



School Finance Litigation in New Mexico

New Mexico's Policy Response

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Historic National Events

1928 – The Problem of Indian Administration (Meriam Report)

- Found dismal socio-economic conditions and outcomes for Native Americans and recommended additional support services to remedy issues

1964 – Civil Rights Act

- Prohibited discrimination on the basis of race, color, sex, or national origin in programs receiving federal assistance

1965 – Elementary and Secondary Education Act

- Provided substantial federal aid to education, particularly for students from low-income families

1969 – Indian Education: A National Tragedy (Kennedy Report)

- Pointed to the failure of federal policies (e.g. assimilation) relating to Native Americans and the impacts to their social, economic, and educational outcomes

1983 – A Nation at Risk Report

- Highlighted academic underachievement on national and international metrics

2001 – No Child Left Behind Act

- Established yearly standardized assessment of students to hold each school responsible for student academic performance



Historic New Mexico Events

1974 – Public School Finance Act

- Created the state equalization guarantee (SEG) formula, which was intended to equalize financial opportunity and guarantee each student access to appropriate programs regardless of location

1975 – Public School Capital Outlay Act

- Provided funding to address critical capital outlay needs that local districts could not finance

1981 – “Big Mac” tax cuts

- Reduced property taxes from \$8.95 per \$1,000 to \$0.50 per \$1,000 for school operations

1986 – Public School Reform Act

- Amended class sizes, teacher licensure, student attendance, testing, graduation, and instructional hours requirements

2003 – Indian Education Act

- Established to ensure equitable learning for Native American students, maintain native languages, and improve cooperation between the state, tribes, pueblos, and nations

2008 – Funding Formula Study Task Force (AIR Report)

- Recommended changes to the funding formula and increasing funding amounts by \$336 million



Public Education Finance Lawsuits

1950s-1970s First Wave of Litigation

Focused on racial segregation and equal protection of educational rights

- 1952: *Brown v. Board of Education*
- 1971: *Serrano v. Priest*
- 1973: *San Antonio Independent School District v. Rodriguez*



1970s-2000s Second and Third Wave of Litigation

Focused on equity of resources and adequacy of funding

- Between 1971 and 2018, 116 lawsuits filed in 46 states
- Lawsuits have taken from 1 year to over 20 years to resolve
- Courts have ordered states to develop new funding systems, increase appropriations, conduct cost studies, and adhere to reform plans



New Mexico Education Formula Lawsuits

1999 – *Zuni v. New Mexico*

- Ruled the state’s public school capital outlay funding system was unconstitutional

2004 – *Zuni v. Department of Education*

- Argued the methodology for determining whether New Mexico could credit federal Impact Aid payments in the SEG was unlawful



2018 – *Martinez and Yazzie v. New Mexico*

- Ruled the state failed to provide a constitutionally-sufficient education to at-risk students



Zuni v. NM Lawsuit Timeline

1998	<ul style="list-style-type: none">• <i>Zuni Public Schools</i> files a lawsuit
1999	<ul style="list-style-type: none">• Court rules in favor of plaintiffs• State authorizes \$100 million in bonds for public school capital improvements• State reduces SEG credit for Impact Aid payments in the operational funding formula from 95 percent to 75 percent, earmarking the 20 percent difference for capital outlay
2000	<ul style="list-style-type: none">• State authorizes \$475 million of bonds for public school capital improvements• State creates a new Public School Capital Outlay Task Force
2001	<ul style="list-style-type: none">• State establishes a school facilities deficiencies correction program, appropriates \$200 million to fund new statewide capital outlay system
2002	<ul style="list-style-type: none">• Court special master finds the state “is in good faith and with substantial resources attempting to comply with the requirements”• Public School Capital Outlay Council (PSCOC) adopts new public school facility adequacy standards
2003	<ul style="list-style-type: none">• State appropriates up to \$40 million for deficiencies corrections program• PSCOC implements a standards-based funding process and facilities master plan process• State establishes the Public School Facilities Authority (PSFA)



Zuni v. NM Lawsuit Timeline

2004	<ul style="list-style-type: none">• State provides \$67 million for critical capital outlay and deficiencies corrections• PSCOC awards \$199 million in standards-based awards
2005	<ul style="list-style-type: none">• State establishes the Public School Capital Outlay Oversight Task Force• PSCOC implements a school facility lease assistance program• State increases SB-9 guarantee from \$50 to \$60 per mill per unit• State removes the 20 percent earmark for capital outlay from the SEG Impact Aid credit
2006	<ul style="list-style-type: none">• District court holds status conference; parties agree to an evidentiary hearing
2007	<ul style="list-style-type: none">• State increases school facility lease reimbursement payment from \$600 to \$700 per MEM• State increases SB-9 guarantee from \$60 to \$70 per mill per unit
2008	<ul style="list-style-type: none">• Albuquerque Public Schools reduces funding advances and offsets by \$75.6 million through applications to the standards-based program
2012	<ul style="list-style-type: none">• School for the Blind and Visually Impaired and School for the Deaf participate in the PSCOC standards-based funding process
2014	<ul style="list-style-type: none">• PSCOC implements a broadband deficiencies correction program

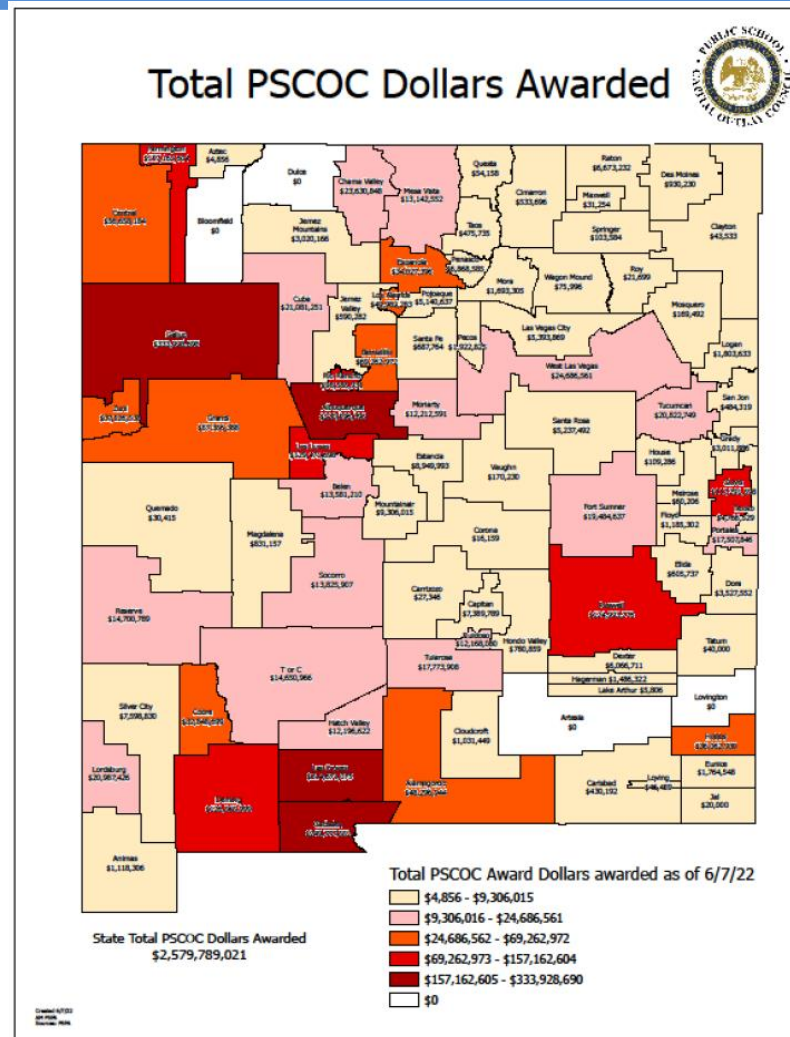


Zuni v. NM Lawsuit Timeline

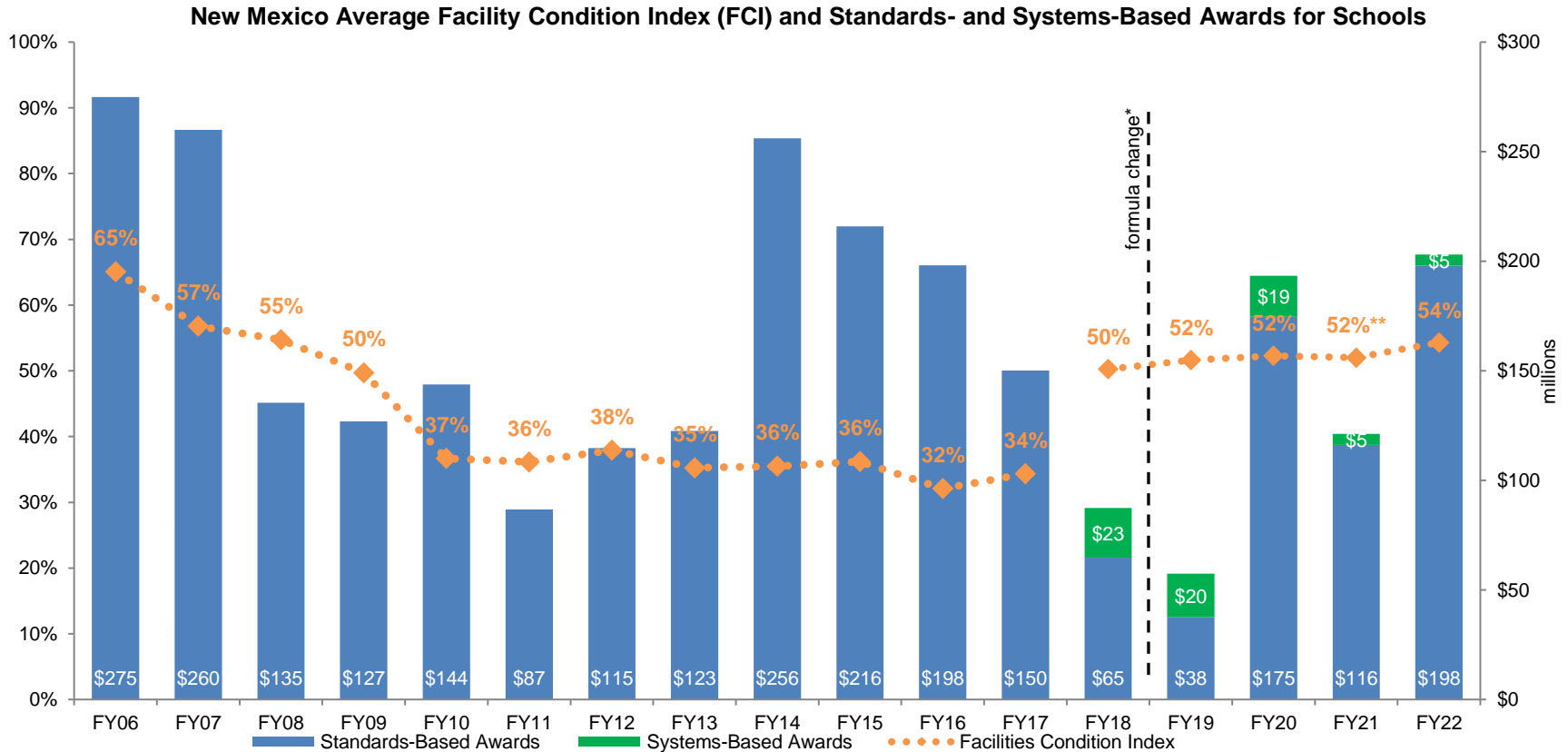
2015	<ul style="list-style-type: none">• Zuni plaintiffs ask the court for a status hearing on new claims of inequity, contending property-poor districts cannot raise local revenue to build facilities beyond educational adequacy standards like property-rich districts
2017	<ul style="list-style-type: none">• PSCOC implements a systems-based program for small projects
2018	<ul style="list-style-type: none">• PSCOC implements a school security and prekindergarten classroom program
2019	<ul style="list-style-type: none">• State creates a new local-state match formula, shifting more of the burden for financing projects over time to property-rich districts by 2024• PSCOC implements a teacher housing and outside of adequacy program
2020	<ul style="list-style-type: none">• State changes the SB-9 guarantee formula to increase the distribution and remove discretionary formula components• Court finds the state's school capital outlay system remain unconstitutional and that a new funding formula would be required
2021	<ul style="list-style-type: none">• State completely removes SEG credit for Impact Aid payments in the operational formula, allowing uncredited SEG to be used for capital outlay and improvements• Court denies the state's motion to amend the findings or order or grant a new trial



New Mexico Has Allocated Over \$2.5 Billion Implementing State Aid Program For School Buildings



Funding Has Improved Condition of School Buildings



* In January 2018, the Public School Capital Outlay Council altered the methodology for calculating FCI, so FY18 scores are not directly comparable to prior year scores. The statewide average FCI of 50.3 percent for FY18 is equal to approximately 32.6 percent using the previous methodology.

Source: PSEA



Zuni v. USDE (Impact Aid) Lawsuit Timeline

1994	<ul style="list-style-type: none">• Congress establishes an Impact Aid disparity test in statute, limiting the U.S. Department of Education's (USDE) authority to determine if a state has an equalized funding formula for purposes of crediting Impact Aid payments
2004	<ul style="list-style-type: none">• Zuni and Gallup file a lawsuit, challenging USDE's methodology for calculating disparity
2007	<ul style="list-style-type: none">• U.S. Supreme Court rules in favor of USDE, noting the statute did not limit the secretary's authority to use a concept of best interest
2010	<ul style="list-style-type: none">• Zuni sues PED for crediting Impact Aid before USDE certification
2018	<ul style="list-style-type: none">• N.M. Supreme Court rules in favor of Zuni, noting PED can only credit Impact Aid after receiving USDE certification
2019	<ul style="list-style-type: none">• PED submits a disparity test calculation to USDE for authority to credit Impact Aid in FY20• USDE allows districts to review the calculation, given funding formula changes in FY20• Central, Gallup, and Zuni request a USDE review of PED's FY20 disparity test calculation
2020	<ul style="list-style-type: none">• USDE reviews the methodology and determines the state cannot credit Impact Aid payments for FY20• PED appeals USDE's ruling and credits FY20 payments – creating a \$60 million liability



Zuni v. USDE (Impact Aid) Lawsuit Timeline

2020	<ul style="list-style-type: none">• Central, Gallup, and Zuni file a restraining order against PED requiring the agency to provide USDE correct information for the disparity calculation• USDE gives PED preliminary approval to credit FY21 SEG with a new methodology• State appropriates \$31 million to offset potential liabilities in the FY21 SEG formula
2021	<ul style="list-style-type: none">• State completely removes the SEG credit for Impact Aid payments and local revenues in the FY22 operational formula• State appropriates \$21 million to the state-support reserve fund to address the FY20 Impact Aid liability• USDE reverses its decision, denying PED's authority to credit FY21 SEG due to the department submitting its application 3 days late
2022	<ul style="list-style-type: none">• State appropriates \$30 million to the state-support reserve fund to address the FY21 Impact Aid liability



Funding Formula Task Force

- *In 2008, the Legislature commissioned the American Institutes for Research (AIR) to study and determine the cost of a sufficient education for all public schools in New Mexico.*
- *Findings suggested at the time that state support for public schools should increase by \$335.8 million to extend the school year, add afterschool hours, provide summer programs, reduce class sizes, and hire appropriate school personnel.*
- *The most expensive component of AIR's cost proposal was extending the school year to include 185 instructional days for students and four planning days for teachers (about 1,512 hours).*
- *A funding formula was proposed that would significantly boost funding for students from low-income families and learning English (at-risk factor); capped special education funding; and addressed scale inefficiencies.*



Martinez-Yazzie Lawsuit Timeline

2014	<ul style="list-style-type: none">• <i>Yazzie</i> plaintiffs file a lawsuit on behalf of Native American and Hispanic children and 6 school districts (Rio Rancho, Santa Fe, Gallup, Cuba, Moriarty, & Lake Arthur)• <i>Martinez</i> plaintiffs file a separate lawsuit for low-income students and English learners
2018	<ul style="list-style-type: none">• Court rules the education system violated students' right to a sufficient education
2019	<ul style="list-style-type: none">• Court orders the state to take immediate action to increase funding, target resources, and establish an accountability system• State appropriates \$411 million from the general fund (a 15 percent increase) to public schools, establishes extended learning time programs (ELTP) in the SEG, increases funding for at-risk students, and raises educator pay levels• <i>Yazzie</i> plaintiffs file a motion requesting the court to enforce the order, claiming noncompliance by the state; <i>Martinez</i> plaintiffs file a motion for discovery, requesting further information
2020	<ul style="list-style-type: none">• Covid-19 pandemic hits; schools close and move to remote learning• State initially appropriates \$206 million from the general fund to public schools, but pulls back the increase due to a projected revenue downturn• State moves to dismiss the lawsuit• Court grants <i>Martinez</i> plaintiffs motion for discovery, denying the <i>Yazzie</i> motion and state motion



Martinez-Yazzie Lawsuit Timeline

2021	<ul style="list-style-type: none">• Court orders state to provide computers and internet access to at-risk students• State appropriates \$234 million from the general fund to public schools (a 7 percent increase), removes Impact Aid credit, expands ELTPs, and provides \$154 million from the public education reform fund (PERF) for ELTP, family income index, broadband, and instructional time pilots
2022	<ul style="list-style-type: none">• Court continues discovery process with parties• State appropriates \$425 million from the general fund to public schools (a 12 percent increase), raises educator pay levels, expands department initiatives, and provides \$208 million from PERF for instructional time pilots, teacher preparation, educational technology, career technical education, and community schools



Martinez-Yazzie Findings

- *The court found the outputs (standardized test scores and graduation and remediation rates) were “dismal” and therefore the inputs (including funding and programs must be insufficient.*
- *The court found evidence-based interventions that added instructional time like prekindergarten, K-3 Plus extended school year, summer school, afterschool, and Extended Learning Time (ELT) programs could help students close achievement gaps.*
- *However, the state had not provided sufficient funding to cover programming for all students needing them, which is the vast majority of students.*
- *The court also found the state lacked adequate numbers of quality educators and school leaders to provide appropriate instruction and support for at-risk students, among other findings, including lack of PED oversight to ensure programs are implemented correctly.*
- ***The court did not mandate specific remedies or funding amounts.***



Ongoing State Issues

Impact Aid: Potential disparities

- Recurring Impact Aid payments will shift the balance of resource allocation to select districts

Zuni: Issues accessing public school capital outlay

- School facility conditions have improved; however, fund balances are growing and demand for funds have fallen significantly
- Growth in legislative offsets and the local match rate may be discouraging participation; many districts now requesting waivers

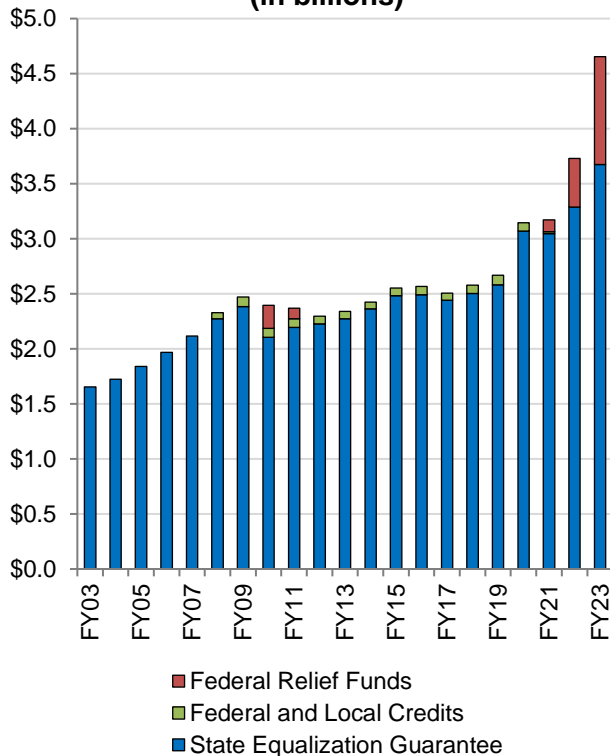
Martinez-Yazzie: Implementation issues

- Lack of participation in evidence-based programs
- Lack of accountability for significant investments



LFC Framework Informs Funding

**Operational Funding for Public Schools
(in billions)**



Source: LFC Files

High Quality Teaching and School Leadership

- Significant salary increases, funding for recruiting, preparation programs, mentorship and ongoing evidence-based professional development

Extended Learning Opportunities

- Increased funding for services to students learning English or from low-income families, K-5 Plus, longer regular school year, afterschool and enrichment programs

Responsive and Appropriate Curriculum

- Culturally and linguistically responsive curriculum, early literacy, interim standards-based assessments, flexibility for instructional materials

Effective Oversight and Accountability

- Performance-based budgets, PED and regional supports have expanded capacity for oversight and assistance



PED Framework for Action

Acting to Meet the Martinez/Yazzie Ruling

Legislature

- **Fund** PreK, ELTP, K-5 Plus, reading interventions
- **Provide** instructional materials, technology, curricula, and transportation
- **Improve** teacher pay, preparation, certification, and working conditions
- **Close formula loopholes** and increase at-risk student funding



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Education Department

- Develop curriculum standards and **monitor student performance**
- Monitor and ensure schools budget funds toward evidence-based programs that **support at-risk students**
- Enforce provisions of the **Bilingual Multicultural, Indian Education and Hispanic Education Acts**



Schools and Districts

- Expend funds for **evidence-based academic and social supports** for at-risk students
- Monitor student outcomes and provide interventions to **close achievement gaps**
- Implement **tribal consultation**, as appropriate
- Provide **professional development** and training for school employees



Questions?

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More LFC Budget and Policy Documents can be found at:
<https://www.nmlegis.gov/Entity/LFC/Default>

