

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

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

Plaintiffs,

v.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO, et al.,

Defendants.

Consolidated with

**WILHELMINA YAZZIE, individually
and as next friend of her minor child,
XAVIER NEZ, et al.,**

Plaintiffs,

v.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO, et al.,

Defendants.

**YAZZIE PLAINTIFFS' EXPEDITED MOTION FOR FURTHER RELIEF
CONCERNING DEFENDANTS' FAILURE TO PROVIDE ESSENTIAL
TECHNOLOGY TO AT-RISK PUBLIC SCHOOL STUDENTS**

The Yazzie Plaintiffs move this Court for an Order granting immediate relief from Defendants' failure to provide all at-risk public school students¹ -- especially in rural districts serving predominantly Native American students -- with essential technology necessary for them to have access to a constitutionally sufficient education through remote learning during the

¹ At-risk students are defined by the Court as children who come from economically disadvantaged homes, English Language Learners, Native Americans, and children with a disability. Decision and Order, July 20, 2018, p. 2.

COVID-19 pandemic. Defendants' failure to urgently implement this Court's prior orders and provide these students with essential technology has caused and continues to cause them to be denied a sufficient education required by the State Constitution and ordered by this Court. These students have already suffered grievous harm from the State's decade-long constitutional violations. Now, the failure to provide them essential tech access during the pandemic has resulted in them falling even farther behind. Therefore, Plaintiffs seek an Order from this Court requiring the State to immediately ensure all at-risk students in New Mexico, especially those living in rural districts serving predominantly Native American students, are provided digital devices and remote access to high-speed internet, along with the funding necessary for the districts to provide tech support sufficient to ensure that these devices and internet access remain stable and reliable.

Plaintiffs have conferred with Defendants and they oppose this motion. Because of the urgency of the relief sought, Plaintiffs request that this motion be decided on an expedited schedule.

I. This Court's Ruling

Over two years ago, on July 20, 2018, this Court issued a comprehensive decision and order, ruling that the State violated the New Mexico Constitution, Art. XII, Sec. 1, by failing to provide a uniform and sufficient system of education for all school-age children. Decision and Order (hereinafter "D&O") at 59. Consequently, the Court enjoined the State to immediately direct resources to the schools to ensure that all at-risk children receive a uniform and sufficient education. D&O, at 74. In entering its injunction, the Court recognized that the students, already caught in an unconstitutional system, would remain there and be irreparably harmed if the State did not comply with its constitutional duty to provide them an education sufficient to make them college and career ready. *Id.* The Court retained jurisdiction of this matter to issue any orders necessary to timely remedy the deficiencies found by the Court and effectuate relief. Final

Judgment and Order at 5.

After the Court’s Decision and Order was issued more than two years ago, the State has still failed to provide adequate resources for technology, as it was understood in a pre-pandemic world.² But now, as technology has become the only entry point to public education, the impact of the State’s failure has become catastrophic, causing many at-risk students, especially those in rural districts serving predominantly Native American students, to effectively be denied all access to public education. This deterioration of educational opportunity is a clear and egregious violation of this Court’s orders and of the uniformity and sufficiency requirements of the Education Clause of the New Mexico Constitution, necessitating further relief from this Court at this time. Therefore, Plaintiffs seek an order from the Court requiring Defendants to immediately remedy the current technological deficiencies facing at-risk students, especially for Native students in rural communities, that effectively bar them from participating in remote learning.

II. Access to Technology is Access to Education in a Remote Learning World

New Mexico is in the grip of a pandemic in which the effects of the inequities found by the Court are even more detrimental now than before the trial in this case and the need to address them even more urgent. All public schools closed to in-person learning in March 2020 and started the

² One of the Court’s significant findings was that the State had failed to provide adequate resources for technology and instructional materials to all at-risk students in all districts. *Id.*, at 26 – 29. This Court found that districts, particularly rural districts, lack access to technology, and that access to computers and related infrastructure is “essential” to a constitutionally sufficient education. *Id.*, at 25, 27. In its Findings of Fact and Conclusions of Law (hereinafter “FFCL”) issued on December 20, 2018, the Court elaborated on this right, further finding that the ability to “utilize technology” is within the “knowledge and skills that students need to enter college or the workforce[.]” FFCL #651. It also found that because it is an essential skill for students, the lack of access to technology compromises at-risk students’ ability to take online standardized tests or classes, and to become educated in computers and technology. *Id.*, at ##2159, 2161. For Native American English learner students in rural locations, insufficient technology reduces their opportunity to interact with the English language, a requirement to gain full academic and social competency. *Id.*, at #325.

current school year under a remote learning model. While some schools briefly transitioned to a hybrid model of remote and in-person learning, most have now returned to remote-learning only, and with the pandemic numbers worsening in the State, in-person learning will not be restored any time soon. Clearly, remote learning that is dependent on substantial technology will continue to be a reality for our public education students for the foreseeable future. The essential requirement for remote learning is sufficient access to the internet and to devices that support school work through the internet. Indeed, it is the gatekeeper to the uniform and sufficient public education system for all children required by the New Mexico Constitution and this Court. While some students can participate in remote learning at home with computers, internet access and telephone services, too many other students are home with none of these educational necessities.

Now, more than ever, it is clear that high-speed internet connection at home is not a luxury -- it is foundational to education equity and the right of all at-risk public school students. To participate in remote learning, a student must have an internet connection sufficient to reliably download and upload assignments, stream instructional videos, and participate in individual and group videoconferencing. The solutions touted by the State, namely mobile hotspots and community Wi-Fi locations, are woefully insufficient. These methods do not provide reliable connectivity, sufficient download/upload speeds, or adequate capacity for remote learning, nor are they accessible for all students who need them. The State must ensure all at-risk students have access to a reliable and stable internet connection with sufficiently fast data transmission speeds to handle the number of concurrent student users in the household without slowing down or being restricted by data usage limits.

“Home access to the internet is necessary for equitable access to educational resources.”
N.M. Pub. Educ. Dep’t, *Internet Connectivity Concerns on Tribal Lands: Guidance Document*,

NMPED website, 2 (April 29, 2020).³ Home connection is the only method that delivers the strength, stability, and reliability needed for remote learning, and that also alleviates issues of accessibility and student safety. But beyond these basic elements of internet connection that make home access necessary, it is also necessary because at-risk students who lack internet at home are put at a documented academic disadvantage. A study conducted by Michigan State University examined how the lack of home internet access impacts student performance. It found that

[s]tudents who do not have access to the Internet from home or are dependent on a cell phone for access perform lower on a range of metrics, including digital skills, homework completion, and grade point average. They are also less likely to intend on completing a college or university degree. A deficit in digital skills compounds many of the inequalities in access and contributes to students performing lower on standardized test scores, such as the SAT, and being less interested in careers related to science, technology, engineering, and math.

Keith N. Hampton et al., *Broadband and Student Performance Gaps*, Quello Center, Michigan State University, 5 (March 3, 2020)⁴. Although extremely topical, this study was released shortly before public schools closed due to the COVID-19 health crisis, and thus does not account for the myriad impacts on at-risk students who still lack home internet access in a remote learning world.

Finally, in addition to access to in-home high-speed internet services, the State's at-risk students obviously also need devices with which they can connect to the internet, download and upload their school assignments, and participate in on-line classes. These devices must be computers, not smart phones or other inadequate devices, and these computers must be fully capable of providing the students with all that they need to participate in remote learning.

³ https://www.iad.state.nm.us/wp-content/uploads/2020/05/Tribal-Guidance-Documents_FINAL_4.29.2020.pdf

⁴ https://quello.msu.edu/wp-content/uploads/2020/03/Broadband_Gap_Quello_Report_MSU.pdf

III. Many of New Mexico’s At-Risk Students Do Not Have Access to Remote Education Because of Lack of Technology

A. Lack of Access to Internet in New Mexico

In New Mexico, an estimated **23 percent** of the population lacks broadband internet service. Leg. Fin. Comm., *Program Evaluation: Funding, Oversight, and Coordination of Broadband Programs*, N.M. Leg. website, 41 (November 1, 2019).⁵ This grim statistic puts New Mexico behind only Mississippi (and tied with Arkansas) for the state with the highest percentage of households without internet service. *Id.* Notably, broadband capacity does not exist at all in significant parts of the state, such that 9 percent of the population does not even have the ability to purchase it. N.M. Indian Affairs Dep’t, *COVID-19: Internet Access and the Impact on Tribal Communities in New Mexico*, 3 (2020).⁶ Due to long-standing racial inequalities, access to the internet (not just high-speed internet), disproportionately impacts Native American individuals, both rural and urban populations. *Id.* at 4. An estimated 80 percent of Native Americans residing on tribal lands do not have internet services. *2016 Federal Communication Commission Broadband Progress Report*, 16 F.C.C. Rcd. 72 (2016).⁷ “... [E]ven in Bernalillo County where access to high-speed internet is greater than in the state overall, ... Native Americans are much less likely than Non-Native Americans to have internet access.” *COVID-19: Internet Access*, *supra*, at 4 (internal citation omitted).

B. Lack of Access to Technology for Students in New Mexico

Given the technological landscape in New Mexico as a whole, it is not surprising that the

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https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Program%20Evaluation%20-%20Funding,%20Oversight,%20and%20Coordination%20of%20Broadband%20Programs.pdf

⁶ <https://www.iad.state.nm.us/wp-content/uploads/2020/06/nabpi-iad-broadband-report-final.pdf>

⁷ <https://www.fcc.gov/document/fcc-releases-2016-broadband-progress-report>

data on students' ability to access the internet and/or a dedicated digital device are just as dismal. Early in the pandemic, 21.8 percent of students did not have access to internet service at home and 31.9 percent of students did not have access to their own devices, such as a computer or smartphone. Leg. Fin. Comm., *Spotlight: Learning Loss Due to COVID-19 Pandemic*, N.M. Leg. website, 9 (June 10, 2020).⁸ In April 2020, the New Mexico Public Education Department identified approximately 23,398 Native American students in public schools (not including Albuquerque Public Schools, Rio Rancho Public Schools, and Santa Fe Public Schools) in need of broadband capabilities and devices. PED Internet Connectivity Concerns on Tribal Lands, *supra*, at 3. A few months later in June, only 1 in 5 districts reported they had a device for every student, and approximately 1 in 4 reported they were unable to provide devices at all. LFC Learning Loss Due to COVID-19, *supra*, at 9. At that time, approximately half of districts also reported they could not provide in-home internet options to their students. *Id.* The districts that were able to provide devices and internet access generally had fewer Title I schools than those that didn't. *Id.*⁹

While it is difficult to identify precisely the current number of at-risk students who still lack access to technology, months into the current school year (2020-2021), it is clear there are many students who remain without a device or high-speed internet. As recently as mid-August, many districts still had not provided internet to all students, and approximately 76,000 students (or 23 percent) continued to lack internet service at home. *Broadband Connectivity at Schools in New Mexico and Prospects for Distance Learning for the 2020-2021 School Year: Hearing Before the*

⁸ https://nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Spotlight%20-%20Learning%20Loss%20Due%20to%20COVID-19%20Pandemic.pdf

⁹ Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA), provides financial assistance to school districts for schools with high numbers or high percentages of children from low-income families. 20 U.S.C. 6301-6339, 6571-6578.

Sci., Tech. and Telecomm. Comm., 2021 Leg., 55th Sess. 17 (N.M. 2021) (statement of Jonathan Chamblin, Executive Director of the Public School Facilities Authority).¹⁰ Even those school districts that have taken measures to provide some internet access to their students, e.g., via cellular hotspots and community Wi-Fi locations, are not actually providing a constitutionally sufficient public education. For example, the strain on hotspot and community Wi-Fi internet service when multiple students are logged on to virtual classes or trying to download school assignments often prevents these students from having a strong enough signal to use the internet at all. COVID-19: Internet Access, *supra*, at 13. In addition, many districts lack sufficient cellular signals to utilize hotspots at all and those that do provide hot spots fail to provide sufficient transportation for their students to get to a community Wi-Fi location. Further, when students can get to a community hotspot, they must sit for many hours in a hot (or cold) vehicle to do their schoolwork on networks that often get overloaded, sputter and fail.

The same insufficiencies exist regarding student access to digital devices. The state has not released updated data on students who still lack a digital device, but as of August 22, 2020 the PED acknowledged there were still students without one. Marissa Armas, *NMPED secretary says schools are facing challenges with online learning*, KOAT Action News (August 22, 2020) (“we know we have to get more devices out in the field”).¹¹

C. Lack of Access to Technology in Rural School Districts Serving At-Risk, Especially Native American, Students

The need for technology is extreme across New Mexico. Students without home internet, or any internet at all, are more likely to be Native American students, students of color and students

¹⁰ <https://nmlegis.gov/handouts/STTC%20081720%20Item%204%20%20PSFA%20--%20Broadband%20Connectivity%20at%20Schools%20and%20%20Prospects%20for%20Distance%20Learnign%20in%202020%20and%202021.pdf>

¹¹ <https://www.koat.com/article/nmped-secretary-says-schools-are-facing-challenges-with-online-learning/33671373#>

from low income families. LFC Learning Loss Due to COVID-19, *supra*, at 9. The need is particularly acute in the school districts serving Native American students. For example:

CUBA (See Exhibit 1, Declaration of Cuba Superintendent Karen Sanchez Griego)

In the Cuba Independent School District (“CISD”) 71% of all students are Native American, over 34% are English Learners, over 96% of Cuba students are low-income, and about 19% are Students with Disabilities.

A majority of students, families, teachers and administrators do not have Internet in their homes or access to broadband Internet and about 85% of all CISD students do not have broadband access. Due to a lack of broadband Internet in this area and/or students’ lack of technology devices to connect to broadband, CISD has lost communication with some of its students.

After schools closed due to COVID-19, 36 out of CISD’s 65 high school seniors, all of whom are Native American, were left without any access to broadband Internet. In order to provide CISD students a remote-learning education for the foreseeable future, all students need access to broadband Internet. Until all students have a way to access broadband Internet and a computer device to use, the remote-online education that CISD provides its students is currently not sufficient.

In order to provide students adequate instructional materials, CISD hired several technicians to upload a week’s worth of school assignments onto thumb drives that students could upload to their laptops. Bus drivers then attempt to deliver them to students at their bus stops and, in some cases, to their homes. The bus drivers then pick up students’ thumb drives and, in some cases, their defective laptops, so that CISD’s technicians can reload them with new content and resolve any technical issues. As a result of this process, CISD has incurred a significant and on-going increase in costs for technology equipment, essential-worker wages, and transportation that CISD lacks the funds to continue to bear for the duration of the summer and into next school year.

CISD also needs additional funding for IT staff and services to address on-going technical difficulties and equipment malfunctions, as well as new funding for lost, stolen, and broken computers.

PEÑASCO (See Exhibit 2, Declaration of Peñasco Superintendent Lisa Hamilton)

In Peñasco, about 12% of all students are Native American from the Pueblo of Picuris; about 5% are English Learners, some of whom are Native American English Learners; 100% are low-income; and, about 18% are Students with Disabilities.

PISD suffers from a lack of Internet infrastructure. The only Internet Service Provider in the area, Kit Carson Internet, is unable to meet the needs of the community. In fact, a senior manager at Verizon suggested to PISD that it would need to invest about \$100,000 into infrastructure – a funding amount that PISD does not have – in order to provide a significant

number of students access to the internet.

Currently, many families, especially multi-student households, within the PISD area do not have sufficient Internet connection to stream class videos simultaneously.

Some PISD students sit or park near the school grounds and other free hotspot locations provided by Kit Carson, in order to connect to the schools' broadband Internet.

Despite PISD's request for support, the PED has been unable to provide any solutions that are sufficient to ensure PISD students have access to conduct remote-online learning.

GRANTS-CIBOLA (See Exhibit 3, Declaration of Grants-Cibola Superintendent Max Perez)

In Grants-Cibola Consolidated School District (GCCS) 45.4% of students are Native American, about 11.3% are English Learners, 100% are low-income, and about 17% are Students with Disabilities.

Many GCCS's Native students, families, teachers and administrators do not have Wi-Fi in their homes or access to broadband Internet. The places where connectivity is most absent includes Laguna Pueblo, Acoma Pueblo, and the areas of the Navajo Nation that overlap with McKinley County. As a result, we have not been able to connect with some Acoma Pueblo, Laguna Pueblo and Navajo students who have no Internet connectivity.

Many of the families and students of GCCS cannot afford the monthly fees for Internet Service Providers (ISP). GCCS needs infrastructure and greater access to Wi-Fi in its local communities. Alternatively, GCCS cannot afford to negotiate any deals with local ISPs right now to pay for the Internet for all GCCS families that need it. The few internet towers in the area are not sufficient for remote learning.

GCCS recently upgraded the broadband service at GCCS schools, so that students and families can connect in the parking lot, but some students live 20 miles away from the school parking lots and will have to drive there or not have access at all.

GCCS also needs additional funding for new Chromebooks for incoming students for the 2021 SY. Until all GCCS students have a way to access broadband Internet, and a computer device to use, GCCS cannot conduct remote learning online for all students. Additionally, the lack of broadband Internet impacts GCCS's ability to train administrative and instructional staff online.

GCCS needs additional Information Technology (IT) staff, given the size of the district and the ongoing need for IT services. As GCCS moves into the 2021 SY, if it is able to get all students a device, the District will need to hire two full-time IT staff, which costs about \$60,000 in salary and benefits for each, which GCCS currently cannot afford.

ZUNI (See Exhibit 4, Declaration of Zuni Superintendent Daniel Benavidez)

In Zuni nearly 100% of all students are Native American, about 31% are English Learners, 100% are low-income, and about 12% are Students with Disabilities.

About 70% of all students and families who reside in Zuni Pueblo do not have Internet or Wi-Fi in their homes or access to broadband. For families who have the Internet at home, many have limited access or cannot afford Internet plans that are sufficient for remote learning. Zuni's students cannot connect to broadband in the school parking lots, because the schools' concrete walls hinder sufficient upload and download speeds.

As a result of school closures and the lack of connectivity in Zuni Pueblo, Zuni is installing equipment into three school buses that may provide up to 20 gigabytes (GBs) of broadband, and will serve as mobile sites for families to connect to the Internet temporarily. Zuni recently purchased hotspots, along with data plans for a minimum of 4 months, to provide to any student and their family that does not have sufficient connectivity. However, this is a temporary solution to a much larger issue, where most Zuni students lack access to adequate Internet infrastructure.

In order to provide Zuni School students a remote-learning education for the foreseeable future, Zuni students need access to sustainable broadband Internet. Until then, Zuni cannot conduct remote learning online.

Zuni also needs additional funding for 2-3 more IT staff to address technical difficulties and equipment malfunctions, as well as new funding for lost, stolen, and broken computers.

JEMEZ VALLEY (See Exhibit 5, Declaration of Jemez Valley Superintendent Susan Passell)

In Jemez Valley Public Schools (JVPS) 70% of students are Native American, approximately 32% are English Language Learners, and 100% are low-income.

A majority of students, families, teachers and administrators who reside in or around JVPS do not have Wi-Fi in their homes or access to broadband Internet sufficient to conduct a full lesson each day -- especially for families with multiple students within the families. Cell-phones do not work for remote learning, however.

Until all JVPS students have a way to access the Internet, they cannot participate in remote learning. In order to provide JVPS students a remote-learning education for the foreseeable future, the district needs additional Chromebooks for all students in grades K–12. JVPS also needs additional funding for IT services to address technical difficulties and to replace or fix lost, stolen, and broken laptops.

COVID-19 has exacerbated the opportunity gaps in an already unfair State public education system in which some districts, families and students have access to broadband Internet and computer devices, while some, like JVPS students and families, do not. Some districts are able to provide remote learning to their students via Wi-Fi while some in other districts, like JVPS, cannot. Some of our students, a majority of whom are Native American

and English Learners, will most likely fall farther behind students in other districts due to our lack of access to necessary broadband infrastructure.

GALLUP-MCKINLEY (See Exhibit 6, Declaration of Gallup-Mckinley Superintendent Mike Hyatt)

Gallup-McKinley Consolidated School District (GMCS) is geographically the largest school district in New Mexico, covering 4,857 square miles. In GMCS approximately 80% of students are Native American, about 30% are English Language Learners, 100% are low income, and approximately 8% are homeless.

A large majority of GMCS families do not have Wi-Fi in their homes or any access to Wi-Fi. This is particularly true for families that live in rural areas or on tribal lands or who live in Gallup and are poor. Homeless students do not have access to Wi-Fi. Some GMCS teachers do not have access to Wi-Fi in their homes. For example, at Navajo Elementary, eight teachers out of 16 did not have Wi-Fi at home.

Until all of our students have a way to access the Internet, GMCS cannot do online remote learning. In fact, GMCS has over 2,000 students who cannot be reached either through Wi-Fi or phone services.

At the start of the pandemic, while some districts were able to purchase computer devices for all of their students using their bonding capacity or donations from wealthy district residents, Gallup McKinley could not do that. GMCS has already maxed out its bonding capacity and is a very poor district.

GMCS students will likely fall further behind than students in other districts due to our lack of appropriate access to computers, technology and necessary internet infrastructure. The State of New Mexico has not provided GMCS any funding to prepare for COVID-19 pandemic needs and the requirements and directives of the Secretary of the NMPED.

IV. The State Has Failed to Comply with the Court's Order Regarding the Constitutional Mandate to Provide a Uniform and Sufficient Education

The COVID-19 pandemic has exacerbated the opportunity gaps in an already unfair State public education system in which some districts, families and students have access to broadband Internet and computer devices, while others do not. Some districts are able to provide remote learning to their students via Wi-Fi while other districts cannot. At-risk students across the state, especially those in rural districts and districts serving Native American and English Learners, are falling farther behind students in other districts due to their lack of access to computers, technology

and necessary broadband infrastructure.

Had the State immediately implemented this Court's rulings, it would already have taken all the steps necessary to ensure that all children have access to the internet and a computer device. To do that, the State needed to put all necessary internet infrastructure in place in those parts of the State where internet access is not available. Likewise, the State needed to assess the cost of providing all at-risk students with a computer device and appropriate money for that purpose. The State did neither of these things and at-risk students' access to technology has only marginally improved since the Court ruled.

The inability to access public education because of the lack of access to technology and the significant disparity in access among the State's 89 school districts are clear violations of this Court's rulings concerning the sufficiency and uniformity requirements of the Education Clause of the New Mexico Constitution. It is unlawful and an educational catastrophe that for the foreseeable future some children are able to continue to access an education from home, while many others are not. The illegal disparities that are required to be eliminated under this Court's rulings will drastically widen as many at-risk students' education will continue to be diminished or effectively abandoned, and the achievement gap between the haves and the have nots will grow even deeper.

This Court has the authority to grant the relief requested in this motion and it specifically retained jurisdiction in order to do so. First, in its Final Judgment and Order the Court ordered, in relevant part, as follows:

1. As set forth in the Decision and Order and Findings of Fact and Conclusions of Law, Defendants are hereby enjoined as follows:
 - a. An injunction is hereby issued enjoining the Defendants to take immediate steps, by no later than April 15, 2019, to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career. 7/20/18 Decision and Order at 74. (FF&CL 3206)

b. It is the State's duty to provide a constitutionally adequate system regardless of whether an injunction is entered. 7/20/18 Decision and Order at 74. (FF&CL 3207)

c. The school children who are now caught in an inadequate system and who will remain there if an injunction is not entered will be irreparably harmed if better programs are not instituted. 7/20/18 Decision and Order at 74. (FF&CL 3208)

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 at 74. (FF&CL 3209)

Final Judgment and Order (Feb. 14, 2019), at pp. 3-5.

To ensure that the State complied with its orders, the Final Judgment and Order also ruled:

6. The Court retains jurisdiction over this matter to issue such orders and take such further actions as may be necessary to timely remedy the determinations set forth in the Decision and Order and Findings of Fact and Conclusions of Law issued by this Court and to effectuate all relief granted in this case.

Id., at pp. 5-6.

Second, the Court has the inherent authority to enforce the injunction it previously issued. *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932) (“A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need”); *United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 249-252 (1968) (when the beneficiary of an injunction seeks relief “to achieve the purposes of the provisions of the decree” (*id.*, at 249), a district court has the authority to “modify the decree so as to achieve the required result with all appropriate expedition” (*id.*, at 252)); *Inmates of Suffolk Cty. Jail v. Kearney*, 573 F.2d 98 (1st Cir. 1978) (affirming district court order amending prior injunction to require additional relief because of the failure to accomplish the results of the original injunction). In *United Shoe Machinery*, the Court addressed the need to modify a prior injunction that had failed to achieve its purpose of ending an illegal monopoly and held it was “the duty of the court to modify the decree so as to assure the complete extirpation of the illegal monopoly. The court's power to do this is clear. See,

e.g., *United States v. Swift & Co.*, supra; *Chrysler Corp. v. United States*, 316 U.S. 556 (1942).” See, also, *Allred v. New Mexico Dep't of Transportation*, 2017-NMCA-019, ¶ 37 (holding that because the permanent Injunction is a judgment, it is enforceable by the district court and not subject to the arbitration clause contained within the Settlement Agreement, citing NMSA 1978, § 39-1-5 (1850-1851) (“It shall be the duty of the judge of any court to cause judgment, sentence or decree of the court to be carried into effect, according to law.”); *Arndt v. Farris*, 633 S.W.2d 497, 499 (Tex. 1982) (“The general rule is that every court having jurisdiction to render a judgment has the inherent power to enforce its judgments”); *In re Warrior Energy Servs. Corp.*, 599 S.W.3d 110, 115 (Tex. App. 2020); *Police Ass'n of New Orleans ex rel. Cannatella v. New Orleans*, 100 F.3d 1159, 1168 (5th Cir. 1996) (“It is settled that, to the extent a decree is drafted to deal with events in the future, the court must remain continually willing to modify the order to ensure that it accomplishes its intended result.” (citing *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 252 (1968)); *Texas v. Calvin*, No. 4:14-CV-00654-O, 2020 WL 3485582, at *2 (N.D. Tex. Mar. 3, 2020).

As set forth above, the State’s failure to promptly remedy the Court’s findings concerning the lack of sufficient technology afforded to at-risk students has had a drastic impact on schools, including Plaintiffs Districts, since the onset of the Covid-19 pandemic. The remedies requested in this motion are focused on the Court’s findings and on the evidence of the substantial breakdown in educational opportunities for at-risk students in rural districts and those serving Native children. They are tailored to achieve the purpose of the Court’s initial injunction and to immediately remedy the loss of education for at-risk students. They adhere to “the Court’s authority to prescribe ‘more definitive[] means to achieve’ the ‘principal objects’ the initial remedies were unsuccessful in achieving.” *Texas v. Calvin*, at *2, quoting *United Shoe Mach. Corp.*, 391 U.S. at 251–52. Finally, they are essential to compliance with Native students’ constitutional rights as specifically

codified in the IEA (“provide for the study, development and implementation of educational systems that positively affect the educational success of American Indian students, see NMSA 1978, § 22-23A-2).”

CONCLUSION and RELIEF

The State’s failure to provide effective access to technology and the means for remote learning has caused at-risk students in New Mexico substantial harm which will continue until this grievous situation has been fully remedied.

THEREFORE, Plaintiffs respectfully request that this Court decide this motion on an expedited basis and order Defendants to implement the following relief:

Devices

1. Immediately determine which at-risk students and their teachers do not have a dedicated digital device and immediately provide one or ensure that one is provided to each of these students and their teachers.

Internet Connectivity

2. Immediately determine which at-risk students do not have access to high-speed internet that will allow them to work from home and immediately provide them with access to a high-speed service sufficient to reliably download and upload assignments, stream instructional videos, and participate in individual and group videoconferencing. This remedy should include such steps as:
 - A. For at-risk students who currently have access to in-home high-speed internet but who lack the financial ability to make this connection, immediately provide vouchers for these students and their teachers to connect to in-home high speed internet service sufficient for all students in the household for at least as long as they are learning remotely. These vouchers must provide sufficient funding to pay for the installation fee, equipment rental, monthly service charge for the high-speed internet service, and any other costs associated with high-speed internet service.
 - B. In the short term until the relief required by paragraph 4, below, has been implemented, provide all rural school districts serving Native American students with wireless broadband service (such as LTE service of 2.5 or 3.25 gigahertz), external antennae, connections to homes, and such other services as are necessary to ensure that the school district’s Wi-Fi

signal reaches students and their teachers who do not otherwise have access to the internet.

C. Provide each at-risk student with in-home high-speed internet service through high-speed fiber-optic cable or other comparable means.

IT Support

3. Immediately provide school districts with funding for sufficient qualified IT staff to support and maintain digital devices, cellular hotspots, and community Wi-Fi locations, and other remote learning needs.

Training

4. Immediately provide teachers serving at-risk students with sufficient professional development to provide high quality remote learning, including but not limited to training about how to use digital devices, distance learning platforms, and other software or applications required under a remote learning model, and provide these teachers on-going technical support. This relief may be implemented by Defendants by providing sufficient funding to the school districts to provide this professional development and ensuring that the funds are spent for this purpose.
5. Immediately and on an on-going basis provide training that is language-appropriate for at-risk students' parents/caregivers on how to use the digital device and distance learning platforms in person or by phone, email, or remote access assistance, as required by public health directives. This relief may be implemented by Defendants by providing sufficient funding to the school districts to provide this professional development and ensuring that the funds are spent for this purpose.

Funding

6. Conduct on-going assessments of the increased financial need of school districts for remote learning during the pandemic and allocate additional funding for expenses that include, but are not limited to, transportation costs of providing school bus-based Wi-Fi, transporting devices or printed materials between students and teachers, internet connection costs, or other special remote learning expenses.

Tribal Consultation

7. In implementing the preceding requirements and as required under the New Mexico Indian Education Act, work in consultation with tribal governments to ensure that tribal sovereignty is respected and that Defendants have the advice of tribal government as to how best to effectuate this relief for at-risk students within their jurisdiction.

Planning and Reporting

8. Within 30 days of the issuance of an Order from this Court granting the preceding relief, provide to the Court and Plaintiffs for their review and approval a written plan that includes action steps, staffing, funding and a timeline of how Defendants will implement this relief, and thereafter provide quarterly reports to the Court and Plaintiffs on Defendants' progress in carrying out this plan.

9. Such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ DANIEL YOHALEM

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Attorneys for *Yazzie* Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2020, a true copy of this motion was e-filed and served through the Court's e-filing system upon counsel of record.

/s/ Daniel Yohalem
Daniel Yohalem

EXHIBIT 1
YAZZIE TECH MOTION

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

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

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO, et al.,

Defendants.

Consolidated with

**WILHELMINA YAZZIE, individually
and as next friend of her minor child,
XAVIER NEZ, et al.,**

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO, et al.,

Defendants.

DECLARATION OF CUBA SUPERINTENDENT KAREN SANCHEZ GRIEGO

Declarant, Dr. KAREN SANCHEZ GRIEGO (Ed.D.), deposes and states as follows:

1. My name is Karen Sanchez Griego and I reside in Sandoval County, New Mexico. I am over 18 years of age and am competent to make this Declaration
2. I am the Superintendent of Cuba Independent School District (“CISD”), which is one of the *Yazzie* Plaintiffs.
3. The following is true to the best of my knowledge about the 2020 School Year.

4. On March 12, 2020, the Governor of New Mexico ordered the closure of all public schools statewide. We have since been directed by the Governor to keep all of our schools closed for the remainder of this school year and the summer.
5. The New Mexico Public Education Department (“PED”) has directed us to conduct remote, on-line learning for the remainder of the school year.
6. CISD serves approximately 570 students. A majority (71%) of all students are Native American; over 34% are English Learners – most of whom are Native American English Learners. Over 96% of JVPS students are low-income (as defined by the Free and Reduced Lunch standard); and about 19% are Students with Disabilities.
7. There are 3 schools in CISD: 1 high school, 1 middle school, and 1 elementary school.
8. Currently, a majority of students, families, teachers and administrators who reside in Cuba do not have Internet in their homes or access to broadband Internet. In fact, about 70% of all CISD students do not have broadband access.
9. Due to a lack of broadband Internet in this area and/or students’ lack of technology devices to connect to broadband – *e.g.*, a smart phone, modem, hot spots, and/or computers – we have lost communication with some of our students.
10. Some students, who reside in the town of Cuba, are often found seated or parked in CISD school grounds in order to connect to the schools’ broadband Internet.
11. CISD recently purchased and installed WiFi hotspots near three Navajo Chapter Houses, which are meant to provide Internet connectivity for each Chapter House up to 30 feet distance, so that families can access Internet from their vehicles if they park or if they sit on the ground close enough to the power station. However, not all Navajo students live close enough to a Chapter House to access the Internet via a power station.

12. In fact, after schools closed due to COVID-19, 36 high school seniors (of 65 total), all of whom are Native American, were left without any access to broadband Internet.

13. Until all of our students have a way to access broadband Internet and a computer device to use, we cannot conduct remote learning online. Additionally, we are struggling to train our administrative and instructional staff online.

14. In mid-March, we purchased laptops for all students. Given the sudden closure of schools and the lack of broadband access, however, we also had to purchase smart phones for teachers to connect with students to provide daily instruction. Teachers have had to administer tests over the phone, while students have had to use smart phones to text their teachers photos of their completed assignments. And, because some families cannot afford phone plans that allow for regular instructional learning, CISD has opted to pay those phones bills through the phone companies directly. These unanticipated and unreimbursed costs have added a significant new expense to the district's budget that cannot be sustained.

15. In order to provide students adequate instructional materials, we hired several technicians to upload a week's worth of school assignments onto thumb drives that students could upload to their laptops. Our bus drivers then deliver them to students at their bus stops and, in some cases, to their homes. The bus drivers then pick up students' thumb drives and, in some cases, their defective laptops, so that our technicians can reload them with new content and resolve any technical issues. As a result of this process, we have incurred a significant and regular increase in costs for technology equipment, essential-worker wages, and transportation. We cannot continue to meet these costs for the duration of the summer and into next school year.

16. Our bus drivers also deliver breakfast and lunch meals daily to students at their bus routes. In some cases, though, where students do not live near a bus route or lack sufficient transportation, our bus drivers deliver the meals to students' homes. After the school year ended on May 19th, we will not be able to administer the summer food program, which provides meals for students daily, because CISD lacks sufficient transportation funds to do so through the summer.

17. In order to provide CISD students a remote-learning education for the foreseeable future, our students need access to broadband Internet. We need to increase the number of hotspots, especially in the most rurally isolated areas of Cuba, which CISD cannot provide or afford at this time.

18. We will also need additional funding for IT staff and services to help us with technical difficulties and equipment malfunctions, as well as new funding for lost, stolen, and broken computers.

19. Due to a lack of broadband connectivity, CISD staff and students also lack continuous learning materials. It is difficult for instructional staff to keep up with lesson plans, given the struggles of remote learning via phones.

20. COVID-19 has exacerbated the opportunity gaps in an already unfair State public education system in which some districts, families and students have access to broadband Internet, while others, like CISD and its students and families, do not. Some districts are able to provide remote learning to their students via Internet while other districts, like CISD, cannot. Our students, a majority of whom are Native American and English Learners, will most likely fall farther behind students in other districts due to our lack of access to computers, technology and necessary broadband infrastructure.

I declare under penalty of perjury under the law of New Mexico that the foregoing is true and correct to the best of my information and belief.

05/29/2020

Date

/s/ Karen Sanchez Griego

Karen Sanchez Griego, Ed. D.

Superintendent of Cuba Independent Schools

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

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

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO, et al.,

Defendants.

Consolidated with

**WILHELMINA YAZZIE, individually
and as next friend of her minor child,
XAVIER NEZ, et al.,**

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO, et al.,

Defendants.

DECLARATION OF PEÑASCO SUPERINTENDENT LISA HAMILTON

Declarant, Lisa Hamilton (Ed.D.), deposes and states as follows:

1. My name is Lisa Hamilton and I reside in Taos County, New Mexico. I am over 18 years of age and am competent to make this Declaration
2. I am the Superintendent of Peñasco Independent School District (“PISD”), which is a Focus District in this litigation.
3. The following is true to the best of my knowledge about the 2020 and 2021 School Years.

4. On March 12, 2020, the Governor of New Mexico ordered the closure of all public schools statewide. Currently, all students are expected to attend school via remote online learning.
5. PISD serves approximately 350 students. A significant percentage (12%) of all students are Native American from the Pueblo of Picuris; about 5% are English Learners – some of whom are Native American English Learners. Over 100% of PISD students are low-income (as defined by the Free and Reduced Lunch standard); and about 18% are Students with Disabilities.
6. There are 3 schools in PISD: 1 high school, 1 middle school, and 1 elementary school.
7. PISD suffers from a lack of Internet infrastructure. The only Internet Service Provider in the area, Kit Carson Internet, is unable to meet the needs of our community.
8. Currently, many families, especially multi-student households, within the PISD area do not have sufficient Internet connection to stream class videos simultaneously. In fact, many families pay for cellular data but still cannot connect to the Internet at home or even make a call or send a text message, and some families cannot afford monthly Internet service. And, due to a lack of internet service provider options, other families have had to enter 2-year contracts for satellite Internet, which is costly and still does not provide consistent or sufficient service and data for remote online learning.
9. According to a recent propagation study of the PISD area, conducted by Verizon Communications Inc., only one out of 40 families in the area have sufficient cellular data to connect to the Internet via a hotspot device.
10. Some PISD students sit or park near the school grounds and other free hotspot locations provided by Kit Carson, in order to connect to the schools' broadband Internet.

11. A senior manager at Verizon stated recently that Verizon has no plans to make infrastructure investments in the Peñasco area, due to a lack of economic viability. In fact, Verizon suggested that PISD would need to invest \$100,000 into developing the infrastructure – a funding amount that PISD does not have – in order to provide a significant number of students access to internet.

12. In response to our request for sufficient technology support and resources, the PED:

- i. Referred us to the Information Technology Disaster Resource Center (ITDRC), an organization that helps communities install and connect hotspots within public facilities that already have an Internet connection. Most buildings in the PISD community, however, are not connected to the Internet, making it impossible to install hotspots for students to be able to access the Internet sufficiently in their homes.
- ii. Suggested that PISD explore the Gen-Yes Corporation, which provides a Student Technology Leadership program that teaches students to build websites and conduct very basic IT maintenance. PISD students and staff, however, require urgent solutions to address the ongoing issue of not having Internet access.
- iii. Stated that it is unable to offer a sufficient solution at this time.
- iv. Recently allocated less than \$15,000 in Governor’s Emergency Education Relief (GEER) Funds to PISD, an amount that is woefully insufficient to help families cover both Internet service and installation costs.

13. Due to a lack of sufficient funding, PISD cannot rely on sustainable Internet connectivity, in order to consistently conduct remote-online education including virtual instruction via Canvas, Zoom or Google Meets.

14. Until all of our students have a way to access broadband Internet, we cannot conduct remote learning online sufficient to serve all students.
15. In order to provide PISD students a remote-learning education for the foreseeable future, PISD requires sufficient, additional funding to provide our students access to sustainable broadband Internet. We need to increase the number of hotspots, especially in the most rurally isolated areas of Peñasco, which PISD cannot provide or afford at this time.
16. We will also need additional funding for IT services to help us with technical difficulties and equipment malfunctions, as well as new funding for lost, stolen, and broken computers.
17. COVID-19 has exacerbated the opportunity gaps in an already unfair State public education system in which some districts, families and students have access to broadband Internet, while others, like PISD and its students and families, do not. Some districts are able to provide remote learning to their students via Internet while other districts, like PISD, cannot. Our students, a significant percentage of whom are Native American, will most likely fall farther behind students in other districts due to our lack of access to technology and necessary broadband infrastructure.

I declare under penalty of perjury under the law of New Mexico that the foregoing is true and correct to the best of my information and belief.

11/13/2020

Date

/s/ Lisa Hamilton

Lisa Hamilton, Ed. D.

Superintendent of Peñasco Independent Schools

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

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

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO, et al.,

Defendants.

Consolidated with

**WILHELMINA YAZZIE, individually
and as next friend of her minor child,
XAVIER NEZ, et al.,**

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO, et al.,

Defendants.

DECLARATION OF GRANTS-CIBOLA SUPERINTENDENT MAX PEREZ

Declarant, MAX PEREZ, deposes and states as follows:

1. My name is Max Perez and I reside in Cibola County, New Mexico. I am over 18 years of age and am competent to make this Declaration.
2. I am the Superintendent of Grants Cibola County Schools (“GCCS”), a focus district in this lawsuit.
3. The following is true to the best of my knowledge about the 2020 School Year.

4. On March 12, 2020, the Governor of New Mexico ordered the closure of all public schools statewide. We have since been directed by the Governor to keep all of our schools closed for the remainder of this school year and the summer.
5. The New Mexico Public Education Department (“PED”) has directed us to conduct remote, on-line learning for the remainder of the school year.
6. GCCS serves approximately 3,400 students. A majority (45.4%) of all students are Native American who live in the Pueblos of Laguna and Acoma, and the Navajo Nation; about 11.3% are English Learners – most are Native American English Learners. 100% of GCCS students are low-income (as defined by the Free and Reduced Lunch standard); and about 17% are Students with Disabilities.
7. GCCS has 11 schools: 2 high schools, 2 middle schools, and 7 elementary schools.
8. Currently, the majority of GCCS’s Native students, families, teachers and administrators do not have Wi-Fi in their homes or access to broadband Internet. The places where connectivity is most absent are Laguna Pueblo, Acoma Pueblo, and the areas of the Navajo Nation that overlap with McKinley County.
9. As a result, we lost connection with some Acoma Pueblo students who have no Internet connectivity. We have reached out to the Acoma’s Tribal Education Department in an effort to connect with those students.
10. Many of the families and students of GCCS cannot afford the monthly fees for Internet Service Providers (ISP), in order for ISPs to want to create infrastructure and greater access to Wi-Fi in our communities. Alternatively, we cannot afford to negotiate any deals with local ISPs right now to pay for Internet for all GCCS families that need it.

11. In order to provide our students with access to education online, we are determining the costs of installing Internet towers for families and purchasing the necessary connectivity devices, such as modems, which will be a recurring cost. While Internet towers, which provide Internet access to homes through a line of sight, are not sufficient for remote learning, it is one of the few options we have available to us. Right now, however, our entire budget is allocated or spent and we cannot afford those costs.
12. Three weeks ago, we upgraded our broadband service at GCCS schools, so that students and families can connect in the parking lot. Some students, however, live 20 miles away from the school parking lots and will have to drive or not have access at all.
13. We also hired consultants and outside contractors to hardwire schools, and paid for more modems and technology equipment, which took a toll on our tech funds and operational funds.
14. We ordered 1,299 Chromebooks for all students in grades 6-12. However, given the recent surge in demand for Chromebooks, there is no way to know when we will receive our order. We also will need to receive additional funding for new Chromebooks for incoming students for the 2021 SY.
15. In the meantime, we have provided most students old laptops and Chromebooks from our schools' computer carts for them to take home. Most families were able to rent out those computers but there are still some families, including multi-student families, that need a computer device. On the last day of school, May 19th, students are required to return the computers they checked out. We do not have enough Chromebooks to replace those that were lost, stolen or broken. Unfortunately, those families may not have any computer or technology devices to use for the summer.

16. For the 2021 SY, we will only have enough Chromebook devices for students in grades 6-12. GCCS will need funding for devices for students in grades PREK-5, in order for our instructional staff to maintain connection and provide educational learning for those students.
17. Until all of our students have a way to access broadband Internet, and a computer device to use, we cannot conduct remote learning online. Additionally, the lack of broadband Internet impacts our ability to train our administrative and instructional staff online.
18. We also require additional Information Technology (IT) staff, given the size of the district and the ongoing need for IT services. As we move into the 2021 SY, if we are able to get all students a device, we will need to hire two full-time IT staff, which costs about \$60,000 in salary and benefits for each, which we currently cannot afford.
19. COVID-19 has exacerbated the opportunity gaps in an already unfair State public education system in which some districts, families and students have access to broadband Wi-Fi, while others, like GCCS and its students and families do not. Some districts are able to provide remote learning to their students via Wi-Fi while other districts, like GCCS, cannot. Our students, a majority of whom are Native American and English Learners, will most likely fall farther behind students in other districts due to our lack of access to computers, technology and necessary broadband infrastructure.

I declare under penalty of perjury under the law of New Mexico that the foregoing is true and correct to the best of my information and belief.

06/02/2020
Date

/s/ Max Perez
Max Perez
Superintendent of Grants Cibola County Schools

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

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

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO, et al.,

Defendants.

Consolidated with

WILHELMINA YAZZIE, individually
and as next friend of her minor child,
XAVIER NEZ, et al.,

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO, et al.,

Defendants.

DECLARATION OF ZUNI SUPERINTENDENT DANIEL BENAVIDEZ

Declarant, DANIEL BENAVIDEZ, deposes and states as follows:

1. My name is Daniel Benavidez and I reside in McKinley County, New Mexico. I am the Superintendent of Zuni Public Schools (“Zuni Schools”), a focus district in this lawsuit.
2. I am over 18 years of age and am competent to make this Declaration.
3. The following is true to the best of my knowledge about the 2020 School Year.

4. On March 12, 2020, the Governor of New Mexico ordered the closure of all public schools statewide. We have since been directed by the Governor to keep all of our schools closed for the remainder of this school year and the summer.
5. The New Mexico Public Education Department (“PED”) has directed us to conduct remote, on-line learning for the remainder of the school year.
6. Zuni Schools, located in Zuni Pueblo, serves approximately 1,378 students. Nearly 100% of our students are Native American, most of whom reside in Zuni Pueblo. About 31% are English Learners – all of whom are Native American English Learners. 100% of Zuni students are low-income (as defined by the Free and Reduced Lunch standard); and about 12% are Students with Disabilities.
7. There are 4 schools in Zuni: 2 high schools, 1 middle school, and 1 elementary school.
8. Century Link, the only Internet Service Provider (ISP) in the area, promised to provide our schools a gigabyte (1GB) of Internet service. However, we have not received that upgrade and, as a result, our schools still lack sufficient Internet connectivity.
9. Our students cannot even connect to broadband in the school parking lots, because the schools’ concrete walls hinder sufficient upload and download speeds.
10. About 70% of all students and families who reside in Zuni Pueblo do not have Internet or Wi-Fi in their homes or access to broadband. For families who have Internet at home, many have limited access or cannot afford Internet plans that are sufficient for remote learning.
11. We had hoped to purchase Kajeet Devices, which serve as hot spots, for all of our students. However, due to a high demand for hotspots and Kajeet devices, Zuni schools could not purchase those devices.

12. As a result of school closures and the lack of connectivity in Zuni Pueblo, we are installing equipment into three school buses that may provide up to 20 gigabytes (GBs) of broadband, and will serve as mobile sites for families to connect to the Internet temporarily.
13. Currently, a majority of our students (70%) can only connect to Internet via smart phone, which is not a sufficient means for remote learning online.
14. Due to some students' lack of any technology devices to connect to broadband – *e.g.*, a smart phone, modem, hot spots, and/or computers – we have lost communication with some of our students.
15. Amidst school closures, some students were given Chromebooks – some were pulled from storage and must be replaced soon while others we purchased new – to take home.
16. These unanticipated and unreimbursed costs have added a significant new expense to the district's budget that cannot be sustained.
17. In order to provide Zuni School students a remote-learning education for the foreseeable future, our students need access to both a computer device and broadband Internet. Until then, we cannot conduct remote learning online. Approximately, 68% of Zuni students do not have either an appropriate computer device or Internet access and therefore cannot participate in remote learning.
18. We will also need additional funding for 2-3 more IT staff to help us with technical difficulties and equipment malfunctions, as well as new funding for lost, stolen, and broken computers.
19. COVID-19 has exacerbated the opportunity gaps in an already unfair State public education system in which some districts, families and students have access to broadband Internet, while others, like Zuni Schools and its students and families, do not. Some districts

are able to provide remote learning to their students while other districts, like Zuni Schools, cannot. Our students, nearly all of whom are Native American and English Learners, will most likely fall farther behind students in other districts due to our lack of access to computers, technology and necessary broadband infrastructure.

I declare under penalty of perjury under the law of New Mexico that the foregoing is true and correct to the best of my information and belief.

05/29/2020
Date

/s/ Daniel P. Benavidez
Daniel P. Benavidez
Superintendent of Zuni Public Schools

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

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

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO, et al.,

Defendants.

Consolidated with

**WILHELMINA YAZZIE, individually
and as next friend of her minor child,
XAVIER NEZ, et al.,**

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO, et al.,

Defendants.

DECLARATION OF JEMEZ VALLEY SUPERINTENDENT SUSAN PASSELL

Declarant, SUSAN PASSELL, deposes and states as follows:

1. My name is Susan Passell and I reside in Sandoval County, New Mexico
2. I am over 18 years of age and am competent to make this Declaration. Everything contained in this Declaration is true to the best of my knowledge.
3. I am the Superintendent of Jemez Valley Public Schools (“JVPS”), one of the Focus Districts in this lawsuit.

4. On March 12, 2020, the Governor of New Mexico ordered the closure of all public schools statewide. We have since been directed by the Governor to keep all of our schools closed for the remainder of this school year and the summer.
5. The New Mexico Public Education Department (“PED”) has directed us to conduct remote, on-line learning for the remainder of the school year.
6. JVPS, located within the boundaries of the Jemez Pueblo, serves approximately 367 students. A majority (70%) of students are Native American from the Pueblos of Jemez and Zia. Approximately 32% of our students are English Language Learners; most are Native American English Learners. 100% of JVPS students are low-income (as defined by the Free and Reduced Lunch Community Eligibility Program standard).
7. There are 4 schools in JVPS: 1 high school, 1 middle school, and 1 elementary school, as well as 1 charter school. All schools are located within the tribal lands of Jemez Pueblo.
8. Currently, a majority of students, families, teachers and administrators who reside in or around JVPS do not have Wi-Fi in their homes or access to broadband Internet sufficient to download a single video-recorded lesson. In fact, according to their Education Department, only about 10% of all students who reside in Jemez Pueblo have such access.
9. Due to the lack of broadband Internet service in this area and/or the lack of technology devices – *e.g.*, a smart phone, modem, and/or computer that is needed for broadband connection – we have lost communication with about 25% of our students.

For the students whose parents came to pick them up from school we were able to provide them iPads to take home to use for remote learning. We also gave iPads to the Pueblos for them to disseminate to our students who reside there. However, these classroom iPads do not come equipped with adapters to allow students to charge the units or utilize keyboards and

thumb drives. Students need keyboards to complete their work and those without internet access need weeks' worth of academic content loaded onto thumb drives. Therefore, we needed to purchase iPad chargers, keyboards, and USB drives. While some of these items were purchased, we were not able to get the thumb drive adaptors that students needed prior to the end of the school year. We utilized funding which was necessary to update classroom computers which are 8-10 years old.

10. Some students who did not receive an iPad are using their cellphones to try to connect with us online, while others have no way to connect at all. Cellphones do not work for remote learning, however.

11. Teachers find it difficult to find free instructional materials and tools online that are consistent. Currently, JVPS students are not provided consistent instructional materials.

12. Until all of our students have a way to access the Internet, and have a computer device to use, we cannot conduct remote learning equitably. Additionally, we are struggling to train our teachers and parents online.

13. In order to provide JVPS students a remote-learning education for the foreseeable future, we will need laptops for all students in grades 3–12. We will also need additional funding for IT services to help us with technical difficulties, and new funding for lost, stolen, and broken laptops.

14. Additionally, JVPS recently passed an \$840,000 bond in order to generate funding to replace old iPads, computers, projectors and other technology equipment in the schools, because the computers and equipment in our computer labs are 8-10 years old and need to be replaced. However, we allocated that tech bond funding to help provide students' a limited amount of technology for use at home during this COVID-19 crisis.

15. COVID-19 has exacerbated the opportunity gaps in an already unfair State public education system in which some districts, families and students have access to broadband Internet and computer devices, while others, like many JVPS and its students and families, do not. Some districts are able to provide remote learning to their students via Wi-Fi while other districts, like JVPS, cannot. Our students, a majority of whom are Native American and English Learners, will most likely fall farther behind students in other districts due to our lack of access to computers, technology and necessary broadband infrastructure.

I declare under penalty of perjury under the law of New Mexico that the foregoing is true and correct to the best of my information and belief.

June 2, 2020

/s/ Dr. Susan Passell

Date

Susan Passell
Superintendent of Jemez Valley Public Schools

EXHIBIT 6
YAZZIE TECH MOTION

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

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

Plaintiffs,

vs.

No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO, et al.,

Defendants.

Consolidated with

**WILHELMINA YAZZIE, individually
and as next friend of her minor child,
XAVIER NEZ, et al.,**

Plaintiffs,

vs.

No. D-101-CV-2014-02224

THE STATE OF NEW MEXICO, et al.,

Defendants.

DECLARATION OF GALLUP-MCKINLEY SUPERINTENDENT MIKE HYATT

Declarant, Mike Hyatt, deposes and states as follows:

1. My name is Mike Hyatt. I am over 18 years of age, and I reside in McKinley County, New Mexico. I am competent to make this Declaration.
2. I am the Superintendent of Gallup-McKinley County Schools ("GMCS"), one of the *Yazzie* Plaintiff Districts in this lawsuit.

3. On March 12, 2020, following the governor's order, we closed all of our schools. We have since been directed by the governor to keep all of our schools closed for the remainder of this school year and the summer. The PED has directed us to switch to remote, online learning for the remainder of the school year.
4. GMCS is geographically the largest school district in New Mexico covering 4,857 square miles.
5. GMCS has over 11,000 students. Approximately 80% of our students are Native American, and the District includes areas on the Zuni Nation and the Navajo Nation. Approximately 30% of our students are English Language Learners, and approximately 8% of our students are homeless. 100% of our students are eligible for free or reduced price lunch.
6. There are 32 schools in the district: 9 high schools, 7 middle schools, and 16 elementary schools. Of the 9 high schools, 6 are in rural communities and/or on tribal lands. Out of the 7 middle schools, 4 are in rural communities and /or on tribal lands. And out of the 16 elementary schools, 6 are in rural communities and/or are on tribal lands.
7. A large majority of our families do not have Internet or wi-fi in their homes or any access to the Internet. This is particularly true for families that live in rural areas or on tribal lands. It is also true for families that live in Gallup and are poor. Our homeless students do not have access to the Internet.
8. Some of our teachers do not have access to the Internet in their homes. For example, at Navajo Elementary, eight teachers out of 16 did not have wi-fi at home.

9. Right now, there are over 2,000 students that we cannot reach with modern technology, either through Internet or phone services. Many of our families change their phone numbers frequently, and other families do not have either phone or wi-fi service in their homes.

10. Because so many of our students do not have computers at home, or access to wi-fi, and because some of our teachers do not have access to wi-fi in their homes, in order to treat all of our students fairly and equitably, we are doing all of our remote learning by mailing paper packets to our students through the U.S Postal Service. We have included in the packages addressed, postage pre-paid envelopes, so that the students can mail their work back to us. The due date for the return packages was May 15, 2020.

11. The NMPED has been pushing us to do online remote learning. However, that would create inequitable opportunities for our students since so many do not have access to the Internet. Until all of our students have a way to access the Internet, and have a computer device to use, we cannot do remote learning via the Internet.

12. Obviously, snail-mailing home packets is not a sustainable or sufficient education for our students.

13. While other districts have been able to purchase computer devices for all of their students using their bonding capacity, or donations from wealthy district residents, Gallup McKinley cannot do that. For example, other districts used their 2 mil tax dollars, Educational Tech bonds (ETBs), wind farm bonds PILTS or Space Port bonds PILTS – all ways of producing money outside of the funding formula -- to meet the technology needs of their districts. Some other districts have enough money to put it in interest-bearing accounts and use that money to meet the technology needs of their district.

14. GMCS has maxed out our bonding capacity, and we are a very poor district. Because so much of the land in our district is tribal land, it does not even closely produce a comparable amount property tax for GMCS to most other school districts. We were supposed to get Impact Aid money from the federal government to supplement our lack of property tax and bonding capacity, but the State has been wrongfully taking credit for 75% of our federal Impact Aid money for decades. This year, the federal Department of Education ruled the State of New Mexico can no longer take credit for our Impact Aid money. Until now we were denied millions of dollars that we could have used to buy computer devices and improve access to technology. If the State or other districts appeal the U.S. DOE ruling, we could again be cheated out of the Impact Aid we desperately need. Even if we eventually get our Impact Aid money it will come too late to serve the many children deprived of remote learning this year. Once we get these federal funds, the State is likely to offset our SEG funding to some extent and we project we will need to use these funds for housing for teachers in order to recruit and retain teachers, rather than purchase new computers and Internet service for all our students.

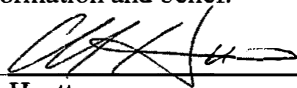
15. Today we have enough computers for our credit recovery students and our dual credit students to each have one to complete those classes. For those students who do not have wi-fi in their homes, they come to the parking lot of the school to log on. These are the only two groups of students that have been doing work via the Internet since the schools closed in the middle of March. This represents approximately 3% of all our students who need computers and Internet access for remote learning.

16. The COVID-19 pandemic has exacerbated an already unfair State public education system in which some districts have computers and broadband Internet service across the

district, and other districts, like Gallup, do not. Some districts are able to provide remote learning to their students via wi-fi while other districts, like GMCS, cannot. Our students will likely fall farther behind students in other districts due to our lack of access to computers, technology and necessary infrastructure.

I declare under penalty of perjury under the law of New Mexico that the foregoing is true and correct to the best of my information and belief.

June 1, 2020
Date



Mike Hyatt
Superintendent of Gallup McKinley County Schools