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## **New Mexico's 2019 School Finance Reforms and The Essential Building Blocks for State School Finance**

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### **Abstract**

This article discusses the State of New Mexico's school finance reforms during the 2019 legislative session and the relationship of those reforms to *The Essential Building Blocks for State School Finance*. *The Essential Building Blocks* is a 2018 report written by the author for the Learning Policy Institute that provides essential, research-based guidance to policymakers and advocates who write school finance laws to ensure more equitable school finance policies. The legislative reforms follow a state court victory in 2019 by plaintiff families and school districts suing the state on school finance and educational opportunity claims in *Martínez v. State of New Mexico and Yazzie v. State of New Mexico*. The author examines how the Legislature's efforts measure up against the guidance articulated in *The Essential Building Blocks*. The author also interviews the Gallup-McKinley County Schools superintendent to assess the reforms and how they relate to realizing educational opportunity for all students as described in *The Essential Building Blocks*. The author concludes that while the state made some progress in its school finance reforms, the absence of a strategic, holistic plan grounded in equity will likely leave the state's underserved children without the educational opportunities they need to succeed. If the state's leadership can match its strong principles and goals of equity and multiculturalism with a formidable school finance system that appropriately invests in its students and educators as reflected in *The Essential Building Blocks*, the state will be poised to realize equity and opportunity for all students.

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## Introduction

Several school-based factors can impact the quality of education a student receives. School-based factors include student-teacher relationships, teacher preparation and quality, school leadership, class size, curriculum, family engagement, school governance, high-stakes standardized testing and accountability, school climate, access to prekindergarten, and condition of facilities (Betts, Reuben, & Danenberg, 2000; Boyd, Grossman, Lankford, Loeb, & Wyckoff, 2009; Card & Payne, 2002; Carnoy, Elmore, & Siskin, 2003; Clotfelter, Ladd, & Vigdor, 2007; Darling-Hammond, 2000, 2010). These are just some of several, seemingly endless, factors affected by state and local policy and implementation that could impact educational opportunity.

State legislatures are largely tasked with creating school finance systems that provide the vital resources to help school districts address many of these factors. To assist state lawmakers and advocates in designing more equitable, research-based school finance systems centered on student need, the author drafted *The Essential Building Blocks for State School Finance Systems and Promising State Practices* (“*The Essential Building Blocks*”) in collaboration with the Learning Policy Institute, which published the report and brief (Hinojosa, 2018b).

Despite the critical role that state school finance systems play in realizing educational opportunity for public school students across the country, most states do a very poor job of funding public education (Baker, Farrie, & Sciarra, 2018). All too frequently, school finance systems are a patchwork of arbitrary laws untethered to the actual cost of providing a high-quality education to every child in every school. School finance is often complicated by the highly politicized nature of whether money matters in public education. To name a few, these debates often pit rich school districts against poor school districts; urban districts against rural districts against suburban districts; high at-risk student populated districts against low-risk; and large districts against small districts. *The Essential Building Blocks* aims to help state policymakers and advocates deconstruct and de-politicize school finance policy to better meet the needs of students.

This article begins with a brief overview of *The Essential Building Blocks*. The author then examines a recent court challenge by parents, students, and school districts to the New Mexico public education system. They alleged that the school finance system was inadequate and inequitable, resulting in a 2019 landmark ruling by State District Court Chief Judge Sarah Singleton holding the system unconstitutional.

This decision propelled the state legislature to enact education reforms, including school finance reforms, in the 2019 legislative session. New Mexico's school finance reforms can be analyzed in light of the recommendations made to policymakers in *The Essential Building Blocks* and can be applied to the practical consequences of implementation in real districts. Thus, this article analyzes the reforms against the *Essential Building Block Framework* and ends with a discussion based on an interview used to discuss real-life implementation of the reforms with the superintendent of Gallup-McKinley County Schools in New Mexico, a district in a rural area of New Mexico serving predominantly Navajo students. The superintendent's viewpoint in terms of the reforms and how they relate to the provisions articulated in *The Essential Building Blocks* offers readers an interesting perspective of the possibilities and continuing challenges that lie ahead for schools and schoolchildren in New Mexico.

### ***The Essential Building Blocks***

In 2017, the Learning Policy Institute (LPI) secured grant funding to support state policymakers and advocates with research-based reports and tools on crucial education issues facing state houses across the country. State school finance reform was among the top issues identified by a diverse, nonpartisan national group of advocacy organizations and researchers, which included state legislative organizations (i.e., National Conference of State Legislatures). The group recognized the complexities of school finance for state legislatures and how policy was further at risk due to the billions in local, state, and federal tax revenue at stake.

LPI contracted with the author (then-National Director of Policy for the Intercultural Development Research Association, IDRA) to draft a report on the essential elements of state school finance. This report was intended to remove the partisan bickering that often pervades school finance policy and to focus funding reforms based on student need, as identified by the research. It also attempts to simplify the topic and the processes involved to reach more legislators, staff, and advocacy organizations who may be apprehensive at approaching the topic due to its intricateness, both real and perceived.

### ***Elements of The Essential Building Blocks***

*The Essential Building Blocks* begin with two strong foundational pillars. First, from a public policy standpoint, the report suggests that states establish strong standards and goals for public education grounded in equitable opportunities for all students (Hinojosa, 2018b). It is essential that states identify the ultimate targets of the educational system, so they know what

they are shooting for. The word “equitable” or “equity” has two reference points. One, it refers to the consideration of legitimate and necessary educational opportunities tied to specific learning needs of all schoolchildren; and two, in the more traditional sense, equity concerns the fair distribution of resources among school districts, irrespective of arbitrary factors such as property wealth that frequently disrupt the equitable allocation of funds (Hinojosa, 2018b).

The second pillar requires states to identify steady and adequate revenue streams to support educational expenditures and costs, including instructional, operational, and capital costs (Hinojosa, 2018b). Typically, states utilize the same revenue streams from one year to the next, without determining the history of volatility among the sources or the inequitable impact it may have on underserved communities and taxpayers. Consequently, the report recommends that states identify a combination of taxes that are more stable and help offset any inherent inequities between school communities.

Once these foundations are in place, a state can begin identifying the essential building blocks of state school finance that will assist diverse students and schools in meeting the educational standards and goals of the state. The regular program allotment (also referred to as the basic or foundation program allotment) typically constitutes the bulk of education funding for school districts because it, purportedly, is expected to cover many standard operating and personnel costs for districts (Hinojosa, 2018b). These may include administrator, teacher, staff and employee salaries and benefits, professional development, and curriculum. To adjust for legitimate district-related factors and costs, states may adjust the regular program allotment based on the size of a district, geographic sparsity, regional cost differences, and inflationary factors (Hinojosa, 2018b).

Costs for maintaining and repairing existing facilities and for new construction is a second major building block. States often shift these costs directly to school districts and local tax revenues, which can create great inequities between property-wealthy and property-poor districts in the ability to cover the costs of school buildings (Filardo, 2016). Promising state practices cited in *The Essential Building Blocks* include states assuming larger shares of construction costs from state resources for low-wealth communities and allowing school districts to use the state's credit rating (Hinojosa, 2018b).

One of the highlights of the report is the focus on how special student programming can impact equity and opportunity for school children. The report favorably cites policies that

target funding to help meet the needs of certain groups of students where research shows they are lacking in educational opportunities. The underserved student groups include: those deemed at-risk of being retained in grade level or not graduating (including students from low-income families), English learners, and students with disabilities (Hinojosa, 2018b). The report also recognizes the special educational needs of students identified as “gifted and talented,” though the author cautions states in tracking affluent, non-minority students into such programs.

The additional revenue allocated to special student programming may help cover expenditures tied to student success, such as research-based extended-day programs for struggling learners, bilingual program materials and stipends for certified teachers, services for meeting special needs of students with disabilities, and gifted programs (Hinojosa, 2018b). Such allotments, however, should be paired with reasonable accountability strings to ensure districts spend those funds on those students.

Funding for high-quality prekindergarten programs is another important building block. Research shows that high-quality Pre-K can close achievement gaps and accelerate learning for students in at-risk circumstances (Meloy, Gardner, & Darling-Hammond, 2019). Yet, states often provide negligible funding, at best, for Pre-K programs.

A growing area of need identified by several states, and recognized in the report, is in Career and Technical Education (CTE). As the technical industry has advanced and placed more demands on students pursuing technical jobs and careers that may only require certification and not a college degree, states must ensure that these growing costs for school districts are covered. Providing an allotment to cover the additional cost of CTE courses and programs should now be considered an essential building block of state school finance.

Transportation and technology are two additional expenditures that should be costed out and covered by policymakers through allotments. Some states provide no additional funding for either of these costs and expect school districts to bear these expenditures through the regular program allotment. However, oftentimes, the regular program allotment does not reflect actual costs and is merely based on prior-year appropriations. Consequently, transportation and technology expenditures are frequently among the most underfunded line items in a district’s budget and suffer in terms of services and resources for students.

Finally, *The Essential Building Blocks* strongly suggests that states consider equalized funding for enrichment and innovation programs. These expenditures, if existent at all, are frequently funded through local tax dollars, which can create further inequities between the haves and have-nots (Hinojosa, 2018b). By providing access to such funding on an equalized basis, states can ensure school districts are enriching the experiences of their students and continuing to pursue innovative educational programs.

Importantly, *The Essential Building Blocks* is not intended to be used as a simple checklist. Some states, such as Texas, may very well provide categorical funding and/or allotments for most of, if not all, the essential building blocks. However, the work does not end there for legislators and advocates. Critical to the success of school finance systems in realizing equitable educational opportunity for every child in every school, the report recognizes that states must also be prepared to: 1) estimate costs using research-based methods; 2) fully implement the plan; 3) equitably distribute the funds; 4) monitor expenditures, opportunities and outcomes; and 5) periodically review the system with a broad group of diverse stakeholders to ensure the goals of education and equity are met (Hinojosa, 2018b).

### **New Mexico's Education Litigation: *Martínez and Yazzie v. New Mexico***

Like many other states, New Mexico has long struggled to create a strong public education system that serves the needs of every child in every school in every school district. From 2012 through 2016, the Kids Count Report ranked New Mexico in the bottom three states in overall child well-being and education (Kids Count Data Center, 2019). This challenge is especially pronounced as New Mexico educates far more Hispanic and Native American students and students living in poverty by percentage than most other states—students whose schools continue to struggle in reaching their needs (National Center for Education Statistics, 2015).

Over the last decade, educational opportunity may have worsened with the advent of several policy changes under former Governor Susana Martínez and Secretary of Education Hanna Skandera. These changes included a teacher evaluation system that was largely based on a “value-added” model heavily influenced by student standardized test scores; and a school and district accountability system that assigned letter grades (A-F) based on a very complex formula and subjected low-performing schools to closure (Torres-Velásquez, 2017). The state further compounded the inequities with a decline in state funding that failed to keep up with inflation

and a shift in state resources from general funding for school districts to competitive grant-funded projects of the administration (*Martínez v. New Mexico*, 2018a, Decision and Order, p. 50).

From its inception, the New Mexico Latino Education Task Force (LETF) was particularly interested in systemic work with local districts and the New Mexico Public Education Department (NMPED), as well as the Colleges of Education across the state to help turn the tide on a dismal public education system. From 2009 through the present day, LETF coordinated several meetings and worked alongside school districts, superintendents, school board members, community leaders and the Hispano Chamber of Commerce, among others. In 2011, the Mexican American Legal Defense and Educational Fund (MALDEF) began consulting on policy work with the LETF, which was attempting to address and oppose many of the state's punitive reforms. As LETF and MALDEF started working together, MALDEF met and queried several nonprofit organizations, legal and non-legal entities in 2011-12 across the state under a grant and observed that no other organizations were doing systemic legal work in education. In August of 2012, the LETF hosted a press conference at Albuquerque High School in Albuquerque, New Mexico, where MALDEF announced that it would begin investigating the New Mexico public education system to determine the causes for the underperformance of students across the state and weigh potential action against the state (Torres-Velásquez, 2017).

From 2012-2014, MALDEF and the LETF hosted several meetings and forums across the state with school district administrators, educators, advocates, organizations, university faculty, parents and children. New Mexican communities repeatedly voiced their frustrations with what they felt were arbitrary, punitive state education policies that were driving away high-quality teachers away from high-need schools and school districts and a system that denied their cultural relevance (Torres-Velásquez, 2017). As the legislature and the NMPED failed to stem the tide of harmful policies, advocates and families turned to the courts.

In April of 2014, fifty-one Latina/o/x and Native American parents and children from seven school districts located across the state filed a statewide school finance/educational opportunity case, *Martínez v. New Mexico* (2014) (Torres-Velásquez, 2017). In their lawsuit, the plaintiffs argued that the state had failed to provide a sufficient education for at-risk students and violated their rights to equal protection under the law and due process, and to “perfect equality” for Spanish-speaking students as required under the New Mexico Constitution

(MALDEF, 2014a). Lead plaintiff parent Louise Martínez stated, “I went to the same school my daughter attends, and nothing has changed. The school is rated F, the classrooms are overcrowded, the kids need support, and violence is high. My children and all the children in New Mexico deserve better. Tomorrow is too late, we need to change New Mexico’s education system now before we’re stuck in the past” (MALDEF, 2014a).

This, however, was not a traditional school finance case, which tend to focus on revenue and expenditures. Though the Martinez Plaintiffs argued that the state grossly and arbitrarily underfunded education for at-risk students, English learners, and students with disabilities, the claims went much deeper and broader in alleging the causes for deplorable student achievement and graduation rates. (MALDEF, 2014b). They argued that the state failed to ensure the effective implementation of many important laws in the state, including the Indian Education Act, the Hispanic Education Act, and the Bilingual Multicultural Education Act. Borrowing from the strong language in state statutes, the Martinez Plaintiffs argued that a constitutionally “sufficient” education was “at a minimum, an education that is ‘founded on the sound principle that every child can learn and succeed’ and is sufficient to ‘meet the needs of all children’ through a ‘multicultural education system’ with ‘quality and diverse teachers,’ ‘proper assess[ment], place[ment] and monitor[ing]’ and a ‘rigorous and relevant curriculum that prepares them to succeed in college and the workplace’” (*Martínez v. New Mexico*, Amended Complaint, 2014b, p. 17-18) (citing NMSA 1978 § 22-1-1.2(A), (B) (2007); NMSA 1978 § 22-23-1.1(C) (2004). Consequently, multicultural education, teacher quality and evaluation, monitoring of district expenditures, and accountability were also on the table, making it perhaps the most comprehensive educational opportunity case ever filed in the United States.

Rather than face the merits of the lawsuit, the state moved to dismiss the case, arguing that education was not a fundamental right under the New Mexico Constitution and that the claims involved purely political questions that could not be resolved by the courts. In October 2014, State District Court Chief Judge Sarah Singleton held a hearing on the motion with MALDEF arguing on behalf of the plaintiffs against attorneys from a private law firm hired by the state. The case was not dismissed. Following the hearing, Judge Singleton held that education was a fundamental right and that the lawsuit presented justiciable claims that the courts could rule upon (Torres-Velásquez, 2017).

The New Mexico Center on Law & Poverty later filed suit in the same district court on behalf of six school districts and thirty-four parents and children (Torres-Velásquez, 2017). They made more traditional school finance claims based on adequacy and equity, but also argued about the importance of multicultural education. The cases were eventually consolidated for purposes of discovery and trial, and an eight-week trial was held in Santa Fe in the summer of 2017.

In July of 2018, Judge Singleton issued her emphatic “Decision and Order” in favor of the Martínez and Yazzie plaintiffs, citing the substantial evidentiary records built by both plaintiff groups. (*Martínez and Yazzie v. State of New Mexico*, 2018a). She followed this initial decision with over six-hundred pages of blistering facts and conclusions of law in December 2018, sending a resounding blow to the New Mexico public education system (*Martínez and Yazzie v. New Mexico*, 2018b).

On February 14, 2019, Judge Singleton issued her Final Judgment in the case. In her judgment, she declared that the state had violated the rights of the children of New Mexico under the state’s Education Clause, Due Process Clause, and Equal Protection Clauses of the New Mexico Constitution. She held that the state “violated the rights of at-risk students by failing to provide them with a uniform statewide system of free public schools sufficient for their education” (*Martínez and Yazzie v. New Mexico*, Final Judgment, Feb. 14, 2019). Her judgment included the following orders and declarations:

- d. The Defendants must comply with their duty to provide an adequate education and may not conserve financial resources at the expense of our constitutional resources. 7/20/18 Decision and Order p.74. (FF&CL 3209)
- e. Reforms to the current system of financing public education and managing schools should address the shortcomings of the current system by ensuring, as a part of that process, that as soon as practicable every public school in New Mexico would have the resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students. 7/20/18 Decision and Order p. 74-75. (FF&CL 3210)
- f. The new scheme should include a system of accountability to measure whether the programs and services actually provide the opportunity for a sound basic

education and to assure that the local districts are spending the funds provided in a way that efficiently and effectively meets the needs of at-risk students.

(*Martínez and Yazzie v. New Mexico*, Final Judgment, Feb. 14, 2019, p. 4-5).

This stinging indictment of New Mexico's public education system revealed the glaring inequities and inadequacies in educational opportunity for the state's most at-risk students, including Native Americans, English Language Learners, low-income students, and students with disabilities. However, because the courts do not legislate, it was up to the state to remedy the constitutional violations in the 2019 legislative session held from January to March.<sup>2</sup>

### **New Mexico's 2019 School Finance Reforms and *The Essential Building Blocks***

Though New Mexico continues to struggle with its financial investment in public education, on paper, the state has strong standards and goals. The Public School Code states that "no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed and that the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal" (NMSA 1978 § 22-1-1.2). The law further recognizes "that the key to student success in New Mexico is to have a multicultural education system," which includes among other things, "attract[ing] and retain[ing] quality and diverse teachers," integrat[ing] the cultural strengths of its diverse student population into the curriculum with high expectations," and "rigorous and relevant curriculum that prepares them to succeed in college and the workplace" (NMSA 1978 § 22-1-1.2). The state has further adopted the Indian Education Act, the Hispanic Education Act and the Bilingual Multicultural Education Act, each setting their respective goals. These equitable and inclusive laws, though imperfect, represent far greater progressive policies than most other states.

In February 2019, under new leadership, the New Mexico Public Education Department announced its intention to scale back on many of the punitive regulatory reforms adopted by

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<sup>2</sup> This article is not intended to referee the dispute of whether the state satisfied its obligations under the court order in *Martínez and Yazzie v. State of New Mexico* (2019). For an examination of whether the state met its obligations under the Martínez/Yazzie district court's ruling, see Yazzie Plaintiffs Notice to the Court of Case Status. <http://nmpovertylaw.org/notice-yazziemartinez-v-nm-yazzie-plaintiffs-2019-06-28/>. On October 30, 2019, MALDEF filed a motion seeking an order from the district court that would allow them to conduct discovery on whether the state has complied with the court's injunction. (*Martínez* Plaintiffs' Opposed Motion for Entry of Schedule for Discovery and Enforcement Proceedings, *Martínez v. State of New Mexico* No. D-101-CV-2014-00793, [https://www.maldef.org/wp-content/uploads/2019/10/2019\\_10\\_30-Martinez-Motion-for-Entry-of-Schedule-for-Discovery-filed-copy.pdf](https://www.maldef.org/wp-content/uploads/2019/10/2019_10_30-Martinez-Motion-for-Entry-of-Schedule-for-Discovery-filed-copy.pdf), and on file with author.)

the prior administration in the state's plan under the Every Student Succeeds Act (New Mexico Legislative Finance Committee, 2019). Among the changes expected was the replacement of the Partnership for Assessment of Readiness for College and Careers (PARCC) exam, the repeal of the A-F school grading system, and the retraction of school closure as an intervention model for low-performing schools.

With these changes to its state accountability plan, the state looks to secure a strong footing in one of the foundational pillars recognized in *The Essential Building Blocks*: strong and equitable standards and goals. However, the same cannot be said about the second pillar requiring states to identify steady and adequate revenue streams to support the implementation of the standards and goals. New Mexico principally relies on oil and gas revenues to support education. Because these revenues are highly influenced by production and the market, they do not provide a stable resource. This volatility has led to substantial cuts in education over the years, despite a strong market in the industry in recent years.

Banking on the revenue surplus, newly elected Governor Michelle Lujan-Grisham announced early on that education would be a major priority for the state legislature (The Office of Governor Michelle Lujan-Grisham, 2019). Although the governor did not explicitly mention the *Martínez and Yazzie* cases in her opening remarks to the 2019 session, it was clear that Judge Singleton's ruling was on her mind and the decision would be a driving force behind the legislature's actions. Governor Lujan-Grisham pledged a half billion in new revenue for education and other reforms.

According to a report by the New Mexico Legislative Education Study Committee (LESC), fifty-two education bills passed both chambers during the 60-day session (State of New Mexico Legislative Education Study Committee [NM LESC], 2019).<sup>3</sup> Governor Lujan-Grisham signed all but three of them. The report estimates the additional revenue for education at \$448 million compared to the previous year.

In examining the reforms under *The Essential Building Blocks*, overall, the state increased funding for the regular program allotment and seemingly made some effort to link funding to research-based programs and services centered on student need. However, it failed to draw a

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<sup>3</sup> This article relies principally on two reports of the reforms enacted by the State of New Mexico, the 2019 Post-Session Review by New Mexico Legislative Education Study Committee and the May 2019 Legislative Finance Committee's Hearing Brief. While such reports are typically reliable, readers are encouraged to further verify the accuracy of these reports.

connection between funding appropriations and actual costs. The state also failed to enact systemic reforms targeting the learning needs of English learners and students with disabilities, two of the most underperforming student groups in New Mexico, among other essential building blocks that went unaddressed.

To help school districts recruit, hire and retain teachers, the state made significant gains by providing additional funding to help cover the cost of mandated teacher and staff salaries. The state increased minimum teacher salaries for Level 1 by \$5,000 and for Level 2 and Level 3-A teachers and Level 3-A counselors by \$6,000 (NM LESC, 2019). School leaders also received increases ranging from \$11,000 to \$16,000. School employees are due a 6% increase in compensation. In a state that ranked 45th nationally in average teacher salaries in 2018 (National Education Association, 2019), this was an important, systemic step to building a stronger teacher workforce and stemming the high cost of teacher attrition, as recognized in *The Essential Building Blocks* (Hinojosa, 2018). These increases, for which funding would flow through the state equalization guarantee (SEG) funding program, were estimated to cost \$162.1 million. The legislature allocated another \$9 million to cover the employer share of increased health insurance costs at 5 percent, though this amount was less than the increased average health cost of 5.6% (NM LESC, 2019).

The state is phasing out its small school funding formula over the next five years (NM LESC, 2019). Intended to offset the higher administrative costs in operating small, rural and sparsely populated areas, much of the allocated funds are now supporting charter schools located in large, urban areas. The state is replacing the program with a new rural population program. School districts with at least 40% of the school district's population located within an area defined as rural by the U.S. Census Bureau will generate this funding (NM LESC, 2019). While the end-result on equity cannot yet be determined, there does not appear to be any evidence in the legislative record linking the rural population program funding to the actual increased administrative costs for operating rural districts.

The legislature also appropriated \$120 million for K-5 Plus extended-year programs, which would extend the school year by 25 days for participating schools (NM LESC, 2019). This was an expansion of the K-3 Plus and K-5 Plus pilot programs, which were previously funded at \$30.2 million. Although this program is not targeted to meet the needs of at-risk students, early results indicated increased academic performance for at-risk students

participating in the program. The revised K-5 Plus program was changed to allow the funding to roll through the formulas and provide districts funding based on the number of children enrolling in the program. Though appropriations would allow for up to 88,000 students, only 23,000 students are expected to participate in the 2019-20 school year due to program requirements (NM LESC, 2019).

The state also adopted legislation that increases funding for educating at-risk students. In New Mexico, at-risk funding is based on a formula that uses a three-year average of a school district's percentage of membership of Title I students, English learner students and student mobility. (NMSA § 22-8-23.3 ,2019). The LESC Report states that the unit multiplier for at-risk students increased from "0.13" to "0.25," which nearly doubles the additional funding for those students (NM LESC, 2019, p. 5). While this provides a sizable increase for programs for at-risk students, there was no indication of how the "0.25" unit allotment related to any actual study of student need (NM LESC, 2019, p. 83).

Other student groups identified in *The Essential Building Blocks* did not fare as well, despite substantial evidence of dismal student performance. The state failed to pass any increase in the formulas for English learner programs and for programs and services for students with disabilities. The LESC Report noted that only 21,000 of the state's 50,000 English learners were enrolled in bilingual education programs (NM LESC, 2019, p. 10). The legislature allocated \$7 million to provide new bilingual and multicultural programs or to expand existing programs. This one-time funding is expected to enroll only between 3,000 and 9,000 additional students, still leaving approximately one-half of English learners without a bilingual program.

The state appropriated \$30 million to provide culturally relevant instructional materials to all students, an increase of \$17.5 million from the previous year (NM LESC, 2019, p. 11). These funds will flow through the state equalization guarantee funding formulas in lieu of a separate instructional material fund, which is a step in the right direction according to *The Essential Building Blocks*.

The state's prekindergarten programs are primarily administered by the Children, Youth and Families Department (CYFD) and the NMPED. For the 2019-20 school year, the legislature appropriated a total of \$88.5 million, an increase of 38% from 2018-19 (NM LESC, 2019, p. 13-14). Advocates sought far greater support for full-day, universal Pre-K for 4-year olds and expansion of 3-year old Pre-K—which are supported in the *Essential Building Blocks*—but were

unsuccessful. The state has steadily increased its participation of 4-year old's in Pre-K, but in 2017, 65% of all eligible students were still not participating. Given its demographics, the state should look to increasing its investment in high quality, full-day Pre-K programs, which could result in greater participation by underserved students who stand to benefit the most from such programs.

Although New Mexico's State Equalization Guarantee (SEG) funding formula tends to bring greater equity in operational revenues for all school districts, revenue disparities continue to affect the state's capital outlay programs. The state largely relies on school districts to raise funds for capital projects through local bond elections. This reliance on local revenues allows property-wealthy districts to raise substantially higher revenues at lower tax rates compared to property-poor districts. The state has a program through the Public School Facilities Authority that allows the state to pay a certain percentage of facilities planning, development and construction with the local school district assuming its share based on its property revenue. Projects are ranked according to need and funded accordingly (New Mexico Public School Facilities Authority, n.a.) but revenue disparities persist between property-poor and property-wealthy districts.

In 2019, the legislature attempted to offset some of the inequities for districts qualifying for federal Impact Aid for its Native American students. Federal Impact Aid dollars are intended to offset the lost local revenues from federal lands that are not taxable. For several years, the state has withheld over \$100 million in federal Impact Aid for school districts in New Mexico that should otherwise receive these funds. The state claims that its use of the SEG allows the state to redistribute those funds through the equalization formula to all school districts. This year, the legislature enacted a bill that redirects \$34 million to the Public School Facilities Authority to allocate to school districts qualifying for Impact Aid (NM LESC, 2019, p. 34).

Historically, the state has largely neglected school district's career and technical education (CTE) programs. In 2019, the legislature appropriated \$5 million to PED to administer a 7-year pilot project on high quality CTE programs (LESC, 2019, p. 24). Applicants must demonstrate a series of requirements, including academic content aligned with college coursework, permeable career pathways, and dual credit classes. These requirements may

pose a barrier for underfunded school districts and the state's adoption of a CTE allotment for all school districts would likely better serve its students.

Transportation received a boost of 14% in funding (NM LESC, 2019, p. 12). However, approximately one-quarter of that additional funding was expected to go to the 6% pay raise and for extended learning programs. Another \$32.9 million was provided to the PED to replace 387 school district-owned buses that have operated for 12 or more years.

The state does not allocate specific funds to all school districts for enrichment and innovation. It has created several PED-funded grants for special projects, including "Grow-Your-Own Teacher" grants but participation is limited to the amount appropriated by the legislature. The PED also has funds to provide individualized and culturally responsive professional development to school staff working with the students (NM LESC, 2019, p. 13)

The state did increase funding for the Indian Education Fund to \$6 million for the 2019-20 school year, an uptick of \$3.5 million from the previous year. In addition, the legislature appropriated \$1 million to PED for indigenous education initiatives (NM LESC, 2019). Although the state should be commended for recognizing these enrichment opportunities, it has not done so in a systemic way, making it difficult for school districts to see the long-term investment of such expenditures.

### **Local District Perspective**

An interview with Superintendent Mike Hyatt of Gallup-McKinley County Schools (GMCS) provides insight into what the proposed changes by the New Mexico Legislature may mean to school districts working on the ground in light of *The Essential Building Blocks*. Because the expected impact of some of the changes cannot be ascertained until the NMPED settles up and reimburses the district for certain expenses during and at the end of the school year, the impact can only be estimated by Superintendent Hyatt.

Superintendent Hyatt is in his twenty-first year serving public schools. He has a bachelor's degree in chemistry with a minor in math and a Master's in Business Administration. Among other duties, he has served as a classroom teacher, assistant principal, principal, assistant superintendent and interim superintendent. Mr. Hyatt is in his third-year as superintendent of GMCS. He has spent all of his professional education life in Western New Mexico, mostly in Gallup-McKinley (M. Hyatt, personal communication, July 30, 2019).

Gallup-McKinley County Schools is a rural district located in Western New Mexico, approximately 140 miles west of Albuquerque. It is an area rich in culture and history and is unique in many ways. First, although rural, the district enrolls an estimated 11,000 students, making it the seventh largest school district in the state. The district has 34 schools spread out over 4,900 square miles in seven distinct geographic areas (M. Hyatt, personal communication, July 30, 2019). One school is located 103 miles from the next nearest school in the district.

Second, the district is very diverse and enrolls the largest number of Native American students in New Mexico, accounting for 80% of the total student population in GMCS. Latina/o/x students comprise 16% of the total population and the remaining population includes Anglo, Asian-Pacific Islander, among other races and ethnicities. English learner students make up nearly one-third of the total students. Students come to school speaking several languages, primarily Navajo and Spanish, but also Filipino dialects, among others (M. Hyatt, personal communication, July 30, 2019).

Third, the district is considered one of the poorest not just in the state, but in the country, and is a Title I school district. Because approximately 80% of the land is tribal- or federal-owned, GMCS does not have a strong local property tax base to generate additional revenue (M. Hyatt, personal communication, July 30, 2019). The District's assessed property value per pupil is only \$74,544, which places it 85th among 89 school districts in New Mexico (Public Education Department-Capital Outlay Bureau, Dec. 31, 2018, on file with author). In contrast, the district with the highest assessed property value, Jal School District in southeastern New Mexico, is \$3,719,278 per pupil—nearly 50 times higher than GMCS.

In the *Yazzie v. New Mexico* case, GMCS was one of the plaintiff school districts for the Yazzie Plaintiffs. The defendants deposed Mr. Hyatt as then-Assistant Superintendent of Human Resources and Finance. He assumed the central contact for GMCS in the lawsuit after becoming superintendent. During the 2019 New Mexico Legislative Session, Mr. Hyatt served as one of the leading administrators advocating for public school districts, especially for programs and services addressing the needs of Native American students.

The district anticipates receiving approximately \$18 million more for the 2019-20 school year through the State Equalization Guarantee compared to the 2018-19 school year. The bulk of this increase results from the increase in the unit value (essentially, the regular program allotment) by approximately \$475 per unit and the increase in the at-risk unit

multiplier from 0.13 to 0.25. However, a large percentage of these additional funds are dedicated to paying the increase in teacher and personnel salaries mandated by the state and for K-5 Plus and Extended Learning.

While the increased revenue for salaries is welcomed, Gallup-McKinley expects to still be at a disadvantage in competition for scarce teachers because the raises are across the board. Given the great challenges the district has in recruiting and retaining teachers to serve students in an impoverished and rural part of the state, the district expects its routine teacher shortages to continue (M. Hyatt, personal communication, July 30, 2019). Had the legislature instituted a cost of education index to assist school districts like GMCS in the recruitment and retention of teachers, the district would have been in a better position to compete with other districts.

The district also expects to continue to struggle with recruiting bilingual certified teachers and teachers certified to teach special education (M. Hyatt, personal communication, July 30, 2019). As noted further above in the state section, the state is providing some funds to assist school districts in growing their own teachers and the district has taken advantage of this funding in the past. However, there does not seem to be any systemic efforts at the state level to encourage college students to earn their teaching degree with a certification in these high-need areas. Given the significant number of students identified as English learners and students with disabilities in the district, further progress is expected to be slow.

The district is considered one of the more successful school districts in educating Native American and low-income students (M. Hyatt, personal communication, July 30, 2019). However, “success” is contextual as many other New Mexican school districts with similar demographics struggle with student achievement. The district has been very intentional and efficient with its limited funding. It capitalized on securing “below-the-line” funds (funds made available by the state outside of the funding formulas) for special programs such as *Reads to Lead* and *Truancy/Dropout Prevention* programs. However, the state has cut funding for those programs and did not replace those monies. Adding to the challenge is a lack of funds for bilingual programs, language revitalization, and culturally relevant materials, which was not addressed in a system-wide manner.

Quality prekindergarten programs could go a long way in helping to further increase student achievement for GMCS’s underserved students of color and low-income students. The district only offers one full-day Pre-K program for non-special education students in 9 of 19

elementary schools, serving only approximately 180 students. Overall, due to insufficient funding, a lack of facilities, and a lack of transportation funds, the district only serves about one-third of all 4-year old children in Gallup-McKinley (Martínez/Yazzie, Findings of Fact, No. 92, 2018b). The district applied for state funding for 18 pre-k teachers but was only approved for 10. Consequently, the district anticipates only marginal gains in access to Pre-K for 4-year old students due to the lack of systemic reform in Pre-K (M. Hyatt, personal communication, July 30, 2019).

The State of New Mexico currently subtracts from the SEG funds a credit for 75% of the district's Impact Aid revenue. As noted further above, this revenue from the federal government is expected to assist those districts serving large numbers of Native American students on tribal and federal land, which cannot be locally taxed. Other property-wealthy school districts in the state can use 100% of their local property tax base to raise revenue through mill levies to help fill the gap left by the state's inadequately funded school finance system and to create enrichment opportunities for their students, causing greater inequities between New Mexican school districts (M. Hyatt, personal communication, July 30, 2019).

In the 2019 session, GMCS helped to successfully negotiate the return of \$34 million of Impact Aid that will be redirected to school districts serving Native American. Most of the funds (\$24 million) will be used to build and repair facilities. The other \$10 million will be used to build housing to help recruit and retain school teachers serving the rural communities in the district who cannot purchase housing on tribal land (M. Hyatt, personal communication, July 30, 2019). However, this is only a one-time appropriation and the districts benefiting from Impact Aid will need to request funds, yet again, in the 2020 session.

In the area of transportation, the district does not project any additional funds to assist with the weekly cost of transportation. Because of its sparsity, the state's failure to update its calculation for transportation is particularly impactful for Gallup-McKinley. The district is expected to continue to spend significant amounts of money from its operational revenues to support the transportation of students to and from school and the lack of transportation funds for pre-k programs will also delay the expansion of those programs (M. Hyatt, personal communication, July 30, 2019). The district does, however, anticipate benefitting from the state's provision of new buses to replace the buses at the end of their lifespan. Funds for this

program, however, come from a one-time Volkswagen settlement with the state (M. Hyatt, personal communication, July 30, 2019).

Among other reforms, Superintendent Hyatt noted that the state could consider reinstating a statewide property tax. The tax was previously used in the 1970s through the 1980s. However, it was eliminated because the state forecast oil and gas revenues to remain stable and make up the void. This left the state relying heavily on highly volatile oil and gas revenue. The state could also reduce state aid to school districts with high tax bases, which tend to use their local tax dollars to supplement operational expenses, as well as capital and reallocate those funds to high-need, low-wealth districts (M. Hyatt, personal communication, July 30, 2019).

### Conclusion

The New Mexican public education system is in a prime position to reap the benefits of its diverse student population. It has strong foundational goals and standards rooted in multiculturalism and equity. It has a new administration that seems to be committed to achieving these goals and has reversed course on several ill-fated reforms by the prior administration. It has teachers, school leaders, district administrators and families who are committed to success. And it has increased revenues.

However, the state cannot afford to pass piecemeal legislation. As the findings of fact bore out in the *Martínez and Yazzie v. New Mexico* cases, New Mexico has failed mightily to meet the needs of its underserved population. Competitive and isolated grants for essential programs and services will not help realize opportunity for all students in all schools.

The state must commit to enacting a comprehensive, equitable school finance system that meets the needs of all school children and all school districts. English learners and students with disabilities were virtually ignored this past session, and it is not enough for the state to merely increase the basic allotment for these students. *The Essential Building Blocks* can help provide legislators and advocates critical guidance and promising state practices for creating systemic reform grounded in equity.

As Chief Judge Sarah Singleton ruled in the *Martínez v. New Mexico* (2014) case, before it even went to trial, on whether public education is a fundamental right under the New Mexico Constitution:

Frankly, it is difficult to conceive of a service that the state provides its citizens that is more fundamental than the right to education. Nothing really promotes the ability to be a good citizen or to be a productive member of society more than having an education. An educated populace is not only something that is fundamental to our current well-being, it is fundamental to our future well-being. (Judge Sarah Singleton, *Martínez v. State of New Mexico*, No. D-101-CV201400793, 1st Judicial District Court, 2014b p. 5-6).

In order to continue the momentum and satisfy the state's obligations to the students, families and public, the author strongly recommends that the state adopt, implement and integrate the following research-based reforms to its school finance policies, with the first step having been largely accomplished already:

1. Establish foundational standards and goals, rooted in principles of equity and meaningful opportunity;
2. Identify diverse, fair, and stable state revenue sources;
3. Identify the essential building blocks of school finance;
4. Estimate costs of a high-quality education based on evidence and research;
5. Equitably distribute the funds;
6. Monitor distributions, educational opportunities and expenditures to ensure equity in the schools;
7. Periodically review and revise the school finance system with a diverse group of stakeholders; and
8. Ensure meaningful access and opportunity for all (Hinojosa, 2018a).

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