

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

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IMPACT AID PREDETERMINATION HEARING

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MONDAY
AUGUST 31, 2020

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The Impact Aid Program met via
Videoconference, at 2:00 p.m. EDT, Faatimah
Muhammad, Director, presiding.

PRESENT

FAATIMAH MUHAMMAD, Director
AMANDA OGNIBENE, Senior Analyst
COLIN BISHOP, Office of the General Counsel
JILL MARTIN, Office of the General Counsel

ALSO PRESENT

DANIEL BENAVIDES, Central Consolidated
Superintendent
GERMAINE CHAPPELLE, Attorney, Central
Consolidated
JVANNA HANKS II, Gallup-McKinley Assistant
Superintendent of Business Services
MICHAEL HYATT, Gallup-McKinley Superintendent
MAX PEREZ, Grants-Cibola Superintendent
MARTIN ROMINE, Zuni Director of Finance
ANDREW SANCHEZ, Attorney, Gallup-McKinley,
Grants-Cibola, and Zuni
AARON KRAMER BROSNAN, Attorney, PED
JENNIFER MAUSKAPF, Attorney, PED

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1 P-R-O-C-E-E-D-I-N-G-S

2 2:00 p.m.

3 DIRECTOR MUHAMMAD: Okay, everyone.

4 It's 2:00 and we're going to get started. I just
5 want to check with Amanda. Are we good on our
6 end for everything?

7 MS. OGNIBENE: Yes, I think so. We
8 have everyone here who needs to be here looks
9 like.

10 DIRECTOR MUHAMMAD: Okay. All right.
11 Very good.

12 Okay. All right. Good afternoon,
13 everyone. As stated, my name is Faatimah
14 Muhammad and I'm the Director of the Impact Aid
15 Program at the U.S. Department of Education. On
16 the call with me today are Jill Martin and Colin
17 Bishop, who are attorneys with our Office of
18 General Counsel, and Amanda Ognibene of the
19 Impact Aid Program.

20 Today's proceedings is an informal
21 predetermination hearing under Section 7009(c)(2)
22 of the Impact Aid Law, which is Title VII of the

1 Elementary and Secondary Education Act. Impact
2 Aid is a federal formula grant program for school
3 districts whose local property tax revenue is
4 negatively impacted by the presence of non-
5 taxable federal land such as military bases and
6 Indian lands.

7 The issue before the Impact Aid
8 Program is whether the State of New Mexico's
9 School Funding Program meets the requirements of
10 Section 7009 for school years 2019 through '20
11 and 2020 through '21. We'll be referring to
12 school year '19 through '20 as fiscal year 20,
13 and school year '20-'21 as fiscal year 21.

14 Under Section 7009 if a state can
15 demonstrate that school funding in the state is
16 equalized by a method outlined in the statute and
17 program regulations, the Impact Aid Program can
18 grant permission for the state to reduce state
19 aid payments to districts by an eligible amount
20 of the impact aid it receives. Basically the
21 test is that the disparity between the LEA and
22 the highest per pupil revenue and the lowest

1 after removing the top and bottom 5 percent of
2 the districts can not exceed 25 percent.

3 In calculating per pupil revenue we
4 look at all revenue from current expenditure
5 purposes including local, state and federal
6 resources. The data should not include funds
7 that are not revenues for current expenditures.
8 For example, revenues from capital outlie
9 purposes.

10 At this point I'm going to turn it
11 over -- all right, before I do that let me just
12 continue for a second.

13 In the Impact Aid -- if the Impact Aid
14 Program certifies a state for a particular fiscal
15 year, then the state can reduce the state aid
16 payments for those districts, but only by a
17 proportion that is dictated by federal statute.
18 That proportion is the share that local tax
19 revenues covered under the State Equalization
20 Program are to all local tax revenues. Note that
21 this proportion focuses on local tax revenues.
22 It is very different from the universe of

1 revenues that go into the disparity test itself
2 where we include all local, state and federal
3 sources of revenue for current expenditures, the
4 proportion used to be the same for every district
5 because the amount of local tax revenues covered
6 under the State Equalization Guarantee Program
7 was 75 percent for every district.

8 But with our fiscal year 20
9 determination we found that local SB-9 revenues
10 should also count as local tax revenues for
11 purposes of the proportion calculation between
12 SB-9 revenues can be used for expenditures. And
13 since not the same amount is covered under the
14 SB-9 equalization system, for each district the
15 proportion now varies for each district.

16 You should see these slides on your
17 screen. At this time I'm going to turn it over
18 to Amanda so she could go further into the
19 explanation for fiscal year 21 and fiscal year
20 20.

21 MS. OGNIBENE: Okay. So I'm going to
22 give a brief overview of the procedural

1 background for both fiscal years being discussed
2 today because it's quite complicated in terms of
3 the timeline.

4 So first for fiscal year 2021, which
5 is the fiscal year that you are currently in.
6 The state initially submitted disparity data on
7 March 6th. Then following the Department's April
8 15th determination for FY 20, so the prior fiscal
9 year, that the state did not pass the disparity
10 test and required the state to change the
11 treatment of various funds, the state submitted
12 revised disparity data for FY 2021 in response to
13 these required changes on May 31st.

14 The new analysis was performed using
15 the inclusion method on a revenue basis which is
16 one of the four methods permitted by our
17 regulations. This is different from what the
18 state had used in the past, which was the
19 exclusion method on a revenue basis.

20 So on June 5th the state requested
21 permission to account for impact aid as a local
22 effort in making estimated state aid payments for

1 FY 21, so the current fiscal year, prior to our
2 determination. The Impact Aid Program provided
3 this permission by letter dated June 29th,
4 subject to certain conditions, including that the
5 state revise its disparity data regarding the
6 treatment of certain revenues if performing the
7 analysis under the inclusion method and regarding
8 the proportion of impact aid funds that the state
9 can take into account.

10 So in response to the Department's
11 letter the state submitted corrected FY 21
12 disparity data on July 20th. The '20-'21 data
13 set dated July 20th is the subject of this
14 hearing for FY 2021.

15 So on Thursday last week, so just last
16 week, the state submitted another data set with a
17 minor revision as well as some explanatory
18 comments. We provided this submission to the
19 hearing attendees on Friday with the agenda. All
20 parties may talk about the newest disparity data
21 in the hearing today, or you can choose to
22 comment on just the July submission. And all

1 parties will be able to submit post-hearing
2 comments about the minor revisions submitted last
3 week.

4 Now to move on to FY 2020, so the
5 prior fiscal year, as I previously said the
6 Impact Aid Program issued a determination April
7 15th that the state did not meet the disparity
8 standard under the exclusion method on a revenue
9 basis.

10 On July 31st the state submitted
11 revised data for FY 20 under the same inclusion
12 method on a revenue basis that it is now
13 proposing to use for FY 2021. For FY 20 that
14 July 31st data submission is being discussed at
15 this hearing. Following this hearing the
16 Department may revise its April 15th
17 determination that the state did not meet the
18 disparity standard or may confirm its original
19 determination.

20 Although the state requested a hearing
21 before an administrative law judge, or ALJ, the
22 ALJ stayed that proceeding pending the outcome of

1 the Department's reevaluation based on the July
2 31st data, and that's the determination that will
3 follow this hearing. We explained the sequence
4 of events in the revised hearing notice, but
5 wanted to update you that on Friday evening the
6 state submitted a request to the ALJ to withdraw
7 the hearing request.

8 Now I'm going to go back to Faatimah
9 to go over the agenda and what we'll be talking
10 about today.

11 DIRECTOR MUHAMMAD: Okay. Thanks,
12 Amanda. So in light of the now issue before the
13 U.S Department of Education, I want to stress
14 that testimony should be limited to the question
15 of whether New Mexico's submission satisfies the
16 requirement for certification for fiscal year 20
17 and/or 21. And again I'm going to ask if you
18 would please mute yourself if you're not speaking
19 at this time.

20 The following are beyond the scope of
21 this hearing: Testimony on matters such as the
22 fairness or lack of fairness of the School

1 Funding Program, the fairness or lack of fairness
2 of Section 7009 or the Department's regulations,
3 and the funding needs of particular school
4 districts. Also beyond the scope are issues that
5 are settled in the U.S. Supreme Court's 2007 Zuni
6 decision, namely there's a procedure for
7 calculating the top and bottom 5 percent of
8 districts as part of the disparity test.

9 In addition, which we understand that
10 districts may raise the issue of the state's
11 reduction of state aid due to districts' receipt
12 of CARES Act funds which may be pertinent to the
13 fiscal year 21 disparity data, issues relating to
14 the use of CARES Act funds by a district are
15 beyond the scope of this hearing.

16 There is one more topic that is not
17 within the scope of this hearing, and that is the
18 temporary restraining order that was issued by a
19 New Mexico state court. While we understand that
20 the parties may have different positions on the
21 interpretation of the state law provision on the
22 75 percent of impact aid that the state may take

1 into account, those arguments are not relevant to
2 this hearing.

3 The federal impact aid regulations are
4 clear in that calculating the proportion of
5 impact aid that a state may deduct, the
6 proportions must be calculated on a district-by-
7 district basis and not on the basis of a general
8 rule. In the Impact Aid Program determination on
9 fiscal year 20 that we issued in April we were
10 clear that the proportion would be done on an
11 individual district basis.

12 The state data for each fiscal year
13 that we specified in our notice will be the
14 subject of today's hearing. The state has
15 represented to us that they have included the SB-
16 9 local tax revenues in the proportion
17 calculation and that they have calculated the
18 proportion for each district separately in
19 accordance with our regulations. Thus, while you
20 may comment on whether this proportion is
21 calculated correctly or incorrectly for a
22 particular district, we are not entertaining

1 comments related to whether it is lawful or
2 unlawful for the state to do so on a district-by-
3 district basis, which is what the Impact Aid
4 regulations require.

5 If necessary I will remind speakers to
6 confine their testimony to whether New Mexico's
7 submission satisfies the requirements for
8 certification for fiscal year 20 and/or 21. On
9 the other hand, all relevant arguments and
10 objections that an LEA has pertaining to the
11 disparity test submissions may -- must be raised
12 on the record of this proceeding in order for
13 these arguments and objections to be considered.

14 So I'll just repeat that. All
15 relevant argument and objections that an LEA has
16 pertaining to the disparity test submissions must
17 be raised on the record of this proceeding in
18 order for these arguments and objections to be
19 considered.

20 This is an informal open hearing. We
21 will hear specifically from the four school
22 districts who requested this hearing, but we have

1 reserved time at the end of the meeting in case
2 other districts would like to present their views
3 on the state's data submission for either or both
4 fiscal years and the data compliance with the
5 requirements in Section 7009.

6 After this hearing we will hold the
7 record open for post-hearing written comments.
8 We will review the state's data and consider the
9 views expressed in this hearing and in the
10 written submissions. We will make a decision as
11 to whether the requirements for certification
12 have been met separately year for fiscal year 20
13 and fiscal year 2021 and issue two separate
14 decisions.

15 I ask each speaker to identify
16 themselves for the record each time they speak
17 along with their organization or district. We
18 ask that you mute your microphone when you are
19 not speaking. We encourage those who are
20 speaking to use video if they would like, but
21 please turn off your video if you're not
22 speaking. These proceedings are being recorded

1 and will be transcribed. So once again, please
2 state your name and your organization when you
3 speak.

4 We will start with issues common to
5 the data submissions for both fiscal year 20 and
6 21. First we'll hear from the school districts,
7 then the state. Then we may have questions for
8 either the districts or the state. Next we'll
9 hear comments on issues unique for fiscal year
10 21, and finally issues unique for fiscal year 20.
11 We will try to save our questions until the end
12 of each section. Once each of the three sections
13 is concluded we will open the floor to any one
14 who wishes to express views.

15 (Telephonic interference.)

16 DIRECTOR MUHAMMAD: Okay. Go ahead.

17 MS. CHAPPELLE: Okay. Thank you,
18 Director, and thank you everyone of the
19 participants for being here for this extremely
20 important issue.

21 Director Muhammad and Ms. Ognibene,
22 I'm a little confused and I just want to make

1 sure I'm understanding with respect to the
2 relevance of fiscal year 2019 in this proceeding
3 -- or I'm sorry, you said fiscal year 2020. My
4 apologies. I thought that that was a closed
5 issue, and so I'm struggling to understand your
6 expectations about that issue in this hearing.

7 MS. OGNIBENE: So we're talking about
8 the FY 2020 revised data that was sent to us in
9 July. That's what we're talking about in this
10 hearing.

11 MS. CHAPPELLE: Okay. Good. So I
12 just wanted to clarify that we're not going back
13 to last year's determination to --

14 MS. OGNIBENE: No.

15 MS. CHAPPELLE: -- kind of have a
16 second bite at the apple. That's a closed issue.
17 Am I correct?

18 MS. OGNIBENE: Yes, we're looking at
19 the resubmission of the data using the inclusion
20 method on a revenue basis.

21 MS. CHAPPELLE: Okay. So essentially
22 what I'm then hearing or I'm trying to understand

1 is: are you allowing the state to move forward
2 with both submittals, and is that why we are
3 looking at FY 20?

4 MS. OGNIBENE: Yes, we're looking at
5 both data submissions.

6 MS. CHAPPELLE: Okay.

7 MS. OGNIBENE: The 20 data submission
8 that we're looking at now was submitted under a
9 different method, which is the same method that
10 they're using for 2021.

11 MS. CHAPPELLE: My apologies. So
12 essentially what you all are expecting from us is
13 our analysis on why we believe both of those
14 submittals do not meet the requirements?

15 MS. OGNIBENE: Correct.

16 MS. CHAPPELLE: Okay. Now Director
17 Muhammad, you also indicated that all of the
18 arguments must be raised on the record.

19 DIRECTOR MUHAMMAD: Yes.

20 MS. CHAPPELLE: I noticed we have some
21 pretty limiting time constraints. By the record
22 are you meaning this hearing plus written

1 comments that will follow or are you meaning this
2 hearing?

3 DIRECTOR MUHAMMAD: I'm meaning the
4 hearing and the written comments that follow.

5 MS. CHAPPELLE: Okay. Because I do
6 have a concern, Director, that the time allotted
7 -- these are pretty complex issues, and so the
8 time allotted is pretty difficult for us to be
9 able to make a pretty cohesive argument about all
10 of our concerns. So I didn't know how you wanted
11 to address that. We've got three schools with
12 pretty distinct concerns, some common, some
13 distinct, and we've worked hard to kind of
14 consolidate that, but wondering what we should do
15 if we find ourselves running out of time.

16 MS. CHAPPELLE: Well we also -- can
17 you state what district you're from again please?

18 MS. CHAPPELLE: Central Consolidated
19 School District, CCSD.

20 DIRECTOR MUHAMMAD: Okay. Thank you.
21 Well we also have the written comments. So once
22 we begin the proceedings and we look at the

1 written comments, I think we'll have a better
2 assessment. And then I may be able to be a
3 little flexible, give or take five minutes or so
4 here or there. So why don't we begin and see.

5 MS. CHAPPELLE: We've got a couple
6 other threshold issues, and what I want to do for
7 my piece is -- I'm not sure it makes sense from
8 the legal perspective. I'm going to kind of wrap
9 up all of our three schools' thought processes,
10 and so it might make sense for me to go at the
11 end and you to have our expert testimony at the
12 beginning. I wasn't sure if you were amenable to
13 that type of modification.

14 DIRECTOR MUHAMMAD: Right now we have
15 the LEA comments first. So you prefer not to go
16 first? Is that what you're saying? Am I
17 understanding you correctly?

18 MS. CHAPPELLE: We have three schools,
19 right? So we've got Zuni, Gallup and CCSD. We
20 have a prepared PowerPoint that our finance folks
21 from Zuni and Gallup are going to walk through.
22 And from the legal perspective I wanted to wrap

1 up those comments together, and so I wanted to
2 follow them is what I'm saying.

3 DIRECTOR MUHAMMAD: Okay. That's
4 fine.

5 MS. CHAPPELLE: All right.

6 DIRECTOR MUHAMMAD: Okay?

7 MS. CHAPPELLE: And I know that the
8 attorney for Gallup and Zuni does have a concern
9 about the existing TRO, so I would like to have
10 that addressed as well. It's a concern I share.

11 DIRECTOR MUHAMMAD: Okay.

12 MR. SANCHEZ: Madam Director, this is
13 Andrew Sanchez. I represent Gallup-McKinley,
14 Grants-Cibola, Zuni with regards to these
15 proceedings as well.

16 My concern is that it appears to me
17 that you're excluding any argument of whether or
18 not the PED is currently -- obviously doesn't
19 want to address whether or not they're acting in
20 violation of the TRO, and that's fine. However,
21 there is -- those issues do need to be at least
22 addressed with regards to those fundamental

1 concepts of whether or not the PED is actually
2 conveying accurately how and depicting how public
3 schools are actually financed in the State of New
4 Mexico. And I understand that you have a
5 formula, but it seems to be that that formula
6 does require some fidelity to the truth of how
7 schools are actually financed. It doesn't seem
8 to be a stand-alone litmus test that does not
9 accurately reflect how schools are funding.

10 So is that just simply off of the
11 ability of any of the LEAs to discuss how in fact
12 they are approaching their budgets, how they in
13 fact are taking the credits, how in fact they are
14 looking at the revenues that come in and come out
15 with regards to this issue?

16 MS. MARTIN: I can actually take that
17 question. This is Jill Martin from the Office of
18 General Counsel at Department of Education.

19 And I believe I understand what you're
20 saying about the accuracy of information. What
21 is relevant to this predetermination hearing is
22 the data that is in the disparity test

1 submissions that the state have presented. So to
2 the extent that you have any arguments or
3 disagreements with what that data presents -- for
4 example, they are showing revenues received by
5 districts. If you have an argument that one of
6 those data tabs is not accurate, you may
7 certainly raise those issues, yes.

8 MR. SANCHEZ: Well thank you, Ms.
9 Martin, but my more -- I believe that that's also
10 probably going to be subject to some discussion,
11 and I'm glad you clarified that. However, what
12 about the fundamental question that is the
13 subject of the TRO is that the Public Education
14 Department is setting forth or conveying to your
15 agency that there is in fact this funding formula
16 that does not actually exist in -- that's
17 certainly argument, but does not exist in reality
18 and how it is actually funded within the state.

19 I do not expect the Agency to resolve
20 that issue because it's certainly a subject of a
21 state court and a state judge; however, I think
22 that that does speak to the accuracy that you

1 require under your federal regulations and the
2 assurance that the PED's required as to the
3 accuracy of that information.

4 I don't think that fidelity to actual
5 determination of whether the state is equalized
6 is supposed to be blind to the actual realities
7 of what goes into the coffers of each public
8 school district based on the SEG formula and
9 based on the provisions of state statutes.

10 So I don't expect the Agency to
11 resolve that issue of interpreting state law, but
12 there does need to be some at least
13 acknowledgment and permission to the LEAs to show
14 where the actual funding differs from the data
15 supplied.

16 DIRECTOR MUHAMMAD: Okay. This is
17 Faatimah speaking. So if it is directly tied to
18 the accuracy of the data in a disparity test
19 submission, then yes. Otherwise, then it's
20 outside of the scope of this hearing.

21 Okay. So what I would like to do at
22 this time is to just make sure everyone's clear

1 on the proceedings. And then as stated after
2 this hearing we'll hold the record open for post-
3 hearing written comments. And we will start with
4 issues common to the data submission as stated
5 for fiscal year 20 and 21.

6 And once again I'm going to ask
7 everyone if they would mute if they're not
8 speaking. And let's begin hearing from the
9 districts on issues relevant to fiscal year 20
10 and 21 disparity test data.

11 So on your screen -- okay. If you
12 could put the agenda back up?

13 MS. OGNIBENE: I think the districts
14 may have slides to present.

15 DIRECTOR MUHAMMAD: Okay. And they --
16 Amanda, just give them control?

17 MS. OGNIBENE: Yes, I put Jvanna in
18 the presenters group. If there's anyone else who
19 needs presenter access, send me a chat or let me
20 know.

21 DIRECTOR MUHAMMAD: This is Ms.
22 Muhammad again. Jvanna, do you have control?

1 MS. HANKS: I am attempting to put up
2 the PowerPoint.

3 DIRECTOR MUHAMMAD: Okay.

4 MS. HANKS: Can you see the PowerPoint
5 on the screen?

6 DIRECTOR MUHAMMAD: Yes.

7 MS. HANKS: Okay. My name is Jvanna
8 Hanks. I'm the Assistant Superintendent for
9 Gallup-McKinley County School District for
10 Business Services.

11 As Andy Sanchez had previously
12 mentioned, one of the issues that we're going to
13 look at is specifically out of 222.161, the data
14 projections submitted with assumptions
15 accompanied by an assurance as to their accuracy.
16 Now I had asked for a copy of that assurance, but
17 I'm not sure if that's a separate document and I
18 wasn't able to find it in any of the items that
19 were sent to us Friday.

20 And then adjusted actual data for the
21 fiscal year must be submitted. So that kind of
22 goes -- my question is to the data that's being

1 submitted, when does that actually have to be
2 implemented? And so these are kind of questions
3 that will be part of this presentation as well as
4 our follow-up comments. As indicated previously,
5 we're looking at the accuracy of the data that's
6 been submitted.

7 When we look at our current statutes
8 in comparison to the data that's being submitted,
9 there's a very specific definition in state
10 statute for local revenue. And so that's -- as
11 you've noticed I've bolded some of the
12 information on the screen. And then also the
13 federal revenue that's being considered and then
14 the percentages that those items must be
15 considered as part of state law, including 75
16 percent of course reserve and 75 percent impact
17 aid.

18 Just looking at the dynamic of -
19 (Telephonic interference.)

20 DIRECTOR MUHAMMAD: I'm sorry. This
21 is Ms. Muhammad speaking again for Impact Aid.
22 Please mute if you're not speaking. We're

1 getting a lot of feedback. Thank you.

2 MS. HANKS: And so the state statute
3 in comparison to the data submittal is clear.
4 Where we've got some percentages which are
5 differentials and then a different definition of
6 local revenue, this is what's currently in New
7 Mexico's state funding formula. The language is
8 clear on what local revenue is. The language is
9 clear about the percentage. And then the
10 language is clear about the type of revenue to
11 consider. Again this is all in comparison to
12 what's being submitted, especially in table 5 I
13 believe, which is the proportionality table where
14 we've got some differential percentages.

15 And then the federal funding revenue,
16 again it's clear at 75 percent on both the
17 federal course reserve and impact aid.

18 Now kind of what we've heard is that
19 the federal law requires a certain calculation.
20 And that's true, but the Federal Government does
21 not tell the state what funding formula to
22 utilize. The federal statutes only tell us based

1 upon your current state statute what does your
2 funding formula actually show? And so while
3 there was specific information given and specific
4 directives given on how to include things, the
5 question is does that actually accurately reflect
6 what's happening in the State of New Mexico? And
7 that's where we kind of are running into an
8 issue.

9 The question of this cap or an
10 optional percentage, I looked through everything
11 that I could find and cited many of those
12 documents here. The statutory language was
13 changed in Senate Bill 418 in 1999. It is very
14 specific. I have looked through presentations,
15 policy briefs, anything that I can find to mirror
16 the data that's being submitted, the accuracy of
17 the data that was submitted by the state and I
18 cannot find a single document that kind of reads
19 to that.

20 So the question is: is the 75 percent
21 optional? Is it optional to take less than 75
22 percent of the half mil or less than 75 percent

1 of impact aid? I have not found anything of
2 that. And actually when I asked that question as
3 I was spinning my budget, the state actually told
4 me specifically that the current process is to
5 calculate budgets based upon the 75 percent
6 credits required by New Mexico statute.

7 If the legislature wants to make
8 changes, that's fine. That's completely within
9 their power to do so. I don't have any
10 documentation of that happening as far as those
11 changes being made to comply with the data
12 submittal that's been given.

13 Other items not modeled. Now I
14 understand that you do not want to discuss CARES
15 crediting. I'm not going to discuss the legality
16 of any of that. What I am going to discuss is
17 modeling of the reduction of state funding based
18 upon the crediting of CARES funds.

19 So this is an issue unique to FY 21,
20 and we can definitely come back to it based upon
21 the agenda. So I'm going to kind of go forward
22 and probably circle back to that.

1 Items not modeled. So there was a
2 provision that was put in regarding a reduction,
3 protection from program cost reductions. I don't
4 have any data on this, and so this is an area
5 where we are actually going to request more data.
6 The state is supposed to be providing any
7 additional supplement to school districts or
8 charter schools that are experiencing a reduction
9 in program costs. And that's for 2020 through
10 2022 in our New Mexico state statutes. So this
11 is an area that I'm actually going to be
12 requesting more information on because I didn't
13 see it modeled anywhere.

14 Items not modeled that were in my FY
15 21 request is that the state presents local
16 charters and districts together and state
17 charters separately. Now each year there's a
18 fluctuation between school districts moving in
19 and out of whether they're a local charter or a
20 state charter. And so these are the schools that
21 applicably move from one designation to another,
22 and that was all approved by the State of New

1 Mexico before they did that. So that is an item
2 that could and should be modeled in the data
3 submittal.

4 Instructional materials. So there is
5 this ambiguity in how we're actually receiving
6 our program costs or SEG funds in relation to
7 instructional materials, early literacy and
8 mentorship funds. We've been told that the
9 components are calculated -- some are calculated
10 on actual units. Others are just considered when
11 the statewide total SEG was funded. We're still
12 just unsure of what that actually means.

13 Revenues. So I do have a question now
14 that we've moved to an inclusion method. So the
15 revenue portion, now that we've included these
16 other items, are there other funds that might be
17 pulled in now that due to -- due to the inclusion
18 of the special populations, are there more state
19 funds that we have not previously included?
20 Because that is a change in methodology that we
21 hadn't seen before.

22 In Yazzie/Martinez the legal opinion,

1 we're still kind of looking for clarification on
2 what amount of altercation indicates if the
3 original state aid formula is still in effect or
4 if there's been significant changes. And we kind
5 of get different legal opinions from the state
6 depending on what court we're in. So in the
7 motion to dismiss Yazzie/Martinez the Public
8 Education Department's legal team said the system
9 in place is substantially different from the
10 system in place during the trial. But in the
11 legal opinion for impact aid, the state aid
12 system is still in effect, just modified to
13 address the concerns. And so we're not actually
14 sure what the legal stipulation is on actually
15 whether or not a formula still exists as it
16 previously did.

17 The last thing that I'm going to kind
18 of talk about is available revenue. And so the
19 state has funds that should be distributed to
20 public schools but is not being distributed to
21 public schools. And the reason for this is
22 because they're underestimating the amount of

1 credits that they're going to receive, so they
2 never actually fully distribute the
3 appropriation.

4 And so year after year we're seeing a
5 reversion of funds from the state, and the state
6 is not actually distributing those. And these
7 are pretty substantial numbers. These are
8 resources that should be going out to public
9 schools, but are not being distributed out to
10 public schools. And so that is an ongoing
11 question for the district as well as to how those
12 revenues should be treated as they are available.
13 They're just not actually being distributed.

14 And I'm going to turn it over now.

15 MR. ROMINE: Good morning, everyone.

16 This is Martin Romine. I'm the Director of
17 Finance for Zuni Public School District.

18 First of all, I'd like to thank the
19 New Mexico Public Education Department for their
20 new submission. On your screen in front of you
21 is table 1, which shows the -- on the left side
22 the top 5 percent for weighted pupil school

1 districts. On the right side is the bottom 5
2 percent.

3 As you look at those ones on the left,
4 the schools highlighted in yellow are schools
5 that receive oil and gas revenue. The school
6 districts highlighted in salmon are those schools
7 that receive emergency supplemental. The one
8 school highlighted in blue gets an \$8.2 million a
9 year appropriation from the Department of
10 Defense. The charter schools receive substantial
11 additional private donations. And I'm not here
12 to criticize any of those schools. I'm happy for
13 what they get. I'm happy they are in the top 5
14 percent of funded school districts.

15 However, on the right side you will
16 see that the lowest -- the highlighted districts
17 -- those highlighted in gray are all charter
18 schools. The ones that are not highlighted are
19 districts. You will see the lowest funded school
20 district according to the new submission by the
21 State of New Mexico is Zuni Public School
22 District, the district that also happens to be

1 the only Native -- 100 percent Native American
2 district, a district that has no way to raise
3 property tax revenue.

4 And as I thought about this, as I
5 looked at this table, it's something that we
6 hadn't seen before from the State of New Mexico,
7 because this is a new formula that they have
8 submitted. It screams to me that what the
9 Federal Government is allowing, what the State of
10 New Mexico is implementing smacks of
11 institutional or systemic racism, and we know
12 what an issue that is in today's society.

13 I'm not speaking about fairness or
14 unfairness, just an observation that I'm seeing
15 that those schools, that this school district
16 that has the largest proportion of Native
17 Americans in the district, has no funds to -- no
18 way to raise property tax funds, is also the
19 lowest funded district in the state. And
20 hopefully through -- as we finish our
21 presentation today, we'll be able to impress upon
22 everybody the importance of the state abiding by

1 the statutes that they have -- that have been
2 legally passed by the legislature and considering
3 property funds that all school districts in the
4 state raise and should be distributed.

5 I believe Ms. Hanks talked about local
6 revenue. I would like to talk about one revenue
7 stream that we brought up in last year's hearing,
8 but that the Impact Aid Department, USDE, did not
9 address in their decision of April 15th, and that
10 is the half mil levy.

11 As you can see in Section 22.8.25,
12 there is a statute that says every school
13 district has to raise a half mil levy. This half
14 mil levy is then distributed statewide through
15 the SEG. However, of that half mil levy mandate
16 there are only three of 89 school districts that
17 collect a true half mil. The average collection
18 is just -- is slightly less than a third of a
19 mil. One district doesn't even collect four
20 hundredths of a mil. The net effect of USDE
21 allowing the State of New Mexico to not abide by
22 its own statutes is a loss of revenue of over \$8½

1 million, not one time, but each and every year.
2 It's been going on probably for the last 35 years
3 as the state began taking credit for this half
4 mil money in approximately 1985.

5 So this is revenue that should be
6 collected, should be distributed, should be
7 received by the students. Not only is it not
8 being received, when you look at the
9 proportionality credit percentages calculated by
10 the state, this lower mil levy collected by
11 districts also affects the percentages that
12 school districts will now be credited for in
13 their SEG.

14 It is my hope that the Federal
15 Government would now look at the state law that
16 New Mexico has duly passed as one that is not
17 being followed, not being adhered to, which is
18 actually harming the students in the State of New
19 Mexico, but is actually -- I know you talked
20 about not unfair, but -- or unfair is probably
21 not the word I would use -- and illegally not
22 abiding by a legally passed statute.

1 I will not get into what yield control
2 is. It's a very difficult formula reassessing
3 property values, but this is -- yield control is
4 what the State of New Mexico uses to justify not
5 collecting a true half mil.

6 The legislature has had opportunities
7 to fix this problem back in 2003. There was a
8 House bill proposed, No. 948. The legislature
9 did not approve that bill. It's been brought to
10 the attention of the legislature that this was an
11 issue, that it could be easily exempted from the
12 yield control statutes as educational technology
13 equipment is not subject to the yield control
14 statutes.

15 The legislature is aware of this. It
16 was brought out in a legislation -- legislative
17 Education Study Committee briefing or hearing
18 last Monday, the 24th of August. When they
19 admitted to the problem and suggested various
20 methods to fix it; it is a problem that needs to
21 be fixed, the legislature has the authority to
22 fix it, the legislature has refused to fix it.

1 That in and of itself shows that if the Impact
2 Aid Office allows the state to continue taking
3 credit for impact aid dollars, they are in effect
4 saying yes, you have the statute, but it doesn't
5 really matter if you live by that statute or not.

6 Why has the state not done anything
7 about it? It's a difficult issue to raise
8 property taxes. It's not fun for legislators.
9 It's not something that any of them want to do.
10 However, that should not dismiss what is actually
11 happening in the State of New Mexico with half
12 mil money.

13 I'd next like to talk about what
14 happens with the two mil money, the SB-9, as it
15 is called in many parts of the state. It has now
16 been ruled by the Impact Office -- Impact Aid
17 Office that the SB-9 monies have to be included
18 in all the revenues when the state submits their
19 disparity analysis. I would contend, along with
20 the other districts that are -- that filed for
21 this hearing, that since all federal PILT-related
22 revenues, be -- those being impact aid-enforced

1 reserve, are considered in the credits taken by
2 the state, that any property tax-related local
3 revenue should also be considered for the credit
4 when the state takes credit for those revenues.
5 That would include SB-9 money, spaceport money,
6 and any other revenues that are property tax-
7 related that give revenues back to the school
8 districts.

9 To not do so would allow those
10 districts that raise those revenues but are at --
11 do not have credit taken for them to have
12 substantial revenue sources opportunities for
13 their students that are not available to other
14 districts.

15 What would this change mean to the
16 State of New Mexico currently, the impact aid
17 funds considered for credit? And as a reminder
18 95 percent of those funds, over 95 percent are
19 raised by New Mexico's Native American students.
20 The credit is just under \$63,500,000. The half
21 mil funds considered for credit are just over
22 \$23,400,000. The credit \$17,561,000 if the state

1 were required to consider all local revenues in a
2 like manner as they do the half mil money right
3 now. The credit to the SEG would be over \$96
4 million.

5 We need to make sure everyone
6 understands there is only one district in New
7 Mexico that is not collecting currently the SB-9
8 revenue. That would be Los Alamos who gets the
9 Department of Defense money for the lab that they
10 have in Los Alamos.

11 It's our contention that the State of
12 New Mexico recognizes local revenue as being
13 revenue that should be subject to the credit.
14 Now that the Federal Government has recognized
15 that SB-9 dollars are part of those dollars that
16 are recognized as local, it only follows that
17 they should also be subject to the credit.

18 I believe that for now -- I have some
19 issues that are -- that pertain strictly to 2020-
20 2021. I don't know if we want to talk about
21 those right now or if we want to hold those for a
22 little later in the discussion.

1 (No audible response.)

2 MR. ROMINE: I'm not hearing anything,
3 so I will go ahead and continue.

4 When the state submitted their
5 disparity analysis, part of the revenue that they
6 modeled was the programs known as K-5+, or
7 Extended Learning. When they modeled those, they
8 only modeled those for the districts that were
9 currently or had applied for those funds.

10 DIRECTOR MUHAMMAD: Martin, I
11 apologize. Martin?

12 MR. ROMINE: Yes, go ahead.

13 DIRECTOR MUHAMMAD: This is Director
14 Muhammad speaking. I apologize. If you could
15 hold those for a moment, we would appreciate it.

16 MR. ROMINE: I will hold those until
17 you tell me to go ahead. Thank you very much.

18 DIRECTOR MUHAMMAD: All right. Thank
19 you so much.

20 This is Faatimah again speaking. Is
21 -- are those the last comments from the LEAs?

22 MS. CHAPPELLE: No, Director. I just

1 wanted to know if you wanted me to finish up with
2 the questions right now or wait until the last
3 section.

4 DIRECTOR MUHAMMAD: I'm sorry. You
5 were breaking up. Can you say that again?

6 MS. CHAPPELLE: My apologies. I just
7 wanted to know if you want me to finish up on --
8 I mean add the legal component on this section or
9 wait until the end.

10 DIRECTOR MUHAMMAD: If there any
11 additional comments that are -- in regard to the
12 data submission that impact both '20 and '21, you
13 want to go ahead before I turn it over to the
14 state?

15 MS. CHAPPELLE: Sure, I'll do that.
16 So --

17 DIRECTOR MUHAMMAD: And if you could
18 state your name again for the record?

19 MS. CHAPPELLE: Yes, absolutely,
20 Director.

21 This is Germaine Chappelle and I
22 represent the CCSD School District, but we also

1 are working together as a team, Zuni, Gallup and
2 CCSD. And I believe Grants has indicated they
3 are in support as well of these efforts, is my
4 understanding.

5 With respect to the things that are in
6 common between the 2020 and 2021 submittals in
7 terms of things that we are concerned about, two
8 things rise up pretty quickly. And one is that
9 in -- following state law and the -- I mean the
10 federal law and federal methodology that is
11 relevant to this proceeding the state must also
12 follow state law. And that was very well-
13 articulated in the 2020 determination from the
14 Impact Aid Program.

15 And with respect to that I do want to
16 note that the state still has an open proceeding
17 regarding the Martinez/Yazzie litigation. The
18 state did request for dismissal. That was
19 ultimately denied. I do think that's important
20 and we will obviously discuss that more in our
21 written briefing.

22 In addition to that the point that Mr.

1 Romine was just discussing regarding making sure
2 that we equalize not just operational dollars but
3 capital as well -- and with respect to capital
4 we're talking about the five mil, House Bill 9
5 and other in-lieu-of-property-tax mechanisms in
6 the state. The 2020 determination indicated that
7 was important. That still is an open issue that
8 the state hasn't fixed. And we believe that with
9 respect to issues in common from 2020 and 2021,
10 both of those are extremely important.

11 The other things I want to discuss are
12 aimed more at 2021, and so I will move to that at
13 the appropriate time, but from our analysis it
14 does not currently appear that even with the
15 state's latest submission their 2020 submittal
16 complies -- I'm sorry, does not comply with
17 federal law. Thank you, Director.

18 DIRECTOR MUHAMMAD: Okay. Thank you.
19 This is Director Muhammad again, and if there
20 aren't any additional comments from the LEAs, I'm
21 going to turn it over to the state now for
22 comments.

1 MR. SANCHEZ: Madam Director, this is
2 Andrew Sanchez again. I just wanted to clarify
3 something. I understand that the PED has
4 withdrawn its appeal for fiscal year 2020. Does
5 that have any effect in terms of this
6 predetermination hearing as to why the Agency is
7 asking for fiscal year 2020 data even though that
8 they -- that that appeal seems to have now been
9 rendered moot by the action of the PED itself?

10 DIRECTOR MUHAMMAD: One second.

11 MS. MARTIN: Hi, this is Jill Martin
12 again from Office of the General Counsel.

13 We -- the Impact Aid Program is
14 looking at the revised submission of data was
15 submitted by the state during the appeal that was
16 before the administrative law judge. Because
17 this withdrawal request has not been ruled on by
18 the ALJ, we are not going to comment today on the
19 effect of that. We're proceeding today as
20 planned with taking comments on that data.
21 Thanks.

22 MR. PEREZ: Madam Director?

1 DIRECTOR MUHAMMAD: Yes?

2 Thanks, Jill.

3 Yes?

4 MR. PEREZ: This is Max Perez,
5 Superintendent for Grants-Cibola County Schools.

6 And just for the record I want to let you all
7 know that we are in support of the efforts of my
8 colleagues from the other LEAs, and we will
9 submit our comments and questions in writing.

10 DIRECTOR MUHAMMAD: Okay. Thank you.
11 So no verbal comments from the State at this
12 point?

13 MR. PEREZ: There are no verbal
14 comment from Grants-Cibola County Schools at this
15 time, unless legal -- Mr. Sanchez?

16 MR. SANCHEZ: Nothing, Madam Director.

17 DIRECTOR MUHAMMAD: Thank you.

18 Okay. So we'll follow the agenda as
19 written. Any additional comments from Ed at this
20 time before we move?

21 MS. MARTIN: No. This is Jill Martin
22 again. I think we can proceed with state

1 comments that are common to both FY 20 and 21.

2 DIRECTOR MUHAMMAD: Okay. Thanks,
3 Jill and OGC.

4 Okay. At this point; again this is
5 Director Muhammad, I'm going to turn it over to
6 the state.

7 (No audible response.)

8 DIRECTOR MUHAMMAD: And whoever from
9 the state, if you're speaking, you may be muted.

10 MR. BROSNAN: This is Aaron Kramer
11 Brosnan with the New Mexico Public Education
12 Department. I think my partner was planning on
13 presenting, but there may be some technical
14 issues.

15 MS. MAUSKAPF: Are you able to hear me
16 now?

17 DIRECTOR MUHAMMAD: Yes.

18 MS. MAUSKAPF: Okay. Thank you. And
19 I apologize for the technical difficulties.

20 Good afternoon, and thank you, Aaron.

21 My name is Jennifer Mauskapf. I am
22 counsel on behalf of the New Mexico Public

1 Education Department and we do want to take the
2 opportunity to respond to the comments from the
3 LEAs, but before we go to some of the direct
4 comments they provided we do want to provide a
5 brief overview of the history and importance of
6 equalization in the State of New Mexico.

7 First, though, we do need to address
8 -- there were many comments we heard making
9 allegations of submission -- data submitted by
10 the state as being inaccurate. We just -- we
11 strongly disagree with that and we just want it
12 to be clear that the state is totally committed
13 to a transparent and collaborative process.

14 We did address issues raised in the
15 April determination, addressed issues raised in
16 the request from the LEAs for the hearing that
17 was submitted I believe on June 19th, and we also
18 submitted -- responded to all the concerns raised
19 by the Impact Aid Program in the June 29th
20 letter.

21 We did ask for any issues or concerns
22 raised by the LEAs requesting this hearing to be

1 shared in advance so that we could really do our
2 best to make this time and hearing as productive
3 as possible and be able to respond to those, but
4 there were not additional issues provided through
5 this process. So I just need to make it clear
6 that the state is fully committed to ensuring
7 that all data we have submitted is accurate and
8 that we're transparent and that we are working
9 together the best we can for this to be a
10 collaborative and effective process.

11 With that I do want to turn to a
12 little bit of an overview over equalization and
13 its importance here in the State of New Mexico.

14 So across the United States in terms
15 of state school finance programs all states do
16 provide a share of total revenues available for
17 public elementary and secondary education,
18 although it varies widely across the country.
19 Now a key role of these state school finance
20 programs has been diminished to a somewhat high
21 degree of inequality in revenues per pupil that
22 might result if funding were based only on local

1 taxable resources. Now that does -- as I
2 mentioned, this varies greatly from state to
3 state, but continuously New Mexico has fallen
4 near the top of the list in terms of highest
5 percentage of state share when it comes to school
6 funding.

7 Now, prior to the enactment of the
8 State Equalization Guarantee in 1974, schools
9 were primarily funded locally with local property
10 tax revenues resulting in a high degree of
11 variance in school funding based on wealth. This
12 in turn caused significant variances in access
13 for opportunity. State education finance experts
14 in the state recognize the reliance on local
15 property tax wealth created a high degree of dis-
16 equalization among the school districts and
17 that's why in 1974 New Mexico passed the School
18 Finance Act in part to help equalize public
19 school funding.

20 New Mexico distributes most of its
21 public school funding through the non-categorical
22 SEG, the State Equalization Guarantee, which

1 maintains local autonomy -- which the districts
2 maintains local autonomy in spending the funds.

3 The state's funding formula equalizes
4 educational opportunity across the state by
5 funding students based on individual need
6 regardless of local wealth or geographical local
7 considerations. The SEG is designed to ensure
8 that districts do not need to rely on local
9 property taxes to fund operational needs of their
10 schools. As mentioned, the far majority of an
11 LEA's general fund is provided through the SEG.

12 Now historically the SEG had been
13 recognized as New Mexico's State Education
14 Program designed to equalize expenditures for
15 free public education. During the initial FY
16 2020 certification process arguments were made
17 that additional funds should be considered as
18 part of the state aid program and be included in
19 the disparity test. In April 2020 when IAP
20 determined that the Capital Improvement Fund SB-9
21 tax revenues as well as certain other funds
22 should be included in the disparity test, the

1 state then incorporated these additional revenues
2 into the revised disparity submissions.

3 We additionally incorporated
4 additional revenues that were subsequently
5 pointed out by the LEAs in their request for the
6 hearing and required by the IAP's letter dated
7 June 29th.

8 With regard to SB-9 what's really
9 critical here and is key to the -- making sure
10 that there is a clear understanding of the
11 revised disparity submissions is that it does
12 function as an equalization program for school
13 districts with lower tax revenues per weighted
14 pupil and as such is considered within that
15 computation of proportion.

16 In short, and I think the program did
17 a -- it was helpful for the program to explain a
18 little bit about the computation of proportion at
19 the outset, but sort of summed up the computation
20 of proportion requirement limits the degree to
21 which a certified state may consider impact aid
22 payments and requires that these determinations

1 be made on a case-by-case basis.

2 In our prehearing comments the state
3 noted that we did apply the computation of
4 proportion requirement as required by the Impact
5 Aid Program in the revised disparity test
6 submissions. And of particular note, because
7 previously -- again previously only SEG had been
8 being considered the disparity test -- in the
9 disparity test; and there is that blanket
10 limitation of 75 percent, the resulting
11 proportion had historically been static. But now
12 as a result of including the second equalization
13 program in the analysis the computation of
14 proportion can be expected to result in varying
15 figures.

16 And when I turn it over to Aaron in a
17 moment, he may address this, but as we noted in
18 our prehearing comments this -- the only time a
19 number less than 75 percent is applied is when it
20 regards impact aid. Any resulting computation
21 less than 75 percent is never applied against the
22 half mil or any of the other funds. That has

1 always remained, including in these submissions,
2 at 75 percent.

3 And I just want to emphasize that the
4 state remains steadfast in our commitment to
5 equalization and to ensuring transparency and
6 collaboration throughout this process.

7 And so next I'll turn it over to Aaron
8 Kramer Brosnan who will go into more detail on
9 some of the specific issues raised today by the
10 LEAs in their comments.

11 MR. KRAMER BROSINAN: Okay. This is
12 Aaron Kramer Brosnan. I'm counsel for the New
13 Mexico Public Education Department. And as
14 Jennifer indicated I'll discuss some of the
15 arguments that were raised in previous letters
16 and in this hearing today.

17 I will note that there are some
18 comments that we're seeing for the first time
19 today. We will answer those in the course of the
20 hearing as much as possible, but we anticipate
21 needing to expand in post-hearing comments on
22 issues that are being raised for the first time.

1 So roughly following the same format
2 as the districts' presentation we'll address a
3 couple things: So starting, one issue is around
4 the idea of modeling changes to the status of
5 charter schools. And so in New Mexico state
6 charters are treated as independent LEAs which
7 then for the sake of the disparity test means
8 that they represent their own school district,
9 while local charters are considered dependent on
10 their local school district and therefore get
11 folded into the LEA that that school district
12 comprises.

13 I want to point out that here the key
14 idea in -- when you look at 34 C.F.R. 222.161(b),
15 the section that deals with data for
16 determinations, the focus here is modeling is --
17 you're using the data from two fiscal years prior
18 unless the Secretary determines the state has
19 substantially revised its state aid program, in
20 which case the state needs to provide data that
21 shows that the new state aid program will still
22 meet the disparity test.

1 Here the changes to the charter
2 schools are not changes to the program of state
3 aid, and so PED did model the changes that had
4 been made as a result of K-5+ units, Extended
5 Learning Time Programs, changes to size units and
6 the staffing cost multiplier, which are the
7 changes to how funds are distributed through the
8 SEG.

9 The charter schools that either open
10 or close in FY 21 still receive money based on
11 this same funding formula. And so whether those
12 need to be modeled or not is -- well, basically
13 those don't need to be modeled because whether a
14 charter school opens or closes, right, there are
15 minor fluctuations in what schools are open or
16 closed in any given year, but the way that those
17 schools receive their state allocations remains
18 the same.

19 And along those lines I'd like to kind
20 of point out that if the state was required to
21 constantly model the changes to what schools are
22 in what district in any given year, the state

1 would run into a situation where the program of
2 state aid; for example, the SEG formula, could
3 remain in effect and unchanged for multiple years
4 in a row and yet the state would end up being --
5 having to model small changes to charter schools
6 every year.

7 The other one is -- this was briefly
8 raised, the save harmless, the protection from
9 program cost reductions, and so that was --
10 that's something that as of yet there haven't
11 been save harmless payments made. And so
12 currently the SEG -- any reduction to the SEG
13 haven't triggered that statutory provision. And
14 so since that provision hasn't been used, the
15 state can't model a hold harmless that hasn't
16 been distributed. So essentially there has been
17 no change to any district on the basis of save
18 harmless.

19 When it comes to yield control this is
20 an issue that was raised last year in the
21 predetermination hearing and I believe Ed had
22 already addressed this issue. And so in the

1 State of New Mexico there's two acts that are
2 going to govern taxation: There's the NMSA 25-8,
3 which is the School Finance Act, which is --
4 determines what credits of the half mil levy,
5 which is the local property tax for operating
6 purposes, are factored into that district's
7 allocation.

8 Then with that the amount of local
9 property tax revenues that can be levied are then
10 limited by the Taxation Act and -- under that,
11 and so that's I believe 737 NMSA. And so under
12 yield control there's a cap on how much property
13 value may be considered in your property tax
14 levy. And so when the state does -- when the
15 state calculates its credit, it can only take
16 credit for the taxes that the district is allowed
17 to collect under state law, and that is reflected
18 in our submissions. And so it -- the state
19 cannot force a district to collect taxes in
20 excess of the yield control statute and therefore
21 that's the only amount that's credited.

22 And so if you look at the tax amounts

1 on table -- the local half mil levy tax amounts
2 on table 5 of the state's submission, that shows
3 what those tax receipts to the LEA would be
4 subject to the yield control statute, and that's
5 where the 75 percent credit is taken.

6 There was some discussion of taking
7 credit for things like SB-9, and here is
8 something where the state isn't -- the state
9 statute that governs what funds are credited or
10 not credited to the SEG is clear. And so
11 something like SB-9 is part of an equalization
12 program and the credits for SB-9 funds are taken
13 within the context of that equalization program.
14 And so that's the state match payment.

15 And as you can see from our disparity
16 submission those revenues associated with the
17 state match are included in the disparity test as
18 well as the local property tax revenues raised.
19 And where you can see the credits that are taken
20 for the state match, that's that comparison in
21 the disparity test of the program guarantee and
22 then the corresponding SB-9 two mil levy. And as

1 Ed had recognized in its June 29th letter, the
2 state would look at -- would determine the amount
3 of credit by looking at the lesser of the program
4 guarantee or the total local tax and that would
5 give the credit.

6 Those credits are then factored in.
7 That goes directly to the computation of
8 proportion because the amount of SB-9 revenues
9 that the state takes credit for are included in
10 the numerator of that fraction along with the
11 amount of half mil levy. And then the
12 denominator of that fraction would be the total
13 SB-9 levies plus the total half mil levies.

14 This is unique from past years when
15 SB-9 funds were not considered and the
16 computation of proportion was limited to the half
17 mil levy in SEG. And so there because SEG takes
18 a flat 75 percent of all half mil levies, the
19 computation of proportion, even though it was
20 calculated individually, would always result in
21 75 percent.

22 Now with this year there's a variable

1 proportion and when we calculate that proportion
2 on the basis of the SB-9 credits and half mil
3 levy credits, that can result in proportions that
4 range anywhere from under 75 percent to as high
5 as 95½ percent. And then as a result of that the
6 state does need to follow its own state statute.
7 And here then in order to comply with state
8 statute the state applies a 75 percent cap on the
9 amount of impact aid that may be considered in
10 the SEG.

11 And then here that's one thing -- I
12 know that discussion of the state law is meant to
13 be outside the scope, but since it was raised in
14 the comments from the district I feel it's
15 important to address that briefly here. And so
16 the state's interpretation of the 75 percent cap
17 is consistent with state law. And there --
18 previously there was a state supreme court case
19 that was brought by the Zuni Public School
20 District which wanted to require PED to follow
21 the requirements of Impact Aid in the timing of
22 taking credits.

1 In that supreme court decision the New
2 Mexico Supreme Court found that the requirements
3 of Impact Aid were incorporated into the
4 requirements of the School Finance Act. And so
5 there they looked at the definition from 228.25
6 NMSA and found that 75 -- which says that 75
7 percent of grants from the Federal Government as
8 assistance to those areas affected by federal
9 activity authorized in accordance with Title 20
10 of the United States Code, commonly known as PL-
11 874 funds, or impact aid.

12 And so therefore the state statute
13 does consider that the -- it's 75 percent, but
14 only up to the point where that would be
15 authorized in accordance with Impact Aid. And
16 there's additional commentary on that that we'll
17 save and include in post-hearing comments if
18 necessary. But in short, the way that the state
19 has treated the 75 percent requirement for impact
20 aid in state law is consistent with the state
21 supreme court and with the state rules on
22 statutory construction. And in allocating SEG

1 payments to districts in July and August after
2 receiving permission from the Department of Ed to
3 do so, the state has used the proportion that we
4 indicated in our July 2020 submission that
5 followed the computation of proportion provided
6 by the Department of Ed on July 1st.

7 With that I would like to note that in
8 the case of many districts including the four
9 districts that have requested this hearing the
10 allowed proportion of impact aid that could be
11 considered under the federal regulations was far
12 in excess of 75 percent, often times more, 95
13 percent. And that's where the state rather than
14 following the maximum allowed under impact aid
15 instead looked at the amount capped by the state
16 law.

17 DIRECTOR MUHAMMAD: Okay.

18 MR. KRAMER BROSNAN: And then I
19 believe that is the 15 minutes. I think we've
20 covered most of what is I think common to both.
21 I believe that the districts have further things
22 that we can discuss in later sessions.

1 DIRECTOR MUHAMMAD: Okay. Thank you.
2 This is Director Muhammad speaking again.

3 Ed, anyone from the Ed Team have any
4 comments at this point?

5 (No audible response.)

6 DIRECTOR MUHAMMAD: Okay. No
7 questions from OGC.

8 Amanda, on behalf of the program?

9 MS. OGNIBENE: I do not have any
10 questions at this time. I think we should just
11 move forward to the 2021 section.

12 DIRECTOR MUHAMMAD: Okay. One second.

13 Okay. All right. So at this point;
14 this is Director Muhammad speaking again, we're
15 going to listen to issues unique to fiscal year
16 21 and turn it over to the LEAs at this point.

17 MR. ROMINE: This is Martin Romine
18 again from Zuni Public School District. Can you
19 see my screen?

20 DIRECTOR MUHAMMAD: It looks like it's
21 getting ready to share, Martin. Not yet.

22 MS. OGNIBENE: Martin, just one

1 moment. I think I need to make you a presenter
2 here.

3 MR. ROMINE: I'm on Jvanna's computer.

4 MS. OGNIBENE: Okay. I do see that
5 you're trying to share your screen. We're not
6 seeing anything at the moment.

7 DIRECTOR MUHAMMAD: It's loading now.

8 Okay, Martin. You're good to go.

9 MR. ROMINE: As has happened with many
10 states throughout the country, New Mexico has
11 seen significantly decreased revenues requiring
12 changes to the funding for schools for the '21
13 school year.

14 The legislature met in special session
15 in late June and part of House Bill 1, which was
16 passed by the legislature, was a mandate that all
17 school districts would either have to participate
18 in the K-5+ Program, which adds 25 school days to
19 the year, or an Extended Learning Plan, which
20 would add 10 days to the school year.

21 When the state submitted their
22 disparity analysis on July 20th, they modeled K-

1 5+ and they modeled Extended Learning, but they
2 did not model the mandate from the state
3 legislature. What they modeled were school
4 districts that had the program in the 2019-2020
5 school year and had applied for funds when they
6 submitted their budgets. Now virtually every
7 student in the state will be mandated to attend a
8 school that will have either an additional 10 or
9 an additional 25 days added to the school year.
10 That was not modeled in the submission and
11 because of the number of days it will be a
12 substantial difference in the money that will be
13 allocated to each school district.

14 In addition, in the superintendent's
15 -- in the Secretary's call to superintendents on
16 August 17th it was made known to them that 10 of
17 the 25 days of the K-5+ Program could be waived
18 if they were in remote -- in a remote learning
19 environment. And on this August 24th call they
20 were asking -- or offering people the opportunity
21 to continue to amend their applications.

22 This is a substantial difference in

1 what was sent in the submission that the PED
2 submitted to the state. It needs to be modeled.
3 It needs to be figured in there, calculated in
4 there so that people actually know what
5 difference it will make to the state funding.

6 Let's see. I kind of explained that
7 already. I kind of went -- got ahead of myself.
8 Got these slides already explained.

9 In reality when the state submitted
10 their submission only 55 of 195 districts and
11 charter schools were participating in the
12 program. It modeled 107,342 of 326,661 student
13 statewide. The K-5+ Program only modeled 24,266
14 of 326,661 students statewide. As you can see
15 there are a lot of students that will now be
16 participating in one or both of those programs
17 that were not modeled in the state's submission.

18 In addition these two programs had the
19 second largest budget increase in the 2019-20
20 school year. As you can see that justifies the
21 need to have these programs modeled in the
22 state's submission.

1 I'll save that for later. That's all
2 that I have to say at this time for 2021.

3 MS. HANKS: This is Jvanna Hanks from
4 the Gallup-McKinley County School District, and I
5 guess I would like to talk about the CARES Act
6 and just the methodology that's being utilized to
7 actually credit those funds.

8 So the state is actually reducing
9 state aid for the about 41 percent, I believe is
10 what we've been told, of the CARES Act funding
11 that we've received. Part of the issue there is
12 that LEAs will be reduced upon the total amount
13 that they have received even if some of those
14 funds are actually proportionately shared with
15 private schools.

16 I'm not sure what that credit actually
17 does to our district. We have not been given
18 that information, and so that information is not
19 currently modeled as a legislative change for FY
20 21.

21 I would also like to ask -- so the
22 state is -- has explained how the SB-9 crediting

1 works, and it's already been modeled they've
2 stated in the data that they've given. If we can
3 please be explained for the districts that are on
4 the line how much we were credited and how that
5 was done? I'm not sure if any of the other LEAs
6 have a question as well.

7 MS. CHAPPELLE: I have a number of
8 questions, but I'm going to wait to -- this is
9 Germaine Chappelle; my apologies -- until the
10 end, Jvanna, of your comments, but I do share
11 that question and concern and it confused me.

12 DIRECTOR MUHAMMAD: Who was speaking
13 just now, please? This is Director Muhammad.
14 Please identify yourself.

15 MS. CHAPPELLE: I did, Director.
16 Germaine Chappelle.

17 DIRECTOR MUHAMMAD: Okay. No, someone
18 else spoke I thought after you.

19 MR. CHAPPELLE: Oh, my apologies.

20 DIRECTOR MUHAMMAD: Okay.

21 Okay. Thank you, Germaine.

22 Any other comments from the LEAs?

1 MR. SANCHEZ: This is Andrew Sanchez,
2 Madam Director, and -- of course for Gallup-
3 McKinley, Grants-Cibola and Zuni Public Schools.

4 Counsel for the PED, while --
5 indicating that somehow that the argument about
6 how they reinterpreted the statute is relevant
7 needs to have some sort of comment.

8 The idea or the PED coming up with the
9 new interpretation of 228.25 is a recent
10 development. In fact, this idea of a 75 percent
11 cap has made its first appearance ever in
12 response to the TRO.

13 If you look again -- and I make
14 reference to Jvanna's slides on No. 8 and No. 9.
15 These denote that the PED has in the past and
16 including for this school year, including fiscal
17 year 2021, has never deviated from the statutory
18 language, which I'm referring to is 228.25(d),
19 subsections 5 and 6, which has the word shall
20 take 75 percent of those revenues.

21 What the PED has been arguing now, and
22 this goes towards the accuracy of this data for

1 2021 -- is arguing that they can now do this
2 sliding proportional scale because they have no
3 reinterpreted state law to allow them to take in
4 accordance with federal law this leap, which can
5 only be characterized as a leap, that they can
6 adopt these aspects of 7009 and of the
7 regulations and of the disparity tests and
8 incorporate them into state law. I think that
9 that goes towards this accuracy of this
10 information. That -- the statute has a shall and
11 they can't get past it.

12 The Zuni case; and I do urge OGC to
13 look at that, the application of the New Mexico
14 Supreme Court in that case was simply to use
15 federal law as when state law would be triggered.
16 The case stands for -- the only holding is that
17 the state may not take impact aid credits under
18 the SEG until this Agency certifies that the
19 funding, the entire funding formula has been
20 equalized. It stands for no other assumption.

21 And the reason why I'm bringing this
22 up is that the argument that if there's a

1 conflict between federal law and state law,
2 preemption applies. And that means that we must
3 follow the federal law. There is no conflict
4 here because I think that, as Jvanna has
5 indicated earlier, there is nothing in your
6 applicable law that tells the states how to fund
7 public schools. There is nothing in 7009 or in
8 the regulations that say the state must fund
9 public school in this manner. All it requires is
10 that it must be able to do it and be equalized
11 for equitable purposes with regards to the taking
12 of federal funds that have been awarded to these
13 -- the school districts that qualify.

14 So that needs to be very much
15 clarified and that -- in other words, the
16 comments of the PED cannot stand alone of this
17 newfound interpretation of state law. And then
18 certainly again I refer the Agency that this
19 matter will be addressed by a state court who
20 will do the job of interpreting state law.

21 So we do ask that that not be
22 blanketly accepted, the PED's submission be

1 blanketly accepted that they are in fact
2 providing accurate information.

3 DIRECTOR MUHAMMAD: Okay. This is Ms.
4 Muhammad speaking again. Any other comment from
5 any of the LEAs?

6 MS. CHAPPELLE: Yes, Director. This
7 is Germaine Chappelle. I'm wanting to follow up
8 as well.

9 DIRECTOR MUHAMMAD: Yes, ma'am, go
10 ahead.

11 MS. CHAPPELLE: Thank you.

12 So, in line with Mr. Sanchez'
13 comments, I do want to -- have a few follow-up,
14 but I also want to just kind of conclude some of
15 the comments and piece them out of that, made by
16 both Jvanna and Martin.

17 And with respect to 2021, I think the
18 point that Mr. Sanchez made earlier in this
19 hearing, about the pending restraining order, is
20 pertinent. In that restraining order the judge
21 indicated it does not believe the -- or, at least
22 for right now, there's a hearing later this week

1 -- that the state can submit this current
2 methodology, given the status of state law.

3 And so I just want to point out,
4 Director, that is an ongoing concern and an open
5 issue that I think we probably will have to
6 address, with respect to this 2021 formula and
7 methodology.

8 You know, we've heard some references
9 to state statute. We've heard some references,
10 obviously, to the federal law and the notion of
11 preemption. And I just kind of want to take us
12 back to the basics for a minute. Federal law, as
13 we all know, and on this particular topic, is not
14 mandatory, it's an option. So, if states want to
15 take the option, they then have to meet certain
16 standards.

17 As we all know, less than, I believe,
18 four states, three or four states, right, have
19 availed themselves of this option.

20 With respect to the state and the
21 state's public education department, they are
22 obviously a part of the executive branch. And as

1 part of the executive branch, they can only act
2 pursuant to authority granted to them by the
3 legislature.

4 I'm in absolute agreement with Mr.
5 Sanchez and the analysis put forth by Ms. Hanks
6 and Mr. Romine, in that the current status of the
7 statute does not contain any language whatsoever
8 to communicate or convey the intention of the
9 task force with true language. If you look at
10 other places in the statute, when the legislature
11 intends to have a sliding scale, with respect to
12 that, it absolutely uses, up to, or, cap, it does
13 not use, shall or mandatory.

14 I'd also like to point out, and I
15 won't belabor this point because we will include
16 it in our briefing, that if the percentage
17 language is actually implemented because the
18 state will decide to treat the percentage taken
19 from impact aid differently from the percentage
20 taken from other local revenue. And it's that
21 history that also says to me that this notion of
22 the 75 percent being a cap is inaccurate.

1 Moving forward from that argument, I
2 also am of the view that the proportionality
3 methodology, the methodology actually violates
4 state law on some other principles. And with
5 respect to the state constitution, as we all know
6 from Yazzie/Martinez, the state is required to
7 provide equal access to students to education.

8 The proportionality methodology, as
9 applied, clearly by the demonstratives showed by
10 Mr. Romine, does not do that. In fact, it
11 actually indicates that the most wealthy schools
12 are excluded in the top 25 percent, and the least
13 funded schools are, obviously, at the bottom, one
14 of those being the impact aid district with less
15 than 1 percent private property tax availability.
16 My understanding is they can collect maybe \$1,000
17 a year in that local proportionately match.

18 So, as applied, and given New Mexico's
19 unique tax structure, we do not believe that the
20 current formula provided by the state for 2021 is
21 consistent with the New Mexico constitution.

22 Frankly, the formula that they have

1 provided is not ripe for review. And the bottom
2 line reason for that is the legislature has not
3 authorized PED to put forth this formula. And in
4 our analysis, the executive does not have that
5 within the executive discretionary powers to
6 implement that.

7 And with respect to preemption, for
8 the reasons already discussed, in order to comply
9 with federal law, the state also has to comply
10 with state law. Preemption does not apply here
11 because this is a discretionary action; the state
12 opts into this program, it's not required to
13 conduct itself in that program.

14 I also encourage OGC to take a
15 detailed look at the Zuni case referred to by
16 PED's counsel. That is an apples to oranges
17 analysis when that was provided. The issue being
18 raised in that case is not the issue that we are
19 discussing today. And so, at the very least that
20 analysis is dicta. But I don't -- I don't even
21 think it's dicta, I think it's apples to oranges.

22 And -- I'm just going through my

1 notes. I think Mr. Sanchez covered a number of
2 things.

3 I did want to quickly respond,
4 Director and parties, to the state's recitation
5 of the background of equalization. I realize
6 that that was probably outside the scope of what
7 we were asked to present today. But I do think
8 it is very important to discuss. And that is
9 because the state, from a demographic standpoint,
10 is very diverse.

11 The central part of the state and the
12 southeast and northwest corners, by and large,
13 are pretty productive, meaning there is industry
14 and there is business and there are fairly decent
15 property tax revenues coming out of those
16 localities.

17 On the other hand, for the most part,
18 with a few exceptions, the northeast and
19 southwest corners of the state neither contribute
20 significantly through severance taxes, property
21 taxes, or impact aid. And so, in the 70s, and I
22 apologize, Ms. Mauskapf, for saying your name

1 incorrectly -- she is absolutely correct, the
2 state had a problem on how it was going to fund
3 schools in a fairly equalized manner.

4 Like I mentioned, the southeast and
5 northwest contribute quite a bit, actually, in
6 both industry, and impact aid, and property taxes
7 to the overall school formula, but those other
8 two corners did not. And so, the state really
9 did need to find a way to deal with that.

10 Unfortunately, and as we discussed
11 last year, and we will raise again in response to
12 the state's 2020 methodology submittal, the per
13 student contribution is skewed, and it still is
14 skewed even under the proportionality test such
15 that Zuni children, for example, contribute about
16 3500 per student, CCSD is at about 2500, and
17 then, of course, Gallup is at about 1500. The
18 rest of the state is between for the most part
19 \$50 and \$200 per student in terms of this 75
20 percent percentage into the overall pot.

21 The reason I think that's important is
22 because we -- we obviously have a problem in

1 school funding in New Mexico. Unfortunately, the
2 formula that the state has put forth actually
3 creates wider disparity on the ground, than it
4 does seeking to actually fix the problem.

5 And I would note, from the CCSD
6 perspective, we are in jeopardy of losing 80
7 percent of our property tax revenue due to the
8 closure or scheduled closure of two major
9 industrial complexes in our school districts.
10 What that means is, if the proportionality test
11 or formula is applied, we will be sitting right
12 next to Zuni, with respect to those funding
13 problems, because our percentage of property tax
14 revenues, like I said, will have dropped by 80
15 percent.

16 And with that, I stand for questions.

17 MS. MARTIN: I do have a question, if
18 that's okay with the Impact Aid Program. This is
19 Jill Martin again from OGC, from Office of
20 General Counsel.

21 DIRECTOR MUHAMMAD: Yes, Jill.

22 MS. MARTIN: Okay. So, I just want to

1 clarify what was just said. Because the
2 proportion calculation only affects the amount of
3 impact aid that a state may take into account,
4 and it only affects school districts that receive
5 impact aid.

6 In other words the federal law says,
7 you can't take more impact aid into account,
8 state, than the percentage that local taxes
9 covered under the equalization program are to
10 total local taxes. That's the proportion. And
11 that only affects impact aid and only affects the
12 districts that received impact aid.

13 So, what that means for New Mexico is
14 that some impact aid districts will get more
15 state aid and get to keep more impact aid. Not
16 all impact aid districts in New Mexico will get
17 to keep more impact aid, due to a lower
18 proportion, because under the data submitted by
19 the state it shows that some districts will still
20 have to have 75 percent of impact aid taken into
21 account. And that doesn't affect, you know, the
22 local amount taken, as we heard from the state.

1 But what confuses me is -- I'm a
2 little confused because of the appearance that
3 the four districts that have asked for the
4 hearing are apparently objecting to the state
5 taking the lower amount of impact aid from impact
6 aid districts and letting them keep more impact
7 aid. The state is saying they will comply with
8 the federal regulations and apply that lower
9 percentage, even though it hurts state revenues
10 because they have to come up with more state
11 money.

12 I think that that's the result, as I
13 see it. And I was curious -- you don't have to
14 answer now, you can do it in your written
15 comments -- but if there's any response from the
16 point of view of the districts about that
17 appearance of why that opposition should be.

18 And just to also clarify one thing
19 that was said by Ms. Chappelle, about
20 equalization being optional, it is true, a state
21 does not have to apply for certification for
22 Section 709. But, if it does, it must comply

1 with federal regulations. So, New Mexico has
2 applied and, therefore, it does have to follow
3 all of our impact aid regulations.

4 And if there is a regulation under the
5 federal law that is different from state law,
6 then that's where the preemption comes in. So, I
7 just wanted to clarify that. Thank you.

8 MS. CHAPPELLE: Yes, if I might
9 respond real quick, Director?

10 DIRECTOR MUHAMMAD: Yes. This is --
11 go ahead. Go ahead, Ms. Chappelle.

12 MS. CHAPPELLE: Thank you. My --
13 Thank you.

14 So, I think the question you're
15 raising really gets to the heart of our concerns.
16 And that is that when you take a district, like
17 Zuni, for example, that has very little private
18 property tax and, therefore, you know, de minimis
19 ability to raise property or tax revenue locally,
20 this methodology does absolutely nothing to help
21 that school district. The data from the state
22 indicates that Zuni will still be at 75 percent.

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And so that's what seems inapposite with respect to how this particular formula, as applied, taking into consideration New Mexico's tax structure, doesn't seem to actually, I guess, implement the policy and the reason behind having the formula with this option for equalization in the first place.

And so that's what the heart is, and we will definitely brief that further so that we can clear up that confusion. And I do appreciate you, you know, bringing that to our attention, because that is, you are absolutely right, the crux of the issue.

And from a preemption standpoint, once the state has decided to avail itself of this option, even after doing that, it still has options in terms of what particular formulas it puts forth. Right? And so, from that perspective, and even under a preemption analysis, state law can be more restrictive in making sure they're, obviously, consistent with

1 the federal law.

2 In this particular situation a state
3 agency is acting ultra vires of the authority it
4 has, because right now the legislature has not
5 authorized it to utilize this particular sliding
6 or proportionality formula. And that's the
7 concern we have, just as a threshold issue.

8 MR. SANCHEZ: Ms. Martin, this is
9 Andrew Sanchez; if I may, Madam Director?

10 DIRECTOR MUHAMMAD: Okay. Just one
11 second, Mr. Sanchez.

12 Have we heard all comments from the
13 LEAs? And, if so, I will turn it over to Mr.
14 Sanchez from the state. Again, this is Director
15 Muhammad speaking.

16 MR. SANCHEZ: Madam Director, I'm not
17 with the state --

18 (Simultaneous speaking.)

19 MR. SANCHEZ: I'm not with the state.
20 I'm with the three school districts.

21 DIRECTOR MUHAMMAD: Oh, okay. I
22 apologize. Okay. Yes, go ahead.

1 MR. SANCHEZ: I think that on a more
2 fundamental level is what we've been arguing
3 here, and I think it can even be reviewed and
4 simplified even more, Ms. Martin.

5 The formula that you have been given
6 by the PED is not based on reality. It is them
7 satisfying the requirements of whatever disparity
8 test that they are doing. But what they are
9 doing is they are reflecting that there is a
10 sliding scale, as you mentioned, of impact aid,
11 and that, in fact, under their formula, the
12 school districts would receive -- would not be
13 subject to as much of the credits with regards to
14 that.

15 The crux of this whole thing is that
16 that's not reality. For this school year, and
17 the budgets that were approved, the PED did
18 exactly what the statute requires, which is you
19 shall take 75 percent. That is why we are
20 arguing, with regards to the accuracy of this
21 data, is that they are, they are contending that
22 there is this other parallel funding formula that

1 is in existence in how they fund public schools.

2 That is not, in fact, reality. The
3 budgets that were approved and the credits that
4 were taken were consistent with 22.8.25 as
5 written in the statute. The idea of this data
6 that's being submitted to the PED as being, this
7 is how we need to fund public schools, is not
8 accurate.

9 That's what the TRO was about, was to
10 try to get the PED to require that the data that
11 they supplied to this agency be rooted in the
12 actual way, and depict how, schools are actually
13 funded.

14 Like I said before, the first time
15 we've ever heard of this 25 percent cap in the
16 sliding proportionality scale was in response to
17 the TRO. It doesn't exist as set forth in slides
18 8 and 9 of Ms. Hanks' presentation. There has
19 never been a presentation to our legislature
20 about this. There has never been any attempt by
21 the PED to say that the budgets need to be
22 adjusted, pursuant to this proportionality,

1 because it doesn't exist in reality.

2 That is the crux of the accuracy
3 challenge that the LEAs are making today, is that
4 there has been data submitted to fulfill nothing
5 more than to pass a disparity test to get the
6 certification. But that's not how schools are
7 funded.

8 DIRECTOR MUHAMMAD: Okay, thank you.

9 Again, this is Director Muhammad.

10 Any other comments? If not, I'm going
11 to turn it over to the state for comments that
12 are unique to school year 21 at this point.

13 Okay.

14 MR. BROSANAN: Okay. This is Aaron
15 Kramer Brosnan again, counsel for the New Mexico
16 Public Education Department.

17 So, a couple of things here. And,
18 one, I'd like to ask -- if it's okay, I'd like to
19 take a little extra time. I think there's some
20 confusion over how proportionality was calculated
21 and operated. And if you don't mind allowing us
22 a little extra time, I think it would be helpful

1 to walk through that issue, Director Muhammad.

2 DIRECTOR MUHAMMAD: Yes. Why don't
3 you go ahead and get started, yes.

4 MR. BROSNAN: Okay. So --

5 MS. CHAPPELLE: I'd like to make a
6 clarification, Director Muhammad.

7 We left out quite a bit of our
8 analysis on the, kind of, bullet point findings
9 we made. So, if the state does that, we would
10 like the ability to be able to respond with a
11 table.

12 DIRECTOR MUHAMMAD: Duly noted. We'll
13 try to stay within the time frame. I'll give the
14 state the time that's allotted and maybe a few
15 minutes. So, yes.

16 And don't forget, everyone, that
17 you'll be able to submit additional documentation
18 in writing, also. But noted. Thank you.

19 MS. CHAPPELLE: Thank you, Director.

20 MR. BROSNAN: Thank you, Director.

21 So, okay, a couple of things. One, I
22 kind of want to address a couple inaccurate --

1 you know, inaccuracies.

2 The temporary restraining order didn't
3 prevent PED from submitting information to the
4 Department of Ed, it just asked that it be
5 accurate, which we do believe and stand by
6 strongly that the data we have is in fact
7 accurate.

8 And along those lines -- so, when it
9 comes to the timing of this cap issue, I think
10 it's important to note that prior to the April
11 determination the credit could only be 75 percent
12 because of the limitations in crediting the half
13 mil levy. And so, this is new because of changes
14 required by the department in the April
15 determination letter.

16 And, you know -- and so what I want to
17 note here is that the state is applying the most
18 restrictive rule for each LEA. So, in instances
19 where Ed would allow a greater proportion, but
20 the state would allow a lesser, then we're going
21 with the lesser proportion required under state
22 law.

1 In instances where the state would
2 allow a larger proportion, but the department's
3 regulations require a smaller proportion, we
4 follow the more restrictive in that case, which
5 is the federal regulations.

6 So, what the state is doing, to
7 harmonize these two statutes and the requirement
8 of the two, is that we're always applying the
9 most restrictive rule, and the rule that is least
10 favorable to the state.

11 In terms of if you look at -- and so
12 along those lines if you look at table 5 of the
13 July 2020 revised FY 21 disparity submission,
14 table 5 lays out the computation of proportion
15 for each district. And what you'll see is for
16 each district we took the half mil 75 percent
17 credit, and the SB-9 property tax is considered
18 in the calculation of the SB-9 state match. And
19 then we divided that by the total of those two
20 local property taxes.

21 And if you look, for example, at
22 Central on the first page of that table, Central

1 Consolidated School District, that is, we would -
2 - the state would be allowed to take a proportion
3 of 95 percent under federal impact aid
4 regulations. However, rather than taking that 95
5 percent, because that would conflict with state
6 law, PED reduced the credits taken to 75 percent.

7 And so, the SEG allocations made this
8 year for Central Consolidated reflect the same 75
9 percent that's been taken historically, because,
10 instead of using the 95 percent proportion
11 allowed under federal regulations, we used the 75
12 percent portion allowed under the state law.

13 If you look at Gallup-McKinley County
14 Schools, the state could take 95.5 percent credit
15 under the impact aid regulations. However, to
16 comply with state law, we reduced that to 75
17 percent, taking the option that was worse for the
18 state.

19 For Grants and Cibola County schools,
20 it was 95.32 percent. These are all Column E
21 versus Column F, which we capped at 75 percent.

22 And then, finally, for Zuni Public

1 School District, impact aid regulations allow a
2 proportion of up to 94.49 percent, which we
3 capped at the maximum 75 percent allowed under
4 state law.

5 And so, if we were not to use the more
6 restrictive of the two pools, and instead we were
7 to follow the federal regulations, as required --
8 as Ms. Martin has indicated would be required
9 under preemption, then the districts would each
10 lose an additional, approximately, 20 percent of
11 impact aid funding to the formula.

12 And that's something I think we had
13 mentioned that this was outside the scope, but I
14 think it's worth mentioning, I think Ed has dealt
15 with in the past, but this is a test of
16 disparity. And the amount of contributions isn't
17 at issue as long as, using the formula provided
18 for in the federal regulations, the state meets
19 the disparity test, which is true in this case.

20 And so, you know, while we understand
21 that there may be concerns over the amount of
22 credit that the state is taking, those concerns

1 are beyond the scope of this hearing.

2 For some other issues, as it relates
3 to CARES Act, and so here the state recognizes
4 that CARES Act is flowing to school districts,
5 and so here the state reduced the total SEG --
6 the state legislature reduced the total SEG
7 allocation. As a result, PED had to reduce the
8 unit value, and so the amount of funding that
9 gets distributed per student through the SEG.

10 But the legislature did not change how
11 that funding flows to schools. And so, it serves
12 as a blanket 1.2 percent reduction in every
13 school district's SEG allocation, but it does not
14 change how that money is distributed.

15 And so here it's not actually a change
16 to the program of state aid, it's simply a change
17 in the amount of funding made available to
18 distribute through the program of state aid.

19 When it comes to the K-5 plot and
20 extended learning time, here I just want to note
21 that it's inaccurate that this is a requirement.
22 The legislature, in their special session,

1 indicated that they strongly encouraged school
2 district participate in the K-5+ and extended
3 learning time programs. And if a district
4 chooses not to participate in those programs,
5 then they need to provide an explanation to PED
6 of what activities they plan to offer instead to
7 make up for learning time lost to the pandemic.

8 Here, the way that these funds are
9 distributed, the formula that determines the
10 units assigned for K-5+ and extended learning
11 time are the same -- it's the same methodology
12 that was indicated in the modeling that we
13 provided.

14 And as the districts note, they're --
15 you know, not 100 percent of the funding
16 available to those two programs was distributed,
17 in large part because, since they are voluntary,
18 and they require that teachers and students go to
19 an extra 25 -- 10 to 25 days of school, it's very
20 difficult for school districts to adopt those
21 programs, and there's large amounts of resistance
22 from local programs.

1 And so, you know, here we don't know
2 what districts will or will not choose to
3 participate, and if districts are going to
4 require staff to stay and teach an additional 10
5 to 25 years, or if parents are going to support
6 that provision.

7 I also want to note that we modeled on
8 the data we had for districts that chose to
9 participate when we submitted the July 2020
10 submission. And I'll note that because this is
11 projected data, the state does have to submit
12 final data at the end of fiscal year 21 that
13 will reflect the total number of districts that
14 choose to participate in K-5 and extended
15 learning time programs. And if in the event the
16 schools that participate cause the disparity
17 percentage in the state to increase more than 11
18 percentage points, to put us over the 25 percent
19 threshold, we have signed that assurance that
20 indicates that we will return the state aid
21 payments that were improperly withheld.

22 And so, the K-5+, both will be dealt

1 with on the back end, and also does reflect the
2 modeling we could do at the time, because until
3 districts choose to participate in that program,
4 there's no way to allocate them funds.

5 With -- there was some discussion --
6 So, also, the Yazzie/Martinez issue was one that
7 I'd like to address.

8 So, here, the state indicated in its
9 legal opinion that the structure of the funding
10 formula remained the same. The issue in the
11 Yazzie/Martinez case is that not enough money
12 went to students who were identified as at-risk.
13 And the court had indicated -- or, shown that it
14 believed that the extended learning time, and K-
15 5+ programs, and the at-risk units were the most
16 appropriate ways to address those issues

17 And so, the state, keeping the exact
18 same School Finance Act, which is still very much
19 in place as it was before, then added the K-5+
20 extended learning time programs to the SEG. And
21 so, instead of being pilot programs, they are now
22 permanent features of the school finance formula,

1 which are changes that we modeled in the FY 21
2 submission.

3 Then, also, it increased the at-risk
4 multiplier from, previously, that multiplier was
5 0.16 and now has been increased to 0.3. And that
6 change has also been modeled in the submission.

7 And so the state aid formulas is --
8 has been changed, and the weights that are
9 associated with at risk, K-5+, and extended
10 learning time have changed. But, all of those
11 changes have already been modeled in the current
12 submissions.

13 There were some other issues, related
14 to proportion, in that a requirement that the
15 state has to provide equal access. And, again, I
16 think that is outside the scope of the disparity
17 test.

18 And so the disparity test isn't
19 looking at exactly how much money goes to every
20 school, and it's not a test of adequacy of
21 funding, it is instead a test of, does the state
22 -- the program of state aid serve to equalize

1 expenditures between the 95th and the 5th
2 percentile school? And our submission does show
3 that the state formula does in fact equalize, and
4 equalize well, to an extent that is well below
5 the 25 percent threshold required.

6 And so I believe that's covered the
7 majority. You know, I would ask if the
8 Department has any questions that they would like
9 us to clarify. I think I'm returning a couple
10 minutes of time to you.

11 MS. OGNIBENE: I think we might be
12 having some technical issues with our chairman.
13 But I will --

14 DIRECTOR MUHAMMAD: I'm back.

15 MS. OGNIBENE: Oh, you're back? Okay,
16 great.

17 DIRECTOR MUHAMMAD: Thank you. Okay.
18 And thanks, everyone, for any and all technology
19 issues, knowing that we're all working from
20 different locations today.

21 So, I am -- I am back on.

22 Okay, so again this is Director

1 Muhammad. Any other comments from the state at
2 this point?

3 MR. BROSNAN: We have no further
4 comments on FY 21. We're just open for
5 questions.

6 DIRECTOR MUHAMMAD: Okay, thank you.

7 MR. BROSNAN: This is Aaron Kramer
8 Brosnan from the New Mexico Department of
9 Education.

10 DIRECTOR MUHAMMAD: Thank you.

11 Okay, any comments from OGC?

12 MS. MARTIN: No, but I believe Amanda
13 has a couple questions.

14 DIRECTOR MUHAMMAD: Okay. I'll turn
15 it over to my senior analyst, Amanda. Go ahead.

16 MS. OGNIBENE: Hi, everyone. This is
17 Amanda Ognibene with the Impact Aid Program. I
18 do just want to ask some clarifying questions
19 just to make sure that we are on the same page.

20 So, you stated before that the state
21 is using the proportion calculation that factors
22 in the SB-9 minimum when they are making their FY

1 21 estimated payments, correct?

2 MR. BROSNAN: That is correct.

3 MS. OGNIBENE: Okay, great.

4 And I also just want to confirm the
5 impact of including ESSER funds, or factoring
6 that into the SEG payments. That has reduced the
7 overall unit value by 1.2 percent. And that
8 otherwise there is -- is there not a change to
9 the state equalization guarantee, in terms of how
10 it is calculated?

11 MR. BROSNAN: That's correct. It was
12 -- the unit value reduction was approximately
13 1.52 percent. And that ends up -- that is just
14 applied universally to all LEAs. It didn't
15 change the actual formula that is outlined in
16 25.825.

17 MS. OGNIBENE: Great.

18 And I also just want to clarify for
19 everyone that when I'm talking about CARES Act, I
20 mean the ESSER funds that others have brought up.

21 DIRECTOR MUHAMMAD: Okay.

22 MS. HANKS: This is Jvanna Hanks from

1 Gallup-McKinley. May I ask two questions?

2 DIRECTOR MUHAMMAD: Yes, Jvanna, go
3 ahead.

4 MS. HANKS: So, number one, the CARES
5 Act, so the reduction in SEG -- so the CARES Act
6 then should be modeled in the FY 21, correct?
7 The total amount that LEAs received?

8 MS. OGNIBENE: Well, I mean, that's,
9 that's another issue. We would have to look at
10 that in terms of, you know, what is the actual
11 impact from the formula, versus -- because, I
12 mean, the state is doing a disparity test on an
13 inclusion basis now, which means that revenues
14 for all districts are being added together and
15 divided by their weighted student count.

16 So, it's an open question. We're just
17 we're trying to clarify right now what exactly
18 the impact was, and figure out whether that needs
19 to be included in the model.

20 DIRECTOR MUHAMMAD: And this is
21 Director Muhammad speaking. And that's something
22 we can circle back with.

1 MS. HANKS: Sure. Yeah. And that
2 will probably be part of our written comments as
3 well.

4 We received the email on Friday. And
5 I know it was mentioned earlier by Mr. Brosnan, I
6 believe, that, you know, there were some issues
7 being brought up that hadn't been discussed
8 before.

9 Some of the information that was sent
10 to us on Friday we haven't seen before. So, I
11 think that's part of the collaborative effort.
12 And then also just revenue methodology on the
13 inclusion method, which is a difference from the
14 prior methods that were being utilized. So,
15 we're going to have to go back and re-analyze all
16 the funding sources that we may have excluded due
17 to the exclusion method being utilized.

18 So, please anticipate that in our
19 written comments as well.

20 And then just my other question that
21 I had asked, if someone can please tell me what
22 my SB-9 credit was?

1 MR. BROSNAN: So, I'd like to comment
2 on the previous question, briefly.

3 That, you know, the state understands
4 from correspondence in previous years that
5 typically a increase or a reduction in the amount
6 of funding without a corresponding change in the
7 way units are generated and the formula is
8 distributed, is not a change that needs to be
9 modeled. The focus is on the changes to the
10 actual program of state aid, rather than the
11 allocation for state aid.

12 DIRECTOR MUHAMMAD: And please
13 identify yourself once again for the record.

14 MR. BROSNAN: Sorry. This is Aaron
15 Kramer Brosnan of NMPED.

16 DIRECTOR MUHAMMAD: Thank you.

17 MS. HANKS: This is Jvanna Hanks from
18 Gallup-McKinley.

19 And, Mr. Brosnan, I appreciate what
20 you're stating. But when the legislature
21 approved that funding, they specifically put the
22 CARES Act as a crediting line item. So, it is

1 specifically changing the way that funds are
2 being distributed.

3 MS. MARTIN: This is Jill Martin from
4 Office of General Counsel in the Education
5 Department.

6 I do have one follow-up question, Mr.
7 Brosnan, for what you were saying about the CARES
8 Act allocations. You did say that there was no
9 change to the state aid formula. But, does that
10 mean for the FY 21 funding -- and I think this
11 is what Amanda's question was getting at, also --
12 for the funding that you are currently giving
13 out, is there a change -- is it a direct match
14 that for each CARES Act dollar, they get less
15 state aid -- they get less state aid, so the
16 total is exactly the same? Or is it not a one-
17 to-one direct match?

18 MR. BROSNAN: That's a good question.
19 I think a point of clarification here is that the
20 legislature isn't looking at a district's
21 allocation of CARES money. They -- the districts
22 -- or, sorry, the legislature recognized that

1 CARES Act money will be going to districts and,
2 therefore, reduced the entire SEG allocation that
3 would be distributed to schools on the basis of
4 the SEG formula.

5 And so, the credit isn't -- is not
6 done like impact aid, where it's done on a case
7 by case basis for districts that receive impact
8 aid, it's different in that that funding source
9 is just being used to reduce the total pot of SEG
10 funds available to be distributed through the
11 state formula.

12 MS. HANKS: So, I'm sorry, this is
13 Jvanna Hanks again. So, point of clarification.

14 The school district is being reduced
15 on the basis of the total CARES Act funding
16 percentages, but we're having to proportionately
17 share out some of those funds to private schools,
18 in which the crediting does not apply. So, there
19 will be a disequalization between school
20 districts on the amount that's credited to them.

21 DIRECTOR MUHAMMAD: Thank you. Thank
22 you. Any additional comments from the

1 department?

2 MR. BROSNAN: No. We don't have any
3 additional comments. And, of course, we're
4 always willing to submit any modeling that the
5 Department believes should be required.

6 MS. HANKS: And, I'm sorry, this is
7 Jvanna hanks from Gallup-McKinley again. If
8 somebody can just please tell me the amount that
9 was credited from the SB-9 dollars?

10 MR. BROSNAN: This is -- go ahead.
11 Sorry, Director.

12 DIRECTOR MUHAMMAD: No, go ahead. Go
13 ahead. And please identify yourself. Go ahead.

14 MR. BROSNAN: This is Aaron Kramer
15 Brosnan from the New Mexico Public Education
16 Department.

17 I believe, and forgive me, I don't
18 have the date off the top of my head, but I
19 believe that the state has already provided a
20 memorandum to each LEA in the state outlining the
21 1.52 percent reduction in unit value.

22 MS. HANKS: No, I'm sorry, I just want

1 to know what my credit was for the SB-9 dollars.
2 This is Jvanna Hanks.

3 MS. MAUSKAPF: This is Jennifer
4 Mauskapf from the New Mexico Public Education
5 Department.

6 Ms. Hanks, I just want to make sure we
7 understand your question. Do you understand that
8 computational proportion is somehow being applied
9 to SB-9 and credit being taken?

10 MS. HANKS: This is Jvanna Hanks. I'm
11 sorry. Should it not be? Because that is a
12 local revenue off of property taxes.

13 MS. MAUSKAPF: And I know that's an
14 argument that I heard you all make earlier, and I
15 believe Mr. Kramer Brosnan addressed that in our
16 prior comments.

17 MS. HANKS: So, to be clear, there is
18 no credit of SB-9 dollars? This is Jvanna Hanks.

19 MR. BROSNAN: This is Aaron Kramer
20 Brosnan, NMPED.

21 All of the information for the
22 calculation of the SB-9 program in the context of

1 the required computational proportion under the
2 federal regulations is on table 5 of our FY 2020
3 and FY 21 disparity submissions.

4 MS. HANKS: I'm sorry, this is Jvanna
5 Hanks, so -- from Gallup-McKinley.

6 And I just want to be clear, because
7 this is the discussion we're having, there is no
8 crediting currently of SB-9 dollars happening?

9 MS. MARTIN: Can I just suggest
10 something? Hi, this is Jill Martin again from
11 Office of General Counsel.

12 I think there may be confusion -- I
13 know there is in my mind -- as to what is meant
14 by the question crediting of SB-9. Because we
15 understand that the SB-9 program functions as its
16 own type of equalization program in that the
17 amount of state funding of SB-9 is dependent in
18 part on the local amount.

19 So, I'm not sure if you're referring
20 to that, or if you're referring to something that
21 is related to the disparity test, or to the
22 proportion which we were discussing that only

1 affects impact aid. And I'm not sure what the
2 question is directed to.

3 Thanks.

4 MS. HANKS: Sorry. This is Jvanna
5 Hanks again.

6 I think that, probably, our written
7 comments will look at this, and it is speaking
8 to, actually, all three of those things that
9 you've mentioned.

10 DIRECTOR MUHAMMAD: Okay. This is
11 Director Muhammad speaking.

12 Thank you. And the written comments
13 will be helpful, because it seems everyone has a
14 question about the question. So, thank you.

15 MS. CHAPPELLE: Director Muhammad,
16 this is Germaine. I do have a quick question for
17 Mr. Brosnan, if that would be okay?

18 DIRECTOR MUHAMMAD: Yes, go ahead.

19 MS. CHAPPELLE: Thank you.

20 Mr. Brosnan, I thought I heard you say
21 that under the proportionality methodology the
22 state was still going to keep 75 percent across

1 the board. Is that -- did I take -- did I get
2 that wrong? Did I confuse that?

3 MR. BROSNAN: This is Aaron Kramer
4 Brosnan with the New Mexico Public Education
5 Department.

6 That is not accurate. And so it
7 happens that for CCSD, Gallup-McKinley, Grants
8 and Cibola, and Zuni School Districts that the
9 proportion is capped at that 75 percent amount.
10 But the amount that we do take credit for varies
11 by district, according to the table 5.

12 MS. CHAPPELLE: And you're speaking --
13 this is Germaine Chappelle again, my apologies --
14 about the 2021 submission?

15 MR. BROSNAN: We did use Ed's
16 proportionality -- we did update the
17 proportionality methodology in both submissions.

18 MS. CHAPPELLE: And just to be clear,
19 right, prior to this, it had been a straight 75
20 percent for a couple of decades across the board.

21 I just want to make -- I was just a
22 little bit confused by what you said earlier

1 about that percentage.

2 MR. BROSNAN: This is Aaron Kramer
3 Brosnan, New Mexico Public Education Department.

4 That is correct. Prior to the April
5 15th, 2020 determination letter from the Impact
6 Aid Program, the only local tax revenue used in
7 the computation of proportion was the half mil
8 levy, which is a flat 75 percent across all
9 districts in the state.

10 After that determination letter, when
11 SB-9 local tax revenues were required to be
12 considered in the computational proportion, the
13 state updated its methodology to comply.

14 MS. CHAPPELLE: Okay. Director
15 Muhammad, this is Germaine Chappelle again.

16 And so obviously we clearly have a
17 disagreement about the interpretation of law, as
18 between LEAs and the state. And so I don't -- I
19 don't want to belabor that. I know we have
20 another subject matter to get into, and so I
21 will, pause my comments simply into that.

22 Thank you, Director.

1 DIRECTOR MUHAMMAD: Thank you. Okay,
2 and this is Director Muhammad.

3 We're going to move on to issues
4 unique to fiscal year 2020. So, I will turn it
5 back over to the LEAs for comment.

6 Okay. Any comments from the LEAs that
7 are unique to 2020?

8 MS. CHAPPELLE: Director, this is
9 Germaine Chappelle again.

10 We are a little confused by what you
11 mean by unique to 2020.

12 DIRECTOR MUHAMMAD: So, are there any
13 questions related to -- that haven't been
14 discussed thus far in the initial comments that
15 were similar to -- that crossed both years that
16 are unique to fiscal year 2020, regarding the
17 data?

18 We've discussed the lines so far
19 overall, but I just want to give you, the LEA, a
20 moment to discuss anything that is unique to
21 fiscal year 2020.

22 MS. CHAPPELLE: Director Muhammad, I

1 would like to reserve our discussion of that for
2 the written briefing. You know, we have
3 addressed those issues both in last year's
4 hearing, obviously, and now there's carryover in
5 our submittal initially regarding some of those
6 concerns. So, that would be my preference, for
7 CCSD.

8 DIRECTOR MUHAMMAD: Okay.

9 MS. CHAPPELLE: I do have some closing
10 arguments, as I mentioned in the beginning, that
11 I would like to make at the appropriate time.
12 Thank you.

13 DIRECTOR MUHAMMAD: All right, thank
14 you.

15 Any other LEAs have any comments?

16 MR. SANCHEZ: Madam Director, this is
17 Andrew Sanchez for the three LEAs, Gallup,
18 Grants, and Zuni.

19 I don't think there's any comments
20 because -- I would also like to reserve any
21 comments for the written submissions, because for
22 all intents and purposes the PEDs which draw up

1 the appeal should render it moot. So, I'm not
2 sure if time should be spent at this hearing on
3 it.

4 DIRECTOR MUHAMMAD: This is Director
5 Muhammad speaking.

6 Any comments from anyone internal to
7 Ed?

8 MS. MARTIN: I actually have a
9 question. Well -- we'll see -- I'll wait till
10 after the state if the state has any comments
11 relating to FY 20 first. I'll wait.

12 DIRECTOR MUHAMMAD: Okay. All right,
13 thank you, Jill.

14 Okay, this is Director Muhammad again.
15 I'm going to turn it over to the state for any
16 comments for 20. And if you're going to respond
17 in writing, then state it; that's fine.

18 MR. BROSNAN: This is Aaron Kramer
19 Brosnan with the state.

20 Since the LEAs don't have comments
21 specific to FY 2020, we also don't. We would
22 just ask that if there are -- ultimately, you

1 know, if there are closing arguments generally,
2 that we have an opportunity to respond.

3 DIRECTOR MUHAMMAD: Okay. This is
4 Director Muhammad. Noted. Thank you.

5 Okay. I don't believe we have any
6 other -- I'm just checking to make sure there
7 aren't any outstanding questions in the chat
8 and/or -- I believe there was a request for the
9 deck, and that was addressed already.

10 MS. MARTIN: I do have one question,
11 if that's okay. This is Jill Martin, again.

12 DIRECTOR MUHAMMAD: Yes. Go ahead.

13 MS. MARTIN: Okay. Question for the
14 state about FY 20 relating to the proportion.

15 I know you stated earlier that the
16 state is already applying the new proportion for
17 FY 21 that takes a district-by-district
18 approach. And so those impact aid districts that
19 have a lesser percentage under the state's 21
20 data, the state is already reducing the amount of
21 state aid that those districts -- sorry --
22 increasing the amount of state aid to those

1 districts due to the lesser proportion.

2 But what about for FY 20, has that
3 occurred, or, if not, when would that occur?

4 MR. BROSNAN: This is Aaron Kramer
5 Brosnan with the New Mexico Public Education
6 Department.

7 The state's plan is once certification
8 for FY 2020 is received, at that point any state
9 aid that would be posed to a district because of
10 a reduced proportionality would be returned, in
11 accordance with the assurance that the state
12 signed prior to FY 2020.

13 DIRECTOR MUHAMMAD: Thank you.

14 MS. CHAPPELLE: Director Muhammad. I
15 actually have a clarifying question on this point
16 made by Ms. Martin as well. I'm just trying to
17 wrap my mind around it, if I may.

18 DIRECTOR MUHAMMAD: Okay. Yes, you
19 may.

20 MS. CHAPPELLE: Thank you, director.
21 Germaine Chappelle speaking.

22 Mr. Brosnan, I just want to make sure

1 I understand what you just indicated, and, Ms.
2 Martin, was your question essentially asking the
3 state if they were going to apply the new
4 formula, if approved, retroactively?

5 MS. MARTIN: Just to clarify, by new
6 formula I was referring specifically to the
7 proportion of impact aid that is allowed to be
8 taken for each district. And since the original
9 submission was made with 75 percent across the
10 board, but the new data show a much less
11 percentage could be taken for certain impact aid
12 districts, I was asking about that state aid that
13 would have to increase. And Mr. Brosnan replied
14 that it would be returned, basically, but has not
15 been yet.

16 MS. CHAPPELLE: Okay. So, Germaine
17 Chappelle again.

18 Essentially, Mr. Brosnan, is the state
19 withdrawing its submission -- it's 2020
20 submission and relying on just the 2021
21 submission?

22 MR. BROSINAN: Director Muhammad, this

1 is Aaron Kramer Brosnan from the state. Would
2 you like me to clarify?

3 DIRECTOR MUHAMMAD: Yes, you could go
4 ahead. I believe we spoke of it earlier, but you
5 can go ahead.

6 The state -- I'll just say one thing,
7 the state submitted new fiscal year 20 data, as
8 we discussed at the beginning of the hearing.

9 Again, this is Director Muhammad
10 speaking.

11 MR. BROSNAN: Thank you, Director.
12 That would be my clarification as well. It's
13 we're not -- we have two submissions: one that
14 discusses the appropriate disparity test of
15 proportion for FY 2020, which would be the
16 subject of an FY 2020 determination; and a
17 separate data submission for FY 2021, which would
18 be subject to an FY 2021 data submission -- or,
19 disparity test.

20 MS. CHAPPELLE: So I apologize. This
21 is Germaine Chappelle again. Just wanted to
22 clarify, the determination for fiscal year -- I

1 mean for school year 2019 and 2020 have been
2 made. All we're saying, correct, Director and
3 Mr. Brosnan, is that the state has now proffered
4 two potential methodologies to apply for school
5 year 2020 and 2021? Is that correct?

6 MR. BROSINAN: This is Aaron Kramer
7 Brosnan of the New Mexico Public Education
8 Department. We have used the same methodology
9 for these two submissions. They're both the
10 inclusion method on a revenue basis.

11 DIRECTOR MUHAMMAD: And this is
12 Director Muhammad speaking again. And now we're
13 looking at that new data for fiscal year 20, the
14 resubmitted data.

15 MS. CHAPPELLE: Thank you, Director.

16 And just to clarify, when we are
17 referring to fiscal year 20, that's for this
18 current fiscal year, the one we're in right now,
19 because the previous one has already been
20 determined. And that's all I'm trying to make
21 sure I understand. I just want to be careful
22 with our language.

1 DIRECTOR MUHAMMAD: Just want to make
2 sure I'm clear here on your question. So, right
3 now --

4 MS. CHAPPELLE: Well, I --

5 DIRECTOR MUHAMMAD: Go ahead. Who was
6 speaking? Jill?

7 MS. CHAPPELLE: It was Germaine. My
8 apologies.

9 DIRECTOR MUHAMMAD: Oh.

10 MS. CHAPPELLE: I just don't want
11 there to be any confusion on the record that we
12 are in any way, with this hearing, reopening the
13 decision from last year. That's my primary
14 concern.

15 And, Ms. Martin, I was a little
16 concerned with the answer to your question
17 because I thought the state, kind of, had two
18 varying formulas. The one we're referring to is
19 for 2020, and then the other, the proportionality
20 that we're referring to as the 2021.

21 And so I just want to be very careful
22 with our language because, as it stands now,

1 especially with the withdrawal of the appeal, the
2 state could not take a credit for impact aid for
3 last year. And I just want to be clear that
4 we're not reopening, that situation.

5 MS. MARTIN: So this is Jill Martin
6 again.

7 Both sets of data, one for FY 20 which
8 is the date to year that we did make a
9 determination on in April. Yes. That is now
10 under reconsideration as stated in the hearing
11 notice that was sent out, I believe, three times
12 because of change in dates. And we do want to
13 thank everybody for being so flexible on changing
14 those dates.

15 But, yes, there's two different fiscal
16 years under consideration. One is FY 20 and one
17 is FY 21. I agree with you it's important to be
18 precise on language because when people refer to
19 a different method or different formula there's
20 two different things being discussed today. One
21 is the exclusion method versus inclusion method
22 of the disparity test. And the other one is the

1 proportion which is set by Federal regulations
2 and there's not a different formula. There's
3 only one formula for that. It's the proportion
4 that is the amount of local revenues covered by
5 the organization divided by total local tax
6 revenues. And so there's two different things
7 that are, I think sometimes being talked about as
8 a method or formula. So, just clear on that.

9 Thanks.

10 MS. CHAPPELLE: Thank you, Ms. Martin.

11 And this is Germaine Chappelle again.

12 And just to be clear when we're saying that we
13 are re-looking at 2020 data we are not, please
14 help me just confirm, reopening last year's
15 determination. Is that correct?

16 MS. MARTIN: The Impact Aid Program is
17 looking at the new data submission that is for FY
18 20 as well as the data submission for FY 21. And
19 it is done on a different basis. It is done on
20 the inclusion method instead of the exclusion
21 method. And that is because the state appealed
22 the initial decision to the administrative law

1 judge and as Amanda went through in the
2 PowerPoint in the beginning of the presentation
3 when she went through the procedural history of
4 all of the events I do recognize that it is very
5 confusing to be discussing two different fiscal
6 years at one time like this. Which is why we
7 tried the Impact Aid Program divided the agenda
8 like it did into the different issues with fiscal
9 years.

10 MS. CHAPPELLE: So, now that the appeal
11 has been my apologies, Germaine Chappelle with
12 a clarification.

13 Now that the appeal has been withdrawn
14 there is no appeal pending and last year's
15 determination remains a final decision, is that
16 correct?

17 DIRECTOR MUHAMMAD: This is what I
18 stated at the very beginning that we were not
19 going to comment on today because that
20 development just occurred very late on Friday.
21 And there has not been any action by the
22 administrative law judge.

1 MS. CHAPPELLE: Okay. I just wanted to
2 be careful on that. I didn't want it to appear
3 that our position in any way waived, the position
4 I just articulated, which is last year's decision
5 is absolutely a final decision. And we are
6 looking prospectively not retroactively with this
7 particular hearing. That's all I'm trying to be
8 careful on, Ms. Martin, because I do agree with
9 you. We've got formulas and we've got
10 methodologies and we've got data and I do think
11 in some ways we have potentially confused some of
12 those references.

13 MS. MARTIN: Right. I want to repeat
14 something that was stated by the director and by
15 Amanda earlier in the presentation which is that
16 we will be taking comments on that FY 20 new data
17 submission by the state. So, if you wish to
18 submit any comments on that you will have the
19 post comment period in which to submit comments.
20 So that is your opportunity. We will be looking
21 at that data submission, yes.

22 DIRECTOR MUHAMMAD: And this is

1 Director Muhammad.

2 Thanks, Jill, for that clarification.
3 I'm going to make sure Ms. Chappelle understands
4 that.

5 MS. CHAPPELLE: And I appreciate that
6 because if we are perceived as looking at this
7 retroactively then we will want to protect our
8 appeal rights on that point as well.

9 DIRECTOR MUHAMMAD: This is Director
10 Muhammad. Thank you.

11 MR. SANCHEZ: Madam Director, this is
12 Andrew Sanchez with the Gallup, Grants, and Zuni.
13 In light of what Ms. Martin is indicating, and
14 the objection we made earlier, I just renew my
15 objection. I'm not sure where the Agency has the
16 ability quite frankly or the authority to remove
17 the 2020 data and do another redetermination
18 predetermination of that data when the matter is
19 pending in another aspect of the Agency's
20 Administrative Law Judge.

21 I don't expect an answer. I don't
22 expect a remedy but I do want to point out for

1 the record that it seems to me that the Agency
2 has created another level of due process for the
3 state to partake in and has left open and has
4 undermined the appeal process that exists in
5 front of the Administrative Law Judge.

6 So, I understand that there is new
7 data, but shouldn't that have been left to the
8 ALJ with regards to whether or not it was timely,
9 whether it was appropriate, rather than to make
10 having another adjudicative function here with
11 regards to that? That's just the objection for
12 the record.

13 DIRECTOR MUHAMMAD: Noted, thank you.

14 MS. MARTIN: And this is Jill Martin
15 again.

16 Thank you, and we did explain, I
17 believe, the Impact Aid Office Hearing Notice did
18 explain that the administrative law judge issued
19 a stay of that proceeding pending a
20 redetermination of FY 20. So, that's on the
21 record and you can certainly look at that notice
22 to understand that further. Thanks.

1 DIRECTOR MUHAMMAD: Okay. All right.

2 This is Director Muhammad. If there
3 aren't any other comments I'm going to move
4 forward with closing out this hearing.

5 So, thank you all once again for
6 participating in this hearing. And we appreciate
7 all the information we received today and note
8 that we will limit our determination and analysis
9 to issues regarding the disparity data under the
10 current statute and program regulations.

11 As we mentioned at the beginning this
12 hearing was recorded and we will have a
13 transcription within approximately two business
14 days. The transcript will be sent to all
15 attendees who spoke to allow for corrections. We
16 have arranged for an accelerated transcript due
17 to the urgency of this submission.

18 We recognize the large sums of money
19 involved and the need for certainty on fiscal
20 year 21 for both the state and the District.

21 Our regulations requires us to accept
22 post-hearing comments that are submitted within

1 15 days. You will have until September 15, close
2 of business, to submit written comments including
3 any additional data or information you would like
4 for us to consider.

5 Although the regulations also provide
6 that we may extend a period for an additional 15
7 days for good cause we are not inclined to do so
8 in this case due the urgency, as mentioned
9 already, and the fact that you'll have a
10 transcript sooner. We're expediting that as
11 stated.

12 However, if you feel that there is
13 good cause to extend the deadline for written
14 comments, please send your request for an
15 extension today or tomorrow to my attention to my
16 email address which is my first dot last name at
17 ed.gov so that we can make an immediate decision.

18 As for now please assume that all
19 parties must submit written comments by COB on
20 September 15. And please email those comments to
21 myself and my senior analyst Amanda Ognibene.

22 Thank you once again for your

1 participation in this hearing if there aren't any
2 additional comments from anyone at this
3 particular time then I'm going to close the
4 hearing. I'll pause just to see if there are any
5 other comments from anyone else who hasn't
6 spoken.

7 MR. BENAVIDES: Director Muhammad, this
8 is Daniel Benavides, Superintendent from CCSD.
9 How are you doing today?

10 DIRECTOR MUHAMMAD: I'm well. How are
11 you?

12 MR. BENAVIDES: I'm good, thank you.
13 Our general counsel she's trying to
14 get back on so if you could wait a few minutes.
15 She just got dropped, but she's trying to get
16 back on. If you could humor us, I'd appreciate
17 that. She may have something left.

18 DIRECTOR MUHAMMAD: Okay. Not a
19 problem.

20 And thank once again to everyone for
21 their flexibility with the scheduling and with
22 any technology issues today.

1 While we're waiting, I know we also
2 have other LEAs on the call at this time while
3 we're waiting for the attorney. Are there any
4 comments?

5 MR. BROSNAN: This is Aaron Kramer
6 Brosnan of the New Mexico Public Education
7 Department. I just have a quick comment, if
8 that's okay, Director?

9 DIRECTOR MUHAMMAD: Yes, Aaron, go
10 ahead.

11 MR. BROSNAN: I would just request that
12 the NMPED be provided a copy of the PowerPoint
13 that was used by the Districts in today's
14 hearing.

15 DIRECTOR MUHAMMAD: This is Director
16 Muhammad speaking. I believe there was a request
17 in the chat. Let me go back and look, and see it
18 and who was presenting that. I believe they
19 stated they can share that presentation. Am I
20 correct?

21 MR. BROSNAN: Yes, that would be great
22 if it could be perhaps shared through the chain

1 with the notice so that everyone in the state
2 receives it.

3 DIRECTOR MUHAMMAD: This is Director
4 Muhammad speaking. I believe it was Germaine
5 Chappelle.

6 MS. OGNIBENE: Right. It's a good idea
7 for the Districts who used the PowerPoint to use
8 a reply all on the email that was the agenda, so
9 that all attendees could get a copy.

10 MR. BENAVIDES: Director Muhammad, this
11 is Daniel Benavides, Superintendent of Central
12 Consolidated Schools. She's trying to dial the
13 number but for some reason the number is saying
14 that that number is incorrect. So she may have
15 to call us and jump on, but we're trying to see
16 if she has any closing comments. I appreciate
17 your patience.

18 DIRECTOR MUHAMMAD: Ok. No problem.

19 MR. HYATT: Director Muhammad, this is
20 Mike Hyatt from Gallup-McKinley Country Schools.
21 I have one quick question about the stay. Is it
22 okay that I ask?

1 DIRECTOR MUHAMMAD: Yes. This is
2 Director Muhammad, go ahead.

3 MR. HYATT: So, first of all, I know
4 that you mentioned the stay at the start of the
5 meeting today. Who received a copy of that stay,
6 and can we receive a copy of that stay?

7 DIRECTOR MUHAMMAD: This is Director
8 Muhammad. I believe our counsel received a copy.
9 Jill, or Colin, do you want to respond?

10 MS. MARTIN: Yes, this is Jill Martin.

11 I believe the attorneys for all of
12 these districts have a copy of the ALJ's stay.
13 And also for other districts that don't have a
14 copy, then the Impact Aid Program would be happy
15 to provide that. You could send in an email.

16 MR. HYATT: Thank you.

17 DIRECTOR MUHAMMAD: This is Director
18 Muhammad again. Perhaps if your attorney cannot
19 get back on shortly, we can close and she can
20 submit her closing remarks in writing. But I
21 will stay on for about another five minutes or
22 so.

1 MR. BENAVIDES: Okay. Director
2 Muhammad, this is Daniel Benavides,
3 Superintendent from Central Consolidated.

4 For some reason neither AT&T or
5 Verizon are able to get her out right now, at
6 least our location. I'm asking if the team down
7 in Gallup can reach out to Germaine and get her
8 on speaker, because we're having a hard time
9 dialing out for some reason as well.

10 DIRECTOR MUHAMMAD: It may be the
11 weather. This is Director Muhammad. Is the team
12 from Gallup on? Did they hear the request?

13 MR. BENAVIDES: Director Muhammad, we
14 have our own lines here. Hold on one second.

15 DIRECTOR MUHAMMAD: Okay, thank you.

16 MR. BENAVIDES: Okay, Germaine, you're
17 on speaker.

18 MS. CHAPPELLE: Hi. My apologies,
19 Director Muhammad. For some reason I wasn't
20 allowed to dial back in. I just kept getting an
21 error message. My apologies.

22 DIRECTOR MUHAMMAD: No problem. You

1 can go ahead, please.

2 MS. CHAPPELLE: So, are we at that
3 point where we are just closing out?

4 DIRECTOR MUHAMMAD: Yes, ma'am, uh-huh.

5 MS. CHAPPELLE: Okay. Okay, great.
6 You did well. It's almost 3:00. On time.

7 So, on a closing standpoint, Director
8 Muhammad and parties, what we are talking about
9 is essentially disproportionate impact. The
10 state has articulated an alternative methodology
11 by which it wishes to qualify for impact aid.

12 Our concern, and we will definitely
13 include this more distinctly in briefing, is that
14 as applied with respect to, you know, existing
15 New Mexico law, that particular methodology,
16 meaning the proportionality methodology, actually
17 seeks to create a great disproportionate impact
18 than the previous methodology. And the reason
19 that we see that and see that is that within the
20 next two years both Gallup and CCSD
21 demographically from a tax perspective are likely
22 to look a lot more like a Zuni. And the reason

1 for that is disproportionately a number of
2 industrial complexes are slated to close within
3 the next five to ten years surrounding the Navajo
4 Nation.

5 And with respect to that, our shares
6 are coming from at least 30 percent of those kids
7 do not have running water, do not have
8 electricity, do not have access to WiFi, don't
9 actually have indoor plumbing. And so what we
10 are looking at in our districts is not only the
11 historic gap that we've all identified our school
12 having, which is supposed to be addressed by
13 Impact Aid. We now have a COVID gap, which is,
14 so many of our students are remote and of such a
15 rural nature that we can't even effectively long
16 distance learn with those kiddos, and we are
17 having to jump through many hoops to make sure
18 that we do that. And, of course, that is our
19 utmost priority.

20 So now what we have is a layering of
21 gaps that these students are facing: poverty gap,
22 remote-rural gap, there's a funding gap, and now

1 obviously the COVID gap.

2 I recognize that both the state and
3 our LEAS all serve the same client, which are
4 students, and obviously the communities of those
5 students. But the ongoing concern that we have
6 is, sure, the state has decided to kind of turn
7 from its previous methodology. The methodology
8 that it's now choosing, however, clearly
9 articulates, as was shown by Mr. Romine, that
10 that particular methodology benefits greatly the
11 most wealthy and hurts the most poor of our
12 districts.

13 So, from the standpoint of what Impact
14 Aid was actually intended to correct, coming out
15 of the Kennedy reports, we are from that at this
16 point. And so, as our briefing will demonstrate,
17 this isn't the solution to bridging the gap for
18 these students, and we will continue to
19 articulate that.

20 I do have great concern about the
21 potential that even though a stay was issued on
22 the appeal, that we have not really honored that

1 stay and are actually, it sounds to me, looking
2 back retroactively on last year's determination,
3 and so we will also address that. And, of
4 course, we will address the concerns about state
5 law as well.

6 And with that I stand for any
7 questions.

8 DIRECTOR MUHAMMAD: All right. This is
9 Director Muhammad. If you could just restate
10 your name for the record and title.

11 MS. CHAPPELLE: My pleasure, director,
12 and my apologies for not doing so. Germaine
13 Chappelle, and I am an attorney for CCSD working
14 with the broader team of CCSD, Gallup, Zuni, and
15 Grants.

16 DIRECTOR MUHAMMAD: Okay. Thank you.
17 I appreciate it.

18 Okay. Let's see. This is Director
19 Muhammad. I believe we're at the conclusion of
20 the hearing. I just want to make sure I pose the
21 question again. Are there any other districts
22 that care to make any comments at this particular

1 time?

2 Okay. Any additional comments from
3 the Department, I mean from the Department of
4 Education. U.S. Department of Education.

5 MS. OGNIBENE: This is Amanda Ognibene.
6 I don't have any further comments or questions.

7 DIRECTOR MUHAMMAD: All right. So at
8 this point I'm going to conclude this hearing,
9 and as stated, I just want to remind everyone of
10 by September 15 to please submit your written
11 comments. And we hope to have a transcript to
12 you within two business days.

13 Thank you and everyone please stay
14 safe and enjoy the rest of your day.

15 (Whereupon, the above proceeding went
16 off the record at 4:53 p.m.)

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In the matter of: Impact Aid Predetermination Hearing

Before: US DED OESE

Date: 08-31-20

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