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May 29, 2020

**MEMORANDUM**

**TO:** Ryan Stewart, Ed.L.D., Secretary of Education

**FROM:** Kevin Force, Assistant General Counsel

**RE:** State Legal Opinion: The New Mexico Public Education Aid Program Remains in Effect

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This memorandum is in reply to the U.S. Department of Education (ED) request for a legal opinion on the continuing existence and effectiveness of the state's public education aid program, relative to the state's disparity calculation submission.

As requested by the Impact Aid Program's April 15, 2020 "Report for the Year July 1, 2019-June 30 2020, Under Section 7009(B) of the Elementary and Secondary Education Act of 1965" ("Report"), the State of New Mexico herein provides a legal opinion regarding the status of the State aid program.

Under the Impact Aid regulations, at 34 CFR 222.161(a)(2):

No State aid program may qualify ... if a Court has determined by final order, not under appeal, that the program fails to equalize expenditures for free public education among LEAs within the State or otherwise violates law, and if the Court's order provides that the program is no longer in effect.

The Report notes that the Judgment in the *Martinez* and *Yazzie* consolidated lawsuit (Count of Santa Fe First Judicial District No. D-101-CV-2014-00793, 12/20/18) arguably determined that the State aid program violated the State constitution, but noted that it was not clear from either the July 20, 2018 or the December 20, 2018 decision whether the *Martinez* and *Yazzie* Court held

that the State aid program is no longer in effect. As such, the Report requests a State legal opinion on this matter as part of New Mexico's disparity test submission.

While the *Martinez* and *Yazzie* decisions raised State constitutional concerns about the State's funding system, they did not hold that the State aid program is no longer in effect. The *Martinez* and *Yazzie* case is unrelated to equalization of expenditures among LEAs, and moreover, does not hold that the State aid program, specifically, violates law.

Invoking separation of powers, the Court held the exact mechanisms and policies behind the State's funding formula were matters for the political branches to determine, and not the Court; rather, the Court asked for "reforms to the current system of funding public education" (Final Judgment and Order, p. 4). The Court did provide guidance to the State, however, noting reforms to the current system of public education finance and oversight should address shortcomings by ensuring that every public school in New Mexico has the resources necessary to provide the opportunity for a sufficient education to all at-risk students. The State aid system is still in effect, just modified to address these identified concerns, and enhanced with significant infusions of additional funding, as well as programmatic changes to better direct and manage the newly appropriated and allocated funds.

Thus, it is apparent that the State has not discontinued its current educational aid program. Nor has the State altered it so substantially as to create, in effect, an entirely new one. Rather, the State aid system is still in effect, just modified to address the identified concerns.

As such, New Mexico's State aid program remains in effect and is not disqualified as a matter of 34 CFR 222.161(a)(2).