

Tribal Education Alliance

Comments on NMPED's *Martinez/Yazzie* Action Plan – Discussion Draft May 2022

July 7, 2022

The Tribal Education Alliance (TEA) welcomes the release of NMPED's draft *Martinez/Yazzie* action plan. We are pleased to offer comments in two formats: key points outlined in the following narrative, and a comprehensive feedback table that aligns the Court ruling and the Tribal Remedy Framework with the NMPED draft plan and our recommendations for NMPED action.

TEA is a coalition of tribal education stakeholders, tribal advocates, and Indigenous education experts. TEA members were deeply involved in developing the Tribal Remedy Framework (TRF), a comprehensive plan for meeting the educational needs of Native students. The TRF was created collectively by tribal community members and Indigenous education leaders and experts, following a series of tribal Community Education Institutes and Pueblo Convocations. The TRF is the official tribal response to the mandates contained in the 2018 *Yazzie/Martinez* Court ruling. It has been endorsed by the leadership of New Mexico's 23 Nations, Tribes, and Pueblos.

Since the 2018 Court ruling, the plaintiffs, tribal leaders, and education advocates have repeatedly requested that NMPED work with stakeholders to develop a comprehensive plan that outlines how the State can come into compliance with the Court's mandates. Yet no such plan was forthcoming; on the contrary, in 2020 the Lujan Grisham administration filed an unsuccessful motion to dismiss the case – a motion formally condemned by tribal leaders. In 2021, the legislature passed a memorial (HM 26) requesting NMPED to develop a comprehensive education plan, in consultation with plaintiffs and based on existing plans developed by education and tribal community stakeholders (including the Tribal Remedy Framework and the Transform Education New Mexico Platform). The memorial asked that the plan "include short- and long-term goals and action steps that address the insufficiencies detailed by the court's decision and findings, time frames, staffing, accountability measures and the projected funding amounts required to meet students' education needs." No such plan was developed at that time.

Given this long and challenging history, NMPED's release of a draft plan in May 2022 marks an important milestone in the multi-year quest for government compliance with legal and constitutional mandates. However, this draft does not explicitly reference the Court's findings and decisions, nor does it align with the tribal response to the Court ruling, the Tribal Remedy Framework. It also does not follow standard planning formats.

TEA considers this draft plan insufficient. For New Mexico's public education system to fulfil the rights and meet the needs of Native students, NMPED must consult and collaborate with Tribes in the development and implementation of a comprehensive strategy – with specific outcomes, actions, and targeted resources – that proactively advances equity and supports tribal education sovereignty.

We hope that our comments and recommendations, alongside those offered by tribal leaders, will help NMPED address the shortcomings of its draft plan. Our recommendations are based on the proposals contained in the TRF, as were our comments on NMPED's draft strategic plan, submitted in December 2020. In that submission, we explained the concepts and goals of the TRF, along with detailed recommendations for NMPED's strategic plan. It remains unclear whether NMPED's strategic plan will be able to address TRF proposals. We hope that, going forward, NMPED and other state entities will rely

less on their own interpretations of tribal proposals and instead increase their collaboration with tribal stakeholders, thus avoiding misunderstandings.

Comments on the format and structure of the draft plan

1. Although this document is called an “Action Plan”, it appears to be primarily a report back, listing past and current projects and legislative appropriations. Much of the document reads as follows: “This section describes actions taken” (page 4); “While these are by no means exhaustive lists of everything that NMPED and its partnering agencies have done” (page 4); and “The next four sections provide some examples of both monetary and non-monetary supports that NMPED has provided to improve outcomes for at-risk students” (page 11). The document lists appropriations received by departments, yet these are not connected to goals or strategies, and some lack even basic information on the use of appropriated funding (page 17). The Indigenous Education Initiative lists the number of students served but no outcomes or benchmarks (page 17). If the document seeks to make a case that past actions have brought NMPED closer to compliance with the Court ruling, then those actions would have to be linked to specific outcomes and results. Yet the “data snapshots” at the beginning of each section show that Court mandates have not been met. Moreover, many of the projects listed in the section on Native American students emerged from tribal advocacy efforts, not from NMPED’s own initiative. Overall, the structure of the draft plan ends up illustrating NMPED’s piecemeal approach, consisting of disconnected projects and short-term funding.
2. Standard action plans require a systematic presentation of the following: Goals (or desired Results), Objectives (or desired Outcomes), Action Steps, Action Items (prioritized), Roles & Responsibilities, Staffing, Resources/Budget, Measurements (based on Indicators and Targets), Timeline. We suggest that NMPED adheres to this standard format and presents forward-looking strategies that connect action steps to goals and measurable outcomes. It is insufficient to simply refer to NMPED’s Strategic Plan (page 3), especially since the Strategic Plan’s goals do not align with the goals presented in this draft’s vision section (page 3). We would like to see short, medium, and long-term actions that are linked to outcomes, and that include budgets, staffing, and accountability measures.
3. Since the draft plan is intended as a response to the *Martinez/Yazzie* Court ruling, we suggest that NMPED align proposed actions with the Court findings and decisions. This is a necessary step to ensure compliance with the Court’s mandates. In our enclosed feedback table, we illustrate what such an alignment could look like. As the table shows, the TRF, as the tribal response to the Court ruling, has been developed in this format (as has TENM’s Platform for Action).
4. The draft plan does not designate human and financial resources required for implementing goals, targets, and actions. We request that NMPED prepare a detailed five-year budget, aligned with goals, outcomes, and actions. We also request that NMPED specify what human resources are needed and which staff positions are responsible for implementing specific actions. We are concerned that in the draft’s final section, “A Call to Action” (page 53), NMPED only describes the general roles of state entities (and education stakeholders), unrelated to any goals or specific actions. Moreover, the unique role of Tribes is omitted, as is the obligation for State entities to work Government-to-Government with Tribes. We suggest that NMPED consider both internal and external capacity and roles, and that it prepare a plan that delineates internal responsibilities as well as collaboration with external stakeholders. NMPED faces capacity challenges, and staff turnover in key positions has been high, especially in the Indian Education Division. The legally required position of Assistant Secretary for Indian Education was vacant for 2 years and is vacant again after the most recent postholder departed following just over one year in office. Given these internal challenges,

we believe that NMPED’s planned *Martinez/Yazzie* Response Team should be augmented with sub-teams, comprised of internal and external stakeholders, that address issue- or population-specific goals and actions. We also request that NMPED implement the TRF’s proposal of establishing Indigenous Technical Assistance Centers to support NMPED, districts, schools, and Tribes in meeting Native students’ needs.

Comments on the sections: “Introduction” and “Vision”

1. We welcome NMPED’s recognition that the “work that lies ahead for NMPED and schools will require systemic change to address the needs of the students and families impacted by decades of neglect and underfunding” (page 3). It would be helpful if this could include an explicit acknowledgment of systemic and institutional racism and the systematic attempt to eradicate Indigenous languages and cultures. We also suggest (as we have done in December 2020) that NMPED develop an understanding of the root causes of the systemic failures that have produced the inequities highlighted by the Court. Understanding the causes and drivers of inequities is a precondition for developing solutions that address the causes, not the symptoms, of ongoing failures.
2. We welcome that NMPED’s vision commits to assuring that “external factors like race, language, economic status, and family situations do not equate with lower rates of success in educational achievement and career prospects” (page 3). It would be helpful if these factors would be identified more inclusively (e.g. including Indigeneity), and if the concept of equity would be introduced to describe the desired result.
 - Explicitly naming, measuring, and accounting for specific inequities, especially racial inequities, throughout this document would help with designing strategies to eliminate those inequities. Throughout this draft, most data is not disaggregated by race (or any other factor). The document rarely mentions disparities and never analyzes the drivers of such disparities. There is no analysis as to who might benefit from certain programs, who might be burdened, and why.
 - Data should be presented in a comparative context, to illustrate disparities, not just as a snapshot in time (e.g. page 16). There is a statutorily mandated mechanism for producing data on Native students, the Tribal Education Status Report, which is mentioned as a support measure (page 18). This report should supply baseline and comparative data, thus shaping and galvanizing action. Yet it is presented here as informational only, and its current format is ill-suited for informing action planning.
3. We welcome that NMPED’s vision commits to “respecting, honoring, and preserving students’ home languages and cultures,” and would like to suggest transforming this into an outcome (rather than a process) goal, along the lines of: “Ensuring that every student can acquire or retain proficiency in their home language, in order to sustain and revitalize New Mexico’s heritage languages and cultures.” We also suggest adding an additional goal that reflects student outcomes beyond academic achievement. For example, “Ensuring that ‘at-risk’ students feel welcome, safe, supported, and secure in their identity.”

Comments on the section: “Outcome Targets for Specific Populations”

1. We agree that a plan should contain sections on each of the student populations deemed by the Court to be “at-risk.” A section on educators, however, would be more appropriate as part of the cross-cutting or “wide-ranging strategies” described in the second part of the document.

2. We consider the “outcome targets” for each population group too narrow. We suggest adding qualitative results and outcomes that reflect the broad range of student needs and necessary systemic transformations.
3. In the educator section, we welcome the target of increasing Native American teacher representation by 7 percentage points (page 11). We suggest adding a general goal relating to teacher diversity to the main educator goals on page 4 (currently, diversity is only mentioned as a sub-goal on page 5). We also suggest that educator targets be expanded to address inequities impacting “at-risk” students (as per the Court’s order: “to achieve equitable distribution of effective teachers,” Decision and Order, p. 35). We also request that NMPED develop a targeted strategy for training, recruiting, and retaining Native teachers, administrators, and other education specialists, requires districts to adopt corresponding goals and strategies, and commits to needed investments, especially in Native-led teacher preparation programs.
4. We appreciate NMPED’s support for ensuring salary parity for 520 certificate teachers in the 2022 legislative session. We ask that NMPED support recurring funding for equal wages, and that it seeks to eliminate barriers to level 2 and level 3 licenses, just as it does for CTE teachers (page 9).
5. Throughout the educator section, none of the information on NMPED’s past and current projects is disaggregated by race or mentions diversity (pages 6-10). For example, the document mentions average class sizes, yet does not disaggregate class size data by student population and geography (page 5), nor does it specify which districts receive waivers. The target for improvement refers to average class sizes. Similarly, the current programs listed (community schools, extended learning, K5 Plus) do not specify which population groups benefit, and which may be excluded (pages 12-14). We request that PED be specific about disparities, and strategies to address those disparities, throughout the document.
6. The subsections on the four “at-risk” student groups would benefit from a recognition of intersectionality; for example, many Native students are also economically disadvantaged. Intersectionality compounds inequities, yet the four student groups are addressed as entirely separate groups. We suggest that NMPED take the impacts of intersectionality into account when designing strategies and actions.
7. The section on funding for economically disadvantaged students omits any reference to the fact that SEG funding is not targeted at all at-risk groups (page 12): the at-risk factor does not include Native students. Similarly, while NMPED commits to ensuring accountability for districts’ use of funding for economically disadvantaged students (page 14) – which we welcome – no such oversight is planned in relation to districts’ support (or lack thereof) for Native students.

Comments on the section: “At-Risk Students’: Native American”

While the draft plan includes several welcome commitments related to Indian Education, referenced above, the section on Native American students does not present a strategy and action plan about how to deliver on those commitments. The lists of funding and non-monetary supports are largely comprised of current projects and insufficiently connected to goals, outcomes, and targets. Several key projects listed are the result of TRF-related appropriations, but these are not presented in the context of the TRF framework and strategy.

- Some appropriations are double-counted (“\$4.5 million has been appropriated for Tribal Library After-School and Summer Programs through FY2022-23.” This appropriation is, in fact, included in

the following: “\$10.6 million was allocated for Tribal Education Departments (TEDs), tribal libraries, and tribally-based Native American language programs,” page 16) or not accurately reported (“In FY2020-21, the Tribal Education Departments received \$1 million for the development of early childhood culturally and linguistically relevant curriculum.” Yet the following sentence states that school districts and charter schools created these curricula, page 17).

- The short section on “Planning for the Future” contains current 2022/23 appropriations, not future budgets and plans (page 20). Moreover, included are general appropriations not targeted at Native students.

The mix of disjointed projects, current appropriations, and general funding disconnected from goals and outcomes illustrates the State’s piecemeal approach to Indian Education. We recommend replacing this with a coherent strategy and action plan for addressing the inequities faced by Native students.

- If NMPED wants to take action to improve outcomes for Native students, it must analyze what the root causes of disparate outcomes are, and how these continue to serve as drivers of inequities and barriers to change. This requires an examination of the systematic attempt to eradicate Indigenous languages and cultures, which gave rise to the education paradigm of assimilation. To transform the failed system, decision-makers at all levels of the education system need to understand how the assimilation paradigm has worked and continues to work.
- The Indian Education Act (IEA) requires “equitable and culturally relevant learning environments for Native students” (22-23 A-2(A)). The Court repeatedly pointed out that the State is in violation of this clause. In its action plan, NMPED should offer a coherent and funded strategy, with measurable outcomes and actions, for creating equitable environments for Native students to learn and thrive.

The Tribal Remedy Framework offers a comprehensive strategy for meeting Native students’ needs and rights, with the intent of dismantling the assimilation paradigm.

- This is aligned with the Court’s finding that “the history of forced assimilation policies on tribal communities in New Mexico requires the system of education to meet the unique cultural and linguistic needs of indigenous students” (Findings of Fact and Conclusion of Law at ¶511).
- Yet NMPED’s draft plan does not incorporate the TRF’s proposals. The document does not include goals, outcomes, or targets related to tribal community-based education, tribal education capacity, or greater tribal control over the education of Native children.
- The IEA requires NMPED to increase tribal involvement and control over the education of Native children. Yet the draft plan includes no explicit strategies for increasing tribal involvement in education.

We recommend that NMPED incorporate TRF proposals in its action plan. This is not only a matter of responding to Court and statutory mandates, but also a matter of respecting tribal education sovereignty. The TRF presents tribal education priorities endorsed by all Tribes, Nations, and Pueblos. These can be summarized as follows:

- Shared responsibility and increased tribal control over the education of Native children
- Community-based education, created by and centered within tribal communities
- A balanced, culturally and linguistically relevant education that revitalizes and sustains the strengths of children and the core values of their communities

The TRF offers recommendations for supporting Native students in the major education policy areas aligned with the Court’s ruling (see enclosed feedback table). We summarize our comments and recommendations below.

- Implementation of the IEA
 - NMPED’s draft does not include an action plan for funding and implementing the IEA.
 - The draft does not include an action plan for holding districts accountable for implementing the IEA, including the required needs assessments and systemic frameworks. NMPED limits its role to providing assistance (pages 18-19).
 - The draft states the number of Indian Education Division (IED) positions available to support IEA implementation (page 19), yet it is not mentioned that many of these positions are vacant and have been subject to high staff turnover.

Our key recommendations:

- We ask that NMPED present a strategy and action plan for fully funding and implementing the Indian Education Act. This requires accountability at all levels and permanent, sufficient funding for Native students, Tribal Education Departments, and for Native-led education infrastructure from community to higher education.
- We request a funding plan that targets financial resources directly to Native students, including in their communities, and that holds districts accountable for spending state funds. The Court found that state funding was insufficient to meet the needs of at-risk student groups, which exposes an inequitable distribution of resources. Since then, the State has increased funding across the board, most recently for teacher salaries. Yet more resources for everyone does nothing to close the gap for those left behind. The State also increased funding for at-risk groups, but Native students are not included in the at-risk formula, and districts are not held accountable for spending at-risk dollars on Native students.
- We request that NMPED collaborate with tribal education advocates to develop a permanent funding mechanism, possibly in the form of a trust fund, to ensure adequate and sustainable financial resources for tribally determined education priorities, including tribal education capacity, facilities, and programs, that implement the purposes stated in the IEA.
- We request that NMPED and other state agencies recognize, and plan appropriate actions in relation to funding and contracting arrangements, that Tribal Education Departments serve an equivalent function to school districts, while retaining full tribal authority. Any funding arrangements should ensure, with immediate effect, that Tribes can retain and carry over unspent resources for future use, just like school districts are able to do.

- Tribal Sovereignty and Education Governance

- NMPED states that it seeks to ensure that tribal consultation is a priority and that it has developed a Tribal Consultation Guide (page 15). Yet a draft guide was published in 2019, and it does not appear to have solved the problem of insufficient, perfunctory consultation by districts and schools.

Our key recommendations:

- NMPED must engage in meaningful Government-to-Government relationships with Tribes, beyond semi-annual information sessions. Tribes must be able to shape the education of Native children by collaborating with NMPED in decisions relating to education policy, governance, budgets, and programming.
- NMPED should require districts and schools to engage in more meaningful consultation and collaboration with Tribal Education Departments (TEDs). It should facilitate the development

of a local governance framework, including MOUs/MOAs that delineate shared responsibilities.

- NMPED should work with Tribes and districts to develop a culturally appropriate accountability system to ensure that districts use their budgets to prioritize the needs of Native students.
- NMPED should fund TEDs to increase their capacity for engaging in shared governance.
- NMPED should establish and fund Indigenous Technical Assistance Centers to support districts, schools, Tribes, and its own actions.
- We request that NMPED consult with Tribes to develop goals and outcomes for Native students. Current targets are limited to student achievement, and it is unclear how these were developed. There are no targets related to language and culture, or tribal involvement, or social and emotional health. All targets should include multi-year budgets.

- Creating a culturally and linguistically relevant learning environment

- NMPED’s draft plan points to the adoption of revised social studies standards, which we welcome, and the development of a handbook and trainings for district and school leadership (page 18). It is unclear which goals and outcomes are linked to the latter effort, and how they fit with tribal concepts of cultural relevance.

Our key recommendations:

- NMPED should develop a strategy for creating and institutionalizing the full range of components that constitute a culturally relevant education, in close collaboration with Tribes. This should include working with Tribes to develop a vision, goals, and action plan for creating a school environment and instruction that does not require Native students assimilate to Western standards but incorporates Indigenous knowledge and values to create a balanced and relevant education.
- NMPED should fund TEDs for collaborating in curriculum development and implementation.
- NMPED should establish Indigenous Curriculum Development Centers operated by Native-led higher education institutions/programs in collaboration with Tribes.

- Sustaining and Revitalizing Native Languages

- We welcome that NMPED seeks to “make every effort to ensure that Native languages and cultures are preserved” (page 15). We would like to see a strategy and action plan that helps achieve this commitment.
- We welcome the intent behind the announcement that “NMPED will develop and implement community-based Native American language programs” and that “competitive grants will be issued to five entities for three years to develop Indigenous language programs” (page 21). However, NMPED should be clear about its obligations to Tribes and tribal sovereignty and defer to tribal authority in matters of language and culture. NMPED is neither in a position to implement language programs itself, nor to select individual contractors.

Our key recommendations:

- Native languages should be elevated to at least the same level of instruction as other non-English languages. Language loss among Native students and within tribal communities is at a critical stage. NMPED should consult and collaborate with Tribes to develop a comprehensive strategy, actions, and targets related to Native languages.

- NMPED and ECECD should fund self-determined Native language programs at all educational stages and levels, designed and delivered by tribal community entities and Native-led higher education institutions/programs without state interference.
- Improving Native Students' Academic Outcomes
 - NMPED sets quantitative Native student achievement and graduation targets yet offers no clear strategy and action plan for achieving these targets.

Our key recommendations:

- NMPED should develop an integrated strategy and action plan, in consultation with Tribes, for supporting Native students in schools and in their communities. This should replace the current project-to-project approach and be funded consistently and sustainably.
- NMPED should hold districts accountable for achieving Native student outcome targets.
- NMPED should conduct tribal community and parental outreach for developing goals and outcomes for Native students.
- NMPED should fund tribal community-based education infrastructure and programs as key drivers of Native student learning and engagement.
- NMPED should establish two Indigenous Technical Assistance Centers to guide districts, schools, Tribes, and its own actions.

NMPED's draft plan addresses other education policy areas – including early childhood, extended learning programs, college & career readiness, technology, health & social services – not in the section on Native students but in general terms, under the heading “Wide-Ranging Strategies.”

Comments on the section: “Wide-Ranging Strategies”

Unfortunately, this important section omits any focus on disparate impacts and targeted supports. While the policy areas described here deliver universal benefits and are important for the entire student population, it is necessary to analyze the disparities experienced by each of the “at-risk” groups, so that these groups can be targeted with specific support frameworks, strategies, and funding. As it is, the range of issues and programs addressed in this section does not differentiate between which populations are served and with what desired outcomes. There are no racially disaggregated improvement targets for early childhood, extended learning, technology, and health and social supports. In the following, we offer specific recommendations for targeting Native students as part of these universal or “wide-ranging strategies.”

- Early childhood programs
 - NMPED points to ECECD's role and to general funding increases. It does not examine Native children's access to early education, nor the link between early language learning and NMPED's academic improvement targets for Native students.

Our key recommendation:

- NMPED should work with ECECD to set a goal that all Native children have access to state-funded, culturally and linguistically relevant early childhood programs, developed by Tribes or tribal community entities and free from state interference. Native language instruction should be part of any early childhood education program. Indigenous worldviews are contained within Indigenous languages, which are essential to maintaining tribal ways of life. Many Tribes have established language immersion programs to counter language loss, and children in these

programs demonstrate substantial academic improvements once they have learned and retained their Native language.

- Extended learning programs
 - This section does not mention Native children, yet it is a key area of disparate impact. Because Native children have less access to extended learning programs than other students, due to limited uptake in Indian-serving districts and for geographical, transportation, and cultural reasons, the State’s continued high-level investment in these programs is a prime example of inequitable resource distribution. This widens rather than closes the opportunity gap in education.

Our key recommendation:

 - NMPED should incorporate the TRF’s proposals related to tribal, community-based education. This requires increasing the initial funding for initiatives such as community-based after school programming at tribal libraries and tribal, community-based extended learning programs. These funds should be made permanent and non-reverting as part of an integrated strategy for increasing opportunities and outcomes for Native students.

- College & Career Readiness
 - NMPED points to a range of projects; none of them appear to target Native students.

Our key recommendations:

 - NMPED should develop a targeted strategy and action plan for college and career readiness for Native students, centered on tribal visions for ideal Indigenous graduates.
 - NMPED should fund internship and college preparation programs operated by Native-led organizations such as College Horizons.
 - NMPED should fund Native-led higher education institutions/programs to assist Tribes with developing workforce profiles and pathways, as well as tribal civic education.

- Digital Divide
 - NMPED seeks to establish a Statewide Education Network, and we welcome this goal, assuming that it includes tribal communities and tribal community facilities.

Our key recommendations:

 - NMPED should develop a strategy and action plan for funding broadband, IT support, and software at all education levels and sites, but particularly for at-risk student groups, as per the 2021 Court order. This requires expanding the focus from supporting districts to supporting students in their tribal communities.
 - NMPED should support technology hubs (primarily libraries) in tribal communities.

- Integrated health and social supports
 - NMPED sets targets for increasing school-based health and social supports, but these are not disaggregated by student populations or geographies. Moreover, there are no targets for community-based support networks, or school-community collaborations.
 - NMPED reports implementing a federally funded mental health project to increase providers in rural and tribal areas (page 50), yet outputs are not reported in ways that would enable an assessment of benefits to Native children, families, and professionals.

Our key recommendations:

 - NMPED should develop an integrated, cross-agency health and social services strategy to guide the development of culturally appropriate school and community-based supports. This will require NMPED to conduct an assessment of current access to culturally appropriate services (as

per HB287, 2021, vetoed with the promise of NMPED carrying out such an assessment without legislative mandate).

- At the school level, an appropriate strategy and action plan should range from the provision of culturally appropriate health and social services to the implementation of Indigenous justice approaches, in collaboration with Tribes, to address racially disparate impacts of school discipline and pushout.
- At the community level, an appropriate strategy and action plan should include funding Tribes and Native-led higher education institutions/programs (such as the Center for Native American Health and the Honoring Native Life initiative) to expand and support integrated community-based health and social services.

The above recommendations point to the need for an integrated, sequential, and collaborative approach to educating Native children, and an action plan that operationalizes such an approach. Tribal education priorities center on the vision of a balanced education system that supports a continuum of education from families and communities to schools to higher education, and that produces a community-engaged graduate grounded in Indigenous values, languages, and cultures. We suggest that NMPED work with Tribes and cross-agency to plan and fund community-based education alongside school-based education, and that it turn to higher education programs to provide assistance to communities and schools. The TRF's recommendations express a holistic understanding of education as a virtuous circle from early childhood to primary and secondary schooling through to graduation and the return of Native professionals to tribal communities. This understanding is in line with the Indian Education Act, which requires NMPED to facilitate collaboration between Tribal Education Departments, community-based organizations, parents, school districts, and universities.

To transform public education in ways that address the systemic failures identified by the *Martinez/Yazzie* Court and meets the needs of "at-risk" students, TEA requests that NMPED look at the system's components holistically, recognize interdependencies, and proactively address the inequities it continues to produce. We ask that NMPED incorporate the Tribal Remedy Framework's proposals for shifting the education paradigm, increase tribal involvement in education, and collaborate with Tribes in creating an action plan that fully implements the Indian Education Act.

Attachment:

Table: Aligning Court Ruling and Tribal Remedy Framework with Suggestions for PED Action Plan

Policy Area (PED Pillar)	Yazzie/Martinez Findings & Decisions	Indian Education Act (IEA)	TRF Proposals	PED Draft Plan (Native students)	Need for PED Action (Native students)
Educators (Educator Ecosystem)	<ul style="list-style-type: none"> New Mexico has not made a concerted effort to recruit and retain diverse teachers. Yazzie, Findings of Fact and Conclusions (FFCL) at ¶474 Only 2% of all teachers in the state are Native American. FFCL ¶ 326 It is important for Native American English learners (NAEL) to have Native American teachers. FFCL ¶323 	<ul style="list-style-type: none"> Ensure equitable, culturally relevant learning environments for Native students. 22-23A-2(A). Assistant Secretary shall “seek funds [...] for the purposes of increasing the number of tribal teachers, administrators and principals” 22-23 A-5(E)(11) 	<ul style="list-style-type: none"> Fund Native teacher & administrator pipeline; fund Native-led teacher training programs and practicums aligned with tribal priorities Secure and sustain pay equity for Native language teachers (520 certificate) Mandate anti-racism and IEA training for all educators, staff Provide tuition & fee waivers for Native college students 	<ul style="list-style-type: none"> Increase Native teacher representation by 7% Support for pay equity for 520 certified teachers NMHED provides non-monetary support to UNM on a Bilingual, Indigenous Educator Pipeline Project 	<ul style="list-style-type: none"> Need a targeted strategy, incl. funding, for Native teacher & education professionals training, recruitment, and retention Require districts to adopt goals and strategies for increasing Native teacher recruitment and retention Need to fund Native-led teacher training programs Need disaggregated data on how/whether current projects increase Native teacher representation Need recurring funding for 520 teacher pay equity and eliminate barriers to level 2 and level 3 licenses
Culturally & linguistically relevant education (Whole Child & Culturally Responsive Education)	<ul style="list-style-type: none"> Defendants have failed to implement culturally relevant learning environments. FFCL ¶3076. Defendants have failed to implement culturally relevant instructional materials for Native students. FFCL ¶3078. An institutionalized, culturally relevant program for Native American students, as required by the NM Indian Education Act, is nonexistent or piecemeal at best. FFCL ¶630 Schools must provide Native American students ... the same quality of education that is provided to non-Native 	<p>Ensure equitable, culturally relevant learning environment, culturally relevant instructional materials for Native students. 22-23A-2(A).</p>	<ul style="list-style-type: none"> Two Curriculum & Materials Development Centers run by Native-led higher ed. programs in partnership with Tribes Two Indigenous Technical Assistance Centers run by Native-led higher ed. programs in partnership with Tribes Provide permanent funding to TEDs for cooperating with districts and schools 	<ul style="list-style-type: none"> PED worked with teachers to develop new social studies standards PED created a “Culturally and Linguistically Responsive Guidance Handbook” and procured training for educators 	<ul style="list-style-type: none"> Need a systematic and cohesive strategy for institutionalizing all components of a culturally relevant education, in collaboration with Tribes Need analysis of assimilation paradigm and how it is being perpetuated Need to fund Native-led higher ed. institutions/ programs to establish Indigenous curriculum and technical assistance centers Need to fund TEDs to build their capacity for collaborating in curriculum

Policy Area (PED Pillar)	Yazzie/Martinez Findings & Decisions	Indian Education Act (IEA)	TRF Proposals	PED Draft Plan (Native students)	Need for PED Action (Native students)
	<p>American students by incorporating into the classroom culturally relevant curriculum that contains the historical contributions made by Indigenous people. FFCL ¶475</p> <ul style="list-style-type: none"> The Indian Education Act is premised on the idea that a culturally relevant education is to be produced through the cooperation of the schools and the tribal communities. This goal has not been realized in most of the districts with significant Native American student populations. Yazzie, Decision & Order (DO), p.28. 		<p>in assessing needs and developing a culturally relevant school environment and education</p>		<p>development and school policies</p> <ul style="list-style-type: none"> Need targets related to culturally relevant curricula, materials, instruction, assessments, and school environments Need targets related to Native student identity and engagement
<p>Native languages (Whole Child & Culturally Responsive Education)</p>	<ul style="list-style-type: none"> New Mexico's system of education does not provide Native American students the necessary programs and services that meet their unique cultural and linguistic needs. FFCL ¶523. Language is necessary for the continuation of the culture and traditions of Indigenous tribes; there is no substitute. FFCL ¶486. 	<p>Ensure maintenance of Native languages. 22-23A-2(B).</p>	<ul style="list-style-type: none"> Elevate Native languages and Native language teachers in curriculum and assessment. Provide permanent funding for school and community based Native language programs. Add a Native language factor to school funding formula; make Tribes eligible for receiving formula funding. 	<ul style="list-style-type: none"> PED seeks to "make every effort to ensure that Native languages and cultures are preserved." PED will issue competitive grants for Native language programs. 	<ul style="list-style-type: none"> Need a clear strategy, actions, and targets related to Native languages, developed in consultation with Tribes and deferring to tribal authority Need to respect tribal sovereignty regarding languages Need to make permanent funding available for self-determined tribal language programs and Native-led higher ed. language programs
<p>Academic success</p>	<ul style="list-style-type: none"> Defendants have not developed any educational 	<p>Provide educational systems</p>	<ul style="list-style-type: none"> Fund tribal community-based 	<p>PED Targets:</p>	<ul style="list-style-type: none"> Need an assessment of educational systems that

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(Whole Child & Culturally Responsive Education; Asset-based Supports)	<p>systems that are specifically targeted at improving the success of Native American students. FFCL ¶3080.</p> <ul style="list-style-type: none"> Defendants have not studied or developed effective educational systems for Native American students. FFCL ¶3082. 	<p>that positively affect educational success of Native students. 22-23A-2(C).</p>	<p>education as a support system to complement school-based learning.</p> <ul style="list-style-type: none"> Fund community-based infrastructure, incl. TEDs and tribal libraries, to provide extended & summer learning, language classes, experiential learning, career services, etc. Make significant capital and operational investments in tribal libraries Two Indigenous Technical Assistance Centers run by Native-led higher ed. programs in partnership with Tribes 	<ul style="list-style-type: none"> Increase Native student achievement in English and math by 50% by 2026. Increase Native students' graduation rate by 15 points to 87% by 2025. <p>Funded projects:</p> <ul style="list-style-type: none"> A \$1m pilot project (IEI) to redesign schools and programs. In FY2021-22, \$10.6 million for TEDs, tribal libraries, and tribally-based language programs. In FY2022-23, \$13.3m for tribal community-based extended learning. \$12 million for tribal libraries capital planning. 	<p>addresses assimilation paradigm, incl. institutional and systemic racism</p> <ul style="list-style-type: none"> Need an assessment of who benefits and who is burdened by current systems and programs Need disaggregated data on disparities and analysis of the drivers of disparities. Need to consult and collaborate with Tribes in developing goals and strategies for improving Native students' outcomes Need to do community and parental outreach for developing goals for Native students Need to hold districts accountable for Native student outcome targets Need to fund Indigenous technical assistance centers Need permanent, sufficient funding for tribal community-based education infrastructure and programs
Health & social services (Asset-based Supports)	<ul style="list-style-type: none"> Defendants have failed to provide sufficient resources for counselors, social workers, and other non-instructional staff that all students, especially at-risk students, need to succeed. FFCL ¶266. New Mexico's Native American students share a legacy of historical trauma 	<p>Districts shall develop a systemic framework in collaboration with [...] social service providers. 22-23A-10</p>	<ul style="list-style-type: none"> Make schools safe and supportive by addressing institutional racism, using trauma informed practices and Indigenous justice models End school pushout and disparate impact 	<p>Targets:</p> <ul style="list-style-type: none"> One school counselor per high school Add 25 school-based health centers <p>Projects:</p> <ul style="list-style-type: none"> PED has given tuition assistance 	<ul style="list-style-type: none"> Need a holistic, cross-agency health and social services strategy that addresses disparities and advances equity Need to conduct an assessment of access to culturally appropriate services (HB 287, 2021)

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	and a set of well-recognized, but chronically unmet, educational needs. It is important to be knowledgeable of this legacy so as to appreciate the need to meet the requirements of the IEA. FFCL ¶496.		of seclusion & restraint <ul style="list-style-type: none"> • Fund tribal agencies to provide integrated health and social supports. • Fund Native higher ed. programs (e.g. CNAH, Honoring Native Life, NABPI) to provide technical assistance to Tribes 	and salary raises to mental health students and school-based providers, as part of a federally funded project. <ul style="list-style-type: none"> • Training on social-emotional health and community engagement 	<ul style="list-style-type: none"> • Need to fund Tribes and Native-led higher ed. programs to expand and support integrated community-based health and social services • Need to report and address racially disparate impact of school discipline & pushout • Need a plan for implementing Indigenous justice approaches, in collaboration with Tribes and Native-led higher ed. programs
Early childhood (not included in PED pillars)	Early childhood education for 3 and 4-year olds (Pre-K) is an important component to providing a sufficient education and equitable educational opportunities. FFCL ¶6.	Sequential, culturally relevant curriculum starting in pre-kindergarten. 22-23A-5 (E)(3)	<ul style="list-style-type: none"> • Provide state funding for self-determined tribal community-based early ed. programs that use Indigenous standards and teach Native languages. 	<ul style="list-style-type: none"> • Capital outlay projects for tribal early childhood centers. • ECECD received funds to increase the number of Indigenous and bilingual early childhood educators. 	<ul style="list-style-type: none"> • Need a joint strategy with ECECD and HED for ensuring that each Native child has access to early childhood education that includes Native language instruction • Need to ensure equitable access to state funding for self-determined tribal early ed. programs
Career & college readiness (Pathways & Profiles)	<ul style="list-style-type: none"> • Defendants have failed to provide at-risk students with programs and services necessary to make them college or career ready. FFCL ¶3187; DO, p.70. • Native American college-preparation opportunities for students attending many of the twenty-three Indian Education districts are 	Collaboration with higher ed. dept., institutions of higher ed., tribal education departments to facilitate Native students' transition into post-secondary education and training. 22-23A-4.1	<ul style="list-style-type: none"> • Fund Native-led college and career preparation programs, incl. College Horizons & Leadership Institute • Fund TEDs and Native-led higher ed. programs to develop tribal community profiles & pathways 	<ul style="list-style-type: none"> • PED's readiness projects include career-technical education, internships, tutoring, etc.; none of them targeted at Native students. • PED works with a nonprofit on a "Graduation Equity Initiative", piloting a 	<ul style="list-style-type: none"> • Need a targeted strategy for college and career readiness for Native students, analyzing and addressing disparities • Need to respect and follow tribal graduate profiles • Need to fund Native-led college and career readiness programs

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	woefully inaccessible. FFCL ¶631.		<ul style="list-style-type: none"> • Provide tuition & fee waivers for Native college students • Provide Native language honors and advanced placement classes 	project-based (not testing-based) graduation pathway.	<ul style="list-style-type: none"> • Need to support tribal civic readiness programs and tribal workforce pathways • Need to fund Native-led higher ed. programs to assist Tribes with developing workforce profiles & pathways
Education governance (not included in PED pillars)	<ul style="list-style-type: none"> • Defendants have not provided a means for formal government-to-government relationship between the Tribes and the State. FFCL ¶3083. • Defendants have not ensured that school districts are consulting with Tribes in a meaningful manner. FFCL ¶620 • Defendants have a duty to provide school districts with sufficient technical assistance, guidance, monitoring and oversight on the implementation NMIEA. FFCL ¶3071. • Defendants do not have a mechanism to assess whether equitable and culturally responsive learning environments and educational opportunities are being provided to Native students. FFCL ¶3077. 	<ul style="list-style-type: none"> • Formal government-to-government relationship. 22-23A-2(F). • Tribal involvement and control over schools and education. 22-23A-2 (D). 	<ul style="list-style-type: none"> • Ensure meaningful tribal consultation, collaboration, and consent. • Fund TEDs to increase tribal involvement and control over education. • Secure permanent funding for TEDs through the IEA or SEG. • Formalize TED-LEA collaboration through a local governance framework & MOUs • Fund Indigenous Technical Assistance Centers to support Tribes and schools. • Create a culturally/community appropriate public education accountability system. 	<ul style="list-style-type: none"> • PED will set up a <i>Martinez/Yazzie</i> Response Team with some oversight functions • PED drafted a Tribal Consultation Guide • PED seeks to ensure that tribal consultation is a priority • PED developed a technical assistance manual for needs assessments 	<ul style="list-style-type: none"> • Need to establish more meaningful G-2-G mechanisms, beyond semi-annual information sessions • Need PED accountability for how districts consult with Tribes • Need to fund tribal capacity building to facilitate shared governance • Need to develop PED oversight and accountability system for how SEG and IEA funding is used to prioritize the needs of Native students, as per IEA • Need to make school needs assessments and frameworks a condition for funding, as per IEA • PED must recognize and effectuate the unique role and rights of Tribes in New Mexico's education system; work with Tribes to develop public education accountability system
Technology (Asset-based Supports)	Provide at-risk students with digital devices and access to	Ensure equitable learning environments for	• Close the digital divide	• PED convened a broadband working	• Need to expand focus from supporting districts to

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	high-speed internet (Court order, April 30, 2021).	Native students. 22-23A-2(A).	<ul style="list-style-type: none"> • Fund tribal broadband infrastructure • Fund tribal IT support services • Fund and use software for CLR materials and language instruction 	<p>group, supporting districts' federal funding applications</p> <ul style="list-style-type: none"> • PED seeks to create a Statewide Education Network • NM State Library assisted six tribal libraries with E-rate projects 	<p>supporting students in their tribal communities</p> <ul style="list-style-type: none"> • Need a strategy for funding broadband, IT support, and software at all education levels and sites • Need a strategy for funding technology hubs (libraries) in tribal communities
<p>IEA funding & implementation (Whole Child & Culturally Responsive Education)</p>	<ul style="list-style-type: none"> • Defendants have a constitutional duty to ensure that the NMIEA is fully complied with and enforced and that its purposes are fully effectuated. A violation of NMIEA is a violation of Article XII, section 1 of the NM Constitution. FFCL ¶3066f. • Defendants are in violation of the NMIEA. FFCL ¶3075 • Defendants have failed to prioritize the NMIEA. FFCL ¶3074. • Defendants have a duty to ensure that the 23 Indian Education districts have sufficient resources, including funding, to fully implement the NMIEA. FFCL ¶3069. • The uncertainty surrounding [NMIEA grant] funding makes it difficult to use it for programs that should be sustained year-after-year. DO, p.50. • While grant-funded “programs may be worthwhile, their 	<ul style="list-style-type: none"> • Provide educational systems that positively affect educational success of Native students. 22-23A-2(C) • Ensure equitable, culturally relevant learning environments, educational opportunities for Native students. 22-23A-2(A). 	<ul style="list-style-type: none"> • Prioritize IEA implementation • Fully fund the IEA through a permanent and sufficient revenue source • Ensure adequate, sustainable financial resources for tribal education priorities through automatic, regular distributions, not grants • Distribute school funding based on needs assessments developed jointly with Tribes • Fully staff IED with Indigenous education experts 	<ul style="list-style-type: none"> • IEF has seen increased appropriations (to \$15m) • On PED's organizational chart, IED has 7 staff positions 	<ul style="list-style-type: none"> • Need a strategy and action plan to fully fund and implement the IEA. • Need to hold districts accountable for implementing the IEA. • Need to make approval of district budgets dependent on use of at-risk funding for Native students and on meaningful tribal consultation (implementation of HB250) • Need to shift from project-based grant funding to permanent, sustainable funding for tribal education capacity and priorities • Need to provide plan for addressing high turnover at IED and consulting with Tribes about staffing those positions

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	<p>coverage is too limited and their funding is too ephemeral to justify the State's failure to comply with the constitutional mandate." DO, p.44.</p> <ul style="list-style-type: none"> Defendants have not staffed the Indian Education Division in a way that would enable it to study, develop, and provide guidance on effective systems of education for Native students. FFCL ¶3081. 				