

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

LOUISE MARTINEZ, *et al.*,

Plaintiffs,

v.

D-101-CV-2014-00793
Judge Matthew Wilson

THE STATE OF NEW MEXICO, *et al.*,

Defendants.

Consolidated with

WILHELMINA YAZZIE, *et al.*,

Plaintiffs,

v.

D-101-CV-2014-02224
Judge Matthew Wilson

THE STATE OF NEW MEXICO, *et al.*,

Defendant

YAZZIE PLAINTIFFS' OBJECTIONS TO
DEFENDANT NEW MEXICO PUBLIC EDUCATION DEPARTMENT'S FINAL
REMEDIAL ACTION PLAN

I. Introduction

The *Yazzie* Plaintiffs hereby object to the entire PED Final Remedial Action Plan submitted on November 3, 2025. The New Mexico Public Education Department (“PED”) Plan does not satisfy the requirements of the Court’s May 20, 2025 Order, and provides no credible basis to conclude that the State will ever remedy the constitutional violations or extensive deficiencies identified in the Court’s 600-page Findings of Fact and Conclusions of Law (“FFCL”).

On May 20, 2025, the Court ruled that Defendants State of New Mexico and the PED were noncompliant with this Court’s 2018 Decision and Order and the 2019 Final Judgment and Order, and that “Defendants continue to violate at-risk students’ right to a uniform and sufficient education mandated by the New Mexico Constitution.” Court Order Requiring Remedial Action Plan at 2. The evidence clearly showed that Defendants failed to implement reforms that satisfied this Court Orders, further necessitating “the development of a comprehensive remedial action plan” that would: 1) allow Defendants to achieve compliance with the Court’s 2018 and 2019 orders; and 2) “provide necessary guidance to the legislature and the executive branches of government, particularly when making difficult budgetary decisions that need to survive political and economic shifts.” *Id.* at 2.

The Court ordered PED to identify an outside expert consultant, along with the Legislative Education Study Committee (“LESC”) staff (per LESC’s consent), to assist in the development of a draft comprehensive remedial action plan, identifying all the components and elements necessary, including those raised in Plaintiffs’ briefing¹ for a constitutionally sufficient and uniform education for New Mexico’s at-risk students. *See id.* at 3.

However, the PED’s Plan, submitted on November 3, 2025, falls woefully short of meeting the Court’s requirements and in no way ensures that at-risk students will have the opportunity for a sufficient education now or for the future.

Yazzie Plaintiffs have collaborated with a multidisciplinary team of education experts to evaluate PED’s Plan, including subject-matter experts in education equity; school finance and funding; Native education (including Native teacher pipeline, culturally and linguistically responsive pedagogy, Native language, early childhood education and the Indian Education Act);

¹ Plaintiffs’ Briefing raised Nine Components. *See* Pls.’ Mot. at 109-111.

bilingual education and biliteracy (including the Bilingual Multicultural Education Act and the Hispanic Education Act); teacher preparation and curricula (including community schools); special education and students with disabilities; social-emotional learning and behavioral/mental health; and accountability and stakeholder-engagement processes. Plaintiffs relied on these experts' analyses in formulating the objections set forth herein, and Plaintiffs cite to these reports where relevant to the deficiencies identified in the Plan.²

II. Overview of Why Defendants' Submission Is Not Adequate to Bring New Mexico's Education System Into Compliance with the New Mexico Constitution and This Court's Orders

A. The PED Plan merely incorporates ongoing work and future aspirations.

Plaintiffs reasonably expected Defendants would submit a plan that set forth **specific actions** Defendants would take that would improve the quality of education programs in school districts across New Mexico for the specific at-risk students who are the subject of this litigation: Native American students, English language learners, students with disabilities, and low-income students. Plaintiffs reasonably expected Defendants' submission would state **how those actions** would achieve the necessary improvements in programs, the **time frame for results** from those actions, the **State actor or agency who had committed to taking those actions**, and the **cost of those actions**. Quite shockingly, Defendants' submission does none of these things. Indeed, what Defendants submitted to the Court is not an action plan, but merely a list of ongoing work and

² Contributing experts and areas of focus: Michelle Valverde, Ph.D. (education equity); Matthew Kelly, Ph.D. (school finance/funding); Emily Wildau, MPP (school finance/funding); Glenabah Martinez, Ph.D. (Native American teacher pipeline; professional development and training; Native/CLR education); Christine Sims, Ph.D. (Native language and culture; early childhood education); Chenoa Bah Stilwell-Jensen, Ph.D. (Indian Education Act; social services; behavioral & mental health; academic supports; Tribal community-based supports); Dulcinea Lara, Ph.D. (Hispanic Education Act; Hispanic students' needs; CLR education); Elisabeth Valenzuela, Ph.D. (bilingual education & biliteracy); Susana Ibarra Johnson, Ph.D. (bilingual education; biliteracy; Bilingual Multicultural Education Act); Adrian Sandoval, MA (bilingual education); Andrew Montoya (teacher preparation; curricula; community schools); Laurel Nesbitt, Esq. (students with disabilities); Amy McConnell Franklin, Ph.D. (social-emotional learning; behavior & mental health); Andrés Uribe (accountability; community & stakeholder input).

aspirational initiatives. Even the PED's very own planning consultant, the LANL Foundation, publicly criticized the PED's draft Plan for incorporating "components [that] are based on work already in place." LANL Found., Letter to Sec'y Mariana D. Padilla, N.M. Pub. Educ. Dep't 1 (Oct. 17, 2025) (signed by Gwen Perea Warniment, Ph.D., President & CEO), attached hereto as Exhibit 1. Absent the concrete, detailed, and enforceable planning elements, the submission will not remedy the education system's violation of Plaintiffs' constitutional rights any time in this century.

B. Structural and foundational deficiencies in PED's plan.

At the outset, PED's Plan is structurally misaligned with the Court's previous Orders and the underlying Findings of Fact and Conclusions of Law. The Plan is organized around four categories of generalized educational "inputs," which PED characterizes as "the four critical needs highlighted by the Court." This framing is legally and factually incorrect. The Court did not identify four discrete issue areas or system inputs as the basis for relief. Rather, the Court, in all previous orders, identified four student populations – Native American students, English Learners, students with disabilities, and students from low-income households – that have been historically and systemically denied a constitutionally sufficient education, and for which the State bears an affirmative, targeted duty to remediate.

The Court's mandate requires the State to remedy systemwide disparities experienced by these four student groups in both educational inputs and educational outcomes, and to establish mechanisms of accountability to ensure that those disparities are meaningfully addressed. That obligation is the core purpose of the court-ordered remedial plan. PED's Plan should therefore have been structured around a student-centered, disparity-focused framework that begins with the specific harms identified by the Court and works backward to define targeted strategies,

responsible actors, timelines, funding, and accountability measures for each affected student group.

Instead, PED organizes the Plan around systemwide inputs, including instruction, educators, student supports, and funding, without centering the four at-risk student populations who are the subject of the Court's findings and order. This approach fundamentally misunderstands the nature of the constitutional violation and the remedy required. A focus on generalized inputs, untethered to identified disparities and without targeted strategies for at-risk students, does not satisfy the Court's remedial mandate. Indeed, improving inputs on a universal basis, without deliberate attention to disparate impact, does not close equity gaps and may exacerbate them by further advantaging students already better served by the system. This structural choice also makes the Plan incapable of doing what the Court's findings require. The Court analyzed each at-risk student group separately before addressing shared and intersecting factors, but the Plan collapses those populations into a single undifferentiated category, with few actions tailored to the distinct assets, barriers, and legal violations affecting each group. By failing to disaggregate inputs and outcomes, and by incorrectly assuming that generic reforms will benefit all groups equally, the Plan blurs both differences and intersections, cannot identify or close group-specific gaps, and predictably generalizes priorities that require specificity.

As a result of this structural flaw, the Plan and its proposed actions cannot reasonably be construed as responsive to this Court's orders. The Plan does not meaningfully address the Court's Findings of Fact and Conclusions of Law, or remedial directives, nor does it demonstrate how the proposed actions will remedy the specific disparities the Court identified for each student group. While the Plan's introduction includes aspirational statements acknowledging the four at-risk

student populations, those statements are largely disconnected from the Plan’s action tables that follow and are not translated into enforceable, student-specific strategies.

C. The PED Plan omits key court-ordered elements.

The PED Plan omits key areas of education reform that were identified in the Court’s Orders and Findings of Facts and Conclusions of Law. A core tenet of the Court’s 2018 Decision and Order and Findings of Fact and Conclusions of Law is establishing a multicultural and multilingual framework, one that guides districts and schools on funding and implementing a culturally and linguistically responsive education, and supports the cultural and linguistic assets of at-risk students. Importantly, the Court’s Decision and Order repeatedly refers to New Mexico’s Indian Education (NMIEA), Hispanic Education (HEA), and Bilingual Multicultural Education (BMEA) Acts and the federal Individuals with Disabilities Education Act (IDEA). These statutes among others, the Court found, underscore the Legislature’s recognition that “the key to success is having a multicultural education system” that “attracts and retains quality and diverse teachers” and “integrates the cultural strengths of its diverse student population[.]” Decision and Order at 17-18. Further, the Court regards the NMIEA statute as the foundational framework for providing New Mexico’s Native American students a constitutionally sufficient education. *Id.* at 28. Yet the PED’s plan omits the multicultural and multilingual framework and fails to provide any details on NMIEA, BMEA, and HEA funding and implementation, and provides no guidance to school districts on how to plan, fund, and implement these statutory mandates. It fails to translate statutory requirements into actionable, accountable commitments, leaving critically important legal obligations unaddressed.

D. The PED Plan lacks specific actions, measurable steps and clear goals.

The Plan lacks specific actions and does not state how its general goals will be accomplished. Most steps are framed in vague, generic terms, such as “provide training,” “monitor implementation,” or “evaluate impact,” without specifying programmatic content, short and long-term implementation steps, performance standards, measurable outcomes, or evaluation mechanisms. Notably, although the Plan recognizes the need for other state and local agencies to implement important action steps, it fails to show that these other agencies have agreed or been ordered to implement these steps. For example, it is essential for the State to rely on institutions of higher education (IHEs) to increase the number of certified teachers who are trained to educate at-risk students and that school districts place these teachers in the classrooms serving these students. Yet Defendant’s submission does not show that these state and local education agencies have agreed or been mandated to accomplish these essential actions. This lack of specificity renders the submission unmeasurable and unenforceable, giving the illusion of a plan without any assurance it can be implemented.

In addition, the Plan fails to provide the Legislature with the “necessary guidance” the Court’s Order requires. This is evident in the current 2026 Legislative Session in which PED has failed to request enactment of all the statutory changes necessary for compliance. Multiple expert reviewers have observed that the Plan repeatedly proposes to “pass legislation” or “request an appropriation” without specifying the required statutory substance, the funding levels (recurring or nonrecurring), the implementation timeline, or the enforcement mechanisms necessary to make those commitments operational, and without explaining what happens if the Legislature does not enact the contemplated measures.³ As a result, the Plan offers conditional, unfunded mandates

³ See LANL Letter 2. Ex.1; Matthew Gardner Kelly, Ph.D., *Evaluation of November 2025 Revised Action Plan 3* (Nov. 10, 2025) (Asst. Prof., Univ. of Wash.), attached hereto as Exhibit 2; Glenabah Martinez, Ph.D., *Work Product Two 4* (Nov. 10, 2025) (Univ. of N.M., Director of Institute for American Indian Education), attached hereto as Exhibit 3; Andrew Montoya, *Yazzie/Martinez Remedial Action Plan Comprehensive Evaluation: Teacher*

rather than the concrete legislative roadmap and budget projections the Court’s Order requires to guide durable compliance. The Court-ordered remedial framework is explicit that constitutional compliance requires both sufficient resources and a system of accountability to measure the sufficiency of at-risk student programs and services and to assure districts spend funds efficiently and effectively to meet at-risk students’ needs. *See* Decision and Order at 74–75; Final Judgment and Order at 5 ¶ 3(f). In crafting this injunction, the Court recognized the need to provide sufficient guidance to enable compliance while avoiding undue intrusion into legislative policymaking. In doing so, the Court relied on other school finance and education-adequacy decisions in which state courts directed legislatures to determine the cost of providing an adequate education as a necessary step toward compliance. *See* Decision and Order at 72 (citing *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1279 (Wyo. 1995), and *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 348–49 (N.Y. 2003)).

E. PED Plan does not state how PED and other agencies will implement the Plan.

The Plaintiffs object to the PED Plan’s omission of increasing and sustaining PED capacity to be able to accomplish its own planning objectives, including, but not limited to: filling vacancies and increasing capacity with high-quality, culturally competent staff; streamlining funding procedures; developing consistent, transparent, enforceable tracking and accountability metrics; implementing meaningful processes for stakeholder input; obtaining tribal consent for significant policy decisions affecting Native American students; consulting with tribes; and establishing reliable, transparent quantitative and qualitative data systems that allow real-time public reporting of progress. *See* FFCL ## 561, 601-602, 606, 3072, 3081, 3086. The Plan lacks details on

Preparation, Curricula, and Community Schools Through an Equity Lens 1, 3 (Nov. 10, 2025) (Director, NEA New Mexico Ctr. for Cmty. Schs.), attached hereto as Exhibit 4.

increasing PED expertise to achieve its obligations, directives, court-orders, and statutory obligations to students and schools.

The Plan states that many of its essential actions are to be carried out by PED, but fails to state how current PED staff are capable of doing all the things for which it is responsible. As shown in Plaintiffs' Joint Non-Compliance Motion and Request for Remedial Action Plan filed in 2024, the PED lacks sufficient staffing and expertise to carry out its existing duties, let alone all the new tasks assigned to it in the submission. Pls.' Mot. at 14-24.

Education reform in New Mexico is a complex and serious undertaking requiring collaboration across state departments and agencies to work in alignment and ensure that the constitutional obligations owed to students are achieved. In addition to PED, the Legislature, the Higher Education Department, the Early Childhood Education Department, and the Institutions of Higher Education all play a pivotal role in building the educator workforce and ensuring that elementary, secondary and post-secondary education goals are in alignment. The Plan, however, fails to name or identify the roles that key state agencies, departments and institutions will serve. This renders the Plan merely aspirational and, as a practical matter, fictional.

F. The PED Plan lacks a budget and fails to assess the costs for remedial actions.

The submission fails to include cost estimates to determine the necessary investments, both existing and future, to fund the proposed actions. Without a comprehensive cost analysis, one that considers progressive action steps to achieve compliance, neither the Legislature nor the Executive branches of government can make informed budgetary and appropriation decisions, districts cannot plan implementation, and the Court, students and their families cannot hold the State accountable for providing adequate resources. Further, the submission provides no mechanism to ensure that "at-risk" dollars will be tracked and used to improve outcomes for at-risk students. *See*

Decision and Order at 74 (“...ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career.”). To remedy the constitutional violation, the Court ordered the State to reform both the manner in which public education is funded and the way districts and schools are managed and overseen, directing the State to ensure “that every public school in New Mexico would have the resources necessary for providing the opportunity for a sufficient education for all at-risk students.” Decision and Order at 74–75. A reformed funding system must “include a system of accountability” to measure whether programs and services actually provide the opportunity for a sound basic education and to assure efficient and effective use of funds. Final Judgment and Order at 5. The Plan must be evaluated against this framework; yet it does not identify what compliance will cost, nor does it establish a workable framework for determining whether those costs are being met and compliance is being achieved over time.

As Plaintiffs’ experts explain, a meaningful adequacy analysis must move beyond aggregate funding totals and instead (1) provide transparent data regarding overall funding and how funds are distributed across districts and directed toward the needs of at-risk students; (2) analyze actual spending in relation to the costs of providing required programs and services; (3) evaluate whether the State Equalization Guarantee (“SEG”) covers the full range of district costs associated with educating at-risk students; (4) assess whether funding generated for at-risk students’ needs is used to support the programs and services required to meet their education needs; (5) examine existing research and recognized benchmarks relevant to the additional funding required to serve at-risk students, consistent with the Court’s findings; and (6) analyze whether the SEG formula adequately captures student need, including whether current low-income eligibility thresholds reflect economic realities. *See Emily Wildau, MPP, The New Mexico Public Education*

Department's Final Martinez/Yazzie Action Plan: Focus Area—Funding Needed 4-5 (Nov. 2025) (Director of Policy, N.M. Voices for Children), attached hereto as Exhibit 5. Similarly, determining funding-adequacy requires a cost-analysis for delivering constitutionally required services, including culturally and linguistically responsive instruction for Native American students and English Learners; appropriate special education services; equitable opportunities for economically disadvantaged students; recruitment and retention of qualified bilingual and special education teachers; adequate instructional materials, technology, and facilities; and comprehensive student support services. *See Kelly Report 4, Ex. 2.*

G. The PED Plan does not address compliance with education laws.

In its May 20, 2025 Order, the Court directed PED to develop its comprehensive plan with stakeholder and Plaintiff participation and to take into account the remedial elements Plaintiffs presented in their briefing. *See Court Order Requiring Remedial Action Plan* at 3. Those elements - Plaintiffs' "Nine Components" - provide a practical compliance framework because they distill the remedial requirements inherent in the Court's findings and prior orders and align those requirements with the State's statutory obligations. They therefore supply a workable benchmark yardstick for assessing whether the Plan is capable of producing constitutional compliance.

The PED Plan, however, does not meaningfully engage with that framework. Rather than incorporating the Nine Components as organizing principles or translating them into concrete deliverables, PED's Plan effectively neglects them, by omission, by subsuming discrete requirements into generic categories, or by leaving essential elements materially unbuilt. The consequence is predictable: key legal and policy mandates central to remedying the violations, including the New Mexico Indian Education Act (NMIEA), the Bilingual Multicultural Education Act (BME), Hispanic Education Act (HEA), and the Black Education Act (BEA), are not

operationalized through clear standards, measurable actions, timelines, or accountability mechanisms, and the Plan does not establish the shared-governance structures necessary for durable implementation.

The Plaintiffs object to the Plan as it neglects to include steps for establishing a multicultural educational framework and fails to provide achievable compliance measures with relevant state and federal statutory obligations. *See* Court Findings of Fact and Conclusions of Law ## 468, 513, 532, 535, 574, 3019-3027; Decision and Order, (2018) at 17, 32 (highlighting Defendant's duty to ensure student success by providing a multicultural education system[.]”); (mandating a multicultural education framework to ensure executive and school district compliance with the NMIEA, BMEA, HEA, and BEA, as well as the relevant statutes pertaining to the needs and rights of English language learners and students with disabilities.); Section III(A), *infra*. The Plan broadly acknowledges these obligations, but not in a practical or enforceable manner. It lacks, for example, implementation pathways, strategies, or directives, as well as responsible actors, timelines, and funding mechanisms sufficient to achieve measurable compliance.

The Plan also omits the PED’s specific obligations to ensure NMIEA compliance by school districts. *See* NMSA 1978 § 22-23A-9. In particular, districts must assess Native students’ needs and utilize a framework to address them. The Plan, however, only references needs assessments in relation to other programs (in Elements 2.1g and 3.2b) and omits any mention of compliance enforcement and/or partnering with state-funded, Tribal Technical Assistance Centers as a resource to assist districts and Tribes to develop culturally relevant curricula, materials, and education policies. NMSA 1978 § 21-1-50; *see also All Pueblo Council of Governors Letter and Resolution*, attached hereto as Exhibit 6; *Jicarilla Apache Nation Letter*, attached hereto as Exhibit 7;

Mescalero Apache Tribe Resolution, attached hereto as Exhibit 8; *Navajo Nation Council Resolution*, attached hereto as Exhibit 9; Tribal Educ. All., *Tribal Education Alliance: Analysis of PED's "Martinez-Yazzie Action Plan"* (Feb. 12, 2026) (Chair: Regis Pecos), attached hereto as Exhibit 10.

The Plan notes the importance of heritage language and bilingual education. It does not, however, identify how PED will work with Tribal governments and Native language experts and practitioners to develop curricula and instructional materials in Native languages, culture and history as required by the NMIEA. NMSA 1978, § 22-23A-5(E)(4); *see also* NMSA 1978 § 22-23A-5. The Plan is silent as to the linguistic needs of Native students, including language retention and revitalization, and provides no consideration for funding to support Native language and cultural programming. *See* TEA Analysis, Ex. 10; *see also* Rebecca Blum Martinez, Letter 2 (Feb. 1, 2026) [*Trial Witness - Review of PED's Final Plan*], (Professor Emerita, Univ. of N.M.), attached hereto as Exhibit 11. This omission leaves unaddressed the necessary supports to ensure Native American students receive a culturally and linguistically relevant education, allowing them “to be confident and respected in their identities, cultures, and languages and sustain their ways of life.” TEA Analysis 3. Ex. 10. *See also* FFCL ## 458, 463, 475, 486, 496, 511, 522, 523.

The Plan claims the number of Native American students served by Native language and culture teachers will increase 10% by 2028, an increase from the 2% identified by Court Findings. *See* FFCL # 326. The Plan, however, lacks steps to achieve this target. *See* Plan at 66. Relatedly, the Plan lacks details on ensuring sustainable funding for Native language materials development and investments for Native language and biliteracy supports. These goals are also omitted in the Plan's proposed New Mexico Literacy Center that is meant to focus on basic literacy skills. *See* Plan at 14, 27-28. Yet it ignores the necessary literacy practices of Native American English

Learners, namely, access to content and materials in both English and Native languages. *See* FFCL # 324, 325, 328; *see also* Blum Martinez Letter 1. Ex. 11.

The Plan expresses respect for tribal sovereignty and articulates a focus on meeting with Tribal leaders as a way of promoting “equity, culturally responsive education, and meaningful partnerships,” and “ensuring Native American students access[.]” Plan at 2. Yet the Plan excludes mention of tribally-developed recommendations to support Native students, such as those contained in the Tribal Remedy Framework. *See* Ex. 6-9. It lacks provisions to ensure “shared decision making, governance, partnerships, tribal consent, or similar strategies for respecting and supporting tribal self-determination.” TEA Analysis 7-8. Ex. 10; *see also* Michelle Valverde, Ph.D., *The Martinez-Yazzie Action Plan: Typical Versus Transformative 2* (Nov. 10, 2025), attached hereto as Exhibit 12; *see also* NMSA 1978, § 22-23A-(D) and (F).

The Plan omits the PED’s specific obligations to ensure Bilingual Multicultural Education Act compliance by the executive branch and school districts. *See* NMSA 1978 § 22-23A-9. The BMEA focuses largely on language education and supports “equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for all students participating in the program.” NMSA § 22- 23-1.1 (K); FFCL #457. Although the Plan “recognizes *some* elements of bilingual education,” its implementation strategies – particularly around literacy, licensure, and educator preparation – do not comply with the BMEA’s purpose or address the community’s concerns. The Plan’s failure “to integrate bilingual pedagogy, biliteracy research, bilingual assessment practices, and culturally grounded training, PED risks perpetuating inequitable outcomes for English Learners.” Susana Ibarra Johnson, Ph.D., *Evaluation of NMPED Actions Regarding English Learners in Bilingual Multicultural Education Programs 7* (Nov. 10, 2025) (N.M. State Univ.), attached hereto Ex. 13. Overall, the Plan’s goals omit steps to ensure

a comprehensive bilingual multicultural education and biliteracy development program, including the adoption of high-quality instructional materials in languages other than English and the inclusion of bilingual educators as members of a diverse team of experts. *Id.* at 4 Exhibit 13 (Ibarra Johnson); *see also* Adrian Sandoval, MA, *Report on the New Mexico Public Education Department (NMPED) Martinez/Yazzie Action Plan* at 6 (Nov. 3, 2025), attached hereto as Exhibit 14; Christine P. Sims, Ph.D., *An Assessment of the New Mexico Public Education Department's Final Action Plan* at 1 (Nov. 17, 2025) (Pueblo of Acoma), attached hereto as Exhibit 15. Although there is a single, generalized reference to improving literacy through a multilingual approach, the submission does not articulate a coherent plan to implement bilingual multicultural education or to advance biliteracy. That said, there is no evidence that statewide assessments, such as the New Mexico Assessment of Science Readiness (NM-ASR), will be accessible in languages other than English, raising concerns regarding equitable access and participation for ELL and multilingual students. Sandoval Report 8, Ex. 14.

The Plan's treatment of early childhood education likewise fails to identify steps for ensuring support systems and accountability on the implementation of culturally and linguistically responsive learning and practices for Pre-K students. From an equity perspective, the absence of explicit guidance, safeguards, and accountability measures disproportionately risks marginalizing multilingual learners at a foundational stage of development. Sims Report 3-4, Ex. 15.

Additionally, the Plan advances Structured Literacy and "Science of Reading" (SoR) frameworks, which center English-only pedagogy and implementation. *See* Section III(A), *infra*. This monolingual approach ignores the fact that we have bilingual, emerging bilinguals, and multilingual students in schools. The cultural and linguistic capital these students bring to the classroom are not addressed or utilized in teaching literacy through this method, and undermine

the principles and goals of bilingual multicultural education that BMEA requires. NMSA 1978 § 22-23-1. Educator Preparation Programs are required to embed structured literacy, with course audits used to enforce compliance. PED's Plan adoption of English-only instructional methods undermine the principles and goals of bilingual education and conflict with BMEA's equity-driven support for biliteracy, dual language, and oral language acquisition, as well as the Court's findings.

Collectively, the Plan omits the necessary guidance and implementation requirements to align literacy and instructional reforms with statutory obligations to promote a multicultural framework, a bilingual multicultural education, and adequate opportunities for ELL students. *See* NMSA 1978 § 22-23-1 et seq.; NMSA 1978 § 22-23A-2; NMSA 1978 § 22-23B-2.

Plaintiff's object to PED's plan on the basis that it provides no explicit details on Hispanic Education Act implementation, including action steps, funding commitments, and accountable mechanisms. The HEA provides a framework to improve the academic success of Hispanic students, many of whom are English learners, low-income and students with disabilities. Because Hispanic students comprise a majority 64% of the State's student population, the HEA cannot be treated as a peripheral programmatic reference in a remedial plan intended to cure constitutional violations affecting New Mexico's at-risk students. Sandoval Report 5, Ex. 14. The HEA was enacted precisely to require the development and implementation of educational systems that close achievement gaps and increase graduation rates, to foster parental involvement, and to create mechanisms for parents, communities, schools, higher education, PED, and policymakers to work together to improve educational opportunities for Hispanic students. *See* NMSA 1978, § 22-23B-1 et seq.

Community input stressed HEA implementation and the consequences of not building it into PED's Action Plan, in 2022. The HEA's Listening Tour Report reflected a statewide demand

to validate and affirm Hispanic students' home culture and language, and to provide educators the training to effectively serve English learners. The Report found that the "one-size-fits-all" model of schooling is not working for many Hispanic students, particularly where students lack access to bilingual counselors and pathways information, and emphasized the necessity of Spanish-speaking counselors, nurses, social workers, therapists, special education teachers, and diagnosticians to ensure equal access to course programming, college and career opportunities, and social-emotional supports. Yet the Plan lacks a strategy to increase Hispanic and Spanish language teachers.

Finally, HEA stakeholders called for expanded, equitable sustained funding for Hispanic education programs with accountability measures and metrics – a direct rebuke to PED's Plan that relies on aspirational implementation without funding, capacity, and enforceable follow-through. Plan at 128.

The Plaintiffs object to the Plan's omission of details and elements for ensuring state and district compliance with Special Education requirements, as well as the Court's orders and findings for students with disabilities. Students with disabilities are frequently forgotten or excluded from PED's Plan in relation to enrichment, extracurricular, and community-based programs and opportunities. This omission is particularly critical, because disabled students often lack access to these opportunities at higher rates than their non-disabled peers. The Plan lacks an articulated approach and vision for achieving a sufficient education system for students with disabilities through: a) measures of compliance with laws protecting their rights to a free appropriate public education (FAPE) in the least restrictive environment (LRE), including anti-discrimination statutes (the Americans with Disabilities Act and Section 504 of the Rehabilitation Act) and the Individuals with Disabilities Education Act (IDEA); and b) efforts to intentionally minimize exclusionary practices experienced by students with disabilities, including discipline, informal removals,

restraint, and seclusion. *See* Laurel Nesbitt, *Evaluation of the State's 11-3-25 Final Remedial Action Plan 7* (Nov. 13, 2025) (Senior Att’y, Disability Rights N.M.), attached hereto as Exhibit 16. Either approach requires a transparent, cohesive, and accountable system, which the Plan does not address. *Id.*

Rather, the Plan’s disability-related elements are scattershot, are not integrated throughout the Plan, and are instead collected in a distinct section (Section 1.3), treating SWDs as a siloed entity rather than as a statewide equity obligation embedded across the system. The Plan does not address, for example, the widespread need for assistive technology and special education transportation and evidence-based curriculum. Other more-urgent, capacity issues, *e.g.*, the critical shortage of well-prepared special educators, educational assistants, and related service providers are avoided almost entirely, aside from references to existing efforts such as mentorship and retention stipends. In fact, the Plan’s educator pipeline initiative does not meaningfully grapple with special education recruitment and retention needs. *See* Nesbitt Report 19-21, Ex. 16.

Other relevant compliance elements (*e.g.*, identification and evaluation, provision of services, parent participation) appear as broad aspirations under the formalization of the Office of Special Education, but without any described expansion of capacity and expertise or concrete actions that would translate codification into increased compliance. While the Plan signals some intention to address disproportionate discipline and restraint/seclusion through targeted improvement plans and monitoring, these actions suffer from the same planning deficiencies as the other at-risk student deficiencies: no measurable outcomes, evaluation structures, staffing, training, and/or enforcement capacity. Further, the compliance monitoring of inadequate behavioral supports will not remedy the insufficiency of systemwide, evidence-based behavioral supports and meaningful, individualized behavior planning

Plaintiffs’ also object to the PED Plan’s complete omission of the Black Education Act. The intent of the Black Education is to improve educational outcomes for Black students by requiring culturally responsive learning environments, expanding parent and community engagement, addressing systemic racism, and ensuring curricula and professional development include the history, culture, and experiences of Black people, and creating an advisory council and liaison position. *See* NMSA 1978, § 22-35-1 et seq. BEA provisions include an advisory council, discipline policy reporting, annual professional learning dedicated to race and racism, and anti-racism/anti-oppression portal, and culturally relevant curriculum and family and community collaboration. *Id.*

In practice, this includes embedding anti-racist, culturally sustaining curriculum and Black student success strategies into concrete implementation structure with defined responsibilities, funded actions, measurable outcomes, and accountability measures, but the Plan does not include any of these key implementation measures. However, the Plan relies on a few generalized initiatives (*e.g.*, Instructional Scope for Black Education) that assume universal benefit without confronting anti-Black racism and anti-racism, generally, as a distinct driver of inequity. Moreover, this omission conflicts with the State’s requirement to implement relevant education statutes through mechanisms that translate statutory goals into lived, school-level practice. The result is a remedial gap in which Black students’ needs are effectively subsumed under broad “at-risk” framing.

Ensuring that all students receive a constitutionally sufficient education inherently requires addressing racial discrimination, including the longstanding disparities in educational access, resources, and outcomes experienced by Black students. In conformance with this constitutional requirement, this Court explicitly declared that “Defendants have a duty to ensure that **no person,**

including any Native American student, is subjected to discrimination based on national origin, race, or sex under any program or activity receiving Federal financial assistance.” FFCL #3044 (emphasis added). The PED Plan, however, does not attempt to remedy the unique needs or disparities affecting Black, Native American, and Hispanic students. A comprehensive remedial action plan must reasonably include full implementation of the BEA.

The Plan’s high-level references to equity do not substitute for the statute’s required operational structures and accountability mechanisms required under the BEA. Community feedback and expert review consistently identify persistent inequities affecting Black students, such as lower academic proficiency, inequitable resource allocation, and the absence of anti-racist curriculum, as well as overlapping barriers that limit educational access and opportunity, including transportation and attendance challenges, limited access to nutritious food, underfunded career technical education, and language and communication gaps between schools and families (including insufficient translation and interpretation supports for bilingual and multilingual communities). Valverde Report 17, Ex. 12.

Plaintiffs object to the PED Plan’s glaring omission of special Advisory Councils for informing PED’s strategies and oversight on the establishment of a multicultural framework and ensuring compliance with relevant education statutes. Aside from a passing mention of the Indian Education Advisory Council in connection with Goal 4.1, the Plan largely excludes the role and responsibilities of Advisory Councils in meeting statutory obligations. LESC Report, p. 46; *see also* LESC Policy Brief, *BMEA and HEAC: Roles and Impact* at 2.

Established by state and federal law, the State’s special Advisory Councils are intended to institutionalize community participation in education governance by ensuring that families, educators, and Tribal and community leaders have a formal, ongoing role in advising PED on the

discharge of its statutory duties and the design, implementation, and evaluation of equity-driven policies and programs, including under the NMIEA, BMEA, HEA, and BEA, as well as the State’s IDEA law. Their core function is to advance equitable educational opportunity and outcomes by embedding community expertise and accountability into PED decision-making. While the Plan includes loose statements that PED will “engage” advisory councils, the councils are not meaningfully positioned as responsible partners in the Plan’s development, implementation, or monitoring. Instead, they are effectively sidelined and reduced to incidental references rather than treated as a meaningful part of the statutory equity infrastructure they are meant to be.

III. The PED Plan Fails to Address Critical At-Risk Student Needs With Targeted Programs and Services.

A significant portion of the Plan is dedicated to the four Critical Needs sections. These sections, however, often offer generalities and recycled goals rather than concrete, student-group-specific standards and actions that can be implemented and monitored. This disconnect is particularly evident with respect to Native American students. The first three pages of the introduction, for example, promise to honor tribal sovereignty and engage in meaningful tribal consultation, but the Plan contains virtually no concrete actions to implement the NMIEA. There are no articulated steps or standards for ensuring district compliance with NMIEA and tribal consultation obligations, and no actions addressing shared governance structures. Tribes are frequently listed as “responsible” parties without explanation for how authority, responsibility, decision-making, or funding would be shared, thereby rendering these references both vague and implausible.

Similarly, the Plan’s introductory commitments to Native American students, English Learners, students with disabilities, and students from low-income households are not

accompanied by a coherent, results-based framework that identifies each group’s distinct assets, challenges, and needs. While PED lists broad outcome goals, such as improving proficiency, reducing absenteeism, and increasing graduation rates, those goals are indistinguishable from PED’s 2025 strategic plan, which are not linked to specific, enforceable actions designed to achieve them. The Plan thus recycles familiar metrics without articulating how PED will do anything differently to remedy the constitutional violations identified by the Court.

Compounding these deficiencies, the Plan explicitly embraces a “business-as-usual” approach. PED repeatedly characterizes the Plan as a continuation of ongoing, systemwide initiatives and frames existing programs as “progress to build on” since 2019 without providing evidence that those initiatives have improved outcomes for the at-risk student groups or addressed the Court’s findings, and operates less as a foundation for reform than as a defense of the status quo, diverting attention from what must change to achieve constitutional compliance. *Id.*

Moreover, the structure of the PED Plan further undermines its utility and remedial function. The Plan’s length and repetitive formatting, for example, obscure rather than clarify its substance. The repeated insertion of identical descriptions of the four student groups and “community perspectives” throughout the document adds volume without adding meaning, making it difficult to discern where, if at all, community input is reflected in decision-making or action design. This repetition underscores the Plan’s central flaw: it gestures toward equity rhetorically while failing to operationalize it substantively. Education experts consistently note the absence of sequencing, interdependence, and strategic coherence among action items; the lack of a systemic praxis oriented toward organizational change, accountability, and sustainability; and

the failure to begin with desired population-level results and design actions backward from those outcomes.⁴

Finally, the Plan’s length and repetitive formatting obscure rather than clarify its substance. The repeated insertion of identical descriptions of the four student groups and “community perspectives” throughout the document adds volume without adding meaning, making it difficult to discern where, if at all, community input is reflected in decision-making or action design. This repetition underscores the Plan’s central flaw: it gestures toward equity rhetorically while failing to operationalize it substantively.

Absent an student-group-specific framework grounded in the Court’s Findings of Fact and Conclusions of Law and informed by meaningful community and tribal input, the Plan falls short of targeted programming per the Court’s Orders. The deficiencies in the Plan’s structure and introduction are not merely technical or stylistic; they reflect a fundamental misapprehension of the nature of the constitutional violations at issue and the remedial work required. The sections that follow detail how these structural failures manifest within each of the Plan’s four “critical needs” and demonstrate the necessity of further judicial intervention.

A. Failure of the Remedial Action Plan - Critical Need 1: Equitable Access to High-Quality Instruction

Plaintiffs’ analysis turns to the Plan’s four substantive sections - identified as “Critical Needs” - and the specific ways PED’s submission fails to comply with this Court’s May 2025 Order, or to remedy the constitutional violations found by this Court therein.

⁴[4] See Martinez Report 1. Ex. 3; Sandoval Report 3-5. Ex. 14; Nesbitt Report 12. Ex. 16; Elisabeth Valenzuela, *Final NMPED Martinez/Yazzie Action Plan Analysis 1* (Nov. 10, 2025) (Assoc. Prof., N.M. Highlands Univ.), attached hereto as Exhibit 17.

PED organizes the Plan around four sweeping “Critical Needs” (instruction, educators, student supports, and funding/accountability). Plan at 6. While those headings may describe broad system inputs, they do not do the remedial work required here. They oversimplify the Court’s directives by treating the four at-risk student groups as interchangeable and by substituting generalized commitments for targeted, enforceable strategies responsive to each group’s distinct legal violations and needs. *See* Sandoval Report at 3-4, Ex. 14.

“Critical Need 1: Equitable Access to High-Quality Instruction,” purports to respond to the “core issues” of high-quality instruction and curricula, multilingual and multicultural education, and the opportunity to learn.” Plan at 13-66. Yet this section of the Plan lacks a coherent strategy and enforceable commitments capable of addressing relevant Court findings. Rather than presenting a comprehensive, data-informed roadmap to remedy these issues, Critical Need 1 offers vague assurances, fragmented references to existing initiatives (many of which predate the Court’s findings and have already proven ineffective), and already-existing obligations of PED, none of which are tethered to enforceable delivery of public education to meet the distinct and often-intersecting academic needs of at-risk students. PED’s failure to define a measurable pathway forward undermines the Court Order requirements for a comprehensive plan to improve the education of at-risk students.

In addition to the deficiencies described in Section II (*supra*), Plaintiffs further object to this section of the Plan for, *inter alia*, the following reasons, which are illustrative and not exhaustive. Critical Need 1 improperly equates the procurement of “High-Quality Instructional Materials” (HQIM) with the delivery of culturally and linguistically responsive (CLR) instruction. While PED defines HQIM as content-rich, fully accessible, and *culturally and linguistically relevant* – an operative term under NMIEA, HEA, and BMEA – PED’s procurement of HQIM

materials for a state instructional-materials adoption list, however, does not itself establish that HQIM serves the cultural and linguistic needs of Native American students, English learners, or students with disabilities.⁵ Notably, the PED Plan lacks the initiative and metrics to ensure the delivery of CLR instructional materials to students. Empirically, the gap is stark: out of more than 14,000 instructional materials currently listed in the state database, only 768 (approximately five percent) are officially “recommended,” and only 173 (about one percent) are “recommended with reservations.” Transform Educ. N.M., Letter 2-3 (Feb. 18, 2026) (signed by Loretta Trujillo, Exec. Dir.) (titled *Transform Education New Mexico’s Coalition Statement Regarding Objections to the State’s Final Martinez/Yazzie Action Plan*), attached hereto as Exhibit 18. Fewer than 4% of all materials are both recommended and identified as CLR. *Id.* If districts are expected to rely on the adopted list to satisfy alignment requirements, then the list should include only materials that are fully aligned, rather than materials that require caveats or supplementation. The Plan neither confronts this scarcity nor proposes a credible pathway to remedy it at scale. For students with disabilities, “access” or “inclusion” is not the endpoint; equity requires a free appropriate public education (FAPE) in the least restrictive environment (LRE), delivered through evidence-based instruction and materials individualized to a student’s IEP goals. *See Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 402 (2017); 20 U.S.C. § 1412(a)(5)(A). It is very important in light of this standard that instruction and instructional materials are both evidence-based and individualized to meet their needs as set out in their particular IEP goals. The Plan makes no effort to grapple with this.

⁵ See Valverde Report 19. Ex. 12.

Further, Critical Need 1 repeats the same mistakes identified in the Court’s Findings of Fact, where PED launches CLR initiatives that lack relevance to New Mexico students.⁶ The Plan does not look beyond the HQIM list for culturally relevant curricula or beyond state agencies to provide culturally relevant technical assistance and professional development to educators. For example, the HQIM excludes existing CLR programs, curricula, and assessment models developed by Native education experts and scholars, such as the Indian Pueblo Cultural Center’s Indigenous Wisdom Project, the Kha’Po School, the Native American Community Academy Inspired Network, the Navajo Preparatory Language and International Baccalaureate (IB) Framework, the Keres Children’s Learning Center, and the Tiwa Language Program at Taos Pueblo, among others. Martinez Report 4. Ex. 3; Plan at 21.

Court Findings made clear that proper CLR implementation is critical to the academic needs of Native American students.⁷ Critical Need 1, however, treats HQIM and content scope as

⁶ See FFCL ##295-96 (a lack of funding results in a lack of reasonable curricula for at-risk students); #335 (“A significant consequence that results from district and school administrators’ lack of knowledge about Native American culture and language development needs is that Native American English language learner students are often misidentified as requiring special education services.”); #337 (“Misidentification of ELL students as speech delayed is generally attributable to a district’s lack of knowledge and professional development about ELL education and a lack of technical guidance by the State”); ##557-60 (Defendants admit that PED ended its CLRI program and had no targeted efforts for Native American student success); see also Valverde Report 1. Ex. 12 (“The plan instead doubles down on test-based outcomes without first specifying what it will take – people, funding, professional learning, working conditions, and PED infrastructure – to deliver high-quality, culturally and linguistically responsive instruction statewide. A balanced evaluation and accountability approach would help tremendously by focusing on measures that matter the most (learning environments, staffing, cultural/linguistic relevance, access, services, etc.) while also tracking academic results as the effect of those investments and improvements.”); *Id.* at 3 (“New Mexico has the right voices in the document, but not yet the right vision or structure to act on them. The next version must center student belonging, culture, language, and inclusive and locally driven learning.”).

⁷ See FFCL ##2 (“All students can learn and all students could improve their achievement if given an enriched environment with relevant curriculum and engaging with structures.”); #332 (A rigorous and well-designed culturally relevant curriculum has a positive impact on students. “Culturally relevant” describes “a condition where programs or services are planned, designed, implemented, and evaluated respecting and accounting for the client’s cultural and linguistic values and heritage.” The terms “culturally relevant,” “culturally responsive,” and “culturally appropriate” have very similar meanings, and are used interchangeably.”); #557 (Defendants admit that the Culturally and Linguistically Responsive Instruction (CLRI) program ... which was meant to help ensure that Native American students are educated in culturally relevant learning environments, no longer exists going into the 2017 school year.”); see also Valverde Report 3. Ex. 12 (“PED, the [LESC], the Legislative Finance Committee (LFC), and the Higher Education Department need a unified vision, shared goals, and a transparent estimate of the cost to fully implement existing laws (including BMEA, IEA, HEA BEA, the state law pertaining to students with disabilities, and IDEA)”).

interchangeable with curriculum, when they are not. “Alignment reviews” and “pacing guidance,” as contained in PED’s submission, may be useful implementation tools, but they cannot replace a coherent, standards-aligned curriculum that is co-designed with Tribes and reflects the pedagogical necessities of Native language instruction. The Plan mentions heritage language and bilingual education, yet lacks a strategy for developing Indigenous curricula, instruction, and materials, an issue identified in the Court’s Findings.⁸ Moreover, the Plan fails to address the full gamut of the Court’s NMIEA violations-findings and lacks significant details on compliance with other explicit NMIEA requirements, including the approval of Indigenous curricula by Tribes as a first step. See NMSA 1978, § 22-23A-2(I).

Similarly, Critical Need 1 contains no concrete actions for ensuring the maintenance of Native languages in partnership with Tribes. NMSA 1978, § 22-23A-2(B). Nor does it include a clear provision for Native language programs or Native bilingual education and fails to align with Court Findings showing that many of New Mexico’s Native languages are taught primarily through oral pedagogy, requiring different materials, staffing, and assessment models.⁹ Court

⁸ See FFCL ##2978, 3041 (articulating State’s duty to provide appropriate guidance, monitoring, and oversight to school districts to ensure that all ELLs receive language assistance programs that are supported by an underlying educational theory, recognized as sound by some experts in the field.). See also TEA Analysis 8. Ex. 10; Valverde Report 3. Ex. 12 (“Short-term goals should first target inputs and conditions (staffing, CLR materials, inclusive practices, bilingual programs, . . . not primarily assessment results”; Kelly Report 3. Ex. 2 (the plan is excessively vague in regards to the training and developing teachers.); Sims Report 1. Ex. 15 (“There is still no information about what kind of [HQIM] that are “culturally and linguistically responsive” across four content areas will be made available to bilingual or Native American English Language learners. There is no indication if these materials are locally produced, authored or representative of regional publishers or if these are a continuation of instructional and curricular materials only authorized by NMPED . The only new addition to this area of need and action in the Final Plan is that PED will recruit Native American, TESOL-endorsed, and special education-licensed teachers to review HQIM materials for 4 content areas during a summer institute.”).

⁹ See FFCL ##83, 313, 328 (emphasizing that some New Mexico Pueblo languages are oral based, which requires specific types of materials, curriculum, and strategies to be made available for Native American English Learners); ##461-62 (emphasizing the need to hire teachers from NAEL students’ cultural communities). See also Sims Report 1. Ex. 15 (“[T]he Plan reflects an absence of and no mention of any instructional material needs for Native language programs or Native bilingual education. There is no acknowledgement that Native language instruction often requires different types of visual instructional materials because many of these languages are taught orally.”).

Findings¹⁰ show that a current needs assessment for teaching Native languages and a mechanism to co-design program models with tribal governments are in high need, but the Plan does not address this need. Rather, Critical Need 1 sidelines Native language and teaching, the learning needs of Native American English Learners, bilingual students and emergent bilingual students who come from oral-based language traditions, and omits imperative bilingual-literacy research. Sims Report 3. Ex. 15.

Critical Need 1 fails to address the NMIEA’s provision to “ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Native American students.” *See* NMSA 1978, § 22-23A-2(A)) and lacks steps to ensure that Tribal consultation requirements, sovereignty rights and other relevant statutory obligations to Native students are included.

In short, Plaintiffs object that the Plan elevates a single, statewide literacy methodology over the differentiated, at-risk student-driven remedial framework the Court ordered, one that must pair measurable outcomes with the inputs, capacity, and locally grounded curriculum design necessary to meet Plaintiff students’ distinct needs.

As for bilingual education, Critical Need 1 states that it will “determine whether additional heritage language programs or BMEPs are necessary to meet the needs of students.” Plan at 43. This language, however, treats the “heritage model” as the operative model and omits the full range of state-approved bilingual program designs available to districts and Tribes. Sims Report 2-5. Ex.

¹⁰ *See* FFCL #328 (Emphasizing that the elements of an adequate education for NAEL students requires “appropriate and unbiased assessments. Nearly all assessments are conducted in English, which suggests the need for an evaluation in another language to determine ELL students’ attainment of content and knowledge”); #411 (“... six districts serving a high concentration of Native American students lacked researched based ESL programs”). *See also* Valverde Report 14. Ex. 12 (“HQIM as it exists currently is highly problematic . . . only 226 materials have been designated as CLR out of 6,801. In addition, it is unclear how CLR is determined in NM. This is a major issue given that human and financial resources could be used in a more effective manner, but it would require a shift from a corporate driven model to a locally driven model.”).

15; Sandoval Report 2, 5, 9. Ex. 14. That framing misstates the policy landscape. The same section recasts baseline compliance initiatives as new “actions,” promising, for example, annual evaluations of heritage language programs and BMEPs and the provision of information, technical assistance, and monitoring for schools serving English learners – these activities are already within PED’s ongoing duties. *See* NMSA 1978 § 22-23-5(D) (requiring annual compilation/reporting of program data); NMAC 6.32.2.15(A) (requiring that bilingual multicultural education programs “shall be evaluated by the department annually”); FFCL #2978 (recognizing the State’s duty to provide “appropriate guidance, monitoring, and oversight” to ensure compliant services for English Learners). Re-labeling PED’s mandatory duties and functions as a “remedy” falls short of the Court’s requirement for concrete, enforceable measures tied to timelines and resources.

Furthermore, Critical Need 1 omits essential implementation capacity as required under the Court’s Order for a Comprehensive Remedial Action Plan. It does not specify the PED’s engagement with New Mexico-based experts and faculty, particularly New Mexico’s Tribal language authorities, TESOL faculty, and special-education scholars, and provides no articulated action steps or process to recruit and retain Native American educators, TESOL-endorsed and special-education teachers, or bilingual educators, notwithstanding this Court’s findings and expert reports on the teacher shortage crisis. *See* FFCL ##719–722; *see also* Montoya Report, Ex. 4; Sims Report, Ex. 15; Ibarra Johnson Report, Ex. 13. Nor does the Plan identify costed initiatives, funding sources, future investments, benchmarks, or timelines tied to each Critical Need 1 “strategy.” The Court called for a comprehensive remedial plan precisely because past spending failed to cure the constitutional violation; a plan without explicit resource commitments is neither sustainable, monitorable nor enforceable.¹¹ PED’s Plan is facially inadequate in key respects. For

¹¹ Decision and Order at 56, (“A sufficient education is a right protected by the New Mexico Constitution. As such it is entitled to priority in funding.”); FFCL #2118, (“Defendants have failed to fund adequately programs necessary to

example, it proposes to support Native American students with disabilities largely by routing “policy and budget issues” to the State IDEA Advisory Panel and a new subcommittee. Plan at 54–55. But the IDEA requires the State to maintain an advisory panel to provide policy guidance on special education and related services—not to assume the State Educational Agency’s responsibility for policy and budgeting decisions. 20 U.S.C. § 1412(a)(21)(A), (D). *See also* 20 U.S.C. § 1412(a)(21)(B). By treating advisory structures as the primary “action” for this student population without committing to any concrete state action, accountability, or implementation steps the Plan effectively evades the State’s affirmative duties under federal law.

The Plan’s treatment of English Learners with disabilities is similarly underdeveloped. It proposes training aimed at reducing the over-identification of English Learners as students with disabilities, but it fails to acknowledge the corresponding and well-documented risk of under-identification of students with disabilities who are classified as English Learners. Plan at 55. The Plan also relies on generalized “capacity-building” and “supplemental tools” without defining their content, standards, or how effectiveness will be measured. Plan at 55-56. Although the Plan gestures toward data monitoring, it does not specify the metrics, baselines, or measurable targets necessary to ensure that monitoring translates into improved identification practices and services. Plan at 56.

Moreover, Critical Need 1 does not address students with disabilities with sufficient specificity. For example, it does not explain how its career-connected learning and internship initiatives will connect to, or be coordinated with, disability-specific transition supports, or even whether these opportunities are intentionally designed to serve students with disabilities. Merely

provide an opportunity for all at-risk students to have an adequate education.”); *id.* #626, “PED allocates . . . an insufficient amount for purposes of fully complying with the NMIEA.”); *id.* at 513 (finding that “educational programs designed to meet the needs of Native American students . . . must ensure that [the programs] are provided in a sustainable manner”).

identifying accommodation needs is not enough. Genuinely inclusive internships and career-connected learning must be designed to meet the needs of students across the full range of disabilities, including those with significant learning, social, and behavioral challenges.

Finally, the “Outcomes” subsection for Critical Need 1 is deficient on multiple fronts. Plan at 65-66. The first two outcomes center on “structured literacy” and the “science of reading,” an orientation that is not demonstrably aligned with the unique cultural and linguistic needs of New Mexico students and, therefore, risks privileging a single, one-size-fits-all methodology over locally identified needs. *See* FFCL ##457-458, 319-322; *see also* Valverde Report 15. Several additional outcomes are arbitrary and present no baselines or rationales, rendering progress and effectiveness unmeasurable and unsustainable. The proposed metrics ignore the quality of the training and coursework – treating completion as a proxy for effectiveness – and omit required trainings for school leaders from the outcome framework altogether. Likewise, Critical Need 1 is silent on PED’s capacity, which the evidence has shown is often-sparse and lacking leadership, to design and conduct the requisite evaluations. An equitable, student-focused accountability system must balance outputs with inputs, resources, and capacity; it must elevate educator and leadership competency as core determinants of student opportunity. Despite the previous Court Orders, Critical Need 1 affords only minimal attention to how teachers and district/school leaders will be evaluated, despite the availability of multiple evaluation approaches, some demonstrably more constructive than others, leaving a critical element of implementation undefined and unenforceable. Decision and Order at 75. *See also* Valverde Report 1.12 The Plan does not go far

12 “The plan still does not meet what the court required nor what communities have repeatedly asked for. The core reason is structural: the plan is not built on a multicultural, multilingual, place-based (MCMLPB) framework and it does not use a balanced evaluation and accountability approach (BEAA).”; *see also* Kelly Report 3 (“This persistent vagueness remains problematic . . . when multiple parties are listed as “responsible” without a clear delineation of duties, accountability is diffused.”); *id.* at 8 (“The addition of monitoring mechanisms and consequences for not meeting tribally identified goals creates accountability structures absent from the draft.”).

enough to ensure the specialized instructional expertise and curricula necessary, statewide, to meet the often intensive needs of students with dyslexia. Apart from inclusion of “dedicated expertise in dyslexia and evidence-based reading program” in the Literacy Center (Element 1.1e), the reach of which is uncertain, there is no acknowledgment of the dire need for statewide capacity building of reading experts, specifically certified academic language therapists (CALTs), to provide appropriately intensive reading interventions for students with dyslexia at all school levels, secondary as well as primary.

In sum, Critical Need 1 does not supply the curriculum architecture, Native-language commitments, program diversity, stakeholder engagement, recruitment pipelines, or resourcing detail necessary to ensure equitable access to high-quality instruction for at-risk students, as required by the Court. Decision and Order 70-71, 74-75. The Court’s Orders require more than business-as-usual; Critical Need 1 does not meet that standard, nor is it designed to implement or align with the provisions of NMIEA, BMEA, HEA and other relevant education statutes, as required by the Court’s Orders. Accordingly, Plaintiffs object to Critical Need #1 as non-compliant with the Court’s remedial directive and inadequate to remedy the State’s ongoing constitutional violations.

B. Failure of the Remedial Action Plan – Critical Need 2: Equitable Access to Well-Prepared, Culturally and Linguistically Responsive Educators

“Critical Need 2: Equitable Access to Well-Prepared, Culturally and Linguistically Responsive Educators” purports to respond to the “three core issues” of educator quality, educator pipeline (teacher recruitment and retention), and staffing for diverse student needs. Plan at 67-93. However, Critical Need 2 is noncompliant with the Court’s May 2025 Order because it does not identify, in a costed and enforceable manner, the components and elements necessary to ensure at-risk students have equitable access to well-prepared, culturally and linguistically responsive

educators,¹³ nor does it provide year-by-year actions, responsible actors, objective measures, and quarterly reporting capable of producing systemwide change. Instead, Critical Need 2 largely repackages existing initiatives and imposes new compliance requirements (licensure rules, micro-credentials, program audits, monitoring) without establishing the workforce, institutional capacity, governance structures, or funding commitments needed to remedy the discriminatory educator-access conditions the Court found for Native American students, English Learners, students with disabilities, and students from low-income households.¹⁴

In addition to the global deficiencies described in Section II (*supra*), Critical Need 2 is substantively deficient in at least five interlocking ways, provided here as illustrative and not exhaustive. First, although the Plan repeatedly invokes “culturally and linguistically responsive” principles, including references to culturally responsive and relevant Native and Hispanic instruction, those statements are not grounded in an overarching multicultural and multilingual framework (*see* FFCL ## 456-459; 467-475, 511-513, 3019-3030; 3063-3068; 3076-3078), and are not translated into concrete, enforceable competencies, implementation supports, or accountability mechanisms. *See* FFCL # 672. Rather, cultural responsiveness is treated as an add-on or supplemental programming and not as a statewide operating standard built with and accountable to affected communities. Valverde Report at 15, 17-18; Martinez Report 2, Sims Report 2, 6-7; *see also* FFCL #672 (“... every New Mexico teacher requires an understanding and ability to engage with students of many backgrounds...”). Second, the Plan shifts substantial

¹³ FFCL #682 (finding that the State fails to ensure that at-risk students in ‘high need’ schools are exposed to highly effective teachers); FFCL #328 School administrators and educators must identify ways to incorporate indigenous culture and language into the general curriculum); FFCL #334 (finding that ELLs become long-term ELL students because ELL teachers, who are not familiar with second language learning, fail to know when ELL students are struggling with English language versus literacy).

¹⁴ *See* FFCL ###670, 671, 707, 863 (finding that the quality of teaching for at-risk students is inadequate, that high poverty schools have disproportionately high number of low-paid entry level teachers; and that inexperienced teachers are systematically less effective in schools with high rates of student poverty and such schools needs have persistent difficulty recruiting and retaining qualified, skilled teachers).

remedial responsibility onto educator preparation programs (“EPPs”) and institutions of higher education (“IHEs”) through top-down directives,¹⁵ rather than committing to build capacity and treat New Mexico’s existing faculty expertise as a remedial asset. Valenzuela Report 1; Sandoval Report 12-13.

Third, the Plan elevates micro-credentialing as a central lever for licensure renewal and advancement even though the Plan provides no clear design process, evidence base, mastery definition, or evaluation plan for micro-credentials, and does not specify formative or summative assessments or quality control that would demonstrate they improve educator practice (as opposed to functioning as a burdensome compliance exercise). See Valverde Rep. at 16; Martinez Rep. at 6, 8; Sandoval Rep, 13. (Goal 2.3 analysis). In other words, micro-credentialing may serve as a short-term bridge to support targeted skill development while the State stabilizes its educator workforce. But as a long-term strategy for expanding the pool of high-quality educators, it is insufficient, and risks substituting unstandardized credentials for the sustained pipeline investments, preparation, and retention supports necessary to remedy the Court-identified staffing shortages. *See* FFCL ## 719-722.

Fourth, the Plan fails to build a scalable pipeline for increasing the number of Native language educators and Native early childhood educators – a priority need among Native students that requires direct consultation with New Mexico Tribes. *See* FFCL ## 511, 513, 362-363. While it references recruitment through the Seal of Bilingualism/Biliteracy and proposes supports for NALC 520 teachers, it does not outline how Tribes, Nations, and Pueblos and their language boards and education departments will play a role in this effort, does not provide preparation pathways for Native students to become future Native language teachers, and does not address

¹⁵ Embedding Culturally and Linguistically Responsive Instruction/Universal Design for Learning across programs; expanding bilingual and heritage-language faculty; aligning preparation standards; monitoring compliance.

essential instructional supports (including tribal language goals and approaches to oral language and Native literacy development) needed for meaningful Natives language programming in schools. Sims Report 4-6.

Fifth, the Plan’s “Outcomes” are not tied to constitutionally adequate accountability measures: they frequently lack baseline measures, the expected results are framed in vague terms (“fewer,” “increase”) instead of measurable targets, tolerate continued disparities (*e.g.*, permitting only “fewer” students in the Plaintiff groups to be taught by long-term substitutes rather than committing to eliminate that condition for at-risk students), and kick the can on developing key academic preparation-expectations to “after 2028” without an explanation or planning details, despite the Plan’s own acknowledgement that urgent needs exist now.¹⁶

Taken together, Critical Need 2 substitutes paltry compliance mechanisms and aspirational partnership language for the enforceable, capacity-built, and culturally grounded educator pipeline the Court’s remedial order requires. It does not ensure that educator preparation, recruitment, placement, compensation, mentorship, and ongoing professional learning are designed and resourced to deliver culturally and linguistically sustaining instruction, particularly for Native students and English Learners, nor does it establish a credible pathway to eliminate staffing inequities (including long-term substitutes and shortages of bilingual/special education educators) in the schools serving at-risk students.¹⁷

¹⁶ Valverde Report 16; Martinez Report 8; Sims Report 6; *see also* Decision and Order at 35 (... “no effort has been made to evaluate the effectiveness of PED’s efforts to achieve equitable distribution of effective teachers or recruitment and retention of teachers in high poverty or low-performing schools.”).

¹⁷ Valverde Rep. at 16, Martinez Report 8, Sims Report 6; *see also* FFCL ## 697, 714 (finding that lower teacher pay is an impediment to recruiting and retraining teachers; that school districts do not have the funds to pay for all the teachers they need); *see also* FFCL ##727-728, 730, 707-739 (“State does not provide districts with sufficient funding to provide professional development...;” “central component... effective professional development...;” and “insufficient funding to provide teachers with adequate mentorship or professional development.”).

The Plaintiffs object to the Plan's failure to articulate a vision for statewide, systemic improvements to curriculum, instruction, and increasing the educator workforce for students with disabilities. *See* Decision and Order at 32-33; 67-68; *see also* FFCL## 2321-2327, 3176, 721-722. Instead, it proposes discrete actions (many clustered in Section 1.3) such as structured literacy and behavioral support initiatives. Plan at 49-59. However, the Plan does not identify the need for high-quality, evidence-based curriculum, instructional programs, and interventions necessary to ensure content-access and inclusion for students with disabilities, nor does it meaningfully address the shortage of special educators, educational assistants, and related service providers. The Plan largely recycles existing efforts without assessing their effectiveness, and even more promising concepts, such as behavioral intervention support, remain insufficiently developed, lacking measurable outcomes, evaluation structures, and clear resource commitments.

C. Failure of the Remedial Action Plan – Critical Need 3: Equitable Access to Academic, Social, Well-Being, and Behavioral Services

In addition to the structural deficiencies described in Section II (*supra*), including the Plan's failure to provide enforceable, costed, and accountable remedies, the Plan's "Critical Need 3" remains constitutionally insufficient under the Court's previous orders because it does not operationalize a whole-child system of academic, social, health, and behavioral supports for at-risk students.

The Plan largely generalizes and disregards the lived realities of students in rural and Tribal communities by focusing on expanding programming rather than removing barriers to access. The Plan, for example, does not address the Court findings showing that geographical and distance factors often impede at-risk students from accessing before- and after-school programs and services that would enhance academic achievement, or resolving transportation barriers preventing their after-school participation. *See, e.g.,* FFCL #2157.

While PED’s Plan merely offers to pursue legislation that increases access to funding for out-of-school time (“OST”) programs, “including transportation costs and unique factors for rural communities,” it lacks essential details on duration and sufficiency of funding. Whether the State will retain financial responsibility after year-three, for example, or instead reassign OST transportation costs to school districts remains unclear. This purported action step is neither sustainable nor equitable if it requires districts to implement OST and Extended Learning Time programs in reliance on potentially temporary state funding, only to later withdraw critical student supports due to transportation funding instability. Such uncertainty undermines continuity, responsible planning, and the educational interests of students and families. *See* FFCL ## 2157, 3099; *see also* Decision and Order at 25–28.

The Plan also fails to address similar access concerns for students with disabilities. In particular, the Plan does not address persistent gaps in special education transportation where an IEP requires transportation as a related service, even though the failure to provide such transportation directly impedes access to instruction and services.

The Plan also fails to provide for a sufficiently funded, instructionally grounded technology strategy that can be implemented at scale. The Plan isolates “technology” to device availability or access to applications; but it lacks provisions for resources for professional development and training that would enable educators to integrate technology into effective instruction. Meaningful integration, for example, requires sustained training tied to core instructional competencies, yet the Plan does not identify dedicated funding streams or enforceable requirements to deliver that training statewide. Critical Need 3 also fails to incorporate plans for increasing the capacity necessary to provide “assistive technology” (“AT”) for Students with Disabilities, including timely AT evaluations and educator training to implement AT effectively.

The Plan neglects the foreseeable and immediate lifecycle costs of student devices. Districts rely on large fleets of aging Chromebooks that cannot, realistically, be refurbished to meet evolving hardware standards. Notwithstanding the Plan's implied timelines (including implementation benchmarks by June 30, 2026), PED does not specify a replenishment program or explain how the State will replace district devices on a sustainable schedule with sufficient recurring funding. Without one, the State cannot ensure that at-risk students have access to up-to-date technology, Wi-Fi, broadband, and hardware devices. For example, some Plaintiff districts estimate replacement costs exceeding the amount of funding received for Chromebooks. The absence of a statewide, funded replacement framework renders the Plan's technology commitments aspirational rather than achievable. Students from economically disadvantaged households often cannot afford home internet service; the Plan offers no alternative, should appropriations to "subsidize broadband service for low-income households" not materialize.

Likewise, the Plan's "family and community supports" initiatives are too narrow, are disconnected from a solution-based framework. For example, the Plan's homelessness supports lack sufficient program detail, braided resources, and capacity-building for local implementation. For Students with Disabilities experiencing homelessness, the Plan lacks an evaluation (where appropriate or parentally requested) of special education and related services, as well as concrete IEP supports.

The Plan devotes minimal attention to community schools, treating "community schools" as optional ("schools interested") rather than as a required, funded, and monitored statewide strategy for at-risk students. Montoya Report 1, 4. According to peer-reviewed evidence, Community Schools often leads to a successful 10:1 to 15:1 return on investment, a proven effectiveness for at-risk students, and the capacity to provide culturally responsive education

through community partnerships. *Id.* at 1. The Plan’s community schools (Goal 3.2h) initiative lacks details on dedicated funding streams; implementation timelines beyond “provide training”; partnerships with existing transformational entities (e.g. NEA-NM, SWIFT-CS); or recognition of community schools as a core strategy for compliance with the Court’s Orders. While the Plan boasts that “150 schools in NM ... implement the community schools framework’s key practices,” it is silent as to whether PED will expand or adequately support this proven approach. *Id.* at 5.

Finally, the Plan’s social, behavioral, and well-being supports—the heart of Critical Need 3—do not establish a culturally safe, prevention-oriented system of mental health and wellness supports that affirms identity, belonging, and heritage languages. Instead, the Plan emphasizes compliance-adjacent trainings and discipline-linked interventions, while failing to ensure neurodiversity-affirming, individualized behavior supports for Students with Disabilities, including PBIS and, where appropriate, functional behavioral assessments (“FBA”) and behavior intervention plans (“IEPs”) aligned to IEPs. Restorative justice practices and “behavior contracts” cannot substitute for IEP/BIP-based supports; absent individualized consideration, they may be contraindicated.

The Plan also omits the foundational infrastructure the Court’s remedial framework demands: (i) a transparent baseline map of current school-level supports and staffing (including measures of school culture and the acceptance and understanding of disability and behavioral difference); (ii) statewide standards for culturally and linguistically responsive wellness services; (iii) mechanisms for government-to-government Tribal consultation on culturally responsive discipline and justice; and (iv) concrete, funded requirements ensuring that services reach Plaintiff student groups in every district—not merely in a limited set of pilots.

For schools and districts demonstrating disproportionality in discipline affecting Students with Disabilities, the Plan omits technical assistance and training for all personnel on positive, neurodiversity-affirming school culture and effective individualized behavior supports. Those requirements are not self-executing and will require corresponding supports to address staffing needs, including 1:1 educational assistants and behavior specialists.¹⁸

When the Plan addresses “behavioral supports” in Critical Need 3, it must encompass not only behavioral health supports for students generally, but also the positive behavioral interventions and supports required for students with disabilities to attend school, be served in the least restrictive environment, and make progress toward IEP goals—supports that require adequate staffing and training beyond limited online modules. FFCL ## 2327-2334.

Critical Need 3 largely repackages existing mandates and aspirational concepts into a patchwork of pilots, surveys, and trainings. Those activities are not designed for implementation at scale, are not tailored to student-group needs, and do not explain how PED will ensure consistent delivery across districts.¹⁹ The Plan also places greater emphasis on intervention and discipline responses (e.g., de-escalation, restorative justice courses, monitoring) than on prevention, culturally grounded wellness, and coherent wraparound systems. The Plan fails to treat “belonging” as a foundational condition for learning, reduces belonging to attendance proxies, and

¹⁸ See Chenoa Bah Stilwell-Jensen, Ph.D., *Review of the PED Defendant’s Status Report 6* (Nov. 8, 2025), attached hereto as Exhibit 19 (noting homelessness section lacks key implementation details and omits community proposals such as strengthening McKinney-Vento supports); *id.* at 5-6 (criticizing reliance on pilots/surveys/trainings instead of child- and family-facing services and the absence of funding amounts for projects); *id.* at 6-7 (critiquing limited scope and missing statewide partner integration for culturally reflective nutrition programming).

¹⁹ See, e.g., Stilwell-Jensen Report 1-2, 5 (concluding the Plan “insufficiently addresses” Critical Need 3 and provides “disparate” actions lacking “depth” or usable implementation detail).

does not describe the systemic changes necessary to transform students' lived experience of school.²⁰

D. Failure of the Remedial Action Plan – Critical Need 4: Effective Funding, Support, and Accountability to Drive Systemic Improvement

The Court's 2018 ruling stemmed from two interrelated failures: (i) a funding system that was insufficient, and (ii) PED's failure to carry out supervisory and audit responsibilities to ensure available funds were used efficiently and effectively to meet at-risk students' needs. Decision and Order 70–71 ¶¶ 2(b)–(c).

Having identified the structural and analytical deficiencies that undermine Critical Need 4's ability to guide the Legislature, Plaintiffs now apply those deficiencies to the specific goals and action items set forth in the State's "Critical Need 4: Sequenced 3-Year Action Plan." *See* Plan at 137-157. Although the Plan presents a sequence of vague aspirations spanning across a three year phase, the same core deficiencies recur throughout each phase. For purposes of clarity and efficiency, Plaintiffs have abbreviated the Plan's deficiencies identified above [In Section II and III, *supra*]. into the following four categories: *See* FFCL ##2226–2228, 2336–2342; Decision and Order at 24–25, 65–66.

1. failure to determine funding adequacy or conduct a cost analysis;
2. reliance on prior funding increases as a proxy for compliance;
3. absence of a meaningful accountability structure; and
4. failure to provide for durable, long-term reform.

²⁰ FFCL ## 266–267, 270–273, 276; FFCL ## 2339, 2341–2342, 2352; Decision and Order at 65–66.

As shown below, these four deficiencies permeate the Plan’s stated goals and action items, thereby preventing the Court, the Legislature, and the public from assessing whether the Plan is capable of achieving constitutional compliance.²¹

Goal 4.1 states: “New Mexico has an equitable school finance system that provides coherent, recurring, and responsive funding that prioritizes and targets the needs of students with disabilities, English Learners, Native American students, and economically disadvantaged students.” Action Item 4.1a suffers from Deficiencies (1), (2), (3), and (4). Years 1 and 2 call for evaluation of SEG factors without identifying adequacy benchmarks, cost targets, or funding levels against which the analysis will be conducted. Although Year 3 contemplates legislative changes “if warranted,” the Plan does not define what would warrant action or who would make that determination.²²

Action Item 4.b is undermined by Deficiencies (1), (2), (3), and (4). Although the Plan relies on existing Indian Education Fund appropriations and distribution mechanisms, it does not analyze whether those funding levels are adequate to meet Native American students’ needs or what additional resources may be required. The action item references monitoring and possible funding adjustments, but does not establish standards for adequacy or assign clear responsibility for decision making.²³

Further, Action Item 4.1c suffers from Deficiencies (1) and (3). Although it expands public reporting on student achievement trends, it does not connect outcome data to an adequacy standard, cost analysis, or funding adjustments. The action item increases transparency but does not assign responsibility for analyzing the data or acting on persistent disparities in outcomes for at-risk

²¹ See FFCL ##2226–2228, 2336–2342.

²² See FFCL ##2176–2186, 2226–2228.

²³ See FFCL ## 622-626; 2182.

students.²⁴ Action Item 4.1d also suffers from Deficiencies (1) and (3). Although it provides for training on the use of accountability data, it does not define what constitutes adequate funding, effective implementation, or improved outcomes. The item also does not identify who is responsible for reviewing results and ensuring that instructional adjustments occur. The continuation of this action into Year 3 without modification also suffers from Deficiency (4), as it lacks any mechanism to institutionalize changes or reassess funding needs over time.²⁵

Finally, Action Item 4.1e suffers from Deficiencies (1), (3), and (4). The Plan references updated facility adequacy standards, but it does not analyze whether funding is sufficient to implement those standards or identify the costs to do so statewide. Although Years 2 and 3 contemplate evaluation and possible legislative action “if warranted,” the Plan does not define adequacy benchmarks or assign decision making authority.²⁶

Goal 4.2 states: “New Mexico has an accountability and enforcement system that tracks local district expenditure of state and federal funds to ensure funds are spent in schools on students with disabilities, English Learners, Native American students, and economically disadvantaged students.” Action Item 4.2a suffers from Deficiencies (1) and (3). The prescribed (?) application process focuses on coordination and efficiency but does not assess whether federal or state funding amounts per district are adequate to meet student needs. Although the action item contemplates review of alignment between budgets and expenditures, it does not identify standards for adequacy or designate an actor responsible for responding when alignment fails to support required programs and services.²⁷

²⁴ See Decision and Order at 65–66.

²⁵ See Decision and Order at 65–66.

²⁶ See FFCL ## 2226–2228.

²⁷ See FFCL ## 2226–2228.

Relatedly, Action Item 4.2b suffers from Deficiencies (1) and (4). Although the accreditation process includes enforcement mechanisms, it is not grounded in an analysis of whether schools and districts have adequate funding to meet accreditation expectations. The subsequent review and amendment of accreditation indicators does not address how funding adequacy will be incorporated or sustained to support long-term compliance.²⁸

Finally, Action Item 4.2c suffers from Deficiencies (1) and (3). While the publication of cash reserve information increases transparency, it does not adhere to or establish standards for determining whether funding levels are adequate or whether unspent funds reflect unmet needs. The action item also fails to assign responsibility for analyzing the data or initiating follow-up when disparities or underutilization are identified.²⁹

Goal 4.3 states: “Accountability systems reliably assess student outcomes by using culturally relevant metrics, and these systems ensure the assessments drive improvements.” As an initial matter, Goal 4.3 is silent as to students with disabilities. Importantly, the Plan must specify disability-appropriate outcome measures that are legally and pedagogically valid (including IEP progress measures and inclusion indicators), with baselines and targets, rather than relying on generic accountability proxies that historically have failed to capture whether students with disabilities are receiving a constitutionally sufficient education.³⁰

Further, Action Item 4.3a’s identification and pilot of new outcome metrics suffers from Deficiencies (1) and (3). The Plan does not connect these metrics to funding adequacy or specify who is responsible for acting on the data. The review process lacks defined standards, funding implications, or mechanisms for ensuring changes.³¹

²⁸ See Decision and Order at 65–66.

²⁹ See FFCL ## 2228, 2336-2339.

³⁰ See FFCL ##2333–2339; Decision and Order at 24–25, 65–66.

³¹ See Decision and Order at 65–66.

Action Item 4.3b’s “evaluation of school improvement efforts” suffers from Deficiencies (1), (2), (3), and (4), because it does not assess whether school improvement supports are adequate to meet student needs, establish standards for determining when reforms are required, or provide a framework for monitoring and revisiting those reforms over time.³²

Action Item 4.3c’s provisions for restarting, redesigning, or closing schools suffers from Deficiencies (1) and (4), because it fails to account for the analysis of funding required to support affected students or to ensure continuity of educational services. The evaluation of the “more rigorous intervention” designation process does not address how funding adequacy will be maintained or adjusted to support long-term improvement.³³

Action Item 4.3d’s expanded review of DASH plans suffers from Deficiencies (1) and (3). While it emphasizes monitoring, it does not define adequacy benchmarks or assign responsibility for acting on identified gaps in supports or outcomes. The continuation of this action item into Year 3 without modification further reflects the absence of a mechanism for durable reform.³⁴

Goal 4.4 states: “New Mexico identifies clear roles and responsibilities across various education agencies and partners and provides the necessary support to ensure coordinated planning and high-quality implementation.” Action Item 4.4a suffers from Deficiencies (1), (3), and (4). The evaluation of instruction time reforms does not assess the costs associated with implementation or determine whether funding is adequate to support affected students. Although Year 3 contemplates legislative or regulatory changes, the Plan does not define adequacy benchmarks or assign decision making authority.³⁵

³² See Decision and Order at 65–66.

³³ See Decision and Order at 65–66.

³⁴ See FFCL #2228.

³⁵ See FFCL #2224; Decision and Order at 24–25.

Relatedly, Action Item 4.4b suffers from Deficiencies (1) and (3). Although the statewide student information system and early warning tolls expand data access, the Plan does not connect these systems to funding adequacy or assign responsibility for acting on identified needs. The action item focuses on information infrastructure without addressing how resources will be adjusted to support identified interventions.³⁶

Finally, Action Item 4.4c's development and implementation of data-sharing agreements suffers from Deficiencies (1) and (3). While it improves access to information, it does not establish standards for adequacy or identify who is responsible for responding to identified disparities. The action item increases coordination without ensuring that funding or services will be adjusted to meet student needs.³⁷

The Plaintiffs object to the Plan's failure to develop an **equitable finance system**, one that provides sufficient, recurring, predictable funding based on student needs and corresponding inputs. An equitable funding system must account for changes to inflation where appropriate; works to close academic outcome gaps; fully funds a multicultural education framework, including full implementation of the NMIEA, BMEA, HEA, as well as ELL and special education requirements, as part of the districts' general education program; and allocates targeted funds sufficient to provide necessary programs, services, teachers, and staff for each at-risk group, ensuring funds are spent on the intended students and specialized inputs. Instead, the Plan omits: the current cost of statewide education reform efforts; compliance with student-specific mandates; and a predictable, recurring funding structure tied to student needs and required inputs for the short- and long-term. Without determining costs, under a sufficient-funding framework, the Plan cannot serve as the fiscal and operational roadmap contemplated by the Court's remedial orders.

³⁶ See Decision and Order at 65–66.

³⁷ See Decision and Order at 65–66.

Plaintiffs object to the PED Plan’s omission of systemwide accountability measures and enforcement -- one that tracks district expenditure of state and federal funds to ensure they are spent in schools on at-risk students; provides oversight and assistance to ensure targeted funds are spent on effective programs and inputs; reliably assesses student outcomes using culturally relevant quantitative and qualitative metrics; evaluates implementation of the IEA/BMEA/HEA/BEA; and develops multi-year budgets based on student needs, equity, and transparency. See FFCL ## 188, 760, 764, 777, 2978, 2991, 3025, 3068, 2982, 3202, 3210. For students with disabilities, the Plan asserts that formalizing the Office of Special Education will “guarantee uniform supports and accountability,” but lacks details on how uniform supports and enforceable accountability will flow from its declaration alone.

IV. Problems with the Process

Plaintiffs object that the process by which Defendants developed and submitted the Plan failed to comply with this Court’s May 20, 2025 Order. Paragraph 4 (C) directs that “NMPED shall develop this draft comprehensive plan with the participation of the stakeholders and the Plaintiffs, taking into consideration the components and elements raised in their briefing.” Here, PED’s engagement with Plaintiffs and stakeholders was largely superficial. The Plan does not demonstrate that the input PED solicited from communities, students, educators, or Tribes had meaningfully informed the Plan’s priorities, actions, sequencing, funding, or accountability mechanisms. See, e.g. [Ex. 21] (Yazzie Community Discussion and Final Synthesis); [Ex. 22] (Central Consolidated School District Student Forum); **Ex. 23** (Dr. Natalie Martinez, *Yazzie* Trial Witness Letter to the Court (Feb. 2, 2026)); **Ex. 24** Navajo Nation Human Rights Commission (Dec. 4, 2025)).

A. Failure to seek Tribal collaboration and valid input

Plaintiffs object to the Plan on grounds that PED failed to engage in meaningful Tribal collaboration and the required government-to-government consultation during development of the Final Plan, despite the centrality of Native students to the constitutional violations at issue and the State's legal obligations to Tribes, Nations, and Pueblos under the New Mexico Indian Education Act and related legal frameworks. See, e.g., All Pueblo Council of Governors Resolution, Ex. 6; Jicarilla Apache Nation Letter, Ex. 7; Mescalero Apache Tribal Resolution, Ex. 8; Navajo Nation Council Resolution, Ex. 9; Tribal Education Alliance Analysis, Ex. 10.

Multiple Tribal entities expressly objected Tribes and tribal education departments were not treated as collaborators in the Plan development. For example, the Tribal Education Alliance reports that "formal tribal consultation did not take place," that Tribes were not treated as co-equal partners, that no regional meetings were held at Navajo Nation chapter houses or elsewhere on Navajo Nation lands, and that the Plan insufficiently reflects Tribal and community input gathered through the process. [Ex. 10] (Tribal Education Alliance, Analysis of PED's Plan (Feb. 12, 2026) at 1). The Navajo Nation HEHSC likewise attributes the Plan's deficiencies to an accelerated process, limited meetings, and a brief comment period, and objects that the Plan undermines its capacity to remedy the constitutional violations identified in Martinez/Yazzie. [Ex. 25] (Navajo Nation HEHSC, Opposing PED Final Plan (Nov. 26, 2025) at 1). The Navajo Nation Council's Naabik'iyati' Standing Committee adopted a resolution opposing the Plan and documenting key process and substance deficiencies. [Ex. 9] (Navajo Nation Council Resolution (Jan. 26)). The All Pueblo Council of Governors likewise formally declared the draft plan inadequate and called for a rewrite grounded in meaningful Tribal consultation and enforceable commitments. [Ex. 6] (APCG Resolution 2025.06). See also [Ex. 7] (Jicarilla Apache Nation letter

requesting rejection of the Plan); [Ex. 8] (Mescalero Apache Tribe resolution find the plan inadequate and requesting revision to address numerous concerns).

Plaintiffs further object on grounds that the participation by some Tribal members in general regional meetings—particularly where the format and categories were predetermined—cannot substitute for structured government-to-government consultation with clear roles, adequate time, and equitable resources. Nor does the Final Plan commit to the accessibility supports necessary for meaningful participation (including translation, travel support, technology access, and adequate time for review and response). And, the engagement process was structured in ways that limited open-ended input and sidelined Tribal priorities and existing frameworks. These failures deprive the Plan of legitimacy and undermine implementation for Native students, because the Plan does not establish the collaborative governance structures necessary to ensure that corrective actions are informed by Tribal partners and can be monitored over time.

B. Failure to incorporate public comment

Plaintiffs object to PED's submission on grounds that it reflects, at most, a performative stakeholder-engagement process. PED gathered extensive community perspectives, echoed portions of them in narrative form, and then failed to translate those perspectives into specific action steps, accountable entities, timelines, or funding commitments. The record reflects repeated, consistent themes across community discussions and syntheses—including the need for culturally and linguistically responsive supports; staffing representation and pipeline strategies; meaningful student voice; transportation and technology access; wraparound supports (including mental health); and transparent accountability. See, e.g., [Ex. 21 (Yazzie Community Forums)].

Yet the Final Plan provides no transparent feedback loop showing how PED evaluated those recommendations, which recommendations it adopted, which it rejected, and why. Instead, the Plan’s repeated “community perspectives” sections operate as a static recital rather than an accountability mechanism. This is precisely the engagement model public-governance and education authorities caution against: episodic listening untethered to decision-making, resourcing, or reasoned explanations for adoption or rejection of community recommendations. Org. for Econ. Coop. & Dev. (OECD), *OECD Guidelines for Citizen Participation Processes* (OECD Pub. Governance Revs., OECD Publ’g 2022).

This approach also mirrors the concern in the Uribe Report that engagement is too often used to improve administrative efficiency rather than to produce meaningful participation designed to improve student well-being and outcomes. (Uribe Report at 5, Ex. 20).

Plaintiffs further object to the PED’s process as it failed to conduct meaningful engagement, which requires more than meetings – it requires structures, supports, and resources that allow communities to serve as co-designers, not merely commentators. The conditions for effective engagement include clear roles and expectations, adequate time, and equitable resourcing throughout the decision-making process. (Learning Policy Institute, *State Handbook for Advancing Racial Equity* (Jan. 2024) at 33; National Education Policy Center, *Recasting Families and Communities as Co-Designers of Education in Tumultuous Times* (July 2019) at 4; U.S. Dep’t of Health & Human Services, *Methods and Emerging Strategies to Engage People with Lived Experience* (Dec. 2021) at 3.) The Plan does not commit to those conditions, does not provide measurable indicators to assess whether engagement is improving program design and service delivery for at-risk students, and does not identify durable infrastructure—regular communications, accessible feedback mechanisms, barrier reduction (including

transportation/technology), and translation supports—needed for ongoing engagement and accountability. (Learning Policy Institute, *State Handbook* at 33.)

Finally, Plaintiffs object to the Plan as it fails to incorporate public comment that is substantively consequential. Stakeholders repeatedly raised issues that go to the heart of implementation. See, e.g., [Ex. 21 (Yazzie Community Forums)]. By disconnecting those themes from enforceable “PED actions,” the Plan creates the appearance of engagement without the substance of incorporation, thereby, inviting predictable implementation failure and discouraging future participation.

C. Failure to utilize the LANL Foundation and WestEd

Plaintiffs object to PED Plan as it failed to meaningfully utilize—and failed to transparently disclose the role, work product, and analytical method of—the LANL Foundation and WestEd in developing the Final Plan. The LANL Foundation’s community-conversations report states that LANL did not document or analyze the data collected or contribute to the development of the Action Plan, and that WestEd instead worked with PED and LESC to compile and produce the Plan—while LANL expressed the hope that the data would be made public. [Ex. 26] (LANL Foundation, Report on Community Conversations for PED (Sept. 26, 2025)).

That history underscores Plaintiffs’ objection: if WestEd compiled and used community-engagement inputs to draft the Plan, the Plan should disclose, at minimum, what was collected, how it was synthesized, what recommendations resulted, and how those recommendations were incorporated into enforceable commitments. The Final Plan does not do so. Nor does it provide the underlying engagement materials in a way that would allow the Court, the parties, or the public to assess whether PED actually used the engagement record to shape

priorities, actions, timelines, accountability, and funding. See also [Ex. 1] (LANL Foundation letter providing feedback and identifying vagueness/measurement gaps in the draft plan).

In conclusion, the Yazzie and Martinez Plaintiffs object to PED's Plan on grounds that it cannot claim compliance with the Court's participation directive while withholding the very analytic work product necessary to verify that participation was meaningful and that the Plan is responsive to the record it created.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2026, a true copy of the foregoing Joint Response was e-filed and served through the Court's e-filing system upon counsel of record.

/s/ Preston Sanchez
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