

FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next
friend of her minor children AN. MARTINEZ,
AA. MARTINEZ, AR. MARTINEZ, and
AD. MARTINEZ; *et al.*,

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO; *et al.*,

Defendants.

Consolidated with

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;
MARSHA LENO, Individually and as next friend to
her minor children, ANDREA LENO, BRYAN
GACHUPIN, AZALIYAH GACHUPIN, and
AS'SHU'WA GACHUPIN; 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; 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.

No. 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.

**YAZZIE PLAINTIFFS' MOTION AND SUPPORTING MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT
TO ESTABLISH THAT THE STATE OF NEW MEXICO HAS FAILED ITS
CONSTITUTIONAL DUTY TO PROVIDE NEW MEXICO A UNIFORM SYSTEM OF
SCHOOLS SUFFICIENT FOR THE EDUCATION OF ALL CHILDREN**

I. Introduction

The education clause of the New Mexico Constitution states, “A uniform system of free public schools *sufficient* for the education of, and open to, *all* children of school age in the state shall be established and maintained.” N.M. Const. art. XII, § 1 (emphasis added). Based on New Mexico students’ achievement and educational outcomes, it is clear that the vast majority of New Mexico school children finish each school year without the basic literacy and math skills needed to continue their education, which when compounded over the course of these students’ lives, translates into entire communities of citizens who are unable to meaningfully contribute to society. As such, the State is not meeting its constitutional duty to provide a system of schools sufficient for the education of all children. Accordingly, there is no issue of material fact as to Defendants’ violation of Count I of Yazzie Plaintiffs’ Third Amended Complaint (“Complaint”), nor any to preclude this Court from entering an order of declaratory judgment in response to such a violation.

The State of New Mexico is failing its public school students and has failed them for so long that there now exists an entire generation of children in this state who do not possess the basic capabilities to meaningfully function in modern society — to be successful in college and beyond or to be ready for a

career after high school. For example, the majority of fourth, eighth, and eleventh graders in this State were not proficient in math or reading, as measured by the State's longest-standing standard assessment (the NMSBA) between 2007 and 2014. For low-income, Native American, and especially ELL students, proficiency levels in reading and math in the fourth, eighth, and eleventh grade levels are startlingly worse, as an even larger majority of these students were not proficient in reading and math during this same time period.¹

Sadly, these abysmal student outcomes have continued over time, unabated. This is demonstrated by the proficiency rates on the recently implemented NMPARCC standard assessment for the 2014-15 school year. Indeed, majorities of fourth, eighth, and eleventh grade students did not score proficient on the NMPARCC assessment for reading and math, and the lion's share of low-income, Native American, and ELL students demonstrated proficiency rates in these subjects in the alarmingly low range of 4%-15%. Not only are almost all of these students performing below grade level, the majority of them are performing *drastically* below proficient and have been for *years*.

Given that the vast majority of New Mexico's public school students cannot read or do math proficiently, it is not surprising that only two-thirds of the state's students ever graduate from high school, and that those students who do go on to higher education need college remediation help in large numbers. (Ex. A at ¶¶ 995-1001, ¶¶ 1024-1028, ¶¶ 1254-1255.) For example, between 2008 and 2014, an average of only 65.7% of New Mexico students graduated from high school. (*Id.* at ¶¶ 995-1001.) That rate dips even lower for Native American students. (*Id.* at ¶¶ 1002-1008.) Additionally, roughly half of the New Mexico public school students who graduate and attend New Mexico public colleges and universities require remedial courses. (*Id.* at ¶¶ 1024-1028, 1254-1255.) This stark reality evinces chronic systemic

¹ See Yazzie Plaintiffs' Statement of Undisputed Stipulated Material Facts, attached hereto as Exhibit A.

failure of the state's system of education that not only imperils the future success of all New Mexico school children but jeopardizes the future health of the state's economy, as well.

These abysmal educational outcomes are not inevitable. Rather, given New Mexico's student population, which is more than two-thirds low income, 14.4% ELL, and 10% Native American, the State has an obligation to provide an education that meets the needs of its students. It is undisputed and agreed by the parties in this case that the correlation between high poverty and low academic achievement means that New Mexico students are at a significantly greater risk of academic failure than their peers in other states with less poverty. Therefore, in order to provide a sufficient education to all students in New Mexico — including poor, ELL and Native American students — as the state constitution requires, the State must provide the requisite public funding, programs, services, and staffing to ensure that all New Mexico public school students have an equal opportunity for achievement throughout their public school lives, regardless of their demographic characteristics.

The prolonged existence of such a dismal achievement landscape constitutes direct dispositive evidence that New Mexico's system of education is not doing what the system is specifically designed to do: educate the state's children and prepare them to succeed in life. As such, Plaintiffs have conclusively demonstrated that the State of New Mexico has violated the education clause of the New Mexico Constitution.

II. Statement of Undisputed Stipulated Material Facts

The Yazzie Plaintiffs' Statement of Undisputed Stipulated Material Facts, attached hereto as Exhibit A, is the Yazzie Plaintiffs' first set of stipulations filed with the Court on April 14, 2017. Exhibit A contains stipulations on New Mexico student achievement spanning from 2007-2016 on the National Assessment of Educational Progress ("NAEP"), administered nationally, and the mandatory New Mexico Standards Based Assessment ("NMSBA"), administered from 2007 to 2013, as well as the New Mexico

Partnership for the Assessment of Readiness of College and Careers (“NMPARCC”), administered to New Mexico school children since 2014. Additionally, Exhibit A contains stipulations relating to student graduation rates, college remediation rates, dropout rates and other data which demonstrates that the State is not providing a sufficient education to its public school students. Rather than re-writing all of the stipulated facts into this motion, Plaintiffs have attached them as an exhibit and request that all the facts in Exhibit A be considered material undisputed facts for purposes of this motion.

III. Argument

Plaintiffs are entitled to summary judgment on Count I of their complaint because, as demonstrated through the material undisputed facts summarized above and attached hereto, the achievement outcomes of New Mexico’s public school students are so deficient – particularly among poor, ELL and Native American students – that Plaintiffs are entitled to judgment as a matter of law that the State is not providing a uniform system of schools sufficient for the education of all students, as required by the New Mexico Constitution. “Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law.” *Safeway, Inc. v. Rooter 2000 Plumbing and Drain SSS*, 2016-NMSC-009, ¶ 8 (internal citations omitted); *see also* Rule 1-056(C) NMRA.

Plaintiffs’ material undisputed facts demonstrate that Defendants are not providing all public school students in New Mexico a sufficient education. This is particularly troubling considering that this Court has already ruled that education is a fundamental right in New Mexico. (Order Den. Defs.’ Mot. to Dismiss Martinez Pls.’ First and Second Am. Compl. 5.) Indeed, it is worth noting again that the great majority of New Mexico’s fourth and eighth graders are not proficient in reading, according to results from the 2015 NAEP test (77% of fourth graders and 80% of eighth graders not proficient in reading). (Ex. A, ¶¶ 1169-1173.) Put another way, only a fifth of the state’s fourth and eighth grade students are

proficient readers. When it comes to math, the results are about the same. Less than one-third (27%) of New Mexico's fourth graders, and only 21% of the state's eighth graders, are proficient in math. (Ex. A at ¶¶ 1174, 1177.) Students who cannot read or do math are not ready for college or the work force. Thus, it is not surprising that, on average, roughly one-third of New Mexico students do not graduate from high school and only 29% of New Mexico's 25 to 35-year-olds have higher education credentials. (Ex. A at ¶¶ 995-1001, ¶ 1259.)

New Mexico's public education system is one of the worst in the nation.² New Mexico children rank at the very bottom in the country for educational achievement and have the lowest likelihood of success among their national peers. While the State may argue that it is doing the best it can, given the student population and resources available, that simply is not the case. The State has failed in its duty to provide New Mexico's students the educational opportunities they are entitled to in order to be successful in school. With sufficient educational opportunities, New Mexico's student outcomes would look very different. Teaching our children to read and do math, as well as be ready for college or a career is certainly attainable. However, the State has to be willing to rise to its constitutional obligation to do so. To date, the State has not done so; thus, our students continue to fail.

A. Providing education is a paramount duty of the states; therefore, this Court should exercise its powers of constitutional interpretation to give meaning to Article XII, Section 1 of the New Mexico Constitution.

The purpose of education is firmly rooted in our national jurisprudence. The U.S. Supreme Court in *Brown v. Board of Education* found that providing education is "perhaps the most important function of state and local governments," as school prepares children to be good citizens capable of performing and contributing to their communities. *See* 347 U.S. 483, 493 (1954). In the same vein, the Court in

² In light of such low proficiency rates, it is not surprising that on a national scale New Mexico has the highest portion of children reading at a "below basic" level. (Ex. A at ¶ 1172.)

Plyler v. Doe found that public education is integral to preserving a democratic system of government, maintaining cultural values, and ensuring the economic vitality of society. *See* 458 U.S. 113, 221 (1982). Crucially, the *Brown* Court ruled that “an [educational] opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” 347 U.S. at 493 (cited by *Natonabah v. Bd. of Educ. of Gallup-McKinley Cty. Sch. Dist.*, 355 F.Supp. 716, 724 (D.N.M. 1973)). Without educational opportunities, the Court reasoned, “it is doubtful that any child may reasonably be expected to succeed in life.” *Id.* Elaborating upon the foregoing, the *Plyler* court posited that when children are denied access to an education, “we deny them the ability to live within the structure of our civic institution, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” *Plyler*, 458 U.S. at 223.

Mindful that education is so integral to the success of the country, the U.S. Supreme Court recently declared that educational programs must be held to a substantive standard that embraces more than just a baseline measure of student progress. Writing for a unanimous court in *Andrew F. v. Douglas County School District*, Chief Justice Roberts went out of his way to state that the definition of education – not solely *special* education – encompasses a measure of progress where students are actually learning and advancing. 580 U.S. ___, No. 15-837 (2017). According to the Chief Justice, “Progress through this system [where advancement is permitted for children who attain an adequate knowledge of the course material] is what our society generally means by ‘education.’” *Id.* Notably, the Court explained, “When all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Id.* Though the opinion is centered on the education of students with disabilities, the Court’s analysis takes a universal view of education for all students by recognizing that an “education” must offer students an *actual* route to meaningful progress and success.

Based on this understanding of what it means to educate a student, in order for a system of public education to be “sufficient,” it must be designed and implemented to ensure that all students are provided opportunities to achieve academically and to lead meaningful and productive lives. As set forth below, numerous state courts have interpreted their state constitutions to require their states to provide education systems wherein every student develops the knowledge and skills necessary to compete and participate in global society. This Court should do likewise in this case.

1. This Court has a duty to interpret and enforce the state constitution.

This Court has already correctly found that it has the authority, in fact, the obligation, to interpret the constitution and determine whether the State is meeting its constitutional mandate to provide a sufficient system of education for all school age children. (Order Den. Defs.’ Mot. to Dismiss Martinez Pls.’ First and Second Am. Compl. 5). Indeed, like its federal counterparts, New Mexico courts are entrusted with the power to interpret the state constitution. *State v. Nunez*, 2000-NMSC-013, ¶ 48, 129 N.M. 63 (“It is the role of the judiciary, and not the legislature to interpret the constitution.”). The Framers of the New Mexico Constitution “intended to create rights and duties and . . . they made it imperative upon the judiciary to give meaning to those rights through judicial review of the conduct of the separate governmental bodies.” *Gutierrez*, 1993-NMSC-062, ¶ 55, 116 N.M. 431. It is the duty of the judiciary to assess the constitutionality of legislative acts. *See, e.g. New Mexico Dept. of Health v. Compton*, 2001-NMSC-032, ¶ 11 n.2, 131 N.M. 204 (emphasizing “the judiciary’s responsibility to ensure that statutes enacted by the Legislature satisfy the minimum procedural requirements of the Fourteenth Amendment, both on their face and as applied”).

Unquestionably, the New Mexico judiciary has the power to interpret the education clause and declare that the State of New Mexico and its Public Education Department (“PED”) have failed their constitutional duty to provide a sufficient education for every child in the state. *See, e.g. Strawn v.*

Russell, 1950-NMSC-028, ¶ 10, 54 N.M. 221 (evaluating the effect of lengthy student commutes on the constitutional mandate requiring a free system of education); *Norton v. Bd. of Educ. of Sch. Dist. No. 16*, 1976-NMSC-045, ¶¶ 4-5, 89 N.M. 470 (analyzing the free aspect of the constitutional mandate in the context of a school district’s imposition of fees for items like identification cards, physical education towels, and general science workbooks).

As contemplated by the New Mexico Supreme Court in *Kerr v. Parsons* 2016 NMSC-028, ¶ 28, there comes a point when the abject failure of a system essentially nullifies the constitutional guarantee of the right the system is meant to enshrine. As set forth herein, the educational outcomes of New Mexico public school students across grades and several school years — particularly among low-income, ELL, and Native American students, which hover in the single digits — have been so consistently poor over so many successive school years that the State cannot be said to have properly managed or financed a system of public education sufficient to meet its constitutional mandate.

2. The words “sufficient” and “all” in Article XII, Section 1 have their common English meaning.

In furtherance of the judiciary’s role to interpret the meaning of the State’s constitutional mandate on education, this Court should follow the dictates of the New Mexico Supreme Court and interpret that the words “sufficient” and “all” contained in Article XII, Section 1 according to their plain language and intent. *See Moses v. Skandera*, 2015-NMSC-036, ¶ 15 (holding that plain language rules of statutory construction applied equally to constitutional construction). Furthermore, New Mexico courts give meaning to every word when interpreting constitutional provisions, avoiding interpretations that would render certain language superfluous. *See Block v. Vigil-Giron*, 2004-NMSC-003, ¶ 9, 135 N.M. 24.

The plain English meaning of “all” is “every member or individual component of.” *All*, Merriam-Webster Dictionary (2017). Consistent with this definition, Article XII, Section 1 requires that *every*

school-age child in New Mexico have the right to a sufficient education. The constitution’s use of the word “all” draws no distinction between students of means and students living in poverty, or between students for whom English is their first language and students for whom it is not.

“Sufficient” is defined in common usage as “enough to meet the needs of a situation or a proposed end.” *Sufficient*, Merriam-Webster Dictionary (2017). Moreover, the word is often used in legal contexts. Black’s Law Dictionary defines “sufficient” as “adequate; of such quality, number, force, or value as is necessary for a given purpose.” *Sufficient*, Black’s Law Dictionary (10th ed. 2014).

Likewise, New Mexico courts have interpreted “sufficient” to mean “adequate, enough, equal to the end proposed, and that which may be necessary to accomplish an object.” *Nissen v. Miller*, 1940-NMSC-055, ¶ 10, 44 N.M. 487 (explaining that the word sufficient “embraces no more than that which furnishes a plentitude, which, when done, suffices to accomplish the purpose intended in the light of present conditions and viewed through the eyes of practical and cautious men.”).

Accordingly, a system of free public schools as contemplated by Article XII, Section 1 must provide an education that is “adequate, enough . . . and that which may be necessary to accomplish an object.” This articulation is consistent with the New Mexico Public School Code’s framing of the objective of the New Mexico education system, which is to “meet the needs of all children” so that every child succeeds. *See* NMSA 1978, § 22-1-1.2. Consequently, the State is constitutionally required to maintain a system of education that provides students with opportunities — enough knowledge, support, resources, and guidance — to ensure each child’s success. The State is hopelessly failing that task in light of the fact that the overwhelming majority of the state’s low-income, Native, and ELL students never learn to proficiently read or perform math throughout the course of their public school lives.

B. This Court should give substantive meaning to the word “sufficient” in Article XII, Section 1 and find that the State has failed its constitutional duty to provide a sufficient education to all school-age children.

1. A “sufficient” system of education is one where students actually learn and develop into competent and capable citizens.

To assess the constitutional sufficiency or efficacy of their education systems, several state supreme courts have relied on an adequacy test set forth by the Kentucky Supreme Court in *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989). In *Rose*, the court was asked to interpret the state constitutional mandate to “provide an *efficient* system of common schools throughout the state.” *Id.* at 189 (emphasis added). The court defined an “efficient system” as one that required “substantial uniformity, substantial equality of financial resources and substantial equal educational opportunity for all students.” *Id.* at 191-92 (internal quotations and citations omitted). The *Rose* court relied on evidence of student achievement scores and legislative funding calculations to determine that Kentucky’s public school system was “underfunded and inadequate . . . fraught with inequalities and inequities throughout [its] 177 local school districts.” *Id.* at 197. The court noted that the obligation to provide a public school system wherein “*every* child . . . must be provided with an equal opportunity to have an adequate education” falls solely on the shoulders of the state legislature. *Id.* at 211. According to the court, “This obligation cannot be shifted to local counties and local school districts.” *Id.*

Ultimately, the *Rose* court set out the standard for a constitutionally “efficient system” of education in the state. The court imbued in the definition of “efficient,” the provision of an “adequate” education with the aim of developing seven capacities in the state’s students:

[A]n efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or

vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

Id. at 212. As set forth herein, this comprehensive standard reflects the importance of public education to individual students and their communities.

Following *Rose*, other state courts have adopted similar, if not identical, standards to give meaning to their constitutions' educational provisions.³ For example, the Kansas Supreme Court in *Gannon v. State* expressly adopted the *Rose* capacities and considered them "minimal standards" to define the adequacy of the education system guaranteed by the Kansas Constitution. 319 P.3d 1196, 1236 (Kan. 2014). The Massachusetts Supreme Judicial Court in *McDuffy v. Secretary of Executive Office of Education* also expressly adopted the *Rose* standard to define its constitutional education requirement, and found that the Commonwealth had failed to provide its children with an education that encompassed the elements articulated in *Rose*. 615 N.E.2d 516, 554 (Mass. 1993). The *McDuffy* court explained that it must give substantive meaning to its constitution's education clause in order to give life to the

³ **Ala:** *Alabama Coal. for Equity (ACE) v. Hunt*, 1993 WL 204083 (Ala. Cir. Ct. 1993); **Ak:** *Moore v. State*, Civ. No. 3AN-04-9756, slip op. (Ak. Super. Ct., June 21, 2007); **Ariz:** *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994); **Ark:** *Lake View Sch. Dist. No. 25 of Phillips Cnty. v. Huckabee*, 91 S.W.3d 472 (Ark. 2002) supplemented, 189 S.W.3d 1 (Ark. 2004); **Colo:** *Lobato v. State*, 218 P.3d 358 (Colo. 2009); **Conn:** *Connecticut Coal. for Justice in Educ. Funding, Inc. v. Rell*, 990 A.2d 206 (Conn. 2010); **Fl:** *Haridopolos v. Citizens for Strong Sch., Inc.*, 81 So. 3d 465 (Fla. Dist. Ct. App. 2011); **Ga:** *Consortium for Adequate Sch. Funding in Georgia v. State*, Civ. No. 2004-CV-91004, slip op (Super. Ct., Aug. 11, 2008); **Idaho:** *Idaho Sch. for Equal Educ. Opportunity v. State*, 129 P.3d 1199 (Idaho 2005); **Kan:** *Gannon v. State*, 298 Kan. 319 P.3d 1196 (Kan. 2014); **Ky:** *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989); **Mass:** *McDuffy v. Sec'y of Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993); **Md:** *Maryland State Bd. of Educ. v. Bradford*, 875 A.2d 703 (Md. 2005); **Mich:** *S.S. v. State of Michigan*, Case No. 12-009231-CZ (Cir. Ct. Wayne Cty., June 27, 2013); **Minn:** *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993) **Mo:** *Committee for Educational Equality v. State*, CIV 190-1371CC, slip op. (Cir. Ct. Cole Cnty., Jan. 1993); **Mont:** *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684 (Mont. 1989); **NH:** *Claremont Sch. Dist. v. Governor*, 794 A.2d 744 (N.H. 2002); **NJ:** *Abbott v. Burke*, 643 A.2d 575 (N.J. 1994); **NY:** *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326 (N.Y. 2003); **NC:** *Hoke Cnty. Bd. of Educ. v. State*, 599 S.E.2d 365 (N.C. 2004); **Ohio:** *DeRolph v. State*, 699 N.E.2d 518 (Ohio 1998); **Or:** *Pendleton Sch. Dist. 16R v. State*, 200 P.3d 133 (Or. 2009); **SC:** *Abbeville Cnty. Sch. Dist. v. State*, 515 S.E.2d 535 (S.C. 1999); **SD:** *Davis v. State*, 804 N.W.2d 618 (S.D. 2011); **Tex:** *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005); **Wash:** *McCleary v. State*, 269 P.3d 227 (Wash. 2012); **WV:** *Tomblin v. West Va. State Bd. of Educ.*, Civ. No. 75-1268 (Cir. Ct., Jan. 3, 2003); **Wyo:** *State v. Campbell Cnty. Sch. Dist.*, 19 P.3d 518 (Wyo. 2001).

requirement set out therein. Quoting Massachusetts' first Secretary of Education Horace Mann, the court equated the provision of an adequate education to the maintenance of a robust citizenry and modern society. It noted, "[U]nder our republican government, it seems clear that the minimum of this education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will be called to discharge" *Id.* at 555. Accordingly, this Court should consider whether the education provided to New Mexico's children is enough to maintain a thoughtful and conscious community.

Bearing in mind the *Rose* standard, the North Carolina Supreme Court in *Leandro v. State* defined the state's constitutional guarantee of a "sound basic education" as one that at least provided students with the "ability to read, write, and speak the England language" and have a "sufficient knowledge" of math and physical science to "enable the student to function in a complex and rapidly changing society." 488 S.E.2d 249, 255 (N.C. 1997). It also noted that students should have a "fundamental knowledge" of geography, history, economics, and political system, as well as "sufficient academic and vocational skills" to enable them to participate in post-secondary education and the job market. *Id.*

Similarly, though it did not expressly adopt the *Rose* standard, the Washington Supreme Court in *McCleary v. State* found that the state had not met its constitutional requirement to provide an "ample" education. 269 P.3d 227, 253 (Wash. 2012). It found that the state had "consistently failed to provide adequate funding for the program of basic education." *Id.* To remedy the state's failure to meet its constitutional duty, the court retained jurisdiction over the case to "monitor implementation of [legislative] reforms" and the state's compliance therewith. *Id.* at 261. Significantly, the court noted that "the issue is complex and no option may prove wholly satisfactory, [but] this is not a reason for the judiciary to throw up its hands and offer no remedy at all." *Id.*

As evidenced above, the judiciary has the power to determine constitutional insufficiency based on educational outcomes. In the exercise of that power, however, courts are not required to contemplate

what improvements are necessary in order for the state to meet its constitutional duty. Rather, as *Rose* and its progeny make clear, courts should assess whether the *current* composition of their respective states' systems of education pass constitutional muster.

Indeed, as the Colorado Supreme Court found when it applied the *Rose* standard in interpreting its state's constitutional guarantee, "whether a better financing system could be devised" is not the question for the court to determine. *Lobato v. State*, 218 P.3d 358, 374 (Colo. 2009). Likewise, in *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, the Montana Supreme Court found that while the state's legislature had made an "initial policy determination by establishing a public school system" as required by the state constitution, that same body had not described what a "quality" system must provide. 109 P.3d 257, 261 (Mont. 2005). The court explained that the "educational product of the current school system is constitutionally deficient" and directed the legislature to define "quality" and adequately fund the state's public school system. *Id.*

Not only do the *Rose* and related standards define what a sufficient education is, they can also be used to demonstrate what it is not. New Mexico's poor outcomes in reading, math, and college readiness for all students, and particularly for low-income, ELL and Native students, demonstrate that New Mexico students are not prepared to function in modern society as contemplated in *Rose*. As such, the chronic and persistently enormous achievement gaps in this state are *prima facie* evidence of the constitutional insufficiency of the state's public education system.

2. The State has failed its constitutional duty to provide a public school system that is sufficient for the education of all children.

As this Court has already stated, the purpose of education is to promote "the ability to be a good citizen or to be a productive member of society." (Order Den. Defs.' Mot. to Dismiss Martinez Pls.' First

and Second Am. Compl. 5). It is clear from the consistently poor student achievement data set forth herein that the State is not providing a public school system that achieves this purpose.

Indeed, New Mexico's system of education is not "sufficient" no matter how that word is defined. As set forth above, using a general, common-meaning definition, the state's students are not obtaining an education that is "enough to meet the needs" to graduate intelligent and engaged citizens in our community. *Sufficient*, Merriam-Webster Dictionary Online (2017). Correspondingly, turning to Black's Law Dictionary: education in this state is not "of such quality . . . or value as is necessary for [the] given purpose." *Sufficient*, Black's Law Dictionary (10th ed. 2014). Accordingly, the creation of a productive and informed citizenry requires a system of schooling that produces proficient readers, writers, and communicators, as well as competent thinkers in the areas of mathematics, science, civics, health, and the arts. The current state of New Mexico's public schools — characterized by longitudinally dismal student achievement across demographics and even more dismal educational outcomes among poor, ELL and Native American students — has failed to reach the level of "quality" and "value" necessary to be sufficient in any context.

Looking to the ways New Mexico courts have interpreted sufficiency in other contexts, New Mexico's student outcomes — in which the vast majority of our students cannot do math or reading at grade level — clearly demonstrates that the state's education system is not "adequate, enough, [and] equal to the end proposed." *Nissen v. Miller*, 1940-NMSC-055, ¶ 10, 44 N.M. 487. If student success and an educated populace is the objective of the state's public school system, the input into the system must be "that which may be necessary to accomplish an object." *Id.* Simply stated, in the face of the state's chronically poor student outcomes across achievement standards, the current levels of funding, services, programming and staffing compositions is not enough to provide students a sufficient system for their education.

As set forth herein, the standard for sufficiency that provides the most comprehensive view of the purpose of education remains the one employed by the *Rose* court. Accordingly, this Court should adopt the *Rose* standard when assessing the constitutionality of New Mexico’s educational mandate, joining dozens of states who have done so since in their own courts. As demonstrated below, the State of New Mexico is not maintaining a system of public schools that produces students empowered with the seven capacities contemplated by the *Rose* court.

Literacy and math skills are baked into each of the *Rose* standard’s seven factors for a sufficient education. If a student is unable to read or perform math at a proficient level, it is immensely difficult for that student to comprehend sophisticated “governmental processes” and “economic, social, and political systems,” let alone find success in the pursuit of postsecondary education or gainful employment. *See* 790 S.W.2d at 212. Without this crucial foundation in reading and math, students are foreclosed from the more advanced capacities outlined in the *Rose* standard.

As evidenced by the years of depressed student achievement data set forth herein, the majority of New Mexico’s public school students are not equipped with the primary capacity of the *Rose* standard, as they do not have “sufficient oral and written communication skills to enable [them] to function in a complex and rapidly changing civilization.” *See* 790 S.W.2d at 212. Indeed, from 2007 to 2014, significant minorities, if not the majority of New Mexico’s fourth and eighth graders, consistently failed to score proficient on the NMSBA reading assessment — some of the lowest levels in the country for reading proficiency. (Ex. A at ¶¶ 1-36). Similarly, on the 2014-15 PARCC assessment, 76.2% of fourth graders and 77.1% of eighth graders scored below proficient in reading. (*Id.* at ¶¶ 55-56). While eleventh graders did a bit better, over half scored below proficient. (*Id.* at ¶ 57). If students cannot read proficiently, they cannot access economic, social and political knowledge to be able to make informed choices as contemplated in the second *Rose* factor.

With so many students struggling to read and perform math proficiently, it is no wonder that since 2008 the average graduation rate of New Mexico students was a shocking 65.7%.⁴ (Ex. A at ¶¶ 995-1001) This means that, on average, fully one-third of New Mexico students do not graduate. This is perhaps the most telling indicator that New Mexico schools are not sufficient under the *Rose* standard. If students are not empowered to meet the minimum graduation requirements, it is unlikely that their education has grounded them in knowledge of the arts, their cultural and historical heritage, or their physical and mental wellness, as incorporated in the *Rose* standard. *See* 790 S.W.2d at 212.

Certainly, without a high school diploma, students are not receiving “sufficient training or preparation for advanced training in either academic or vocational fields so as to enable [them] to choose and pursue life work intelligently.” *See id.* According to a 2015 Legislative Finance Committee report, career and technical education classes are often not offered to students in the middle grades because of the deficiency in the vocational cost differential in the funding formula and federal grants. (Ex. A at ¶ 1267) This is important because student achievement in 8th grade has a greater impact on college and career readiness than performance in any other grade in high school. (*Id.* at ¶ 1266.) Because CTE classes are not offered, the State of New Mexico is not providing students with the opportunity to achieve in vocational training that could translate to success in vocational fields post-graduation.

Relatedly, the “Quality Counts” report found that children in New Mexico have the lowest “chance for success” of all students in the country. (Ex. A at ¶¶ 1158-1160) Between 2010 and 2014, 48%-52% of first time freshman enrolled in New Mexico public postsecondary institutions from New Mexico public high schools were enrolled in remedial courses. (*Id.* at ¶¶ 1024-1024) This means that roughly half of the students who graduate from New Mexico public high schools and then enroll in New

⁴ High school graduation is even more unattainable for Native American students. In the same time frame, the graduation rate for Native American students was 59% (Ex. A at ¶¶ 1002-1008).

Mexico public colleges and universities are not ready for postsecondary success. This is because students who require remedial courses in college are less likely to complete a degree or certification program. (*Id.* at ¶ 1029.)

Finally, New Mexico public school students do not have “sufficient levels of academic or vocational skills to enable [them] to compete favorably with their counterparts in surrounding states, in academics or in the job market.” *See* 790 S.W.2d at 212. Compared with the surrounding states, New Mexico workers are some of the most uneducated. This poses a threat to our state’s economy as more jobs require postsecondary degrees, especially bachelor’s degrees. Only 29% of New Mexico’s 25 to 35-year-olds have higher education credentials. (Ex. A at ¶ 1259) In fact, a meager 29% of *all* New Mexico workers participating in the labor force had a bachelor’s degree or higher. (*Id.* at ¶ 1263). This is the second lowest rate among the six southwestern states.⁵ (*Id.*) Moreover, according to a 2013 Georgetown University Center for Education and Workforce report cited in 2014 by the Legislative Finance Committee to the Fifty-First Legislature Second Session, “by 2020, 63% of New Mexico’s jobs in a variety of fields will require postsecondary training.” (*Id.* at ¶ 1264) Bearing this prediction in mind, the State’s failure to provide a sufficient education will undoubtedly yield a devastating impact on the state economy and employment rates when one-third of new entrants to the job market lack a high school diploma, let alone postsecondary credentials.

Applying the foregoing undisputed facts to the *Rose* standard, it is clear that the State of New Mexico has not maintained a system of education that is *sufficient* for all students. Our state’s children deserve an education that embraces the capacities laid out in *Rose*. Article XII, Section 1 of the New Mexico Constitution promises a sufficient education to all school age children. As evidenced by the very low levels of student achievement in New Mexico, this Court should find that the State and its Public

⁵ Only Oklahoma had a lower rate. (*Id.*)

Education Department have failed to provide the resources, programmatic opportunities and support required to satisfy this constitutional guarantee to New Mexico's children.

IV. Conclusion

In light of the foregoing, this Court should grant Yazzie Plaintiffs' Second Motion for Summary Judgment to Establish that the State of New Mexico Has Failed Its Constitutional Duty to Provide New Mexico Children a Sufficient Education and enter a judgment declaring that:

1. New Mexico student achievement outcomes demonstrate that New Mexico is not providing a system of public schools sufficient for the education of all school-age children.
2. The current levels of public school funding, programmatic opportunities, services, and supports found in New Mexico's system of public education violate the sufficiency provisions of the educational mandate of the New Mexico Constitution;
3. New Mexico school districts do not have sufficient resources, programmatic opportunities and supports to provide their students with a sufficient education; and
4. In order for Defendants to meet the educational mandate in the New Mexico Constitution, Defendants must provide the public schools in New Mexico with sufficient resources, services, programmatic opportunities and supports to provide their students with a sufficient education, including but not limited to Native American students, students living in poverty, and those learning the English language.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2017, 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
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