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New Mexico Advisory Committee to the U.S. Commission on Civil Rights  
Via email to Brooke Peery ([bpeery@usccr.gov](mailto:bpeery@usccr.gov))

**Written Public Comment: Education Disparities and Adequacy for Native American Students**

Dear Committee Members,

On behalf of the Tribal Education Alliance (TEA), please accept this letter and its attached documents as TEA's public comment on the topic of education disparities and education adequacy for Native American students.

The Tribal Education Alliance (TEA) is a group of tribal education experts in New Mexico that advocates for the Tribal Remedy Framework (TRF), a comprehensive plan for meeting the educational needs of Native students, presented in 2019. The TRF was created collectively by tribal community members and Indigenous education experts, following a series of tribal Community Education Institutes and Pueblo Convocations throughout New Mexico. It has been endorsed by the leadership of New Mexico's 23 Nations, Tribes and Pueblos.

The TRF responds to the landmark 2018 *Yazzie/Martinez v. State of New Mexico* court ruling, which ordered the state to transform the public education system to ensure that all students receive the programs and services necessary to be college, career, and civics ready. The TRF is also aligned with New Mexico's 2003 Indian Education Act, which envisions an equitable and culturally relevant education for Native students.

The *Yazzie/Martinez* ruling found that the state of New Mexico failed to ensure an adequate and sufficient education for Native students, yet no significant progress has been made in the four years since the court's decision. This is despite New Mexico's statutory framework for Indian Education, the 2003 Indian Education Act (IEA), as well as detailed proposals from the Tribes themselves, in the form of the 2019 Tribal Remedy Framework.

In the following, we summarize the persistent failures of the state of New Mexico to close gaps in education access and outcomes for Native students and to provide an adequate, relevant education that meets Native students' cultural and linguistic needs. We also offer a summary of key recommendations contained in the TRF.

**Persistent Problems:**

1. Four years after the court ruling, Native students in New Mexico still do not receive an equitable, adequate education. The equity gap in educational inputs and outcomes remains largely unchanged. The State's newly released assessment data (September 1, 2022) shows that Native Americans, the third largest student sub-group, "are the most poorly served of any group," according to the New

Mexico Public Education Department's (NMPED) own statement. Just 19 percent of Native American seventh graders were proficient in language arts (53 percent of white students were proficient), and 13 percent in math (compared to 43 percent of white students). At some grade levels, Native students' proficiency scores were four times lower than those of white students.

2. New Mexico's public education system continues to lack Native American teachers (an estimated 2-3% of teachers are Native, yet Native students comprise 11% of the student population; in some school districts, Native students are primarily taught by temporary AmeriCorps volunteers).
3. Two decades after its passage into law, the state's Indian Education Act (IEA) has yet to be fully implemented; the *Yazzie/Martinez* ruling found NMPED in violation of the IEA. Yet the state has not assessed what it would cost to fully implement the IEA.
4. In 2019, tribal advocates succeeded in passing an amendment to the IEA that requires school districts to conduct assessments of Native students' needs and to develop systemic frameworks to meet those needs. This provision was intended to improve school accountability and increase tribal consultation and involvement. It has yet to be implemented as intended.
5. Public education in New Mexico is largely funded by the state. In recent years, the state's public education budget has seen across-the-board funding increases, yet very little funding has targeted Native students.
6. Around 90% of Native American children attend New Mexico's public schools, comprising around 11% of the student population, yet less than 0.1% of public education funding is targeted at Native students.
7. Indian Education continues to be deeply underfunded: the state's school funding formula does not include a factor for Native students, tribal communities receive no formula funding, and the IEA funds only small, short-term projects through reimbursable grants. The *Yazzie/Martinez* court had criticized this funding model as unsuitable for developing Indian Education capacity and programs that need to be sustained year-after-year.
8. The short-term project grants received by Tribes often revert, as many Tribes lack the capacity, staffing, and facilities to spend grants quickly and in line with state restrictions. While Tribes often lose the little money awarded to them, school districts are allowed to carry over large amounts of state funding and build up unrestricted cash balances.
9. The state's public education system is not designed to be inclusive of Native children and their tribal communities:
  - a. Native children often travel long distances off-reservation to schools located in other jurisdictions.
  - b. Many face an unwelcoming and unsafe school environment that does not offer relevant curricula, materials, instruction, or teachers they can relate to.
  - c. After school, Native students travel back to their tribal communities, which lack the programs, facilities, services, and infrastructure to support them.
  - d. Native students have suffered disproportionate learning loss due to the COVID-19 pandemic. Many Native students were unable to fully partake in online learning, due to poor technology infrastructure in their communities.
  - e. Tribal communities are marginalized in the governance of public schools, following historical voter disenfranchisement, systemic racism, and a lack of respect for Native languages and cultures.
  - f. Tribal consultation at the school district level often falls short. Tribes have not been able to meaningfully influence public school policy, programs, and budgets.
10. State education policy and plans are not sufficiently informed by meaningful tribal consultation. State funding does not sufficiently respect tribal sovereignty: grant-funded projects tend not to be aligned with purposes identified by Tribes themselves. Some tribal entities and programs choose to not

compete for restricted, one-time state dollars that impose conditions and limit their self-determination.

11. There is no comprehensive support infrastructure for Indian Education: schools do not know how to meet Native students' needs, tribal communities struggle to develop capacity, teachers lack training and resources.

**Key Tribal Recommendations:**

With the TRF, New Mexico's Tribes, Nations, and Pueblos have put forward concrete proposals for a coordinated, comprehensive system of Indian Education, starting in early childhood. The TRF recommends a holistic, integrated approach, whereby K-12 public schooling receives support from tribal community programs on the one hand and Indian Education experts at higher education institutions on the other.

1. Fully implement and fund New Mexico's Indian Education Act:
  - a. Ensure that all Native students receive an equitable, culturally relevant education.
  - b. Build and fund a long-term Native educator pipeline.
  - c. Elevate and fully fund Native language programs in schools and tribal communities.
  - d. Incentivize and fund coordination and collaboration between school districts, Tribes, and higher education programs.
  - e. Invest in a comprehensive support infrastructure for Native-serving school districts and Tribes, utilizing Native-led higher education programs, starting with two Technical Assistance Centers for Indian Education.
  - f. Improve the state's funding strategy for Indian Education: replace short-term project grants with consistent, predictable, and sustainable funding streams.
2. Invest in tribal education capacity and tribal community-based initiatives:
  - a. Ensure that Native students have access to an adequate education infrastructure, services, programs, and supports in the tribal communities they live in.
  - b. Ensure that Native students receive linguistically and culturally relevant programs, including programs created by and centered in tribal communities.
  - c. Fund education capacity in tribal communities through establishing a Tribal Education Trust Fund that provides consistent, sustainable state funding distributions to Tribes via an agreed formula (similar to the state's formula for funding school districts).

On behalf of the Tribal Education Alliance, I thank you for your attention and consideration. Please do not hesitate to contact us with any questions you may have.

Sincerely,

Regis Pecos  
*Chair, Tribal Education Alliance*  
*Co-Director, Leadership Institute*

*Attachments:*

1. TEA Report: Pathways to Education Sovereignty (2020)
2. Tribal Remedy Framework: List of Recommendations (2019)
3. TEA Comments on PED Draft Strategic Plan (December 2020)
4. TEA comments on PED Draft Action Plan (July 2022)
5. All Pueblo Council of Governors: Letter on PED Draft Action Plan (July 2022)
6. All Pueblo Council of Governors: Letter to Governor Michelle Lujan Grisham on Educational Outcomes in 2021 Legislative Session (May 2021)