fail to prepare students to meet the minimum admissions

requirements for postsecondary institutions and community colleges.

50. The National ACT analyzes the "Percentage of Students who met College Readiness Benchmarks." In 2012, 17% of students in New Mexico and 25% of students in the Nation met all four benchmarks (e.g. English, Math, Reading, and Science). Moreover, New Mexico students score lower on the ACT than the national average.

51. New Mexico's public schools fail to prepare students for the rigors of college coursework.

52. Students that enroll in remedial courses have decreased chances of completing a higher educational credential on time, where taking one remedial course drops the six-year bachelor's degree attainment from 77% to 17%.

53. 78% of students enrolling in remedial classes are recent graduates of New Mexico public high schools.

54. Nearly 50% of New Mexico high school students graduating in 2012 and enrolling in New Mexico colleges the following fall required remedial courses.

55. Previous analysis by the Office of Education Accountability indicates students who require remedial courses in colleges are less likely to complete a degree or certificate program.

56. Currently, only 29% of New Mexico's 25- to 35-year olds have higher education credentials.

57. The poor educational performance of New Mexico's students directly threatens their future economic security and creates significant costs for the state as a whole.

58. For example, the median income of persons age 18 through 67 in the United States who had not completed high school was roughly \$25,000 a year in 2009. By comparison, the median income of persons age 18 through 67 who completed their education with at least a high school credential,

including a General Educational Development (GED) certificate, was \$43,000. Over a person's working life, this difference translates to a loss of approximately \$630,000 in income for a person who did not complete high school compared to a person with a high school credential.

59. People that fail to graduate from high school are also less likely to be employed, are in worse health than adults who are not dropouts, regardless of income, and are more likely to be incarcerated.

FACTS RELATED TO ACHIEVEMENT GAP FOR LOW INCOME STUDENTS

60. New Mexico has one of the highest rates of child poverty in the country: 31% of New Mexico's children live at or below the federal poverty level, which in 2013 was \$23,550 a year for a family of four. This places New Mexico's child poverty rate far above the national child poverty rate average of 23%, and ranks New Mexico 49th in the country (ahead of only Mississippi).

61. According to the most current data available, New Mexico has about 338,000 students in the public schools. A full 67% of New Mexican school students are designated as low-income, meaning they live in families at or below 185% of the federal poverty level, and are eligible for free or reduced lunch, the second highest rate in the country (again ahead of only Mississippi), and far above the national average of 48%.

62. A higher percentage of children in New Mexico live in extreme poverty (14%) than any other state in the nation besides Mississippi and Louisiana. Living in extreme poverty means living in a family that survives at 50% of the federal poverty level, meaning less than \$12,000 a year for a family of four.

63. Education research has consistently shown that child poverty is the most significant barrier to a child's success in school, including completion of secondary education, greater even than minority status or whether a student's parents graduated from high school.

64. National research indicates that 40% of the variation in average reading scores and 46% of the variation in average math scores across the country are directly determined by whether a student lives in poverty.

65. The link between child poverty and poor academic performance is forged by the fact that low-income students face additional barriers and challenges in their home, economic, and social life that make succeeding in school more difficult.

66. Child poverty is associated with substandard housing, homelessness, food insecurity, as well as the social challenges of living in unsafe neighborhoods.

67. In addition to these economic and social barriers, growing up in poverty also has a negative impact on the emotional and cognitive development of children making it more difficult for them to succeed in the classroom.

68. The American Psychological Association (APA) outlines that children living in poverty are more likely to suffer developmental delays as well as social-emotional problems due to the "chronic stress" associated with growing up in poverty--this fundamentally compromises their ability to concentrate, learn, process information and thus succeed in an academic setting.

69. Moreover, children from low income families as compared to families that are not low income score very differently on school readiness tests in kindergarten, showing that the opportunities available to higher income children when they are infants starts the achievement difference in academic performance before children even enter kindergarten.

70. In addition to high levels of poverty in New Mexico, the concentration of poverty in New Mexico necessitates higher levels of school funding and resources to create educational opportunities in order for New Mexican children to have a sufficient education.

71. Ongoing research that dates back to the 1960s has shown that the concentration of

poverty within a school has a negative impact on student performance, above and beyond the impacts of poverty alone.

72. Schools of concentrated poverty, also known as "high poverty schools" are defined as schools in which 75% of students are eligible for free or reduced lunch.

73. There are few areas in the state where poverty is not pervasive. In fact, only five counties in New Mexico have poverty rates of less than 15% of their total population, and most have more than 20% poverty rates. As of 2012, of the 89 school districts in the state, only eight have less than half of their students who qualify for free or reduced lunch. Conversely, 33 of 89 public school districts have student populations in which over 75% of students qualify for free or reduced lunch. This means that 37% of our school districts are school districts of concentrated poverty. In one district in the state, Hatch Valley School District, more than 95% of the students qualify for free or reduced lunch.

74. This widespread, and in places, blanket poverty, means that there are few public school teachers and public school districts who do not face the additional negative effects of concentrated poverty. Given the recognized correlation between poverty, especially concentrated poverty and low academic achievement, New Mexico students have a greater risk of academic failure than most students across the country well before they enter the school doors, and thus, New Mexico's public schools require more public funding and resources than schools in other states with less poverty.

75. On the NAEP, only 20% of low income 4th grade New Mexican students test proficient or above in reading, while 51% of non-low income 4th grade New Mexican students test proficient, making an achievement gap of 31 percentage points.

76. On the NAEP, only 20% of low income 8th grade New Mexican students score proficient or above in reading, while 48% of non-low-income 8th grade New Mexican students test proficient,

making an achievement gap of 28 percentage points.

77. NAEP math scores show only 25% of 4th grade low income students score proficient on math, while 59% of non-low-income students test proficient, making an achievement gap of 34%.

78. NAEP math scores for New Mexican 8th graders show that only 20% of low income students scored proficient on math, with 49% of non-low-income students scoring proficient, making an achievement gap of 29%.

79. The NMSBA also indicates a significant achievement gap when low income student's reading, math and science scores are compared to students overall.

80. Schools with higher poverty rates tend to have the highest college remediation rates, including Gallup High at 77%, West Mesa High in Albuquerque at 77%, and Zuni High at 90%.

81. In 2012, 79% of low-income students required college remedial courses, as compared to 50% of New Mexican students overall.

FACTS RELATED TO ACHIEVEMENT GAP OF NATIVE AMERICAN, LATINO/HISPANIC AND AFRICAN AMERICAN STUDENTS

82. In addition to extremely high numbers of children who are economically disadvantaged, New Mexican students are also predominately students of color. In total, 59% are Hispanic/Latino, 10% are Native American, 2% are African American, and 1% are another ethnicity other than Anglo. In all, 72% of New Mexican students are students of color.

83. Disparities in academic performance exist between students of color, as compared to Caucasian students, where more than half of Caucasian students achieve "proficiency and above" while, in most cases, more than half of all students of color do not.

84. For example, based on the SY2013 NMSBA, 63% of Caucasian 4th graders scored proficient in reading, while only 43% of African Americans, 41% of Hispanic/Latinos and 29% of Native Americans were proficient readers.

85. Turning to 8th grade results of the SY2013 NMSBA, 75% of Caucasian 8th graders were proficient readers, with only 54% of the African American students, 56% of the Latino/ Hispanic students and 44% of the Native American students testing proficient in reading.

86. By 11th grade, 71% of Caucasian students tested proficient in reading, with only 52% of the African American students, 50% of the Hispanic students and 41% of the Native American students scoring proficient or above in reading.

87. Based on the SY2013 NMSBA math results, 62% of Caucasian 4th graders scored proficient, with only 39% of African American students, 41% of Hispanic students, and 31% of Native American students scoring proficient.

88. Turning to 8th grade NMSBA math results, 59% of Caucasian 8th graders were proficient in math, with only 33% of the African American students, 37% of the Latino/Hispanic students and 29% of the Native American students scoring proficient.

89. By 11th grade, the NMSBA math results show that 59% of Caucasian students are proficient in math, with only 30% of African American students, 35% of Latino/Hispanic students, and 33% of Native American students scoring proficient or above in math.

90. The science gap is particularly large. Based on the SY2013 NMSBA science results, 73% of Caucasian 4th graders were proficient, as compared to 48% of African American students, 48% of Latino/Hispanic students and 32% of Native American students 32%.

91. The 11th grade 2013 NMSBA science results show that 63% of Caucasian students are proficient, with only 34% of African Americans, 32% of Latino/Hispanics, and 22% of Native Americans scoring proficient in science.

92. The NMSBA results for SY2012 and SY 2011 show a similar achievement gap, with Caucasian students much more likely to do well on educational achievement tests than African

American, Latino/Hispanic or Native American students.

93. For example, in SY 2012, 66% of Caucasian 4th graders were proficient in reading, while only 50% of African Americans, 45% of Latino/ Hispanics, and 35% of Native Americans were proficient.

94. In SY 2012, 72% of Caucasian 8th graders were proficient in reading, with only 52% of African Americans, 49% of Latino/ Hispanics, and 42% of Native Americans proficient.

95. In SY 2012, 65% of Caucasian 11th graders were proficient in reading, with only 43% of African Americans, 39% of Latino/Hispanics, and 30% of Native Americans scoring proficient or above in reading.

96. Turning to SY2012 NMSBA math scores, 62% of Caucasian 4th graders tested proficient in math, with only 41% of African Americans, 38% of Latino/Hispanics, and 30% of Native Americans testing proficient in math.

97. For 8th graders in SY 2012, 59% of Caucasian students testing proficient in math, with only 38% of African Americans, 36% of Latino/Hispanics, and 28% of Native Americans testing proficient.

98. By 11th grade, NMSBA math results show that 59% of Caucasian students tested proficient, with only 31% of African Americans, 31% of Latino/Hispanics and 28% of Native Americans scoring proficient or above in math.

99. Based on the SY2011 NMSBA results, 63% of Caucasian 4th graders were proficient in reading, with only 43% of African Americans, 41% of Latino/Hispanics and 32% of Native Americans.

100. In 8th grade, NMSBA math results show 70% of Caucasian students testing proficient in reading, with only 46% of African Americans, 47% of Latino/Hispanics and 44% of Native Americans testing proficient.

101. In 11th grade, 65% of Caucasian students scored proficient on NMSBA reading tests, with only 42% of African Americans, 41% of Latino/Hispanics, and 35% of Native Americans scoring proficient or above in reading.

102. Based on the SY2011 NMSBA, 61% of Caucasian 4th graders scored proficient or above in math, with only 35% of African Americans, 39% of Latino/Hispanic, and 32% of Native Americans scoring proficient.

103. NMSBA results for 8th grade math showed that 58% of Caucasian students scored proficient or above, with only 35% of African Americans, 34% of Latino/Hispanics and 28% of Native Americans testing proficient.

104. NMSBA results for 11th grade math showed that 57% of Caucasian students tested proficient, with only 27% of African Americans, 30% of Latino/Hispanics and 25% of Native Americans scoring proficient or above in math.

105. Finally, the SY2011 NMSBA science results showed that 68% of Caucasian 4th graders were proficient with only 39% of the African Americans, 41% of the Latino/Hispanics and 27% of the Native Americans proficient in science.

106. The NMSBA SY 2011 science results for 11th graders showed that 61% of Caucasian 11th graders were proficient with only 30% of the African Americans, 30% of the Latino/Hispanic and 23% of the Native Americans scoring proficient or above in science.

107. In 2012, the average college remedial rate was higher for students of color than Anglo students, with 59% of Native American students and 68% of Hispanic students requiring college remedial courses, compared to 50% of students overall.

FACTS RELATED TO ACHIEVEMENT OF ENGLISH LANGUAGE LEARNERS

108. English language learner (ELL) refers to students being served in appropriate programs

of language assistance (e.g., English as a Second Language, High Intensity Language Training, and bilingual education).

109. NAEP reading and mathematics scale scores for non-ELL students are higher than their ELL peer's scores.

110. In all years between 1992 and 2011 NAEP reading scale scores for non-ELL 4th, 8th, and 12th-graders were higher than their ELL peers' scores.

a. In SY 2011 the national average reading scale score for non-ELL 4th-graders was 225. In the same year, the national average reading scale score for ELL 4th-graders was 188. The SY 2011 reading achievement gap between non- ELL and ELL 4th-graders was 36 points.

b. In SY 2011 the national average reading scale score for non-ELL 8th-graders was 267. In the same year, the national average reading scale score for ELL 8th-graders was 224. The SY 2011 reading achievement gap between non-ELL and ELL 8th-graders was 44 points.

c. In SY 2010 the national average reading scale score for non-ELL 12th-graders was 290. In the same year, the national average reading scale score for ELL 12th-graders was 240. The SY 2010 reading achievement gap between non- ELL and ELL 12^{t h} -graders was 50 points.

111. In all years between 1992 and 2011, NAEP mathematics scale scores for non-ELL 4th, 8th, and 12th-graders were higher than their ELL peers' scores.

a. In SY 2011 the national average mathematics scale score for non-ELL 4th- graders was 243. In the same year, the national average

mathematics scale score for ELL 4th-graders was 219. The SY 2011 mathematics achievement gap between non-ELL and ELL 4th-graders was 24 points.

- b. In SY 2011 the national average mathematics scale score for non-ELL 8th- graders was 286. In the same year, the national average mathematics scale score for ELL 8th-graders was 244. The SY 2011 mathematics achievement gap between non-ELL and ELL 8th-graders was 42 points.
- c. In SY 2010 the national average mathematics scale score for non-ELL 12th- graders was 154. In the same year, the national average mathematics scale score for ELL 12th-graders was 117. The SY 2010 mathematics achievement gap between non-ELL and ELL 12th-graders was 38 points.

112. New Mexico is one of 8 states with the highest percentage of ELL students in its public schools.

113. In SY 2010-2011 52,029 students in New Mexico public schools were ELLs, comprising 15.7% of all students.

114. In school years 2006-2009 New Mexico year-end mean reading scale scores for non-ELL 4th , 8th, and 11th-graders were higher than their ELL peers' scores.

- a. During these years, the year-end reading mean scale score for New Mexico non-ELL 4th-graders was 644.7. During the same years, the year-end reading mean scale score for New Mexico ELL 4th-graders was 621.9. The reading achievement gap between non-ELL and ELL

4th-graders was 22.8 points.

- b. During these years, the year-end reading mean scale score for New Mexico non-ELL 8th-graders was 698.1. During the same years, the year-end reading mean scale score for New Mexico ELL 8th-graders was 669.8. The reading achievement gap between non-ELL and ELL 8th-graders was 28.3 points.
- c. During these years, the year-end reading mean scale score for New Mexico non-ELL 11th-graders was 623.7. During the same year, the year-end reading mean scale score for New Mexico ELL 11th-graders was 597.5. The reading achievement gap between non-ELL and ELL 11th-graders was 26.2 points.

115. In school years 2006-2009 New Mexico year-end mean mathematics scale scores for non-ELL 4th , 8th, and 11th-graders were higher than their ELL peers' scores.

- a. During these years, the year-end mathematics mean scale score for New Mexico non-ELL 4th-graders was 633.5. During the same years, the year-end mathematics mean scale score for New Mexico ELL 4th-graders was 618.0. The mathematics achievement gap between non-ELL and ELL 4th-graders was 15.5 points.
- b. During these years, the year-end mathematics mean scale score for New Mexico non-ELL 8th graders was 704.8. During the same years, the year-end mathematics mean scale score for New Mexico ELL 8th-graders was 682.8. The mathematics achievement gap between non-ELL and ELL 8th-graders was 22 points.

- c. During these years, the year-end mathematics mean scale score for New Mexico non-ELL 11th-graders was 587.0. During the same years, the year-end mathematics mean scale score for New Mexico ELL 11th graders was 563.2. The mathematics achievement gap between non-ELL and ELL 11th- graders was 23.8 points.

116. In SY 2012-2013, three quarters of ELL 8th graders failed to reach proficiency in reading and 85% failed to reach proficiency in math.

117. According to the National Education Commission of the States, New Mexico's largest minority group, Hispanic students, is underperforming its cohort in other states, in reading.

118. The United States Office of Civil Rights has raised concerns with Defendants about the lack of bi-lingual reading instruction in New Mexico.

119. The achievement gap between ELL- and non-ELL students tends to widen as students' progress through grades, and ultimately results in a disparity in high-school graduation rates.

- a. The graduation rate for all students in New Mexico for SY 2010-2011 was 63%.
- b. The graduation rate for students in New Mexico with limited English proficiency in SY 2010-2011 was only 56%.

FACTS REGARDING OVERALL SUFFICIENCY OF EDUCATIONAL FUNDING

120. Over the past 30 years, since the 1986/1987 school year, the portion of the state budget dedicated to education has declined, with Defendants making sufficient education funding less and less of a priority, and leaving New Mexico's public schools less and less able to provide necessary opportunities and resources to sufficiently educate New Mexico's children.

121. In 1986-1987, the public schools in New Mexico were appropriated 51.6 % of the state's

total recurring budgeted revenue.

122. During the early 2000's, public schools in New Mexico were receiving about 46% of the state's total recurring budgeted revenue. For example, in the fiscal year 2003, public education received \$1.8 billion of a \$3.9 billion budget.

123. By 2008, public schools received only 43.8% of the state's budget - \$2.5 billion out of a total state budget of \$5.7 billion.

124. Between 2009 and 2014, with years of both decreases and then increases, the last legislative session resulted in Defendants providing the public schools again with approximately 44% of the state's total budget.

125. Since 1974, Defendants have distributed funding to the public schools through a public school funding formula. The premise behind the formula - that all students are entitled to an equal educational opportunity despite differences in the wealth of their local districts - departed from the prior method, which had funded New Mexico's schools according to local district wealth.

126. With the intent of achieving equitable funding between school districts, the state's formula provides each district (and more recently state-chartered charter schools) a certain base amount of funding calculated by multiplying the number of students times a basic unit amount, and then making variations for, *inter alia*, the number of students at various grade levels and the number of teachers with certain training and experience. The formula also provides additional money -through a weighting equation - to districts and state charter schools that face additional costs due to their size, geographic location, and the makeup of their student population.

127. The amount of money distributed by the state to each school district and state- chartered charter school is known as the State Equalization Guarantee ("SEG").

128. The SEG is the mechanism that distributes 95% of the operational revenue for all public

schools in New Mexico.

129. In 2006, the State of New Mexico created a bi-partisan Funding Formula Study Task Force made up of New Mexico legislators, school board members, union representatives, and school administrators that contracted with the American Institute for Research ("AIR") to conduct a 2-year study on the sufficiency of educational funding in New Mexico public schools as well as its distribution mechanism.

130. In 2008, the AIR published "An Independent Comprehensive Study of the New Mexico Public School Funding Formula," which concluded that "state support for public schools should increase by 14.5 percent (or \$334.7 million in 2007-08) to achieve sufficiency in New Mexico." That conclusion was the result of a "16 month effort by the AIR to determine the cost of a sufficient education for all public school students in New Mexico," which started with a careful analysis of what constitutes a "sufficient" education.

131. The bi-partisan Funding Formula Study Task Force issued its final finding, based on the AIR Report: "The bottom line estimates derived from this study suggest that the state support for public schools should increase by 14.5% (or \$334.7 million in 2007-08 dollars) to achieve sufficiency in New Mexico."

132. According to the Legislative Finance Committee, the initial recommendation of the AIR report was that New Mexico's schools needed more than an additional \$700 million (in 2008 dollars) in order for schools to be sufficiently funded, but due to political push back, the final report recommended only a \$335 million increase for sufficient funding.

133. Since AIR issued its report in 2008, Defendants have failed to pass a public schools budget that increases the money available to schools and attempts to achieve sufficiency.

134. Since AIR issued its report, the budget for public schools in New Mexico has actually

decreased, while the number of students has remained steady, and poverty in New Mexico has increased - a combination which makes it harder and harder for New Mexico schools to provide necessary resources to sufficiently educate New Mexico's children.

135. In 2008, the basic unit value of funding for each student distributed through the SEG was \$3871.79 and the total amount of money that New Mexico appropriated to the public schools through the SEG was \$2.35 billion.

136. By 2011, after several years of decreases, the basic unit value of funding for each student was \$3598.87, and the total money appropriated to the public schools through the SEG had dropped to \$2.29 billion.

137. In 2013, the unit value was not back to 2008 levels, amounting to only \$3,817.55.

138. By 2014, even with an increase in the basic unit value to \$4005.75, the unit value has barely surpassed 2008 levels in actual dollars and is well below 2008 levels when adjusted for inflation. (In 2008, the unit value was found by national and local experts to be significantly too low.) Moreover, the total appropriation to the public schools distributed through the SEG in 2014 was \$2.48 billion, falling several million dollars short of basic maintenance of effort levels from 2008.

139. New Mexico ranks 37th in the country for per-student funding, with only \$9,070 on average annually expended.

140. When the high proportion of economically disadvantaged students, and high proportion of ELL students are considered, the per pupil funding ranks even lower nationally and is significantly too low to provide a sufficient education to New Mexico's children.

141. The consistent decline in the overall percentage of state revenues appropriated to public school education since 1987, combined with the drop in the unit value distributed through the SEG, along with the failure of the New Mexico Legislature to implement any of the numerous

recommendations related to the overall sufficiency of funding of public education in New Mexico, has resulted in a system of public education in New Mexico that is insufficient and fails to satisfy the educational mandate in the New Mexico constitution.

**FACTS REGARDING LACK OF SUFFICIENCY DUE TO INADEQUATE FUNDING
FORMULA FOR PUBLIC EDUCATION**

142. The intent of New Mexico's funding formula is to ensure that all children - including children who are economically disadvantaged and ELL - have a sufficient and equitable education.

143. In 1997, the state legislature recognized that low-income students and those for whom English is a second language (classified as "ELL") are "at risk" of failing or dropping out of school and require additional education resources. To better meet these needs, the legislature added an "at-risk index" to the state's funding formula that directs additional resources to districts based upon the size of their low-income and ELL student populations.

144. The at-risk index was 0.0915 until it was amended in the 2014 legislative session to change to 1.06 during the 2015/2016 school year. Even with the recent change, the at risk index is far smaller than that of many other states; some states direct up to 50% in additional funds to students living in poverty - New Mexico directs about 10% more funds to students at risk of failing.

145. Only 3% of total public education formula funding is directed to students at risk of failing, despite the large percentage of these students in the state.

146. Unlike many other states, New Mexico does not base its at-risk funding on the number of students eligible for free and reduced priced meals under the National School Lunch Act, even though well-established research demonstrates that those students are at high risk for school failure and require greater per-pupil funding. Instead, the index is calculated using a three year average of three different school district characteristics: the percentage of membership used to determine its Title I allocation, the percentage of ELL students, and the percentage of student mobility in the district.

147. New Mexico's funding formula directs more money to schools with teachers with more training and experience (through the "Training and Experience index"), resulting in high poverty schools generating less formula funding than low poverty schools since high poverty schools have less teachers with qualifications that draw down dollars under the Training and Experience index. For example, an Albuquerque Public School, Emerson, with 96% of the students on free or reduced lunch draws down \$42,000 under the T & E index, while another Albuquerque Public School, Georgia O'Keefe, with only 15% of its students on free or reduced lunch, draws down \$47,000 under the T & E index. In the Santa Fe Public Schools, RM Sweeney has 87% of its students on free or reduced lunch and draws down \$41,500 under the T & E index while Wood-Gormley has only 19% of its students on free or reduced lunch and it draws down \$49,500 under the T & E index.

148. In 2008, AIR, pursuant to its contract with the Funding Formula Study Task Force, recommended, in addition to an overall increase in funding for the schools, a simplified funding formula and a smaller and simplified set of pupil needs weighting factors to achieve an equitable distribution of funds according to pupil need.

149. The AIR recommended funding formula included a basic per pupil cost, which was then multiplied by pupil need components including the following four separate measures:

- a. Student poverty - measured by the proportion of pupils eligible for the free or reduced lunch program;
- b. English learner status - measured by the proportion of pupils who are classified as English learners (limited or non-English speaking);
- c. Student mobility - measured by the proportion of total enrollment that is mobile (students who for one reason or another had moved into or out of the school); and

- d. Special education - measured by the proportion of the total enrollment identified as eligible for special education services.

150. Legislation was introduced in both the 2008 and 2009 legislative sessions implementing the recommendations of the Funding Formula Study Task Force and passed the House of Representatives but never came to the floor of the New Mexico Senate for vote and therefore, failed in both the 2008 and 2009 legislative sessions.

151. In November 2011, the Legislative Finance Committee ("LFC") and the Legislative Education Study Committee ("LESC") in a joint study issued an evaluation of the public school formula in advance of the 2012 legislative session ("joint study"). The joint study assessed the funding formula, and included the following conclusions:

- a. New Mexico needs to update the funding formula to ensure efficient allocation of resources aligned with recent education policy. The formula's 24 components make it overly complicated and difficult to administer, and a number of these components generate a few units that have a minimal impact on school funding.
- b. Some components do not effectively recognize the cost difference or fairly allocate funding for serving at-risk students. Past LFC reports found the formula does not effectively steer resources to the incremental cost needed to educate at-risk students. Other states direct more funds to their at-risk students that are English language learners and/or living in poverty. Those states also used simplified metrics to identify these students rather than the formula's at-risk index, *"which is a broken component that, when calculated*

correctly, would direct more funds to districts with fewer at-risk students."

- c. The at-risk index is too complex and misallocates funds even when calculated accurately. Among the factors in the at-risk index is the mobility rate, but the PED does not calculate the mobility rate accurately, leading to a misallocation of at-risk funds. The mobility rate is currently calculated using seven enrollment codes, assigned to students based on enrollment status. However, due to federal requirements asking for more specific enrollment and withdrawal data, the PED requires districts to track student enrollment through one of 27 codes. Students with enrollment codes not used in the current mobility rate are not counted in the district's calculation, creating an inaccurate mobility rate used in the at-risk index. For example, a student who withdraws from school and whose whereabouts are unknown is counted under the current mobility formula, but a student who withdraws to attend a Bureau of Indian Education school or to pursue a general education degree or vocational program is not counted.
 - d. The current formula does not direct adequate resources to cover the increased costs needed to educate at-risk students. Other states direct significantly more funds to their at-risk students that are living in poverty or those that are English Language Learners.
152. In the January 2014 Report to the New Mexico Legislature, the LFC again emphasized

the need to improve outcomes for at-risk students in New Mexico's public education system. The 2014 LFC report stated:

- a. In New Mexico, a relatively small amount of public education funding formula is allocated to the state's most needy students.
- b. Despite the significant impact that poverty and English language fluency have on academic achievement, only 3% of the total public education funding formula is directed to students at-risk of failing.
- c. New Mexico and Mississippi direct the least amount of incremental funding to servicing at-risk students despite the large percentages of these students in each state. Both New Mexico and Mississippi consistently rank in the bottom of comparative studies of student outcomes.
- d. States vary on the percentage on incremental dollars allocated for at-risk students, but in some instances other states provide up to 50% more funding for at-risk students.
- e. To move the needle on student achievement, at-risk students must be identified early with valid tools and appropriate educational strategies must be implemented that will assist in closing the achievement gap and improving outcomes for at-risk students.

153. Despite the recommendations of the of the 2008 New Mexico Funding Formula Study Task Force, the AIR report, the 2011 report of the joint study of the LFC and LESC and, most recently, the January 2014 LFC report, Defendants continue to implement a funding formula that does not provide sufficient additional resources to economically disadvantaged and ELL students.

154. Governor Susana Martinez line item vetoed \$15 million appropriated for at-risk children from the \$171 million increase in public education passed in the 2014 legislative session.

155. Amending the funding formula, without first providing sufficient increased funding for the public schools, would result in many school districts and state-chartered charter schools actually losing significant amounts of money -thereby setting back the ability of public schools in New Mexico to provide students with a sufficient education.

156. Adjustments in the funding formula are required along with increased overall funding in order to meet the constitutional mandate of sufficiently educating New Mexico's children.

157. The inadequacies of the current funding formula, and specifically its failure to allocate sufficient resources for students living in poverty and learning English language, combined with an overall lack of funding for public schools, results in a system of public education in New Mexico which is insufficient to meet the needs of New Mexico public school students.

FACTS RELATING TO FAILURE OF UNIFORMITY

158. A recent focus of PED is "below the line funding" of educational projects.

159. "Below the line funding" consists of educational funding outside the public school educational funding formula that is distributed at the discretion of the PED to school districts in New Mexico on the basis of grant applications submitted to PED.

160. While these grant programs sometimes target at-risk students, including economically disadvantaged students, they only benefit certain at-risk students attending certain schools in certain districts that are selected by the PED for a grant, leaving the needs of the remaining at-risk students unmet.

161. Moreover, the programs funded through the below the line funding that target at risk students are severely underfunded. K- 3 Plus, an extended year program for economically disadvantaged

children to learn reading, is one such program. In 2012-2013, below the line funding for that program will only reach about 13,000 of the 63,000 eligible children; while funding has been increased, it is still drastically insufficient to meet the needs of all at-risk children.

162. Similarly, pre-kindergarten programs are funded by below the line funding, for which school districts must put in a grant application to PED. In SY 2012-2013, only 1/3 of the school districts had pre-kindergarten classrooms, leaving 2/3 of the school districts without them. Although funding has increased, there is still insufficient funding for all school age children to attend pre-kindergarten programs and it is still done through below-the-line funding for which school districts must submit a grant application for approval by the PED.

163. In its January 2014 report the LFC recommended relying on the funding formula to equitably distribute funding to school districts and charter schools while limiting "below the line" initiatives controlled by PED to existing programs that have demonstrated improved student outcomes.

164. The amount of below the line funding more than tripled from fiscal year 2012 to fiscal year 2014.

165. For fiscal year 2015, below the line appropriations increased to \$107 million, up \$38 million or 55% from the previous year.

166. The inordinate emphasis and expansion of the "below the line funding" for public educational funding violates the uniformity requirement of the New Mexico constitutions educational mandate.

FACTS RELATED TO LACK OF OPPORTUNITIES AND RESOURCES IN THE CLASSROOM FOR NEW MEXICO'S CHILDREN

167. High-poverty schools serve high-needs students with different educational circumstances, needs and aptitudes, and require greater resources spent on teachers and programs and increased educational opportunities for students.

168. Research shows that teachers with extensive training and experience are more able to meet the high needs of students in high poverty schools.

169. High poverty schools generally have the greatest difficulties hiring and retaining experienced teachers with advanced degrees for the long-term, and rarely are able to offer financial incentives and often suffer from high turnover rates.

170. New Mexico's high poverty schools have lower numbers of teachers with training and experience than New Mexico's schools with lower proportions of economically disadvantaged students.

171. Research shows that small class room size is a significant factor in improving the educational outcomes.

172. Due to insufficient funding, New Mexico has also cut many hundreds of educator positions in the past 5 years, and increased class room sizes.

173. In 2009, due to a lack of funding, Defendants enacted a temporary waiver to mandated individual class loads, teaching loads, length of school day requirements, staffing patterns, required subject areas, and purchase of instructional materials through SY 2011-2012.

174. In 2012, this temporary provision was again extended for school years 2012-2013 through the 2013-2014, saving some school districts from having to hire additional teachers. For example, Albuquerque Public Schools would have had to hire 300 more teachers if the waiver on class size, teaching load staffing patterns and instructional materials had not been extended.

175. Due to insufficient funding, across the state, school districts have lost hundreds of educator positions each year. Albuquerque Public Schools started the 2013 school year with 180 less teachers from the previous year; Gadsden was short 16 teachers; Gallup-McKinley was short 25 teachers; Santa Fe was short 53 teachers.

176. According to the US Department of Education, from 2004/2005 to 2010/2011,

New Mexico saw a consistent shortage of teachers in the fields of Bilingual/TESOL, Elementary, Mathematics, Science, and Special Education; and, from 2012 to 2015, a shortage in all statewide academic disciplines and subject matters.

177. Districts that have a shortage of teachers have had to rely on substitutes, educational assistants, and parent volunteers.

178. Research clearly demonstrates the importance of teachers in student learning. Evidence shows that paying educators a decent salary is critical to attracting and retaining high quality and well trained teachers and thereby, to improving educational outcomes.

179. Generally, educational experts agree that making the teacher profession a highly regarded and respected profession goes a long way towards improving an educational system.

180. New Mexico's teachers are some of the lowest paid in the country.

181. According to the National Center for Education Statistics, New Mexico ranks 45th out of the 50 states for teacher pay. The national average is approximately \$56,000 a year and New Mexico's teachers earn, on average, about \$46,000. New Mexico's teachers' average pay is also less than our neighboring states of Arizona, Colorado, Utah and Texas.

182. In 2003, New Mexico implemented a three tier teacher licensing system, with the intent of increasing teachers' salaries and competencies. The beginning salary for a new teacher (Tier I), for which at least a bachelor's degree and a teaching license is required, is \$30,000. Tier II teachers earn a minimum of \$40,000 a year, and Tier III teachers, for which masters degrees and many years of teaching experience are required, earn a minimum of \$50,000 a year. Except for a \$2000 a year increase for incoming level I teachers beginning in FY 2015, defendants have not increased these salary scales in the 11 years that this payment structure has been in place.

183. The average New Mexico teacher salary in the 2013-2014 school year was \$46,252 a

year, less than it was in the 2008 - 2009 school year when the average New Mexico teacher salary was \$46,569. The slight rise in teachers' pay (3%) approved by the Defendants in 2014 will not impact significantly the abysmally low salaries of New Mexican teachers.

184. The Legislative Finance Committee reports that New Mexico's 8,300 educational assistants ("EAs") earn an average annual wage of \$21,600, about 20% less than the national average wage for EAs (\$25,500), and on a par with the other states with the lowest paid EAs - Alabama, Georgia, and Mississippi. This average salary for New Mexico is considered to be inflated due to some errors in reporting.

185. Research clearly demonstrates that quality curriculums, which include research based literacy instruction, the fine arts, music and physical education, are critical to improving educational outcomes, especially for low income students, who are less likely to have such opportunities outside of school.

186. Due to limited resources, there are limited course offerings, educational programs, and support services for students compared to other states.

187. For example, in 2007, New Mexico made certain Physical Education requirements part of the mandatory curriculum. Physical education is necessary in the schools, not only to improve health outcomes of children by fighting obesity, and consequently, Type 2 diabetes, but also because regular exercise increases short term learning and performance on tests. However, due to insufficient funding, only 40 to 50 percent of elementary schools in the state currently receive funding for their PE courses.

188. Reading proficiency rates have generally declined in New Mexico during the past 10 years.

189. Due to a lack of funding, New Mexico's schools are not able to provide their students with research based methods of literacy instruction which have proven to bring about significant

improvements in reading capabilities in students in other states, particularly among Hispanic and ELL students.

190. During a brief period around 2006 when federal funding for reading instruction was available, New Mexico implemented an evidence based literacy instruction program called "Reading First." For a few years, New Mexico's reading proficiency rates markedly improved. Once federal funding ended, defendants cut the "Reading First" program, rather than fund it, and reading proficiency rates declined.

191. Rather than implementing the research based methods of literacy instruction, along with state wide identification, treatment and monitoring of progress of students at risk, as well as professional development for all elementary school principals, general education class room teachers, teacher development specialist, K - 12 literacy coaches and special education program specialists, Defendants have implemented an underfunded program called "Reads to Lead" which is not an evidence based literacy program.

192. In 2012-2013, only 13 of the 89 districts were awarded money to implement "Reads to Lead." In the following year, all the districts except two - Las Cruces and Albuquerque - were awarded a small amount of money for "Reads to Lead." The average reading improvement rates for "Reads to Lead" schools are not different than the reading improvement rates of the state's schools overall.

193. Due to a lack of funding, New Mexico schools do not have the support staff that they need to meet the needs of their students. Nurses, nurses' aides, social workers, and therapists' positions have been cut across the state.

194. Due to a lack of funding, across the state, New Mexico school districts have had to cut summer school and tutoring programs, and credit recovery programs.

195. Due to a lack of funding, preventative programs, such as Albuquerque's Early Childhood

Liaison Program, have been cut. Albuquerque Public Schools district lost a program comprised of 20 staff members who were trained to work with at-risk kindergarteners and their families to help them be successful in kindergarten. No such program exists anymore.

196. Due to a lack of funding, NM schools have an inadequate amount of educational supplies and equipment, and access to technology.

197. Across the state, families of low income children are expected to supply the schools with paper, pencils, pens, glue, crayons and notebooks for the classrooms, as well as tissues, cleaning supplies, copying paper, and dry erase markers and chalk. Families are also required to purchase books, or students are expected to share books at school and cannot bring them home to study or do homework, thereby slowing down the progress that a class can make if all the reading must be done during class time.

198. American Indian students have a substantially higher risk of dropping out of school compared to other groups. American Indian students require additional services and programs to address high dropout rates.

199. New Mexico provides an insufficient number of health and safety prevention and intervention programs to the 23 school districts that serve American Indian students.

200. As of 2013, only 14 of the 23 school districts that have a large proportion of Native American students provide Student Assistance Services, School Based Health Centers, and peer counseling; only 11 school districts provide Conflict Resolution and mediation programs; only 8 school districts provide active mentoring programs; only 5 school districts provide Peer facilitation programs; only 8 use Character Education program with tribal values; and, only 3 school districts have implemented a health education curriculum that includes Native Language and Culture (by theme and lessons).

201. The Bilingual Multicultural Education Act was enacted to direct state and federal funding to assist all students, including English language learners, to become bilingual and biliterate in English as a second language, as well as to meet academic content standards and benchmarks in all subject areas.

202. The BME Act recognizes the value of bilingualism as an educational tool and the need for professional development for district employees, including teachers, TAs, principals, bilingual directors or coordinators, superintendents and associates, and financial officers.

203. However, as of 2013, many of the school districts containing large populations of Hispanic and American Indian students fail to provide all students with adequate language programs. (ex: The results of the HEA Status report show that many school districts offer very few bi-lingual programs where there are large percentages of Hispanic students).

204. Research demonstrates that early childhood education, such as pre-kindergarten programs, are crucial to address the achievement gaps between low income and non-low income students, as well as with students of color, and ELL students.

205. Pre-kindergarten programs provide economically disadvantaged, ELL students, and students of color with educational opportunities that enhance cognitive and social development and enable these children to start kindergarten ready to learn and on more equal footing with their non-disadvantaged peers. Indeed, pre-kindergarten programs have been found to be fundamental to addressing the achievement gap since children from disadvantaged families generally start kindergarten one to two years behind their non-disadvantaged peers, because they have not been exposed to the same opportunities to develop.

206. In New Mexico, pre-kindergarten classrooms are funded by below the line funding that requires school districts to put in a grant application to Defendants PED and Secretary-Designate Skandera for money for pre-kindergarten education.

207. Due to insufficient funding, more than 2/3 of the school districts do not have pre-kindergarten programs and those that do only operate them in a few classrooms. For example, in school year 2012-2013, Albuquerque Public Schools had only 16 pre-kindergarten classrooms in operation, Santa Fe Public Schools had only 4 pre-kindergarten classrooms, and Gallup- McKinley had only 5.

208. In 2012, only 16% of the State's total population of 4 year old children enrolled in New Mexico pre-K. According to a report released by New Mexico Voices for Children, New Mexico ranks 44th in the nation in pre-school enrollment for 3 and 4 year olds.

209. Recently, Defendants have increased high school graduation requirements without providing additional funding to support students to meet those more stringent requirements.

210. Due to insufficient funding, the Defendants fail to provide the resources and adequately align those resources with students' needs to support students to graduate and to graduate students who are prepared academically to handle the first-year of college courses in English Composition, College Algebra, Biology, and social sciences.

211. Due to inadequate college preparation, many students who graduate from New Mexico public schools will not be prepared with the skills necessary to meet the demands of the five fastest growing career fields, which include: Education, Computer Information Specialties, Community Services, Management, and Marketing Sales. These fields generally require a post-secondary degree.

212. New Mexico has the second lowest percentage of workers in the labor force with bachelor's degree or more (trailing only Oklahoma).

213. Research shows that the necessary resources to meet the needs of low income students to be college ready, include: early intervention programs to ensure that a larger pool of low-income students are prepared for college; better access to college counseling and test preparation; better financial and college application training; afterschool programs; on-campus remedial education; high

standard curricula; Advanced Placement courses; mentorship opportunities; and, career and educational planning.

214. Georgetown University’s Center for Education and the Workforce reports that, “by 2020, 63% of New Mexico’s jobs in a variety of fields will require postsecondary training.” However, as stated in a recent Legislative Education Study Committee report, reaching the goal of 60 % of New Mexicans with postsecondary credentials by 2025, an increase of 20 % within 11 years, is not feasible if programs are not aimed at the young minority populations and all adults without postsecondary credentials or degrees.

215. Despite legislative reports advising the State to direct more funding towards alleviating the factors that contribute to these students’ high risk of academic failure, the achievement gap persistently continues to affect economically disadvantaged students, including American Indian and Hispanic students.

216. In order to provide the necessary resources to meet the needs of New Mexico’s student population, almost every school district in the state, and certainly all of the school districts implicated through this lawsuit, need additional money. The 2008 AIR study, and the recommendations adopted by the Funding Formula Task Force in 2008 and 2009, if implemented, would result in all but three of the 89 school districts receiving additional money through the funding formula. All of the school districts involved in this litigation would receive significantly more money if the AIR study and recommendations of the Funding Formula Task Force were implemented. Without significant changes to the overall amount of funding and the formula through which the funding is directed to the districts, school funding in New Mexico will remain unconstitutionally insufficient.

FACTS RELATED SPECIFICALLY TO GALLUP-MCKINLEY COUNTY SCHOOL DISTRICT

217. Gallup-McKinley is one of the larger districts in New Mexico with about 12,000

students. 87.5% of all Gallup-McKinley School District students are economically disadvantaged, and 55.4% are current or exited English Language Learners.

218. Due to insufficient funding, Gallup-McKinley County Schools is unable to provide the necessary programs and services to meet the specialized needs of students who are predominantly American Indian, economically disadvantaged, and ELL. Student SBA scores indicate that Gallup-McKinley public schools are unable to produce students that are prepared for college and/or the workforce.

219. In the Gallup-McKinley School District, according to New Mexico Public Education Department data from 2013 for districtwide reading scores, only 33.2% were at proficient or above, with 41% nearing proficiency and 25.9% at the beginning step level. For the economically disadvantaged students, only 29.7% were at proficiency or above, with 42.2% nearing proficiency and 28.1% at the beginning step level. For the current English Language Learners, only 13% were at proficient or above, with 40.8% nearing proficiency and 46.2% at the beginning step level.

220. 64.8% of 318 Caucasians were proficient or above at reading, compared to 47.2% of 1,033 Hispanics, 27.8% of 5,195 American Indians, and 17.4% of 23 African Americans.

221. In math, only 32.6% of all students, 29.7% of economically disadvantaged students, and 17.2% of current English Language Learners were proficient or above. 63% of Caucasians were proficient or above, compared to 44% of Hispanics, 27.8% of American Indians, and 22.7% of African Americans.

222. The districtwide graduation rate for the Gallup-McKinley School District class of 2013 was 71.3%. For economically disadvantaged students it was 68.9%, and for English Language Learners it was 67.9%. For Caucasians it was 84%, compared to 78.9% for Hispanics, and 69.3% for American Indians.

223. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Gallup/McKinley County Schools would receive a budget increase of approximately 27%.

224. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$22 million in 2009/2010 dollars being added to an annual budget of \$84 million dollars.

225. With the additional money, Gallup/McKinley County Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

226. An increase in the overall funding to Gallup/McKinley County schools, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Gallup/McKinley County Schools, to provide its students, including plaintiff child Xavier Nez, with a sufficient and uniform education.

FACTS RELATED SPECIFICALLY TO SANTA FE PUBLIC SCHOOLS

227. Santa Fe is the fourth largest school district in New Mexico, with over 18,000 students.

60.7% of all Santa Fe District students were economically disadvantaged during the 2012-2013 school year.

228. Santa Fe School district is unable to provide the necessary programs and services to meet the specialized needs of students who are predominantly American Indian, Hispanic, economically disadvantaged, and ELL. Student SBA scores indicate that the Santa Fe school district is unable to produce students that are prepared for college and/or the workforce.

229. Reading scores show that in 2013, only 46.1% of Santa Fe students are proficient or better. Only 36.1% of the economically disadvantaged students tested proficient or above, and only 20.2% of the current English Language Learners tested proficient or above. In 2013, 65.7% of 1,902 Caucasians are proficient or above, compared to 62.5% of 80 African Americans, 42.8% of 194 American Indians, and 39.3% of 6,114 Hispanics.

230. In math scores for 2013, 35.1% of all students were proficient or above. 26.2% of economically disadvantaged students were proficient or above and 15.8% of current English Language Learners were proficient or above. 55.9% of Caucasians, compared to 43.8% of African Americans, 27.8% of Hispanics, and 32.8% of American Indians were proficient or better.

231. The graduation rate for the Santa Fe school district class of 2013 was 60%. For economically disadvantaged students it was 60.9% and for English Language Learners it was 58.8%. Caucasians had a 65.4% graduation rate, compared to 63.6% for African Americans, 57.7% for Hispanics, and 55.8% for American Indians.

232. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Santa Fe Public Schools would receive a budget increase of approximately 14%.

233. If the results had been implemented during the 2009/2010 school year, this would have

resulted in an increase of approximately \$11 million in 2009/2010 dollars being added to an annual budget of \$83 million dollars.

234. With the additional money, Santa Fe Public Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

235. An increase in the overall funding to Santa Fe Public Schools, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Santa Fe Public Schools to provide its students with a sufficient and uniform education.

FACTS RELATED SPECIFICALLY TO MORIARTY-EDGEWOOD PUBLIC SCHOOLS

236. Moriarty-Edgewood is a small rural school district in New Mexico with about 2,752 students. 57.5% of all Moriarty-Edgewood School District students are economically disadvantaged. Approximately 11% of the students are English language learners. Additionally, a significant number of Moriarty-Edgewood students are mobile and/or transient.

237. Due to insufficient funding, Moriarty-Edgewood School District is unable to provide the necessary programs and services to meet the specialized needs of students who are Hispanic, economically disadvantaged, and/or ELL. Student SBA scores indicate that Moriarty-Edgewood public

schools are unable to prepare students for college and/or the workforce.

238. In the Moriarty-Edgewood School District, according to New Mexico Public Education Department data from 2013 for districtwide reading scores, 62.4% were at proficient or above, with 27.4% nearing proficiency and 10.2% at the beginning step level. For the economically disadvantaged students, only 52.3% were at proficiency or above, with 32.9% nearing proficiency and 14.8% at the beginning step level. For the current English Language Learners, only 17.6% were at proficient or above, with 37.8% nearing proficiency and 44.5% at the beginning step level.

239. 67.7% of Caucasians were proficient or above at reading, compared to 56.7% of Hispanics.

240. In math, 50.9% of all students, 39.8% of economically disadvantaged students, and 10.6% of current English Language Learners were proficient or above. 58.2% of Caucasians were proficient or above, compared to 42.7% of Hispanics.

241. The districtwide graduation rate for the Moriarty-Edgewood School District class of 2013 was 72.6%. For economically disadvantaged students, it was 61.1%, and for English Language Learners it was 61.9%. For Caucasians, it was 72%, compared to 72.3% for Hispanics.

242. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Moriarty-Edgewood School District would receive a budget increase of approximately 21%.

243. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$5.5 million in 2009/2010 dollars being added to an annual budget of \$25.9 million dollars.

244. With the additional money, Moriarty-Edgewood School District could provide the

necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

245. An increase in the overall funding to Moriarty-Edgewood School District, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Moriarty-Edgewood School District Board of Education, to provide its students with a sufficient and uniform education.

FACTS RELATED SPECIFICALLY TO RIO RANCHO PUBLIC SCHOOLS

246. Rio Rancho Public Schools is the fourth largest district in New Mexico with about 17,206 students. 47.7 % of all Rio Rancho School District students are economically disadvantaged.

247. Due to insufficient funding, Rio Rancho Public Schools is unable to provide the necessary programs and services to meet the specialized needs of students who are predominantly American Indian, economically disadvantaged, and ELL. Student SBA scores indicate that Rio Rancho Public Schools is unable to produce students that are prepared for college and/or the workforce.

248. In the Rio Rancho School District, according to New Mexico Public Education Department data from 2013 for districtwide reading scores, only 66% were at proficient or above, with 26% nearing proficiency and 7.5% at the beginning step level. For the economically disadvantaged students, only 55% were at proficiency or above, with 33.4% nearing proficiency and 11.6% at the

beginning step level. For the current English Language Learners, only 20.8% were at proficient or above, with 44.1% nearing proficiency and 35.1% at the beginning step level.

249. 73.6% of 4,057 Caucasians were proficient or above at reading, compared to 60.4% of 5,108 Hispanics, 58.3% of 448 American Indians, and 60.7% of 417 African Americans.

250. In math, only 57.7% of all students, 46.6% of economically disadvantaged students, and 19.5% of current English Language Learners were proficient or above. 66.4% of Caucasians were proficient or above, compared to 51.1% of Hispanics, 52.1% of American Indians, and 46.4% of African Americans.

251. The districtwide graduation rate for the Rio Rancho Public Schools class of 2013 was 84%. For economically disadvantaged students it was 72.9%, and for English Language Learners it was 72.4%. For Caucasians it was 86.5%, compared to 81.4% for Hispanics, and 74.2% for American Indians.

252. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Rio Rancho Public Schools would receive a budget increase of approximately 10.3%.

253. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$4,373,359 million in 2009/2010 dollars being added to an annual budget of \$104,499,066 million dollars.

254. With the additional money, Rio Rancho Public Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading

instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

255. An increase in the overall funding to Rio Rancho Public schools, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Rio Rancho Public Schools to provide its students with a sufficient and uniform education.

FACTS RELATED SPECIFICALLY TO LAKE ARTHUR MUNICIPAL SCHOOLS

256. Lake Arthur is a small rural school district in New Mexico with about 119 students. 88% of all Lake Arthur Municipal School students are economically disadvantaged. Approximately 30% of students are English language learners while 33% are mobile and/or transient.

257. Due to insufficient funding, Lake Arthur Municipal Schools are unable to provide the necessary programs and services to meet the specialized needs of students who are economically disadvantaged, Hispanic and/or ELL. Student SBA scores indicate that Lake Arthur Municipal Schools are unable to prepare students for college and/or the workforce.

258. In the Lake Arthur Municipal School district, according to New Mexico Public Education Department data from 2013 for districtwide reading scores, 54% of the students were not proficient in reading, with 31% nearing proficiency and 23% at the beginning level. For economically disadvantaged students, 57% were not proficient in reading, with 34% nearing proficiency and 24% at the beginning level. For English-language learner students, 87% were not proficient, with 55% nearing proficiency, and 32% were at the beginning level.

259. 72% of Caucasians were proficient or above at reading, compared to 38% of Hispanics.

260. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Lake Arthur Municipal School would receive a budget increase of approximately 11%.

261. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$267,913 in 2009/2010 dollars being added to an annual budget of \$2,425,989 million dollars.

262. With the additional money, Lake Arthur Municipal Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

263. An increase in the overall funding to Lake Arthur Municipal Schools, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Lake Arthur Municipal Schools Board of Education, to provide its students with a sufficient and uniform education.

FACTS RELATED SPECIFICALLY TO CUBA INDEPENDENT SCHOOLS

264. Cuba is a small rural school district in New Mexico with about 560 students. 91% of all

Cuba Independent School students are economically disadvantaged. Approximately 41% of students are English language learners. Additionally, 62% of Cuba Independent School students are American Indian.

265. Due to insufficient funding, Cuba Independent School District is unable to provide the necessary programs and services to meet the specialized needs of students who are American Indian, economically disadvantaged, and/or ELL. Student SBA scores indicate that Cuba Independent School District are unable to prepare students for college and/or the workforce.

266. In the Cuba Independent School District, according to New Mexico Public Education Department data from 2013 for districtwide reading scores, only 36% were at proficient or above, meaning 64% are not proficient, with 41% nearing proficiency and 23% at the beginning step level. For ELL students, only 13% were at proficient or above, meaning 87% are not proficient, with 33% nearing proficiency and 54% at the beginning level.

267. The scores also show a gap in “proficient or above” in reading and math between the districtwide average and students who are either American Indian, and/or economically disadvantaged.

268. The districtwide graduation rate for the Cuba Independent School District class of 2013 was 61%, while the graduation rate for American Indian students was 54%.

269. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Cuba Independent School District would receive a budget increase of approximately 38.5%.

270. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$2,501,772 in 2009/2010 dollars being added to an annual budget of \$6,493,185 million dollars.

271. With the additional money, Cuba Independent School District could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

272. An increase in the overall funding to Cuba Independent School District, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Cuba Independent School District Board of Education, to provide its students with a sufficient and uniform education.

FACTS RELATED SPECIFICALLY TO ALBUQUERQUE PUBLIC SCHOOLS

273. The Albuquerque Public School district is not able to provide its students with a sufficient and uniform education system. Albuquerque Public Schools has the largest number of students in the state, with approximately 93,000 students. 66% of all students are economically disadvantaged, and 27% of those tested were current or exited English Language Learners. APS students, who are predominantly American Indian, Hispanic/Latino, African American, economically disadvantaged, and ELL, fail to receive the necessary programs and services that meet their specialized needs, as evidenced by their students’ outcomes. Student SBA scores indicate that many of these students are not prepared to enter college and/or the workforce.

274. New Mexico Public Education Department data from 2013 shows that for Albuquerque

Public Schools' districtwide reading scores, only 52% were at proficient or above, with 32.7% nearing proficiency, and 15.3% at the beginning step level. For the economically disadvantaged students, only 41.4% were at proficient or above, with 38.3% nearing proficiency, and 20.3% at the beginning step level. For the current English Language Learners, 19.5% were at proficient or above, 42.2% were nearing proficiency, and 38.3% were at the beginning step level.

275. The school system impacts Hispanics, African Americans, and American Indians disproportionately in the Albuquerque Public Schools district where 71.1% of Caucasians were proficient or above in reading compared to 45.9% of Hispanics, 57.4% of African Americans, and 38.5% of American Indians.

276. Math scores in the Albuquerque Public Schools were worse than reading in 2013. Of all students only 42.4% were at proficient or above. Only 31.4% of economically disadvantaged students were proficient or above, and only 16.9% of current English Language Learners were proficient or above. 62.8% of Caucasians were proficient or above, compared to 35.5% of Hispanics, 33% of African Americans, and 30.4% of American Indians.

277. Albuquerque Public Schools class of 2013 had a graduation rate of 68.7% districtwide. Economically disadvantaged students had a 61.2% graduation rate, and English Language Learners had a 61.8% graduation rate. Caucasians had a 76.9% graduation rate, compared to 65.6% for African Americans, 50.3% for American Indians, and 66.4 for Hispanics.

278. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Albuquerque Public Schools would receive a budget increase of approximately 9%.

279. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$60 million in 2009/2010 dollars being added to an annual

budget of \$648 million dollars.

280. With the additional money, Albuquerque Public Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

281. An increase in the overall funding to Albuquerque Public Schools, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Albuquerque Public Schools to provide its students, including plaintiff students Marcos Martinez, Genesis Canuto, Justus Bowe and Solomon Bowe, with a sufficient and uniform education.

**FACTS RELATED SPECIFICALLY TO GRANTS-CIBOLA COUNTY
SCHOOL DISTRICT**

282. Grants-Cibola County Schools is unable to provide its students a sufficient and uniform education. In 2013, with a total of approximately 3,600 students, 75.8% of the students in Grants-Cibola School District were economically disadvantaged, and 28.7% were current or exited English Language Learners. Grants-Cibola County School students, who are predominantly American Indian, Hispanic/Latino, economically disadvantaged, and ELL, fail to receive the necessary programs and services that meet their specialized needs, as evidenced by their students’ outcomes. Student SBA scores indicate that many students attending Grants-Cibola public schools are not prepared to enter college

and/or the workforce.

283. In Grants-Cibola School District, reading scores for 2013 showed 47.8% of the students were proficient or above. 42.3% of economically disadvantaged students, and 18.4% of current English Language Learners were proficient or above. 65.1% of Caucasians were proficient or above, compared to 53.8% of African Americans, 50.8% of Hispanics, and 37.6% of American Indians.

284. In math, 39.1% of all students were proficient or above. 35.3% of economically disadvantaged students, and 20.7% of current English Language Learners were proficient or above. 51% of Caucasians were proficient or above, compared to 46.2% of African Americans, 39.3% of Hispanics, and 33.3% of American Indians.

285. Districtwide the class of 2013 had a graduation rate of 67.4%. Economically disadvantaged students were at 62.6%, and English Language Learners were at 60.2%. Caucasians were at 72.8%, compared to Hispanics at 63.8% and American Indians at 68.3%.

286. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Grants/Cibola Public Schools would receive a budget increase of approximately 17%.

287. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$5 million in 2009/2010 dollars being added to an annual budget of \$28 million dollars.

288. With the additional money, Grants/Cibola Public Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading

instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

289. An increase in the overall funding to Grants/Cibola Public Schools, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Grants/Cibola Public Schools to provide its students, including plaintiff children Andrea Leno, Felisha Patricio, Kylie Patricia, Juanita Patricio, TobieMae Patricio and Hailey Patricio, with a sufficient and uniform education.

FACTS SPECIFICALLY RELATED TO GADSDEN INDEPENDENT SCHOOL DISTRICT

290. Gadsden Independent School District is unable to provide its students with a sufficient and uniform education. For the 2012 SY, 99.9% of all 13,910 Gadsden students were economically disadvantaged, and 76.8% of those tested were current or exited English Language Learners. Gadsden students, who are predominantly Hispanic/Latino, economically disadvantaged, and ELL, fail to receive the necessary programs and services that meet their specialized needs, as evidenced by their students’ outcomes. Student SBA scores indicate that many students attending Gadsden public schools are not prepared to enter college and/or the workforce.

291. In 2013, Gadsden student reading scores showed 47.2% of students were proficient or above. 47.1% of economically disadvantaged students were proficient or above, and 26.4% of 3,056 current English Language Learners were proficient or above. 64.9% of 239 Caucasians were proficient or above in reading, compared to 47.8% of 23 African Americans, 46.6% of 8,002 Hispanics, and 46.2%

of 13 American Indians.

292. Gadsden student math scores were nearly identical to reading scores in 2013, with 47.8% proficient or above. 47.8% of economically disadvantaged students, and 30.5% of current ELL students were proficient or above. 59.4% of Caucasians, compared to 40.9% of African Americans, 47.5% of Hispanics, and 30.8% of American Indians were proficient or above.

293. The class of 2013's graduation rate was 79% districtwide.

294. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Gadsden Independent Schools would receive a budget increase of approximately 22%.

295. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$22 million in 2009/2010 dollars being added to an annual budget of \$97 million dollars.

296. With the additional money, Gadsden Independent Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

297. An increase in the overall funding to Gadsden Independent Schools, provided by an

increase in the overall education appropriation and an adjustment to the funding formula, and ensuring money flows through the SEG and not “below the line,” is necessary for Gadsden Independent Schools to provide its students, including plaintiff children Julio Delgado, Daniel Delgado and Veronica Delgado, with a sufficient and uniform education.

**FACTS RELATED SPECIFICALLY TO PENASCO INDEPENDENT
SCHOOL DISTRICT**

298. Peñasco Independent School District is unable to provide its students with a sufficient and uniform education. With a total of 420 students in SY 2013, 61.4% of all Peñasco students were economically disadvantaged, and 20.3% those tested were current or exited ELL students. Peñasco students, who are predominantly Hispanic/Latino, American Indian, economically disadvantaged, and ELL, fail to receive the necessary programs and services that meet their specialized needs, as evidenced by their students’ outcomes. Student SBA scores indicate that many students attending Peñasco public schools are not prepared to enter college and/or the workforce.

299. In 2013, Peñasco student reading scores showed that 45.6% were proficient or above in 2013. Only 40.6% of the economically disadvantaged students, and 23.5% of current ELL students were proficient or above. 84.6% of Caucasians, compared to 43.3% of Hispanics, and 50% of American Indians were proficient or above.

300. Math scores for 2013 showed only 33.7% of all students, 30.5% of economically disadvantaged students, and 20.6% of current ELL students were proficient or above. 61.5% of Caucasians, compared to 31.6% of Hispanics, and 42.9% of American Indians were proficient or above.

301. The class of 2013’s graduation rate was 75.6% districtwide.

302. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Peñasco Independent Schools would receive a budget increase of approximately

27%.

303. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$1.6 million in 2009/2010 dollars being added to an annual budget of \$5.8 million dollars.

304. With the additional money, Peñasco Independent Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

305. An increase in the overall funding to Peñasco Schools, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring that money flows through the SEG and not “below the line,” is necessary for Peñasco Schools to provide its students, including plaintiff children Anthony Guajardo, Johnathan Guajardo, Andrew Dominguez, Able Dominguez, and Dylan Sanchez, with a sufficient and uniform education.

**FACTS RELATED SPECIFICALLY TO JEMEZ VALLEY
PUBLIC SCHOOLS**

306. Jemez Valley Public Schools is unable to provide its students a sufficient and uniform education. Of the 445 students in 2013, 82.7% of all students were economically disadvantaged, and 22.7% of tested students were current ELL students. Jemez Valley students, who are predominantly American Indian, Hispanic/Latino, economically disadvantaged, and ELL, fail to receive the necessary

programs and services that meet their specialized needs, as evidenced by their students' outcomes. Student SBA scores indicate that many students attending Jemez Valley public schools are not prepared to enter college and/or the workforce.

307. In 2013, Jemez Valley student reading scores showed 32.8% were proficient or above. 29.6% of economically disadvantaged students, and 13.8% of current ELL students were proficient or above. 68.8% of Caucasians, compared to 42.9% of Hispanics, and 20.8% of American Indians were proficient or better.

308. In 2013, Jemez Valley student math scores showed 15.2% of all students were proficient or better. 12.1% of economically disadvantaged students and 8.6% of current ELL students were proficient or better. 37.5% of Caucasians, compared to 19% of Hispanics and 8.8% of American Indians were proficient or above.

309. The class of 2013's graduation rate was 82.4% districtwide.

310. If the results of the 2008 AIR report are implemented, as was called for by the Funding Formula Task Force, after an increase in the overall education appropriation as well as adjustments to the funding formula, Jemez Valley Public Schools would receive a budget increase of approximately 32%.

311. If the results had been implemented during the 2009/2010 school year, this would have resulted in an increase of approximately \$1 million in 2009/2010 dollars being added to an annual budget of \$3.3 million dollars.

312. With the additional money, Jemez Valley Public Schools could provide the necessary services to its students, such as retaining experienced and trained staff, hiring more staff to reduce classroom sizes, implementing after school programs and summer school programs, adding pre-kindergarten programs, tutoring programs, enhanced curriculum, including evidence based reading

instruction and broader course offerings which include the fine arts, music and physical education, improved classroom materials, including greater access to technology, culturally relevant educational services, better access to college counseling and test preparation, better financial and college application training, afterschool programs, on-campus remedial education, Advanced Placement courses, mentorship opportunities, and, career and educational planning.

313. An increase in the overall funding to Jemez Valley Public Schools, provided by an increase in the overall education appropriation and an adjustment to the funding formula, and ensuring money flows through the SEG and not “below the line,” is necessary for Jemez Valley Public Schools to provide its students, including plaintiff child Justin Madalena, with a sufficient and uniform education.

CAUSES OF ACTION

COUNT I

Overall Funding of Public School Education in New Mexico: Violation of Sufficiency Requirement of Article XII, Section 1 of the New Mexico Constitution

1. Plaintiffs allege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Art. XII, Section 1 of the New Mexico Constitution states: "a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."
3. Defendants are violating the sufficiency provision of this clause by not providing enough funding for New Mexico children to have an opportunity to succeed in school.
4. The amount of money appropriated to public school education, especially in light of the steady decline of the percentage of revenues appropriated to public school education in New Mexico and

the low educational outcomes of New Mexican students, and the high number of children living in poverty and going to high poverty schools, violates the sufficiency provision of the educational mandate of the New Mexico Constitution.

COUNT II:

**Modification of the Funding Formula for Public Education:
Violation of Sufficiency and Uniformity Requirements of
Article XII, Section 1 of the New Mexico Constitution**

1. Plaintiffs allege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Art. XII, Section 1 of the New Mexico Constitution states: "a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."
3. Defendants violate Plaintiffs' right to a sufficient and uniform education by not directing sufficient funds to meet the needs of low income children and ELL children.
4. The failure to correct the well-documented inadequacies of New Mexico's current funding formula, and specifically the failure to provide additional funding in the formula for low income and ELL students, violates the sufficiency and uniformity provisions of the educational mandate of the New Mexico Constitution.

COUNT III:

**Below the Line Funding of Education: Violation of
Uniformity Provision of Art XII, Section 1**

1. Plaintiffs allege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Art. XII, Section 1 of the New Mexico Constitution states: "a uniform system of free

public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."

3. Defendants recent trend of expanding the "below the line funding" of educational initiatives in New Mexico violates the uniformity provision of the educational mandate of the New Mexico Constitution.

PRAYER FOR RELIEF

Plaintiffs respectfully request the court to enter a declaratory judgment, pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978 §44-6-1, *et seq.* to resolve an actual controversy with respect to their rights, status, and other legal relations with respect to the New Mexico system of public school education under Article XII § 1 of the New Mexico constitution. Plaintiffs further request, pursuant to the Declaratory Judgment Act, and the court's inherent power in equity, that the Court enter further injunctive relief. Specifically, plaintiffs seek a judgment:

- a. Declaring that the current levels of public school funding in New Mexico violate the sufficiency provisions of the educational mandate of the New Mexico Constitution;
- b. Declaring that the current distribution of public school funding violates the sufficiency and uniformity provisions of the education mandate of the New Mexico Constitution;
- c. Declaring that in order for Defendants to meet the educational mandate in the New Mexico Constitution, Defendants must provide more funding to public schools in New Mexico, and Defendants must make adjustments to the funding formula to provide additional funding for students living in poverty and

learning the English language;

- d. Declaring that inordinate expansion of "below the line funding" of public school education in New Mexico violates the uniformity requirement of the educational mandate of the New Mexico Constitution;
- e. Enjoining the Defendants to make a budget proposal and funding formula plan before the next legislative session to sufficiently, uniformly and equitably fund the public schools commensurate with this ruling and the New Mexico Constitution;
- f. Enjoining Defendants to fund the public schools at a constitutionally sufficient level and to provide sufficient resources to the schools to ensure that all children are receiving a sufficient education, as recognized by national standards of sufficiency and adequacy.
- g. Enjoining Defendants to monitor the additional money provided to the public schools to ensure that the money is used to increase educational opportunities for low income and ELL students;
- h. Enjoining Defendants to ensure that a system of accountability is established that measures whether every school has sufficient resources and whether, in fact, every child is receiving a sufficient education;
- i. Retaining jurisdiction to ensure that the Defendants budget proposal and plan complies with the New Mexico Constitution

and to ensure that a constitutional public school budget is soon implemented;

- j. Granting attorneys' fees to plaintiffs; and
- k. Granting any further and other relief the court deems just and proper.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July 2015, a true and correct copy of the foregoing pleading was e-filed and served through the Court's e-filing system upon counsel for the Defendants, and counsel for the Martinez plaintiffs.

 /s/ Gail Evans

Gail Evans