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KATHLEEN VIGIL CLERK OF THE COURT
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FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

LOUISE MARTINEZ; *et al.*,

Plaintiffs,

vs. **D-101-CV-2014-00793**

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

Defendants.

DEFENDANTS' RESPONSE TO PLAINTIFFS' JOINT MOTION TO COMPEL DISCOVERY RESPONSES

Defendants, State of New Mexico, the New Mexico Public Education Department, and Hanna Skandera, by and through their counsel, state the following for their Response to Plaintiffs' Joint Motion to Compel:

INTRODUCTION

The Court should deny Plaintiffs' Motion to Compel. Defendants recognize the significance of this lawsuit and of the role discovery will play in addressing these issues. However, Defendants have complied with their legal obligations regarding discovery. As Plaintiffs have acknowledged, following good faith conferences regarding discovery disputes, Defendants supplied additional documents. It is also important to note that Defendants have produced over 60,000 pages of documents in this case as well as narrative discovery responses totaling hundreds of pages. Thus, Plaintiffs' characterization that they have limited information about Defendants' compliance efforts or that Defendants somehow refused to cooperate in good faith discovery is demonstrably untrue. Notably, several of Plaintiffs' basis for disputes set forth in their Motion to Compel have already been resolved by the parties or in fact, were never raised at all during the Rule 37 discussions. Additionally, Plaintiffs have addressed objections which did not actually limit

Defendants' discovery responses. Accordingly, the Court should deny Plaintiffs' Motion to Compel.

ARGUMENT

I. PLAINTIFFS' RELIANCE ON SUMMARIES IS INAPPROPRIATE.

In their Motion, Plaintiffs refer the Court to certain exhibits which are in fact are tables that simply reiterate Plaintiffs' legal arguments. Plaintiffs, in several instances, completely miscategorized the type of objection stated by Defendants in response to particular interrogatories, thus these summaries in some instances are inaccurate. Moreover, they simply invite the Court to read all the interrogatories and answers and to conclude Plaintiffs are correct that the information provided by Defendants is insufficient. However, Plaintiffs make no effort to tie any specific argument to a particular interrogatory. Instead, they group interrogatories by Defendants' objections. While Defendants did articulate the same objection to several interrogatories, the analysis of each discovery request and its objection is necessary for the Court to rule. Further, given the volume of the information at issue, Defendant rightfully relied upon Rule 33(D) for several interrogatory responses. These business records are part of the interrogatory answer. Rule 1-037 explicitly requires the party moving to compel a discovery response must attach the *response* to the discovery response at issue to their Motion. See Rule 1-037(A)(4) NMRA. By failing to provide the Court with a complete and accurate picture of Defendants' discovery responses, Plaintiffs improperly ask the Court to take their word that those certain responses were deficient. The Court should reject Plaintiffs' request to accept their representation of Defendants' discovery responses in lieu of actually providing the response given by Defendants, as well as Plaintiffs' request to reject Defendants' objections by category as opposed to considering each objection in

relation to individual interrogatories. The Court must analyze each of the requests, answers, and objections to rule on this Motion to Compel. It cannot do so by way of broad category of topics.[1]

II. DEFENDANTS DID INQUIRE WITH MUTLIPLE STATE AGENCIES TO RSESPOND TO DISCOVERY REQUESTS: Interrogatory Nos. 2(a), (b), (c), 3, 4(a), (c), (d), (e), 5(a), 19, 29, 84, 85(a), 86, 87, 88, 89, 90, 138.

Defendants are perplexed by Plaintiffs' position as to other State agencies, because notwithstanding Defendants' objection, Defendants did in fact inquire with other State agencies and obtain the information requested outside the control of the Public Education Department ("PED"). See Exhibit 3 to Plaintiffs Motion, p. 1 (noting "counsel for Defendants has already reached out to other state agencies and Defendants will agree to supplement"). Specifically, the following interrogatories addressed by Plaintiffs' section on this point were addressed by Defendants' Third Supplemental Answers to Plaintiffs' First Set of Interrogatories: 2a, b, c, 3, 4, 84, 85a, 87, 88, 89, 90. See Exhibit 1 to Plaintiffs' Motion, pp. 1-12. Defendants expressly stated its answer to Interrogatory No. 5 was not limited any objection. See Exhibit 3 to Plaintiffs' Motion. Interrogatory No. 19 was not objected to on the basis that responsive material was not in possession of PED, but rather because this information is not maintained by the State, but instead was created specifically for trial in 2017. See Exhibit 1 to Plaintiffs' Motion, p. 6. Accordingly, Defendants agreed not to limit their responses to information maintained by PED only, but instead did inquire with other state agencies, such as the Higher Education Department, the Early Childhood Education and Care Division, and the Children Youth and Families Department.

A number of Defendants' responses indicated the information Plaintiffs seek would need to be obtained from individual education institutions (Interrogatories 87, 88, 89, 90). See Exhibit

[1] The situation may be different if, for example, Defendants categorically refused to answer questions about Pre-K. Then the Court could likely rule that Pre-K is relevant and therefore, discovery is proper on that topic. Here, however, Defendants articulated individual objections to specific inquiries based upon the specific discovery request, not broadly by topic.

1 to Plaintiffs' Motion, pp. 10-12. Defendants point out that upon receiving Defendants' Third Supplemental Discovery Responses on August 9, 2021, neither Yazzie nor Martinez Plaintiffs asked Defendants to obtain documents directly from individual Institutes of Higher Education ("IHEs"). Thus, Plaintiffs failed to confer on this issue to the extent they now seek to compel Defendants to obtain materials directly from IHEs. Even if the Court overlooks this procedural flaw, it should not compel Defendants to obtain information from each IHE. New Mexico courts have recognized, "in general a party should not be required to obtain, collect or turn over materials which the opposing party is equally capable of obtaining on its own." United Nuclear Corp. v. Gen. Atomic Co., 1980-NMSC-094, ¶ 57, 96 N.M. 155, 170, 629 P.2d 231, 246. Plaintiffs have articulated no reason why the State should be forced to obtain information from individual IHEs when Plaintiffs can likewise subpoena these documents.

Additionally, this Court may limit discovery if "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." Rule 1-026(A)(2)(c) NMRA. This case is undoubtedly raising significant issues. However, the specific interrogatories at issue here, 87, 88, 89, and 90 impose a significant burden. Interrogatory No. 87 asks the State to review each individual teacher preparation program to determine which programs provide training in culturally and linguistically relevant (CLR) instruction to its students. See Exhibit 1 to Plaintiffs' Motion, p. 10. The Court never ordered the State to incorporate CLR into teacher preparation training, although it did indicate CLR training would be beneficial for teachers that interact with certain students. Interrogatory No. 88 is even more burdensome, it demands that the State obtain individual data on applicants to each program, participants, graduates, and then to track those graduates, apparently by manually comparing

names of graduates to staff rosters to determine at what school and districts those graduates are currently teaching. See id., pp. 10-11. Notwithstanding the important interests at issue in this litigation, the proposed discovery is unduly burdensome especially considering these are just two of over 200 discovery requests propounded by Plaintiffs.

Interrogatory No. 89 asks "[p]lease state separately for each school year 2018-19 to the present the amount of funds necessary to ensure that the State of New Mexico has all the teachers that it needs to offer all at-risk students the opportunity to be college and/or career ready, and who meet the state teaching requirements and are trained in CLR instruction." See id., p. 11. This interrogatory asks information that is beyond the capability or even a broadly construed definition of control of the State. Teaching position needs are determined by the individual districts. Thus, one way is determined the "need" for teachers is to assess teacher vacancies. However, there is no fixed fund allocation that will ensure all teacher positions are filled. Accordingly, there is no way to determine the amount of funds necessary to ensure New Mexico has "all the teachers it need." Second, this interrogatory presupposes a requirement not required by this lawsuit, that each and every teacher receive CLR training as part of his/her teacher preparation program. Interrogatory No. 90 then states, "[p]lease state separately for each IHE in New Mexico, the number of additional faculty positions necessary to accomplish the result set forth in the previous interrogatory." See id., p. 12. The State is similarly without the raw data as well as clear formula to answer this question.

III. DEFENDANTS SHOULD NOT BE COMPLETED TO GATHER DATA FROM FOCUS DISTRICTS: Interrogatory Nos. 13, 23, 24, 25, 26, 35, 40(b), 41(b), 42(b), 48, 51, 52, 53, 61(c), (d), 71(a), (b), (c), (d), (e), (i), 72(a)-(e), 75, 80, 97, 100(c), 102, 116(a), 122(b), 127(g)-(j), 128, 129, 134(c).

Not one time during the parties' extensive discussion of the discovery materials in this case did either Plaintiffs' group ever claim Defendants were required to obtain materials directly from

focus districts. See Exhibit 2 to Plaintiffs' Motion (Yazzie Plaintiffs' good faith letter)[2]. Accordingly, Plaintiffs have failed to confer in good faith on this point prior to filing the instant Motion. Rule 1-037(A)(4) states "[a]ny motion filed pursuant to this paragraph shall state that counsel has made a good faith effort to resolve the issue with opposing counsel prior to filing a motion to compel discovery." Plaintiffs cannot have made a good faith effort to resolve this issue when they never asked Defendants to obtain data from all Focus Districts. Significantly, several of the interrogatories that Plaintiffs now seek the Court to address were never referenced on counsel's discussions of discovery responses such as Interrogatories Nos. 13, 23, 75, 80, 122. See Martinez Plaintiffs' June 15, 2021 letter, attached as Exhibit A; see also Letter from Yazzie Plaintiffs, dated July 2, 2021, attached as Exhibit B. As noted above, all other interrogatories responses were addressed during the parties' discussion prior to the filing of this motion were discussed in a context other than production directly from Focus Districts. See e.g. Exhibit B (Yazzie Plaintiffs' letter), noting Interrogatories 127 and 139 were discussed in relation to the limitations of the pandemic.

Notably, school districts are not State agencies contrary to Plaintiffs' claims school districts are State political subdivisions. Daddow v. Carlsbad Mun. Sch. Dist., 1995-NMSC-032, ¶ 24, 120 N.M. 97, 105, 898 P.2d 1235, 1243 (noting the Supreme Court concluded "that New Mexico school districts and their boards are political subdivisions and not "arms of the state."). Nor are school districts business partners or subsidiaries of Defendants. Compare United Nuclear, ¶ 52-54. Most obvious, however, is the fact that several of the 23 Focus Districts are actually Plaintiffs. The Focus Districts in this case are: Alamogordo, Albuquerque, Bernalillo, Cuba, Española, Gadsden

[2] In their good faith letter, Martinez Plaintiffs asked Defendants to identify documents specifically in the possession of the school districts. See Exhibit A. However, this letter does not demand Defendants produce materials in exclusive possession of the school districts.

Gallup McKinley, Grants-Cibola, Hatch, Jemez Valley, Lake Arthur, Las Cruces Los Lunas, Magdalena, Moriarty-Edgewood, Peñasco, Pojoaque, Rio Rancho Santa Fe, Silver City, Taos Tucumcari, Zuni. Gallup McKinley, Rio Rancho, Cuba, Lake Arthur, Santa Fe, Moriarty-Edgewood are all Plaintiffs. Plaintiffs are demanding the State compel data from Plaintiffs to produce to Plaintiffs. This is categorically a waste of resources. For those Focus Districts that are not parties, Plaintiffs have not attempted to subpoena the documents directly from the districts, who are not arms of the State.

Instead, Plaintiffs point out that the State generally has supervisory power over public schools and apparently, therefore it is easier for the State to obtain this information. Plaintiffs mischaracterize the nature of the State's oversight over school districts as well of their own data requests. Plaintiffs cite to general statutes regarding the State's retrieval of data from school districts and then simply assert the data maintained by the State is the same data sought by the interrogatories. This is incorrect. For example, Interrogatory No. 13 demands specific enrollment data disaggregated by various at-risk groups for mentoring programs. This data is not tracked by PED, nor have Plaintiffs identified any statute that would require to PED to track these programs with this level of detail. See Exhibit 1 to Plaintiffs' Motion, p. 14. Interrogatory No. 48 asks for data on individual textbooks assigned to every student in each Focus District. See id., p. 23. Interrogatory No. 51 asks for the number of students in reading programs. See id., pp. 23-24. Interrogatory No. 53 asks the State to provide the number of instruction hours spent reading by each student in pre-K-3rd grade for each Focus District. See id., pp. 25-26. Interrogatory No. 71 asks the State to provide data on the number of teachers who applied at each Focus District to receive a stipend, the number of teachers who received a stipend who are currently teaching (which would require manual search of current teaching rosters and would require participation by non-

Focus Districts as teachers sometimes switch schools, and the dollar amount received by each teacher. See id., pp. 30-34. Interrogatory No. 97 asks PED to look back over up to 10 years of data for individual students' enrollment in an ESL program. See id., p. 43. Notably, most of the accountability measures cited by Plaintiffs were implemented only recently, meaning PED does not have this data. Further, because there is no way to automate review of the data that is maintained, Plaintiffs' request would require manual review of hundreds of students' data. Thus, while Plaintiffs are correct, PED generally has a duty to oversee certain programs, it is not required and does not track data with the specificity demanded by Plaintiffs.

A number of Plaintiffs' interrogatories ask Defendants to determine the "additional funding" for certain programs, including Interrogatories No. 23, 24, 25, 26, 40. See id., pp. 14-19. For example, Interrogatory No. 24 "[p]lease state separately for each Focus District for each school year 2018-19 to the present, the amount of additional transportation funds needed to provide programs and services to all children at-risk in that Focus District, stating separately for each of the following: a. full-day Pre-K; b. extended learning time program; and c. K-3/K-5 Plus." See id., p. 15. Plaintiffs again wrongfully assume the Court has ordered Defendants to ensure every at-risk student is enrolled in these programs. There is not requirement that the State provide an all-day Pre-K, extended learning program, or K-3/K-5 Plus program for every at-risk student. While certainly the State does not dispute these programs might have benefits, these are simply not mandatory programs. What Plaintiffs are actually asking Defendants to determine is the number of at-risk students in each program in each district currently, the number of at-risk students who could be in the program (i.e. the number of at-risk four year olds in the entire State), some type of per student cost for the program in specific categories such as transportation, teachers, etc. The State does not have the baseline information to make these calculations and has clearly stated as

such in their answers to interrogatories. Interrogatory Nos. 40, 41, 42 make similar requests for additional costs to offer after-school programs, summer school and tutoring programs for all at-risk students. See id., pp. 19-23. Again, this is a very vague request as there is no specific requirement for these programs or indeed what forms these programs may take. Thus, there is no fixed cost from which the State can make this calculation. Interrogatory No. 127 asks for what additional staff is needed for 10 different positions (such as social workers) for each Focus District. See id., pp. 49-56. The need for these positions is determined by the Focus Districts themselves. Further, there is no legal required ratio for each one of these positions, thus the State cannot speculate as to individual school and district *need*.

Plaintiffs challenge Defendants' reliance on Am. C.L. Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315, 324, 992 P.2d 866, 875 for the proposition that they are not required by to "expend additional time and money "analyzing, compiling and creating new statistical reports solely for the benefit of the recipient." As an initial matter, Defendants acknowledge the issue in the ACLU did was not procedurally the same as the question in this case, however, the Court in ACLU was required to determine whether the City violated its discovery obligations by failing to conduct analysis and creation of new reports solely for the benefit of Plaintiffs. The Court indicated the City did not. That proposition holds true here, many of the calculations Plaintiffs seek would require Defendant to create wholly new analysis. Plaintiffs claim Defendants should produce "raw data" from which an answer may be ascertained. However, Plaintiffs have not identified this raw data. As noted above, the future prediction requests by Plaintiffs do not have a precise formula and cannot be ascertained by information currently possessed by the State. Further, the burden for the State to obtain information it does not have, and to conduct calculations it is not otherwise required to conduct, is not justified by the need for

discovery on this matter, especially given that the bar that Plaintiffs set (100% participation by at-risk students in various programs and 100% fully staffed positions at all school districts) is far beyond what was ordered by this Court.

Defendants fully responded with information in its possession to Interrogatory No. 35 (Exhibit 1 to Plaintiffs' Motion, p. 18-19), Interrogatory No. 61 (pp. 26-30), Interrogatory No. 72 (pp. 31-35), 75 (pp. 36-42), Interrogatory 80 (p. 42), Interrogatory 102 (pp. 44-45), and Interrogatory No. 116 (p. 45).

III. DEFENDANTS ARE NOT REQUIRED TO SPECULATE IN RESPONSE TO INTERROGATORIES: Interrogatory Nos. 2(d), 4(b), 6, 9, 23, 24, 25, 26, 30(b), 31(b), 31* (duplicate), 32, 36(e), 37(c), (d), 39(h), 40(g), 41(g), 42(g), 47, 48, 54(e), (f), 55(d), (e), 56(e), (f), 58, 59, 60, 64, 65, 71(j), 72(j), 85(b), 89, 90, 94, 95, 125(c), (d), 126(c), (d), 127, 128, 129.

Interrogatories are to be answered based upon personal knowledge. Of course, personal knowledge would not include mere speculation. That is what Plaintiffs are asking Defendants to do in several their interrogatories. As discussed above, Plaintiffs have not identified the "raw" data that is necessary to respond to their interrogatories. Instead, they ask Defendants to determine the relevant factors to determine future need, compile data of those factors, and conduct calculations. Plaintiffs fail to demonstrate to the Court that their interrogatories are based upon data that Defendants have, but instead summarily conclude Defendants should be able to make these calculations. A careful review of Plaintiffs' interrogatories demonstrates the opposite.

For example, Interrogatory No. 2 asks the State to provide data on full day pre-K for *all* NM four-year olds. See Exhibit 1 to Plaintiffs' Motion at p. 59. The State has no such obligation to provide this service or track this data. Defendants refer to their discussion of Interrogatories 23, 24, 25, 40, 41, 42, 89, 90, and 127 above. Interrogatories 32, 36, 37, 54, 55, 56 similarly discuss expansion of programs beyond what is required by law. See id., pp. 63-74. Interrogatory 33

additionally places a burden on the State to estimate costs of a school-based health centers in every Focus District. The State has no obligation to provide school-based health centers at every district. Similarly, the State does not have the data to determine the funding necessary for each student to have her/his own textbook (Interrogatory No. 48). Interrogatory No. 58 asks the State to define "competitive" salary for teachers and the basis for this conclusion. See id., p. 74. This clearly asks the State to research other states' salaries, data outside the control of the State. Similarly Interrogatory No. 85 also asks the State to speculate by asking for additional funds necessary to ensure all teacher vacancies are filled. See id., pp. 8-9. While the State is of course concerned with teacher vacancies and is actively trying to reduce them, there is no particular formula by which the State could calculate the costs of *ensuring* vacancies are filled.

These interrogatories are asking the State to make Plaintiffs' case for them. It appears that Plaintiffs are attempting to force the State to put a price tag on Plaintiffs' version of an adequate education system. The State does not define an adequate education system in the same manner as Plaintiffs and thus does not track this data and does not possess responsive information. Plaintiffs claim if Defendants' objections are just another way of saying they do not have the information that Defendants should just say that. Defendants have clearly stated they do not have the information requested. To the extent Plaintiffs wish to make a point that Defendants should have conducted these calculations and they have not done so, Defendants' discovery responses clearly state this.

Defendants substantively answered Interrogatory Nos. 94, 95 notwithstanding their objections. See id., p. 77-78.

IV. DEFENDANTS' OVERBROAD OBJECTION IS WELL-FOUNDED AND/OR DID NOT LIMIT THEIR RESPONSES: Interrogatory Nos. 17, 19, 53, 61(c), 62, 74, 82, 84, 97, 102, 125(a), (b), 126(a), (b), 134(c).

At the outset, Plaintiffs imply Defendants used the terms "overly broad' and "unduly burdensome" in response to all of the interrogatories requests addressed below. It appears this was done in an effort to claim Defendants simply asserted "boilerplate objections." Defendants did not assert each one of the interrogatories addressed below was overly broad, and instead they articulated why several were unduly burdensome. While Plaintiffs claim the information sought is "highly relevant", even relevant information can be protected from discovery is obtaining it is unduly burdensome. See Rule 1-026 NMRA. Further, Defendants point out that while Defendants did respond to some requests to which they originally asserted an objection, they are required by Rule 1-033 to assert objections or risk waiving them. Thus, Plaintiffs' apparent goal of punishing Defendants for asserting an objection to a question that was latter fully answered is without legal support.

Defendants specifically articulated that it does not maintain the data requested by Interrogatory No. 19 and that recreating it manually for the years since the 2017 trial would be unduly burdensome. Thus, contrary to Plaintiffs' assertion, Defendants did not rely on a boilerplate unduly burdensome objection.

Interrogatory No. 61(c) asks Defendants to "disaggregate" teacher vacancy data by teaching subject matter. See Exhibit 1 to Plaintiffs' Motion, p. 26. Defendants stated they do not track this information. Accordingly, gathering this data would require retroactive manual review of data from up to three years ago. The information provided in response to the first two subparts of Interrogatory No. 61 indicates this would include review of thousands of vacant positions.

Interrogatory No. 74 asks for all professional developments provided by PED on particular topics. Defendants specifically stated it does not track this data with the specificity requested by

Plaintiffs. See Exhibit 1 to Plaintiffs' Motion, p. 82. Defendants did produce the information it does track. See id.

Interrogatory No. 126 asks for information on "technical assistance" provided to school districts. See id., p. 79. Defendants specifically noted "[t]echnical assistance is a broad term and can range from an e-mail/phone to more a formal process. Defendant does not track every single contact with the districts." Thus, manually gathering this data would be unduly burdensome.

Interrogatory No. 134 asks for data on individual AP (Advanced Placement) exams. Defendants specifically stated "Collecting this data is unduly burdensome. PED does not have access to individual exam data. Moreover, to the extent it is accessible, it is not queriable. Thus, it would require hours of manual review to determine which students actually took an AP exam." Id., p. 58.

Defendants refer to the above discussion of Interrogatory Nos. 84 and 97.

Defendants substantively answered Interrogatory Nos. 17 (p. 80), 53 (p. 25), 62 (p. 81), 82 (p. 83), 102 (pp. 44-45), 111 (p. 118).

Defendants previously produced a spreadsheet that contains the information on professional development provided by PED on special education Bates no. 4403) as well as professional development generally (Bates No. 00004279). Defendants will provide supplemental answer to Interrogatory No. 125 that clarifies that this information which Plaintiffs have had for over six months is also responsive to Interrogatory No. 125(a), (b).

V. DEFENDANTS DID NOT FAIL TO ANSWER PARTICULAR INTERROGATORY SUBPARTS: Interrogatory Nos. 5(a), 17, 28, 35, 37(b), 40(i), 41(i), 42(i), 44, 45, 46, 49, 51, 54(a)-(d), 55(a)-(c), 56(a)-(d), 62, 71(a), (d), (h), 72(a)-(i), 76, 78, 79, 85(a), 86, 104, 105, 112, 114, 115, 117(c), 119(c), 121, 125(a), (b), 126(a), (b), 130, 137, 138, 140, 141, 148.

Defendants will agree to supplement their answer to Interrogatory No. 5. However, Defendants note that despite being provided with an answer to Interrogatory No. 5 with Defendants' original discovery responses on February 1, 2021, Plaintiffs failed to raise this issue with Defendants prior to filing. Defendants will likewise agree to supplement its answer to Interrogatory No. 105.

Defendants responded to Interrogatory Nos. 17 (Exhibit 1 to Plaintiffs' Motion, p. 80), 28 (p. 84), 37(B) (p. 68) Interrogatory Nos. 40i, 41i, 42 (see spreadsheet, attached as Exhibit C (Bates No. 059192) (as explained in the interrogatory response, the funding is not tracked separately for these programs); 44 (Exhibit 1 to Plaintiffs' Motion, pp. 85-88), 45 (p. 88), 46 (p. 89), 49 (p. 90), 51 (p. 23), 55 (p. 72), 56, (p. 73), 62, (p. 81), 71 (pp. 31-35), 72 (p. 35), 76 (p. 91), 78 (p. 92), 79 (p. 93), 85a (p. 8.), 86 (pp. 9-10), 104 (pp. 93-95), 112 (pp. 95-96), 114 (p. 97), 115 (p. 97), 117c (pp. 97-98), 119c (pp. 97-98), 121 (p. 99), 126 (p. 79), 130 (p. 100), 137 (pp. 100-101), 138 (p. 13), 140 (p. 101), 141 (p.101), 148 (p. 102). Notably, because Plaintiffs have failed provide the Court with full copies of the responses provided, the Court cannot assess whether the business records provided by Defendants fully respond to all subparts. As the moving party, Plaintiffs bear the burden to establish Defendants failed to properly answer discovery. These interrogatories and their numerous subparts were not ignored as claimed by Plaintiffs, instead it appears Plaintiffs simply reassert their argument that they take issue with a number of the objections raised by Defendants or apparently disagree with Defendants' statement that information is not in their possession or that there is no responsive information as Plaintiffs' interrogatory is phrased.

Defendants provided a substantive response to Interrogatory No. 35 with the exception of subpart 35(e) because Defendants do not track this demographic data or did not for the school years addressed. See id., pp. 18-19.

Defendants provided Plaintiffs will information as to *all* Focus Districts by providing supports spreadsheets. Within that data is the information sought by Interrogatory No. 54a. See id., pp. 71.

Defendants have already agreed to supplement their answer to Interrogatory No. 125 by directing Plaintiffs to records already in their possession.

Of the dozens of requests Plaintiffs claim Defendants wholly failed to answer, only two subparts were actually overlooked. Notably, Plaintiffs did not call this to Defendants' attention during the attempts to resolve the discovery dispute.

Additionally, Plaintiffs do not point the Court to any specific examples of missing data but instead claim some of the spreadsheets were not completely filled out. Plaintiffs fail to identify any specific missing data points. Defendants agree that in the spreadsheets provided there are some data points that were not included, because it is not available to Defendants. Defendants point out that for nearly all of the 32 requests referenced by Plaintiffs under this section, Plaintiffs asked for data points from 23 Focus Districts for a period of three school years. That is over 2,000 data points not considering subparts. Defendants are not required to explain to Plaintiffs why a particular data point was not recorded. Defendants are only required to provide information in their possession. Defendants have answered Plaintiffs' voluminous requests to the best of their ability. Defendants did not "limit" their answer, but instead provided the data available to them.

VI. DEFENDANTS' ANSWERS ARE NOT VAGUE OR CONFUSING.

Plaintiffs claim they have some questions about discovery requests and note there are some what they characterize as "typographical errors" including missing or transposed Bates numbers. Defendants endeavored to provide complete and accurate discovery responses as evidenced by their multiple supplements and multiple exchanges with counsel to address these issues. However,

to the extent Plaintiffs require clarity, Defendant is willing to clarify these issues. Specifically, Defendants will supplement/clarify its answers to 2(a), (b), 4(a), (c), (d), (e), 5(b), (c), (d), 7, 10, 13, 39(d), (e), (f), (g), 40, 41, 42, 61(a), 66, 67, 70, 71(b), (c), 71 (f), (g), 81(d), 99, and 102 to address Plaintiffs' questions on pages 19-20 of their Motion. Defendants note, however, that Plaintiffs' counsel never requested this clarification during good faith attempts to resolve discovery disputes. Defendants recognize that discovery and supplementation stretched over a long period of time in this case through various supplements. Defendants do not assert that Plaintiffs' duty to confer in good faith necessarily extends to every supplemental discovery response or that Defendants must be given endless chances to supplement. But many of Plaintiffs' questions are directed towards Defendants' original discovery responses provided on February 1, 2021 or its first supplement provided on March 16, 2021 which were provided to Plaintiffs *before* Plaintiffs' counsel first Rule 37 good faith letters. Defendants should not be penalized because during five (5) months the parties were actively engaged in discussing concerns with discovery issues, Plaintiffs wholly failed to raise these questions, many of which are easily clarified and several which are clearly the result of an unintentional oversight.

VII. DEFENDANTS DID NOT FAIL TO SUPPLEMENT AS REQUIRED.

As an initial matter, Plaintiffs fail to identify any specific interrogatories to which they are owed supplemental information. This alone is fatal to their Motion. See Rule 1-037(a)(4). Defendants do not disagree that they have a duty to supplement when they identify corrective materials, or their original answers are materially incomplete. However, as Plaintiffs acknowledge, their discovery requests were aimed a specific start time to the "present." Plaintiffs' discovery requests were served on November 18, 2020. Defendants did not understand "present" to be a moving target. Instead, "present" is the date of Plaintiffs' discovery requests. The Court should

allow Plaintiffs to continually change the data requested by including a vague term that is solely subject to Plaintiffs' interpretation. Plaintiffs submitted 71 requests for production and 148 interrogatories; accordingly, continuing to update over 200 discovery responses for an entire year after they were propounded is unreasonable. To the extent the Court finds Defendants are required to supplemental particular data up through the close of discovery in this case, which is April 2022, Defendants will do so. However, Defendants again point out Plaintiffs never advised Defendants they asserted their requests required 2021-2022 data prior to filing this Motion. Additionally, it is difficult for Defendants to determine how to supplement when Plaintiffs have claimed that despite Defendants' good faith efforts, five supplements, hundreds of pages of narrative responses, and over 60,000 pages of documents, Defendants have essentially still failed to respond to the majority of Plaintiffs' requests. Given the clear disputes on the data that should be provided, Defendants require the Court's clarification to ensure it is does not needlessly produce data.

VIII. DEFENDANTS RELIANCE UPON PUBLIC RECORDS IS REASONABLE: Interrogatory Nos. 5(a), 6, 28, 29, 46, 85(a), 106, 121 And 122(b)

Defendants have agreed to supplement their response to paragraph 5(a) above.

The Public School Supports spreadsheet is a document that has been relied upon by both parties in this litigation. See Response to Plaintiffs' Motion to Enforce, filed on December 19, 2019, Exhibit C; see also Yazzie Plaintiffs' Response to Motion to Dismiss, filed on May 1, 2020, Exhibit H. Accordingly, Plaintiffs' claimed ignorance of this document or how to obtain it, is demonstrably untrue as they themselves relied upon a copy of the 2019-2020 spreadsheet in this litigation. Further, Defendants in addition to pointing to the public-school spreadsheet also provided a response to Interrogatory No. 28, (Exhibit 1 to Plaintiffs Motion, pp. 84-85), Interrogatory No. 29 (p. 7), Interrogatory No. 46 (p. 89), Interrogatory 121 (directing Plaintiffs to SEG funding).

Defendants did rely directly on the Public Schools Supports spreadsheet for their answer to Interrogatory No. 106. However, information from Plaintiffs' own exhibit answers the information interrogatory, indeed the type of funding is clearly labeled as "SEG funds, Below the Line Funding, Capital Outlay, Direct Appropriations, etc." See Yazzie Plaintiffs' Response to Motion to Dismiss, filed on May 1, 2020, Exhibit H. Plaintiffs have demonstrated an understanding and access to this document. It is unclear why they are entitled to discovery on this issue as well when it is clearly in their control. See Rule 1-026(b)(2).

Regarding Interrogatory No. 122b, Defendants did not assert expenditure information is contained in the public school supports spreadsheet, but instead that this information is maintained at a district level. See Exhibit 1 to Plaintiffs' Motion, p. 46.

VIII. DEFENDANTS' SUPERNUMERARY OBJECTION IS PROPER AND/OR DID NOT LIMIT DEFENDANTS' RESPONSES.

Defendants expressly represented to Plaintiffs that the supernumerary objection did not limit their answers to discovery. Defendants stated the objection was simply stated so as not to be waived. However, since Plaintiffs have pressed the issue, if Plaintiffs submit any more discovery requests, Defendants will seek a protective order as required by Rule 26. There is no need for the Court to rule on this issue now because Defendants did not refuse to answer any questions on this basis. Notably, the Motion to Compel addresses Plaintiffs' First Set of Discovery Requests. Plaintiffs submitted a second set to which Defendants responded.

Further, Defendants' objection has a basis in law. Courts have recognized that, while interrogatory subparts are permissible, "[e]xtensive use of subparts, whether explicit or implicit, could defeat the purposes of the numerical limit contained…in a scheduling order, by rendering it meaningless unless each subpart counts as a separate interrogatory." Williams v. Board of County Commissioners, 192 F.R.D. 698, 701 (D. Kans. 2000). Accordingly, parties "cannot evade

[interrogatory limitations] through the device of joining as 'subparts' questions that seek information about discrete separate subjects." Soseeah v. Sentry Ins., 2013 WL 11327129, at *6 (D.N.M. Nov. 4, 2013) (quoting Fed. R. Civ. P. 33 Advisory Committee Notes (1993 Amendment)). Determining which subparts of an interrogatory constitute discrete questions is a "case-specific assessment" not reducible to a "crisp verbal formula." Synopsys, Inc. v. Atoptech, Inc., 319 F.R.D. 293, 295 (N.D. Cal. 2016) (internal citation omitted). See also Burget v. Capital W. Secs., Inc., 2010 WL 11508643, at *2 (W.D. Okla. Mar. 30, 2010) ("The difficulty with the numerical limitations of interrogatories lies with how to count both the discrete and natural subparts to interrogatories," which courts generally resolve "on a case-by-case basis"). However, courts have developed some general principles for counting interrogatories. Subparts directed toward a "common theme" should generally be counted as a single interrogatory, while "subparts inquiring into discrete areas" are generally counted as multiple interrogatories. Williams, 192 F.R.D. at 701 (quoting Charles A. Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure § 2168.1, at 261 (2d ed. 1994)). The parties in this case are divided into two groups, Yazzie Plaintiffs and Martinez Plaintiffs. Each group of Plaintiffs is represented by the same group of attorneys. Further, there has never been a time in the litigation that Plaintiffs have claimed the interests of their clients were diverse from one another. Plaintiffs made no effort to distinguish the interrogatories propounded on behalf of particular Plaintiffs. Accordingly, the Court should consider Yazzie Plaintiffs and Martinez Plaintiffs the two "parties" for the Plaintiff. They would then be allowed 100 interrogatories. However, they propounded nearly 200, even using their numbering system. Even assuming the Court holds school districts have separate interests despite being jointly represented by counsel, Plaintiffs' interrogatories have multiple subparts, such as requesting data on current funds and then asking about future need or asking about several different

programs in a single interrogatory. Should Defendants have to seek a protective order from future discovery, Defendants will identify exactly how many subparts they are, but as Defendants have not yet asked for any such relief, there is no need for the Court to address this issue.

CONCLUSION

The Court should deny Plaintiffs' Motion. Before turning the substantive legal arguments, Plaintiffs failed to provide the Court with Defendants entire discovery responses in order to evaluate their sufficiency. Further, Plaintiffs also failed to individually address discovery responses and instead rely upon summaries and general characterizations. Assuming the Court does not deny the Motion based upon these flaws, Defendants address Plaintiffs' arguments in turn. First, Plaintiffs' Motion addresses several objections that did not actually limit Defendants' discovery responses. The purpose of a motion to compel is to direct a party to answer a discovery request. Plaintiffs can obtain no further relief on those requests to which they have already received an answer. Second, the "clarification" questions posed in Plaintiffs' Motion were never raised during discussions with Defendants about resolving discovery disputes despite Defendants' obvious willingness to work with Plaintiffs as demonstrated by the three (3) supplemental responses following the parties' Rule 37 conference. Third, Defendants should not be required to gather evidence from Focus Districts. Fourth, Defendants cannot be forced to speculate about additional or future need when even Plaintiffs have been unable to identify what information would be necessary to make certain predictions. Finally, Plaintiffs' claim that Defendants "ignored" dozens of subparts to their interrogatories is demonstrably untrue.

WHEREFORE, Defendants respectfully request this Court deny Plaintiffs' Motion to Compel, award Defendants' their costs, and for any other relief this Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

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I hereby certify that the foregoing was electronically filed through the First Judicial District Court and sent via electronic mail on this 23rd day of December, 2021 to all counsel of record.

/s/ Taylor S. Rahn
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June 15, 2021

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RE: *Martinez/Yazzie, et al. v. State of New Mexico, et al.*

Dear Taylor,

I write regarding Defendants' Responses, First Supplemental Responses, and Second Supplemental Responses to Martinez and Yazzie Plaintiffs' Joint First Post-Judgment Set of Interrogatories and Requests for Production. Martinez Plaintiffs are still reviewing the documents that Defendants produced in response to our requests for production. However, we believe that some of Defendants' objections are without merit or do not preclude disclosure to the extent that Defendants claim. Plaintiffs do not believe there is a basis to object to requests for production to the extent that they require response by agencies of the State of New Mexico other than the New Mexico Public Education Department. Additionally, the attorney-client privilege does not preclude production of the documents requested. Plaintiffs are also concerned with the objections alleging the State does not have custody of documents because they are in the possession of school districts or because they are in PED buildings, to which PED staff do not currently have access. Finally, objections based on having previously provided "updates about measures taken through extensive briefing" do not suffice as either a valid objection or response.

EXHIBIT
A

Defendants must produce responsive documents from State of New Mexico agencies.

The New Mexico Public Education Department is not the only Defendant subject to the Court's orders and judgment. Even though you appear to admit this in your responses to discovery requests, you object to production of documents that may be in the custody of other agencies by claiming that "PED is the primary agency involved in this litigation and the only agency whose head is named in the lawsuit." *See* Responses to RFPs at No. 9.

Previously, the Court ordered Defendants to respond to discovery requests that required information from agencies other than PED. *See* Order on Joint Data Set Agreement (February 15, 2016) at 1-2, Ex. A; *see also* Order Regarding Fact Stipulations and Discovery (October 24, 2016) at ¶ 7. The information that the Court ordered Defendants to produce included data from the Children, Youth, and Families Department and the Higher Education Department. Defendants did not object to production of documents or data in the custody of these other agencies previously and produced information from these agencies

Additionally, Defendants must produce information that is in the custody of the Early Childhood Education and Care Department (ECECD). The ECECD is a new department to which Pre-K and early education issues were delegated after judgment was entered in this case and are covered by the Court's orders.

Please supplement your answers and responses to the following discovery requests accordingly:

- Answers to Interrogatories 2, 4, 9, 10, 11, 84, 87, 88, 89, 90;
- Responses to Requests for Production 9, 55.

Defendants should supplement responses with documents that you claim are protected by attorney-client privilege.

You object to production of the PED strategic plan about which PED spoke publicly before the New Mexico Legislative Finance Committee on August 28, 2020. *See* Responses to RFPs at No. 6. Attorney-client privilege covers communications between attorney and client, which may not necessarily cover all portions of a plan made by PED officials. Additionally, Defendants must disclose responsive documents to the extent that Defendants have publicly disclosed them in a forum such as a public legislative hearing. *See Gingrich v. Sandia Corp.*, 2007-NMCA-101, ¶ 13, 142 N.M. 359, 363, 165 P.3d 1135, 1139 (holding that "prior extrajudicial disclosures to members of Congress and to representatives of the Department of Energy, trigger waiver under the plain language of Rule 11–511 NMRA").

Even if Defendants have not waived privilege as to the Strategic Plan, Defendants should provide information sufficient for Plaintiffs and the Court to determine if such privilege bars disclosure completely. *See* NMRA, Rule 1-026(B)(7)(a) (party withholding

information "shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection").

Defendants must identify what categories of documents are in the exclusive possession of school districts.

The objection that certain information "is more readily available from the districts, including Plaintiff districts" does not preclude Defendants' duty to disclose documents in their custody. *See* RFP Responses at Nos. 27, 69, 70. School districts are not among the parties that are the *Martinez* Plaintiffs. Moreover, not all focus districts are party to this lawsuit.

Defendants should disclose documents in their possession and describe which are more "readily available" from school districts.

Please supplement your answers and responses to the following discovery requests accordingly:

- Answers to Interrogatories 26, 32, 33, 35, 39, 40, 41, 42, 52, 71, 78, 122, 125, 126;
- Responses to Requests for Production 8, 27, 69, 70.

Defendants' inability to access PED facilities does not create a total excuse from disclosure of documents.

Defendants' inability to access PED facilities does not create an excuse from disclosure of documents. *See* Responses to RFPs at Nos. 12, 13, 24, 25, 26, 27, 30, 31, 34, 35, 36, 38, 39, 44, 57, 53, and 60. It is also not clear from the objections how "demands of the pandemic" and "security threats" have prevented access to the data. Defendants must disclose what categories of documents are only available at PED facilities and what timeframe in which they may access the relevant data and documents.

Defendants fail to cite to any authority that allows them to avoid production in response to these requests, in violation of the First Judicial District's Local Rules. *See* NM R 1 DIST LR1-202(C) ("All objections must cite supporting authority").

Additionally, under NMRA, Rule 1-034(A)(1), documents being in a facility that is not open to the public does not excuse production. There is no requirement of current physical custody over the documents. Rule 1-034(A)(1) states:

> Any party may serve on any other party a request: (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy,

> test or sample any designated documents, electronically stored information any tangible things which constitute or contain matters within the scope of Rule 1-026 NMRA and which are in the possession, custody or control of the party upon whom the request is served.

NMRA, Rule 1-034(A)(1). The Rule does not require physical possession at this moment. These documents are without question within the "custody or control" of the State, and therefore the discovery obligation exists. *See United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 58, 629 P.2d 231, 246–47 ("Thus, it is immaterial under Rules 33 and 34 that the party subject to the discovery orders does not own the documents, or that it did not prepare or direct the production of the documents, or that it does not have actual physical possession of them. It is also clear that the mere fact that the documents are in the possession of an individual or entity which is different or separate from that of the named party is not determinative of the question of availability or control.").

Please supplement your answers and responses to the following discovery requests accordingly:

- Answers to Interrogatories 132, 134;
- Responses to Requests for Production 30, 35, 38, 39, 44, 57, 53.

<u>General objection of burdensomeness cannot preclude production of all emails and communications between and among Defendants and their agents.</u>

Plaintiffs have not requested that Defendants examine "each employee's e-mails and notes." Additionally, Defendants cite no authority for the proposition that such documents may not be responsive to the requests. Therefore, Defendants' objections along these lines are invalid.

Finally, Defendants' objections that they have previously provided updates about matters in briefing are inappropriate and incomplete. Defendants should supplement their responses with references to which portions of briefing that contain responsive information. Also, Defendants should provide updated information to the extent that there have been changes to the information used in briefing.

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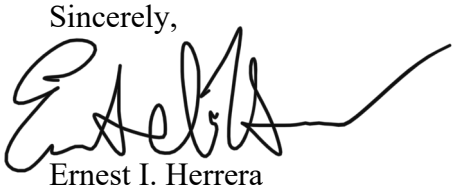
Please notify Martinez Plaintiffs of how Defendants expect to respond as soon as practicable. Please also provide your availability for a date by which Martinez Plaintiffs and Defendants can confer within the next fourteen (14) days.

Sincerely,



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Re: Yazzie Plaintiffs' Response to Defendants' Objections to Plaintiffs' Discovery and to Defendants' Answers to Interrogatories

Dear Taylor,

Plaintiffs have reviewed Defendants' objections and answers to Plaintiffs' interrogatories. For the reasons set forth below, Plaintiffs believe that Defendants' objections lack merit and request they be withdrawn. We will also soon send you our comments as to each interrogatory for which we believe supplementation is required.

1. <u>The Supernumerary Objections to Interrogatories via NMRA 1-033 Is Improper.</u>

Defendants improperly object to all of Plaintiffs' requests for written interrogatories on the basis that NMRA 1-033 limits both Plaintiff parties to a total of 50 interrogatories. While this general proposition is neither true nor supported by legal precedent, most concerning is Defendants' argument: that Plaintiffs are represented by "a single set of attorneys" who "share common arguments and goals for litigation." This narrow interpretation of NMRA 1-033 is both self-serving and borderline deceptive, as it completely undermines the complexities of this case and seeks to dilute the diversity of multiple Plaintiff-party interests.

To clarify, this litigation involves two Plaintiff parties and three Defendant parties; neither the two Plaintiff parties nor the three Defendant parties amount to a singular Plaintiff party. See Black's Law Dictionary, 11th ed. 2019 ("One by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment; Litigant <a party to the lawsuit>"); see also *United Nuclear Corp. v. General Atomic Co.*, 1980, 96 N.M. 155, 629 P.2d 231, 26 A.L.R.4th 705, appeal dismissed, certiorari denied 101 S.Ct. 1966, 451 U.S. 901, 68 L.Ed.2d 289, rehearing denied 101 S.Ct. 3070, 452 U.S. 932, 69 L.Ed.2d 433 ("Discovery rules governing interrogatories and production of documents must be liberally construed in order to ensure that a litigant's right to discover is broad and flexible."). As such, NMRA 1-033 permits the *Yazzie* Plaintiffs and the *Martinez* Plaintiffs, each, the right to propound interrogatories. While the Plaintiff parties have propounded post-judgment interrogatories jointly, in order to facilitate a timely and organized response by Defendants, neither Plaintiff group has waived those rights, should they choose to exercise them independently.

Further, Defendants' claim, that the discrete subparts of Plaintiffs' interrogatories brings the total amount to "well over 200" interrogatories, is incorrect. While the term "discrete subparts" is not defined by NMRA 1-033, the local rule requires that: "Subparts of an interrogatory shall relate directly to the subject matter of the interrogatory." NM.R-1 Dist. LR1-202. Under this premise, "courts generally agree that 'interrogatory subparts are to be counted as one interrogatory ... if they are logically or factually subsumed within and necessarily related to the primary question.'" *Safeco of America v. Rawstron,* 181 F.R.D. 441, 445 (C.D.Cal.1998),

EXHIBIT
B

citing *Kendall v. GES Exposition Services,* 174 F.R.D. 684 (D.Nev.1997); see also 1993 Amendment to Fed. R. Civ. P. 33 ("Parties cannot evade this presumptive limitation through the device of joining as "subparts" questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication."). While many of Plaintiff's interrogatories contain directly-related subparts, which qualify as one interrogatory, Defendants have issued blanket "supernumerary" objections to each and every interrogatory. It is unclear, for example, how many interrogatories Defendants make of Interrogatory No. 47, which contains subparts that cannot exist independent of the premise-statement:

> "Please state separately for each Focus District for each [SY] 2018-19 to the present the amount of additional funding needed for each district to: a. obtain and/or purchase up-to-date CLR instructional materials, including textbooks, that will be used by all students; b. maintain up-to-date, CLR instructional materials, including textbooks, that are used by all students."

Given the unique complexities of this litigation and the diverse interests of multiple Plaintiff parties, it is reasonable for Plaintiffs' to seek discovery, via NMRA 1-033, about Defendants' efforts to comply with the Decision and Order. Compliance in this case includes compliance with the New Mexico Constitution, the New Mexico Indian Education Act, the Bilingual Multicultural Education Act, the Hispanic Education Act, state public school finance laws, and federal and state laws pertaining to the education of ELLs and Students with Disabilities (See *generally* Decision and Order). Equally imperative to Plaintiffs' assessment of state compliance is the information pertaining to educational "inputs" and "outputs." See Decision and Order, at 12-13, 25-26, 32, 36, 37, 40. Inputs generally include educational programs, services, technology, staff, and state operational funding allocated to school districts. Outputs generally include student outcomes in relation to the standards that determine college and career readiness (e.g. testing results, standard based assessments, graduation rates, English learner proficiency scores ...).

Further, in 2015, in an effort to assess the statewide system of education, both Plaintiff and Defendant parties mutually agreed to focus on twenty-three school districts (i.e. "Focus Districts") (see Focus District Order). Each Focus District varies in its location, size, geographical challenges, demographics, and at-risk student populations (e.g. Indigenous, English Learners, Low-income, and Students with Disabilities). Together, the Focus Districts -- *e.g.* six *Yazzie* District plaintiffs, twelve districts attended by all *Yazzie* and *Martinez* Family Plaintiffs, and five districts chosen by the Defendants -- comprise an adequate representation of the entire school system as a whole.

As such, it is reasonable for Plaintiffs to seek interrogatories relevant to the state legislative efforts, PED initiatives -- including its goals, funding, resources -- as well as information pertaining to the relationship between funding and resources to student performance measures in each of the Focus Districts, over multiple years. As a way to facilitate a more efficient process for answering Plaintiffs' Interrogatories, Plaintiffs have organized all interrogatories into categories by subject matter that, most often, correspond to the various PED departments that have in their control and possession relevant knowledge and data -- respective to each category. It is well within reason, for example, that PED's Indian Education Department

can and should respond fully, without much effort, to the 11 interrogatories contained in the "Indian Education" category (*see* Plaintiffs' Interrogatories at 146). The same is true for the 10 "PREK" interrogatories (Id. at 4) that correspond to the knowledge and data held by PED's Early Childhood Education Department. Needless to say, the remainder of interrogatory categories makes it easy for the various PED departments (*see* hyperlink for a complete list of PED bureaus, https://webnew.ped.state.nm.us/bureaus/) to respond to the cache of Plaintiff Interrogatories.

Plaintiffs require sufficient amounts of discovery, including information obtained through interrogatories, in order to fully understand the breadth of the State's Actions, and the current impact on "at-risk" students. In order to avoid further delay and this court's involvement, we hope to resolve these matters amicably, without seeking leave of court and/or a motion to compel under the rules of discovery.

2. <u>The Defendant State is required to get answers from other state agencies.</u>

In several interrogatories Plaintiffs seek information and documents that concern the State's educational program as addressed in the Court's orders but which may be in the possession of state agencies other than PED. For example, in the area of Pre-K, Plaintiffs seek information about Pre-K programs regulated by the Early Childhood Education Department (see Interrogatories _____). In the area of teacher preparation, Plaintiffs seek information from the Higher Education Department, UNM, NMSU and Highlands University about what the State has done and will do to ensure there are a sufficient number of properly trained teachers to fill the Pre-K, extended year, and basic classes for all at-risk students.

Defendants' response to these interrogatories is to raise the following objection:

> "PED is the primary agency involved in this litigation and the only agency whose head is named in the lawsuit. Construing the State to mean each and every agency is overly broad and unduly burdensome."

The standard for responding to an interrogatory is that the party "shall furnish such information as is available to the party" (NMRA, Rule 1-033) and for an RFP that a party must produce all documents "which are in the possession, custody or control of the party upon whom the request is served (NMRA, Rule 1-034).

The defendants in this consolidated lawsuit are: The State of New Mexico; Ryan Stewart as Secretary of PED (automatically substituted by Rule for Hanna Skandera), and NM PED. The lead defendant is the State of New Mexico and therefore the State must provide all requested information and documents in its "custody and control." This means if a state agency other than PED has the information or documents requested, that agency must be the one to respond to the Interrogatory.

The law on this is clear. See *Washington v. GEO Grp., Inc.*, No. 3:17-CV-05806-RJB, 2018 WL 9457998, at *3 (W.D. Wash. Oct. 2, 2018) (holding that when a party in the litigation is "the State of Washington discovery addressed to the State of Washington includes its agencies."); Perez v. Perry, No. SA-11-CV-360-OLG-JES, 2014 WL 1796661, at *1 (W.D. Tex. May 6, 2014) (holding that the State of Texas had to produce documents in the possession of the

Legislature because a party can "control" documents that are within the possession or custody of a non-party "when that party has the right, authority, or practical ability to obtain the documents from a nonparty" (internal citations omitted)); Rosie D. v. Romney, 256 F.Supp.2d 115 (D.Mass. 2003) (holding that in a suit against the Governor, state officials had "control" over documents in non-party state agency's possession).

This interpretation was fleshed out by the New Mexico Supreme Court in the seminal New Mexico case about discovery: *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶¶ 48-65, 96 N.M. 155, 168–73. In that case, a named defendant, GAC, contended that GAC's partner, who is not itself a party in the case, may not be required to answer interrogatories under Rule 33 or produce documents under Rule 34. The Court squarely rejected that argument. Even though the Court was addressing the obligations of obtaining evidence from a non-party in a partnership situation, its underlying reasoning is fully applicable here:

> GAC's argument is based on the principle that discovery under Rules 33 and 34 is limited to parties to the case. ... [W]e conclude that under Rules 33 and 34 the trial court properly ordered GAC to produce partner documents and to furnish information from the partners. In construing Rules 33 and 34, we must begin with the notion that discovery is designed to "make a trial less a game of blindman's buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." (citation omitted). In light of that policy, Rules 33 and 34 must be liberally construed in order to insure that a litigant's right to discovery is "broad and flexible." (citations omitted)
>
> * * *
>
> If, under Rule 33, Gulf is obliged as an agent of GAC, to furnish answers to interrogatories directed at the partnership, it would be incongruous to hold that information in the possession of Gulf is not "available" to GAC for the purpose of giving complete and accurate answers to those interrogatories. Indeed, the rule that "all information available to the interrogated party must be supplied . . . includes information possessed by, or within the knowledge of, . . . agents or representatives of the party." (citation omitted).
>
> * * *
>
> First, a party obviously cannot be required to produce materials which he is incapable of procuring. Second, in general a party should not be required to obtain, collect or turn over materials which the opposing party is equally capable of obtaining on its own. Konczakowski v. Paramount Pictures, 20 F.R.D. 588, 593 (S.D.N.Y. 1957); Cinema Amusements v. Loew's, Inc., 7 F.R.D. 318, 321 (D. Del. 1947).

In sum, the Court concluded that "It is immaterial under discovery rules governing interrogatories and production of documents that a party subject to discovery orders does not own documents or that it did not prepare or direct the production of the documents, or that it does not have actual physical possession of them." Id. Cf. C. Wright & A. Miller, Federal Practice and Procedure: Civil s 2208, p. 616 (1970) ("(A) party cannot immunize a document from inspection by turning it over to a nonparty so long as it remains in the party's control." (Footnote omitted.))

> "Other decisions involving discovery from distinct, though related, corporations in cases in which only one corporation is named as a party, support our conclusion that the coordinated nature of the business enterprises of separate entities may justify the

imposition of discovery obligations on those entities which are not parties to the action."

United Nuclear, supra.

Here, there is a practical reason for the Court to order the State to respond to interrogatories concerning information from non-PED state agencies. This Court recognized from the outset that relief will involve state and local agencies beyond PED and the Findings of Fact and Conclusions of law and the Decision and Order contemplate the involvement of state agencies other than PED in remedying the constitutional violations.

Even the State has recognized the need for multiple state agencies to work together on the relief ordered by this Court and it has created a mechanism for them to do just that. The State created the New Mexico Longitudinal Data System that connects the Department of Workforce Solutions with the Higher Education, Public Education, and Early Childhood Education and Care departments to provide a warehouse of relevant information that can help state leaders identify what practices and programs are essential in turning children into productive members of the state's workforce. See https://www.santafenewmexican.com/news/education/new-mexico-s-three-education-secretaries-discuss-need-for-collaboration/article_4a8663b8-74bb-11eb-aa08-dfa5176c3b56.html

Thus, the State should be compelled to answer the interrogatories fully, even if some of the requested information is currently housed in a state agency other than PED.

3. <u>Defendants are required to compile and analyze data if necessary to respond to interrogatories.</u>

Defendants object to many of Plaintiffs' interrogatories on the basis that "[t]he discovery rules allow a party to request certain data, but it does not compel a party "to expend additional time and money 'analyzing, compiling and creating new statistical reports solely for the benefit of the recipient.'" In support of their objection, Defendants cite *American Civil Liberties Union of New Mexico v. City of Albuquerque*, however, this reliance is misplaced. In that case, the plaintiffs sought attorney's fees under Rule 1-037 NMRA after spending a large amount of time working to understand the raw data provided by Defendant in response to discovery. *Am. Civil Liberties Union of New Mexico v. City of Albuquerque,* 1999-NMSC-044, ¶ 27, 128 N.M. 315. The Court's decision contains few facts and little analysis on this issue, except to succinctly conclude the district court did not abuse its discretion in denying Plaintiff's request for attorney's fees; the Court agreed that Defendant was required to provide the data, but not to "expend additional time and money 'analyzing, compiling and creating new statistical reports solely for the benefit of the recipient.'" *Id.* As such, this case reaffirms the broadly held understanding that a responding party is not compelled to compile data in response to interrogatories when that party has provided the requesting party with access to records from which the requesting party can create his or her own compilation. *See Penk v. Oregon State Bd. of Higher Educ.,* D.C.Or.1982, 99 F.R.D. 504 ("This court agrees with defendant's assertion that normally a party should not be compelled to answer an interrogatory that requires a compilation of data when that party is willing under Fed.R.Civ.P. 33(c) to allow the requesting party access to records from which the requesting party can make his own compilation of data."); *Leonia Amusement Corp. v. Loew's Inc.,* S.D.N.Y.1955, 18 F.R.D. 503 ("It is elementary that a party has no right to require his opponent to make compilations of information when documents containing the material

necessary for the compilations are available to the first party.").

Here, Defendants' raise this objection in response to several interrogatories, but do not provide any data or access to business records. In other instances, Defendants provide business records that correspond to certain subparts of an interrogatory, from which *some* answers may be ascertained; but it is not clear whether Defendants cite *Am. Civil Liberties Union of NM v. City of Albuquerque* with respect to the data provided in those records, or, erroneously cited as justification for the missing information (see interrogatories #4, 5, 6, 74, 79, 85).

The Court's holding in *Am. Civil Liberties Union of NM v. City of Albuquerque* does not stand for the proposition that a responding party need not provide information that is otherwise discoverable, simply because it requires analysis or compilation. However, this erroneous interpretation is precisely how Defendants rely on this case. As such, it is inaccurate, and Defendants should be compelled to "provide the requested data," as required by the discovery rules. *Id.* at ¶ 27.

4. <u>The Interrogatories are not Overly Broad and Unduly Burdensome</u>

Plaintiffs' post-judgment interrogatories seek specific information regarding various components of the State's educational system addressed in the Court Decision and Order. Defendants' response to [nineteen] of Plaintiffs' interrogatories is to raise overly broad and unduly burdensome objections with little to no further explanation.

Discovery rules allow parties to obtain "any information, not privileged, which is relevant to the subject matter involved in the pending action . . . ." Rule LR1-202, NMRA. NMRA 1-026(B)(1). NMRA 1-033(C)(1) states, "Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable." The Rule further provides, "All grounds for an objection to an interrogatory shall be stated with specificity." NMRA, Rule 1-033(C)(4). All objections must cite supporting authority.

Plaintiffs' interrogatories meet the relevancy requirement of Rule 26 and must be provided. The information requested by Plaintiffs' interrogatories are relevant to the various components of the education system addressed in the litigation and are within the Court's Decision and Order and Findings of Fact and Conclusions of Law. Relevancy is broadly construed, and a request for discovery should be allowed "unless it is clear that the information sought can have no possible bearing" on the claim or defense of a party." 2008 WL 1958350 (D.Kan.), 3. "When the discovery sought appears relevant on its face, the party resisting the discovery has the burden to establish that the requested discovery does not come within the scope of relevance as defined under Rule 26(b)(1), or is of such marginal relevance that the potential harm occasioned by the discovery would outweigh the ordinary presumption in favor of broad disclosure." *McBride v. Medicalodges, Inc.*, No. 06-2535-JWL, 2008 WL 1958350, at *3 (D. Kan. May 2, 2008).

Defendants should explain why they believe Plaintiffs' interrogatories do not come within the scope of relevance as defined under Rule 26. Otherwise, Defendants must answer each interrogatory.

Furthermore, Defendants fail to cite supporting authority and to explain the specific ways in which each request is expansive or burdensome in nature. In several interrogatories, [i.e., Interrogatory Nos. 16 through 19 and 84], Plaintiffs include a blanket overbroad and unduly burdensome objection among a series of other objections making it unclear which part of each request that Defendants believe is overly broad and unduly burdensome. *See Fisher v. Baltimore Life Ins.* Co., N.D.W.Va.2006, 235 F.R.D. 617 (holding that objections to interrogatories must be stated with specificity, and mere recitation of familiar litany that interrogatory is overly broad, burdensome, oppressive, and irrelevant does not suffice as specific objection); *Guzman v. Irmadan, Inc.,* S.D.Fla.2008, 249 F.R.D. 399 (holding objections which state that a discovery request is "vague, overly broad, or unduly burdensome" are, by themselves, meaningless, and are without merit; a party objecting on such bases must explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome).

Since Defendants do not provide specific reasons for asserting that Plaintiffs' requests for information are overbroad or cause undue burden, Defendants must answer the interrogatories as required under Rule 1-033.

Finally, Plaintiffs anticipate Defendants may claim that certain interrogatories are facially overly broad and unduly burdensome because it is difficult to ascertain what information is being requested. *Moss v. Blue Cross & Blue Shield of Kansas, Inc.,* 241 F.R.D. 683, 693 (D. Kan. 2007)(finding that a request or interrogatory is overbroad and unduly burdensome on its face if the "request's wording requires the answering party to]'engage in mental gymnastics to determine what information may or may not be remotely responsive.") Here, Plaintiffs' written interrogatories were carefully tailored to elicit specific information regarding areas of the education system delineated in the ruling, within a reasonable timeframe, beginning with the 2018-2019 school year to present, to determine the State's compliance with the Court Decision and Order.

Because the scope of Plaintiffs' interrogatories is narrow as to subject matter and timeframes, Defendants should answer or submit specific reasons why Plaintiff's requests are objectionable pursuant to Rule 1-033.

5. <u>Defendants must respond to interrogatories about waiting lists and gaps and steps to fill gaps.</u>

In several interrogatories, Plaintiffs asked the State and PED to explain gaps in the availability of services, the additional resources that will be necessary to implement the relief ordered by this Court, and the process for doing so.

In response to these interrogatories, Defendants responded: "Defendant is not required to speculate about a potential future need."

Plaintiffs are not asking Defendants to speculate about a potential future need. Plaintiffs are seeking highly relevant information about whether the State knows what needs to be done to implement this Court's orders and whether the State has specific plans for filling and paying for the current large gaps in educational services. This is highly relevant information and should be provided.

Rule 1-026 provides in relevant part:

> Parties may obtain discovery of any information, not privileged, which is relevant to the subject matter involved in the pending action. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. A party responding to discovery requests shall provide all non-privileged responsive information then known to the party, subject to the limitations in these rules or as ordered by the court.

The information sought by Plaintiffs' interrogatories is well within the requirements of Rule 26 and should be provided. If Defendants' objection is just a sly way of saying they do not have the information necessary to answer these interrogatories, they must say so, clearly identifying the interrogatory for which they lack sufficient ability to answer.

6. The pandemic has prevented Defendant from getting data and Defendant will supplement its answer with data when available.

In response to several interrogatories, Defendants stated they are "unable to gather this data due to the demands of the pandemic and office closures due to security threats" and offered to "supplement its answers when the data becomes available." Although the Covid-19 pandemic has disrupted the normal course of business of state agencies, and offices may have been temporarily closed for related reasons, these events have not completely shut down state government. The public education department and school districts have been in operation throughout the pandemic. As such, it is reasonable to expect that Defendants have various means to obtain information in the daily course of its work, such as through remote access to electronic databases, electronic mail, and telephone. Plaintiffs request an explanation of exactly why Defendants are having trouble getting the requested information, what the plan is to obtain it, and when the information will be provided to Plaintiffs.

7. The Public School Spreadsheet is available to the public and contains the information requested.

Under Rule 1-026(B)(2)(a) NMRA, Defendants assert the public school support spreadsheet is publicly available online to object to Plaintiffs' interrogatories regarding funding for pre-k (#5, 6, 7), transportation (#20), health and social services (#28, 29), culturally and linguistically responsive instructional materials (#46), teacher scholarships (#85), bilingual multicultural education programing (#106, 107, 108), the Indian Education Act Fund (#117, 119), for school years 2018-19 through the present. However, in order to limit discovery under this rule, the information sought must be obtainable from some other source that is *also* more convenient, less burdensome, or less expensive. Rule 1-026(B)(2)(a) NMRA. Defendants assert merely that the public school support spreadsheet "can be easily viewed online[,]" but have not made a showing that the information sought in the interrogatories listed above would be more easily obtained from the public school support spreadsheet. Further, it is only appropriate for a party to answer an interrogatory with reference to a business record, such as the public school support spreadsheet, if the burden of ascertaining the answers is substantially the same for both parties. Rule 1-033(E) NMRA.

Here, the only publicly available documents relevant to the questions put forth in the

listed interrogatories (above) are school districts revenue and expenditure charts for the first three quarters of school year 2018-2019. Notably, PED has only made available *estimated* Stat Books for school year 2018-2019, and no data at all for school years 2019-2020 or 2020-2021. Therefore, the publicly available information cited by Defendants is incomplete and insufficient to answer Plaintiffs' interrogatories, and as such, does not relieve them of the obligation to provide discovery. This is true for two obvious reasons. First, the public school support spreadsheet available online is incomplete as to the timeframe within which Plaintiffs' sought information (i.e. school years 2018-2019 to the present), because the available data only covers a *portion* of *one school year*. Second, it is not possible to ascertain the very specific and reasonable data requested in Plaintiffs' interrogatories (above) without institutional knowledge of and familiarity with PED's reporting format. To develop its yearly reports on school districts budgets, revenue, and expenditures, PED requires the use of an accounting and financial reporting format that identifies revenues and expenditures by fund, function and object. Each fund, function and object is assigned an individual account code, of which there are easily hundreds. Without knowledge of, or reference to, the account codes for each specific subset of data sought by the interrogatories above, it is not possible to ascertain an answer. This requirement makes the burden of ascertaining the answer from the publicly available documents substantially greater for Plaintiffs.

Finally, Defendants also object to interrogatories #121, and #122 on the grounds that the information is simply "publicly available," again relying on Rule 1-026(B)(2)(a) NMRA. But again, in order to limit discovery under this rule, the information sought must be obtainable from some other source that is *also* more convenient, less burdensome, or less expensive. Rule 1-026(B)(2)(a) NMRA. Defendants assert merely that the "information is publicly available," but do not provide sufficient detail for Plaintiffs' to even identify the public source from which the answers can be ascertained. Further, Defendants do not establish that the information sought in interrogatories #121 and #122 would be more easily obtained from said unspecified public source.

We look forward to discussing these issues with you and obtaining supplemental discovery from Defendants.

Sincerely,

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					ELTP 2019-2020
#39 A - Focus Districts marked as "No Program - NP" and Participating Focus Districts	#39, 40 & 42 B-ELTP Funded Membership - Source = 2019-20 Final Funded Extended Learning Time Program Cost	#39, 40 & 42 B- Low Income - Avg. of 40, 80 and 120 Day - Source STARS, recorded on Excel sheet	#39, 40 & 42 B - Students w/Disabilities - Avg. of 40, 80 and 120 Day - Source STARS, recorded on Excel sheet	#39, 40 & 42 B - Native AmericanAvg. of 40, 80 and 120 Day - Source STARS, recorded on Excel sheet	#39, 40 & 42 B - English Language LearnersAvg. of 40, 80 and 120 Day - Source STARS, recorded on Excel sheet
Alamogordo	NP	NP	NP	NP	NP
Albuquerque	6808	1651	793	285	1104
Bernalillo	1290	844	289	789	441
Cuba	255	49	16	54	28
Espanola	NP	NP	NP	NP	NP
Gadsden	12864	6426	3072	29	7557
Gallup McKinley	10665	5917	2162	13249	5007
Grants-Cibola	NP	NP	NP	NP	NP
Hatch	188	128	25	0	108
Jemez Valley	NP	NP	NP	NP	NP
Lake Arthur	NP	NP	NP	NP	NP
Las Cruces	10080	6636	2057	234	1995
Los Lunas	8540	6673	1614	1079	1510
Magdalena	NP	NP	NP	NP	NP
Moriarty-Edgewood	NP	NP	NP	NP	NP
Penasco	NP	NP	NP	NP	NP
Rio Rancho	2900	299	182	121	51
Santa Fe	4326	100	56	14	96
Silver City	NP	NP	NP	NP	NP
Taos	378	54	34	15	9
Tucumcari	NP	NP	NP	NP	NP
Zuni	NP	NP	NP	NP	NP
	State Total At Risk Students - From STARS Excel Spreadsheet	**Funding Appropriated by Legislature**	**# 39 J- Appropriations for ELTP that reverted to Public Education Reform Fund**		
State of New Mexico	193195	$62,497,500.00	$ 22,014,627.94		
Charters are not included					
Data For L, S, T, U, AB and AC from 2019-20 Final Funded Extended Learning Time Program Cost from Feliz Garcia, 2020-21 fr					
Data For M, N, O, P, V,W, X, and Y was obtained from the Student Snapshot Template Validation Report using only schools th					
Data For Q, R, Z and AA was obtained from STARS 40, 80, 120 and EOY ELTP and CSP Membership Certification Reports					
Reversion received from Marian Rael-2020-21 not yet final					

EXHIBIT

C

42 A & B -Tutoring Participation-Avg. of 40, 80, 120 and EOY STARS Reports	40 B Afterschool Participation-Avg. of 40, 80, 120, and EOY Reports	#39 F $ Allocated by PED	#39 $ Spent by LEA	#39, 40 & 42 B-ELTP Funded Membership - Source = 2020-21 40 Day Certified Extended Learning Time Program Cost	#39, 40 & 42 B- Low Income - Avg. of 40, 80 and 120 Day - Source STARS, recorded on Excel sheet	#39, 40 & 42 B - Students w/Disabilities - Avg. of 40, 80 and 120 Day - Source STARS, recorded on Excel sheet
NP	NP	NP	NP	NP	NP	NP
Not Reported	Not Reported	$3,446,547.96	$3,446,547.96	3,256.00	3504	476
Not Reported	Not Reported	$653,062.11	$653,062.11	2,796.00	2688	447
Not Reported	Not Reported	$129,093.67	$129,093.67	547.00	70	10
NP	NP	NP	NP	NP	NP	NP
Not Reported	Not Reported	$6,421,271.19	$6,421,271.19	12,036.00	19516	3063
5004	Not Reported	$5,399,153.05	$5,399,153.05	11,197.00	7552	1717
NP	NP	NP	NP	3,250.00	3162	540.3
Not Reported	Not Reported	$95,174.94	$95,174.94	400.00	1212.3	113.6
NP	NP	NP	NP	257.50	42	16
NP	NP	NP	NP	106.00	53	29
Not Reported	Not Reported	$5,102,996.98	$5,102,996.98	8,035.00	19151	3597.6
Not Reported	Not Reported	$4,323,372.44	$4,323,372.44	8,208.00	4024	1209
NP	NP	NP	NP	NP	NP	NP
NP	NP	NP	NP	2,334.00	997	381
NP	NP	NP	NP	345.00	181	53
74	Not Reported	$1,468,124.13	$1,468,124.13	16,865.50	5071	2695.6
Not Reported	Not Reported	$2,341,911.11	$2,341,911.11	1,426.00	339	161
NP	NP	NP	NP	NP	NP	NP
1	Not Reported	$191,362.39	$191,362.39	2,055.50	119	99
NP	NP	NP	NP	833.00	559	234
NP	NP	NP	NP	1,225.00	1231	124.6

				#39 C State Total At Risk Students - From STARS Excel Spreadsheet	**#39 D Funding Appropriated by Legislature**	**Appropriations for ELTP that reverted to NM Education Reform Fund**
				192484	$71,394,100.00	$1,119,019.87

om Membership Certification Form SY2020-21 - 40D SEG (Actual and Highest MEM) from Marangellie Trujillo

at were reported in STARS as participating in ELTP and averaging 40, 80 and 120 days. It includes total membership for those schools, not just c

ELTP 2020-21						
#39, 40 & 42 B - Native AmericanAvg. of 40, 80 and 120 Day - Source STARS, recorded on Excel sheet	#39, 40 & 42 B - English Language LearnersAvg. of 40, 80 and 120 Day - Source STARS, recorded on Excel sheet	Tutoring Participation-Avg. of 40, 80, 120 and EOY Reports	Afterschool Participation-Avg. of 40, 80, 120, and EOY Reports	$ Allocated by PED	$ Spent by LEA	
NP	NP	NP	NP	NP	NP	
285	501	274	524	$1,624,882.38	$1,624,882.38	
1354	793.6	942	1029	$1,395,322.83	$1,395,322.83	
55	25	4.5	34	$272,976.25	$272,976.25	
NP	NP	NP	NP	NP	NP	
58	7829	218	680	$6,006,475.53	$6,006,475.53	
11106	4527	1070	1271	$5,587,778.87	$5,587,778.87	
1474.6	421.6	0	253	$1,621,888.13	$1,621,888.13	
3.3	565	0	28	$199,617.00	$199,617.00	
90	68	1	38	$128,503.44	$128,503.44	
0	20	0	40	$52,898.51	$52,898.51	
330	3177.6	254	442	$4,009,806.49	$4,009,806.49	
785	1007	14	351	$4,096,140.84	$4,096,140.84	
NP	NP	NP	NP	NP	NP	
37	185	42	52	$1,164,765.20	$1,164,765.20	
45	13	7	47	$172,169.66	$172,169.66	
1501.6	756.6	87	155	$8,416,601.28	$8,416,601.28	
27	274	139	604	$711,634.61	$711,634.61	
NP	NP	NP	NP	NP	NP	
33	14	11	682	$1,025,781.86	$1,025,781.86	
11	75	25	27	$415,702.40	$415,702.40	
1217.3	421.3	109	710	$611,327.06	$611,327.06	
lata for those who participated in ELTP.						