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Pathways to Education Sovereignty: Taking a Stand for Native Children

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Presented by the Tribal Education Alliance, New Mexico



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Foreword

Beginning with the first federal Indian education policy in 1890, education was never intended to meet the needs and purposes of Indigenous communities. Rather, it articulated a policy and process to kill our languages, eliminate our cultures and terminate our way of life, starting with the forced removal of our children. For the next 130 years, generations of Native children have been subjected to assimilation measures to serve a relentless national expansionism that some public officials today still praise as Manifest Destiny.¹ Hopi leaders who resisted the taking of their children were imprisoned at Alcatraz on charges of sedition. They said, “Whiteman’s education is and will be our biggest enemy.” Today, Wilhelmina Yazzie, a plaintiff in the landmark *Yazzie/Martinez v. State of New Mexico* case, has become the voice of the continuing struggle by tribal communities for self-determination and cultural survival. It is a fight against an exclusive Western model of education predicted by the Hopi elders as a threat to our very existence as Indigenous peoples.

The historic decision in the *Yazzie/Martinez* case has created a watershed moment for education in New Mexico. Seizing on this moment, the All Pueblo Council of Governors, the Jicarilla Apache Tribal Council, the Mescalero Tribal Council and the Navajo Nation Office of the President and Vice President, along with the respective Chairs of their Legislative Committees on Education, led efforts to reflect upon the past, the present and the future of Indian education. In collaboration with Native parents, students, teachers, tribal education directors, language program directors, social workers, health practitioners and Native higher education faculty, they developed a framework for education that envisions a future where Indigenous knowledge is balanced with the skills necessary to function in our contemporary world. Together, tribal leaders and community members sought to create a new paradigm that embraces a balanced approach to education. It gives equal value to all that defines who we are as Indigenous people — our language, our culture, our values and our way of life — and to the academic skills and tools that equip us for success in Western society. In the tribal vision, one-sided, one-way education policies and practices — whether relating to curriculum, governance or accountability — must give way to a new balance, a transformational approach to education that enables mutual, reciprocal relations.

These tribal recommendations are aligned with the findings in the *Yazzie/Martinez* court ruling. They articulate and delineate a framework for education rooted in advocacy by generations of Indigenous peoples. The process of developing these recommendations was supported by the Santa Fe Indian School Leadership Institute, which brought together leaders and community members from all Tribes and held Community Education Institutes and Convocations across tribal homelands. The Leadership Institute was founded in 1997 as a convener think tank enabling members of our tribal communities to have frank and honest discussions about the challenges we face. The Institute was born out of a recognition that today’s challenges are deeply embedded in a long history of colonialism and Manifest Destiny — policies and practices conceived to extinguish, eradicate and acculturate Indigenous people. Successive waves of infringement and impositions have weakened our Indigenous systems and institutions. Yet, over time and over many generations, our tribal communities have been resistant, resilient and have regained the strength to protect and sustain a way of life gifted to us by our elders since the time of our Origin, Creation and Emergence. It is through the resistance and sacrifice of prior generations that we are still here today, despite the efforts of the world’s most powerful country to erase our existence.

Today’s era of self-determination and self-governance is the result of an unyielding resistance by tribal leaders and their conscientious fight to disrupt the policies of genocide, extermination, ethnic cleansing, war, removal, termination and acculturation. Assimilation through education was purposely conceived as the most humane way to deal with what the United States defined as the “Indian Problem.” The prohibition against speaking Indigenous languages was still in place in the 1950’s. Laws were enacted to disconnect us from our sense of spirituality. Laws apportioned our aboriginal lands for the establishment of national parks, plantations and oilfields, constructed on the grounds where we once worshipped. Laws removed us from our lands, forced us onto reservations and confined us. Our once vast homelands were taken by colonizers who arrived from every direction and claimed our lands as theirs.

Today we ask, what are we doing differently in these times of self-determination, now that we are no longer forced to let others define who we are? If we continue to replicate programs conceived by others for us, will we contribute to our own demise?

Pathways to Education Sovereignty lays out a different strategy. It takes the recommendations made by tribal leaders and community members in response to the *Yazzie/Martinez* court ruling and describes how we can reclaim the education of our children. *Yazzie/Martinez* has brought forth an opportunity forced out of desperation. This is the moment to rise to the challenge and face the vestiges of colonialism. As the late Congressman John Lewis so eloquently stated, “when you see something that is not right, not fair, not just, you have you have a moral obligation to say something, to do something.”² The voices and ideas chronicled in this report continue the journey of generations resisting assimilation and refusing to contribute to our own demise as Indigenous people. We are standing up to what is not right, not fair and not just.

The Leadership Institute, together with the Tribal Education Alliance and the Native American Budget and Policy Institute (NABPI), is grateful to have worked with Dr. Anja Rudiger, the author of this report. We consciously sought out a fresh pair of eyes to capture our journey toward self-determination in education. When we have told our story, expressing our own aspirations, time and time again, it has fallen on deaf ears. This report blends the voices of our tribal community members with the evidence produced by decades of policy and academic research. We believe the recommendations contained in this report demonstrate how we can strike a balance between our worlds and create the possibility of mutual understanding and accountability. It is not a debate about which is superior to the other; it is a matter of validating and honoring who we are, and of sharing responsibility for sustaining our culture.

Pathways to Education Sovereignty is the product of Indigenous educators, experts and students sharing their life experiences and their struggle navigating through an education system designed for them by others. Severing us from our culture, language and communities has been devastating. The education we have received has had very little relevance to our own lives. Many of us have never seen a Native teacher during our entire educational experience. To this day, tribal communities remain invisible in public education institutions and are largely excluded from the governance of public schools. We have little to no influence over the design of programs and the investment of resources. The systemic failure of the education system to meet the needs of our children has been well documented over many decades, captured in study after study. Deeply inequitable education outcomes are the inevitable result. A fundamental cause lies in a history of institutional racism and an ongoing violation of our children’s civil rights.

All children in New Mexico have been hurt by this in one form or another, as shown by our state’s bottom ranking in academic achievement. It also translates into New Mexico’s unbelievably high ranking in poverty, hunger, health disparities and youth suicide. Our young people take their own lives as they grow hopeless when schools fail them. They are criminalized and incarcerated, propelled though a pipeline that often pushes them from school to prison. This travesty of public education was condemned by the *Yazzie/Martinez* ruling, which concluded that the systemic failure of education in New Mexico irreparably harms our children.

In this watershed moment, it is our prayerful hope and dream that this will be the time in history when the paradigm shifts to redefine what future generations will inherit from us. It is the hope and belief of our Indigenous people that this must be the time for meaningful change. The gifts of our Creator, all the elements that define our core values, laws and customs that sustain our way of life, have reached a fragile state under the onslaught of policies and laws purposefully conceived to diminish and eradicate our culture and undermine our self-determination. If we fail in this time to sustain and revitalize our Indigenous ways of life, we will see our language die and our cultures fade away. A human part of our ecosystem will no longer be sustainable.

We can only fulfill our sacred trust if we walk a different path. This report presents the solutions put forward in the Tribal Remedy Framework, endorsed by all 23 sovereign Nations, Tribes and Pueblos in New Mexico. It is a blueprint for moving toward a new education paradigm, born out of the fight for self-determination. In good faith we have developed what we consider our role in a system of shared responsibility in public education. At its heart lie the values we seek to gift to all future generations, not just to our Indigenous peoples, but to all people, following the teachings of our elders. We believe that a balanced education, grounded in equality, equity and justice, also reflects the aspirations of the United States of America and of the Land of Enchantment. This is the place we all call home and where we celebrate the beauty of our cultural diversity and shared existence.

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I. Executive Summary

Pathways to Education Sovereignty explores the unfinished journey of Indian education from coercion and assimilation to tribal practices of teaching and learning now known as Indigenous education. It charts Indigenous solutions to New Mexico's education crisis contained in the *Tribal Remedy Framework*, a comprehensive plan for upholding Native students' constitutional right to an adequate and sufficient education. The Tribal Remedy Framework was created collectively by tribal community members and endorsed by the leadership of New Mexico's Nations, Tribes and Pueblos. This report examines the structural deficiencies of the state's public education system, the shortcomings of reform efforts, and the strategic solutions proposed by tribal communities.

The 2018 court ruling in *Yazzie/Martinez v. State of New Mexico* found that "the education system in New Mexico violates the New Mexico Constitution art. XII, § 1" (Decision and Order, 7/20/18, p. 59) and that the state has "not studied or developed effective educational systems for Native American students" (Court's Findings of Fact and Conclusions of Law, 12/20/18, ¶3067), despite the directives of New Mexico's Indian Education Act (22-23A-1 NMSA 1978). This report presents updated data documenting educational inputs and outcomes related to Native students. These facts and figures confirm, unequivocally, the existence of an education equity gap. Left unchecked, this gap will continue to jeopardize the well-being, identity and future of Native children and their communities. This report draws on a long history of recommendations for a new approach to Indian education, including those put forth by numerous federal commissions and independent task forces and by education experts and tribal advocates. The report contrasts the insufficiencies of New Mexico's current piecemeal reforms and small-scale state grant funding with the need for a significant, systemic transformation to address historical injustices and ensure equitable outcomes.

Pathways to Education Sovereignty centers on an analysis of the proposals contained in the *Tribal Remedy Framework* and examines the following three strategic solutions:

- 1. Shared responsibility and increased tribal control over the schooling of Native children:**
 - Capacity building within Tribal Education Departments (TEDs), including through investment in a pipeline for Native professionals supported by college and career preparation programs.
 - Recurring state funding for TEDs, including through the school funding formula's at-risk factor.
 - A local governance and accountability framework that formalizes collaboration between Tribes and school districts; Native technical assistance centers to support TEDs and schools.
- 2. Community-based education, created by and centered within tribal communities:**
 - Investment in tribal libraries as community education centers to provide extended learning, technology access, career and support services.
 - Investment in early education programs and services developed and delivered by tribal communities; full tribal authority over early childhood services.
 - Capacity building for tribal community-based networks to deliver integrated student supports, including social and health services; formal coordination and contracting with public schools.
- 3. A balanced, culturally and linguistically relevant education that revitalizes and sustains the strengths of children and their communities:**
 - Policies to address institutional racism; development of trauma informed practices; implementation of Indigenous justice models to end the marginalization and school pushout of Native children.
 - Investment in tribally-led curriculum development centers and Native language programs, operated in partnership with Native higher education institutions and programs; addition of a Native language factor to the school funding formula; full tribal authority over Native language and culture programs.
 - Investment in a pipeline for Native teachers, educational leaders and staff; mandatory anti-racism and Indian Education Act training for all teachers, educational leaders and staff.

Each of these solutions compels the state to adopt a fundamental shift in approach: a commitment to rectifying historical injustices and persistent systemic racism; an appreciation of Indigenous community knowledge and practices; and a readiness to facilitate tribal involvement in, and control over, the education of Indigenous children. With a consistent and comprehensive commitment, New Mexico can move toward a new paradigm for Indigenous education. The result would be a balanced public education system that brings schools and communities together and empowers tribal families and communities to reclaim the education of their children.

II. Introduction

*"Indian education doesn't need another shallow report. ... [T]he secretary of education would do well to find some way to confront the reality of Indian culture, community, and history and devise an educational program to meet this specific challenge. If traditional institutions, programs, and teaching have to be changed, so be it. After five centuries of contact, it does not seem too much to ask non-Indian educators and institutions to come to grips with the reality that is the American Indian."*³ Vine Deloria, Jr., Lakota, 1992

New Mexico's 23 Nations, Tribes and Pueblos firmly believe that this is the time for a new beginning in Indian education. Over the past several years, they have gathered to develop a blueprint for an education system that enables all children to thrive. As the country is finally examining how to rectify centuries of colonialism and racial injustice, New Mexico's tribal communities draw on their resilience and perseverance to present a vision for public schools that values each and every child.

Native children have the right to an adequate and sufficient education, but at each stage of their lives the public education system fails them. From early childhood through primary, secondary and post-secondary schooling, the cumulative effect of under-resourced, misguided and — to this day — biased educational inputs produces disparate educational outcomes. This systemic equity gap in education jeopardizes the future of Native students and the future of tribal communities.

On June 20, 2018, New Mexico's first district court ruled in *Yazzie/Martinez v. State of New Mexico*⁴ that "the education system in New Mexico violates the New Mexico Constitution art. XII, § 1" (Decision and Order, p. 59) and that children will be "irreparably harmed" (Id., p. 74) if this "systemic failure" (Id., p. 46) were allowed to continue. The court explicitly pointed to the violations endured by Native children and concluded that the state had "not studied or developed effective educational systems for Native American students" (Court's Findings of Fact and Conclusions of Law, 12/20/18, FFCL, ¶3067), despite the mandates of New Mexico's Indian Education Act (IEA). It declared that any violation of the IEA was equivalent to a constitutional violation (FFCL ¶3082). Furthermore, preempting any excuses over tight public finances, the court reminded state officials that a lack of funds did not allow the state to deprive its citizens of their constitutional rights and that "the remedy for lack of funds is not to deny public school children a sufficient education, but rather the answer is to find more funds" (Decision and Order, p. 56).

Over two years later, the state has yet to make meaningful investments in Native children. It has yet to embrace a shift in attitude and approach. Instead, a pattern of resistance to change emerged. In March 2020, as the COVID-19 pandemic laid bare the inequities Native children and their communities faced, the state filed a motion to dismiss the *Yazzie/Martinez* case. The court, however, quickly denied the state's motion. When the federal government ruled that New Mexico had unlawfully deprived school districts serving Native students of federal Impact Aid, the state initially opted to appeal the ruling. When the Public Education Department lost key Native staff in the Indian Education Division, including the Assistant Secretary for Indian Education, it did not rush to replace them. When legislators introduced memorials and bills to address the *Yazzie/Martinez* ruling and institutional racism, they were not given a fair hearing.

It became apparent that the refusal to transform Indian education was deeply ingrained in the history of forced assimilation. This calculated form of oppression has shaped public schooling to this day. Over the last century, every task force and every report on Indian education has championed systemic change, yet Native children and their communities are still awaiting meaningful action. Tribal advocates calling for transformative education changes, as distinguished from a trickle of handouts wrapped in piecemeal reforms, contend that change is a matter of political will, driven by a moral sense of obligation.

*"It's time for our leaders to be courageous and make real changes for our kids. All across the country, people are standing up against the inequities caused by hundreds of years of systemic racism. It's time for our state to [...] address the inequities in our schools."*⁵ — Wilhelmina Yazzie

Pathways to Education Sovereignty presents the systemic change solutions detailed in the *Tribal Remedy Framework*, which has been developed and endorsed by New Mexico's Nations, Tribes and Pueblos. These proposals are part of a comprehensive agenda for transforming education in New Mexico.

In response to the *Yazzie/Martinez* ruling, a coalition of education experts, families, teachers, superintendents, community organizations and school districts united under the umbrella of Transform Education NM (TENM) and developed a *Platform for Action*. The *Platform* lays out the minimum remedies for the state to comply with the *Yazzie/Martinez* ruling. In addition to participating in TENM's work, tribal education leaders and advocates formed the Tribal Education Alliance (TEA). Following a series of Education Community Institutes and Pueblo Convocations, convened by the Leadership Institute (Santa Fe Indian School), tribal leaders, educators, scholars, youth and tribal community members created and agreed on recommendations to guide a new paradigm for Indian education. An implementation plan was developed and aligned with the mandates in the *Yazzie/Martinez* case and the Indian Education Act. The result was the *Tribal Remedy Framework*. During the 2019 and 2020 legislative sessions, the recommendations were introduced as a legislative package. An updated version of these bills that takes into account additional education needs revealed by the COVID-19 pandemic will be introduced in the 2021 legislative session.

The *Tribal Remedy Framework* offers a step-by-step plan for turning legal and judicial mandates into policy solutions and actions. These solutions are not radical new ideas; they are inspired by successful tribal educational practices and guided by research and evidence, along with decades of policy recommendations detailed in this report. To date, none of the solutions have been implemented in New Mexico.

These strategic solutions can be summarized as follows:

1. Shared responsibility for the public schooling of Native children, grounded in respect for tribal education sovereignty;
2. Community-based education, created by and centered within tribal communities; and
3. A culturally and linguistically relevant education that revitalizes and sustains the strengths of Native children and their communities.

Implementation of these solutions would require a shift in approach, a commitment to systemic change backed by substantial targeted investments, and a willingness to share responsibility with Tribes at both state and local levels.

Pathways to Education Sovereignty analyzes how each proposed solution can help turn around New Mexico's failed education system — from governance to funding, from school environments to teaching and testing, and from early education to college. This framework for change, offered by the

Tribal Remedy Framework in tandem with TENM's *Platform*, presents a historic opportunity to begin closing the education equity gap and enable New Mexico's Nations, Tribes and Pueblos to take greater ownership over the education of their children.

Methodology

This report is based on an analysis of primary and secondary literature, stakeholder meetings and interviews. It examines historical, legal, legislative and budget documents, academic research and policy evidence, and draws on materials chronicling the development of the *Tribal Remedy Framework*. This includes documents generated by the tribal Community Institutes on Education and Pueblo Convocations held between 2016-2019, public correspondence and resolutions by tribal leadership, as well as project and budget proposals by tribal educators and meeting transcripts. In-depth qualitative information was obtained in 20 semi-structured interviews conducted with tribal stakeholders. Finally, the Leadership Institute (Santa Fe Indian School), which operates the Summer Policy Academy (SPA), an annual program for Native high school students, asked 12 youth, all SPA Fellows, to write about their vision for education; excerpts from these writings are interspersed throughout the report.

This report weaves together a collection of diverse voices and perspectives. It does not purport to represent a single voice on "Indian Education." Nor does it claim that all possible voices have been included. However, a significant finding has emerged. When carefully examined, the medley of perspectives overlaps and blends into a unified vision for Indigenous education.

GRAPH — The Equity Gap: A Snapshot of System Inputs and Outcomes

The Equity Gap: A Snapshot of System Inputs and Outcomes

“The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed and that the system must meet the needs of all children.”

(New Mexico Public School Code, 22-1-1.2 NMSA 1978)

Closing the school funding gap in the Gallup-McKinley County School District would require \$400 million over 5 years.

New Mexico's 19 Pueblos brought \$608.2 million revenue into the state in 2017, which supported 11,500 jobs and nearly \$1 billion in sales.

\$6 million were appropriated to the Indian Education Fund in 2019 and 2020.

New Mexico has 571 teachers vacancies.

2% of teachers are Native American; it would take 1600 additional Native teachers to close the diversity gap.

The state's school funding formula does not include a factor targeting Native students. The at-risk factor was increased to 0.3; providing the same factor for Native students would yield \$48M annually.

Early educators in New Mexico earn less than \$30k/year (child care worker median wage is \$9.66/ hour; preschool teachers: \$12.89).

Only 56% of schools offer bilingual classes, a 7.5% drop from 2013.

Student participation in Native language programs decreased by 15% since 2014/15.

PED asked school districts to develop a culturally and linguistically responsive framework and published a guidance handbook.

85% of school districts had no plan for supporting Native students during FY2020 COVID-19 school closures. 44% of districts did not require attendance.

For over two years, PED lacked an Assistant Secretary of Indian Education (a position required by law).

On the new Equity Councils Tribes are represented as one of four "interest groups."

A former PED Deputy Secretary visited 22 Tribes; PED convened semi-annual summits.

PED published in 2019 a draft tribal consultation guide for LEAs, responding to 2015 federal requirements and 2003 IEA mandates.

Public schools expel Native students at 1.5 times the average rate, and refer them twice as often to law enforcement.

Access to Advanced Placement is limited for Native students: in 2019 less than 4% of all students taking AP tests were Native; only 1 in 10 of these Native students passed.

PEOPLE	MONEY	EARLY EDUCATION	NATIVE LANGUAGES	CURRICULUM & INSTRUCTION	DISTANCE LEARNING	TRIBAL CONSULTATION	RACIAL HARASSMENT & VIOLENCE	SCHOOL PUSHOUT	GRADUATION	COLLEGE	EMPLOYMENT
33,755 Native children attend public schools (10.6% of student population); students of color are the majority (76%) in New Mexico.	40% of children in tribal areas live at or below the poverty level.	The share of Native children enrolled in state pre-K programs decreased from 25.1% in 2006 to <u>11.2%</u> in 2018.	<u>57%</u> of Native families speak a language other than English at home.	9 in 10 Native 8th graders are not proficient in reading, a <u>28%</u> gap between Native and white students.	<u>55%</u> of students in Title I schools were not engaged in learning by the end of the FY20 school year.	Jicarilla Apache Nation passed a resolution (2020-R-089-04) criticizing the deterioration of trust and lack of partnership with the State.	Native teenagers face the highest rate of bullying at school (<u>27%</u>) and are <u>4 times more</u> likely than whites to fear an attack or harm.	Native teens in New Mexico have the <u>highest dropout rate</u> , with a 5 year average that is almost double the dropout rate of white students.	Native students' <u>graduation rate</u> in New Mexico is 9% lower than white students'; Native students are <u>a third</u> more likely not to graduate on time.	<u>11%</u> of New Mexico's adult Native population has BA degrees or higher, compared to 42% of white adults.	Native workers' median wage is one third lower than white workers' wages (<u>\$21,990</u> compared to \$34,849) in New Mexico.
“Childhood is most threatened” in New Mexico, which ranks as one of the worst places for children.				The U.S. Civil Rights Commission noted in 2018 that irrelevant, inaccurate or inappropriate curricula can have “ <u>harmful effects</u> on Native American students.”	<u>55%</u> of rural tribal residents lack broadband. Native students are <u>3 times</u> more likely than whites to have only one device — a phone.		<u>1 in 4</u> missing and murdered Indigenous women are girls under 18 years; New Mexico has the highest number of cases in the country.	Native students in New Mexico are <u>a third</u> more likely to be chronically absent from school than white students.	Native graduation rates at some tribal community-run schools were <u>8% to 19%</u> higher in 2017 than at state-run schools.	<u>Fewer than 4%</u> of BA degrees or higher awarded in New Mexico went to Native students; compared to 37% going to white students.	
							New Mexico's Native youth have a <u>30% higher</u> than average suicide rate.	Native teens in New Mexico are <u>2.5 times</u> more likely not to be in school and not working, compared to white teens.			

III. A New Paradigm for “Indian Education”

*“We have generational work to do in restoring educational outcomes for communities of color and disadvantaged populations in our state. The system will not reform itself.”*⁶ Governor Michelle Lujan Grisham, 2020

*“The first and foremost need in Indian education is a change in point of view.”*⁷ Meriam Report, 1928

Cold statistics illuminate how New Mexico’s education system continues to fail Native students (see *Graph 1*). The persistent equity gap demands a commitment to systemic change. This gap has not narrowed since the *Yazzie/Martinez* court ruling warned in 2018 that children “will be irreparably harmed if better programs are not instituted” (Order and Decision, p. 74). It has not notably narrowed since the enactment of the Indian Education Act in 2003. Since 1928 numerous national task forces have demanded a different approach to Indian education, yet much has remained the same. Native children continue to get pushed through or pushed out of the public education system, at the cost of their well-being, language, identity and their professional futures.

At the same time, Native students are routinely turned into a statistic, a liability for New Mexico, with disparate educational outcomes attributed to stereotypical assumptions about poverty.⁸ Such racialized scapegoating places blame on children and their families for the very injustices inflicted upon them. It ignores that poverty is produced and reproduced by what historians call “the colonial condition,” which suppresses tribal self-determination.⁹ This extends into the realm of education, where Native values, languages and cultures are treated as educational weaknesses rather than strengths. A Native child starts with a deficit, so the story goes, and schooling seeks to remediate this deficit through assimilation, a deleterious process considered a gateway to academic success.

The *Yazzie/Martinez* ruling shattered this perception by attributing disparate educational outcomes not to the individual but to a “systemic failure” (Id., p. 46). It exposed that Native children attend systemically under-resourced schools that fail to provide essential educational programs and services and ignore students’ diverse strengths and needs. The court tallied up educational inputs (e.g. teachers, curriculum, technology) and outputs (e.g. graduation rates and test scores) and brought to light the state’s “failure to provide adequate educational inputs” (Id., p. 40). The court proceedings “uncovered the institutional forces behind the widespread deficiencies undermining the educational success for American Indians in New Mexico today.”¹⁰

Native students are neither “failing” school nor “dropping out” — the court’s findings revealed that they are being pushed out by schools and administrators, teachers and policymakers. This leaves one in seven Native students without a high school diploma or equivalent.¹¹ In order to succeed, students are expected to cope with racial discrimination and bullying, accept without question a shortage of teachers and technology, and conform to a biased curriculum and distorted set of assessments. Unsurprisingly, these injustices manifest themselves in disparate educational outcomes. Yet the policy and funding solutions offered by the state do not match the scale and depth of the problem.

“Native American students face challenges that not every American student faces, including racism, and balancing their traditional and non-traditional life.” — Celeste Lucero, Isleta Pueblo/Turtle Mountain Chippewa (Summer Policy Academy 2018 Fellow)

The Piecemeal Approach: Shortchanging Indian Education

New Mexico’s response to the *Yazzie/Martinez* ruling largely consisted of minimal funding increases and announcements of piecemeal reforms, along with a suite of guidance documents thrust upon

school districts. Missing from the state's actions was a comprehensive plan or strategy to comply with the court's order. Bills introduced in 2019 and 2020 by state Senator Mimi Stewart of Albuquerque, which would have established a temporary Commission on Equity and Excellence to develop a long-term plan for transformation, did not gain traction.

New Mexico is one of many states with an active court case addressing education rights and equity. It is not uncommon for these lawsuits to result in a court-imposed plan and financing mandate to achieve more equitable funding for schools serving Black and Brown students. Most recently, the State of North Carolina was ordered in *Leandro v. State* (346 N.C. 336) to make significant additional investments in education, as part of an eight-year court-ordered plan to fulfill children's constitutional right to a sound education.¹² A 2002 ruling mandated North Carolina to provide the resources necessary to meet the educational needs of at-risk children, yet the state had consistently failed to put forward an adequate, equitable and needs-based education budget.¹³

New Mexico's recent education budget increases, enacted prior to the pandemic, barely reached the pre-recession funding levels of 2008 and entailed no substantive changes to the state's funding formula. Although the legislature passed new requirements for state agencies to prioritize evidence-based programs in their performance-based budgeting (6-3A-7 NMSA 1978), it did not consider a needs-based approach to budgeting. Education financing in New Mexico is still not based on an assessment of what it would cost to provide all students with the programs and services they need to be college, career and community ready.

An estimate of what it would cost to raise educational outcomes to the national average found that New Mexico has a total school funding gap of \$1.90 billion per year, which amounts to \$5,924 per student.¹⁴ The state's school funding formula, created by the 1974 Public School Finance Act and known as the State Equalization Guarantee (SEG), distributes approximately \$3.1 billion annually to public schools across the state. The FY2020 education budget increase of around \$430 million pales in comparison to the persistent funding gap — a gap ranked as the fourth worst per student in the country. Notably, school districts with majority Native students suffer from much larger gaps. In the Cuba Independent School District, the funding gap is almost \$15K per student. At Zuni, the funding gap is \$14K, in the Gallup-McKinley County School District it is \$12.4K, and in the Central Consolidated School District the funding gap hovers around \$7.7K per student.¹⁵

The SEG includes a number of special formula factors that result in increased allocations to districts serving certain student populations. The Legislative Finance Committee (LFC) presented evidence that targeted funding, and specifically increases in the at-risk formula factor, improves educational outcomes.¹⁶ But the SEG does not include a factor related to Native students or Native languages. Although the *Yazzie/Martinez* ruling classified Native students as part of the "at-risk" student group, the at-risk formula allocation under the SEG is not directed at Native students or tribal education programs. Tribal programs are not eligible SEG funding recipients.

The *Yazzie/Martinez* court ruling recognized the Indian Education Act as a constitutional mandate (FFCL ¶3067), but Indian education in New Mexico remains largely unfunded. The court criticized the competitive Indian Education Fund grant program, which currently awards a total of \$6 million in the form of one-off grants to Local Education Agencies (up to \$90K per grant) and Tribal Education Departments (up to \$100K per grant).¹⁷ The court leveled its criticism at the fact that it is "difficult to use [these grants] for programs that should be sustained year-after-year" (Decision and Order, p. 50). It also made reference to the testimony of Senator Mimi Stewart, in which the Senator noted that "the funding levels and inconsistency limit the effectiveness of the funded program because of the relatively small number of students it reached" (Id.). The lack of permanent and sufficient funding for Indian education mirrors the situation in Montana in 1999, when that state adopted an unfunded Indian Education for All Act. It took six years and a school funding lawsuit before the Montana legislature appropriated funds to implement the law.¹⁸ Similarly, closing the equity gap for Native students in New Mexico will require a permanent and recurring source of funding. An investment of state funds could increase capacity within Tribes and schools, build an infrastructure

of community-based education facilities and programs, and support a collaborative effort with higher education programs.

School districts with large populations of Native children residing on federal lands, which includes Indian Trust or Treaty lands, receive federal subsidies for educating these students. This “Impact Aid” (P.L. 81-874 and P.L. 81-815) is intended to compensate districts for the loss of local property taxes and limited bonding ability. However, rather than allow districts to use federal Impact Aid to level the playing field for Native children, the State of New Mexico takes 75% of these federal funds, folds it into the State Equalization Guarantee formula and redistributes it to other school districts. This means that federal funds generated by Native students for their education are used by the state to subsidize the education of non-Native students. Specifically, the state reduces its allocations to districts that educate Native children by taking 75% in federal Impact Aid as “credit,” thus limiting the ability of impacted districts to build out education infrastructure, programs and services. As a result, the only “guarantee” under the State Equalization Guarantee formula is that children in majority Native districts will remain poor and without an adequate education, according to one longtime school superintendent.

The persistent inequities in public school funding have been challenged in a number of lawsuits leading up to the *Yazzie/Martinez* ruling. In 1999 a district court ruled in *Zuni School District v. State* that New Mexico’s capital school funding system was inequitable.¹⁹ A subsequent lawsuit against the state’s use of Impact Aid (*Zuni Public School District v. Department of Education*) was unsuccessful. However, when the same challenge was filed in 2019 with the U.S. Department of Education, the agency issued a ruling in April 2020 barring the state from taking credit for Impact Aid in FY 2020 and allocating it as part of SEG funding. The Department affirmed what tribal leaders had long argued since the state began siphoning off Impact Aid funds with the creation of the SEG in the 1970s. In addition to the *Yazzie/Martinez* court ruling, which declared that state funding for at-risk students was insufficient, the federal Impact Aid ruling points to a pattern of chronic underfunding of Indian education in New Mexico.

Funding equity would require sufficient education resources to be raised and allocated based on student need. Budgets should not rely on existing program cost or supplemental federal grants such as Impact Aid. Besides allowing school districts to keep the federal Impact Aid they generate, the state must calculate what it would cost to meet its constitutional obligations and comply with the *Yazzie/Martinez* ruling. A complete overhaul of the state’s school funding formula will likely be necessary to ensure that Native students have equitable access to educational resources, programs and services.

There is little evidence to date that the state has comprehensively assessed what it would take to uphold Native students’ right to a sufficient education. The Public Education Department’s (PED) progress reports presented to the Legislative Education Study Committee (LESC) and the LFC in July and August 2020, respectively, list disparate projects but lack a long-term strategic plan for systemic change.²⁰ The *Yazzie* plaintiffs, in collaboration with TENM and TEA, presented their own assessment of the state’s actions and concluded that the state had much more work to do to overhaul the education system.²¹ In September 2020 the LESL criticized PED’s descriptive accountability model focused on “sharing vague, ambiguous data” and lacking “meaningful goals,”²² and an LFC presentation on state actions to meet *Yazzie/Martinez* mandates showed few notable actions and no explicit strategies or goals.²³

The Transformative Approach: Investing in Indigenous Education

New Mexico’s education system needs a transformative approach in order to fulfill every student’s constitutional right to an adequate and sufficient education. Otherwise, closing the equity gap may take another hundred years — the time frame calculated for overcoming the equity gap for disadvantaged children in Britain.²⁴ Almost a hundred years ago in this country, the Meriam Report condemned the “work of the government directed toward the education and advancement of the Indian himself, as distinguished from the control and conservation of his property, [as] largely ineffective. The chief explanation of the deficiency in this work lies in the fact that the government

has not appropriated enough funds” (Meriam Report, p. 8). In fact, it was through the effective “control” of Tribal and Hispanic property that New Mexico’s Permanent Land Grant Fund (valued in 2020 at around \$20 billion) was established upon entry into statehood in 1912. Since the fund was earmarked for the purpose of financing education, the newly created public school system benefited directly — and continues benefiting to this day — from the break-up of tribal structures and tribal lands, instigated by late 19th century federal policy. The Ferguson Act of 1898, followed by the Enabling Act of 1910, transferred millions of acres, including Pueblo and Spanish land grants, into public trust to support New Mexico’s public schools and other institutions. Renowned tribal leader and longtime president of the Mescalero Apache Tribe, Wendell Chino, often pointed out that “our people made the biggest down payment to secure our homelands for all future generations along with education and health care for our people for as long as the waters flow and the grass grows.”²⁵ The Mescalero Apache Tribe, along with New Mexico’s other Tribes, are still waiting for those promises to be fulfilled.

Equitable and sufficient funding for educating Native students would go a long way toward redressing unmet needs. But without dismantling the “underlying assimilative nature”²⁶ of the Western-designed school system, the history of forced acculturation will continue into the present day. Additional funding would simply shore up an unjust system. The persistent education equity gap is embedded in the destructive history of Indian education in the United States. The boarding school agenda, conceived in the 1890s, sought to “kill the Indian... and save the man.”²⁷ Promoted as a more humane solution to the so-called “Indian Problem,” federal Indian education policy channeled the extermination agenda of previous centuries into a form of cultural genocide. Through education, the colonial state attempted to eradicate tribal cultures and values by removing young children from their families, deliberately disconnecting them from their language, their communities and their way of life.

The harm American schooling inflicted on Native children and their communities runs deep. Generations of child abuse and neglect did not end with federal boarding schools, but continued with the forced integration of Native children into state public schools. As public schools were reluctant to serve Native children, the federal government began paying states for educating Native students in public schools through the Johnson O’Malley Act (JOM) of 1934. The act was part of the so-called “Indian New Deal,” which sought to reduce the grip of the Bureau of Indian Affairs on virtually every aspect of Native people’s lives. JOM paved the way for Native children to obtain a public school education, an alternative to missionary and federal boarding schools. Despite that, Native children faced overt racism, discrimination and outright neglect in state schools,²⁸ and their families actively resisted the cultural domination and indoctrination perpetrated by teachers, school leadership and administrators. According to Dr. Joseph Suina, renowned Cochiti Pueblo education expert, “there has never been a come-together of the two entities, the school and the tribe, the family. We have never enjoyed what middle class America has always enjoyed, and that is a continuation of home language, home values, home knowledge in the school.”²⁹ Without tribal resistance to American schooling as an instrument for eradicating Indigenous cultures and communities, historians acknowledge that “there would be no culturally recognizable Indian people today.”³⁰

“What many educators fail to understand and appreciate is that many of our Native people have yet to buy into mainstream America but instead walk a thin line of balance between the White world and our own way of life.” — Jasmine Yepa, Jemez Pueblo (Summer Policy Academy 2008 Fellow)

To the present day, Native families’ distrust in public schools is fueled by a dominant culture that disregards Indigenous values, cultures and the tightly threaded fabric that weaves family, clanship, ceremony and communities together. The one-sided Western view ignores the legacy of colonial structures endemic in the education system, which prop up the racial discrimination Native students and families experience on a daily basis.

The continuum of historical injustices, present day failures to comply with laws and court orders, and the prospect of losing future generations to a Western way of life is evident to New Mexico's Nations, Tribes and Pueblos, yet obscure to others. The pandemic might change this: the depth of entrenched inequities surfaced dramatically as Native Americans are dying of COVID-19 at 23 times the rate of whites.³¹ When access to running water and electricity appears as a privilege, it becomes clear that Native children have been deprived of more than the modern technology required for distance learning. As President Gabe Aguilar of the Mescalero Apache Tribe noted in a letter to New Mexico Governor Michelle Lujan Grisham: "This pandemic has exposed generations of broken promises."³²

Decolonizing education and dismantling the racist systems of oppression that deprive Native children of an adequate education demands more than piecemeal reforms. It involves acknowledging how patterns of domination have harmed one culture while benefiting another. It requires recognizing tribal communities as sovereign nations and yielding to them on decisions that affect their children's education. It calls for a shift from an assimilationist Indian education paradigm to an Indigenous education model, where the dignity, knowledge and values of Native children and their communities are clear, visible cornerstones.

"If change is implemented piecemeal, we end up with pockets of excellence that serve the few and a flawed education system that does not work for the many."³³ This warning, issued by the Indian Nations At Risk Task Force 30 years ago, was not heeded. As a result, it can still be used to describe current education reform failures. What would education look like today if the country had implemented the large-scale investment plan proposed by the 1969 Kennedy Report, which "compared the size and scope of the effort [that] must be mounted to the Marshall plan which revitalized postwar Europe"?³⁴

New Mexico has both a moral and a legal obligation to transform education. It could lead the way toward a new model of schooling that sustains and revitalizes the values and cultures of tribal communities and their children. When the Indian Education Act was enacted in 2003, it was meant to set the state on a path of change. By that time, state education agencies had substantially increased their role in the education of Native children, due to the gradual devolution of federal powers to the states, including New Mexico. However, this shift occurred without the establishment of formal relationships between state agencies and sovereign Tribes. Whereas federal Indian policy has been characterized by government-to-government relationships between Tribal Nations and the U.S. government since the self-determination era of the 1970s, initially such mechanisms did not exist at the state level (and largely remain absent at the local level). While Tribes were offered control over schools and school funding at the federal level, no similar sharing of responsibility occurred at the state level. On the contrary, while Congress encouraged state-tribal interaction, federal policy authorizations tended to be "lopsided in favor of state control."³⁵ Gradually, however, New Mexico developed a legal framework for state-tribal intergovernmental collaboration, starting in the areas of taxation (e.g. 7-12-19, 7-2A-16, 7-29C-1 NMSA 1978) as well as child welfare. Since the 1990s, the state and Tribes share responsibility for child welfare, guided by New Mexico's Children's Code (32A-1-8 NMSA 1978). A decade later, the passage of the Indian Education Act marked the culmination of concerted efforts to embed the principles of government-to-government relations and state-tribal collaboration in state education law and policy. One of the act's central precepts was to increase tribal control over public schools that serve Native children (22-23A-2 NMSA 1978). But whereas matters of child welfare (as well as taxation) have benefited from the sharing of authority and responsibility between Tribes and the state, no such reciprocity has occurred in public education. Native students have been ill-served by this one-sided approach.

Tribal Solutions for Systemic Change

Full implementation of the Indian Education Act, as amended in 2019, must be one of the cornerstones of a transformed and just education system. The *Yazzie/Martinez* court ruling was clear that the state had to comply with the mandates in the act. This necessitates a fundamental change in approach. But meeting the needs of Native children and their communities is not an intractable challenge in search of brand new ideas; it is about shifting the perspective, along with

sharing power over policy and resources. Recognizing that education should be a shared responsibility entails working with tribal leaders, educators and communities, which have considerable experience designing and delivering education programs for Native children. Tribes have successfully established or taken over schools and colleges, developed Indigenous language preservation and revitalization programs, implemented culturally relevant instruction, built community education centers and partnered with higher education programs. At a Pueblo Convocation convened by the Leadership Institute in 2018, tribal stakeholders reflected on their experiences, and observers identified a set of shared lessons:

- *All of the Pueblos had sought their direction from their own people, convening community meetings to establish their priorities.*
- *All of the Pueblos sought to define success on their own terms.*
- *All of the Pueblos maintained language and culture at the heart of each initiative.*³⁶

The transformative framework Tribes developed to guide the state's compliance with the *Yazzie/Martinez* ruling is grounded in these lessons and also draws from similar experiences shared by members of the Navajo Nation, the Jicarilla Apache Nation and the Mescalero Apache Tribe. The *Tribal Remedy Framework* offers comprehensive guidance for a new education paradigm, envisioning a balanced education system that brings schools and communities together and shares responsibility and resources. It offers a relevant education that welcomes tribal values, cultures, languages and knowledge systems into public school classrooms. This new education paradigm is centered on three systemic solutions that complement and build on each other:

1. Shared responsibility and increasing tribal control over the schooling of Native children;
2. Community-based education through investing in infrastructure and programs created by and centered in tribal communities; and
3. A culturally and linguistically relevant education that is revitalizing, sustaining and builds on the strengths of Native children and their communities, thus creating a balanced education from early childhood to adult learning.

Each of these solutions, discussed in this report, requires a shift in approach, not in rhetoric. It calls for a dramatic change in course, ending systemic biases and redressing historical injustices; incorporating Indigenous expertise and tribal communities' successful practices; and acting on Native students', families' and communities' visions for transforming education.

IV. Solution 1: Shared Responsibility in Public Education

*"The thing that has always been missing in Indian education, and is still missing today, is Indians."*³⁷ Vine Deloria, Jr., Lakota, 1992

*"It is time for Indian people to define Indian education in their own voices and in their own terms."*³⁸ Gregory Cajete, Santa Clara Pueblo, 1994

Nine in ten Native children attend public schools, yet New Mexico's Tribes have little say over how these schools are run, how they address the needs of Native students, or how they spend their budgets.

How can the state and Tribes shift toward shared responsibility for the public education of Native students? Or, more pointedly, how can New Mexico finally overcome the "paternalism"³⁹ called out by the Kennedy Report half a century ago? In order to "significantly improve education for Indian students," the Indian Nations At Risk Task Force recommended almost three decades ago to

implement “[s]trong community control and partnerships among Tribes, school districts, colleges, and the state and federal government” (Task Force, p. 59).

The formal rights of Tribes relating to the education of Native children are spelled out in many legal and policy mandates. The United Nations Declaration on the Rights of Indigenous Peoples, which has been endorsed by the United States, states that “Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”⁴⁰ However, the right of Indigenous people to exercise education sovereignty is jeopardized by contradictory federal, state and local policies and practices, such as funding formulas, unilateral decision-making and standardized assessments. New Mexico is well-positioned to provide leadership in resolving those policy tensions. The Indian Education Act requires the state “to increase tribal involvement and control over schools” (22-23A-2 NMSA 1978). However, the *Yazzie/Martinez* ruling found that this has not yet happened (Decision and Order, p. 28-29).

The state, Tribes and school districts should share responsibility for school governance, accountability and funding decisions. In order for Tribes to become partners in school governance, the state must first honor, enforce and support formal tribal consultation, collaboration and consent in school district decision-making in ways that align with tribal sovereignty. Second, the state must ensure that federal and state funds generated by Native students are used in accordance with student needs, which requires a joint governance and accountability framework that involves Tribes in school spending decisions. Third, state resources must be shared equitably, allowing Tribes to access state funds in order to provide programs and services for their students.

1. What is the shift in approach?

New Mexico’s Tribes must have a say over the education of their children. While Tribes have already taken control of half of New Mexico’s Bureau of Indian Education (BIE) schools and are establishing tribal charter and community schools, developing positive relationships with local school districts, as advised by *Yazzie/Martinez* (FFCL ¶522.g), remains a challenge. With 33,755 Native children in public schools, Tribes cannot afford to leave decisions about their education to Local Education Agencies (LEAs), superintendents and school boards, which are largely comprised of non-Native people.⁴¹

LEAs must recognize that educating Native students implicates issues of tribal sovereignty.⁴² Derived from the U.S. Constitution, Treaties and Supreme Court decisions, several federal statutes recognize that “Indian tribes exercise inherent sovereign powers over their members and territory” (P.L. 93-638). At the most basic level, sovereignty means that Tribes have an inherent authority of self-determination and self-governance and cannot be ruled or regulated by the state or its political subdivisions. At the same time, tribal citizens are also state and U.S. citizens, and rights-holders under the New Mexico and U.S. constitutions. The federal government has a unique government-to-government relationship with sovereign Tribes. Treaty obligations commit the United States to provide Tribes with basic services such as education, health care and housing. This gives rise to special federal funding streams, including those attached to the Native student population in public schools, as well as federal requirements for tribal consultation. While there are no such treaty obligations between the State of New Mexico and sovereign tribal governments, government-to-government relations and tribal consultation are mandated under the State-Tribal Collaboration Act of 2009 and the Indian Education Act of 2003.

Of paramount importance for Tribes, beyond legal and political mandates, is the profound connection between sovereignty and Indigenous cultural identity. Sovereignty is key to the protection of every aspect of Indigenous ways of life, including cultural integrity. The ongoing loss of language and culture threatens the core principle of tribal sovereignty.

The link between self-determination, tribal identity and cultural and linguistic expression illuminates the role of tribal sovereignty with regard to education policies and practices. If sovereignty is “rooted

in a community's conceptions of its needs and past, present, and future,"⁴³ what and how community members learn becomes key to a Tribe's continued sovereign existence. Thus, tribal sovereignty intertwines with education sovereignty. In so far as it is exercised in a context of overlapping state and federal sovereignties,⁴⁴ education sovereignty is not a matter of unilateral decision-making, but one of shared responsibility and governance.

The *Yazzie/Martinez* ruling found little evidence of cooperation in education: "The Indian Education Act is premised on the idea that a culturally relevant education is to be produced through the cooperation of the schools and the tribal communities. This goal has not been realized in most of the districts with significant Native American student populations" (Decision and Order, p. 28). Given the court's observations, Tribes not only have a legitimate reason for collaborating with schools, but can also make important contributions in terms of helping public schools meet Native students' needs. Therefore, public schools should consider a cooperative approach as an essential tool for improving educational outcomes, rather than an obstacle. For a school to be effective, it must understand who their students are, where they come from, and how they and their respective communities envision and define educational success.

Community collaboration leads to a richer notion of school accountability. Beyond measuring school performance against standardized state and federal assessments, schools should be incentivized to embrace direct accountability to the communities they serve. Increasingly, education advocates across the country are piloting more participatory approaches to school governance, accountability and budgeting, not only to improve outcomes but also to strengthen democracy. For example, some schools have introduced participatory budgeting, allocating district or school budgets through participatory, community-engaged processes.⁴⁵

In developing the *Tribal Remedy Framework*, tribal leaders, education advocates and tribal community members sought to take a step toward reclaiming the education of Native children. The vision embedded throughout the *Tribal Remedy Framework* highlights important tribal tenets and beliefs: the schooling of Native children should be shaped by a tribal community's views of what an educated Indigenous person should know by the time of graduation, what counts as knowledge and what constitutes the purpose of schooling. Values and goals important to a tribal community should be reflected in educational programming, balanced with — but not overwhelmed by — state and federal goals and standards. Tribes should be empowered to make administrative, programming and budget decisions that impact their students. Schools should engage families and communities and receive guidance and support from a broad range of stakeholders. Tribal self-determination opens up possibilities for greater collaboration and participation, rather than exclusion or self-isolation. The goal is to make public education relevant for everyone — especially for those who have been disillusioned and harmed by it.

2. What is the history and mandate?

Half a century ago, the Kennedy Report called for "increased Indian participation and control" in education (Kennedy Report, p. xiii). Its findings were highly critical, noting that "Indian involvement in the operations of the schools attended by their children was practically or entirely nonexistent" (Id., p. 135). "The schools rarely understand the Indian community and cultural differences, and the Indian community rarely has any influence on the school" (Id., p. 134). The report recommended that "state and local communities should facilitate and encourage Indian community and parental involvement in the development and operation of public education programs for Indian children" (Id., p. 135).

At the time, this recommendation reflected the activism of Indigenous organizations and movements and the emergence of the federal self-determination agenda. The Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) allowed Tribes to contract for the provision of programs and services previously run by the federal government, including BIE schools. This act became the statutory basis for the shift toward tribal self-governance.⁴⁶ In its wake, the Education Amendments Act of 1978 (P.L. 95-561) deemed tribal organizations that

operated their own schools equivalent to LEAs and made them eligible for direct federal funding. In addition to encouraging Tribes to take control of BIE schools located on tribal lands, federal policy mandated collaborative educational planning and decision-making for Johnson-O'Malley contracts. It also required LEAs receiving Impact Aid to follow the Indian Policy and Procedure (IPP) guidelines (Impact Aid Section 7004), which involved tribal consultation. For federal policymakers, tribal sovereignty was likely of less interest than programmatic effectiveness and efficiency. It simply made sense, according to the Kennedy Report, to "place the initiative and responsibility for change and improvement in the hands of those who best understand the problems" (Kennedy Report, p. 134), namely, in the hands of the Tribes.

Even with federal support, the process of reclaiming a school and shifting from assimilation to self-determination is a long one, as the example of the Santa Fe Indian School (SFIS) illustrates. In 1976, the All Indian Pueblo Council was the first tribal organization to utilize the Indian Self-Determination Act to contract for operating a federal boarding school, first in Albuquerque and then transferring the school back to the current SFIS campus. Following the Tribally Controlled Schools Act of 1988 (P.L. 100-297, Title V) SFIS became a tribally controlled school governed by a Board of Trustees, and in 2000, Congress returned the school's land to the 19 Pueblos of New Mexico, enabling SFIS to exercise educational sovereignty.

Whether a school is tribally or publicly run, the principle of self-determination and the protocols behind it should apply to all decisions affecting Native children's education. In 1991, the Indian Nations at Risk Task Force reiterated that "[r]esponsibility for the education of Native students must rest in the hands of the parents and communities served by schools" (Task Force, p. 33). It stated that "[p]artnerships between schools and Native communities and Tribes must become one of the schools' highest priorities" (Id., p. 45). The Task Force concluded that "educational reform includes local empowerment, accountability, and adequate financial and political support" (Id., p. 17). Almost twenty years later the National Caucus of Native American State Legislators reminded legislatures around the country to "[i]ncrease the voice of Native peoples and their participation in the work of schools."⁴⁷

An overview of state Indian education laws, compiled in 2005 by the Native American Rights Fund (NARF), found that "tribes have been denied [the] opportunity and responsibility" for tribal governance of education and "have been left 'out of the loop' in terms of decision-making and accountability."⁴⁸ On the positive side, the report pointed to state laws allowing cooperative agreements between school districts and Tribes. North Dakota's statute (Chapter 54-40.2), for example, enables school districts to contract with Tribes for the provision of educational services. NARF concluded that for "Indian education to succeed, federal and state governments must allow tribes the opportunity to regain governance of the education of tribal students, thereby shaping their children's future and their own future as tribes."⁴⁹ However, another decade later, the U.S. Commission on Civil Rights would express concern that tribal self-determination in education was limited to federal programs and had almost no impact on public schools operated by state and local authorities, which "have historically excluded tribal input."⁵⁰

One key barrier to education sovereignty was the emergence of national performance standards for public schools. The No Child Left Behind Act (NCLB) of 2001 adopted a one-size-fits-all approach ignoring unique student needs. It turned accountability upside down as it gave individual students the impression that they were responsible for their school's performance.⁵¹ The NCLB's accountability approach was the opposite of the quest for community accountability. It ran counter to the accountability recommendation made by the Indian Nations At Risk Task Force, which called for developing "comprehensive educational plans with local districts and tribal governments to meet the educational needs and to improve the academic achievement of Native students" (Task Force, p. 39). In 2009 the United Nations called on state actors around the world to implement "shared decision-making" with Tribes and urged "the participation of Indigenous peoples in all phases of the planning, design, implementation and evaluation of reforming education systems."⁵²

The Every Student Succeeds Act (ESSA) of 2015, which replaced NCLB, is, at least on paper, more conducive to facilitating tribal consultation and participation. According to the U.S. Commission on Civil Rights, it was designed to give “tribal authorities a voice in decisions concerning the education of Native youth in public schools—from the use of federal grants to the development of academic programs and curricula.”⁵³ New Mexico’s Public Education Department (PED) waited until 2019 to prepare a draft tribal consultation guide for LEAs, who are required by ESSA (Title VIII, Part F, Section 8538) to consult with Tribes prior to submitting their ESSA plan. According to the PED, topics for consultation include the “equitable allocation of resources.”⁵⁴

New Mexico’s Indian Education Act requires collaboration between LEAs and Tribes (22-23A-10 NMSA 1978), while the State-Tribal Collaboration Act calls on state agencies to collaborate with Tribes in the development and implementation of policies and programs that directly affect them (11-18-3.C. NMSA 1978). New Mexico’s Children’s Code, in a provision enacted in 1993, guarantees tribal authority over services available to Native children under tribal court orders, whether such services are state-funded or not (32A-1-8.). In 2006 the Legislative Finance Committee (LFC) pointed to the Navajo Sovereignty in Education Act of 2005 (NSEA) as a “leading initiative and example for other Tribes/pueblos/nations in increased tribal involvement and control of education.”⁵⁵ The NSEA established a Navajo Nation Board of Education to oversee the operation of all schools serving the Navajo Nation, either directly or through joint powers agreements or memoranda with school districts (10 N.N.C. §106 A). At the state level it took until 2019 for stronger collaboration requirements to be incorporated into the IEA. School districts are now mandated to partner with Tribes in developing plans for meeting Native student needs (22-23A-9 NMSA 1978).

A study by the Leaning Policy Institute, published in September 2020, underscored the importance of “authentic collaboration with tribes” at the school district level and recommended developing local capacity for community-engaged planning and budgeting. The study envisioned a “supportive accountability system” that combines state data and support with community-appropriate strategies based on local expertise. It proposed “regionalized technical assistance” to guide tribal collaboration and community-engaged accountability processes.⁵⁶

3. What problems does this solution address?

The *Yazzie/Martinez* ruling found that “Defendants [i.e. the State of New Mexico] have not ensured that school districts are consulting with Tribes in a meaningful manner” (FFCL ¶620), nor have they provided “a means for formal government-to-government relationship[s] between the Tribes and the state” (FFCL ¶588). The *Yazzie* plaintiffs’ compliance motion of January 2020, referencing affidavits submitted by several Tribes, reiterated that state consultation efforts “are nothing more than lip service and have no real effect.”⁵⁷ The state admitted as much in its April 2020 Motion to Dismiss, when it pointed to visits and conference presentations as evidence of consultation. The lack of meaningful consultation and collaboration has led to a deterioration of trust in the PED and the state, according to a resolution passed by the Jicarilla Apache Nation in April 2020.⁵⁸

The lack of meaningful consultation, collaboration and participation reflects a deeply ingrained power imbalance between state and local agencies on the one hand and Tribes on the other. The persistent reluctance to fully recognize and accept the inherent, sovereign powers of tribal governments spills over to tribal education sovereignty, despite state and federal mandates. This has created a disconnect between the schooling provided by public schools and the education that Indigenous students, families and communities want and need. There is no strategic effort to address the unequal balance of power between Tribes and school districts that systematically marginalize the voices of Native students, families and tribal leaders.⁵⁹ Despite rhetorical commitments, there also appears to be no programming or budgeting strategy that specifically targets differential student needs, whether these are based on tribal identity, language, racial or economic backgrounds.

“Education should be a right, not a privilege. Students from low-income and people of color communities should not have to fight 10x harder just to keep up with their peers.” — Natisha Toya, Jemez Pueblo/San Felipe Pueblo (Summer Policy Academy 2014 Fellow)

Tribal communities have rarely been involved in setting educational goals, content standards or assessment criteria, outside of Native language programs. A standardized, top-down, teaching-to-the-test system impedes community input. The comprehensive 2010 study, *Indian Education in New Mexico, 2025*, found that the inclusion of Indigenous education goals and values was thwarted by NCLB mandates that promoted acculturation to American society.⁶⁰ While performance monitoring has undergone some reforms since then, the dominant purpose of schooling has not. As long as a key goal is to prepare students for a competitive economy and individualistic society centered on materialistic goals — a form of cultural assimilation to the colonial state — integrating a community vision of education remains challenging.

Standardization on the one hand and IEA mandates for tribal involvement and cultural responsiveness on the other produce policy conflicts that, if left unresolved by the PED, leave local districts and schools in a bind.⁶¹ For example, schools are required to “[a]nnually measure the achievement of not less than 95 percent of all students” through statewide assessments (ESEA section 1111(c)(4)(E)(i)), and also to implement “curricula in native languages, culture and history” (22-23A-5 NMSA 1978). Attempts at reconciling these directives often come at the expense of the IEA, which is less known at the local level — including in public schools on tribal homelands and in border towns — and has weak enforcement mechanisms.⁶² Even Native language efforts are hampered by a lack of understanding among local educators of the legal and policy implications of tribal sovereignty.⁶³

An education system that ignores differences in community goals and needs will not be able to implement adequate accountability mechanisms. The *Yazzie/Martinez* Court mandated “a system of accountability to measure whether the programs and services actually provide the opportunity for a sound basic education and to assure that the local districts are spending the funds provided in a way that efficiently and effectively meets the needs of at-risk students” (Decision and Order, p. 74f). Yet without tribal consultation and collaboration, the state lacks the capacity to understand how funding and programming can best be deployed to meet Native students’ needs. This deficiency is at the core of the education system’s constitutional failure. It is the direct result of a reluctance by the PED and Local Education Agencies to share responsibility with Tribes and to incorporate tribal education sovereignty into a comprehensive plan that addresses Native student needs.

The lack of institutional capacity at both state and tribal levels hampers effective governance and accountability. PED has failed to staff its Indian Education Division (IED) in line with statutory mandates (22-23A-5 NMSA 1978; see also FFCL ¶¶463, 594, 628-29). The position of assistant secretary for Indian Education has been vacant since the 2018 termination of the last secretary, who stated that “we have fallen short and have a very long way to go.”⁶⁴ While PED expects to appoint a new assistant secretary in October 2020, the long-term vacancy indicates that essential duties mandated by the IEA, which accords a key role to the assistant secretary, have been neglected for a considerable period of time. Several other IED positions also remain vacant, creating a situation where PED lacks sufficient expertise of Indigenous education content, tools and assessments. The IED’s staffing profile should reflect both the size of the student body and the challenges underscored by the *Yazzie/Martinez* case. A string of resignations has contributed to the perception of turmoil in the Indian Education Division, and points to a need for more support from the Governor’s Office. Consultative bodies, such as the Indian Education Advisory Council and the new Equity Councils, are viewed by many stakeholders as lacking authority. Moreover, by reducing tribal representation on Equity Councils to those of other interest groups, these entities appear to undermine the special legal and political status of Tribes.

At the tribal level, it is the role of Tribal Education Departments to oversee the education of Native children, yet they do not have sufficient capacity for working closely with public schools. The state did not heed the LFC’s warning back in 2006 that the “PED has not developed a strategy and

working relationship to develop the capacity of Tribes/pueblo/nations education departments and coordinate efforts.”⁶⁵ TEDs serve as counterparts to both the PED and Local Education Agencies, and are tasked by the IEA to collaborate with agencies and stakeholders at all levels. However, they are largely grant-dependent unless a Tribe is able to contribute an amount in tribal revenue. State grants are competitive, non-recurring awards from the Indian Education Fund that tend to arrive late in the year, with the risk of reversion to the state if not spent immediately. In FY 2020 grants were awarded mid-year and one third of grant allocations remained unspent.⁶⁶ Many TEDs lack the administrative infrastructure to enable a quick ramp-up in spending. Due to underfunding, most are understaffed, pay low salaries and experience high turnover. Unlike some federal grants, which are awarded for multi-year cycles to include development, planning and implementation phases, state grants are not designed to build capacity. As a consequence, many TEDs struggle to respond to what little information and data is shared by school districts. They would need significantly more capacity to lead tribal education visioning and planning and engage in public school governance.

How little say most TEDs have in school district matters is on full display in federally mandated consultation processes, which are beset with problems. LEAs receiving federal Impact Aid must consult with Tribes to develop, implement and evaluate Indian Policies and Procedures (Impact Aid Section 7004) that cover issues from student needs assessment and programming to budgeting. In some districts, consultation is perfunctory; in others, it does not happen at all. Since little federal money actually remains within those districts that generate the federal funds, local stakeholders are not sufficiently incentivized to engage in meaningful consultation. A lack of PED oversight means rules are not enforced, accountability goes unchecked, and chronic capacity gaps within the PED stand in the way of consistent support and training to improve consultation practices.

4. How does this solution work?

New Mexico is legally required to ensure that Tribes can take their seat at the table and share responsibility with the PED and Local Education Agencies for the education of Native children (22-23A-2.D, 22-23A-9.C, 22-23A-10 NMSA 1978). Three strategies can help make this happen: first, increasing the capacity of Tribal Education Departments; second, funding TEDs through recurring state sources; and, third, using a culturally appropriate governance and accountability framework to assist TEDs and LEAs in their mutual engagement and responsibility.

TEDs serve the educational needs of tribal members from birth through adulthood. They cultivate lifelong learning, rooted in Native languages and culture, and guide students toward becoming contributing members to tribal communities.⁶⁷ Most TEDs in New Mexico operate Head Start programs, Native language programs, a tribal library, summer school and student support services. Yet many lack the capacity and resources for long-term education planning, expanded programming and engagement with LEAs and public schools.

This is not uncommon: a study by the Institute of Education Science of partnerships between TEDs and LEAs in other regions of the country struggled to identify a sufficiently large set of functioning partnerships for its review.⁶⁸ It found that TEDs with existing partnerships had a reliable source of permanent funding, usually in the form of tribal revenues. Partnership obstacles included discrimination and mistrust. However, partners cited the existence of a formal agreement, such as a memorandum of understanding, as a success factor. In New Mexico, few formal agreements between TEDs and LEAs exist.⁶⁹ These are largely limited to Native language instruction and federal funding, with other issues addressed on an ad hoc basis. The *Indian Education 2025* study pointed to “the importance of developing formal agreements between tribal communities and public schools to ensure that accountability includes Indigenous knowledge, and culturally responsive curriculum, and pedagogy.”⁷⁰

Elevating the role of TEDs in the public school system and building their capacity is a stated federal goal. The federal state Tribal Education Partnership Grant Program seeks to promote tribal self-determination in education through increased collaboration between TEDs, state and local education agencies.⁷¹ However, only four to six TEDs (of over 200 TEDs across the country)

receive grant awards in each program cycle, which distributes a total of \$2 million. The U.S. Commission on Civil Rights noted that despite TEDs' unique role in the education ecosystem, "many TEDs lack sufficient funding to fully develop tribal expertise in education administration—and thus to fulfill their potential."⁷²

The state level solution for enabling TEDs to assume their rightful roles alongside LEAs is simple: New Mexico's school funding formula should treat TEDs like their local counterparts, the LEAs, and direct formula funding to them. The LFC recognized that TEDs have the same function as LEAs and recommended funding them accordingly: "Make tribal/pueblo education departments Local Education Agencies eligible for state funding as a foundational step in increasing tribal capacity, involvement and control over the education of their students."⁷³ Currently, at-risk, bilingual and other formula funds bypass TEDs and go straight to LEAs. Given that the *Yazzie/Martinez* court ruling defined Native students as part of the at-risk group, the at-risk factor should be updated accordingly by including Native students in the unit value calculation and by allocating a portion of at-risk funding to TEDs. Oversight rules for state funding will have to be adapted to safeguard tribal self-determination. A permanent state funding source for discretionary use would enable TEDs to develop and deliver community-based education and support programs that respond directly and proactively to Native student needs. It would also allow them to work with LEAs more effectively, in respectful partnerships that adhere to the principle of tribal education sovereignty.

Such collaboration can be supported at the government-to-government level by developing and institutionalizing a culturally appropriate local governance and accountability framework. This would provide a foundation for LEAs and TEDs to work jointly toward improving Native students' educational opportunities and outcomes. At the state level, a well-developed framework of policies, protocols and intergovernmental agreements defines the government-to-government relationships and shared responsibilities between New Mexico's Tribes and the state. To date, this has been more consistently operationalized for centrally controlled policy areas, such as tax and judicial matters, than locally devolved issues, such as education. While LEAs have received some tribal consultation guidance with regard to federal programs (ESSA and IPPs), there is no mutually agreed legal and policy framework that defines shared education governance at the local level.

The 2019 amendment to the IEA (HB 250, enacted as 22-23A-9 through 22-23A-11 NMSA 1978) requires collaborative planning by LEAs and Tribes. It was crafted as part of the *Tribal Remedy Framework* in response to the *Yazzie/Martinez* mandate for shared accountability. The IEA as amended tasks school districts with assessing Native students' needs and collaborating with Tribes to prioritize needs and develop a framework for improving outcomes. It also mandates twice-yearly accountability meetings with tribal communities. To fulfill these tasks, LEAs and Tribes will need to develop an accountability system that includes agreed upon educational purposes, goals, strategies and programs. This should be monitored through culturally and community-appropriate targets, benchmarks and outcomes that measure different aspects of student well-being, from academic to cultural. Aligning district and school budget decisions with identified student needs and mutually agreed upon plans will require shared financial governance.

The PED's oversight role should be supportive, flexible and balanced, with top-down as well as bottom-up accountability for meeting student needs and rights, not just for complying with departmental rules. The department should be more responsive to community needs and input, and more hands-on in supporting districts to match their resources to prioritized needs. The state's performance-based budgeting approach, with its emphasis on data- and evidence-driven accountability, may be at odds with a "greater level of local engagement in the budget development process,"⁷⁴ which has been recommended by the LESC and the Learning Policy Institute. While performance-based budgeting requires districts and schools to prioritize resource use for improved student achievement (22-2F-3.F and 22-8-18.B NMSA 1978), it does not account for the actual cost of meeting student needs, nor for culturally or community-appropriate solutions that can improve local outcomes.

A more supportive, needs-based oversight model should start with a needs-based education budget, submitted by PED to the legislature as direct result of government-to-government consultations with Tribes. Any accountability measures related to Native students or state-funded tribal programs must be designed in a culturally appropriate way, with full tribal consultation, collaboration and consent. Unfortunately, PED's rulemaking for the IEA amendment, carried out during the height of the COVID-19 pandemic, fell short of existing consultation requirements. The new rule includes provisions that appear to infringe on tribal sovereignty, for example by including tribal languages in programmatic areas subject to state performance assessments (6.35.2.12.E.1.d). If the PED's capacity continues to lag behind and impede the IEA's effective implementation, a state-tribal commission may have to be established — akin to Senator Stewart's proposed Commission on Equity and Excellence, albeit with a focus on tribal collaboration — to advance education governance reform aligned with tribal sovereignty.

Finally, to expand the capacity of both Tribes and school districts for educational planning, monitoring and program delivery, partnerships with higher education institutions have a crucial role. Tribal Colleges, including Navajo Technical University, Diné College and A:shiwi College, and Native higher education programs, such as the University of New Mexico's Institute for American Indian Education, Native American Studies Department, Center for Native American Health and Indigenous Design and Planning Institute, can provide assistance in identifying best practices, addressing data gaps and providing training. All of these institutions and programs are experienced in community-based research, participatory planning and community capacity building, particularly with tribal communities, yet none receive adequate funding for this type of work, despite repeated requests before the state legislature.

Tribal colleges and Native higher education programs could host technical assistance centers similar to Regional Education Cooperatives (RECs) but focused on assisting both school districts and TEDs in meeting the needs of Native students. New Mexico currently has ten RECs, authorized by law (22-2B-3 NMSA 1978) to deliver education support services to LEAs on a contract basis, but none of them specialize in Indigenous education issues or serve tribal, community-based programs. Recent legislative action also provided for four higher education centers of excellence (21-1-27.11 NMSA 1978), though none are based at Native institutions. The establishment of Native technical assistance centers, under Indigenous control but supported through state funding — akin to both RECs and centers of excellence — could support school districts, schools and Tribes in meeting their IEA obligations. Such centers would enhance Indigenous education expertise within Tribes, thus increasing tribal capacity to provide education services centered on Indigenous knowledge and research.

Higher education programs could also help LEAs improve their use of data to inform educational strategies for Native students, as suggested in the IEA (22-23A-10 NMSA 1978), and provide anti-racism training for teachers, staff and school board members. Tribes could obtain technical assistance in preparing long-term education strategies and plans, drafting formal agreements with LEAs, and developing education codes and education governance functions.

Increasing tribal education sovereignty also hinges on Tribes' ability to recruit and retain tribal members as professionals and experts. Partnerships with Native higher education programs can help foster a virtuous cycle of Native student college readiness and recruitment, student retention through social and financial supports, and placement of Native graduates and professionals back into tribal communities. The above listed institutions, along with organizations such as College Horizons and SFIS's Leadership Institute, offer tailor-made college readiness programs, ranging from dual credit classes to college preparatory courses to internship placements. As financial constraints prevent many Native students from accessing post-secondary education, the state should consider not just scholarships but a tuition waiver program for enrolled tribal members, as several other states do.⁷⁵ To raise the career expectations of high school students, state agencies, higher education programs and Tribes should collaborate in developing tribal community profiles that collect data on tribal workforce needs and provide students with searchable information about the type of employment available within tribally operated agencies and departments.

5. Summary: Shared Responsibility in Public Education

- Tribal leaders, communities and families need to have a say in how public schools are educating their students.
- Tribal education sovereignty, in the form of increased involvement and control over schools that serve their students, is required by the Indian Education Act and affirmed by the *Yazzie/Martinez* ruling.
- Despite federal and state mandates, tribal consultation by school districts is limited and often perfunctory.
- A framework of shared responsibility between Tribes and school districts requires formal collaboration regarding governance, accountability and resourcing.
- To enable Tribes and school districts to work together effectively, three strategies are needed:
 1. Increase the capacity of Tribal Education Departments, including through partnerships with Native higher education institutions and programs and with Native organizations specializing in college and career preparation.
 2. Resource TEDs through recurring state funds, akin to Local Education Agencies, including through the school funding formula's at-risk factor.
 3. Agree a local governance and accountability framework that formalizes collaboration between Tribes and school districts; and establish Native technical assistance centers to support TEDs and schools in meeting the needs of Native students.

*Ears open to hear
Looking for ways to improve
All action not talk*

Alec Lee, Navajo Nation/Cochiti Pueblo (Summer Policy Academy 2016 Fellow)

V. Solution 2: Community-Based Education

*"[T]he education program must be a visible growing product of the Indian people's own efforts, drawing from the existing culture for point, form, and direction."*⁷⁶ Domingo Montoya, Chairman, All Indian Pueblo Council, 1968

*"Indian communities have a better understanding of their education needs and problems than the schools that serve them."*⁷⁷ Kennedy Report, 1969

How can the education system effectively and authentically incorporate the collective wisdom and strengths of tribal communities to better serve Native students? A straightforward solution lies in supporting tribal communities to serve as one of the primary sites for student learning. Educational programs created by and centered in tribal communities can expand and enrich formal education by connecting classrooms with communities.

Community-based programs respond to students' needs in more direct and integrated ways, with programming and services delivered by Native staff in multi-generational settings that support the full development of a child. Embedded in cultural and linguistic traditions, community-based education offers a means for tribal communities to regain direct control over the educational process, in concert with increased tribal collaboration with public schools.

Developing the infrastructure for community-based education can be achieved through investing in community facilities located within tribal homelands that offer programs and services for children, families and community members. Community schools, tribal libraries, tribal early education programs and Native language programs are examples of such community-based initiatives. They correspond to the *Yazzie/Martinez* mandates for extended learning and early childhood programs that are culturally relevant and guided by a tribal community's understanding of "what supports are needed in public school, at home and in the community to help Indian students succeed" (22-23A-9 NMSA 1978).

1. What is the shift in approach?

Community-based education is rooted in traditional Indigenous ways of teaching and learning preceding colonization. Practices of sharing and deepening knowledge "traditionally occurred holistically and in social settings that emphasized the individual's responsibilities and contributions to the larger community."⁷⁸ Such knowledge sharing, enabled through oral traditions, was not confined to times spent in a classroom but invited students to interact with their surroundings and to reflect on their position within the larger environment. Knowledge is understood as relational; it emerges and is maintained in a web of reciprocal relationships with others. Knowledge is explored and expanded over generations of careful observation and collective experience within the community and within nature.

Native families today value the traditional model of the community as teacher, according to participants in the Education Community Institutes and interviews. It is through the collective contributions of tribal members that Native cultures and languages have survived. Indigenous knowledge is embodied across generations and embedded in place and belonging. Education that comes from within communities, using situated knowledge, grounds students in cultural integrity and community mindedness and forms the basis for holistic human development. Fostering a child's development within a community context strengthens the well-being of individuals and communities alike.⁷⁹

Community-based education draws on this history, while also infusing it with Western methods of academic learning. This approach can restore a balance to education that weaves community contributions into individual development. Over the past decades, bottom-up, community-based education has become a worldwide movement. It addresses the shortfalls of formal Western schooling, which has failed, time and again, to deliver a learner-centered education responsive to students' needs and relevant to their lives. Inspired by traditional Indigenous education, scholars and practitioners alike recognize that it is easier for a child to gain a sense of belonging, human connectedness and confidence when teaching and learning take place "informally outside the school building, using a conversational method of instruction."⁸⁰ Some of the growing popularity of community-based education can be attributed to successful Native language immersion programs, created and run by Indigenous communities around the world since the 1970s.⁸¹

There is a clear contrast between a "community-based approach where all community members contribute to children's education"⁸² and a Western approach focused on a one-way transfer of compartmentalized knowledge. Whereas community-based learning is grounded in place-based cultures and allows for experiential practices, Western schooling provides a one-size-fits-all delivery of prescribed content standards. One approach is rooted in communities, the other emphasizes the individual, isolated in the disembodied context of mass schooling. In so far as "Indigenous means 'to be of a place,'"⁸³ denoting the original inhabitants of a place, the process of indigenizing education, in its broadest sense, entails connecting education to a history and "culture emergent from a place, and [to] actively draw on the power of that place."⁸⁴

Evidence suggests that "place-based education," as promoted by Western education scholars and practitioners, "fosters students' connection to place and creates vibrant partnerships between schools and communities. It boosts student achievement and improves environmental, social, and

economic vitality.”⁸⁵ However, lingering colonial attitudes about place and land often prevail when schools take students out of the classroom and into communities. Therefore, the community-based education model envisioned here is not about bringing students to the community, but about incorporating community facilities, programs and services into formal public education. Tribal communities become agents in education, not objects.

By situating educational programming within communities, and thus devolving ownership to them, public schools, tribal community members and families can cultivate a more equal, mutually supportive relationship. While some community-based programs, such as language programs, are run independently by the sovereign Tribes, others benefit from formal coordination with schools. Through integrating community-based and formal learning, schooling can reach more students, increase family involvement and connect students to future professional opportunities in tribal economies.

2. What is the history and mandate?

Almost a century ago, the Meriam Report, submitted to the U.S. Secretary of the Interior in 1928, sought to end the boarding school era by reintroducing the principle of “upbringing in the natural setting of home and family life.” It concluded that the “Indian educational enterprise is peculiarly in need of the kind of approach that recognizes this principle; that is less concerned with a conventional school system and more with the understanding of human beings” (Meriam Report, p. 32). Yet, as tribal communities continue to seek healing from the trauma of boarding schools, the current generation’s schooling remains unduly institutionalized. Many Native children still make long journeys to schools run by non-Native administrators and located in unfamiliar settings, often perceived as unwelcoming and hostile.

More calls for community-based education would follow throughout the 20th century. In 1969, the Kennedy Report suggested “education programs and projects run directly by the Tribe itself (for example, summer school programs)” (Kennedy Report, p. 134). It recommended “[m]aximum Indian participation in the development of exemplary educational programs”, including “[f]ull-year preschool programs for all Indian children between the ages of 3 and 5” (Id., p. 106). In 1991, the Indian Nations at Risk Task Force reiterated this proposal: “it is critical to start with community-based early childhood education that involves parents” (Task Force, p. 19). And 50 years after the Kennedy Report, the U.S. Commission on Civil Rights, quoting a White House report, noted again “that tribal educators ‘are in the best position to address the unique needs of their students,’” more than capable of “develop[ing] initiatives that address local needs and circumstances.”⁸⁶

A hundred years of official recommendations are backed up by research evidence. The LFC pointed to an evidence review that attributed improved educational outcomes to “[s]trong Native community participation with parents, elders, and other community resources in the curriculum, planning, and operation of school/community activities.”⁸⁷ The *Indian Education 2025* study identified community-based learning both within and outside of school as a best practice, as it motivates students through “experiential learning techniques that bring meaning to local places, events and situations.”⁸⁸

In California, the Education Code provides for “community-based educational resource centers” (§33381) to offer coordinated programs with public schools, serve as centers for community activities, operate extended learning programs and provide educational resources, among other services. Eighteen such centers are currently in operation, supported by state funds, covering around a third of California counties.⁸⁹

New Mexico’s IEA addresses community programs as part of an integrated ecosystem of education services for Native students, specifying that both school and community interventions are needed to address student and family needs (22-23A-11.D.1-5 NMSA 1978). While many Tribes receive some federal grants for community-based programming, there is no sufficient and sustainable source of state level support for tribal community-based initiatives such as extended learning, summer schools and early education.

It is not that New Mexico disregards the value of community-based education. The New Mexico Rural Revitalization Initiative (2005-2011) sought to foster collaboration between schools and communities, featuring place-based programming to make learning more relevant to students and remove it from the confines of the classroom. Yet tribal communities were not included.⁹⁰ Similarly, the Community Schools Act of 2013 (22-32-2 NMSA 1978), which, according to PED, helps organize community resources to develop schools that meet the needs of the whole student,⁹¹ initially omitted Tribes as entities eligible for programming and funding. This was rectified through a 2019 amendment; yet, to date, no Tribe has a state-funded public community school.⁹² Instead, tribal communities have increasingly looked to the charter school model for bringing the schooling of their children back into community hands. This has allowed schools such as Walatowa High at Jemez Pueblo and the Native American Community Academy (NACA) in Albuquerque to create spaces for cultivating Indigenous knowledge while also securing state funding.

3. What problems does this solution address?

The one-way model of schooling relegates students, families and communities to passive recipients, conforming to education agendas determined elsewhere. When schools peddle standardized content, instruction and materials that demand identification with the dominant culture, and when the home is not in a position to provide educational enrichment, it is important that students can turn to community facilities for support. Yet the network of educational infrastructure for Native children, which should be accessible when and where they need it, is decidedly underdeveloped.

Deep gaps in student access to education have been exposed by the COVID-19 pandemic. Prolonged school closures have caused particular hardship for Native students. Many are unable to partake in distance learning due to a lack of internet connectivity and suitable devices. Data shows that over half of rural tribal families lack access to broadband.⁹³ Most households in Native American census tracts have no internet subscription. Over 40% of families in the majority Native school districts of Central Consolidated, Gallup-McKinley and Cuba Independent do not have access to a computer or similar device.⁹⁴ Students reported writing papers on their cellphones or by hand and submitting photos of their homework. Parents drove their children to restaurant parking lots for online lessons as they sat in the car. Some students without technology access taught themselves in the absence of online learning tools. 55% of students in New Mexico's Title I schools were not engaged in education by the end of the 2019/20 school year.⁹⁵ For the 2020/21 school year, total student enrollment has decreased in the three districts serving the most Native students.⁹⁶ As schools have shifted to distance or hybrid learning, which is set to continue for the foreseeable future, the digital divide for Native students has widened. Congress allocated \$98 million in Title I emergency funds to New Mexico (through the Elementary and Secondary School Emergency Relief Fund of the CARES Act of 2020). These federal funds were intended to alleviate the educational impacts of the pandemic. Instead, the state chose to use the extra funds to make up for education budget cuts passed during a Special Legislative Session in June 2020.

Prior to the pandemic, Native children struggled to gain access to important educational programming because of the limited range of services offered in the schools they attend. For example, during the 2019/20 school year, fewer than half of the districts with a sizable Native student population implemented extended learning time.⁹⁷ Furthermore, many Native students lack physical access to extended learning time, due to an inadequate and underfunded transportation infrastructure. According to an LFC analysis, high transportation costs are a key barrier to providing after school programs in rural districts.⁹⁸ During the *Yazzie/Martinez* case, the court heard that summer and after school programs in the Gallup-McKinley, Grants-Cibola and Cuba Independent school districts were only accessible to students with personal transportation, as were Bernalillo district programs for Pueblo children.⁹⁹ The court concluded that "Native American children who live on the reservation lack access to these programs because they have to find personal transportation." (FFCL ¶198; ¶2157). Yet the state has not made extended learning funding available to Tribes, despite an overall increase in funding and a lack of uptake by school districts.

state investment in extended learning programs located in tribal communities would improve access for Native students.

School districts also struggle to provide appropriate social support services for Native children, youth and their families. The *Yazzie/Martinez* Court found that “[m]ost districts do not have sufficient funding to make social and health services available to all at-risk students” (FFCL ¶267), including mentoring and counseling, despite strong evidence that such services improve student well-being and educational outcomes (FFCL ¶270-275). statewide, at least 77 staff positions for counselors, behavioral support providers and psychologists remain vacant.¹⁰⁰ According to interviewees, this number significantly underestimates the real need for mental and emotional support services, which is assumed to be much higher, especially in the wake of the pandemic. Moreover, few existing positions are staffed by Native professionals. Investing in wrap-around support services provided in and by tribal communities would better address children’s social and emotional needs by drawing on cultural knowledge and tribal resilience for support and healing.¹⁰¹

Finally, under-resourced and culturally inappropriate schooling affects the youngest children the most. The education equity gap begins in early childhood.¹⁰² For Native children, lack of access to appropriate early education results not only in learning loss but also in language loss. Culture and language shape early development and frame a child’s understanding of the world. If children are not able to identify with their culture and their tribal communities, and if they are not taught in their Native language from the earliest age,¹⁰³ their future development as an Indigenous person and a participating member of a Tribe is seriously jeopardized. Even more serious will be the adverse impact on the overall future of tribal cultures and languages.

This concern weighed heavily on those who participated in the Education Community Institutes or interviews. They expressed that once a Native child enrolls in an education program that omits or suppresses tribal cultures and languages, the child may struggle to retain their Indigenous identity and their sense of tribal belonging. Tribal communities have resisted such threats to cultural identity since the introduction of the federal Head Start program in 1965, which may have cost two generations of Native children their language and culture.¹⁰⁴ Over time, Tribes took increasing control over Head Start and inserted language, culture and community components.¹⁰⁵ This has not been the case for state-level pre-K programs, launched in 2005 and recently merged under the umbrella of the newly created Early Childhood Education & Care Department (ECECD). The LFC found that the share of Native children enrolled in state pre-K programs decreased from 25.1% in 2006 to 11.2% in 2018.¹⁰⁶ Moreover, in 2019, 44% of all 4-year old children in New Mexico still lacked access to any type of pre-K program, whether state or federal.¹⁰⁷ Community-based early education programs, developed and run by Tribes, could improve access and participation by reaching more Native children and better meeting their needs. To expand tribal early childhood programs, Tribes would need funding for creating culturally relevant curricula and for professional development, according to an ECECD survey,¹⁰⁸ in addition to full authority over the use of those funds.

4. How does this solution work?

Community-based education extends the site of learning from the classroom to the community and thereby empowers and enables families and communities to become active participants in the education process. By expanding what public schools can do, community-based programming closes access gaps and enriches children’s learning experience. Formal agreements between schools, Tribal Education Departments and community facilities located on tribal lands can smooth the way for smart interchanges between school-based and community-based programming. Many public schools have a clear need for the type of comprehensive education support programming that already exists in some Tribes. If schools were allowed to invest at-risk formula funding in partnerships with tribally-based social and behavioral support programs, they could better meet student needs. According to tribal education leaders, several school districts have indicated they would welcome more opportunities for collaborating with tribal programs, along with a greater community role in developing and delivering much needed programs and services.

Community involvement and programming may look different for Native students residing in their homelands than for students in urban areas or border towns. Urban school districts must recognize that Native students can identify as both “urban” and belonging to a tribal community and that living outside tribal homelands does not mean leaving culture and community behind. A community-based approach does not entail a traditionalist, reservation-centered view of indigeneity,¹⁰⁹ but promotes a fuller range of experiences for all Native students. Urban districts serve some of the highest numbers of Native students (e.g. over 7,000 in Albuquerque alone),¹¹⁰ and it is incumbent upon these districts to offer programs, services and supports that enable urban Native students and their families to participate in educational decisions (22-23A-2.G. NMSA 1978) and to maintain links to their tribal communities. This must include those urban districts, such as Farmington (serving around 4,000 Native students),¹¹¹ that currently lack a separate administrative department for Indian Education.

The pandemic-related school closures have underscored the importance of community-based services and involvement. Distance learning deprives students of much needed social interaction, support and services. However, the inherent benefits of in-person, on-site learning can be realized not only in schools but also in communities. Planning for a post-pandemic era should include investment in community-based education sites close to students’ homes on tribal lands. If the state is serious about closing the equity gap, the future of education does not lie in online technology pushed by for-profit education companies,¹¹² but in small-scale, community-based programs, including place-based experiential activities that can be conducted outdoors. Over recent months, some Native students have enjoyed, for the first time, culture and language-based learning activities in their families and close surroundings. The State of Montana supported this form of learning through online Indigenous curriculum resources.¹¹³

“Through the COVID-19 pandemic [and] the requirement to stay at home in our communities, many Pueblo children have had the opportunity to experience a semblance of what a return to traditional teaching might look like. They’ve been able to walk on their homelands, to farm with their families, to hear their language spoken in the home more frequently than they would when spending most of their time in a school.” — Kayleigh Warren, Santa Clara Pueblo/Isleta Pueblo (Summer Policy Academy 2015 Fellow)

Community-based education requires an infrastructure comprised of different learning spaces, some intergenerational, such as libraries, some focused specifically on young children, and some connecting youth to opportunities and services that help them graduate and transition out of school. Education experts now consider “aligned partnerships throughout the community” a necessity for children’s development and well-being.¹¹⁴ Student participants in the Education Community Institutes pointed to a wealth of resources within Tribes that community partnerships can draw upon.¹¹⁵ They suggested learning from and expanding tribal programs that support youth engagement and college readiness, such as the Katishtya Youth Leadership Institute (San Felipe), the Cochiti Youth Experience and the Leadership Institute’s Summer Policy Academy. Several tribal social and health programs are well known for supporting students from prevention through to treatment, such as the comprehensive wraparound services in the Pueblos of Jemez and San Felipe, and the Butterfly Healing Center operating under the umbrella of Eight Northern Indian Pueblos Council, Inc. Other initiatives focus on breaking down the boundaries between schools and communities, such as the Community-based Education Program at the Santa Fe Indian School, which connects classroom with community learning and encourages communities to identify areas of educational need and take on roles as teachers and mentors.¹¹⁶

Family and community involvement is at the heart of community-based education and student support services. Historically, Indian education consisted of separating children from their families and communities, with the intent of erasing their sense of belonging through the boarding school system. As a result, generations of parents and caregivers, once stolen children themselves, have been alienated from the formal education system. Community-based initiatives that span across

generations can provide a space for renewing trust in educational programs. At community education sites, such as libraries, children are not sent away but brought closer, and encouraged to learn from community members who are invited to share their knowledge.

TRIBAL LIBRARIES

Libraries serve as central education spaces within tribal communities, welcoming children, youth, families and elders alike. Most assist public schools and their students through a range of educational programming, but are not supported with school funds. Tribal libraries fulfill many essential functions: as extended learning sites and summer schools; cultural and language learning centers utilizing their tribal archives; technology hubs for students; conduits for social support services; and career pathway centers connecting students to internship and job opportunities. If these education enrichment hubs were adequately resourced and staffed, they could “serve as the anchor, the hallmark and the heart of our collective commitment for success of our students.”¹¹⁷

To inform the *Tribal Remedy Framework*, tribal librarians surveyed the aspirations and activities of tribal libraries and participated in interviews for this report. They confirmed that tribal libraries are well-positioned to provide an array of programs and services for preK-12 students:

1. Extended learning: libraries offer after school and summer programming for children and youth; depending on capacity and community size, student engagement numbers range from hundreds to several thousands.¹¹⁸ Library programs are popular for at least three reasons: first, they tend to be learner-centered and culturally relevant, starting with children’s love of learning and addressing topics affecting children directly, thus increasing their motivation to learn. Second, libraries offer intergenerational programs, including in Native languages, which foster family and communal support for student learning. Third, most libraries are centrally located within tribal villages, making it easy for students to participate. These features would make libraries ideal hosts for a third school trimester, thus preventing the “summer slide,” a learning loss that disproportionately affects low-income students.¹¹⁹
2. Technology access: libraries offer internet and computer access and support. They are the closest access point for most Native students, and during the COVID-19 school closures, many students sat outside their tribal library using the facility’s Wi-Fi. For example, the new Katishtya Community Library in San Felipe Pueblo features a 24/7 accessible outside deck area with Wi-Fi, charging stations and USB ports, in addition to 12 public computers and 12 laptops that can be checked out. At the Santa Clara Pueblo Community Library, which serves over 5200 visitors, technology access is in high demand, yet with only five public computers it imposes a 30 minute user time limit. Expanding all tribal libraries into technology hubs, supported by IT staff, would increase students’ access to online learning. Beyond upgrading individual libraries, New Mexico could consider developing a statewide education technology network, connecting schools, libraries and universities through one centrally managed, affordable and reliable network that makes educational resources equally accessible to all communities, no matter how remotely located.¹²⁰
3. Access to support and career services: tribal libraries connect students to a range of community supports. For example, the Santa Clara library coordinates services with the Head Start program, the senior center, tribal jobs programs and the Kha’po Community School. Both Santa Clara and Laguna tribal libraries have close relationships with tribally controlled BIE and community schools; formal relationships with public schools have yet to be developed.

As a central site for community-based education, tribal libraries could systematically bridge access gaps that currently exist for Native students in public schools. This would require capital and operational investments in New Mexico’s 19 tribal libraries. They currently compete for a mix of restricted grant funding from small pockets of state and federal programs, as well as receipts generated through General Obligation bonds offered by the state. The average bond receipts for all state libraries, excluding Albuquerque, were \$6,100 in 2018.

In 2015, lawmakers recognized in House Memorial 106 that the capital and operational needs of tribal libraries had to be reassessed since “many tribal public libraries exist in older, unsafe and

inadequate buildings that were not designed for library use, nor do they have the capacity to deliver up-to-date technologies and services.”¹²¹ Despite receiving no capital funds and only \$32,600 in operating funds from the state, the tribal library at Isleta Pueblo recorded the most annual visits (23,546) and served around 7,300 students with its educational programs in 2018. At the other end of the scale, the smallest library, the Torreon Community Library — the only public library in the Navajo Nation — delivered educational programs for 234 students in a modular building without plumbing. It received no capital funds and only \$7,315 in state operating funds.¹²² Most tribal libraries are less well equipped than mainstream public libraries. This is particularly apparent in nearly every category of technology service, from technology availability to speeds and bandwidth to training and support.¹²³ The infrastructure and human resources investments proposed in the *Tribal Remedy Framework* are the result of five years of planning by tribal leadership, tribal librarians, educators, architects and planners.

TRIBAL EARLY EDUCATION PROGRAMS

Tribal education leaders have considerable experience designing and directing culturally and linguistically relevant early education programs,¹²⁴ commonly funded by tribal revenues as well as federal and charitable sources. As New Mexico expands its pre-K capacity, state-tribal collaboration in developing and resourcing community-based early education programming is key to ensuring equitable access for Native children. Whether Native families are comfortable enrolling their children in pre-K programs depends on the language and cultural instruction offered. In a national Head Start survey, almost all Native parents said that it is somewhat or very important that their child learn a Native language.¹²⁵ In New Mexico, focus groups with Native parents, along with a survey of parents of all racial and ethnic backgrounds, confirmed that most demand appropriate language and culture instruction.¹²⁶ At the same time, there is skepticism that federal and state pre-K programs can deliver. One concern is whether the criterion of “school readiness,” used in standardized child progress assessments, is a code for acculturation. state commissioned research found that focusing heavily on English language acquisition in pre-K programming and assessments was perceived as structural racism.¹²⁷

The solution is to increase tribal capacity for providing community-based early education programs that create safe, nurturing spaces for their youngest children.¹²⁸ Early education initiatives designed and delivered by tribal communities “recogniz[e] that traditional values at the heart of tribal cultures support a more holistic and community-based view of raising and educating young children.”¹²⁹ Successful examples in New Mexico include Native language immersion schools, such as the Keres Children’s Learning Center (KCLC), a non-profit language revitalization school in Cochiti Pueblo. It uses an Indigenous, cross-generational model of education rooted in Cochiti culture and language. KCLC does not accept state funding due to the requirements and restrictions imposed by the state. In Jemez Pueblo, the Head Start program is federally funded but designed and controlled by the Tribe and conducted in the Pueblo’s Native language, Towa, involving community members as teachers. The Native American Budget and Policy Institute at the University of New Mexico (UNM) concluded that “Tribes are already relying on their community to provide informal early childhood development to the children, but they are not given respect and authority and pay in line with what they provide.”¹³⁰ According to the Office of Head Start, language revitalization in early education depends on professional development ladders for Native language teaching staff, support for the involvement of tribal elders and locally developed curricula.¹³¹ If New Mexico’s early education investments are to benefit Native children, both resources and decision-making authority must be shifted to the Tribes for developing community-based early education programs, with support from Native education experts affiliated with tribal colleges and Native higher education programs. Tribes should be able to access state funds for providing integrated early childhood services while retaining full authority over their children, just as they do under New Mexico’s Children’s Code, which regulates child welfare services (32A-1-8 NMSA 1978).

A NETWORK OF SOCIAL SUPPORT SERVICES

Meeting the mental, physical, social and emotional health needs of the whole child requires a better integration of education, social and health services (22-23A-11.D NMSA 1978). Educational

outcomes are intricately linked to other social determinants of health, including access to health care and housing, food and water, energy and economic security. They are also shaped by adverse experiences, both past and current, including trauma caused by racism, abuse, oppression and a history of colonial violence. In a community setting, students and educators can draw on a resiliency model, anchored in the profound strengths, resourcefulness and perseverance of Indigenous communities.¹³² Community-based support services use traditional approaches to helping and healing that deepen a student's sense of belonging, alongside a Western clinical approach. Some Tribes have built a network of integrated support services throughout the community. San Felipe Pueblo, for example, has a wraparound care program¹³³ that includes a Youth Suicide initiative (Katishtya Embraces Youth Wellness And Hope III). It connects youth to culturally-based supports in the community and emphasizes the strengths of the child, family and community.

Public schools should be able to contract with Tribes for ancillary services, using at-risk formula funding, to benefit from tribal expertise in developing community-based student support networks. The state, on the other hand, should support collaborations between Tribes and Native higher education programs in order to enhance and expand tribal capacity for delivering integrated student and community health strategies. There are several prominent examples at UNM. The Center for Native American Health works with Tribes to build long-term community capacity, including through community health needs assessments. The Honoring Native Lives initiative, which is part of UNM's Community Behavioral Health Division, provides technical assistance and training to tribal communities for addressing unmet behavioral health needs and coping with crisis and trauma. Honoring Native Life found that trained community members who become certified peer support workers were invaluable. They not only alleviated the workforce shortage but also provided peer-to-peer counseling that proved effective with youth burdened by adverse experiences.

5. Summary: Community-Based Education

- Education programs created by and centered in tribal communities can expand and enrich formal education by connecting classrooms with communities and their cultural resources.
- Community-based education extends the sites of student learning into the community, thereby empowering and enabling families to become active participants in the education process.
- Community-based education affirms the principle of tribal self-determination, while also benefiting public schools through programming that meets Native students' needs.
- The current one-way model of standardized classroom instruction relegates students, families and communities to passive recipients.
- Deep gaps in access to school-based programming, including technological, physical and cultural barriers, deprive Native students of important learning opportunities.
- Community-based education can close access gaps and engage more students and families.
- In order to expand community-based education infrastructure, three strategies are needed:
 1. Invest in tribal libraries as community education centers to provide extended learning, technology access, career and support services.
 2. Invest in early education programs developed and delivered by tribal communities and ensure full tribal authority over early childhood services.
 3. Build tribal capacity to expand community-based networks of integrated student support services and enable formal coordination and contracting with public schools.

*soft touch helps us Grow
voice with comfort peals to Teach
brown hands of Wisdom*

Leia Lucio, Zuni Pueblo (Summer Policy Academy 2011 Fellow)

VI. Solution 3: A Culturally and Linguistically Relevant Education

*"Nothing underscores more the insensitivity of the present paternal method of educating Indian children than the continued absence of bicultural materials. This situation must be corrected immediately."*¹³⁴ Kennedy Report, 1969

*"I don't know
if humankind understands
culture: the act
of being human
is not easy knowledge."*¹³⁵
Simon Ortiz, Acoma Pueblo, 2002

Hardly anyone disputes the importance of a culturally and linguistically relevant education for meeting students' needs, protecting their rights and improving educational outcomes. The PED's vision for education indicates as much: "Students in New Mexico are engaged in a culturally and linguistically responsive educational system that meets the social, emotional, and academic needs of ALL students."¹³⁶

Yet this vision is far from reality. The *Yazzie/Martinez* court ruling found that "New Mexico's system of education does not provide Native American students the necessary programs and services that meet their unique cultural and linguistic needs" (FFCL ¶523).

Why, after a century of forcing a public education on Native children that ignored the needs, values and aspirations of New Mexico's Tribes, has the state not managed to make education relevant, respectful and responsive to children, their families and their communities?

A relevant education is not merely a function of revising curriculum content, developing new instructional materials, or building a better trained, more diverse pool of teachers — although all of these are essential. It is about a different educational approach, creating a different environment that starts with children's existing knowledge and strengths, challenges implicit bias and is accountable to communities. This can only happen with the tribal involvement and community-based practices proposed in the solutions above.

1. What is the shift in approach?

If New Mexico wants to protect and fulfill children's constitutional, civil and human rights, it has to dismantle the last vestiges of a colonial education model that exposes children to stereotyping and discrimination, denigrates and erases their history and culture, deprives them of their language and strips them of their identity. Yet, ending the assimilation paradigm, along with the systemic racism that feeds it, requires more than policy recommendations, statutory directives, multicultural rhetoric and even court orders. It requires questioning hierarchies of knowledge and built-in bias, reconnecting teaching and learning to the communities served, and expanding rather than narrowing the purpose and methods of education.

For tribal communities, the shift from acculturation to a culturally revitalizing and sustaining education is nothing short of an existential imperative. Continued loss of language and culture threatens the existence of Indigenous peoples, their self-determination, self-governance and their philosophical and spiritual world views. The community and the individual develop and flourish in interdependent ways. Public education provides the context for interweaving both. Whether education plays a nourishing or menacing role is in the hands of policymakers.

A culturally and linguistically relevant and revitalizing education model that challenges the power imbalances inherent in Western schooling is an expression of tribal sovereignty and serves as its sustaining force.¹³⁷ Culturally relevant education is not about an optional language class in middle school or a module about the Pueblo Revolt in high school. It is not an additive to a curriculum that otherwise ignores and obscures Native history, languages, knowledge and values. UNM scholar Dr. Gregory Cajete cautioned that as long as we “allow school curricula to serve the will of the ‘marketplace,’ we also allow the landscape of students’ minds to be altered.”¹³⁸ Therefore, rather than battling for recognition within the assimilationist paradigm, which would legitimize the Western dominant model of education, a decolonizing approach seeks to revitalize Indigenous knowledge on Indigenous terms.

New Mexico’s Tribes envision a relevant, revitalizing education that fosters the full development and well-being of their children and their communities alike. This requires embedding Native language and culture in school life, starting with infants and proceeding sequentially through childhood and adolescence into adulthood. It calls for appropriate pedagogy that supports the development of Native identities throughout all stages. Ideally, this sequence turns into a circle of reciprocity, with students receiving education and giving it back to their community as active tribal members.

While a culturally and linguistically relevant education is not simply a matter of inserting piecemeal content into existing curricula, nor is it in competition with modern academic knowledge and methods. The goal is a “balanced integration,”¹³⁹ a “blending of knowledges”¹⁴⁰ that produces a richer educational experience and a bilingual, bicultural educated person connected to their community. A balanced education interweaves cultural, linguistic and academic competencies and braids Indigenous and Western knowledge systems. The *Yazzie/Martinez* ruling reflected this vision when it found that “New Mexico and PED do not account for the binary education system valued by the local Tribes; the delivery of curriculum and pedagogy takes a one-sided approach” (FFCL ¶1526, citing Dr. Joseph Suina).

“In society education has been structured to reflect the western world. I believe we should be able to integrate western education with native education. Finding a balance between the two.” — SunnyRose Eaton, Tesuque Pueblo/Jicarilla Apache/Lakota (Summer Policy Academy 2015 Fellow)

By definition, a two-sided, two-way approach to education requires the involvement of children’s families and communities in the development and delivery of educational goals, content and methods. As the National Caucus of Native American State Legislators noted in 2008, the “mismatch between the desire of families and the practice of schools may contribute to the achievement difficulties experienced by American Indian” students.¹⁴¹ Therefore, a culturally relevant education is not a product that can be designed in a top-down manner by the state or private entities; it can only emerge from communities themselves, from collaborative efforts that define goals, themes and outcomes. Native-led charter schools such as Dził Dít Ł’ooí School of Empowerment Action and Perseverance (DEAP), NACA and Walatowa High have emerged in this way and offer lessons for public schools. The active participation of families and community members in schooling processes and practices is essential, as is increased tribal involvement in school governance. Responsive and relevant schooling can only be built upon the foundation of tribal education sovereignty and community-based education.

New Mexico must shift to a community-led, culturally relevant education model in order for improved educational outcomes to occur. A body of research evidence shows that a culturally and linguistically relevant education can close the equity gap for Native students: “AI/AN [American Indian/Alaska Native] students who have access to culturally relevant curriculum, including tribal language, and who possess positive identities as AI/AN people are predicted to have higher grades, higher self-esteem, and lower dropout rates.”¹⁴²

Over the last half century, a series of studies has demonstrated the positive effects of Native language instruction, confirming that children who develop Native language capabilities first enjoy

improved academic competencies and outcomes, compared to children in English-only programs.¹⁴³ This has been recognized by the Native American Languages Act of 1990: “student achievement and performance, community and school pride, and educational opportunity is clearly and directly tied to respect for, and support of, the first language of the child or student” (P.L. 101-477). In New Mexico, both the LFC and LESC have repeatedly pointed to research that correlates bilingual and dual language programs with better educational outcomes.¹⁴⁴

The role of culturally relevant curricula and pedagogy in improving outcomes has been harder to prove, at least when using mainstream evaluation standards. But a sound evidence base has now been established, including through studies such as the “Math in a Cultural Context” project, which yielded “strong evidence that this curriculum has been statistically and practically significant in improving Alaska Native students’ academic performance.”¹⁴⁵ These and other controlled studies confirmed what Native educators, including at UNM’s Native American Studies Department, have experienced for decades when using Indigenous education principles rather than compensatory measures to tackle Native students’ alienation from schools. Dr. Cajete pioneered Indigenous science education, designed and “seen through the metaphors, concepts, and reality of Indian people.”¹⁴⁶ This can transform not only the curriculum but the school itself, leading to very different educational outcomes. An early reviewer concluded that “the evidence suggests that congruency between the school environment and the culture of the community is critical to educational success.”¹⁴⁷ Recent research in the field of neuroscience, presented to the LESC in September 2020, underscores this: “Interventions and supports in the home, school, or community that specifically target cultural well-being improve educational, socioeconomic, and health outcomes.” Conversely, the experience of discrimination undermines cognition.¹⁴⁸ The academic consensus has solidified around the insight that “students will learn better and be more engaged in schooling when they can make connections to it.”¹⁴⁹

2. What is the history and mandate?

The assimilation and acculturation paradigm, which lays bare an intentional deculturization and dismantling of Native identities, has been challenged for a century. By enacting the Indian Education Act in 2003, New Mexico sought to finally open a new chapter and “ensure equitable and culturally relevant learning environments” and the “maintenance of native languages” in public schools (22-23A-2. NMSA 1978). The *Yazzie/Martinez* ruling confirmed that the IEA mandates rise to the level of constitutional rights.

And yet, the 1928 Meriam Report retains its bite: “The uniform curriculum works badly because it does not permit of relating teaching to the needs of the particular Indian children being taught” (Meriam Report, p. 13). The report goes on to argue against a “standardized” curriculum and calls for instructional materials that are “within the scope of the child’s experience,” along with “teachers and school supervisors who are competent to fit the school to the needs of the children” (Id., p. 33). It concludes that a Native student “needs to have his [sic] own tribal, social and civic life used as the basis for an understanding of his [sic] place in modern society” (Id., p. 372).

Fifty years later, the Kennedy Report produced much the same analysis and arrived at the same conclusions: the curriculum and “materials used by the children either completely ignored the contributions of Indians to society, or presented Indians in insulting stereotypes. In some instances the teaching materials in use were totally irrelevant to the experiences of the children” (Kennedy Report, p. 117). The “infinitesimal” number of Native teachers meant that “new programs to train native teachers are required immediately” (Id.).

The Indian Nations at Risk Task Force in 1991 again repeated these conclusions but also made an effort to acknowledge, at least in passing, the role of racism in perpetuating education inequities. The Task Force suggested “a multicultural focus to eliminate racism” (Task Force, p. 37). Furthermore, it proposed that tribal communities “build partnerships with colleges and universities to ensure the training of Native educators, professionals, and technicians” (Id., p. 33). That proposal,

made almost 30 years ago, promotes the very collaboration needed between Tribes and higher education programs that has become a cornerstone of the *Tribal Remedy Framework*.

As the decades passed, the multiculturalism championed by the 1991 Task Force was reduced to a catchphrase, lost in the focus on standardization, and no longer a strategy for combating systemic racism. The U.S. Commission on Civil Rights found in 2003 that Native children’s “civil rights and cultural identities are often at risk in the educational environment” and concluded that the education system as a whole fostered “a continuous violation of [Native students] civil rights.”¹⁵⁰ In 2018, the Commission again expressed concern about patterns of stereotyping, bullying and discrimination toward Native children and pointed to the need for a self-determination approach whereby Tribes have greater autonomy, authority and control over the education of their children.¹⁵¹

Official federal policy suggests a commitment to advancing a culturally and linguistically relevant education. ESSA, for example, seeks “to meet the unique educational and culturally related academic needs of Indian students” and “to ensure that Indian students gain knowledge and understanding of Native communities, languages, tribal histories, traditions, and cultures” (20 U.S.C. §7402). The Native American Languages Act recognizes that “the United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages” (P.L. 101-477). The Esther Martinez Native American Languages Preservation Act of 2006 (named after the renowned Tewa linguist), reauthorized in 2019, provides federal grants for language nests, immersion schools and language restoration programs. In New Mexico, the Keres Children’s Learning Center is a federal grant recipient, yet competition for funding is fierce.¹⁵²

At the state level, much of the responsibility for ensuring the implementation of the IEA’s language and culture mandates lies with the assistant secretary of Indian Education — a position that PED left vacant over long stretches of time. While the Bilingual Multicultural Education Act of 1973 (22-23-1 NMSA 1978) was expanded in 2004 to integrate Native languages, the school funding formula includes only a bilingual, not a specific Native language factor. The LFC has been on record for criticizing PED for not including Native languages as part of the bilingual education program and for failing to meet the need for Native language and culturally competent teachers.¹⁵³ It recommended coordinating Native language with bilingual program activities and hiring additional Native language speaking agency staff. The LFC also called for developing Native cultural content standards on the same level as core curriculum subjects and adjusting assessments to include language and cultural competencies relevant to Native students. Similarly, the LESC has repeatedly pointed to a need for culturally relevant instruction and pedagogy along with “culturally responsive assessments.”¹⁵⁴

New Mexico’s administrative code gives each Tribe the authority to certify tribal language teachers (6.63.14 NMAC, based on 22-10A-13 NMSA 1978) as well as tribal language proficiency, based on “processes and criteria defined by that tribe” (22-1-9.1.A.3. NMSA 1978). However, despite the principle of tribal sovereignty, this explicit statutory authority does not extend to other matters of educational programming and assessments. This creates an obstacle for tribally-operated Native language and culture programs that depend on state funding, subjecting them to standards imposed by the PED.

Although the PED envisions a culturally and linguistically responsive education for all students, the 2020 Learning Policy Institute study concluded that “that vision has not been resourced or implemented sufficiently to have a positive impact on students’ learning opportunities and outcomes.” The study called for “meaningful learning” grounded in students’ “prior experiences, cultural knowledge, and linguistic background,” along with the incorporation of social and emotional learning. It also recommended “new approaches to school discipline that feature restorative practices in culturally and linguistically supportive contexts,” supported by regional technical assistance.¹⁵⁵

3. What problems does this solution address?

The *Yazzie/Martinez* ruling stated unequivocally that “Defendants [i.e. the State] have failed to implement culturally relevant learning environments” (FFCL ¶3076). It summed up a multitude of inadequate and inequitable schooling “inputs” that denied Native students their right to education. The court heard numerous witnesses describe one-sided Eurocentric curricula, insufficient and inappropriate instructional materials, low-quality teaching, a lack of bilingual and Native language instruction and an underrepresentation of Native teachers. It heard about “deficit-based” (FFCL ¶575) programs and services that treated Native students and their cultural and linguistic assets as problems. These grievances were echoed by many tribal community members and experts participating in the Education Community Institutes sponsored by the Leadership Institute as well as in interviews for this report. Their shared experiences illustrate how public schools continue to demand assimilation to dominant ideologies and cultures, through selective histories and stereotyping in curricula and textbooks, teacher bias and hostile school environments.

Despite the large body of legal, research and anecdotal evidence reflected in this report, the discussion of cultural responsiveness rarely touches on racism and how racism might relate to the need for a responsive and relevant education. It is not a discussion that the PED, school districts and the legislature seem inclined to take up. Yet scholars have stressed that “it is critical that educators attempting to engage in CRS [culturally responsive schooling] understand the dynamics of racism and the ways in which racism and oppression affect efforts at providing a high-quality CRS to Indigenous youth.”¹⁵⁶

The starting point for making education relevant is to make schools safe. Bullying, racial microaggressions and discrimination impede learning and push students out of school.¹⁵⁷ As long as Native students are stereotyped and discriminated against, bullied and threatened, denigrated and mocked, overlooked or singled out, the promises of cultural responsiveness will remain empty. Without a willingness to tackle the root causes of educational inequities, half-hearted reform measures such as curriculum add-ons or extended learning time merely serve as tactics to manage “problem” children rather than transform schools. Whether it is the boy whose mouth was washed out with soap for speaking his language 50 years ago, the girl spat on in class 20 years ago, or the Albuquerque teenager whose teacher cut inches off her braids in 2018,¹⁵⁸ policymakers owe it to Native students to scrutinize racist structures underlying schools and school systems.

The “colonial blind spot of structural inequality,”¹⁵⁹ examined by many Indigenous scholars, creates very real problems that New Mexico’s PED and school districts must recognize and address. To do so, they must question a shallow understanding of cultural responsiveness and acknowledge that teaching inherently and routinely produces and reproduces dominant cultural knowledge and norms.¹⁶⁰ There have been attempts over the years, but these have not been sufficiently robust to produce compelling results.

First, despite a fifteen-year effort by the PED, there are still only partial, top-down cultural curriculum initiatives that proceed at a stop-and-go pace without meaningful community input. The court in the *Yazzie/Martinez* case heard that “an institutionalized, culturally-relevant program for Native American students, as required by the Indian Education Act, is nonexistent or piecemeal at best” (FFCL ¶ 630). In 2006 the LFC noted that the PED had shifted responsibility for curriculum development to school districts and outside contractors;¹⁶¹ this remains unchanged. The PED now points to the Indian Pueblo Cultural Center’s curriculum as the state’s Indigenous curriculum. While this is a useful start, subsequent efforts would need to be much more comprehensive, involving and including each Nation, Tribe and Pueblo. At this point, the role and future of curriculum initiatives, occasionally advertised through requests for proposals, remains unclear.

Second, there are no adequate Native language programs in public schools, and tribal community-based language programs are not sustainably funded. According to language experts, Native language instruction in public schools is often relegated to 30-minute classes offered twice a week, with students having to choose between attending a language or another important class. The

number of students enrolled in Native language programs has decreased by 15% since 2015.¹⁶² While most Tribes offer some form of Native language instruction, either on behalf of schools or within their respective communities, there are no permanent funding sources for Native language programs. The school funding formula includes a bilingual but not a Native language factor; tribally-based Native language programs have not received bilingual formula funds. The Indian Education Fund grant program gives one-off awards for Native language initiatives (up to \$100k per grantee in FY2020), which compete with other funding priorities. For FY2021 the PED announced additional grants for language teacher preparation,¹⁶³ but did not present an overarching strategy for meeting tribal language needs.

The 8 tribal languages spoken in New Mexico are at different stages of revitalization, with each Tribe facing unique and sometimes overwhelming challenges. Despite years of efforts, many Tribes feel they are fighting a losing battle to preserve and protect their languages. The United Nations lists the Jicarilla Apache and Tewa languages as severely endangered, with Keres, Tiwa and Mescalero Apache as definitely endangered, and Diné, Towa and Zuni as vulnerable.¹⁶⁴ Despite this dire situation, the PED attaches their own requirements to language grants, specifying curriculum and assessment standards that are difficult to meet for Tribes with few language speakers left. But more important, the imposition of standards undermines tribal self-determination. Native language programs also face obstacles in recruiting, certifying and retaining teachers. While the Native American Language and Culture teacher certification program (NALC-520 Certificate, 6.63.14 NMAC) authorizes Tribes to certify language and culture teachers without PED review, these teachers are not treated as equal teachers with equal pay.

Third, the state's lack of teacher diversity and appropriate teacher training programs produces negative classroom experiences for many Native children. Students, parents and fellow teachers report a disturbing pattern of inexperienced, disinterested and ill-prepared teachers, who bring their personal prejudices and biases into the classroom. Rather than encouraged by their teachers, Native students are at risk of being mislabeled as "special needs."¹⁶⁵ Data shows that New Mexico's Native students are more likely to be diagnosed with "development delays" than their white counterparts.¹⁶⁶ At a 2020 Institute for American Indian Education summit, participants concluded that "[e]ducators are not prepared to work effectively with culturally and racially diverse students," and criticized a lack of guidance and support for culturally responsive teaching.¹⁶⁷

Since only 3% of New Mexico's teachers are Native,¹⁶⁸ the diversity gap in most school districts is large and apparent. Most Native children, even in schools located on or near tribal homelands, are taught by non-Native teachers. At Cuba Independent Schools, 66% of the student population is Native, yet the district has only 7.7% Native teachers. Dulce Independent Schools, serving the Jicarilla Apache Nation, has an almost all Native student population (93.7%), but only 10.2% of the teachers are Native.¹⁶⁹ The state has no clear strategy or plan to rectify this. Instead, the PED entered into a multi-year contract with AmeriCorps' *Teach for America* program, which provides temporary volunteer teachers who currently serve Zuni Pueblo. No prior teaching experience is required for these positions. Additionally, high teacher turnover creates instability for students. Some cannot count on having the same teacher from year to year, others arrive at classrooms and find they have no teacher at all.¹⁷⁰

Native students and their communities continue to pay a high price for the many deficiencies found in New Mexico's public education system, yet no institutional framework exists to remedy these failures. Many tribal education experts, community members and interviewees consider the current generation of students as critical for sustaining and revitalizing tribal languages and cultures. They expressed dismay at the failure of public schools to address both language and learning loss among Native children. The COVID-19 pandemic has added to those challenges, not only by interrupting children's education and accelerating disengagement from school, but also by endangering tribal elders who are the repositories of Indigenous knowledge. This unprecedented scenario has deepened distress and trauma among Native students and their tribal communities.

The loss experienced by Native students cannot be separated from the collective losses inflicted on generations of their families through colonization, systematic oppression and cultural suppression. It is the obligation of present-day institutions, including schools, to recognize the widespread impact of intergenerational trauma, often deeply buried and unrecognized. Schools and educational leaders must identify the symptoms of trauma and foster pathways for healing. Yet New Mexico's education system does not support trauma and healing-informed practices, and overburdened teachers are ill-equipped to address those needs.

Despite the proven resilience of tribal communities, the threat of losing lives, language and culture is ever-present. Native youth are at a higher risk for depression and a range of chronic health conditions, which have been attributed to loss of cultural identity and historical family disruptions.¹⁷¹ The pandemic has compounded these underlying factors by restricting community gatherings that normally support Indigenous ways of healing. The Honoring Native Life initiative at UNM reports an increase in suicide ideation as a result of the pandemic. The suicide rate among New Mexico's Native youth (15 to 24 years of age) is already higher than any other racial or ethnic group in that age range. Nationally, the suicide rate of Native adolescent girls and young women is 3.5 times higher than their age group's average. Native boys and young men have the highest suicide rate of all populations and age groups.¹⁷²

Students and their families do not experience schools as either supportive or safe environments. Students' social and emotional needs are often neglected, and supports for students with disabilities are insufficient. Moreover, Native students, along with Black students, are subjected to more frequent and harsher school discipline measures than white students. They undergo double the rate of corporal punishment, arrests and referrals to law enforcement.¹⁷³ Native girls experience threats to their physical safety, underscored by the crisis of missing and murdered Native women and girls that replicates a long history of colonial gender violence.¹⁷⁴ Transgenerational trauma recurs with the continued racial and cultural bias and deficit-based approach endemic in present-day schools.¹⁷⁵

4. How does this solution work?

To achieve a "culturally relevant education that blends both academic learning with traditional, cultural-based learning," as explained in Dr. Joseph Suina's courtroom testimony (*Yazzie/Martinez* FFCL ¶ 513.a), the education system must respond to the values and needs of Native students and their communities. This requires transforming the school environment, changing the curriculum and instruction, and developing and training teachers.

There are three main strategies that can support such a transformation:

First, schools and Tribes should collaborate in making school environments welcoming and safe for Native students and their families. If a school is to evolve into one that Native children can trust, it would have to treat them with dignity, respect, and provide stability and support. Such a school would respect traditional calendars, rather than penalizing students for their cultural engagements. A school that engages its students instead of pushing them out would confront the history of injustice and the impact of trauma. It would lift up tribal values and honor Native students' identities, and it would ensure the physical, psychological and emotional safety needed for individual and collective healing. Such a school would recognize that connecting students to culture and language can help shield them from trauma, especially during a pandemic.¹⁷⁶ It would seek support from Native experts to train educators and administrators in trauma- and healing-informed practices.

To address and resolve conflicts, such as school attendance and behavioral issues, which currently trigger punishment, pushout and even criminalization of Native children, schools should work with tribal communities and Indigenous law practitioners to incorporate Indigenous justice practices, specifically peacemaking.¹⁷⁷ This may require amending the school discipline law (22-5-4.3 NMSA 1978) and regulations (6.11.2 NMAC), which currently allow for the full range of punitive practices, from restraint and seclusion to expulsion and criminal charges. New Mexico's new bullying law

(22-35-1 NMSA 1978), along with PED's revised rules (6.12.7 NMAC) — which currently fail to prohibit bullying on the basis of Native identity — include options for “restorative school practices” and “resolution circles” that repair rather than punish. However, PED's suggested actions are directed only at the individual, rather than incorporating a holistic approach. Indigenous justice, by contrast, consists of a non-adversarial process that includes everyone impacted by a conflict. By coming together and creating a quiet, sacred space, a circle of peace that keeps the student at its heart, accountability becomes relational rather than anonymous. As the process unfolds, a student experiences their connection with and their impact on others. According to Indigenous peacemakers, a student's realization that people care enough about them to come together and make space for reflection can have a profound impact and affect changes in behavior.

Second, the state should invest in Native language programs and Native-led centers for curriculum and materials development, operated by Tribes in conjunction with Tribal colleges and Native higher education programs. Curriculum development cannot be imposed from the top or delivered by private contractors, nor should it be separated from the development of Native language programs. The participation of tribal communities must be central to both. Tribal members have to be involved in creating educational content and pedagogy in order to allow what has been historically sealed to surface, and “explore ways of knowing and systems of knowledge that have been actively repressed for five centuries.”¹⁷⁸ It is in the mutual engagement between education scholars, practitioners and tribal communities that the shift toward relevant knowledge and responsive practices can begin to occur: such “engagement shifts the power structures of education and places community leaders as holders of information and state-certified teachers as learners of such information.”¹⁷⁹ This is important because a curriculum is not simply about transmitting abstract knowledge, it is about reinforcing students' desire to learn and shaping their values, behaviors and development. A curriculum infused with Indigenous content helps a student develop and strengthen a “[c]ultural identity [that] can foster protective attributes such as health, resilience, and well-being.”¹⁸⁰ Much of this happens through Native languages, in which tribal cultures, values and practices are embedded. This reinforces a deeply held tradition, namely, that Native languages “are often at the core of healing through education.”¹⁸¹

“My idea of education for Native children would be a safe space where they can freely learn the language and the importance of why we need it and how it all corresponds and ties back into not only who they are, but the entire community.” — Sara Chama, Laguna Pueblo (Summer Policy Academy 2015 Fellow)

Native language revitalization is a long-term process that requires a culturally-focused environment and support from the local, state and national level, and from academic institutions such as UNM's American Indian Language Policy Research and Teacher Training Center.¹⁸² A permanent investment of state funds in community-based Native language programs would be critical in sustaining and revitalizing New Mexico's Native languages and cultures. This should happen through the state's school funding formula, where a special Native language factor could generate recurring funds for language programs operated by Tribes. Tribes would have to retain full authority over state-supported tribal education programs and services. Greater legal clarity about the realm of tribal authority could be achieved by expanding existing statutory tribal powers pertaining to language certification (22-1-9.1.A.3 NMSA 1978) and aligning these more closely with the principles of tribal jurisdiction over child welfare (32A-1-8. NMSA 1978).

Tribally-led curriculum development has to proceed systematically, creating a continuous sequence of educational content and materials from early childhood through college, tailored to each Tribe's goals and needs. It has to design new methods and tools for learning, for assessing progress and for measuring success. This requires tribal community engagement, long-term planning and central coordination — in contrast to the “piecemeal” approach criticized by the *Yazzie/Martinez* ruling (FFCL ¶ 630). Collaborative curriculum development centers, managed jointly by Tribal Education Departments and Native higher education institutions and programs, can form the strategic and operational hubs of this process.

Third, the state must make a concerted effort to increase the number of Native educators and educational leaders who understand the communities, languages and cultures of their students, along with the colonial structures that have shaped schools. To close the teacher diversity gap and fully reflect the Native student population, New Mexico would have to hire approximately 1,400 Native teachers.¹⁸³ Even a less ambitious goal would require creating a teacher pipeline that assists Native students in entering the teaching profession. Additionally, to increase the representation of Native professionals in senior administrative positions, support for educator leadership programs is needed. A pipeline has to start with preparing Native high school graduates for college, supporting them through post-secondary education by providing scholarships and loan-forgiveness programs or —ideally— tuition waivers, and offering field experiences for pre-service teachers in schools serving Native students. Research found that Native-led higher education programs are most conducive to meeting Native college students needs and increasing their college completion rate.¹⁸⁴ UNM’s Institute for American Indian Education, for example, works with tribal communities in identifying and meeting student, teacher and tribal needs. In addition to teacher recruitment, retention challenges must be addressed in order to stop the revolving door for teachers and education staff in tribal communities. This must include equal pay and equal status for language teachers. Moreover, it is imperative that “community members and leaders are regularly invited to share their knowledge and motivate students to excel” as an integral part of the curriculum.¹⁸⁵

Since the majority of teachers and school staff Native students encounter throughout their academic life will continue to be non-Native, it is crucial to improve teacher training and professional development. Every educator and school administrator in the state should be able to respond to the unique needs of their students, whether a student is Native or not. A major first step is knowledge of the IEA, along with the HEA. This should be required, as should the completion of anti-racism training. Professional development workshops, provided by Native higher education faculty, could help teachers come to understand and value their Native students. Such workshops could also infuse Indigenous perspectives into teachers’ classroom practices. In Montana, the Indian Education for All (IEFA) Act seeks to support educators in the effort of becoming culturally responsive. IEFA’s goal is to integrate Native values and content into every aspect of education, from classroom instruction to assessments, from teacher preparation to professional development. There is some evidence that this has allowed educators to relate better to their students and create more welcoming classroom environments.¹⁸⁶ New Mexico similarly needs educators who view the well-being and success of Native students as central to their own success as teachers.¹⁸⁷

5. Summary: Culturally and Linguistically Relevant Education

- A culturally and linguistically relevant, revitalizing and sustaining education starts with children’s strengths, challenges cultural and racial bias, and is accountable to communities.
- Ending the assimilation paradigm requires addressing hierarchies of knowledge and power.
- The vision of a balanced education interweaves cultural, linguistic and academic competencies, and braids Indigenous and Western knowledge systems.
- A culturally relevant education cannot be designed top-down; it requires community collaboration.
- A culturally relevant curriculum requires a continuous sequence of educational content, materials and pedagogy, from early childhood through college, including new tools for assessing progress and measuring success.
- New Mexico has no systematic, sequenced, culturally and linguistically relevant curriculum that meets Native students’ needs.
- New Mexico does not sufficiently support and fund Native language programs, and it lacks Native teachers, Native language teacher pay equity, and adequate teacher training.
- Institutional racism provides a fertile ground for bullying and discrimination, and solidifies entrenched punitive practices that often push Native students out of school.
- To make schools safe and welcoming, to foster a balanced education and to increase teacher diversity and training, three main strategies are needed:

1. Confront institutional racism, develop trauma-informed practices and use Indigenous justice models to end marginalization, discrimination and school pushout.
2. Invest in Native curriculum development centers, operated jointly by Tribes, tribal colleges and Native higher education departments; provide permanent funding to Tribes for Native language programs by adding a Native language factor to the school funding formula; and ensure full tribal authority over Native language and culture programs.
3. Invest in a pipeline for Native teachers, educational leaders, specialists and administrators; and require anti-racism and Indian Education Act training for all teachers, educational leaders and staff.

Like growth in the field

Patience. Reciprocity.

Rooted intention.

Rachel Riley, Acoma Pueblo (Summer Policy Academy 2010 Fellow)

VII. A Plan for Action: Implementing the *Tribal Remedy Framework*

Solution	Policy Steps	Implementation & Investments
Shared Responsibility in Public Education	Build capacity of Tribal Education Departments (TEDs) to assume a role akin to LEAs and increase tribal involvement & control	<ul style="list-style-type: none"> • Support Native higher education institutions/ programs to provide technical assistance • Build pipeline for Native professionals through college & career preparation and tuition waivers
	Resource TEDs through recurring funding, including the at-risk formula factor	<ul style="list-style-type: none"> • Recurring allocation for TEDs • Expand at-risk factor to include Native students; make Tribes eligible for receiving at-risk funds
	Formalize TED-LEA collaboration through a local governance framework that increases tribal involvement & control over school resourcing and programming	<ul style="list-style-type: none"> • Support the meaningful implementation of HB250 (collaboration in developing needs-based resourcing and programming) • Require accountability measures to be culturally and community-appropriate • Establish Native technical assistance centers to support Tribes and schools.
Community-Based Education	Build community education infrastructure, e.g. tribal libraries as community education centers (extended & summer learning, technology & career services)	<ul style="list-style-type: none"> • Make significant capital investments in all tribal libraries • Make significant operational investments in all tribal libraries
	Increase tribal capacity to develop and deliver community-based early education programs	<ul style="list-style-type: none"> • Provide full authority and state funding for TEDs to develop early education programs • Expand Native language teacher certification to include early education • Fund early education curriculum development through Native higher education programs
	Increase tribal capacity to develop a network of integrated student support services	<ul style="list-style-type: none"> • Fund tribally-based design and delivery of integrated social support services • Support Native higher education institutions/ programs to provide technical assistance
Balanced, Culturally & Linguistically Relevant Education	Make schools safe and supportive and end school pushout by addressing institutional racism, using trauma informed practices and Indigenous justice models	<ul style="list-style-type: none"> • Fund technical assistance to Tribes, schools, teachers and PED through Native higher education institutions/programs • Support tribal agencies in providing social and emotional supports, assisted by Native higher education institutions/programs
	Establish curriculum development centers at Native higher education institutions/programs partnering with Tribes; provide permanent funding for Native language programs.	<ul style="list-style-type: none"> • Invest in curriculum development centers at Native higher education institutions/programs. • Add a Native language factor to the school funding formula; make Tribes eligible for receiving formula funding; ensure full tribal authority over programming and use of funds
	Create a Native teacher pipeline; require anti-racism and IEA training for all educators and staff	<ul style="list-style-type: none"> • Support Native teacher/administrator enrollment and training at Native higher education institutions/ programs • Provide professional development for teachers through Native higher education programs • Provide tuition waivers for Native college students • Ensure equal pay for Native language teachers

VIII. Conclusion

After a century of Indian education devised by non-Indians to assimilate Indigenous people into the country's dominant society, and after another fifty years of tepid reforms to improve Indian education outcomes, it is time for the State of New Mexico to invest in the education sovereignty of New Mexico's Tribes. Shifting the paradigm from Indian to Indigenous education would disrupt the culture of bias toward Native values, knowledge and languages that has permeated public schooling. It would allow Native identity to be marshaled as a strength that children can draw upon, and an asset that schools can use to make teaching more relevant. This new education paradigm would encourage a mutually beneficial and meaningful collaboration between Tribes and school districts in pursuit of better educational opportunities and outcomes for Native students.

The *Tribal Remedy Framework* responds to the historic court ruling in the *Yazzie/Martinez* case with a set of strategic solutions that place tribal communities at the center of education planning, programing and infrastructure. It guides the state toward sharing responsibility with Tribes and investing in community-based education. This is the foundation on which schools and communities, Tribes and higher education institutions can build an equitable, culturally and linguistically relevant education system that meets the needs of Native students and their communities.

Some components of the *Tribal Remedy Framework* can be implemented within the existing education system, leaving current institutional and funding structures mostly intact. However, the impact of such reforms would be limited. Only through a fundamental change in approach, a transformation that embraces tribal communities as partners and collaborators in the education of their children, can the state begin to create the balanced education that enables Native students to thrive. This requires a recognition that learning emerges from reciprocal relationships between students, schools and communities, and that public schools have to reflect the voices and values of tribal communities. Finally, transforming education requires sharing power and resources with New Mexico's Nations, Tribes and Pueblos. The *Tribal Remedy Framework* lays out the steps for starting this process now.

Appendices

I. Community Institutes and Stakeholder Interviews

1. Education Community Institutes and Pueblo Convocations convened by the Leadership Institute (Santa Fe Indian School)

- Pueblo Convocation on Ten Critical Issue Areas (April 1-3, 2012) Tamaya Hyatt, Pueblo of Santa Ana, NM
- Community Institute on Education: Fulfilling the Promise of Education (May 22-24, 2016) Buffalo Thunder Resort, Pueblo of Pojoaque, NM (co-convenor: Bernalillo Public Schools)
- Governor's Community Institute on Education (October 20-21, 2016) Santa Fe Indian School Health Education Building, Santa Fe, NM
- Pueblo Convocation on Education (July 8-10, 2018) Tamaya Hyatt, Pueblo of Santa Ana
- All Pueblo Council of Governors Community Institute on Education (July 22-24, 2019) Santa Ana Star Hotel and Casino, Pueblo of Santa Ana, NM
- Mescalero Apache Community Institute on Education (September 10-11, 2019) Inn of the Mountain Gods, Mescalero, NM
- Navajo Nation Community Institute on Education (October 17-18, 2019) Economic Development Center, St. Michael's, AZ
- Zuni Pueblo Community Institute on Education (October 28 -29, 2019) Zuni Pueblo, NM
- Jicarilla Apache Community Institute on Education (November 2019) Tribal Council Room, Dulce, NM

2. List of interviewees

- *Melissa Candelaria, Esq.*, New Mexico Center on Law and Poverty
- *Dr. Gayle Diné Chacon*, Native American Budget and Policy Institute at UNM
- *Christy Chapman, Esq.*, Native American Budget and Policy Institute at UNM
- *Dr. Curtiz Chavez*, Keres Children's Learning Center, Pueblo of Cochiti
- *Dr. Carnell Chosa*, Leadership Institute (Santa Fe Indian School)
- *Norman Coeeyate*, Center for Native American Health at UNM
- *Cheryl Demmert Fairbanks, Esq.*, Native American Budget and Policy Institute at UNM
- *Teresa Gomez*, Honoring Native Life, Dept. of Psychiatry & Behavioral Sciences, UNM
- *Janice Kowemy*, Laguna Public Library, Pueblo of Laguna
- *Dr. Lloyd Lee*, Native American Studies Department, UNM
- *Dr. Tiffany Lee*, Native American Studies Department, UNM
- *Felice Lucero*, Consultant, San Felipe Pueblo
- *Dr. Genabah Martinez*, Institute for American Indian Education at UNM
- *Dr. Natalie Martinez*, UNM College of Education
- *Alana McGrattan*, formerly New Mexico State Library, Tribal Libraries Program
- *Teresa Naranjo*, Santa Clara Pueblo Community Library
- *Regis Pecos*, Leadership Institute (Santa Fe Indian School)
- *Dr. Christine Sims*, American Indian Language Policy Research and Teacher Training Center at UNM
- *Dr. Nathania Tsosie*, Center for Native American Health at UNM
- *Claudia J. Vigil-Muniz*, Jicarilla Apache Department of Education
- *Jasmine Yepa, J.D.*, Native American Budget and Policy Institute at UNM

II. Indian Education Recommendations: A Historical Timeline

Indian Education Recommendations: A Historical Timeline

	“Education programs and projects run directly by the Tribe itself.”	“Responsibility for the education of Native students must rest in the hands of the parents and communities served by schools.”	“Make tribal/pueblo education departments Local Education Agencies eligible for state funding as a foundational step in increasing tribal capacity, involvement and control over the education of their students.”		“TEDs [Tribal education departments] lack sufficient funding to fully develop tribal expertise in education administration—and thus to fulfill their potential.”
The “work of the government directed toward the education and advancement of the Indian himself is largely ineffective. The chief explanation [...] lies in the fact that the government has not appropriated enough funds.”	“Increased Indian participation and control” in the “development and operation of public education programs.”	“Strong community control” and “partnerships between schools and Native communities and Tribes must become one of the schools’ highest priorities.”	Get a “Funding Formula Task Force” to review “the adequacy of at-risk unit values to determine if funding is adequate” to meet “the purposes of the [Indian Education] Act.”	“Involve the tribal community to participate and be proactive in the long-range design and development of facilities to serve their students and the community.”	“The federal government has failed in its trust obligation to provide educational services that address the unique situation of Native American students.
“The first and foremost need in Indian education is a change in point of view.”	Indian education needs an effort comparable “to the Marshall plan which revitalized postwar Europe.”	Develop “comprehensive educational plans with local districts and tribal governments.”	“Develop a strategy and focus resources on implementing the Indian Education Act” and “require the development of an implementation plan framework.”	Develop “formal agreements between tribal communities and public schools.”	The “lack of full recognition of the sovereign status of tribal governments by state and federal governments, laws, and policies diminish[es] tribal self-determination and negatively impact” outcomes.
1928	1969	1991	2006	2010	2018
<i>Meriam Report</i>	<i>Kennedy Report</i>	<i>Indian Nations At Risk Task Force</i>	<i>Legislative Finance Committee, Review of IEA Implementation</i>	<i>Indian Education in New Mexico, 2025</i>	<i>US Civil Rights Commission</i>
A Native student “needs to have his own tribal, social and civic life used as the basis for an understanding of his place in modern society.”	“Maximum Indian participation in the development of exemplary educational programs.”	A “multicultural focus to eliminate racism.”	“Content standards and tests [should] include language and cultural competencies relevant to Native American students.”	“Strengthen cultural identity by promoting and supporting strong Native American values, traditions, culture, and language at the local level.”	Native students “experience discernible disparities in access to educational opportunities,” which “has a profound impact on the socioeconomic opportunities and wellbeing of both tribal nations and individuals.”
“Teachers and school supervisors who are competent to fit the school to the needs of the children.”	“New programs to train native teachers are required immediately.”	Build “partnerships with colleges and universities to ensure the training of Native educators, professionals, and technicians”	“Get more Native and certified culturally based educators in the pipeline.”	“Make curriculum relevant to Native students’ lives [...] by incorporating experiential learning techniques that bring meaning to local places, events and situations.”	Native students are “often mistreated at school, which makes for a negative learning environment.”
Instructional materials that are “within the scope of the child’s experience.”			Use a “culturally based education model” “as a blueprint and guide for the development of a set of accountability measures.”	Ensure that “accountability includes Indigenous knowledge, and culturally responsive curriculum, and pedagogy.”	

ENDNOTES

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¹⁸² See Office of Head Start, *Tribal Language Report*, 2; see also U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start, *A Report on Tribal Language Revitalization in Head Start and Early Head Start*, Washington, DC [n.d.], vii; <https://eclkc.ohs.acf.hhs.gov/sites/default/files/pdf/report-tribal-language-revitalization.pdf>

¹⁸³ Author's calculation, based on ratio of 3% Native teachers and 10% Native students, and 20,414 total number of teachers in 2018-19; https://webnew.ped.state.nm.us/wp-content/uploads/2018/12/SBFA_StatBook_F_17181819_PrsnlChngsByCtgy.pdf. On the federal policy goal of increasing teacher diversity, see U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *The State of Racial Diversity in the Educator Workforce*, Washington, D.C. (2016); <https://www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf>

¹⁸⁴ Desiree Carver-Thomas, *Diversifying the Teaching Profession: How to Recruit and Retain Teachers of Color*, Palo Alto, CA: Learning Policy Institute (April 2018); https://learningpolicyinstitute.org/sites/default/files/product-files/Diversifying_Teaching_Profession_REPORT_0.pdf

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¹⁸⁶ Jioanna Carjuzaa, "The Positive Impact of Culturally Responsive Pedagogy: Montana's Indian Education for All," in: *International Journal of Multicultural Education* 14:3 (2012).

¹⁸⁷ Pirette McKamey, "What Anti-Racist Teachers Do Differently," in: *The Atlantic*, June 17, 2020; <https://www.theatlantic.com/education/archive/2020/06/how-be-anti-racist-teacher/613138/>

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