

**Gaps in Implementation of Sufficient and Equitable Public Education
By Yazzie Plaintiffs, August 2021**

New Mexico’s students have faced decades of systemic racism in our society, institutions and school system, and some of the worst educational outcomes in the country. In the Yazzie/Martinez decision, the court ruled that the state constitution requires the state to comprehensively overhaul the public education system for Native American students, English language learners, students with disabilities, and low-income students (termed “at risk” by the court). The decision focused on the areas of deficiency outlined below.

This gaps assessment provides snapshots reflecting that much more work must be done by the state to address the deficiencies and overhaul the education system. For more details about each goal, see Transform Education NM’s Platform for Action (www.transformeducationnm.org/resources), and the Tribal Remedy Framework developed by New Mexico’s Pueblos, Tribes and Nations (<https://nabpi.unm.edu/assets/documents/2020-tea-tribal-remedy-framework.pdf>).

GOALS	GAPS
Where do we need to go?	Where are we now? What is needed? (Examples)
Student Equity	
<p>Comprehensive plan for equitable and sufficient education for 4 student groups: Native American, English language learners, students with disabilities, and low income students.</p>	<p>The state has no comprehensive plan that shows how it will get to sufficiency and equity in educational programs, services and funding for the 4 student groups.</p> <p>The public education system must be fundamentally reimagined for equity -- to engage students, parents and tribal leaders in defining priorities, dismantle systemic racism, and build a foundation for learning that embraces the cultures, languages, and heritages of students and their overall well-being, including their physical, social and emotional health.</p> <p>Student outcomes are still dismal because the education system is not providing a learning environment conducive for Native American, English Language Learner, students with disabilities, and low-income students that face the deepest inequities and disparities in educational outcomes. New Mexico’s children finish each school year without the basic literacy or math skills needed to pursue post-secondary education or a career.</p> <p>During the 2021 legislative session, the House of Representatives unanimously passed House Memorial 26, which calls for the state to work jointly with the Yazzie and Martinez Plaintiffs to develop a comprehensive education plan by September 30, 2021, and resolve the lawsuit. To date, the Plaintiffs have not heard from PED.</p>
Multicultural & Multilingual Framework: Culturally & Linguistically Responsive Education	
<p>PED capacity to implement IEA, HEA and BMEA</p>	<p>The state continues to violate its own laws -- Indian Education Act, Hispanic Education Act, and Bilingual Multicultural Education Act.</p> <p>Legislation failed to pass in 2019 and 2021 that would have restructured PED to align the three Acts, and improve staffing and capacity to implement them.</p>

<p>Indian Education Act implementation (includes language programs, teacher preparation, educational programs and resources, and tribal consultation)</p> <p><i>See the Tribal Remedy Framework for details.</i></p>	<p>The state has not adequately consulted and collaborated with tribal governments, or sought their informed consent, to determine educational programs or assess student needs; has not provided technical assistance to school districts; has not increased the number of Native American teachers or ensured teachers have training in culturally and linguistically responsive education; and has not provided a curriculum and pedagogy that is responsive to Native American students. Students continue to lack access to the internet, technology, libraries, after school and other programs. A comprehensive plan to come into full compliance with the IEA is necessary.</p> <p>Legislation was passed in 2019 requiring Native American student need assessments, but it has not been implemented.</p> <p>Substantial recurring funding is still needed for language programs, teacher preparation, libraries, technology, and tribal education departments. While funding amounts were increased in 2021 for certain programs, the investment is only a portion of what is needed.</p>
<p>Culturally & Linguistically Responsive Education (including Curriculum, Instructional Materials and Professional Development)</p>	<p>Instructional materials were required by the Legislature in 2020 to be culturally and linguistically responsive (CLR), but the state has not provided clear information on how it will meet these goals or who has been consulted locally or nationally to develop and sustain curriculum and materials, and does not maintain data on how much funding is need to purchase CLR materials for all students.</p> <p>Legislation was never implemented or funded that had been passed in 2019 for Regional Education Cooperatives (RECs) to provide professional development to teachers and support staff on the educational needs for culturally and linguistically diverse students.</p> <p>Substantial new funding and capacity is needed for higher education institutions, tribal governments, and state agencies to develop and sustain language programs, CLR curriculum development & professional development for educators and other school staff.</p>
<p>Language programs (including bilingual education, English Language Learner programs, Native language programs)</p>	<p>Over 40,000 students are English Language Learners and over 1/3 of students speak a language other than English at home, yet thousands of classrooms with ELL students don't have teachers with bilingual or TESOL endorsements.</p> <p>The state has not provided bilingual and English Language Learner (ELL) programming for students, access to qualified instructors, professional development for instructors, curriculum or materials for ELL students, placement into ELL programs, and monitoring to ensure students receive assistance.</p> <p>The number of students enrolled in Native Language programs has decreased by 15% (1,215) since 2015.</p> <p>All districts have had serious shortages of trained teachers, programs and resources for ELL students. While bilingual education funding has been nominally increased, the state has not published data to show whether programs were expanded and to how many students, by grade level.</p> <p>Legislation failed in 2019 that would have required most teachers to become endorsed in bilingual education or TESOL (Teach English as a Second Language).</p> <p>In 2021, legislation failed that would have created a working group of experts in CLR instruction, tribal languages, special education, and others, to make recommendations for improving and sustaining literacy, biliteracy, and oral language development programs.</p> <p>Substantial funding is needed to expand bilingual programs at every grade level (Pre-K through 12), monitor and ensure placements and programs for English Language Learners, and train most teachers to be bilingual or TESOL endorsed.</p>

Teachers & Educators

<p>Teacher diversity and pipeline</p>	<p>Only 2% of teachers are Native American. An additional 1600 Native teachers are needed to be representative of the student body.</p> <p>The pipeline to train, recruit, place and retain more teachers must be exponentially enlarged to fill shortages for bilingual education, special education, and early childhood education. In 2020, there were 571+ teacher vacancies. Funding and capacity is needed to establish teacher pathways through scholarships and living stipends and to increase faculty in higher education institutions.</p> <p>The state continues to be without an incentive system to bring experienced teachers to high-poverty schools with a large at-risk student population, where quality teaching is essential.</p>
<p>Professional development</p>	<p>Legislation was not implemented or funded that was passed in 2019 to provide professional development for educators on educational needs of culturally & linguistically diverse students.</p> <p>The state continues to lack a detailed, fully funded framework to ensure all teachers acquire adequate professional development that is culturally and linguistically responsive to the diverse needs of their students. Included in this must be specific training requirements and opportunities in bilingual and TESOL education, special education, and anti-racism for all educators and administrators.</p>
<p>Teacher pay</p>	<p>Teachers need competitive pay, but salary levels for teachers in New Mexico are lower than in all neighboring states, and are not competitive with other occupations within New Mexico. During the 2020 special session, funding to increase teacher salaries by 4% was decreased substantially to 1%, and in 2021 teachers only received a salary increase of 1.5%.</p>

Curriculum & Instructional Programs

<p>Pre-K / Early Childhood</p>	<p>Substantial additional funding is needed to expand pre-K universally. Public pre-k programs had waitlists for SY 2019-2020 because there were not enough slots funded, and 24 districts do not offer pre-K. Only a fraction of 4-year-olds were enrolled in full-day pre-K for SY 2020-2021 before the COVID-19 public health crisis. That number is expected to decrease significantly because of the health crisis.</p> <p>The number of Native children enrolled in public pre-K programs decreased from 25.1% in 2006 to 11.2% in 2018.</p> <p>The state has no plan to increase access for all 4 year olds to a full-day program, and has yet to increase the capacity of early childhood educators by implementing standard measures of program quality, educator assessments, minimum licensure and qualifications, and professional development including practices for culturally and linguistically responsive education.</p>
<p>K-5 Plus Summer programs</p>	<p>Many districts could not implement K-5 plus programs in 2019 due to lack of funding, insufficient lead up time, and programmatic restrictions such as difficulties recruiting teachers and students to meet program requirements. Many more did not provide this important program in 2020 due to COVID-19, and only 26 districts will implement a K-5 plus program or ELTP for SY 2021-2022, a decrease in enrollment of 36% from the prior year.</p>

Extended learning time	<p>The Extended Learning Time Program is not available to all at-risk students because many districts did not receive enough funding to fully implement it. For SY 2021-2022, some districts could only do so by supplementing state funding with non-recurring, emergency federal funding, but without any assurance of long-term, sustainable funding from the state. Enrollment in ELTP for SY 2021-2022 is flat with the prior year.</p> <p>Substantial funding and capacity is needed to expand culturally and linguistically responsive afterschool programs, including community and tribal based programs.</p>
Reading & Literacy	<p>Substantial additional funding is needed to provide literacy instruction and reading specialists in every district (at least one for each district). During the 2020 special session funding for literacy was decreased by \$2 million; this amount was not restored during the 2021 regular session.</p>
Special Education	<p>The state has not added any money or resources for special education and services; has not increased the capacity of PED to provide technical assistance and oversight to special education in the districts; has not ensured all teachers are trained in special education, has not provided timely individualized education programs in the least restrictive classroom settings, and has not provided students with the required teachers and support staff, ancillary services and programs.</p> <p>Legislation passed in 2019 requiring screening of all 1st graders for dyslexia, but has not been implemented, and bills that would have required tracking of special education money and increased professional development for all teachers on special education failed.</p>
Class Size	<p>The state has provided no information about current class sizes in New Mexico, and how many students are in classrooms with too many students; class size waivers are still permissible under state law.</p>
Instructional Materials	<p>More funding is needed for all districts to have sufficient funds for purchasing up-to-date instructional materials and there are enough textbooks for children to bring home.</p>
Student Supports	
Technology	<p>Lack of access to technology continues to exacerbate educational inequity, due to the COVID-19 pandemic and remote learning. This is especially true for students in rural and tribal areas.</p> <p>As of June 2020, 85% of school districts had no plan for supporting Native students during school closures, 44% did not require attendance, and 55% of students in Title I schools were not engaged in learning by the end of the 2019-2020 school year. 55% of rural tribal residents lack broadband. Native students are 3 times more likely than whites to have only one device (a phone).</p> <p>While some students returned to in-person learning at the end of SY 2020-2021, almost half of public school students remained in remote learning as of April 2021. Many districts anticipate a significant percentage of their students will continue in remote learning during SY 2021-2022.</p> <p>In April 2021, the court ruled in favor of the Yazzie Plaintiffs' motion by finding that students who lack access to high-speed internet and technology for remote learning are not getting much of an education, if at all, let alone one that is sufficient to make them college and career ready. The court ordered the state to immediately provide dedicated digital devices to all at-risk students and teachers, funding for IT staff, and high-speed internet at home for all at-risk students who lack it.</p> <p>Substantial additional funding in infrastructure and technology is needed, and it must be</p>

	prioritized for at-risk students in rural and tribal areas to expand broadband internet access that meets the court's order.
Transportation	<p>The state does not pay for transportation for summer or after-school programs or pre-K thus limiting student participation, especially those living on or near tribal lands.</p> <p>The state needs to create, implement, and fund a system that actually covers the full cost of transportation for all school districts.</p>
After-School & Summer enrichment	<p>The state recognizes the efficacy of after school programs, tutoring, and summer school to address loss of skills over the school break, but has not funded these programs sufficiently.</p> <p>During the 2021 legislative session, legislation that would have funded approximately 40 after-school sites failed to pass.</p> <p>There were no elementary summer school programs in the state in 2020, and there has been no expansion of after school or tutoring programs for at-risk students. Even in districts that provide summer/after school programs, the state does not provide transportation funding for those programs.</p>
College readiness	<p>Successful access to Advanced Placement classes must be increased for Native students; Currently, only 1 in 10 Native students passed AP tests in 2019.</p> <p>Funding and capacity is needed to support Native students enrolled in any NM tribe attending in-state post-secondary institutions with tuition waivers, as well as college readiness programs, e.g., dual credit classes to informal college preparatory courses, and leadership programs.</p> <p>PED must fully implement a system that is culturally and linguistically appropriate to measure the readiness of every NM high school student for success in higher education or career.</p>
Career & technical education	Funding and capacity is needed to develop a statewide plan that ensures all districts have the capacity and resources to develop and provide technical and vocational training programs.
Health & Wellness	
Wellness and health center, social services	<p>Many schools and districts eliminated counselors, nurses and social workers positions due to lack of funding, and the services that remain in some districts (such as nurses, school based health centers, or community schools models) are fragmented, under-staffed and under-funded, despite the importance of resources for overcoming socio-economic barriers and evidence that mentoring and counseling services can improve graduation rates.</p> <p>PED has not yet begun to study the gaps and needs for health and social services. Legislation in 2021 would have required this assessment, but was vetoed by the Governor with a message that the agency would conduct this assessment anyway.</p> <p>In addition, legislation failed in 2021 that would have required a school nurse in every school.</p>
Healthy school environments (meals, water, safety)	When students have access to healthy meals, clean water and safe schools, they are able to focus on learning and do well in school, but the state has not assessed the social determinants of education and/or developed a plan to address the needs of the whole child.
Physical education	The state does not monitor or evaluate physical education programs, or the implementation of them, despite the academic, health and emotional benefits associated with physical activity.

<p>Reducing school discipline & punitive measures</p>	<p>Alarming data has been revealed about the use of seclusion and restraints, and punitive school disciplinary practices in New Mexico’s schools. Public schools expel Native students at 1.5 times the average rate, and refer them twice as often as other students to law enforcement.</p> <p>Funding and capacity for schools must be substantially expanded to develop trauma informed practices and use Indigenous justice models to end school pushout in collaboration with tribes.</p> <p>In 2021, legislation failed that would have limited out-of-school suspensions as an allowable disciplinary measure to one of last resort, and only after exhausting other interventions, such as restorative justice practices.</p>
<p>Funding & Accountability</p>	
<p>Overall funding</p>	<p>The state does not have a process to create multi-year budgets that are based on student and school district needs, rather than annual scatter-shot budget adjustments. Instead, the state begins with last year’s budget and makes a few adjustments.</p> <p>Overall school funding levels per pupil have barely returned to the levels of 2008 when accounting for inflation and for spendable amounts.</p> <p>Due to insufficient funding for the 2019-2020 school year, most school districts are unable to: 1) Cover the cost of transportation or instructional materials; 2) Provide sufficient technology; Implement the NM Indian Education Act; 3) Provide culturally and linguistically relevant instruction or materials; Expand English language learner and bilingual programs; 4) Hire additional social workers, counselors, or nurses; 5) Expand professional development for teachers and administrators; 6) Provide K-5 Plus and/or Extended Learning Time to all the children who need it; 7) Provide full day pre-K to all the children who need it.</p>
<p>SEG Funding formula and recurring funds</p>	<p>The state must increase units in the funding formula for bilingual, rural isolation, special education, and track those funds to these targets.</p> <p>Although the court ordered the state to reform the current system of financing public education to ensure that every public school has the resources necessary to provide the opportunity for a sufficient education for all at-risk students, the state has not yet undertaken efforts to update or reform the formula.</p> <p>A Native Language unit should be considered for addition to the SEG to meet mandates in the IEA, similar to bilingual/multicultural program units.</p>
<p>At-risk student funding & accountability</p>	<p>The state needs to: 1) increase the at-risk index in the funding formula to .366 so that at-risk students are funded at 25% higher than non-at-risk students; 2) adjust the poverty factor of the funding formula to use the Free & Reduced Lunch Program (FRLP) for poverty determination; 3) monitor/audit the school districts’ use of at-risk funding and funding appropriated for specified student groups to ensure it is used on programs and services that improve outcomes for the intended students; and 4) develop the annual education budget with transparency and fairness.</p>