

MEMORANDUM OF AGREEMENT BETWEEN
THE NEW MEXICO EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT
AND THE NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This Memorandum of Agreement (MOA) is made and entered into between the New Mexico Early Childhood Education and Care Department (ECECD) and the New Mexico Public Education Department (PED).

RECITALS:

WHEREAS, in 2019, New Mexico established the ECECD to develop and administer a comprehensive early childhood care and education system through an aligned continuum of state and private programs, including home visitation, early intervention (Individuals with Disabilities Education Act (IDEA) Part C), child care, Early Head Start, Head Start, early childhood special education, family support, family, infant, toddler program, pre-kindergarten (PreK), and early PreK.

WHEREAS, the transition of the IDEA Part B, Section 619 Coordinator is needed to improve the outcomes of students with disabilities ages three through five in this State by ensuring collaboration between the PED and ECECD in serving children with disabilities and their families.

WHEREAS, Executive Order 2023-062 requires that the PED and the Office of Special Education consult and coordinate with the ECECD to execute a formal written agreement that transfers the IDEA Part B, Section 619 Coordinator (619 Coordinator) to the ECECD, while maintaining compliance with Part B of the IDEA and identifies the administrative roles, responsibilities, personnel, and funding for both the PED Office of Special Education and ECECD.

WHEREAS, the agencies are effecting the transfer of the IDEA Part B, Section 619-grant from PED to ECECD, including funding for purposes of transferring the 619 Coordinator position within the ECECD;

WHEREAS, the U.S. Department of Education's Office of Special Education Programs (OSEP) provides these grants (IDEA Part B, Sections 611 and 619), and the 619 Coordinator oversees the IDEA Part B, Section 619-grant program;

WHEREAS, the federal IDEA requires states to provide a free appropriate public education (FAPE) in the least restrictive environment for children with disabilities ages 3-21. (20 U.S.C. §§ 1400, *et seq.*). Part B of IDEA specifically governs the provision of special education and related services to children ages three through five. (20 U.S.C §§ 1411-1419, 34 CFR §§ 300.100-300.174) Section 619 of Part B provides for additional preschool grants to eligible states, including New Mexico (20 U.S.C 1419; 34 CFR §§ 300.800, *et seq.*). Part B of IDEA requires that this federal grant be issued to PED which is the State educational agency (SEA) in New Mexico.

WHEREAS, participation in quality, inclusive PreK programming, such as New Mexico Early PreK, PreK, Early Head Start and Head Start, has a positive effect on children's intellectual,

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emotional, social, and physical development;

WHEREAS, Early PreK, PreK, Early Head Start and Head Start will advance the State's interests in and commitment to promoting childhood development and school readiness;

WHEREAS, the ECECD is the lead agency for developing and implementing an Early PreK and PreK programs per the State PreK Act and is the lead agency for Head Start State Collaboration; and

WHEREAS, the PED was established to enforce the provisions of the Public School Code and to exercise functions including those associated with education policy, the provision of special education and related services, and the supervision and administration of federal funds received for education;

NOW, THEREFORE, IT IS AGREED as follows:

I. PURPOSE OF THE MEMORANDUM OF AGREEMENT

The purpose of this MOA is to identify and establish the ECECD's and the PED's respective roles and responsibilities in implementing Executive Order 2023-062, specifically regarding the implementation of the IDEA Part B, Section 619 grant and transfer of the Section 619 Coordinator to ECECD and to ensure the ongoing responsibilities of the state under IDEA Part B, Section 619.

II. TERMS OF AGREEMENT

To carry out the purpose of this agreement, the parties agree to the following:

The 619 Coordinator will be hired by and employed by the ECECD upon execution of this agreement by the parties and transfer of funds for the position from the PED to ECECD. The 619 Coordinator hired by ECECD will continue conducting IDEA compliant state-level administration and activities to support children with disabilities ages three through four, and for students age five served by a Local Education Agency (LEA) not yet enrolled in kindergarten.

The 619 Coordinator will ensure compliance with the IDEA Part B, Section 619 grant requirements, will work with the PED and the Office of Special Education to meet those requirements inscribed in federal law, and will work with a person designated by the PED to liaise with the 619 Coordinator hired by ECECD to meet the programmatic and funding requirements of the IDEA Part B, Section 619 grant.

The ECECD will:

1. Fulfill its state statutory obligation to coordinate and align an early childhood education and care system to include child care, Early PreK, PreK, home visitation, Early Head Start, Head Start, early childhood special education, and early intervention and family support

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(Section 9-29-8 (B)(1), NMSA 1978); this coordination and alignment may include monitoring and oversight of Early PreK, PreK, Early Head Start and Head Start special education initiatives and programs as appropriate.

2. Collaborate with the PED in providing special education and related services programmatic support and technical assistance to LEAs to fulfill requirements related to outreach and identification of children with disabilities ages three through four and for children with disabilities age five not yet eligible for kindergarten, official Child Find related activities, and the provision of services to identified children in need of special education and related services.
3. Notify the PED, who retains general supervision responsibilities over the provision of special education and related services, if concerns arise regarding the provision of special education and related services to a child or children in childcare, Early PreK, PreK, Head Start, or Early Head Start programs.
4. Collaborate with PED in its general supervision and programmatic monitoring of the provision of special education and related services to children with disabilities ages three through four, and for children with disabilities age five served by an LEA in Early PreK, PreK programs as well as child care and Head Start programs in which children with disabilities are publicly placed by their LEA.
5. Notify the PED, who retains general supervision responsibilities for Preschool Special Education, if concerns arise regarding the administration and use of IDEA Part B Sections 611 or 619-grants to the extent those grant funds are used for to children with disabilities ages three through four, and for children with disabilities age five not yet eligible for kindergarten.
6. Notify PED of any complaints received by ECECD regarding the provision of special education and related services to a child or children in childcare, Early PreK, PreK, Early Head Start, and Head Start programs within two (2) business days after the receipt of the complaint in order for PED to assist the complainants in accessing the appropriate dispute resolution processes required by IDEA Part B (See Paragraph 7 of PED's responsibilities under this agreement).
7. As referenced above, the ECECD (as a subgrantee), with the 619 Coordinator, will ensure compliance with IDEA Part B, Section 619 federal fund requirements, will work with the PED and the Office of Special Education to meet those requirements inscribed in federal law, and will work with a person designated by the PED to liaise with the 619 Coordinator to meet the programmatic and funding requirements of the grant.
8. Receive from the PED state-level funding from the federal IDEA Part B, Section 619-grant, including funding for purposes of the 619 Coordinator position within the ECECD, in the manner detailed in Attachment A and A-1 of this MOA, and as amended

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in any subsequent fiscal years.

9. Collaborate with the PED in its preparation and submission of New Mexico's State Performance Plan submitted at least every six years, New Mexico's annual IDEA Part B grant application and the IDEA data reports required under IDEA sections 616 (State Performance Plan and Annual Performance Report (SPP/APR)) and 618 to the federal OSEP.
10. Provide technical assistance to community-based and school-based New Mexico PreK and Head Start programs with respect to the requirements of IDEA Part B, and collaborate with the PED to ensure that eligible children served in community-based and school-based New Mexico PreK and Head Start programs receive special education and related services through the LEA.

The PED will:

1. Transfer the 619 Coordinator position to ECECD to be effective when this agreement is signed by all parties.
2. Continue to accept and review LEA subgrant applications and allocate IDEA Part B, Sections 611 and 619 subgrants to LEAs that have been approved to receive such subgrants in accordance with the requirements of the IDEA and state law.
3. Collaborate with the ECECD in providing special education and related services programmatic support and technical assistance to LEAs, Early PreK, and PreK programs, as well as childcare and Head Start programs in which children with disabilities are publicly placed by their LEA.
4. Retain all its oversight responsibilities under federal special education law, including IDEA, and federal and State regulations, and retain oversight for ensuring that FAPE is available to all IDEA eligible students with disabilities ages three through four, and for children with disabilities age five served by an LEA not yet enrolled in kindergarten. Although collaboration with ECECD in programmatic monitoring as described above is permitted; nothing in this agreement shall be interpreted to change or delegate the general supervision authority and responsibilities of the PED.
5. Retain all of its responsibilities to ensure administrative and fiscal compliance with requirements found in IDEA Part B, Sections 611 and 619, the Uniform Grant Guidance, Education Department General Administrative Regulations (EDGAR), and General Education Provisions Act. This shall include responsibilities related to the oversight of LEA compliance. Although collaboration with ECECD in ensuring administrative and fiscal compliance as described above is permitted; nothing in this agreement shall be interpreted to change or delegate authority or responsibilities of the PED.

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6. In collaboration with ECECD, prepare and submit the New Mexico's IDEA Part B grant application to OSEP, retain all fiscal oversight and reporting requirements under the IDEA for special education PreK, and prepare and submit all federal monitoring reports as required with copies to ECECD.
7. Continue to be responsible for the administration of dispute resolution systems that affords parents of students with disabilities an opportunity to engage IDEA Part B procedural safeguards including facilitated individualized education program (IEP) meetings, mediations, state complaints, and due process hearing requests.
8. Transfer to the ECECD state-level funding from the federal IDEA Part B, Section 619-grant including funding for purposes of the 619 Coordinator position within the ECECD, in the manner detailed in Attachment A and A-1 of this MOA, and as amended in any subsequent fiscal years.
9. Remain responsible for preparing and submitting New Mexico's SPP at least every six years, New Mexico's annual IDEA Part B grant application and any IDEA data reports required under IDEA sections 616 SPP/APR and 618 to the federal OSEP as well as data reports to the public. PED will seek input from ECECD when the SPP, application and data reporting relate to the provision of special education and related services to children with disabilities ages three through four, and for children with disabilities age five not yet eligible for kindergarten.
10. Continue to issue Annual Determinations to LEAs in accordance with IDEA and applicable state rules. PED may seek input and information from ECECD in making its Annual Determinations for IDEA indicators related to the provision of special education and related services to children with disabilities ages three through four, and for children with disabilities age five not yet eligible for kindergarten.

III. DATA SHARING UNDER PRE-K ACT

1. According to the New Mexico PreK Act, the ECECD and the PED shall enter into an agreement to share data necessary to report on the Early PreK and PreK programs' performance.
2. The PreK Act requires that PED and ECECD shall share the data necessary to report on the early PreK and PreK programs' performance including the percentage of program participants who enter kindergarten: (a) developmentally prepared for it; (b) needing special services; and (c) proficient in reading and mathematics; and are retained in kindergarten or first, second, or third grade (Section 32A-23-4(B) NMSA 1978). The PED and the ECECD shall share such data from any data source necessary to improve reporting and monitoring or observation of student performance of Early PreK and Kindergarten programs.

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3. The PED shall share, and the designated ECECD staff shall be allowed, staff access and user profiles to the Nova for monitoring and reporting purposes.
4. The PED shall share and the ECECD shall be allowed access to Early Childhood Observation Tool (ECOT) data for children transitioning from the New Mexico PreK program into kindergarten for students served by an LEA for accountability and program improvement process.
5. The PED and the ECECD shall further exchange longitudinal student-level and educator data required to implement federal or state-required education performance accountability measures; exchange data that will allow for research and evaluation regarding federal, state, and local education and training programs at all levels; exchange data that will allow the parties to audit and ensure compliance of those programs with applicable federal or state requirements; include the use of a common student identifier for PreK through graduation and an educator identifier, both of which may include additional identifiers, with the ability to match educator data to student data and educator data to data from schools and other educational agencies. For the purposes of this agreement, the data exchanged by PED will only be inclusive of students age three through five enrolled with LEAs, regardless of actual placement in a Head Start, PreK, or other preschool provider.
6. For purposes of this agreement, nothing herein shall be construed as expanding the current functions performed through ECOT, limited to tracking students in PreK programs served by LEAs including tracking attendance in public schools. The ECOT system will not track attendance for private PreK nor provide a unique identifier (ID) to private PreK students.

IV. CLIENT RECORDS AND CONFIDENTIALITY

PED and ECECD shall comply as participating agencies and educational agencies with the IDEA at 34 C.F.R. Part 300; the Family Educational Rights and Privacy Act of 1974 at 34 C.F.R. Part 99, and all other applicable state and federal statutes and regulations protecting the privacy of any personally identifiable information (PII) and confidentiality of information, including data shared through the platforms referred to in this agreement. PED and ECECD shall protect the confidentiality, privacy, and security of all confidential information and records and, unless otherwise required by law, shall not release any confidential information to any other third party, without the express written authorization of the client, as required by the above federal and state laws, when the record is a client record.

V. DATA SHARING UNDER FEDERAL AUTHORITIES - IDEA & FERPA -- FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

The Parties agree to comply with the provisions of IDEA and FERPA and all related applicable provisions of federal and state law and regulations.

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Under federal privacy law, ECECD is an authorized representative of PED, the IDEA agency under this MOA. IDEA Part B confidentiality regulations in 34 C.F.R. Part 300 apply to the education records of children with disabilities ages three through 21 and incorporate exceptions under FERPA in 34 C.F.R. Part 99. IDEA and FERPA generally prohibit the disclosure of PII contained in early intervention or education records without the consent of the parent for children under the age of 18. Under IDEA Part B in 34 C.F.R. §§ 300.610 through 300.626 and FERPA in 34 C.F.R. Part 99, education records are defined as records directly related to a student and maintained by the school. PED and ECECD are participating agencies that must comply with these privacy provisions.

Both IDEA and FERPA contain specific exceptions to the general rule that PII in early intervention or education records may not be disclosed without prior written parental consent. Under IDEA in 34 C.F.R. § 300.622(a) and the FERPA regulations in 34 C.F.R. § 99.35 (a)(1), PII may be disclosed to organizations in connection with an audit or evaluation of federal or State supported education programs. By serving as an authorized representative under the evaluation exception of PED and reporting data to PED, ECECD accesses the PII in education records using this IDEA and FERPA exception for the purpose of providing evaluation-related information identified in this agreement to help the IDEA Part B, Section 619 preschool program improve its child find, service delivery, and child outcomes purposes.

The parties agree to effect the transfer of data and to ensure that the required confidentiality of the data provided by the other party is always maintained. Such data may, and is expected to, include any data possessed by the other party regularly accessible by staff in the positions listed above. The parties agree to use the other party's data specifically for the purpose of this MOA, to treat other party's data as confidential to the extent permitted by federal and state law, including the Inspection of Public Records Act, and to destroy all the other party's data subject to FERPA when the data is no longer needed for the purpose of this agreement, in accordance with FERPA.

The parties agree to:

1. Not use data shared under this MOA by the other party for another purpose other than what is agreed to in this MOA.
2. Not share or re-disclose PII received under this MOA with any other entity, organization, or individual without the prior written approval of the other party's authorized representative, except as required by law.
3. Ensure that all IDEA and FERPA-protected data is shared only by secure electronic systems or networks.
4. Ensure all copies of data of any type including any modifications or additions to data from any source that contains PII subject to the provisions of this MOA in the

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same manner as the original data.

5. Not use PII released by the other party under terms of this MOA through transfer, assignment, access, or maintenance agreement with any other individual, institution, organization, or entity.
6. Not disclose any data obtained under this MOA in a manner which could identify an individual student to any other individual, institution, organization, or entity, except as required by law.
7. Establish procedures and systems to ensure that all confidential data processed, stored, or transmitted under the provisions of this MOA shall be maintained in a secure manner that prevents further disclosure of the data, including the interception, diversion, duplication, or other unauthorized access to said data, except as required by law.
8. Establish procedures and systems to ensure all PII obtained is kept in secured facilities and media and that access to such records is restricted to the other party's personnel who are authorized to have access to said data for the purposes of conducting the responsibilities specified in this MOA.
9. Report to the other party any incidents that breached or may have breached the security of any PII received from the other party.
10. Destroy or return to the other party any referenced PII received under terms of this MOA within 14 days of the termination of this MOA, and ensure a designee who can later attest to the other party that the party destroyed PII under of this MOA witnesses the destruction of PII by the party.
11. Not maintain data received from the other party beyond the time period reasonably needed to complete the purpose of the request, and in no case beyond the termination date of this MOA.
12. Submit a letter to other party within 15 days of the termination of this agreement, attesting to the destruction of any referenced personally identifiable data received under terms of this agreement.
13. Adhere to any mutually agreed-upon protocols or directives prohibiting disclosure of data, which even though it may not have been provided by the other party in a personally identifiable manner, would still permit public identification of students because of the small cell sizes (i.e., subgroups of fewer than 10 students) of the data; if data is so identified, it shall be used only in a disaggregated or other manner consistent with generally accepted statistical principles that does not permit identification of students.

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14. Maintain records that document and verify the destruction of the data provided to the other party under this MOA.
15. Use the requested data only to perform descriptive statistical analyses with a variety of predictor variables involving student data.

VI. DISPUTE RESOLUTION

1. In the event that a dispute arises between PED and ECECD related to the responsibilities of either agency in this agreement, the Agencies commit to pursue good faith efforts to resolve the dispute voluntarily. The PED and ECECD may seek technical assistance from a variety of sources including OSEP or technical assistance providers funded by OSEP.
2. If a dispute cannot be resolved voluntarily, the agencies will refer the dispute to their respective agency heads (Cabinet Secretaries) who will convene a formal meeting to resolve the dispute between the agencies.
3. If all attempts to resolve the dispute are unsuccessful, the dispute will be referred to the Governor of New Mexico for review. The Governor's decision and order shall be final.
4. Under no circumstances shall a dispute between the agencies result in a delay or denial of the provision of special education and related services to IDEA eligible children with disabilities within the State. The agencies shall ensure that all responsibilities under this agreement and IDEA Part B are met during the dispute resolution process described above.

VII. SCOPE OF MEMORANDUM OF AGREEMENT

This MOA incorporates all the understandings between ECECD and PED, concerning the subject matter hereof, including the attached Attachment A and A-1. No prior MOA, verbal representations, or understandings shall be valid or enforceable unless embodied in this MOA.

VIII. TERM OF MEMORANDUM OF AGREEMENT

This MOA shall be effective beginning with the date of the last signature hereon and until terminated pursuant to termination to Article IX herein by the ECECD or the PED.

IX. TERMINATION OF MEMORANDUM OF AGREEMENT

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This MOA may be terminated by ECECD or PED upon written notice delivered to the other party, not less than fourteen (14) days prior to the intended termination date. Such termination notice shall also be provided to OSEP and shall not negate any obligations already incurred or required to be performed by PED or ECECD prior to the effective date of termination. This MOA shall only terminate in accordance with this Article. The termination of this MOA does not in any way change, alleviate, or supersede the ECECD's and the PED's state and federal statutory and constitutional obligations.

X. AMENDMENTS

PED and ECECD will periodically review this MOA to determine whether any amendments are needed to further clarify roles and responsibilities. This MOA will not be amended without prior consultation with OSEP and only by written instrument signed and executed by all the parties hereto.

XI. FUNDS ACCOUNTABILITY

The Parties agree to fulfill all federal and state requirements in procuring and administering PreK services. The agencies shall maintain an accounting of the funds that are part of this MOA including those funds that are transferred between the agencies from the IDEA Part B, Section 619-grant following execution of this MOA and as amended each fiscal year thereafter.

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IN WITNESS WHEREOF, the parties have caused this Memorandum of Agreement to be executed on the year and date indicated, with the effective date being the most recent signature.

NEW MEXICO EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

DocuSigned by:
By Elizabeth Groginsky Date: 4/3/2024
Elizabeth Groginsky, Cabinet Secretary
for Early Childhood Education

DocuSigned by:
By Shelley Strong Date: 4/3/2024
ECECD Legal Counsel - Certifying
Legal Sufficiency

DocuSigned by:
By Carmel Pacheco Date: 3/29/2024
ECECD Chief Financial Officer

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

DocuSigned by:
By Arsenio Romero Date: 3/28/2024
Arsenio Romero, Ph.D.,
Secretary of Public Education

DocuSigned by:
By Goffrey Tager Date: 3/28/2024
PED Legal Counsel – Certifying
Legal Sufficiency

DocuSigned by:
By Marian Lael Date: 3/28/2024
PED Chief Financial Officer

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Attachment A

1. Beginning in fiscal year 2025 (FY25), the New Mexico Public Education Department (PED) will set aside the State Directed portion of the Individuals with Disabilities Education Act (IDEA) Part B, Section 619 grant for the New Mexico Early Childhood and Care Department (ECECD) for the purpose of reimbursing the ECECD through operating transfer the State Directed programs administered through the ECECD. The PED, however, will withhold \$200,000 of the State Directed portion of the IDEA Part B, Section 619 grant each year for the purpose of funding a contractor to maintain, modify, and enhance the Early Childhood Observation Tool (ECOT) database system that is within the PED.
2. Beginning upon execution of this Memorandum of Agreement (MOA), for FY24, the remaining administrative or indirect cost allotted from the IDEA Part B, Section 619-grant will be set aside the purpose of funding one salaried 619 Coordinator position to be hired by the ECECD as a full-time employee. This will be the case whether or not the total administrative or indirect cost is able to fund the 619 Coordinator position in part or in full in any year during the term of this agreement. Payment will be made through reimbursement by operating transfer.
3. Beginning in FY25, the administrative and indirect cost allocated from the IDEA Part B, Section 619-grant will be set aside for the ECECD for the purpose of funding the one salaried 619 Coordinator position as a full-time employee as referenced in #2 directly above. This will be the case whether or not the total administrative and indirect cost is able to fund the 619 Coordinator position in part or in full in any year during the term of this agreement. Payment will be made through reimbursement by operating transfer.
4. The total funding from the IDEA Part B, Section 619-grant designated for allocations to the local education agencies (LEAs) will not be transferred and will remain with the PED. This funding will continue to flow to LEAs through the PED as the PED continues to have oversight as the recipient of those federal funds over subrecipients both involving program and fiscal performance. As the ECECD is not a recipient or subrecipient of the federal funds, the funds will be withheld for that purpose, however, the parties will work together in carrying out this work.
5. As the amount of the IDEA Part B, Section 619-grant is subject to change each year, the total calculations will be represented as an Attachment A-1 to this agreement each year through a calculation spreadsheet or table. This is for the purpose of representing the amount for that relevant year so the New Mexico Department of Finance and Administration may grant budget authority. Attachment A-1 is incorporated in this MOA and each year will supersede the prior year in terms of representing that year's calculations.
6. As the State Directed portion of the IDEA Part B, Section 619-grant will not begin to be transferred until FY25 (starting July 1, 2024), and the total State Directed portion (of the IDEA Part B Section 619 grant) is currently encumbered through agreements for the remainder of FY24, agreements already encumbering those funds will not be cancelled

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solely because of the execution of this MOA. Those funds are intended to remain through those agreements to continue those State Directed programs for the remainder of FY24, or to proceed otherwise based on the program priorities that the agencies determine appropriate. The 619 Coordinator will be funded upon execution of this MOA within the ECECD, however, the PED will continue to be the agency responsible for carrying out the State Directed programs for FY24 in collaboration with the ECECD. Following the conclusion of FY24, the ECECD will be the agency carrying out the State Directed programs under this MOA. The PED will approve and make payment for acceptable invoices made under this agreement with the 619 Coordinator's input that the services were provided, or the input of the employee within the ECECD filling that role when that position is not filled.

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Attachment A-1

Account	Fund	Dept	PC Bus Unit	Project	Activity	Budget	Available Budget
200	84402	S23000	92400	PEDA5702GY22	ADMIN	87,221.00	87,221.00
200	84402	S24000	92400	PEDA5702GY23	ADMIN	89,117.08	89,117.08
400	84402	S24000	92400	PEDA5702GY23	ADMIN	2,046.00	2,046.00
							\$ 178,384.08