

The Public Education Department (PED), on November 21, 2024, filed a response to the *Martinez-Yazzie* plaintiffs' recent motion of noncompliance and request for a remedial action plan, stating that while the PED is not "resisting Plaintiffs' interest in working with Defendants to develop a plan towards compliance," it does "oppose Plaintiffs' request in their motion that this plan be mainly authored by the Legislative Education Study Committee."

In the motion filed September 4, 2024, in the First Judicial District Court, the plaintiffs in the *Martinez-Yazzie* lawsuit argued the state has still not addressed educational deficiencies for at-risk students, which the court defined as students with disabilities, economically disadvantaged students, English learners, and Native American students. The motion asked the court to order the creation of a comprehensive remedial action plan outlining the actions needed to address the court's orders, the parties responsible for implementing those actions, and objective measures by which to evaluate success. The motion called for LESC staff to coordinate the planning process to create a remedial action plan.

While calling for LESC staff to coordinate a planning process, the plaintiffs' motion was largely dedicated to examples of how, in the plaintiffs' view, the state, namely PED, has failed to meet court mandates to date. It cited the court's findings in its original 2018 order and describes a perceived lack of progress toward improvement, underscored by the absence of a remedial action plan and a lack of positive student outcomes for student groups named in the lawsuit.

In their response, attorneys for PED argue the plaintiffs' request is based on "dated information or unsupported allegations." The response states the context "is not as Plaintiffs suggest, one where PED has ignored the Court's orders, made no efforts to improve educational inputs and outputs for at-risk students, or otherwise demonstrated a complete inability or unwillingness to provide a constitutionally adequate public education system."

PED's response includes rebuttals to many of the plaintiffs' arguments, including the claim PED has not drafted its own plan to address the lawsuit or that it has still failed to address the needs of at-risk students, among others. Because the court has not scheduled a hearing to consider the plaintiffs' motion, this brief focuses primarily on specific aspects of PED's response that pertain to LESC and its staff, including PED's objections to LESC or its staff coordinating or writing a remedial plan, as well as how PED envisions LESC participating in the planning process.

PED, Rather than LESC, Should Lead Development of a Plan

PED's response notes the department acknowledges its primary role in New Mexico's education system, and while the department "cannot accomplish this task alone, PED and its professionals are in the best position to take the lead in developing a remedial action plan." The response states, "PED is respectful of the expertise and insight of the LESC and would not oppose the LESC playing a role in development of a plan."

However, the response argues plaintiffs are conflating LESC with the Legislature, and that LESC does not speak for the Legislature any more than PED does. Because the Legislature does not always adopt LESC's

Key Takeaways

- PED filed a response to plaintiffs' motion requesting a remedial action plan in the *Martinez-Yazzie* education sufficiency lawsuit (*Page 1*).
- PED's attorneys argue the department, not LESC, should lead the development of a remedial action plan (*Page 1*).
- The response calls for an outside consultant, with input from LESC, to coordinate planning (*Page 2*).
- It is likely the court will not rule on the motion until after start of the new year and possibly after the start of the legislative session (*Page 2*).

recommendation, the response argues the claim “that PED has been unable to fully resolve the Court’s findings would be equally true of LESC.”

PED does not, however, object to working with LESC to identify an outside consultant who would help the department, with LESC input, in developing a remedial action plan. The plaintiffs’ motion outlined the various expectations of LESC and staff in coordinating the development of a plan. PED’s response suggests replacing LESC staff with an outside consultant to fulfill those roles, though many would still include LESC input.

Varying Understandings of Compliance

Beyond differences in what entity should lead the planning process, the two filings also differ in their fundamental argument of compliance with the court’s 2018 orders.

In the September 4, 2024 motion, plaintiffs argue the lack of a comprehensive and structured remedial plan from PED, alongside persistent unsatisfactory student outcomes, are evidence of non-compliance with the 2018 ruling. Plaintiffs assert without a remedial action plan, PED’s efforts to date lack cohesion, writing in September 2024, “There have been grave consequences to Defendants’ failure to develop and implement a comprehensive plan to fulfill their constitutional duties. By all relevant measures most elementary and secondary schools in New Mexico continue to fail the State’s at-risk students. The most recent available statewide data show dismal attendance and proficiency rates have continued since the Court issued its rulings in 2018.” In contrast, in the November 21, 2024 filing, attorneys for PED argue inputs to the educational system—such as increased funding and specific programs for students identified as at-risk in the lawsuit—are evidence of compliance.

These varying approaches are notable, with plaintiffs highlighting a lack of positive student *outcomes* and defendants asserting there is evidence of *inputs* that may outweigh outcomes as evidence in addressing the lawsuit. In the November 21, 2024 response, PED’s attorneys write “the Court’s prior rulings make it clear that outcomes are not the primary method for evaluating adequacy of the State education system. Instead, the Court indicated it would review whether the State is meeting statutory requirements, with a focus on *inputs*. It is clear under the Court’s reasoning that student achievement outcomes, standing alone, do not demonstrate a continuing violation of the law, or the Court’s orders.”

Of note, PED’s attorneys also assert concern about separations of power between the judicial, legislative, and executive branches, noting the court has previously rejected arguments for ordering more specific remedies. PED attorneys write “This Court, and many other courts around the country, have declined to micromanage activities of the other branches. The evidence shows PED has taken measures to address the Court’s rulings. PED does not object to the Court setting a deadline by which a plan should be finalized as well as a procedure for resolving disputes. As the agency with the primary statutory authority and duties regarding education, PED believes it should take the lead in drafting the plan.”

Long-term strategic educational planning, as discussed by LESC, could be a mechanism to develop both a remedial plan to address the *Martinez-Yazzie* findings while also charting a course for how these actions impact long-term stability and strategy toward a comprehensive vision for the state’s education system. An effective long-term plan would inherently allow for comprehensive understanding of both inputs and expected—as well as actual—outcomes, including the complex relationship between the two, and how this may guide state actions.

Timeline and Next Steps

The plaintiffs’ motion calls for LESC staff to submit to both plaintiffs and defendants a draft plan, developed in consultation with the PED secretary, by May 1, 2025, with the objective of fully satisfying the defendants’ constitutional obligations by the end of 2030. PED’s response states the department is “uncertain whether May 1, 2025 is a feasible goal, given the demands of the Legislative session.” Subsequently, PED’s response notes other deadlines would be subject to the selection of a “feasible date for original draft plan.”

In a conclusion, PED’s attorneys reiterate they are not arguing the department has fully complied with the court’s original findings and it “remains committed to improvements to the public education system,” but that plaintiffs “have not demonstrated an entitlement to the relief requested.” However, they note “PED does not object to the Court setting a deadline by which a plan should be finalized as well as a procedure for resolving disputes.”

Attorneys for the plaintiffs are expected to reply to PED's filing before asking the First Judicial Court for a hearing date. Given the time needed for a response, it seems likely the court may not schedule a hearing until after the start of the year, and possibly after the start of the legislative session.