FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
2/7/2022 8:33 PM
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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

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

Plaintiffs,

v. **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, *et al.*,

Plaintiffs,

v. **No. D-101-CV-2014-02224**

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

Defendants.

***YAZZIE* AND *MARTINEZ* PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO JOINT MOTION TO COMPEL ANSWERS TO INTERROGATORIES**

As a result of information contained in Defendants' Sixth Supplemental Answers to Interrogatories received on January 12, 2022 (attached hereto as Exhibit 6) and statements made in Defendants' Response brief, Plaintiffs have eliminated a number of interrogatories from being at issue in this Motion to Compel. These eliminated interrogatories are listed at the end of this Reply in Section XI. There continue to be a number of interrogatories that have yet to be fully answered, however, and these are addressed in this Reply.

I. Plaintiffs' Motion Reasonably Categorized Defendants' Objections and Inadequate Responses and Provided the Responsive Documents in Full.

In the Motion to Compel Plaintiffs used summary spreadsheets and organized Defendants' responses into categories for Plaintiff's analyses. This approach was appropriate in light of

Defendants' redundant objections, unspecific answers and seven separate waves of answers and supplemental answers. Plaintiffs' intent was to aid the Court in its assessment of the many responses at issue and to avoid repetition. Contrary to Defendants' assertion in their Response, Plaintiffs did attach to the Motion Defendants' specific answers and objections as required by Rule 37. *See* Motion Exhibit 1. If in Defendants' judgment Plaintiffs mischaracterized any of Defendants' responses or objections, it is only because Defendants' answers lacked sufficient clarity, which is further evidence of Defendants' violation of Rule 1-037(A)(4) NMRA. Plaintiffs decided not to encumber the briefing process by also attaching thousands of pages of Defendants' documents for the Court to review. Plaintiffs now provide the following link at which all the background documents at issue can be viewed in full:

https://drive.google.com/drive/folders/1WQq6phK7lYYXMT7-y8NbiNhJwldonB5V?usp=sharing.

II. Defendants Must Obtain Information from State Agencies in Addition to the PED.

In their Response to Plaintiffs' Motion concerning the State's refusal to fully answer interrogatories that sought information from State agencies in addition to the PED, Defendants do not challenge Plaintiffs' legal argument that Defendants must obtain the requested information if it is in the possession of any State agency, but instead make a number of meritless alternative arguments. *See* Defendants' Response to Plaintiffs' Joint Motion to Compel Discovery Responses (hereinafter "Response") at 3-5. Because Defendants did not challenge their obligation to obtain the requested interrogatory answers from other State agencies, they now must comply and supply answers to these interrogatories.

A. Interrogatories concerning Pre-K (Interrogatory Nos. 2(a), (b), (c), 3, 4(a), (c), (d), (e), and 5(a)).

Defendants assert they did obtain information from other agencies in answering these interrogatories. *See* Response at 3-4. But Defendants' Answers and Second Supplemental Answers supply information only about PED's Pre-K programs and their Third Supplemental Answers,

cited by Defendants in their Response, supply information about PED's and CYFD's Pre-K programs **only for the 2018-19 school year**. *Id*; *see also* Exhibit 1 at 1-6; *see also* Bates Nos. D1, D4419, and D4420 (at link above). Defendants' Answer to Interrogatory No. 5 referred Plaintiffs to a series of spreadsheets, none of which is responsive to subpart (a). See Exhibit 1 at 5-6; *see also* Section 8, below. To date, Plaintiffs have not received any answers to these interrogatories concerning the CYFD, private and Head Start Pre-K programs for the 2019-2020 and 2020-21 school years.

B. Interrogatories concerning recruitment, training and placement of new teachers (Interrogatory Nos. 84, 85(a), 86, 87, 88, 89 and 90).

Defendants assert they are not required to get the requested information from the various State colleges ("Institutes of Higher Education" or "IHEs") and that it would be a burden for them to do so. *See* Response at 3-5; *see also* Exhibit 1 at 7-13; *see also* Bates Nos. D58707 (at link above). But each IHE is an agency of the State and subject to approval of annual budgets, collection of extensive operational information, and exercise of oversight authority by both the Higher Education Department and the Legislative Finance Committee. Thus, it is clear that all the information requested in these interrogatories is under the custody and control of Defendants. Trying to make Plaintiffs obtain this information through separate subpoenas to each IHE is unreasonable, burdensome and, actually, impossible -- Plaintiffs cannot use subpoenas to require the IHEs to answer these interrogatories. Moreover, the State's resources and authority to obtain the requested information from the IHEs is far superior to Plaintiffs' and the State should be ordered to obtain the requested information from the IHEs.

C. Interrogatory concerning the inadequacy of preparation for college (Interrogatory No. 19).

Defendants assert they do not have to answer this interrogatory because they do not "maintain" this information and, even though they relied on this information at trial, they now argue they would need to compile it again (Defs Supp Answer to Interrogatory 19: "Those PED

staff are no longer employed at PED, and records were not left in good order. Therefore, PED is unable to provide any additional information for 2018-19 or 2019-20 with undue burden given the amount of resources it took to gather this data for the trial."). *See* Response at 3-4; *see also* Exhibit 1 at 6. This information is readily available from the various institutes of higher education in the State and is highly relevant to the question of the State's progress in complying with this Court's orders. Defendants should be ordered to obtain the requested information.

D. Interrogatory concerning funding for school-based health centers (Interrogatory No. 29).

In their Answer to Interrogatory No. 29, Defendants erroneously state that "these programs are not funded discretely, they are funded through the SEG." See Exhibit 1 at 7. That is not correct. Through the 2020-2021 school year these centers were separately funded by specific appropriations to both PED and the Department of Health ("DOH"). For the current school year (2021-2022) these health centers were funded solely through DOH. This information is easily obtained by the State from both PED and DOH.

III. Defendants must obtain and produce Focus District Data (Interrogatory Nos. 48, 51, 52, 53, 61(c), (d), 97, 116(a), 122 (b), and 127 (g)-(j)).

As a result of Defendants' recent supplemental responses, Plaintiffs now seek Focus District information only for Interrogatories: 48, 51, 52, 53, 61(c) & (d), 97, 116(a), 122 (b), and 127 (g) through (j). Despite Defendants' attempt to avoid their obligation to answer these interrogatories, it is clear that all school districts and charters – not just Focus Districts – are required to gather and submit information to PED throughout the year and that Defendants have custody and control of district-level information. *See* Plaintiffs' Motion at 8-10.

Defendants' Response misconstrues the law when it argues that PED, a state agency, functions independently of New Mexico school districts which are themselves political subdivisions of the State. *Id*. at 8-10. Defendants also erroneously cite to *Daddow* and *United Nuclear* but omit any supporting legal analysis. *See* Response at 6-7. Although Defendants try to

downplay their authority to obtain district-level information, they admit they do have this authority but provide the weak excuse that "most of the accountability measures cited by Plaintiffs were implemented only recently, meaning PED does not have this data." *See* Response at 8.

Defendants also complain that they should not have to obtain information from all 23 Focus Districts when six of them are Plaintiffs in the case. As shown in Plaintiffs' Motion, however, much of the requested district-level information is already stored in PED's databases, and much of it is organized by school district categories. *See* Plaintiffs' Motion at 10. These files are shareable, and generally allow users to efficiently disaggregate district-level information, for example, by student-demographic factors. For example, Interrogatory No. 61 seeks for each Focus District the "total number of teachers" by distinct categories, including "licensure level," and "TESOL" and "bilingual" certifications, as well as the total number of "teacher vacancies" within each of those categories. *See* Exhibit 1 at 26-30. Plaintiffs require this information in order to identify program and service gaps in each district and to analyze the systemic impact of Defendants' actions as a whole.

Lastly, Defendants wrongly argue that "many of the calculations Plaintiffs seek would require Defendant to create wholly new analysis" which, they assert, would be barred by *ACLU of New Mexico v. City of Albuquerque*, 1999-NMSC-044. *See* Response at 9-10. But in 2016 during pre-trial discovery in this case this Court required PED to produce "data sets," including district-specific and statewide-level data; and, to disaggregate the data by numerous subcategories (ELL, low-income, Native American, SWD, grade, school, funding levels, etc.). When Defendants failed to make certain data sets available, Plaintiffs filed a Motion for Order to Show Cause that resulted in this Court ordering Defendants to provide much of the same district-specific information requested here today. *See* Order Regarding Fact Stipulations and Discovery, October 24, 2016, para. 9. Thus, production of these data has already been mandated by the Court and is the law of the case.

IV. Defendants Must Answer Interrogatories Concerning Service Gaps and Planning (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).

These interrogatories ask the State to identify the number of children not yet served by various programs, the steps that must be taken in order to expand the programs to serve these children, and the amount of funding necessary to do so. In its Answers, the State objects to answering these interrogatories and withholds highly relevant information on the fallacious ground that it "is not required to speculate." But as the Court can see, these interrogatories are asking the State to calculate, not speculate. Each interrogatory seeks only information which is essential for the State to plan and then implement this Court's Orders. Indeed, without this crucial information it is the State that will be speculating about how to comply with the Court's orders.

In its Response the State argues two points. First, it argues that these interrogatories seek information that supports Plaintiffs' view of the State's obligations, not the State's own view of what a sufficient education entails. ("These interrogatories are asking the state to make Plaintiffs' case for them."). *See* Response at 11. Of course, that is what Plaintiffs are doing. Plaintiffs seek information relevant to their claims in the case. That is always how discovery is conducted. After discovery, either at a hearing or through a motion for further relief, when presented with this information and any counter information provided by the State this Court will decide what is legally required.

The State's second point amounts to an important admission that simply needs to be stated and sworn by Defendants as to each of these interrogatories.

> 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.

Response at 11. If this is so, then Plaintiffs seek a clear statement in each of the State's sworn

answers to these interrogatories that the information does not exist in the custody or control of any State agency and that the State has failed to conduct the analyses requested. With such admissions, Plaintiffs can show the Court why it should order the State to develop the implementation plan previously sought by Plaintiffs to implement this Court's Orders.

It is clear, however, that the State is simply avoiding giving Plaintiffs this essential planning information. A clear example of this is the State's response to Interrogatory Nos. 58 and 85(b), which asked the State what level of salary is necessary to make New Mexico's teacher salaries competitive with other states and how much money will it take to fill all the current teacher vacancies in New Mexico. While Defendants' Response claims that these interrogatories call for speculation and for information "outside the control of the State," Response at 11, Defendants submitted a budget request for FY23 with a specific budget amount that they claim will make teacher salaries competitive with neighboring states and fill current teacher vacancies. See, Governor Lujan Grisham's Executive Budget Recommendation for FY 2023, p. III, located at https://www.governor.state.nm.us/wp-content/uploads/2022/01/FY23-Budget-Exec-Rec.pdf

V. Defendants' "Overbroad and Unduly Burdensome" Objection Is Without Merit (Interrogatory Nos. 17, 19, 53, 61(c), 62, 74, 82, 84, 126(a), (b))

Defendants claim they do not track or maintain information to the level of specificity requested in Interrogatory Nos. 61(c) and 74 and that it would be unduly burdensome for them to answer them. Interrogatory No. 61(c) seeks the total number of vacancies for certain categories of teachers (*e.g.*, Native language and bilingual, early childhood, and special education teachers). Interrogatory No. 74 requests information on various aspects of professional development provided to teachers by PED. Although the document provided partially satisfies the requested information for Interrogatory No. 74, subpart (a) is incomplete and subpart (d) is not answered at all. *See* Bates No. D004279 (LCD PD Tracker) (at link above). The point is not whether they do track the data, but that Defendants should be tracking this information to comply with the Court's

order and they had ample time to obtain responsive answers.

Interrogatory No. 82 seeks data regarding teacher mentorship. Defendants assert they have substantively answered this interrogatory by providing a business record containing estimated district-level funding allocations for the 2021-2022 school year. *See* Bates No. D58706 (at link above). However, this document is an incomplete answer as to mentorship expenditures, and the numbers of teacher mentors and mentees. Since Defendants claim they have answered in full, it appears that Defendants believe that extracting the data sought by Interrogatory No. 82 is unduly burdensome. *See* Exhibit 1 at 83. Nevertheless, it would not be unduly burdensome because PED has reporting requirements under NMSA 1978 § 22-10A-9 that would contain responsive answers.

Interrogatory No. 84 seeks information regarding scholarships available to students pursuing a teaching degree. Defendants assert they "addressed" this interrogatory in their Third Supplemental Answer. *See* Response at 3. However, Defendants only provide scholarship information regarding the Lottery Scholarship and the Opportunity Scholarship. Defendants did not provide any information about the other relevant scholarships, including Grow Your Own Teachers, Teacher Preparation Affordability, and Teacher Loan for Service Program.

Interrogatory No. 126(a) and (b) request information regarding technical assistance provided to districts by the PED's Special Education Division. Defendants argue the term "technical assistance" is overly broad, making it burdensome to gather responsive data. The technical assistance information sought are the types of "supports" the Division provides as part of its mission, such as professional development, coaching, and training in special education and it cannot be burdensome to report on what it does.[1]

[1] Although Defendants claim that despite their "overbroad and unduly burdensome" objections to Interrogatory Nos. 17, 53 and 62, they have substantively answered these interrogatories, their responses do not constitute complete answers on the basis of other deficiencies. The deficiencies with these interrogatory answers are addressed in other sections of this Reply. See Section II as to Interrogatory No. 19, Section VI as to Interrogatory Nos. 17 and 62, and Section III as to Interrogatory No. 53.

VI. Defendants' Responses to Particular Interrogatories or Subparts are Evasive and Incomplete

In their Response, Defendants wrongly assert they have answered most of the interrogatories at issue in this Motion. *See* Response at 13-15. The responding party's answers "must be complete, explicit, and responsive" so as to narrow the issues and ascertain relevant facts. *Milner v. Nat'l Sch. of Health Tech.*, 73 F.R.D. 628, 632 (E.D. Pa. 1977). By extension, in order for an answer to an interrogatory to be complete, each subpart must be addressed. However, if the responding party lacks information to provide a full and specific answer, the party should so state. *See Miller v. Doctor's General Hospital*, 76 F.R.D. 136, 140 (W.D.Ok.1977). Defendants have not followed these basic requirements and should be compelled to provide "complete, explicit, and responsive" answers, or state with specificity that the information is not reasonably obtainable. *See Milner*, 73 F.R.D. at 632.

A. Defendants' Answers are Incomplete or Evasive (Interrogatory Nos. 5(a), 17, 35, 37(b), 44, 46, 54(a)-(d), 62, 76, 79, 85(a), 104, 105, 112, 114, 115, 117(c), 119(c), 121, 130, 148).

Interrogatory No. 17 seeks information regarding students who graduate through "alternative demonstration of competency," or ADC. Defendants assert they have "substantively answered" in their First Supplemental Answer by stating the ADC "described in 6.17.7.8 [sic] apply beginning with the Class of 2022 and no data for current or prior classes is available." *See* Exhibit 1 at 80; *see also* Response at 13-14. However, the interrogatory at issue is not specific to any rule, and responsive data *is* available and tracked by Defendants. *See* Bates Nos. D59292-D59293 (at link above).

Interrogatory No. 35(e) requests information regarding the number and percentage of at-risk students served by K-3/K-5 Plus Programs. *See* Exhibit 1 at 18-19. Defendants assert they "do not track this demographic data or did not for the school years addressed." *See* Response at 14. However, the PED's K-3 Plus Annual Report for the 2018-2019 School Year seems to provide the

exact data requested on a statewide basis and the file path in STARS to access the data. *See* N.M. Pub. Educ. Dep't, *K-3 Plus 4&5 Pilot Annual Report for the 2018-2019 School Year,* NMPED website, 9 (Dec. 2019).[2] Thus, without more, Defendants' response is evasive.

Interrogatory No. 37(b) requests the number of bilingual certified teachers in the K-3/K-5 Plus program by focus district. *See* Exhibit 1 at 68. Defendants responded by providing general data in their narrative response; however, it is not specific to focus districts. *Id.*

Interrogatory No. 44 seeks information on culturally and linguistically relevant ("CLR") instructional materials by focus district and grade level. *See* Exhibit 1 at 85-88. Defendants provided documents Bates No. D18 through D59 (see link above) containing focus districts "Instructional Material Annual Reports" that are unresponsive and incomplete. *See* Exhibit 1 at 85-88. Despite the legislative mandate for PED "to monitor and evaluate the extent to which schools purchase and use instructional materials relevant to the cultures, languages, history and experiences of culturally and linguistically diverse students and report its findings and recommendations to the governor, legislative education study committee and legislative finance committee" that became effective in 2020, Defendants fail to answer this interrogatory in full. *See* the General Appropriation Act of 2020 at pg. 177.[3]

Defendants claim that documents Bates No. D18 through D59 respond in full to Interrogatory No. 54 that seeks data on funding for reading initiatives. *See* Exhibit 1 at 70-71. The documents provided by Defendant are not at all specific or responsive to this interrogatory or any of its subparts.

Interrogatory No. 46 requests information regarding funding for the development and purchase of CLR instructional materials. *See* Exhibit 1 at 89. Defendants answer with a link to a document entitled "Instructional Material Final Allocation 2018-2019 …" *Id*. This document is

[2] https://webnew.ped.state.nm.us/wp-content/uploads/2021/01/2018-19-K3-Plus-4-and-5-Pilot-Annual-Report.pdf
[3] https://nmlegis.gov/Sessions/20%20Regular/final/HB0002.pdf

not specific to CLR instructional materials, nor is it responsive to subpart (a) regarding funding for the *development* of these materials. Notably, while Defendants claim they have answered in full, they did not rely on the public school support spreadsheet. *See* Response at 14, 17.

Interrogatory No. 62 seeks information regarding waivers granted by PED to focus districts for school years 2018-2019 to the present. *See* Exhibit 1 at 81. Defendants assert they have substantively answered this interrogatory by providing documents Bates No. D59292-D59293 (see link above) containing responsive data for school years 2017-2018 and 2018-2019. *Id*; *see also* Response at 13-14. However, this is an incomplete answer as to school years 2019-2020, 2020-2021, and 2021-2022. Furthermore, since Defendants already collect this data they cannot be excused from answering in full because it is unduly burdensome. *See* Section V.

Interrogatory No. 76 requests information regarding funding for professional development. *See* Exhibit 1 at 91. In response, Defendant provided document Bates No. D024495 (see link above) regarding participation in the LETRS professional development, which is wholly unresponsive. *Id*; *see also* Plaintiffs' Motion at 16.

Interrogatory 79 seeks information about professional development provided by PED to district administrators, etc. *See* Exhibit 1 at 93. Defendants respond by providing documents Bates No. D4403 and D4226-D4235 (see link above), both of which are wholly unresponsive to the specific information sought be this interrogatory. *Id*.

Defendants stated they would supplement their answer to Interrogatory No. 105, but to date, they have not. *See* Response at 14; *see also* Exhibit 6. In addition, Defendants admit two subparts were overlooked, but do not specify which subparts or which interrogatories, Response at 15, nor is this clarified by Defendants' Sixth Supplement and Defendants should be compelled to specify the subparts they overlooked and supplement, if necessary.

Finally, Defendants failed to provide responsive answers to Interrogatory Nos. **104, 112** (which is applicable to all departments within PED), **114** (which seeks to understand the progress

and process by which PED has or is working to implement culturally relevant instructional materials in schools, as required under the NMIEA), **115** (document Bates No. D024501 provided by Defendant is unresponsive), **117(c)** (documents Bates Nos. D005709-D005716, and D005717-D005725 provided by Defendant are not responsive), **119(c)** (documents Bates Nos. D005726-D005728, and D005729-D005730 provided by Defendant are not responsive to the purpose of the expended funds), **130,** and **148 (**document Bates No. D4267 provided by Defendant is unresponsive). *See* link above and Exhibit 1 at 93-98, 100, 102. [4]

B. Defendants' Answers Remain Incomplete as to Each Focus District And/Or School Year

Finally, in response to Plaintiffs' Motion concerning Defendants' failure to answer in full or explicitly state that information is not available as to each focus district and/or school year, Defendants admit that spreadsheets they provided contain missing data points. *See* Response at 15. But Defendants make no attempt to identify their deficient responses, supplement with responsive information, or even recognize their duty to do so. *Id*.

As to Focus Districts (and corresponding business records, if any, at link above):

Interrogatory No. 4(e) (Bates Nos. D4419 and D4420)
Interrogatory No. 5(b), (c), (d) (Bates Nos. D2, D3, D4, D5, D6, D7 and D8)
Interrogatory No. 7 (Bates No. D1)
Interrogatory No. 8
Interrogatory No. 13 (Bates No. D024491)
Interrogatory No. 37(a) (Bates No. D59296-D59298)
Interrogatory No. 44 (Bates Nos. D18-D59)
Interrogatory No. 61(b)
Interrogatory No. 66
Interrogatory No. 71(b), (c), and (e) (Bates Nos. D59299 and D59300)
Interrogatory No. 100(a), (b) (Bates Nos. D059237 and D059238)
Interrogatory No. 102 (Bates No. D59242)
Interrogatory No. 116 (Bates D24502 not answered for all focus districts *or* statewide data)

As to School Years 2018-2019, 2019-2020 and 2020-2021 (and corresponding business records, if any, at link above):

[4] Defendants' response to the following interrogatories remains incomplete for the reasons addressed in other sections of this Reply: Interrogatory Nos. 5(a) (Section II(A)), 85(a) (Section II(B) and 8), 121 (Section VIII), and 126 (Section V).

Interrogatory Nos. 2(b), (c)
Interrogatory No. 5(b), (c), (d) (Bates Nos. D2, D3, D4, D5, D6, D7 and D8)
Interrogatory No. 13 (Bates No. D024491)
Interrogatory No. 21
Interrogatory No. 22
Interrogatory No. 37(a) (Bates No. D59296-D59298)
Interrogatory No. 43 (summer school, after-school, and tutoring for school year 2018-2019)
Interrogatory No. 44 (Bates Nos. D18-D59)
Interrogatory No. 61(b)
Interrogatory No. 66
Interrogatory No. 71(b), (c), and (e) (Bates Nos. D59299 and D59300)
Interrogatory No. 111 (Bates D5696, D5698, D5699, D5700-D5707, D5697)
Interrogatory No. 117 (narrative answer and Bates Nos. D5709-D5716, and D5717-D5725)
Interrogatory No. 119 (Bates Nos. D5726-D5728 and D5729-D5730)
Interrogatory No. 123 (Bates No. D24503)
Interrogatory No. 147 (Bates Nos. D4409, 4410, and 4411)

VII. Defendants' Answers Are Insufficient for Plaintiffs to Derive an Answer: Interrogatory Nos. 5(b) and (c), and 7.

In response to Plaintiffs' Motion concerning Defendants' unclear, vague and confusing responses, Defendants served their Sixth Supplemental Answer to Plaintiffs' Interrogatories on January 12, 2022 (hereinafter "Defendants Sixth Supplemental Answer"). A copy is attached as Exhibit 6. Defendants' answers do not address all of Plaintiffs' concerns, remain deficient for Interrogatory Nos. 5(b), (c), and 7, and require an order to answer in full.

In Defendants' initial answer to Interrogatory No. 5(b), (c), and 7, concerning information on overall funding and transportation funding for full-day, public pre-k for 4-year-olds, they provide references to documents Bates No. D2, D5, and 1, respectively (see link above). *See* Exhibit 1 at 5-6, 103. However, these documents only provide aggregated funding for half-day and full-day programs. In their Sixth Supplemental Answer, Defendants provided clarifying information, but did not provide disaggregate funding data for Fiscal Year 2020 or transportation data that is specific to full-day pre-kindergarten programs as requested. *See* Plaintiffs' Motion at 19; *see also* Exhibit 6 at 9-11. Without providing the disaggregated data requested in Plaintiffs' Motion, Defendants' responses remain incomplete.

VIII. The Information Sought in Interrogatory Nos. 5(a), 85(a), 106, and 121 Is Not Obtainable from the Public School Support Spreadsheet Nor Is It Otherwise Available to Plaintiffs.

In their Response, Defendants continue to inappropriately rely on the public school support spreadsheet (hereinafter "PSSS"), a two-page summary of public school appropriations to PED released by the Legislative Finance Committee, and otherwise "direct Plaintiffs to SEG funding" in response to Interrogatory Nos. 5(a), 85(a), 106 and 121. They do not provide an answer beyond these references. However, the PSSS does not contain information from which a complete answer can be ascertained for 5(a), 85(a), and 106. Nor does Defendants' general reference to the SEG provide an answer for 121. The interrogatories at issue all seek information on the total amount of state-wide funding for highly relevant programs or services that was appropriated to the PED or other state agency. Therefore, it stands to reason that the State has within its custody or control responsive information and should be compelled to produce it. *See* Plaintiffs' Motion at 21-23; Sections 2(A), 2(B) and 6(B).

In Interrogatory No. 5(a), Plaintiffs seek information regarding the amount of state funding for pre-k, stated separately for each state agency to which the appropriation was made. None of Defendants' responses to Interrogatory 5 are specific to subpart (a). *See* Exhibit 1 at 5-6; *see also* Exhibit 6 at 9-10. To the extent Defendants rely on the PSSS, their response is incomplete because Plaintiffs seek information about pre-k funding for agencies other than just PED - the only state agency addressed in the PSSS. *See* Section II(A), above.

Defendants' Response fails to address Interrogatory 85(a), even though Plaintiffs raised it. See Response at 17-18. This interrogatory seeks information regarding the amount of funding appropriated for scholarships available to students pursuing a teaching degree. Defendants' response is incomplete because it does not account for all scholarships - a deficiency addressed in this Reply (Section II(B), above), and because Defendants do not dispute their reliance on the PSSS. But the PSSS does not contain responsive information because the interrogatory at issue is

seeking information in the custody or control of the State through its Higher Education Department and/or Institutes of Higher Education.

Plaintiffs seek information regarding state funding to PED for bilingual multicultural education programs for school years 2018-2019 to the present in Interrogatory 106. *See* Exhibit 1 at 128. As Defendants admitted in their Response, they rely directly on the PSSS for their answer to this interrogatory. Again, this document does not contain information from which to ascertain a complete response to each subpart, or for each school year requested by the interrogatory at issue. For example, the PSSS for Fiscal Year 2018 and for FY 2019 only make mention of stipends for bilingual teachers, which is not responsive to the scope of the interrogatory seeking data on bilingual multicultural education programs. *See* Leg. Fin. Comm., *Post-Session Review for Fiscal Year 2018*, N.M. Leg. website, 49-50 (May 2017);[5] *see also* Leg. Fin. Comm., *Post-Session Review for Fiscal Year 2019*, N.M. Leg. website, 60-61 (May 2018).[6] Similarly, the PSSS for Fiscal Year 2022 does not include any appropriation related to bilingual education at all. *See* Leg. Fin. Comm., *Post-Session Review for Fiscal Year 2022*, N.M. Leg. website, 63-64 (May 2021).[7] Finally, the PSSS does not contain capital outlay funding, grant funding, or other funds, as requested by subparts (d), (e), and (f), respectively. Defendants' reliance on the PSSS is inadequate to provide a complete response. If funding was not appropriated in a particular school year, or for each category set forth in this interrogatory, Defendants must affirmatively state this.

In Interrogatory 121, Plaintiffs seek information regarding the total amount of state funding appropriated for students with disabilities. *See* Exhibit 1 at 99. Defendants provide an insufficient answer by simply directing Plaintiffs to the SEG. *Id*. While funding for special education is generated through the SEG, the portion attributed to special education is not included in the

[5] ttps://nmlegis.gov/Entity/LFC/Documents/Session_Publications/Post_Session_Fiscal_Reviews/May%202017.pdf

[6] https://nmlegis.gov/Entity/LFC/Documents/Session_Publications/Post_Session_Fiscal_Reviews/May%202018.pdf

[7] https://nmlegis.gov/Entity/LFC/Documents/Session_Publications/Post_Session_Fiscal_Reviews/May%202021.pdf

relevant PSSS, Post-Session Reports, or General Appropriation Acts (also known as House Bill 2). Further, state funding for students with disabilities is also appropriated through mechanisms in addition to the SEG. For example, special appropriations, other recurring appropriations, and grants to PED and to state agencies other than the PED, such as the Developmental Disabilities Planning Council. *See* Plaintiffs' Motion at 21-23**.**

IX. Defendants Must Supplement Their Responses to Include the Current School Year.

Many of Plaintiffs' discovery seek data for the period "from the 2018-2019 school year **to the present**." Plaintiffs did this to ensure that Plaintiffs and the Court have the most up to date information with which to determine the status of the State's compliance with the Court's Orders. Plaintiffs also did this to keep Defendants from ambushing Plaintiffs with new information at a hearing on a future non-compliance motion.

Defendants' claim that Plaintiffs have not specified which interrogatories need to be supplemented is a red herring. Each interrogatory clearly states the time period for which that discovery is sought.

Similarly, Defendants' argument that Plaintiffs' requests for information are a "moving target," subject to Plaintiffs' interpretation of the term "present," lacks merit. The present means whenever the discovery responses are completed. So far, the State has dragged its response to Plaintiffs' discovery out over 15 months (taking us more than half-way through the 2021-2022 school year), produced its responses in seven piecemeal waves, and still not provided complete and sufficient responses, as set forth in Plaintiffs' Motion to Compel. The State has no one but itself to blame for dragging the discovery period into the current school year.

Although Plaintiffs could have limited the discovery time frame to the Court's Decision and Order compliance deadline (April 2019) or to the date Plaintiffs propounded discovery (November 2020), Plaintiffs would not have been apprised of the most up-to-date status of compliance. Moreover, had Plaintiffs done so, Defendants certainly will use the most current

evidence of compliance available to them at a future compliance hearing and, when Plaintiffs protest that the evidence is for a period after the discovery period, the State will certainly argue it was Plaintiffs' fault for having limited discovery to an early time period. Either Defendants agree to limit their presentation of implementation evidence to the pre-2021-2022 time period at a future compliance hearing or they recognize that their duty to supplement extends to the current school year, they cannot have it both ways.

In addition to their duty to respond to the time period specified in Plaintiffs' discovery, Defendants have a duty to seasonally supplement interrogatories under Rule 1-026. This duty does not require a party to supplement as each new item of information is learned of, but supplementation "should be made at appropriate intervals during the discovery period." F.R.C.P. Rule 26(e), Advisory Committee Note, 1993 Amendments; *see also AVX Corp. v. Cabot Cop*. 252 F.R.D. 70, 77 (D.Mass. 2008). Furthermore, the obligation to supplement answers to interrogatories is continuous, and "a party may not free itself of the burden to fully comply by placing a heretofore unrecognized duty of repeated requests for information on its adversary." *Id*. (internal quotations omitted). The State should be ordered to update its responses to include data for the 2021-2022 school year.

X. The State's Boilerplate "Supernumerary" Argument Has No Merit (Interrogatory Nos. 1-8, 11-26, and 28-148).

Finally, the State claims that the "supernumerary objection" it made to virtually every interrogatory is not ripe because this objection "did not limit" its answers to these interrogatories, but was made "so as not to be waived." Response at 18. Defendants state, however, that they will reassert this objection to bar any further interrogatories that Plaintiffs might serve in the future. *Id.*

The 26 Plaintiffs in the two consolidated cases have directed a total of 148 interrogatories to the three named Defendants, covering all the elements of the State's education system. Notably, the parties agree that subparts directed toward a "common theme" should generally be counted as

a single interrogatory. Charles A. Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure § 2168.1, at 261 (2d ed. 1994)). Response, at 19. Here the subparts in each interrogatory are directed at the common theme of that interrogatory.

This Court did not previously limit the number of interrogatories Plaintiffs could serve and pre-trial limits set forth in the Rules of Civil Procedure do not automatically apply to this post-trial compliance discovery. Moreover, Plaintiffs do not believe they have exceeded a reasonable number in light of the number of parties, the Court's July 20, 2018 Decision and Order that totaled 76 pages and addressed multiple aspects of the state's educational system, the 3,212 Findings of Fact and Conclusions of Law issued by the Court on December 20, 2018 that ran 607 pages long, and the complexity of the remedy required in the case. Because Plaintiffs seek to ensure that the State implements the Court's judgment regarding the State's entire public school system, the number of interrogatories served so far is reasonable and future interrogatories, if necessary, should be allowed. Nonetheless, Plaintiffs agree that the supernumerary objection is not ripe at this time because Defendants have not refused to answer any interrogatory on this basis.

XI. Interrogatories No Longer at Issue in this Motion to Compel

As a result of information contained in Defendants' Sixth Supplemental Answers to Interrogatories received on January 12, 2022 (attached hereto as Exhibit 6) and statements made in Defendants' Response brief, Plaintiffs withdraw from consideration in this Motion Interrogatory Nos. 10, 28, 45, 49, 68, 69, 70, 75, 78, 80, 81, 99, 134, 137, 138, 140, and 141.

CONCLUSION

For the reasons set forth in Plaintiffs' Motion to Compel and in this Reply, Plaintiffs respectfully request this Court to enter an Order compelling Defendants to fully answer Plaintiffs' Joint First Post-Judgment Interrogatories addressed above, and for such other relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, a true copy of this Reply brief was e-filed and served through the Court's e-filing system upon counsel of record.

/s/ Daniel Yohalem
Daniel Yohalem

PLAINTIFFS' EXHIBIT 6

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

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

Plaintiffs,

v. **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, *et al.*,

Plaintiffs,

v. **No. D-101-CV-2014-02224**

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

Defendants.

DEFENDANT THE STATE OF NEW MEXICO'S ANSWERS TO MARTINEZ AND YAZZIE PLAINTIFFS' JOINT FIRST POST-JUDGMENT INTERROGATORIES

Plaintiffs' general instructions and definitions violate LR1-202 NMRA which provides "[i]nterrogatories, requests for production, and requests for admission shall not contain prefatory instructions except to say that they are served in accordance with the Rules of Civil Procedure for the District Courts." Accordingly, these instructions will be disregarded.

INTERROGATORIES

Interrogatory 1: For each question, please state the name, address and telephone number of each person who prepared or assisted in the preparation of the response to these interrogatories.

Answer: Objection. Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Further, this request appears to seek information protected by attorney-client privilege and/or litigation work-product.

Without waiving these objections, Defendant states as follows:

Counsel for Defendant
Robles, Rael & & Anaya, P.C., 500 Marquette Ave NW, Suite 700, Albuquerque, NM 87102

General Counsel for PED, Lisa Chai
c/o Robles, Rael & Anaya, P.C., 500 Marquette Ave NW, Suite 700, Albuquerque, NM 87102

Secretary Ryan Stewart
c/o Robles, Rael & Anaya, P.C., 500 Marquette Ave NW, Suite 700, Albuquerque, NM 87102

Deputy Secretary Katarina Sandoval
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Deputy Secretary Adan Delgado
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Anthony Burns, Instructional Materials
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Mayra Valtierrez, Language and Culture Bureau
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Holly Duffy, Literacy
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SIXTH SUPPLEMENTAL ANSWER:

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Marian Rael, Director of Administrative Services Division, PED
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Marianna Padilla, Director of the Children's Cabinet
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PRE-K

Interrogatory 2: Please state separately for each school year from 2018-19 to the present:

a. the number of 4-year-old children enrolled in full-day pre-kindergarten;

b. the number of 4-year-old children enrolled in full-day publicly funded (state, federal and/or local) pre-kindergarten;

c. the number of 4-year-old children enrolled in full-day privately funded pre-kindergarten; and

d. the number of additional slots needed to provide all 4-year-old children in New Mexico access to full-day pre-kindergarten programs.

Answer: Objection. Defendant contends this interrogatory seeks irrelevant information as neither the Court's Injunction, Findings of Fact, nor Final Judgment compel Defendants to provide full-day Pre-k to each and every 4 year old child in the state. Accordingly, this request is objectionable pursuant to Rule 1-026(B)(2)NMRA. Further, applying this interrogatory to each and every agency in the State of New Mexico is unduly burdensome. Finally, Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests.

Without waiving the above objections, Defendant states as follows:

a. 2018-19: 3,166 funded with 3,105 enrolled
2019-20: 4,718 funded with 4,482 enrolled
2020-21: 5,598 funded with 4,314 enrolled

These numbers refer to students enrolled in public schools overseen by PED.

b. Numbers below are public school PreK only. Data are from 120th Day for 2018-19 and 2019-20, and 80th Day for 2020-21
2018-19: 3,166 funded with 3,105 enrolled
2019-20: 4,718 funded with 4,482 enrolled
2020-21: 5,598 funded with 4,314 enrolled

c. Objection. The number of children enrolled in full-day privately funded pre-K can be obtained from the Early Childhood Education Department. As noted above, 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.

d. Objection. The interrogatory asks for information and analysis not currently in possession of the State. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Moreover, it asks Defendant to speculate.

THIRD SUPPLEMENTAL ANSWER: Without waving these objections, Defendant states as follows:

b and c. Without waiving the above objections, as allowed by Rule 1-033 NMRA, Defendants will produce a business record from which an answer to this interrogatory may be ascertained. This information is contained the Pre-K Annual Report, available at https://webnew.ped.state.nm.us/wp-content/uploads/2020/08/PreK-2018-19-Annual-Report.pdf.

Please refer to pages 35-45.

SIXTH SUPPLEMENTAL ANSWER: Without waving these objections, Defendant states as follows:

a. This data set refers to full day as requested by the interrogatory.
b. This data set refers to full day as requested by the interrogatory.

Interrogatory 4: Please state separately for each school year from 2018-19 to the present pre-kindergarten available to 4-year-old children in each Focus District, stating separately for each district:

a. the number of students served in full day programs (as defined in NMDAC Rule 6.30.9.7) provided by:

i. Focus District,
ii. Private entities (not including Head Start), and
iii. Head Start;

b. the number of students on a waiting list for each program;

c. the number of students served by private entities (not including Head Start) through vouchers or other public support from CYFD and/or ECECD;

d. the number of students served in half day programs provided by:

i. Focus District,
ii. Private entities (not including Head Start), and
iii. Head Start;

e. the number of at-risk students served by each type of program listed in Interrogatory 3(a), above, (stated separately for each of the following at-risk groups: low-income, students with disabilities, Native American students, and English Language Learners).

Answer: Objection. Defendant contends this interrogatory seeks irrelevant information as neither the Court's Injunction, Findings of Fact, nor Final Judgment compel Defendants to provide full-day Pre-k to each and every 4 year old child in the state. Accordingly, this request is objectionable pursuant to Rule 1-026(B)(2)NMRA. Further, as noted above, 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. Additionally, Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Finally, this interrogatory seeks information and analysis not currently in possession of Defendant. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315.

Without waiving these objections, Defendant states as follows:

Defendant will produce the following business records from which an answer may be ascertained as allowed by Rule 1-33(E) NMRA.

1. Focus District Funded Slots and Transportation (Bates No. D000001)(subparts a-d);
2. Full Day Pre-K at Risk spreadsheet (Bates No. D004419) (subpart e); and
3. Half Day Pre-K at Risk spreadsheet (Bates No. D004420) (subpart e).

THIRD SUPPLEMENTAL ANSWER: Without waving these objections, Defendant states as follows:

Without waiving the above objections, as allowed by Rule 1-033 NMRA, Defendants will produce a business record from which an answer to this interrogatory may be ascertained. This information is contained the Pre-K Annual Report, available at https://webnew.ped.state.nm.us/wp-content/uploads/2020/08/PreK-2018-19-Annual-Report.pdf.

Please refer to pages 35-45.

Defendant does not maintain individual waiting lists.

SIXTH SUPPLEMENTAL ANSWER: Without waving these objections, Defendant states as follows:

Funded slots refer to allocated spots, while enrolled indicates students actually attending on the particular day of the report. Additionally, the terms “extended day” and “full-day” are synonymous. For additional clarification, Defendant will produce the following business record from which an answer to this interrogatory may be ascertained:

1. 2018/2019 Snapshot on 40th day of school year (Bates No. D059313);
2. 2019/2020 Snapshot on 40th day of school year (Bates No. D059314).

Please note 450 hours refers to half day while 900 hours refers to full-day/extended day.

Interrogatory 5: Please state separately for each school year 2018-19 to the present, for full-day public pre-kindergarten programs for 4-year-old children:

a. the total amount of state funding appropriated by the State Legislature, stated separately for each state agency to which the appropriation was made;

b. the amount of state funding applied for from PED, by each school district
c. the amount of state funding received from PED by each school district;

d. the amount of money spent by each school district;

e. the amount of additional funds needed for that district to provide public full-day pre-kindergarten programs to all 4-year-old children in that district who are not being served by a Pre-K program of any kind.

Answer: Objection. Defendant contends this interrogatory seeks irrelevant information as neither the Court's Injunction, Findings of Fact, nor Final Judgment compel Defendants to provide full-day Pre-k to each and every 4 year old child in the state. Accordingly, this request is objectionable pursuant to Rule 1-026(B)(2)NMRA. Further, as noted above, 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. Additionally, Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Additionally, this interrogatory seeks information and analysis not currently in possession of Defendant. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Finally, the public school support spreadsheet is publically available and can be easily viewed online. See Rule 1-026(B)(2)(a).

Without waiving these objections, Defendant states as follows:

Defendant will produce the following business records from which an answer may be ascertained as allowed by Rule 1-33(E) NMRA.

1. Additional Funding Requests New Applicant and Expansion spreadsheet (Bates No. D000003) (subpart b);
2. FY18-19 PreK Funding – excel spreadsheet (Bates No. D000004) (subpart b);
3. FY20 PreK Funding – excel spreadsheet (Bates No. D000005) (subpart b);
4. Final FY20 PED PreK Funding by District – excel spreadsheet (Bates No. D000002) (subpart c);
5. FY21 Public PreK Funding Totals with RECs and Sites – excel spreadsheet (Bates No. D000006) (subpart c);
6. State of NM PreK Public School Operating Budget - Grant Year Expenditure Statewide Summary Report 2018-2019 Fund: 27149 – excel spreadsheet (Bates No. D000007) (subpart d);
7. State of NM PreK Public School Operating Budget - Grant Year Expenditure Statewide Summary Report 2019-2020 Fund: 27149 – excel spreadsheet (Bates No. D000008) (subpart d);
8. Funding for Universal PreK – excel spreadsheet (Bates No. D000009) (subpart e); and
9. Estimated Cost of Universal PreK – excel spreadsheet (Bates No. D0000010) (subpart e).

SIXTH SUPPLEMENTAL RESPONSE: Without waiving any objections, Defendants provide the additional clarification.

"Extended-day" is the same as "full-day". The initial language used in HB2 when the full-day option was funded was "Extended-day".

All funding amounts, including those provided for transportation, are only for four-year-old children. If a district was funded for full-day (extended-day) the dollars are for transporting 4-year-old children in extended-day programs. If the district was funded for half-day, the transportation dollars are to transport those 4-year-old children. The legislature has never funded public schools to serve 3-year-olds in Early PreK programs. Only private providers are funded for threes.

"Budget year" and "grant year" are the same; they indicate the fiscal year. School years are identified as 2018-19, etc., which is fiscal year, i.e., 2018-19 is fiscal year 19.

Interrogatory 7: Please state separately for each Focus District for each school year 2018-19 to the present, the total amount of funding available to the district for transportation of all 4-year-old children attending public, full-day pre-kindergarten programs.

Answer: Objection. Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Finally, the public school support spreadsheet is publically available and can be easily viewed online. See Rule 1-026(B)(2)(a).

Without waiving these objections, Defendant states as follows:

Defendant will produce the following business records from which an answer may be ascertained as allowed by Rule 1-33(E) NMRA.

FOCUS Districts Funded Slots and Transportation from 2018-2021 – excel spreadsheet (Bates No. D000001)

SIXTH SUPPLEMENTAL RESPONSE: Without waiving any objections, Defendants provide the additional clarification.

"Extended-day" is the same as "full-day". The initial language used in HB2 when the full-day option was funded was "Extended-day".

All funding amounts, including those provided for transportation, are only for four-year-old children. If a district was funded for full-day (extended-day) the dollars are for transporting 4-year-old children in extended-day programs. If the district was funded for half-day, the transportation dollars are to transport those 4-year-old children. The legislature has never funded public schools to serve 3-year-olds in Early PreK programs. Only private providers are funded for threes.

"Budget year" and "grant year" are the same; they indicate the fiscal year. School years are identified as 2018-19, etc., which is fiscal year, i.e., 2018-19 is fiscal year 19.

Interrogatory 10: Please state separately for each Focus District, for each school year 2018-19 to the present, the number of additional pre-kindergarten classrooms needed and the cost of new construction and/or renovations to provide these classrooms for pre-kindergarten programs to serve all 4-year-old children in the district.

Answer: This interrogatory seeks information regarding a standard that was not imposed by the Court. Accordingly, this request is objectionable pursuant to Rule 1-026(B)(2)NMRA. Further, as noted above, 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. Further, this interrogatory seeks information and analysis that is not currently in the control of the Defendant. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315.

Without waiving these objections, Defendant states as follows:

Defendant will produce the following business records from which an answer may be ascertained as allowed by Rule 1-33(E) NMRA.

PreK Capacity AMS-PSCOC – excel spreadsheet (Bates No. D000013).

THIRD SUPPLEMENTAL ANSWER: Without waving these objections, Defendant states as follows:

Defendant, to include ECECD is not possession of additional information.

SIXTH SUPPLEMENTAL ANSWER: The spreadsheet was intended to provide information on current Pre-K capacity. Defendant has not waived its objection to completing a future calculation.

COLLEGE AND CAREER READINESS

Interrogatory 13: Please state separately for each Focus District for each school year 2018-19 to the present:

a. all the mentoring programs available, by high school;

b. the number of students served by each mentoring program, by high school; disaggregated by each of the following at-risk groups: low-income, students with disabilities, Native American students, and English Language Learners; and

c. the number of at-risk students completing the mentoring program.

Answer: Objection. Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests.

Without waiving this objection, Defendant states as follows:

Defendant is not in possession of this data, it is maintained by the districts.

Supplemental Answer: Subject to its objections, Defendant will produce the following business records from which an answer may be ascertained as allowed by Rule 1-33(E) NMRA:

No.	Description	Bates No.
1.	2019 Mentorship – excel spreadsheet	D024491

SIXTH SUPPLEMENTAL ANSWER: Subject to its objections, the data provided is for the 2018/2019 school year. PED does not specifically track mentorship programs. A variety of course codes include mentorship opportunities. PED is unable to determine which students "complete" a mentoring program.

EXTENDED LEARNING TIME PROGRAM & OTHER EXTENDED LEARNING PROGRAMS (after-school, summer school, and tutoring)

Interrogatory 39: ELTP: Please state separately for each Focus District for each school year 2018-19 to the present:

a. each Extended Learning Time Program ("ELTP");

b. the number of students served by each ELTP, disaggregated by each of the following at-risk groups: low-income, students with disabilities, Native American students, and English Language Learners;

c. the total number of at-risk students, state-wide;

d. the total amount of funding appropriated for the ELTP by the State Legislature;

e. the amount of state funding for the ELTP requested from PED, by each Focus District;

f. the amount of state funding for the ELTP received by each Focus District;

g. the amount of money spent on the ELTP by each Focus District;

h. the amount of additional funds needed for each Focus District to provide the ELTP to all at-risk students;

i. each Focus District that did not implement the ELTP; and

j. the total amount of funding appropriated for the ELTP that was reverted to the Public Education Reform Fund.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Further, this request requires information and analysis not currently in the control of Defendant. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Defendant is not required to speculate about a potential future need. Further, this information is more easily accessible from the districts, including Plaintiff districts. See Rule 1-026(B)(2)(a) NMRA.

Without waiving these objections, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

THIRD SUPPLEMENTAL ANSWER: Subject to the above objections, Defendant will produce the following business records from which an answer to this question can be ascertained:

Data Request August 2, 2021 (Bates No. D059192); and
Updated Total Enrollment (Bates No. D059193).

SIXTH SUPPLEMENTAL ANSWER: Subject to the above objections, Defendant states as follows:

This data is all based on one funding source: the Extended Learning Time Program (ELTP). Statutorily, any district/school that chooses to participate in ELTP must offer after school programming (which might include tutoring) and additional instructional days. Thus, Defendant will not provide data disaggregated by tutoring, after-school programming and additional instructional days.

Interrogatory 40: AFTER-SCHOOL: Please state separately for each Focus District for each school year 2018-19 to the present:

a. all the after-school programs available;

b. the number of students served by each after-school program, disaggregated by each of the following at-risk groups: low-income, students with disabilities, Native American students, and English Language Learners;

c. the total amount of funding appropriated for after-school programs by the State Legislature;

d. the amount of state funding for after-school programs requested from PED, by each Focus District;

e. the amount of state funding for after-school programs received by each Focus District;

f. the amount of money spent on after-school programs by each Focus District;

g. the amount of additional funds needed for each Focus District to provide after-school programs for all at-risk students;

h. each Focus District that did not implement an after-school program; and

i. the total amount of funding appropriated for after-school programs that was reverted to the Public Education Reform Fund.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Further, this request requires information and analysis not currently in the control of Defendant. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Defendant is not required to speculate about

a potential future need. Further, this information is more easily accessible from the districts, including Plaintiff districts. See Rule 1-026(B)(2)(a) NMRA.

Without waiving these objections, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

THIRD SUPPLEMENTAL ANSWER: Subject to the above objections, Defendant will produce the following business records from which an answer to this question can be ascertained:

Data Request August 2, 2021 (Bates No. D059192).

SIXTH SUPPLEMENTAL ANSWER: Subject to the above objections, Defendant states as follows:

This data is all based on one funding source: the Extended Learning Time Program (ELTP). Statutorily, any district/school that chooses to participate in ELTP must offer after school programming (which might include tutoring) and additional instructional days. Thus, Defendant will not provide data disaggregated by tutoring, after-school programming and additional instructional days.

Additionally, not reported simply means the school did not report data.

Interrogatory 41: SUMMER SCHOOL: Please state separately for each Focus District for each school year 2018-19 to the present:

a. all the summer school programs available;

b. the number of students served by each summer school program, disaggregated by each of the following at-risk groups: low-income, students with disabilities, Native American students, and English Language Learners;

c. the total amount of funding appropriated for summer school programs by the State Legislature;

d. the amount of state funding for summer school programs requested from PED, by each Focus District;

e. the amount of state funding for summer school programs received by each Focus District;

f. the amount of money spent on summer school programs by each Focus District;

g. the amount of additional funds needed for each Focus District to provide summer school programs for all at-risk students;

h. each Focus District that did not implement a summer school program; and

i. the total amount of funding appropriated for summer school programs that was reverted to the Public Education Reform Fund.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Further, this request requires information and analysis not currently in the control of Defendant. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Defendant is not required to speculate about

a potential future need. Further, this information is more easily accessible from the districts, including Plaintiff districts. See Rule 1-026(B)(2)(a) NMRA.

Without waiving these objections, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

THIRD SUPPLEMENTAL ANSWER: Subject to the above objections, Defendant will produce the following business records from which an answer to this question can be ascertained:

Data Request August 2, 2021 (Bates No. D059192).

SIXTH SUPPLEMENTAL ANSWER: Subject to the above objections, Defendant states as follows:

This data is all based on one funding source: the Extended Learning Time Program (ELTP). Statutorily, any district/school that chooses to participate in ELTP must offer after school programming (which might include tutoring) and additional instructional days. Thus, Defendant will not provide data disaggregated by tutoring, after-school programming and additional instructional days.

Additionally, not reported simply means the school did not report data.

Interrogatory 42: TUTORING: Please state separately for each Focus District for each school year 2018-19 to the present:

a. all the tutoring programs available;

b. the number of students served by each tutoring program, disaggregated by each of the following at-risk groups: low-income, students with disabilities, Native American students, and English Language Learners;

c. the total amount of funding appropriated for tutoring programs by the State Legislature;

d. the amount of state funding for tutoring programs requested from PED, by each Focus District;

e. the amount of state funding for tutoring programs received by each Focus District;

f. the amount of money spent on tutoring programs by each Focus District;

g. the amount of additional funds needed for each Focus District to provide tutoring programs for all at-risk students;

h. each Focus District that did not implement a tutoring program; and

i. the total amount of funding appropriated for tutoring programs that was reverted to the Public Education Reform Fund.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Further, this request requires information and analysis not currently in the control of Defendant. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Defendant is not required to speculate about a potential future need. Further, this information is more easily accessible from the districts,

including Plaintiff districts. See Rule 1-026(B)(2)(a) NMRA.

Without waiving these objections, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

THIRD SUPPLEMENTAL ANSWER: Subject to the above objections, Defendant will produce the following business records from which an answer to this question can be ascertained:

Data Request August 2, 2021 (Bates No. D059192).

SIXTH SUPPLEMENTAL ANSWER: Subject to the above objections, Defendant states as follows:

This data is all based on one funding source: the Extended Learning Time Program (ELTP). Statutorily, any district/school that chooses to participate in ELTP must offer after school programming (which might include tutoring) and additional instructional days. Thus, Defendant will not provide data disaggregated by tutoring, after-school programming and additional instructional days.

Additionally, not reported simply means the school did not report data.

TEACHERS

Pay

Interrogatory 58: Please state the minimum teacher base salary for Tier I, II, and III that would make teacher salary in New Mexico for school year 2021-2022 competitive with surrounding states, the basis for this conclusion, and the amount of additional funding needed to implement these salaries state-wide.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Defendant is without sufficient facts or data to answer this question therefore, this request requires speculation. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315.

SIXTH SUPPLEMENTAL ANSWER: Subject to the above objections, Defendants will provide the following business record from which an answer to this interrogatory can be ascertained:

Public Education Budget Presentation (Bates Nos. D059315-D059338).

The data relied upon for this calculation can be accessed here:

https://www.nea.org/resource-library/teacher-pay-and-student-spending-how-does-your-state-rank

Recruitment, Retention and Class Size

Interrogatory 61: Please state separately for each Focus District for each school year 2018-19 to the present:

a. the total number of teachers, by licensure level (see NMSA § 22-10A-4(c));
the total number of:
    i. TESOL certified teachers;
    ii. bilingual certified teachers.

b. the total number of teacher vacancies;

c. the total number of teacher vacancies, disaggregated by:
    i. Native American Language and Culture (i.e. 520 Certified Instructors);
    ii. All other dual language teachers;
    iii. Bilingual endorsed teachers;
    iv. TESOL (Teaching English to Speakers of Other Languages) endorsed teachers;
    v. Special education teachers;
    vi. Early childhood education teachers;
    vii. Science, technology, engineering, and mathematics teachers;

d. the total number of education assistant vacancies.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Defendant does not track all demographic information required and disaggregation is unduly burdensome. Finally, this information is more easily accessible from the districts, including Plaintiff districts. See Rule 1-026(B)(2)(a) NMRA.

Without waiving these objections, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

FIRST SUPPLEMENTAL RESPONSE:

Without waiving these objections, Defendant states as follows:

District Name	Licensure Level	School Year 2018-2019	School Year 2019-2020	School Year 2020-2021
ALAMOGORDO	1	28	33	38
ALAMOGORDO	1A	45	68	63
ALAMOGORDO	1CS	1	2	9
ALAMOGORDO	2	121	127	137
ALAMOGORDO	3A	102	108	114
ALBUQUERQUE	1	353	480	565
ALBUQUERQUE	1A	271	433	593
ALBUQUERQUE	1CS	5	7	66
ALBUQUERQUE	2	1983	2336	2501
ALBUQUERQUE	3A	2204	2461	2553
BERNALILLO	1	14	13	14
BERNALILLO	1A	5	14	14
BERNALILLO	1CS	0	0	2
BERNALILLO	2	81	90	104
BERNALILLO	3A	58	63	69
CUBA	1	2	2	2
CUBA	1A	2	1	1
CUBA	1CS	0	0	1
CUBA	2	17	24	29
CUBA	3A	13	17	19
ESPANOLA	1	6	8	11
ESPANOLA	1A	11	18	24
ESPANOLA	1CS	1	0	5
ESPANOLA	2	80	93	98
ESPANOLA	3A	88	95	87
GADSDEN	1	53	55	69
GADSDEN	1A	37	42	85
GADSDEN	1CS	2	0	5
GADSDEN	2	382	428	458
GADSDEN	3A	223	269	274
GALLUP	1	44	38	44
GALLUP	1A	74	68	68
GALLUP	1CS	6	1	22
GALLUP	2	291	333	347
GALLUP	3A	230	241	240
GRANTS	1	13	16	20
GRANTS	1A	9	15	24
GRANTS	1CS	0	0	4
GRANTS	2	100	116	114

GRANTS	3A	68	69	74
HATCH	1	8	7	6
HATCH	1A	4	13	13
HATCH	2	31	35	37
HATCH	3A	17	21	23
JEMEZ VALLEY	1	2	1	1
JEMEZ VALLEY	1A	0	2	2
JEMEZ VALLEY	2	16	19	18
JEMEZ VALLEY	3A	11	10	8
LAKE ARTHUR	1	1	0	0
LAKE ARTHUR	1A	2	2	2
LAKE ARTHUR	2	4	3	4
LAKE ARTHUR	3A	1	4	4
LAS CRUCES	1	78	122	151
LAS CRUCES	1A	58	115	163
LAS CRUCES	1CS	0	5	19
LAS CRUCES	2	504	583	621
LAS CRUCES	3A	568	580	580
LOS LUNAS	1	34	42	42
LOS LUNAS	1A	30	48	51
LOS LUNAS	1CS	1	0	8
LOS LUNAS	2	142	152	170
LOS LUNAS	3A	170	168	189
MAGDALENA	1	1	1	1
MAGDALENA	1A	1	4	4
MAGDALENA	2	12	15	17
MAGDALENA	3A	8	8	8
MORIARTY-EDGEWOOD	1	4	9	13
MORIARTY-EDGEWOOD	1A	11	15	18
MORIARTY-EDGEWOOD	1CS	1	1	2
MORIARTY-EDGEWOOD	2	53	54	58
MORIARTY-EDGEWOOD	3A	51	58	54
PENASCO	1	1	2	1
PENASCO	1A	2	5	4
PENASCO	1CS	0	0	1
PENASCO	2	10	12	11
PENASCO	3A	9	7	8
POJOAQUE	1	6	7	8
POJOAQUE	1A	7	10	15
POJOAQUE	1CS	0	1	4
POJOAQUE	2	48	49	43
POJOAQUE	3A	30	37	25
RIO RANCHO	1	57	91	111

RIO RANCHO	1A	51	88	129
RIO RANCHO	1CS	0	4	15
RIO RANCHO	2	374	451	508
RIO RANCHO	3A	344	369	387
SANTA FE	1	34	45	49
SANTA FE	1A	65	82	102
SANTA FE	1CS	0	3	9
SANTA FE	2	316	374	394
SANTA FE	3A	321	345	357
SILVER CITY	1	9	14	14
SILVER CITY	1A	7	9	15
SILVER CITY	2	78	87	91
SILVER CITY	3A	64	68	60
TAOS	1	4	9	13
TAOS	1A	15	17	17
TAOS	1CS	0	0	3
TAOS	2	78	81	89
TAOS	3A	73	72	75
TUCUMCARI	1	6	6	6
TUCUMCARI	1A	3	4	5
TUCUMCARI	1CS	0	0	2
TUCUMCARI	2	24	24	24
TUCUMCARI	3A	28	29	22
ZUNI	1	5	10	8
ZUNI	1A	6	9	11
ZUNI	1CS	1	0	2
ZUNI	2	26	41	37
ZUNI	3A	19	19	18

b.

District Name	School Year 2018-2019	School Year 2019-2020	School Year 2020-2021
ALBUQUERQUE	158	58	125
BERNALILLO	1	2	1
ESPANOLA	15	7	2
GADSDEN	16	41	14
GRANTS	24	11	32
HATCH	8	38	9
JEMEZ VALLEY	1	11	1
LAKE ARTHUR	6	6	6

LOS LUNAS	1	Not Available	Not Available
MORIARTY-EDGEWOOD	2	7	1
PENASCO	1	Not Available	Not Available
POJOAQUE	10	7	5
RIO RANCHO	12	7	6
SANTA FE	4	1	8
SILVER CITY	1	1	2
TAOS	6	15	3
ZUNI	8	6	2

SIXTH SUPPLEMENTAL ANSWER: Subject to its objections, Defendant states as follows:

Defendant has provided data available to Defendant. Defendant does not track data with the specificity required for subparts c and d. Additionally, data regarding certification was provided with Defendant's first supplemental answers but was inadvertently placed under Interrogatory No. 66. For clarity, below is data regarding certification:

Number of Teachers in Focus Districts which are TESOL Certified or Bilingual Certified				
District Name	Certification Area	School Year 2018-2019	School Year 2019-2020	School Year 2020-2021
ALAMOGORDO	TESOL	12	18	25
ALAMOGORDO	Bilingual Education	5	6	5
ALBUQUERQUE	TESOL	1,695	1,951	2,000
ALBUQUERQUE	Bilingual Education	516	571	595
BERNALILLO	TESOL	64	67	71
BERNALILLO	Bilingual Education	26	26	25
CUBA	TESOL	17	20	20
CUBA	Bilingual Education	2	2	2
ESPANOLA	TESOL	72	74	68
ESPANOLA	Bilingual Education	41	44	36
GADSDEN	TESOL	379	423	420
GADSDEN	Bilingual Education	207	241	247
GALLUP	TESOL	169	167	166
GALLUP	Bilingual Education	17	14	18
GRANTS	TESOL	55	57	62
GRANTS	Bilingual Education	6	8	7
HATCH	TESOL	19	22	20
HATCH	Bilingual Education	17	17	18
JEMEZ VALLEY	TESOL	6	4	3
LAKE ARTHUR	TESOL	2	1	1
LAS CRUCES	TESOL	171	195	219
LAS CRUCES	Bilingual Education	170	179	193
LOS LUNAS	TESOL	86	82	94
LOS LUNAS	Bilingual Education	19	17	15
MAGDALENA	TESOL	5	5	7
MORIARTY-EDGEWOOD	TESOL	22	19	22
MORIARTY-EDGEWOOD	Bilingual Education	3	2	3
PENASCO	TESOL	7	7	6
PENASCO	Bilingual Education	7	9	9
POJOAQUE	TESOL	31	39	31
POJOAQUE	Bilingual Education	17	20	18
RIO RANCHO	TESOL	130	152	172
RIO RANCHO	Bilingual Education	25	31	30
SANTA FE	TESOL	193	213	223
SANTA FE	Bilingual Education	118	131	127
SILVER CITY	TESOL	17	18	16
SILVER CITY	Bilingual Education	7	5	5
TAOS	TESOL	39	38	41
TAOS	Bilingual Education	30	30	31
TUCUMCARI	TESOL	6	4	5
ZUNI	TESOL	15	18	17
ZUNI	Bilingual Education	6	6	3

Interrogatory 66: Please state separately for each school year 2018-19 to the present the number of Native American teachers and administrators employed statewide and by Focus District.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Defendant does not readily track the demographic information identified and doing so is unduly burdensome. Finally, this information is more easily accessible from the districts, including Plaintiff districts. See Rule 1-026(B)(2)(a) NMRA.

Without waiving these objections, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

Supplemental Answer: Subject to its objections, Defendant states as follows:

District Name	Assignment Category	School Year 2018-2019	School Year 2019-2020	School Year 2020-2021
ALAMOGORDO	Teacher	0	3	3
ALBUQUERQUE	Principal	7	5	3
ALBUQUERQUE	Teacher	69	75	82
ALBUQUERQUE	Administrator	2	2	2
BERNALILLO	Teacher	9	12	10
CUBA	Teacher	5	8	8
ESPANOLA	Teacher	5	4	4
GADSDEN	Teacher	2	3	3

GALLUP	Principal	13	12	7
GALLUP	Administrator	1	1	1
GALLUP	Teacher	181	160	150
GRANTS	Teacher	18	17	18
HATCH	Teacher	2	1	1
JEMEZ VALLEY	Principal	1	1	0
JEMEZ VALLEY	Teacher	3	3	2
LAS CRUCES	Teacher	5	9	8
LOS LUNAS	Principal	1	1	1
LOS LUNAS	Teacher	5	8	5
MAGDALENA	Principal	1	1	1
MAGDALENA	Administrator	1	1	1
MORIARTY-EDGEWOOD	Teacher	1	1	1
PENASCO	Teacher	2	3	1
POJOAQUE	Administrator	0	0	1
POJOAQUE	Principal	1	1	0
POJOAQUE	Teacher	3	3	4
RIO RANCHO	Teacher	12	13	18
RIO RANCHO	Principal	1	1	1
SANTA FE	Principal	1	1	1
SANTA FE	Teacher	10	13	11
SILVER CITY	Teacher	3	2	1
TAOS	Teacher	1	3	3
ZUNI	Teacher	27	17	11
ZUNI	Principal	0	1	0

Category	**School Year 2018-2019**	**School Year 2019-2020**	**School Year 2020-2021**
Administrators	5	5	7
Principals	48	43	36
Teachers	592	595	590

SIXTH SUPPLEMENTAL ANSWER: Subject to its objections, Defendant states as follows:

With its supplemental answer, Defendant inadvertently pasted the wrong table in the response to Interrogatory No. 66 in addition to responsive information. For clarity, below are the correct numbers:

Number of Native American Administrators, Principals and Teachers Employed Statewide

Category	School Year 2018-2019	School Year 2019-2020	School Year 2020-2021
Administrators	5	5	7
Principals	48	43	36
Teachers	592	595	590

Number of Native American Teachers and Administrators Employed in each Focus District

District Name	Assignment Category	School Year 2018-2019	School Year 2019-2020	School Year 2020-2021
ALAMOGORDO	Teacher	0	3	3
ALBUQUERQUE	Principal	7	5	3
ALBUQUERQUE	Teacher	69	75	82
ALBUQUERQUE	Administrator	2	2	2
BERNALILLO	Teacher	9	12	10
CUBA	Teacher	5	8	8
ESPANOLA	Teacher	5	4	4
GADSDEN	Teacher	2	3	3
GALLUP	Principal	13	12	7
GALLUP	Administrator	1	1	1
GALLUP	Teacher	181	160	150
GRANTS	Teacher	18	17	18
HATCH	Teacher	2	1	1
JEMEZ VALLEY	Principal	1	1	0
JEMEZ VALLEY	Teacher	3	3	2
LAS CRUCES	Teacher	5	9	8
LOS LUNAS	Principal	1	1	1
LOS LUNAS	Teacher	5	8	5
MAGDALENA	Principal	1	1	1
MAGDALENA	Administrator	1	1	1
MORIARTY-EDGEWOOD	Teacher	1	1	1
PENASCO	Teacher	2	3	1
POJOAQUE	Administrator	0	0	1
POJOAQUE	Principal	1	1	0
POJOAQUE	Teacher	3	3	4
RIO RANCHO	Teacher	12	13	18
RIO RANCHO	Principal	1	1	1
SANTA FE	Principal	1	1	1
SANTA FE	Teacher	10	13	11
SILVER CITY	Teacher	3	2	1

TAOS	Teacher	1	3	3
ZUNI	Teacher	27	17	11
ZUNI	Principal	0	1	0

Interrogatory 67: Please state separately for each Focus District for each school year 2018-19 to the present the number of bilingual endorsed and/or TESOL endorsed teachers employed by the district.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests.

Without waiving this objection, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

Supplemental Answer: Subject to its objections, Defendant states as follows:

SIXTH SUPPLEMENTAL ANSWER: Subject to its objections, Defendant states as follows:

With its First Supplemental answer, Defendant inadvertently pasted the chart responsive to Interrogatory No. 67 into the supplemental answer for Interrogatory No. 66. For clarity, below is the information responsive to Interrogatory No. 67.

Number of Teachers in Focus Districts which are TESOL Certified or Bilingual Certified				
District Name	Certification Area	School Year 2018-2019	School Year 2019-2020	School Year 2020-2021
ALAMOGORDO	TESOL	12	18	25
ALAMOGORDO	Bilingual Education	5	6	5
ALBUQUERQUE	TESOL	1,695	1,951	2,000
ALBUQUERQUE	Bilingual Education	516	571	595
BERNALILLO	TESOL	64	67	71
BERNALILLO	Bilingual Education	26	26	25
CUBA	TESOL	17	20	20
CUBA	Bilingual Education	2	2	2
ESPANOLA	TESOL	72	74	68
ESPANOLA	Bilingual Education	41	44	36
GADSDEN	TESOL	379	423	420
GADSDEN	Bilingual Education	207	241	247
GALLUP	TESOL	169	167	166
GALLUP	Bilingual Education	17	14	18
GRANTS	TESOL	55	57	62
GRANTS	Bilingual Education	6	8	7
HATCH	TESOL	19	22	20
HATCH	Bilingual Education	17	17	18
JEMEZ VALLEY	TESOL	6	4	3
LAKE ARTHUR	TESOL	2	1	1
LAS CRUCES	TESOL	171	195	219
LAS CRUCES	Bilingual Education	170	179	193
LOS LUNAS	TESOL	86	82	94
LOS LUNAS	Bilingual Education	19	17	15
MAGDALENA	TESOL	5	5	7
MORIARTY-EDGEWOOD	TESOL	22	19	22
MORIARTY-EDGEWOOD	Bilingual Education	3	2	3
PENASCO	TESOL	7	7	6
PENASCO	Bilingual Education	7	9	9
POJOAQUE	TESOL	31	39	31
POJOAQUE	Bilingual Education	17	20	18
RIO RANCHO	TESOL	130	152	172
RIO RANCHO	Bilingual Education	25	31	30
SANTA FE	TESOL	193	213	223
SANTA FE	Bilingual Education	118	131	127
SILVER CITY	TESOL	17	18	16
SILVER CITY	Bilingual Education	7	5	5
TAOS	TESOL	39	38	41
TAOS	Bilingual Education	30	30	31
TUCUMCARI	TESOL	6	4	5
ZUNI	TESOL	15	18	17
ZUNI	Bilingual Education	6	6	3

Interrogatory 70: Please state separately for each Focus District for each school year 2018-19 to the present the number of teachers who have taught at the same school for:

a. 1-2 years;

b. 2-5 years;

c. 10 years or more.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests.

Without waiving this objection, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

SIXTH SUPPLEMENTAL ANSWER: Subject to its objections, Defendant states as follows:

Defendant produced all data with its first supplemental answers, however based upon Plaintiffs' request for clarification (made for the first time in Plaintiffs' Joint Motion to Compel), Defendants reproduce the data already provided with headings:

(Note: Teachers who have taught at the same school for two (2) years are included in both the "1-2 Years" category and the "2-5 years" category)

ool Year 2018-2019: Number of Years Teachers in Focus Districts Have Taught at the Same Scho

District Name	1-2 Years	2-5 years	10+ Years
ALAMOGORDO	258	261	71
ALBUQUERQUE	4885	4927	1360
BERNALILLO	149	150	44
CUBA	42	45	14
ESPANOLA	197	199	59
GADSDEN	813	818	235
GALLUP	624	636	131
GRANTS	253	260	86
HATCH	74	76	12
JEMEZ VALLEY	33	35	5
LAKE ARTHUR	22	22	2
LAS CRUCES	1327	1339	356
LOS LUNAS	375	378	117
MAGDALENA	35	36	13
MORIARTY-EDGEWOOD	135	137	25
PENASCO	33	36	9
POJOAQUE	105	106	29
RIO RANCHO	908	911	204
SANTA FE	757	766	143
SILVER CITY	168	168	52
TAOS	188	189	61
TUCUMCARI	59	61	35
ZUNI	66	67	1

Interrogatory 70 - School Year 2019 - 2020

(Note: Teachers who have taught at the same school for two (2) years are included in both the "1-2 Years" category and the "2-5 years

ool Year 2019-2020: Number of Years Teachers in Focus Districts Have Taught at the Same Scho

District Name	1-2 Years	2-5 years	10+ Years
ALAMOGORDO	270	273	60
ALBUQUERQUE	5137	5192	1378
BERNALILLO	167	168	45
CUBA	41	41	14
ESPANOLA	214	219	57
GADSDEN	813	823	229
GALLUP	625	631	123
GRANTS	252	254	84
HATCH	87	88	12
JEMEZ VALLEY	31	31	4
LAKE ARTHUR	23	23	1
LAS CRUCES	1348	1357	345
LOS LUNAS	405	407	115
MAGDALENA	33	34	13
MORIARTY-EDGEWOOD	144	145	24
PENASCO	43	43	11
POJOAQUE	103	104	24
RIO RANCHO	944	952	233
SANTA FE	766	771	131
SILVER CITY	170	175	50
TAOS	174	175	64
TUCUMCARI	63	65	38
ZUNI	63	65	1

Interrogatory 70 - School Year 2020 - 2021

(Note: Teachers who have taught at the same school for two (2) years are included in both the "1-2 Years" category and the "2-5 years" category)

ool Year 2020-2021: Number of Years Teachers in Focus Districts Have Taught at the Same Schc

District Name	1-2 Years	2-5 years	10+ Years
ALAMOGORDO	313	314	61
ALBUQUERQUE	5489	5520	1336
BERNALILLO	193	193	43
CUBA	53	53	14
ESPANOLA	224	227	52
GADSDEN	864	871	246
GALLUP	630	635	125
GRANTS	261	262	74
HATCH	76	79	11
JEMEZ VALLEY	33	34	5
LAKE ARTHUR	23	23	1
LAS CRUCES	1433	1440	330
LOS LUNAS	425	429	109
MAGDALENA	32	33	13
MORIARTY-EDGEWOOD	137	139	26
PENASCO	32	34	11
POJOAQUE	94	96	24
RIO RANCHO	962	967	215
SANTA FE	855	858	152
SILVER CITY	166	166	49
TAOS	185	185	60
TUCUMCARI	60	61	35
ZUNI	69	69	1

Interrogatory 71: Please state separately for each Focus District for each school year from 2018-19 to the present all stipends offered to teachers, and for each type of stipend state:

a. the purpose of the stipend;
b. the number of teachers who applied to receive the stipend;

c. the number of teachers who received the stipend;

d. the number of teachers who received the stipend who are currently teaching in New Mexico public schools;

e. the dollar amount of the stipend received by each teacher;

f. the total amount of funding appropriated by the State Legislature;

g. the total amount of state funding requested from the State Legislature by PED;

h. the amount of state funding received by each Focus District;

i. the amount of money spent by each Focus District; and

j. the amount of additional funds needed to place qualified teachers in hard-to-staff schools.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Defendant does not track all data set forth in this interrogatory and extracting it manually will be unduly burdensome.

FOURTH SUPPLEMENTAL ANSWER: Without waving these objections, Defendant states as follows:

Defendant is not in possession of information responsive to subparts A-E, or J. The information regarding subparts F-I is contained the annual reports previously provided by Defendants as Bates Nos. D000018-D000059.

FIFTH SUPPLEMENTAL RESPONSE:

- Stipends by their nature are additional compensation provided to staff for performing duties over and above what are contracted for. Stipends are paid for by a district for several duties and are paid in a variety of ways. In some cases, they are included as part of an employee's contract and are tracked as regular compensation under Object Code 51100 and are not identifiable as a separate payroll item. Some stipends are paid as one-time payments at the end of an athletic season or at the end of the year and are considered total compensation and included in Object Code 51100 as well. Other times they are classified as "additional compensation" and are coded under the 51300 Object Code by the various Job Codes. These can be tracked and will be provided under Item I below, but it is important to keep in mind that "additional compensation" will not reflect all dollars spent on stipends and should not be used for comparisons as each district determines how they report these expenditures.
- A review of legislation chaptered in the timeframe indicated identified only one bill that may meet the criteria of the interrogatory. House Bill 102 of the 2020 regular session creates the National Board Certification Scholarship program and a fund to receive appropriations.
- The Department has requested and received funding for the following programs. Data Request have been submitted to determine if stipends are involved, amounts and teacher names.
  - STEM Initiatives. It is unclear if any of this is for stipends.
  - Next Generation School Teacher and School Teacher Preparation Programs.
  - Interventions and Support for Students, Teachers, Struggling Schools and Parents.
  - Teachers Pursuing Excellence.
- The State Equalization Guarantee Distribution received $11 million for Mentorship and Professional Development in FY20. Since the SEG is a categorical appropriation that school districts and charter schools can use at their discretion the data available will be in Object Code 53330 (Professional Development).

a. the purpose of the stipend;

For programs administered by PED the following data is provided. For district stipends, each district will need to provide.

Teachers Pursuing Excellence NOW Achieve Excellence-Rising: Teacher Stipends: $1,250.00; Performance Coach Stipends: $2,000.00; District AE Lead Stipends: $1,150.00; Principals; $500.00 for completion all, and any work completed above and beyond the regular duty day.

For other PED programs, the stipends were provided to compensate teachers participating in professional learning off-contract time and not requested by the district or individual.

b. the number of teachers who applied to receive the stipend;

For programs administered by PED, Defendant will provide the following document from which an answer to this question can be ascertained, Stipend Spreadsheet (Bates No. D059300) and MY Math and Science Data (Bates No. D059299)

Teachers Pursuing Excellence now Achieve Excellence Rising: See the EXCEL spreadsheet titled "MY Interrogatory Request Teachers Stipends by District Amount and Year-TPE.

c. the number of teachers who received the stipend;

For programs administered by PED, Defendant will provide the following document from which an answer to this question can be ascertained, Stipend Spreadsheet (Bates No. D059300) and MY Math and Science Data (Bates No. D059299). For district stipends, each district will need to provide.

Teachers Pursuing Excellence -now- Achieve Excellence Rising: See the EXCEL spreadsheet titled "MY Interrogatory Request Teachers Stipends by District Amount and Year-TPE.

d. the number of teachers who received the stipend who are currently teaching in New Mexico public schools;

The PED only has information on teachers with active licenses but not if they are still teaching. This will have to be requested by each district.

e. the dollar amount of the stipend received by each teacher;

For programs administered by PED, Defendant will provide the following document from which an answer to this question can be ascertained, Stipend Spreadsheet (Bates No. D059300) and MY Math and Science Data (Bates No. D059299). For district stipends, each district will need to provide.

f. the total amount of funding appropriated by the State Legislature;

Data reported is taken from the Post Session Reports of the Legislative Finance Committee. These reports were used by the Plaintiffs at trial and for consistency are used here.

- FY19:
  - STEM Initiative $3,000,000
  - Teacher and School Leader Preparation Programs $1,000,000
  - Teacher Mentorship – Teachers Pursuing Excellence $2,000,000
- FY20

- STEAM Initiative $5,000,000
- Teacher Mentorship – Teachers Pursuing Excellence $2,500,000

o FY21
- SEG – Mentorship and Professional Development $11,000,000
- STEAM Initiative $4,152,600
- Teacher Mentorship – Teachers Pursuing Excellence $2,869,500
- Computer Science Professional Development $166,100
- National Board Certification Scholarships $500.0

o FY22
- STEAM Initiative $3,025,900
- Teacher Mentorship – Teachers Pursuing Excellence $2,869,500
- National Board Certification Scholarships $5,500,000

g. the total amount of state funding requested from the State Legislature by PED;

o FY19:
- STEM Initiative $4,000,000
- Teacher and School Leader Preparation Programs $2,100,000
- Teacher Mentorship – Teachers Pursuing Excellence $2,000,000

o FY20
- STEM Initiative $3,000,000
- Teacher and School Leader Preparation Programs $1,000,000
- Teacher Mentorship – Teachers Pursuing Excellence $2,000,000

o FY21
- STEM Initiative $4,000,000
- Teacher Mentorship – Teachers Pursuing Excellence $3,000,000
- National Board Certification Scholarships $500,000

o FY22
- STEM Initiative $2,491,500
- Teacher Mentorship – Teachers Pursuing Excellence $2,869,500
- National Board Certification Scholarships $500,000 **

h. the amount of state funding received by each Focus District; and

Defendant will provide the following document from which an answer to this interrogatory can be ascertained. “MY Focus District Data, Bates No. D059301 The spreadsheet details additional compensation expended by the districts. As noted above, this probably does not reflect just stipends but other forms of additional compensation for additional work performed that may not relate to classroom related activities.

j. the amount of additional funds needed to place qualified teachers in hard-to-staff schools.

This will need to be provided by the individual districts as they are in possession of staffing data and individual school need.

SIXTH SUPPLEMENTAL ANSWER: Without waving these objections, Defendant states as follows:

Please refer to spreadsheet MY Interrogatory Requests Teacher Stipends by District Amount and Year (Bates No. D0059300). This document was produced with Defendant's Fifth Supplemental Answers but is included again for counsel's convenience.

Interrogatory 76: Please state separately for teacher professional development:

a. the total amount of funding for each school year 2018-19 to the present appropriated by the State Legislature to the PED and/or the Focus Districts;

b. the amount of state funding requested from PED by each Focus District for each school year 2018-19 to the present;

c. the amount of state funding received by each Focus District for each school year 2018-19 to the present, stated separately for each sub-category set forth in the preceding interrogatory subpart (a); and

d. the amount of money spent by each Focus District for each school year 2018-19 to the present, stated separately for each subcategory set forth in the preceding interrogatory subpart (a).

Answer: Objection. Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. This interrogatory seeks information in possession of districts as opposed to Defendant.

Without waiving this objection, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available.

Supplemental Answer: Subject to its objections, Defendant will produce the following business records from which an answer may be ascertained as allowed by Rule 1-33(E) NMRA:

Professional Development Participation Spreadsheet (Bates No. D024495).

SIXTH SUPPPLEMENTAL ANSWER: Subject to its objections, Defendant will produce the following business records from which an answer may be ascertained as allowed by Rule 1-33(E) NMRA:

Statement from Northwest Regional Education Cooperative (Bates No. D059339).

Interrogatory 81: Please state separately for administrator, school board member and/or PED employee professional development:

a. the total amount of funding for each school year 2018-19 to the present appropriated by the State Legislature to the PED and/or the Focus Districts;

b. the amount of state funding requested from PED by each Focus District for each school year 2018-19 to the present;

c. the amount of state funding received by each Focus District for each school year 2018-19 to the present, stated separately for each sub-category set forth in the preceding interrogatory subpart (a); and

d. the amount of money spent by each Focus District for each school year 2018-19 to the present, stated separately for each subcategory set forth in the preceding interrogatory subpart (a).

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Defendant does not track all data set forth in this interrogatory and extracting it manually will be unduly burdensome.

Without waiving these objections, Defendant states as follows:

Defendant has been unable to gather this data due to the demands of the pandemic and office closures due to security threats. Defendant will supplement its answer when the data becomes available

FOURTH SUPPLEMENTAL ANSWER: Without waving these objections, Defendant states as follows:

Defendant is not in possession of responsive information as this level of detail is not tracked by PED. The districts make their own decision on how to spend operational funds or federal funds for professional development.

FIFTH SUPPLEMENTAL RESPONSE:

a. the total amount of funding for each school year 2018-19 to the present appropriated by the State Legislature to the PED and/or the Focus Districts:

The Legislature has not provided appropriations specific to professional development for administrators, school board members or PED staff. The department as well as school districts use operational funds to pay for the costs of professional development as local priorities arise.

b. the amount of state funding requested from PED by each Focus District for each school year 2018-19 to the present;

School districts have not requested funding from the PED for funding wide-scale professional development for administrators or school board members. A limited number of administrators receive stipends for participations in Principals Pursuing Excellence. These are detailed in Interrogatory 71 above.

c. the amount of state funding received by each Focus District for each school year 2018-19 to the present, stated separately for each sub-category set forth in the preceding interrogatory subpart (a); and

The PED has not distributed funding to school districts specific to administrator or board member training. Specific distributions for teachers are detailed as part of Interrogatory 71. Districts, at their options may expend operational funds for these purposes.

d. the amount of money spent by each Focus District for each school year 2018-19 to the present, stated separately for each subcategory set forth in the preceding interrogatory subpart (a).

Defendant will produce the following document from which an answer to this question may be ascertained, MY Focus District Data (Bates No. D059301). The spreadsheet details professional development dollars expended by the districts by Fund, Function and Object Code.

SIXTH SUPPLEMENTAL RESPONSE: Without waiving these objections, Defendant states as follows:

Defendant will produce the following business records from which an answer to this question may be ascertained:

1. FY18-FY19 Martinez Yazzie PodHOC (Bates No. D059340)
2. FY19-FY20 Martinez Yazzie PodHOC (Bates No. D059341)
3. FY20-FY21 Martinez Yazzie PodHOC (Bates No. D059342)
4. FY21-FY22 Martinez Yazzie PodHOC (Bates No. D059343)

Interrogatory 99: For every ELL student in the following Focus Districts, please state separately for each school year 2018-19 to the present, their race/ethnicity, heritage/home language, proficiency level on the WIDA ACCESS test, grade level, and number of years enrolled in an ESL or ELD (English as a Second Language or English Language Development) program:

a. Gallup;

b. Grants-Cibola;

c. Jemez Valley;

d. Bernalillo;

e. Cuba; and

f. Zuni.

(**Example**: Excel CSV file -- SY 2019-20; Cuba = 208 ELL students:

1. Student ID, Grade 6, Native Amer., Navajo, ESL 7 yrs, WIDA 4;
2. Student ID, Grade 9, Hisp/Latino, Span, ESL 6 yrs, WIDA 4;
3. Student ID, Grade 10, Native Amer., Eng., ESL 5 yrs, WIDA 4.)

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Defendants do not track this data. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Moreover, Defendants are not required to respond to unduly burdensome requests.

FOURTH SUPPLEMENTAL ANSWER: Without waiving the above objections, as allowed by Rule 1-033 NMRA, Defendant will produce the following business records from which an answer to this interrogatory may be ascertained:

1. ACCESS 2016-17 (Bates No. D059229);
2. ACCESS 2017-18 (Bates No. D059230);
3. ACCESS 2018-19 (Bates No. D059231);
4. ACCESS 2019-20 (Bates No. D059232);
5. Alt-ACCESS 2016-17 (Bates No. D059233);
6. Alt-ACCESS 2017-18 (Bates No. D059234);
7. Alt-ACCESS 2018-19 (Bates No. D059235); and
8. Alt-ACCESS 2019-20 (Bates No. D059236).

SIXTH SUPPLEMENTAL ANSWER: Without waiving the above objections, Defendant states "Alt-ACCESS" is the version of ACCESS (the English Learner Progress measurement tool) intended for English Learners with significant cognitive disabilities.

Interrogatory 102: For each Focus District and statewide, state separately for each school year 2018-19 to the present the total number and percentage of ELL students placed in a special education program by race/ethnicity and home/heritage language.

Answer: Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. Defendants do not track this data. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Moreover, Defendants are not required to respond to unduly burdensome requests.

FOURTH SUPPLEMENTAL ANSWER: Without waiving the above objections, as allowed by Rule 1-033 NMRA, Defendants will produce the following business records from which an answer to this interrogatory may be ascertained:

1. ELL SPED by Subgroup SW (Bates No. D059241); and
2. ELL SPED by Subgroup (Bates No. D059242).

SIXTH SUPPLEMENTAL ANSWER: Without waiving the above objections, as allowed by Defendants provide the following clarification. SW means Statewide. The race attribute used below is a derived field in STARS. If a student has a Hispanic indicator field marked as 'Y' then the derived race is Hispanic. The student race is Caucasian but because of the Hispanic indicator, the student is listed as Hispanic.

For Bates No. D59241, for example, Row 2, Columns B, C, and H demonstrates that statewide, one ELL student, whose home language is Albanian and who is characterized as Hispanic, was placed in a Special Education program in 2019. The sum of columns D through J equals the total stated in Column C. Defendants further note that Plaintiffs did not request clarification of the data prior to filing their Motion to Compel. This is the data specifically requested by Plaintiffs and was not delivered in an esoteric fashion.

Interrogatory 125: Please state separately for each Focus District for each school year 2018-19 to the present, a description of all professional development training in special education provided by PED's Special Education Division, including:

a. number of all staff trained, disaggregated by:

i. special education teachers;

ii. regular education teachers;

iii. educational assistants; and

iv. other designated school personnel in seclusion and restraint;

b. purpose or type of training provided;

c. amount of additional funds needed to provide training in special education to every teacher in every Focus District; and

d. amount of additional funds needed to provide training in special education to every Focus District on an ongoing basis.

Answer: Objection. Defendant objects to this interrogatory under Rule 1-033(A) NMRA which limits the number of interrogatories to a total of 50, to include discrete subparts, by one party to another party. Defendant acknowledges there are two distinct Plaintiff groups recognized by the Court, Martinez and Yazzie. Even assuming the Court construes Martinez and Yazzie plaintiffs to be separate parties, Plaintiffs have submitted 148 interrogatories jointly, which is well over 50 per Martinez and Yazzie plaintiffs. To the extent Plaintiffs assert the individual Plaintiff districts and families are individual parties, each of whom is entitled to submit 50 interrogatories, this argument is inconsistent with a reasonable interpretation of the term "party." Yazzie and Martinez Plaintiffs are represented by a single set of attorneys respectively and share a common arguments and goals for the litigation. Moreover, many of the interrogatories contain discrete subparts which bring the total number of interrogatories to well over 200. Defendant does not waive any supernumerary objection to Plaintiffs' discovery requests and reserves the right to seek protection from future requests. This request seeks information and analysis not currently in control of the Defendant. The 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.'" Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, ¶ 27, 128 N.M. 315. Defendant is not required to speculate about a potential future need. Finally, gathering this data manually would be unduly burdensome.

SIXTH SUPPLEMENTAL ANSWER: Without waiving its objections, Defendant states as follows:

Defendant relies upon the following business records, which were previously produced to Plaintiffs' counsel from which an answer to this interrogatory can be ascertained: 1) Bates No. D004279; and 2) Bates No. D004403.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Taylor S. Rahn

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