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July 8, 2022

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Kurt Steinhaus
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RE: *Martinez/Yazzie, et al. v. State of New Mexico, et al.* Draft Action Plan.

Dear Secretary Steinhaus:

Sacramento**Program Office**

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The Martinez and Yazzie Plaintiffs (“Plaintiffs”) submit comments regarding the draft Action Plan released by the New Mexico Public Education Department in May of 2022. Collectively, Plaintiffs include parents and their children who are students in New Mexico public schools, and six school districts. Plaintiffs sued the State of New Mexico and the New Mexico Public Education Department in the *Martinez/Yazzie, et al. v. State of New Mexico, et al.* lawsuit.

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The Action Plan mentions but does not directly discuss the Court’s rulings or findings of fact. Plaintiffs provide a non-exhaustive summary of those rulings before specific comments on the plan. Plaintiffs reserve the right to address shortcomings in the Action Plan, as well as all other compliance issues, before the Court that retains jurisdiction over the case.

Washington, D.C.**Regional Office**

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The Court ruled, *inter alia*, that the State of New Mexico, the New Mexico Public Education Department, and the New Mexico Secretary of Education must ensure that public schools

have the resources “necessary for providing the opportunity for a sufficient education for all at-risk students” that prepares those students for college and career. Final Judgment and Order at 4; *see also* Decision and Order at 77; Findings of Fact and Conclusions of Law (“FF&CL”) ¶ 3206. Those at-risk student groups identified in the Court’s orders are English learners, economically disadvantaged students, students with disabilities, and Native American students. The Court identified various aspects of the New Mexico public education system that failed to serve at-risk students, as shown in extensive findings of fact. In order to address these failures, the Court ordered that “[r]eforms to the current system of financing public education and managing schools should address the shortcomings of the current system by ensuring, as a part of that process, that as soon as practicable every public school in New Mexico would have the resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students.” Final Judgment and Order at 4-5. In addition, the Court said that the reformed education system “should include 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.” Final Judgment and Order at 5.

NMPED’s Action Plan falls far short of the Court’s mandates summarized above. In general, the Action Plan merely offers a series of goals, aspirations, and limited initiatives without providing concrete steps, outlining necessary changes, measurable outcomes, or detailing the required commitments—by all state actors, not just the NMPED—to achieve these goals. The children of New Mexico deserve more. A real and effective plan would contain specific commitments by the State such as short and long-term action steps that are aligned to the deficiencies identified by the Court and to the goals they intend to meet, necessary statutory and regulatory changes, estimated increases to staff, a multi-year cost and budget analysis of what would be required to achieve the higher goals of academic achievement and attainment that students so desperately need, and a description of how the State will measure whether these actions are adequately preparing students for college or career. This critique applies to all aspects of the Action Plan. Additionally, we discuss specific issues below.

With respect to economically disadvantaged students, the plan fails to provide a comprehensive roadmap for ensuring that such students receive the educational inputs that would allow them to come to the classroom as prepared as other students. One example of such inputs is research-based programs. At trial, the Court found that research-based programs, such as reading and literacy programs, would be part of an education system that allows economically disadvantaged students to receive an education that prepares them for college and career. FF&CL ¶¶ 4, 236. The Court found that even though the former K-3 Plus Program provided economically disadvantaged and other at-risk students with much-needed additional learning days, many districts could not continue the program because of fiscal constraints and a decline in funding by the State. FF&CL ¶¶ 108-113, 121-131. Plaintiffs fear that inconsistent or incomplete implementation of the new K-5 Plus Program that the Action Plan touts and that was

created after the Court's decision could have the same results for economically disadvantaged students. *See* Action Plan at 12.

NMPED itself admits that participation in the program decreased in the last 2 years, but it says that the pandemic was the cause. However, there were issues with the implementation of K-5 Plus immediately after its creation, with many districts not applying for funding. NMPED may be taking a step in the right direction with such programs, but there must be a more detailed plan that explains how the state will ensure full implementation of such programs **in every school district** if economically disadvantaged students are to receive a sufficient education.

NMPED's Action Plan also fails to address the most serious issues regarding English learners ("EL students"). The Court found that NMPED failed to ensure that school districts provided all EL students with an adequate education. Specifically, the Court found that NMPED did not monitor local education authorities in a manner that allowed it to ensure that schools' English language development programs meet federal standards and are research-based. For example, NMPED's data coding did not allow the agency to know about the discrete practices and strategies of certain English language development programs reported by school districts or whether such programs met federal standards. FF&CL ¶¶ 393-394, 396-398. The Court also found that "[t]he State has never evaluated whether the funding that school districts receive is enough to implement effective programs for ELLs." FF&CL ¶ 383. Additionally, NMPED did not know whether school districts used money generated by EL students through the State Equalization Guarantee funding formula to educate EL students. FF&CL ¶¶ 385-387.

The Action Plan does not clarify whether these monitoring or tracking issues relating to programming and funding for English learners have been or will be resolved. NMPED states that "[i]n addition to using 'sheltering' methods in content areas, NMPED's Language and Culture Division (LCD) now requires that English Learners receive at least 45 minutes of specific English-language development instruction per school day." Action Plan at 22. However, NMPED does not elaborate on how it will ensure that school districts comply with such a mandate, much less whether school districts currently have the teachers and resources to do so. Similarly, the Action Plan mentions how EL students "are included in the at-risk funding" that school districts receive and that such funding has increased (Action Plan at 12) but does not mention how NMPED will ensure that such funding is used for inputs such as English language development programs.

Plaintiffs welcome new funding and forms of training provided to teachers and other school personnel who teach and provide services to students with disabilities, but the Action Plan does not sufficiently address findings regarding certifications of teachers and diagnosticians raised in the Court's findings. *See* Action Plan at 24-31. The Court found that NMPED's "certification standards for educational diagnosticians are not particularly specific concerning required skills or the types of assessment tools these individuals must be qualified to use." FF&CL ¶ 2331. The Action Plan does not directly address this issue. It mentions that there have been various views of its new, publicly posted technical assistance manual for special education, but not a systematic tracking of

whether teachers across districts have received training on such materials. *See* Action Plan at 30. The Court also found that “New Mexico educates fewer of its students with [individual education programs (‘IEPs’)] in general education classrooms and is substantially above the national average in placing students outside of general education anywhere from 20-60 percent of the school day.” FF&CL ¶ 2333. While the Action Plan appears to recognize the importance of educating students with disabilities in a general education setting, it does not contain a systemic approach to that issue.

Plaintiffs also see efforts, but lack of a systematic approach, when it comes to multicultural education and the implementation of culturally and linguistically responsive curriculum pedagogy and curriculum. The Action Plan mentions this aspect of education in various places, but there does not seem to be a plan to ensure that multicultural education is mandated and implemented across all districts and schools. For example, the Action Plan describes the training of 500 educators in NMPED’s Culturally and Linguistically Responsive Guidance Handbook. *See* Action Plan at 18. NMPED does not, however, describe how it plans to track actual training in and dissemination of such multicultural education materials across all districts.

With respect to Native American students, the Court found that Defendants have failed to provide Native students with a constitutionally sufficient education (FF&CL ¶ 3073) because the State is not providing Native students an education that “meets their unique cultural and linguistic needs and adequately prepares them for college or career.” FF&CL, pp. 575-576. Further, the Court found that the State has a “constitutional duty to ensure the New Mexico Indian Education Act is fully complied with and enforced and that its purposes are effectuated.” FF&CL ¶ 3066. The Action Plan is devoid of details with regard to the types of programs and services to be afforded Native American students to meet their unique needs, and the concomitant allocations of resources and funds for such programs and services. The Action Plan also fails to delineate a strategy to fund and implement fully the provisions of the Indian Education Act.

In terms of the Action Plan’s general reforms to the education system, Plaintiffs remain concerned about NMPED receiving the proper resources, staffing, and funding to be able to conduct the transformational change needed to comply with the Court’s orders. The Action Plan describes the formation of a Martinez/Yazzie Response Team, which would include various coordinators and directors. *See* Action Plan at 14. It should be noted that the Action Plan shows that such roles have yet to be filled, and such a team has yet to begin its work. Even though Plaintiffs welcome such a coordinated, intentional effort to comply, such efforts come more than three years after the Court’s final judgment and order. Similarly, Plaintiffs are concerned about the benchmarks for outcomes that have been set. For example, in the “Targets for Improvement” section of the English Learners section of the plan, there are several benchmarks and goals that NMPED seeks to reach, such as “[b]y the end of the 2025-26 school year, 75% of English Learners will be on track toward achieving English proficiency within five years.” Action Plan at 23.

However, it is unclear how NMPED developed such benchmarks and targets, and NMPED does not explain whether such targets relate to some research-based goal or are

based on some baseline of outcome metrics from before the Court entered its orders in 2018 and 2019. And, as mentioned above, the plan does not specify any concrete steps to be followed to achieve this goal. In addition, many of the goals are simply inadequate. For instance, increasing competency by 50% when the current competency level stands at a dismal 20% would yield a competency level of only 30% and not satisfy the Court's orders.

Finally, the Action Plan does not provide a fully developed plan for monitoring and accountability, particularly with regard to ensuring that funding allocated for at-risk students actually is used for educating such students. Again, the Action Plan mentions that the yet-to-be-formed Martinez/Yazzie Response Team will be involved in review of at-risk funding usage by school districts. *See* Action Plan at 14. However, it is not clear how this will happen. The Action Plan reverts to the language that NMPED and the State used in their defense at trial, which says, "[a]fter school districts and charter schools receive their share of at-risk funding, it is the responsibility of local school boards and governing councils to ensure that the funding is allocated for its intended purpose." *See* Action Plan at 12.

The Court rejected this defense and reaffirmed NMPED's broad statutory authority to ensure that districts use the money provided by the State to provide the programs and services that at-risk students need. Decision and Order at 52. As a result, it is critical that NMPED clearly acknowledge that it is the primary entity responsible for ensuring that every school in New Mexico is serving its at-risk students sufficiently and include details of a monitoring and accountability system for reforms and ongoing use of at-risk funds. As explained above regarding services for specific at-risk student groups, there are large gaps in monitoring that NMPED and the State have yet to bridge.

These comments do not include all of the concerns that Plaintiffs have with the Action Plan. Plaintiffs reserve the right to submit further comments on this and future draft action plans and to address compliance issues before the Court. Plaintiffs object to this Action Plan on the basis that the NMPED did not consult with Plaintiffs before releasing this plan for public review and comment. However, Plaintiffs renew their request to work collaboratively with the State in developing a comprehensive compliance plan that contains all the necessary elements described above, addresses the deficiencies identified by the Court, and resolves the lawsuit.



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