

Martinez-Yazzie Lawsuit

What did the Court say about Native American Students?

On December 20, 2018, the 1st Judicial District Court filed a 608-page report of findings and conclusions for the *Martinez-Yazzie* education sufficiency lawsuit, which found New Mexico’s education system was not constitutionally sufficient nor uniform for all students. The court included Native American students in the definition of “at-risk student,” or students that can learn and achieve at high levels with the proper support and intervention, but begin school with certain disadvantages outside of the school system.

The court credited testimony that Native American students should have access to:

- prekindergarten programs;
- after school activities and extended learning, like tutoring;
- strong non-academic supports, like social workers and counselors;
- language acquisition programs, particularly for English learners;
- curriculum and materials reflecting indigenous culture and language;
- teachers with specialized knowledge of native language literacy;
- Native American teachers; and
- appropriate special education services.

The court found some teachers refused to educate Native American students because low test scores affected teacher evaluations, few schools provided high quality language or multicultural education for Native American students, and the Public Education Department (PED) failed to provide adequate technical assistance to schools or closely monitor Native American student performance. Additionally, the state failed to adequately consult with tribal governments or comply with state acts pertaining to Indian and Bilingual Multicultural education.

On February 14, 2019, the court ordered the state to immediately ensure schools had the resources necessary to give at-risk (including Native American) students the opportunity to obtain a uniform and sufficient education. The order did not specify remedies but broadly required the state to increase financial resources for evidence-based education interventions and hold schools accountable for providing sufficient materials, staffing, and curricular offerings to at-risk students.

In FY21, plaintiffs filed a motion for further relief concerning the state’s failure to provide essential technology to at-risk students during school closures. On May 18, 2021, the court further ordered the state to immediately provide access to digital devices, high-speed Internet, and IT staff for the 23 focus school districts.

State expands supports for Native American Students

In addition to increased formula funding for at-risk students, extended learning time programs, and instructional materials, the Legislature appropriated new funds to PED and school districts to address the needs of tribal students. The state also enacted Laws 2019, Chapter 16 (House Bill 250), which requires schools with

AGENCY: Public Education Department (PED)

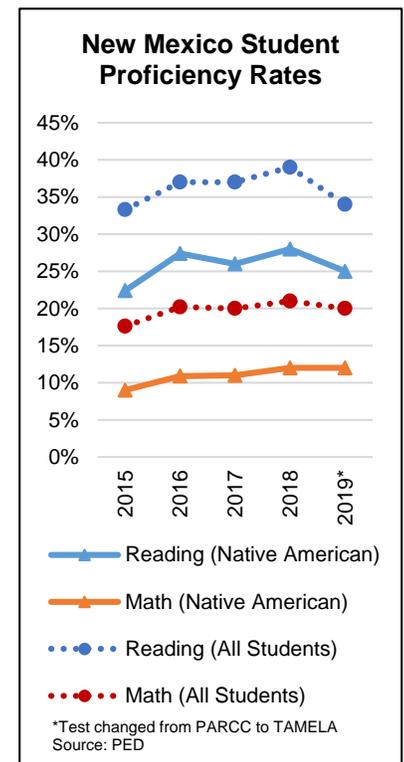
DATE: July 23, 2021

PURPOSE OF HEARING:
Addressing *Martinez-Yazzie* Findings Related to Native American Student Outcomes

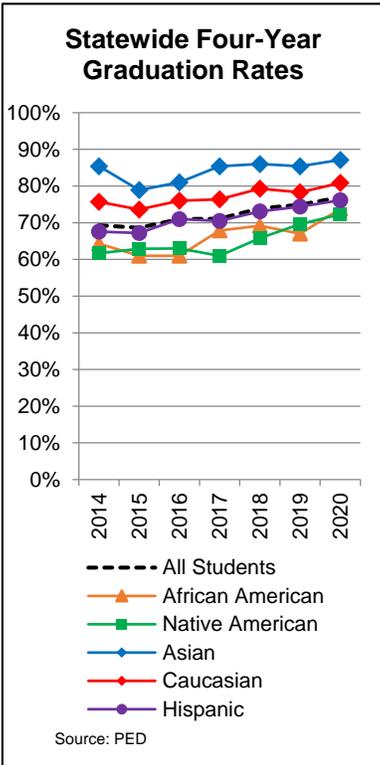
WITNESS: Dr. Ryan Stewart, Secretary, PED; Daniel Benavidez, Superintendent, Central Consolidated Schools; Regis Pecos, Co-Director, Leadership Institute, Tribal Education Alliance

PREPARED BY:
Sunny Liu, Senior Fiscal Analyst, LFC

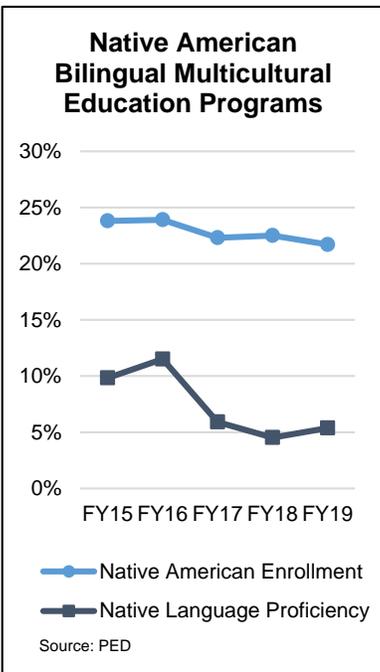
EXPECTED OUTCOME:
Informational



Native American students to work with tribal governments and community members to conduct needs assessments. PED further appointed an assistant secretary of Indian education and required schools to establish equity councils to provide community members an avenue for ensuring local school officials address findings in the *Martinez-Yazzie* lawsuit.



Evaluation of the Indian Education Act. A 2021 LFC evaluation on the state’s implementation of the Indian Education Act found recent improvements in Native American student reading proficiency, math proficiency, high school graduation, and native language acquisition. However, consistent with court findings, Native American students still lagged behind peers in these performance metrics. Although more Native American students participated in bilingual multicultural education programs (BMEP) in FY20, only 22 percent of the Native American student population were enrolled. Additionally, Native American language proficiency rates remained low in FY19, with 53 percent of BMEP participants having no proficiency, 42 percent showing limited proficiency, and 5 percent demonstrating fluency.



New Native American Public Education Appropriations (in millions)	FY19	FY20	FY21	FY22
Indian Education Fund	\$2.5	\$6.0	\$5.3	\$5.3
Indigenous, Multicultural, and Special Education Initiatives		\$1.0	\$4.6	\$5.1
Bilingual Multicultural Education Programs		\$7.0	\$7.0	\$7.0
Impact Aid			\$31.0	\$66.0
Culturally and Linguistically Responsive Materials and Curricula			\$9.0	
Tribal Education Departments				\$4.5
Tribal Library Programs				\$4.5
Native American Language Programs				\$1.6
Total Funds	\$2.5	\$13.0	\$56.9	\$94.0

Money Left on the Table. The 2021 evaluation also found almost 30 percent of Indian education fund awards went unspent in the last 3 years, and awardees did not achieve half of grant deliverables and requirements. Further, PED had historically failed to adequately staff its Indian education division and process Indian education funds in a timely manner. The department is shifting from a reimbursement process to a grant letter process, which will allow awardees to access funds upfront and spend grants expeditiously.

In FY21, PED budgeted \$2 million of the \$9 million appropriation for culturally and linguistically responsive instructional materials and curriculum development for indigenous curriculum and materials. The department reported the \$2 million earmark remained unspent due to a lack of adequate proposals and bids for the initiative, suggesting limited statewide capacity or awareness for the project. Given the resources and technical expertise on Native American studies at in-state higher education institutions, such as the University of New Mexico (UNM), PED should partner with colleges in the development of indigenous curriculum and materials.

For FY22, only a fifth of Native American-serving school districts and charter schools plan to participate in K-5 Plus; however 72 percent of these entities plan to provide an Extended Learning Time Program (ELTP). School closures in FY20 and FY21 significantly reduced instructional time and classroom engagement, particularly for students living on tribal and rural lands with limited Internet access. To catch up from a year of lost learning time, the state should consider requiring at-risk schools to participate in K-5 Plus and ELTP programs designed in conjunction with tribal communities to support Native American students.

Tribal Remedy Framework

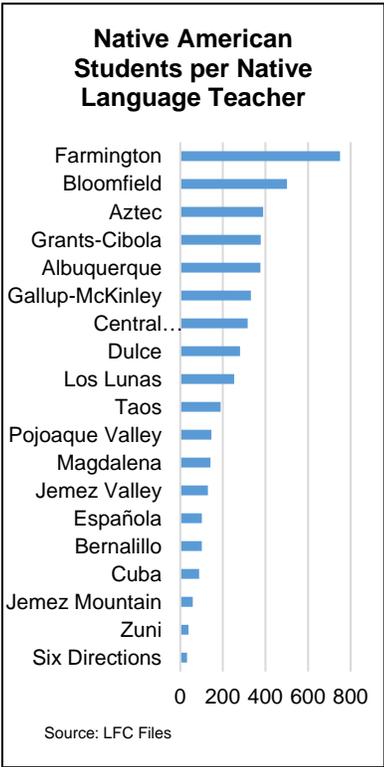
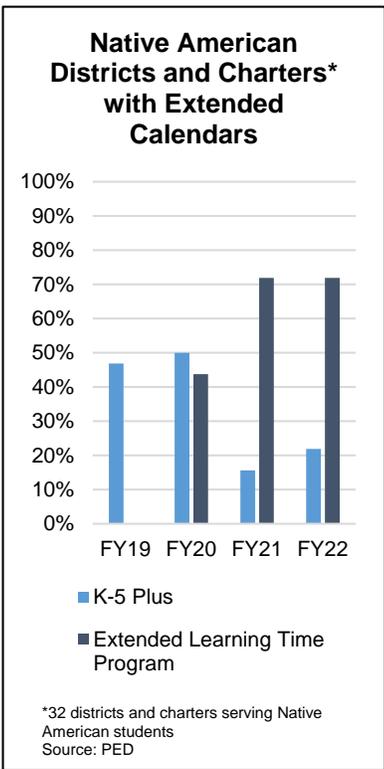
Tribes create a plan to address *Martinez-Yazzie* findings.

In FY19, the Tribal Education Alliance (TEA) – a coalition of tribal education leaders, experts, and advocates, including the Santa Fe Indian School Leadership Institute and UNM’s Native American Budget and Policy Institute – published the tribal remedy framework to address findings from the *Martinez-Yazzie* lawsuit. TEA’s framework includes budget and policy recommendations endorsed by New Mexico’s 23 tribes, pueblos, and nations to improve tribal infrastructure, expand tribal government operations, develop indigenous resources, and enhance the pipeline of Native American professionals in various fields.

Although the *Martinez-Yazzie* case centered on public school students, the majority of TEA’s framework affects entities outside of public schools. For FY22, TEA’s request for the tribal remedy framework included \$196.6 million in state appropriations, which are summarized in the following table.

Proposed 2021 Legislation	Description	Fiscal Impact (in millions)
HB84: Native Language Funding Formula	Adds a Native language factor and Native American at-risk component in the public school funding formula and makes tribal education departments eligible for these formula dollars	\$53.4
HB85: Tribal Education Departments (TED)	Appropriates funds through the Indian Affairs Department (IAD) to TEDs for the development and staffing of education blueprints, early childhood programs, afterschool and summer school programs, and IT departments	\$22.7
HB86: Tribal Infrastructure and Resources	Appropriates funds through IAD for tribal library capital outlay, tribal broadband, tribal curriculum and materials development centers, and early childhood centers	\$94.8
HB87: Tribal Investments in Higher Education	Appropriates funds to public and tribal institutions of higher education to support programs relating to Native American studies, education, outreach, medicine, law, architecture, policy, social work, and curricula development	\$25.7
Total Fiscal Impact		\$196.6

TEA notes the framework contrasts the state’s piecemeal reforms and small-scale state grant funding approach with a significant, system-wide investment in tribal capacity. By building tribal capacity, TEA contends that tribes could increase



Public Schools Budget Federal Aid for Native American Students

Of the \$435 million allocated to public schools in the second federal stimulus aid package, public schools budgeted \$1.1 million for activities that address the unique needs of Native American students.

Schools reported plans to develop Native American curriculum, provide academic interventions, organize afterschool activities, train staff, and address needs identified through tribal consultations.

To assist in closing the digital divide, PED purchased and distributed 700 residential hotspots on the Navajo Nation and 101 CradlePoint fixed and mobile hotspots for chapter houses, buildings, teacherages, buses, and indoor antennas and 6,282 Chromebooks for all tribes, nations, pueblos, and schools with high Native American enrollment.

control over the shared schooling of Native American children and create more community-based and relevant learning experiences.

Although the court, in the *Martinez-Yazzie* case, enjoined the state to provide sufficient resources, properly-trained staff, and appropriate curricular offerings to school-age (K-12) students, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead. And while the state has increased funding for Native American education since the ruling, many agencies and institutions outside of the K-12 schools operate programs or fund initiatives that address parts of the tribal remedy framework (such as research and public service projects, university budgets, PED initiatives, GOB capital outlay, etc.). Further, the state, schools, and tribes will receive federal stimulus aid to address infrastructure and technology access on tribal lands requested under the framework.

Federal and State Resources

Tribal schools received aid for similar purposes as public schools.

Three rounds of federal stimulus aid (CARES, CRRSA, and ARP) will provide \$183.5 million for Bureau of Indian Education (BIE) schools based on weighted student counts. BIE schools can make expenditures authorized under the Elementary and Secondary School Emergency Relief (ESSER) fund, similar to limitations placed on public schools. Uses can range anywhere from Covid-19-related cleaning supplies to employing staff to maintain school operations.

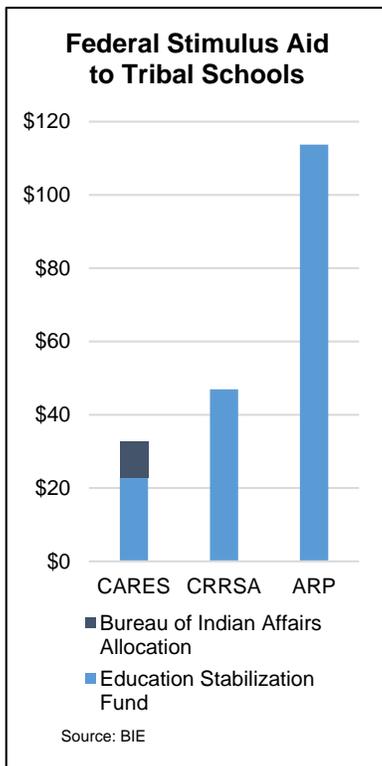
Tribes are eligible for substantial broadband support. Several federal revenue streams will support educational technology needs on tribal lands. The federal Emergency Broadband Benefit program offers eligible households a \$50 per month credit on Internet services (\$75 per month for households on tribal land) and a one-time \$100 credit for the purchase of a computer or laptop. The federal Tribal Broadband Connectivity program will also provide \$980 million to build out broadband infrastructure on tribal lands. For FY22, state capital outlay appropriations include \$5 million for tribal broadband and \$25 million for broadband expansions at schools. Additionally, Laws 2021, Chapter 49 (Senate Bill 144), expands the use of public school capital outlay funding for student and teacher connectivity.

Uncredited Impact Aid can support Native American student needs.

Laws 2021, Chapter 52 (House Bill 6), eliminated federal and local revenue credits in the public school funding formula, directing \$66 million in additional, recurring state aid to school districts with federally-connected students (including students living on tribal lands). Beginning in FY22, provisions of the new law would further require schools to report how uncredited revenue was used to improve outcomes for students and require schools to report on federally-required Impact Aid consultations with tribal authorities.

Can the state improve recruitment of Native American educators?

The General Appropriations Act of 2021 included \$2 million for indigenous and bilingual early childhood educators, \$1 million for teacher residency programs, and \$500 thousand for grow your own teacher program scholarships. While national research suggests these initiatives can help improve the diversity of the teacher workforce, New Mexico has limited data on the efficacy of these new programs. As such, the state should consider adding new performance measures, such as teacher diversity, teacher retention rates, and teacher placement areas, to monitor and evaluate the outcomes of these programs.



Key Native American Outcomes and Conditions

Native American Population				
New Mexico	230,651	11%	11%	SAME
US	3,282,395	1.5%	1%	
		2006	2019	
Students in New Mexico Public Schools				
Native American Students	32,439	10%	10%	SAME
Total Number of Students	322,776			
		2015	2019	
4-Year High School Graduation				
Native American Students		58%	69%	BETTER
Statewide		66%	75%	
		2009	2019	
Third Grade Reading Proficiency*				
Native American Students		11%	19%	BETTER
Statewide		26%	30%	
		2015	2019	
Third Grade Math Proficiency*				
Native American Students		14%	21%	BETTER
Statewide		26%	32%	
		2015	2019	
Eighth Grade Reading Average Score**				
Native American Students		246	237	WORSE
Statewide		258	252	
		1998	2019	
Percentage of New Mexico College Enrollment				
Native American		9%	9.4%	BETTER
White		42%	29%	
Hispanic		36%	48%	
		2006	2019	
Limited Proficiency and Fluent Proficiency in Students' Language				
Native American Students		30%	47%	BETTER
Hispanic Students		58%	54%	
		2015	2019	

Source: U.S. Census, 2018-2019 PED 80th Day Count, *PED PARCC data, **NAEP, HED, PED 2018-2019 Multicultural Education Annual Report

K-5 Plus and Extended Learning Student Participation

District/Charter	K-5 Plus Actual Students (FY19)	K-5 Plus Students Actual (FY20)	K-5 Plus Students Budgeted (FY21)	K-5 Plus Students Budgeted (FY22)	K-5 Total ¹ Students	Percent of K-5 Total ¹ Students	ELTP Students Actual (FY20)	ELTP Students Budgeted (FY21)	ELTP Students Budgeted (FY22)	K-12 Total ¹ Students	Percent of K-12 Total ¹ Students
ALAMOGORDO	218	-	-	-	2,839	0%	-	-	5,474	5,731	96%
ALBUQUERQUE	3,796	1,688	1,026	-	37,134	0%	6,808	3,256	7,114	77,714	9%
ANIMAS	-	-	-	-	68	0%	-	-	-	153	0%
ARTESIA	360	389	-	-	1,875	0%	1,785	480	-	3,796	0%
AZTEC	-	29	-	-	1,162	0%	381	2,608	2,210	2,608	85%
BELEN	159	155	-	-	1,787	0%	510	665	3,485	3,784	92%
BERNALILLO	236	419	-	-	1,414	0%	1,290	2,796	-	2,826	0%
BLOOMFIELD	174	193	1,378	-	1,176	0%	1,189	-	-	2,645	0%
CAPITAN	-	-	-	-	207	0%	-	-	-	495	0%
CARLSBAD	322	469	-	-	3,530	0%	-	-	-	6,931	0%
CARRIZOZO	39	38	-	53	53	101%	-	135	-	138	0%
CENTRAL CONS.	-	-	2,325	-	2,365	0%	-	5,275	4,908	5,393	91%
CHAMA VALLEY	26	48	-	171	177	97%	-	386	355	399	89%
CIMARRON	-	-	-	-	173	0%	-	341	-	352	0%
CLAYTON	-	-	-	-	193	0%	415	415	375	424	89%
CLOUDCROFT	-	-	-	-	177	0%	-	-	367	419	88%
CLOVIS	268	-	-	-	3,893	0%	-	-	-	7,779	0%
COBRE CONS.	211	196	554	-	566	0%	797	1,106	534	1,118	48%
CORONA	-	-	-	-	33	0%	-	43	-	62	0%
CUBA	33	31	211	233	197	118%	255	547	590	549	107%
DEMING	1,071	1,742	-	2,349	2,366	99%	3,572	5,046	5,085	5,090	100%
DES MOINES	-	-	-	-	37	0%	-	-	-	86	0%
DEXTER	141	96	150	-	357	0%	-	-	-	856	0%
DORA	-	-	-	-	106	0%	-	-	-	227	0%
DULCE	88	91	-	-	295	0%	291	-	600	578	104%
ELIDA	-	-	-	-	72	0%	-	-	-	155	0%
ESPANOLA	404	-	-	-	1,609	0%	-	-	3,025	3,222	94%
ESTANCIA	-	-	-	-	275	0%	-	-	-	595	0%
EUNICE	96	85	-	-	378	0%	-	-	-	810	0%
FARMINGTON	-	169	-	-	4,933	0%	-	-	-	11,051	0%
FLOYD	-	-	-	-	108	0%	-	-	-	203	0%
FT. SUMNER	41	65	127	-	131	0%	129	127	-	262	0%
GADSDEN	1,513	974	1,250	-	5,655	0%	12,684	5,438	12,307	12,679	97%
GALLUP	880	1,112	-	-	4,698	0%	10,665	10,657	-	10,720	0%
GRADY	-	-	-	-	82	0%	-	-	-	171	0%
GRANTS	206	314	-	1,394	1,554	90%	-	3,250	3,062	3,349	91%
HAGERMAN	80	91	-	160	168	96%	-	-	213	391	55%
HATCH	450	301	-	-	535	0%	188	400	1,170	1,195	98%
HOBBS	202	238	-	-	5,051	0%	-	10,300	9,448	10,304	92%
HONDO	-	-	-	-	61	0%	-	-	131	147	89%
HOUSE	-	-	-	-	25	0%	-	-	-	57	0%
JAL	-	-	-	-	242	0%	-	509	447	514	87%
JEMEZ MOUNTAIN	26	43	145	123	108	114%	-	258	72	208	35%
JEMEZ VALLEY	35	30	-	-	106	0%	-	-	262	262	100%
LAKE ARTHUR	-	-	-	-	42	0%	-	91	114	94	122%
LAS CRUCES	2,140	2,733	-	-	10,959	0%	10,080	8,035	-	23,829	0%
LAS VEGAS CITY	132	114	664	-	668	0%	-	-	1,373	1,441	95%
LOGAN	-	-	-	-	100	0%	-	-	-	337	0%
LORDSBURG	84	62	80	-	219	0%	-	-	-	466	0%
LOS ALAMOS	-	-	1,875	-	1,605	0%	307	695	-	3,670	0%
LOS LUNAS	408	292	-	-	3,702	0%	8,208	8,208	7,960	8,245	97%
LOVING	98	28	-	-	281	0%	-	619	-	622	0%
LOVINGTON	98	120	-	1,424	1,695	84%	1,596	3,709	3,377	3,713	91%
MAGDALENA	-	-	-	-	131	0%	-	-	-	300	0%
MAXWELL	11	-	-	-	58	0%	-	-	-	140	0%
MELROSE	-	-	-	-	130	0%	-	-	-	277	0%
MESA VISTA	-	-	-	-	96	0%	-	-	-	245	0%
MORA	20	-	-	214	199	108%	-	-	444	413	107%
MORIARTY	-	-	-	-	1,013	0%	-	2,334	2,100	2,290	92%
MOSQUERO	-	-	-	-	32	0%	-	-	-	81	0%
MOUNTAINAIR	-	-	-	-	91	0%	213	-	-	212	0%
PECOS	76	91	-	-	226	0%	-	-	480	542	89%
PEÑASCO	-	-	-	143	164	87%	-	345	318	345	92%
POJOAQUE	77	75	-	-	726	0%	777	1,817	1,257	1,829	69%
PORTALES	-	-	-	-	1,228	0%	-	-	-	2,628	0%
QUEMADO	-	-	-	-	68	0%	-	-	-	163	0%
QUESTA	38	27	-	-	120	0%	219	-	-	269	0%
RATON	-	-	-	-	414	0%	-	870	804	881	91%
RESERVE	-	-	-	-	47	0%	-	-	-	113	0%
RIO RANCHO	-	-	-	-	7,668	0%	2,900	16,866	16,087	17,020	95%
ROSWELL	1,941	1,375	4,288	-	4,894	0%	6,447	9,962	9,153	10,119	90%
ROY	-	-	-	-	38	0%	-	-	-	58	0%
RUIDOSO	102	-	-	-	918	0%	-	250	250	1,962	13%
SAN JON	-	-	-	-	63	0%	-	-	105	116	91%

K-5 Plus and Extended Learning Student Participation

District/Charter	K-5 Plus Actual Students (FY19)	K-5 Plus Students Actual (FY20)	K-5 Plus Students Budgeted (FY21)	K-5 Plus Students Budgeted (FY22)	K-5 Total ¹ Students	Percent of K-5 Total ¹ Students	ELTP Students Actual (FY20)	ELTP Students Budgeted (FY21)	ELTP Students Budgeted (FY22)	K-12 Total ¹ Students	Percent of K-12 Total ¹ Students
SANTA FE	839	975	-	-	5,996	0%	4,626	1,426	11,477	12,206	94%
SANTA ROSA		-	-	-	276	0%	-	608	562	613	92%
SILVER CITY CONS.	61	-	-	-	1,200	0%	-	-	-	2,468	0%
SOCORRO	82	110	-	651	600	109%	507	1,396	1,499	1,405	107%
SPRINGER		-	-	-	67	0%	-	132	131	137	96%
TAOS	189	43	-	-	821	0%	378	2,056	1,954	2,072	94%
TATUM		-	-	-	148	0%	-	337	327	359	91%
TEXICO		-	-	-	240	0%	-	-	-	549	0%
TRUTH OR CONSEQ.	150	-	-	-	567	0%	-	1,180	-	1,197	0%
TUCUMCARI		-	-	-	446	0%	-	450	-	920	0%
TULAROSA		-	-	-	425	0%	-	-	-	857	0%
VAUGHN		-	-	-	26	0%	-	52	52	54	97%
WAGON MOUND	24	27	-	31	35	90%	-	67	-	67	0%
WEST LAS VEGAS	89	62	-	-	618	0%	-	-	-	1,388	0%
ZUNI		-	-	-	602	0%	-	1,225	1,219	1,233	99%
STATEWIDE ²	18,227	15,967	16,067	10,250	146,078	7%	82,816	134,042	143,771	321,411	42%

1. Total Students are estimates based on FY21 student membership in the preliminary funding formula.

Source: PED

2. Statewide includes charter schools, which are not shown.

Participating:

Districts	46	40	13	12			27	46	44
Charters	3	8	4	9			27	66	76