

NINTH JUDICIAL DISTRICT
COUNTY OF CURRY
STATE OF NEW MEXICO

NEW MEXICO SCHOOL)	
SUPERINTENDENTS)	
ASSOCIATION, et al.,)	
)	
<i>Plaintiffs/Petitioners,</i>)	
)	
v.)	Cause NO. D-905-CV-2024-167
)	
NEW MEXICO PUBLIC)	
EDUCATION DEPARTMENT,)	
et al.,)	
)	
<i>Defendants/Respondents.</i>)	

ORDER GRANTING NMSAA'S MOTION FOR SUMMARY JUDGMENT AND
DENYING PED'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Before this Court is the First Amended Verified Complaint and Application for Temporary Restraining Order and Injunctive Relief filed by Plaintiff/Petitioner **NEW MEXICO SCHOOL SUPERINTENDENTS ASSOCIATION, et al.** (hereinafter referred to as "**NMSSA**").¹

On September 30, 2024, this Court heard and considered **NMSSA's** Motion for Summary Judgment and the Motion for Partial Summary Judgment of Defendants/Respondents **NEW MEXICO PUBLIC EDUCATION DEPARTMENT, et al.** (hereinafter referred to as "**PED**"). After considering the motions, pleadings, evidence, including testimony, and the able arguments of counsel, and being otherwise fully advised in the premises, the Court hereby **FINDS**:

¹ This matter was filed in the Ninth Judicial District Court, Curry County. The undersigned is sitting by special designation by Order of the Supreme Court, No. 24-8500-DS, filed of record in this matter on April 25, 2024.

1. This case concerns the validity of 6.10.5 NMAC, entitled “School Instructional Time Requirements.” (Hereinafter the “RULE”).

2. In *Martinez v. State*, No. D-101-CV-2014-793 (known generally as the “*Martinez/Yazzie*” litigation), the Honorable Sarah Singleton ruled that all of New Mexico students have a right to be college and career ready and that the State of New Mexico was failing to meet the obligation.

3. The **PED** argues that the RULE is part of the **PED’s** ongoing attempts to seek to improve the state of education in New Mexico pursuant to the *Martinez/Yazzie* matter.

4. This Court does not doubt the **PED** or the Secretary’s good intentions with regard to the RULE, or that the **PED’s** intent with regard to implementation of the RULE was to assist New Mexico students in becoming college and career ready.

5. The questions before the Court, though, are whether the **PED** exceeded its rulemaking authority and whether the RULE conflicts with Section 22-2-8.1 of the New Mexico Public School Code. See NMSA 1978, §22-2-8.1?

6. Section 22-2-8.1 of the New Mexico Public School Code governs the required length of school calendars for public school districts and charter schools. See NMSA 1978, § 22-2-8.1.

7. Prior to 2009, Section 22-2-8.1 of the Public School Code provided that regular students were required to be in school-directed programs for a minimum number of hours. See 2003 N.M. HB 68. There was no requirement for a school year to consist of a minimum number of days. See *id.*

8. In 2009, Section 22-2-8.1 of the Public-School Code was amended to provide that a school year was required to consist of at least 180 full instructional days for a regular school year calendar and 150 full instructional days for a variable school year calendar. See 2009 N.M. HB 691.

9. In 2009, Section 22-8-9 of the Public-School Code was also amended to provide that a budget for a school district will not be approved by the **PED** if it does not provide for a school year and school day meeting the minimum requirements provided in Section 22-2-8.1 of the Public School Code. See 2009 N.M. HB 691.

10. In 2009, the **PED** amended Rule 6.10.5 NMAC (11/13/2009) to include a 180-day school year requirement. See Rule 6.10.5.8(B) NMAC (11/13/2009).

11. Although the 2009 amendments to Section 22-2-8.1 of the Public School Code were scheduled to go into effect for the 2010–2011 school year, the Legislature delayed the applicability of changes to the school year and length of school day provisions to the 2011–2012 school year, for a variety of reasons.² See 2010 N.M. SB 87.

12. Subsequent to the delay in implementation of the new language, the **PED** did not enforce compliance with its 180-day school year requirement of Rule 6.10.5.8(B) NMAC.³

13. The Legislative Education Study Committee (LESC) reported several problems with implementing a 180-day school year requirement, including that the

² See **NMSSA's** Mot. for Sum. Judgment, Exhibit B at TR-36:1–39:25.

³ See *id.* TR-165:22–24.

legislation would cause an increase in a wide range of per-day operational costs at certain school districts and charter schools.⁴

14. In 2011, the LESC study group estimated that if all school districts were to add one additional instructional day, the additional cost would have been almost \$13,000,000 per day in 2011 dollars.⁵

15. In 2011, prior to the effective date of the 180-day requirement, the Legislature amended Section 22-2-8.1 of the Public School Code to expressly repeal the 180-day requirement.⁶ The Legislature's repeal of the 180-day requirement returned the language to Section 22-2-8.1 wherein a minimum hour requirement was the controlling law for school calendars.⁷

16. The 2011 N.M. SB 145 LESC Bill Analysis⁸ expressly states:

SB 145 amends the *Public School Code* to change the provisions governing the required length of school calendars. Specifically, the bill:

- Strikes language providing that:
 - a school year consists of at least 180 full instructional days, exclusive of any release time for in-service training;
 - a school year consists of at least 150 full instructional days for a variable school year, exclusive of any release time for in-service training;
- . . .
- Provides for minimum number of hours per year during which regular students must be in school-directed programs . . .
- . . .
- Strikes the requirement that the Public Education Department (**PED**) provide for the length and number of school days

⁴ See *id.*, Exhibit B at TR-36:1–39:25; See *id.*, Exhibit A.

⁵ See *id.*, Exhibit B at TR-39:9–18; See *id.*, Exhibit A.

⁶ See *id.*, Exhibit B at TR-41:1–3; TR-87:19–88:10; See *id.*, Exhibit A.

⁷ *Id.*

⁸ The LESC Bill Analysis is an official contemporaneous record or statement, published by the LESC, providing the history of Public School Code § 22-2-8.1, the context in which the 2011 amendment to § 22-2-8.1 was promulgated, and the objective and purpose the Legislature sought to accomplish by amending the Public School Code in 2011 to change the provisions governing the required length of school calendars.

for variable school year calendars in accordance with the *Variable School Calendar Act*;

Considering that districts already offer more than the minimum required number of instructional hours, the enactment of SB 145 will allow school districts to avoid the cost of adding additional instructional days, while still providing the required instructional time.

SB 145 repeals changes made to the *School Calendar Act* during the 2009 legislative session mandating a minimum 180 school days, and restores language in the *School Calendar Act* defining the number of hours required each year.⁹

17. In 2023, the New Mexico Legislature passed House Bill 130 (“HB 130”) which extended instruction time for students from 1,080 hours per year at the secondary level and 990 hours per year at the elementary level to 1,140 hours per year in New Mexico public schools.¹⁰ Thus, the Legislature increased the minimum instructional hours for all students. There was no language mandating a minimum number of days.

18. HB 130 took effect on July 1, 2023, and is currently still in effect under NMSA 1978, § 22-2-8.1.

19. The current statutory authority of Public School Code, NMSA 1978, §22-2-8.1 provides:

A. Except as otherwise provided in this section, students shall be in school programs, exclusive of lunch, for a minimum of one thousand one hundred forty instructional hours per year, except half day kindergarten, which shall have five hundred fifty instructional hours per year.

⁹ See *id.*, Exhibit A.

¹⁰ See *id.*, Exhibit B at TR-33:1–17.

C. Up to sixty instructional hours per school year for elementary grades and thirty instructional hours for middle and high school grades may be used for professional work hours, which may be embedded during the course of a normal school day. A “professional work hour” means time during which a teacher participates in professional work aligned to challenging academic content and performance standards, including:

(1) home visiting or parent-teacher conferences;
(2) educator training or professional development; and
(3) mentorship, coaching and collaboration between school employees.

D. Nothing in this section precludes a local school board from setting a school year or the length of school days in excess of the minimum requirements established by Subsection A of this section.

E. The secretary may waive the minimum length of school days in those school districts where such minimums would create undue hardships as defined by the department as long as the school year is adjusted to ensure that students in those school districts receive the same total instructional time as other students in the state.

20. In the General Appropriations Act of 2024 (2024 N.M. HB 2), the Legislature stated: “[m]oney appropriated to the public education department shall not be used to implement or enforce any rule establishing a minimum requirement of one hundred eighty instructional days per school year.”¹¹ This language was line item vetoed by the Governor.¹² It is not disputed that the Governor had the required authority to veto the specified language. Nonetheless, the Legislature’s language included with the General Appropriations Act of 2024 is relevant to determining legislative intent with regard to the 180-day issue and the RULE.

¹¹ See NMSSA’s Exhibit D; 2024 N.M. HB 2 at p.132.

¹² See *id.*

21. Prior to March 2024, the **PED** never enforced their 180-day administrative rule.¹³ The **PED's** actions highlight the **PED's** belief as to its statutory authority between 2011 and 2024.

22. However, on or about March 26, 2024, the **PED** adopted and implemented a new Rule 6.10.5 NMAC (the "RULE"), which was to become effective on July 1, 2024. Rule 6.10.5 NMAC (07/01/2024).

23. The **PED's** Rule 6.10.5.8 NMAC in pertinent part states:

REQUIREMENTS: All students shall be in a minimum of 1,140 instructional hours per school year, exclusive of lunch, lunch recess, and lunch passing periods. Beginning in the 2024-2025 school year:

...

B. All public schools that are not exempt shall have calendars with at least 180 instructional days.

D. Reading, language arts is foundational to student achievement in core subject areas; school districts and charter schools will be exempt from the minimum 180 instructional day requirement if they meet certain proficiency and growth targets in reading, language arts as determined by the secretary.

24. Subsection J of Rule 6.10.5.8 NMAC further states:

REQUIREMENTS: All students shall be in a minimum of 1,140 instructional hours per school year, exclusive of lunch, lunch recess, and lunch passing periods. Beginning in the 2024-2025 school year:

...

J. Up to 60 instructional hours per school year for primary grades and up to 30 instructional hours for secondary grades may be used for professional work hours, provided that professional work hours are scheduled before, after, or on a day other than the required minimum 180 instructional

¹³ See **NMSSA's** Mot. for Sum. Judgment, Exhibit B at TR-165:22–24.

days. When calculating a school's total number of instructional hours, time shall not be double counted as both instructional hours with students and professional work hours.

25. To comply with the 180-day requirement of the **PED's** Rule 6.10.5 NMAC, New Mexico schools would have to restructure and reallocate their budgets, resources, and schedules to accommodate the addition of extra instructional school days and professional work days.

26. Many New Mexico schools would have to add between 22 and 30 days to their school calendar to comply with the 180-day requirement of the **PED's** Rule 6.10.5 NMAC.¹⁴

27. The estimated costs for adding instructional days to a school calendar is debated, but would be substantial.¹⁵

28. The Legislature has not appropriated funding to cover the additional costs associated with adding instructional days under the **PED's** Rule 6.10.5 NMAC.¹⁶

29. **NMSSA** challenges the RULE in this Court. The **PED** initially argues that this Court is without authority to decide this matter. However, this is not an administrative appeal pursuant to NMRA 1-075. **NMSSA** did not institute the administrative review process under NMRA 1-075. Consequently, **NMSSA** may initiate a claim for declaratory relief by filing a court proceeding such as this one. *See Smith v. City of Santa Fe*, 2007-NMSC-055, paras. 2, 11, 17-19. This Court has authority to decide the matter.

¹⁴ See *id.*, Exhibit B at TR-43:23–44:1; TR-97:13–14; see also Declaration of Sara Cordova, **PED's** Resp. to **NMSSA's** Mot. for Sum. Judgment.

¹⁵ **NMSSA's** Mot. for Sum. Judgment, Exhibit B at TR-39:13–16; TR-76:18–77:22.

¹⁶ See *id.*, Exhibit B at TR-42:7–21; TR-44:10–TR-47:4; TR-226:8–20.

30. Pursuant to the State Rules Act, “[n]o rule is valid or enforceable if it conflicts with statute” and “[a] conflict between a rule and a statute is resolved in favor of the statute.” NMSA 1978, § 14-4-5.7(A).

31. “If there is a conflict or inconsistency between statutes and regulations promulgated by an agency, the language of the statute shall prevail.” *Jones v. Emp’t Servs. Div. of Human Servs. Dep’t*, 1980-NMSC-120, para 3, 95 N.M. 97, 619 P.2d 542.

32. “An agency by regulation cannot overrule a specific statute.” *Id.*

33. “The [PED Secretary] is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law.” NMSA 1978, § 22-2-1(A) (emphasis added).

34. As part of its duties, the Public Education Code provides that the **PED** shall “properly and uniformly enforce the provisions of the Public School Code [Chapter 22 NMSA 1978].” NMSA 1978, § 22-2-2(A).

35. The powers and discretionary authority of the **PED** and Secretary are not without limit. The Public Education Code expressly states “the [S]ecretary shall . . . take administrative action by issuing orders and instructions, not inconsistent with law.” NMSA 1978, § 9-24-8(B)(5) (emphasis added).

36. It is well settled that “the discretion otherwise afforded the Public Education Department . . . ‘may not justify altering, modifying or extending the reach of a law created by the Legislature.’” *Alarcon v. Albuquerque Pub. Sch. Bd. of Educ.*, 2018-NMCA-021, para 29, 413 P.3d 507.

37. “With respect to the principle of separation of powers, ‘an unlawful conflict or infringement occurs when an administrative agency goes beyond the existing New Mexico statutes or case law it is charged with administering and claims the authority to modify this existing law or to create new law on its own.’” *In re Adjustments to Franchise Fees*, 2000-NMSC-035, para 19, 129 N.M. 787, 14 P.3d 525 (quoting *Sandel*, 1999-NMSC-19, para 12, 127 N.M. 277, 980 P.2d 60).

38. The Court’s “mandated task in construing a statute is to ‘search for and effectuate’ the intent of the Legislature.” *Alarcon v. Albuquerque Pub. Sch. Bd. of Educ.*, 2018-NMCA-021, para 5 (quoting *Weiss v. Bd. of Educ. of Santa Fe Pub. Sch.*, 2014-NMCA-100, para 4, 336 P.3d 388); accord *Leger v. Leger*, 2022-NMSC-007, para 26, 503 P.3d 349 (“In construing a statute, the Court’s ‘primary goal is to ascertain and give effect to the intent of the Legislature.’”).

39. “In furtherance of this goal, ‘[courts] examine the plain language of the statute as well as the context in which it was promulgated, including the history of the statute and the object and purpose the Legislature sought to accomplish.’” *Leger*, 2022-NMSC-007, para 26; *Pirtle v. Legis. Council Comm. of N.M. Legislature*, 2021-NMSC-026, para 14, 492 P.3d 586; see *Baker v. Hedstrom*, 2012-NMCA-073, para 12, 284 P.3d 400 (“We may consider ‘the structure, context, history, and background of the statute, as well as the likely policy implications of various constructions.’”).

40. “In determining legislative intent, the court may consider both prior and subsequent statutes in pari materia.” *State v. Prince*, 52 N.M. 15, 1948-NMSC-003, at para 10, 189 P.2d 993.

41. “When in any enactment there appears an express modification or repeal of certain provisions in the former enactment, such express modification or repeal of the portions thereof thus affected will be held to disclose the full intent of the framers of the later enactment as to how much or what portion of the former it was intended to modify or repeal.” *State v. Prince*, 52 N.M. 15, 1948-NMSC-003, at para 11, 189 P.2d 993.

42. In construing whether the **PED’s** Rule 6.10.5 NMAC conflicts with the Public School Code, the Court “must analyze the statute through the lens of the Legislature’s intended purpose.” *State v. Adams*, 2022-NMSC-008, para 22, 503 P.3d 1130.

43. The Court “must construe [the statute] consistent with ‘its obvious spirit or reason.’” *Adams*, 2022-NMSC-008, para 23.

44. The Supreme Court of New Mexico has “cautioned against an overly simplistic application of the plain-meaning rule, stating that ‘it is part of the essence of judicial responsibility to search for and effectuate the legislative intent—the purpose or object—underlying the statute.’” *Bishop v. Evangelical Good Samaritan Soc’y*, 2009-NMSC-036, para 10, 146 N.M. 473 (quoting *Gallegos*, 1994-NMSC-023, 117 N.M. at 353).

45. “[W]here the language of the legislative act is doubtful or an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others.” *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, 117 N.M. 346, 348, 871 P.2d 1352.

46. Courts “must also consider the practical implications of the legislative purpose of a statute, and when the literal meaning of a statute would be absurd, unreasonable, or otherwise inappropriate in application, [courts] go beyond the mere text of the statute.” *Bishop*, 2009-NMSC-036, para 11; see *Baker v. Hedstrom*, 2012-NMCA-073, para 17, 284 P.3d 400 (explaining even where “[n]either party argues that there is ambiguity in [the statute],” courts still “examine the overall structure of the statute and its function in the comprehensive legislative scheme”).

47. Courts “will not construe a statute to defeat its intended purpose.” *Baker*, 2012-NMCA-073, para 12 (quoting *Padilla v. Montano*, 116 N.M. 398, 403, 862 P.2d 1257, 1262 (Ct. App. 1993)).

48. The language of NMSA 1978, § 22-2-8.1 and the context in which it was enacted, taking into account its history and background, as well as the Legislature’s express statements, show the Legislature’s intended purposes of the current Public School Code statutes are:

- (1) to increase learning time for students by increasing the statutory minimum instructional hours;
- (2) to grant districts flexibility to schedule hours of instructional time rather than days, since the minimum day requirement was repealed;
- (3) to provide up to 60 professional work hours for elementary schools and 30 professional work hours for secondary schools which may be counted towards the 1,140 instructional hour requirements and may be embedded during the course of a normal school day; and

(4) to allow the continuation of four-day school weeks.¹⁷

49. The Legislature is supreme on these issues and its directives must be followed.

50. The administrative action taken by the **PED** exceeded the discretion and authority otherwise afforded to it by implementing provisions in Rule 6.10.5.8 NMAC which are inconsistent with the existing statutes and legislative purpose of NMSA 1978, § 22-2-8.1.

51. These actions, while undeniably being well intentioned and for the purpose of improving the education of certain New Mexico students, exceeded the **PED's** authority and the Rule is inconsistent with the intent of the Legislature.

52. The **PED** exceeded its authority when the **PED** implemented provisions in Rule 6.10.5.8 NMAC which conflict with the existing statutes and legislative purpose of NMSA 1978, § 22-2-8.1, because the **PED** went beyond the existing New Mexico statutes it is charged with administering and claimed the authority to modify this existing law or to create new law on its own.

53. The mandates of Rule 6.10.5.8 NMAC requiring that all New Mexico public school districts and charter schools “shall have calendars with at least 180 instructional days” directly conflict with the Legislature’s repeal of a minimum day requirement in favor of the current hour requirement.

54. Moreover, Subsection J of Rule 6.10.5.8 NMAC, requiring professional work hours to be scheduled before, after, or on a day other than the required minimum 180 instructional days, and prohibiting time from being counted

¹⁷ **NMSSA's** Mot. for Sum. Judgment, Exhibits A–C; Plaintiffs' Exhibit D; 2024 N.M. HB 2 at p.132.

as both instructional hours and professional work hours when calculating a school's total instructional hours, directly conflicts with the existing statute under NMSA 1978, § 22-2-8.1(C), which expressly allows that "[u]p to sixty instructional hours per school year for elementary grades and thirty instructional hours for middle and high school grades may be used for professional work hours, which may be embedded during the course of a normal school day."

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that **NMSSA's** Motion for Summary Judgment is hereby **GRANTED** and the **PED's** Motion for Partial Summary Judgment is hereby **DENIED**, as set forth herein.

Pursuant to the Uniform Declaratory Judgment Act, NMSA § 44-6-1 *et seq.*,

IT IS HEREBY DECLARED:

- a. The **PED's** requirement under Rule 6.10.5 NMAC that all school districts and charter schools have 180 instructional days does not align with the Legislature's clear intention to allow local flexibility while still requiring 1,140 instructional hours with no requirement for a specific number of days;
- b. The **PED's** requirement under Rule 6.10.5 NMAC that professional work take place "before, after, or on a day other than the required minimum 180 instructional days," is not aligned with the Legislature's intent to allow professional work to be embedded within the school day;
- c. Based on the existing statutes under the Public School Code, Chapter 22, Article 2, NMSA 1978, the **PED** lacks the authority to implement a rule mandating a minimum number of instructional days for public school districts and charter schools;
- d. The **PED's** Rule 6.10.5.8(B) NMAC is invalid and unenforceable as it directly conflicts with the existing statutes under the Public School Code, Chapter 22, Article 2, NMSA 1978, which expressly repealed the 180-day requirement and maintained that a minimum hour requirement shall be the law governing for school calendars;

- e. The **PED's** Rule 6.10.5.8(C) NMAC is invalid and unenforceable as it directly conflicts with the existing statutes under the Public School Code, Chapter 22, Article 2, NMSA 1978, which expressly repealed the 180-day requirement and maintained that a minimum hour requirement shall be the law governing for school calendars;
- f. The **PED's** New Rule 6.10.5.8(D) NMAC is invalid and unenforceable as it directly conflicts with the existing statutes under the Public School Code, Chapter 22, Article 2, NMSA 1978, which expressly repealed the 180-day requirement and maintained that a minimum hour requirement shall be the law governing for school calendars;
- g. The **PED's** New Rule 6.10.5.8(J) NMAC is invalid and unenforceable as it directly conflicts with the existing statute under NMSA 1978, § 22-2-8.1(C), which expressly allows that "[u]p to sixty instructional hours per school year for elementary grades and thirty instructional hours for middle and high school grades may be used for professional work hours, which may be embedded during the course of a normal school day."

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all costs and fees incurred shall be borne by the party incurring same.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all relief requested but not expressly granted is hereby expressly **DENIED**.

This is a final judgment and is immediately appealable by either party within thirty (30) days from the date of Order.



DUSTIN K. HUNTER
DISTRICT COURT JUDGE, DIV. X

C: Counsel of record via e-service