

# Response to BMEB Proposed Regulation Changes

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# Invited participants

- Raymond Concho Jr., First Lieutenant Governor from Acoma
- Stan Holder, Executive Director for the Pueblo of Acoma Education Department
- Mary Jean Habermann-Lopez, Co-Chair for Coalition for the Majority

# Packet

- Powerpoint
- Bilingual Education Regulation Analysis
- Expert Letters
- All Pueblo Governors Letter

# LESC Hearing on Bilingual Education Regulation

## Expert letters

- **Dr. Jim Cummins**, Professor Emeritus, Ontario Institute for Studies in Education, University of Toronto
- **Dr. Lily Wong Fillmore**, Professor Emerita, Graduate School of Education, University of California, Berkeley
- **Dr. Wayne Thomas**, Professor Emeritus, Program Evaluation and Research, and **Dr. Virginia Collier**, Professor Emerita, Bilingual and ESL Education, George Mason University
- **Dr. Laurie Olsen**, “Multiple Pathways to Biliteracy”, Californians Together: Long Beach, CA. 2014
- **Dr. Tamara Lucas**, Professor Emeritus, Department of Educational Foundations, Moncton State University
- **Dr. Esther DeJong**, President, National TESOL (Teachers of English to Speakers of Other Languages) and author, Foundations of Multilingualism in Education, From Principles to Practice.

# Points to cover...

- Elimination of Two Models
- Consultation
- Program Evaluation
- Monitoring
- What next?
  - Considerations for strengthening and expansion of Bilingual Programs
  - Expanding the Bilingual Teaching workforce
  - Making stronger connections to the Bilingual Seal



# Elimination of Two Models:

- Models offer districts options select a program that responds to the community's and local board's philosophy about bilingual instruction.
- We understand that NMPED has guided school districts to choose one of three options before the regulation is finalized.
- There is a large constituency that are in favor of maintaining the 5 program models.
- [May 2<sup>nd</sup> Testimonies - https://vimeo.com/217789822](https://vimeo.com/217789822)

# New Mexico is unique and a pioneer in having these models...

- “As I noted above, New Mexico’s current set of program options are enlightened compared to those of many other states insofar as they respect the principle of **community choice** and provide a range of options that respond to the realities of community language profiles and aspirations.”

**Dr. Jim Cummins, Letter to LESC, June 11, 2017**



# Consultation

- The NMPED is required to consult and collaborate with tribal governments relative to proposed changes that may affect the maintenance of tribal languages as referenced to Article 23A of the Indian Education Act before any scheduled public commentary.
- Lack of consultation prior to release of changes does not honor the government to government relationships that exist between the State of New Mexico and sovereign tribes.





# Rapid Erosion of Languages

“New Mexico groups, because of their strong tribal governments have managed to hang onto their languages and cultural practices longer than many other groups, **but in the past half-century, they too have seen the rapid erosion of their languages and cultures and the effect these shifts have had on children and youth.** Community leaders recognize the long-term cultural, emotional, and psychological cost of language loss on families and the educational participation of their young people.”

**Dr. Lily Wong Fillmore**



# Expand, enhance and clarify our bilingual programs to fit local contexts

Our Indigenous languages are sacred to NM and allowing tribal communities the flexibility to offer a state bilingual program unique to their community. This would honor our NM Indigenous tribes and support the intention of the Indian Ed. Act [NMSA 1978 Section 22-23A through 22\_23A-8]



# Complex, but possible...

Consolidating Maintenance and Enrichment into Heritage creates a vague program for that doesn't allow recognition of cultural and linguistic influences within distinct communities.

Through “True” consultation with individual tribal communities, NM could expand and enhance an indigenous language program that would position Tribes in NM as leaders in Indigenous Education.



# Program Evaluation- “Sufficient Progress”

- Since the NMPED will determine compliance for program renewal based on “sufficient progress toward meeting state targets for language and academic proficiency” (6.32.2.16.A), it is absolutely imperative that districts know the operational standard the NMPED will use to evaluate them for renewal of the program.
- Moreover, in the case of indigenous languages, sufficient progress should be determined by the specific tribe the students belong to, and not by the NMPED.



# Evaluation – 2-year determination

- Districts may be defunded after two years using local district evaluation report. This brings into question...
  - Local funding implications???
  - Instructional implications for EIs ???
  - Community choice ???



# Evaluation – Compliance

- Regulation proposes to determine compliance with entire statute and regulation based on local district report.
- This is not yet fully understood. What will be measured?

I see no defensible rationale for restricting the range of program options nor for reducing the time period available to schools to demonstrate effective student progress (however this is defined) from four to two years.”

**Dr. Jim Cummins, Letter to LESC, June 11, 2017**



# Monitoring & Missing Pieces

- The NMPED's Bilingual Bureau is responsible for supporting local school boards, Superintendents, Bilingual Directors , and others in meeting the intentions of the Bilingual Multicultural Education Act.
  - How can technical assistance be improved upon?
- Currently some of the legislative findings of 2004 are still being worked on so why remove program options, change evaluation without making sure all the pieces are in place.
  - J. Standardized curriculum, including instructional materials with a scope and sequence...





# What next?

- The NMPED has begun to consult with local entities regarding the regulations. It is hoped that the NMPED will demonstrate response to community input.
- New Mexico is unique and privileged to have the existing five program models as per expert letters.

# What next?

- Existing reg. was developed (2005) with wide consultation and represented the desires of NA and Hispanic communities.
- Yes, NCLB wording needs to come out.
- ESSA offers local control, however the regulations changes seem to express this as “state control”.



# NM has many local experts!

- Local expertise in the room has been tapped nationally and internationally, from the Arctic Circle to the Native American villages of Central and South America, from Europe, Mexico, and recently even Italy has relied upon the expertise of many in the room.
- We have Tribal Education Departments, elders in our tribal communities committed to preserving the languages of New Mexico. All have the foundation to support language learning in their local context.
- Local organizations such as DLeNM, NMABE, NMTLC, UNM's Center for American Indian Teacher and Training Policy Research Center, CESDP, Coalition for the Majority, and our Tribal Nations.



**All** New Mexico students have the right to a bilingual, multicultural education enabling them to graduate with the Seal of Bilingualism and preparing them to fully **contribute and compete** in their local and world communities as bilingual, multicultural citizens.

Coalition for the Majority Letter, May 2017

**ANALYSIS OF BILINGUAL EDUCATION REGULATION CHANGES  
PROGRAM RENEWAL**

**6.32.2.16 PROGRAM RENEWAL:** The district annual report will be the indicator to determine the effectiveness of the program, and need for program renewal and/or modification. The following cycle will apply for evaluation of program effectiveness:

A. after the first year (SY 2005-06), districts will report baseline data;  
B. after the second year, districts shall submit a progress report, by school, indicating how schools met annual measurable achievement objectives from year one to year two; if data shows improvement, the public school district may continue the program as previously outlined in the initial or modified application;  
C. after two consecutive years of the school's failing to make progress toward meeting AMAOs, the department shall:

- (1) notify the public school district that the school has not demonstrated reasonable progress;
- (2) assist the school in the development of an improvement plan; and
- (3) provide technical assistance to the school and district.

D. after four consecutive years of the school's failure to make progress toward meeting AMAOs, the department shall:

- (1) require the school to modify the curriculum, program, and method of instruction; or
- (2) the program shall be redesigned, modified, or discontinued by the department.

A. A bilingual multicultural education program shall be compliant pursuant to 22-23-1 NMSA 1978 and 6.32.2 NMAC.

(1) The district annual progress report will be evaluated by the department for compliance.  
(2) If the department determines that a program is compliant, the public school district may continue the program as previously outlined in the approved application.  
(3) After two consecutive years of failing to make sufficient progress toward meeting state targets for language and academic proficiency, the department shall determine that the program is not compliant and shall:

**According to the regulation, a BMEP shall be compliant pursuant to the statute and the entire regulation. Yet, the PED shall determine compliance "After two consecutive years of failing to make sufficient progress toward..." based on the district's annual progress report. Moreover, in the case of indigenous languages, sufficient progress in the native language should be determined by the specific tribe the students belong to, and not by the NMPED.**

**This is of deep concern.**

**Legislative findings for the 2004 amended statute clearly recognized the national standard for acquiring academic proficiency in English. (Specifically, 22-23-1.1. Legislative findings. (2004) I: "...because research has shown that it takes five to seven years to acquire academic proficiency in a second language, priority should be given to programs that adequately support a child's linguistic development...") National scholars (Collier and Thomas, Cummins, Wong Fillmore) substantiate this finding in their research.**

**Again, this revision suggests the PED can determine compliance and continuation of funding solely on the basis of a written report. Doesn't the PED have a role in monitoring program implementation to assure compliance with statute and regulation? Doesn't the PED have a role in providing technical assistance to districts when there are problems?**

(a) notify the public school district that the program is not compliant;  
(b) require the program to develop a corrective action plan to address the non-compliance including a plan to adjust the curriculum, program or method of instruction;  
(c) verify compliance; or  
(d) discontinue the program.

[6.32.2.16 NMAC - Rp, 6.32.2.15 NMAC, 11-30-05]

## **ANALYSIS OF BILINGUAL EDUCATION REGULATION CHANGES INSTRUCTION**

### **6.32.2.12 PROGRAM ELEMENT - INSTRUCTION:**

- A. Public schools providing an approved bilingual multicultural education program shall include:
- (1) instruction to attain language proficiency and literacy skills in two languages, one of which is English;
  - (2) sheltered content instruction;
  - (3) standardized curriculum that is aligned with the state academic content standards, benchmarks and performance standards; and
  - (4) instruction in the history and cultures of New Mexico.
- B. Public schools providing an approved Native American heritage language revitalization program shall include:
- (1) instruction to attain language proficiency and literacy skills in English and a Native American language (where tribal language is written); for Native American languages that are oral only, the literacy component shall be measured only in the skill areas/domains of listening, speaking and comprehension;

### **RENAMING OF NATIVE AMERICAN HERITAGE LANGUAGE REVITALIZATION PROGRAM**

**The Legislature amended the Bilingual Multicultural Education Act in 2004.(22-23 NMSA 1978) Native American community input into the promulgation of the regulation included a new program termed “Native American heritage language revitalization”.**

**What is the rationale for changing the name of the program to “Native American Language Program”?**

**The lack of consultation with tribes in revising the regulation conflicts with the Indian Education Act and is a major concern.**

**Moreover, in B (1) above, measurement of literacy in the skill areas listed needs to be determined by the tribe. The PED does not have the expertise to create such a measurement.**

- (2) sheltered content instruction;
- (3) standardized curriculum that is aligned with the state academic content standards, benchmarks and performance standards; and
- (4) instruction in the history and cultures of New Mexico Native American tribes; and
- (5) ~~public schools providing a Native American heritage language revitalization program (or other approved bilingual education model) shall obtain appropriate approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children.~~

- C. The following content areas shall be included in all programs:
- (1) language arts in the home or heritage language; for funding purposes, time allotted for instruction in the home language must be equivalent to the time provided for English language arts and must be consecutive in nature (that is, not fragmented throughout the day);
  - (2) ~~modifications of instruction in the English language arts that address the developmental, linguistic and academic needs of students; and~~ depending on an English language learner’s English language proficiency level:
    - (a) English language development; instruction that shall be distinct from English language arts and addresses the English language learning needs of English language learners; or
    - (b) English language development integrated with English language arts; instruction that addresses the developmental, linguistic, and academic needs of English language learners.

**Both (a) and (b) use the term English language development, but express different meanings depending on a student’s English proficiency needs. The terminology is verbose, confusing and difficult to understand. New Mexico PED consistently uses the term “English Learner” in all its documents but will now use “English language learner” in its regulation. These two terms also confuse—one only addresses language learning, the other addresses learning.**

**PED indicates it took this language directly from the US Office for Civil Rights Lau policy guidance, under the *Lau v Nichols* Supreme Court decision.**

**This change will require more technical assistance from the NMPED to local districts, and PED's resources in this regard are already limited.**

- (3) depending on the program model:
  - (a) content area instruction in ~~two languages~~ the home or heritage language of the program that utilizes the student's language, history, and/or culture; and/or
  - (b) fine arts instruction in ~~two languages~~ the home or heritage language of the program that utilizes the student's language, history, culture, and the arts traditions of ~~his/her~~ the student's community.

D. All programs shall implement one or more of the following bilingual education models in the public school program:

- (1) dual language immersion: designed to develop:
  - (a) high academic achievement in two languages;
  - (b) additive bilingual and biliterate proficiency; and
  - (c) cross-cultural skills development.
- (2) ~~enrichment: designed to further develop the home language of fully English proficient students and to teach the cultures of the state; BMEB~~

~~(3)(2) heritage language: designed to support and revitalize a student's native language and culture through oral and/or written language instruction; Native American language programs require approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children; designed to revitalize and support the home or heritage language and culture of the student through oral and written language instruction.~~

~~(4) maintenance: designed to develop and maintain proficiency and literacy in the primary or home language while developing a student's literacy and oral skills in English;~~

### **REMOVAL OF MAINTENANCE AND ENRICHMENT MODELS**

**BMEB 2015-2016 report (page 69, 67) shows 149 enrichment and 109 maintenance programs in the state will be eliminated.**

**The current BMEB report (p. 27) indicates ... "American Indian and Hispanic EL students participating in BMEPs outperform ELs that do not participate in BMEPs in math and English language arts, but not science." Chart 14 on the same page show similar growth between non-EL Hispanic and American Indian participating in BMEPs as compared to those that do not participate. This growth is a step in the right direction. Why eliminate this model?**

**The PED states it wishes to "clean up" the regulation and that the changes will not eliminate any students from the program.**

**The additional two models to be eliminated offer local communities and boards of education choice in how they wish to implement their programs. Local districts understand what they mean and reflect their local philosophy about bilingual education. Further, at the NMPED's May 2 hearing on the regulation, Mabry Hall was filled to capacity with many people standing. Time and again, the testimony was "Why eliminate maintenance and enrichment models?"**

**Why fix something that is not broken?**

~~(5)(3) transitional: designed to transfer students from home language instruction with gradual transition to an all-English curriculum. designed to develop skills in the primary or home language while introducing, maintaining, and developing skills in English.~~

## ANALYSIS OF BILINGUAL EDUCATION REGULATION CHANGES EVALUATION

### 6.32.2.15 EVALUATION:

A. To evaluate bilingual multicultural education program effectiveness and the use of funds generated by the bilingual cost differential in the funding formula, each district shall maintain academic achievement and language proficiency data and update the data annually.

- (1) Districts shall submit to the department an annual progress report.
- (2) Reports shall be submitted by September 30th of the following year.
- (3) The report by school and by model(s) shall include:

(a) verification that the program has identified and served students most in need (with priority given to K-3) based on language proficiency (English and home or heritage language) and academic achievement;

(b) ~~a current analysis of assessment results by school and by model(s); a~~ current analysis of language and academic assessment results demonstrating that participating students have made sufficient progress in meeting the state targets for language and academic proficiency;

**What is the operational definition of “sufficient progress”? Since the NMPED will determine compliance for program renewal based on “sufficient progress toward meeting state targets for language and academic proficiency” (6.32.2.16.A), it is absolutely imperative that districts know the operational standard the NMPED will use to evaluate them for renewal of the program. Moreover, in the case of indigenous languages, sufficient progress should be determined by the specific tribe the students belong to, and not by the NMPED.**

~~A(c) data demonstrating that participating students have met the state targets for annual measurable achievement objectives (AMAOs); and specific and attainable goals for the following school year; and~~

(d) an expenditure report from the general ledger on the use of funds generated by the bilingual cost differential in the funding formula for the program.

B. The department shall compile and analyze the student data submitted by public school districts and shall report annually to the appropriate interim legislative committee.  
[6.32.2.15 NMAC - Rp, 6.32.2.14 NMAC, 11-30-05]



**OISE**  
ONTARIO INSTITUTE FOR STUDIES IN EDUCATION  
UNIVERSITY OF TORONTO

11 June, 2017

**Memorandum**

To: Dr. Julia Rosa Lopez Emslie, Co-chair of the Coalition for the Majority  
Dr. David Rogers, Executive Director, Dual Language Education of New  
Mexico

From: Dr. Jim Cummins, Professor Emeritus, University of Toronto  
*(Jim Cummins)*

Re: Proposed rule changes for implementing Bilingual Multicultural Education  
Programs

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Thank you for the invitation to comment on the scientific credibility of the proposed changes to the implementation of Bilingual Multicultural Education programs in New Mexico.

In order to provide some context for my assessment of the proposed changes, let me give you a brief overview of some of the research I have carried out in this field and its relevance to the issues under discussion. I have been engaged in research related to the education of bilingual students for more than 40 years (since 1973). The research that I and many other colleagues in the field have carried out during this period has established the principle of *linguistic interdependence*, which makes possible the transfer of conceptual and linguistic knowledge across languages. This is why students from both majority and minority language backgrounds in bilingual or second language enrichment programs perform at least as well as monolingual comparison groups in the majority language (e.g., English in the United States) despite considerably less instructional time through that language.

My research has also contributed to understanding the distinction between social and academic language and the fact that very different timelines and trajectories are involved in developing these two dimensions of language proficiency. Specifically, many English language learners (ELLs) or emergent bilingual students acquire reasonable conversational fluency in English within one or two years of instructional exposure but at least five years (and frequently more) are typically required for students to catch up to grade expectations in English.

These findings are almost universally acknowledged in the policy and research literature. For example, the Technical Assistance Manual (SY 2013-2014) of the New Mexico PED Bilingual Multicultural Education Bureau Title III Programs stated:

It takes approximately one to two years for English Language Learners to master the conversational aspects of English (“Basic Interpersonal Communication Skills or BICS”) so that they have native-like control of the surface structures of the language. Development of literacy-related skills in the second language (“Cognitive/Academic Language proficiency or CALP”) requires approximately five to seven years before students can perform on a par with their native English-speaking peers. This is why instruction in the ELL student’s primary language provides the foundation upon which to build English proficiency (Cummins, 1992). (Pelayo Cervantes et al., p. 8)

Similarly, two of the six research-based ‘essential understandings’ of second language learning outlined by Lucas, Villegas, and Freedson-Gonzalez (2008) reflect the same points:

1. Conversational language proficiency is fundamentally different from academic language proficiency (Cummins, 1981, 2000), and it can take many more years for an ELL to become fluent in the latter than in the former (Cummins, 2008). ...
4. ELLs with strong native language skills are more likely to achieve parity with native-English-speaking peers than are those with weak native-language skills (Cummins, 2000; Thomas & Collier, 2002). (p. 363)

## **Relevance of the Scientific Research to New Mexico Policy Issues**

### ***1. The legitimacy of bilingual education***

New Mexico is unique (and exemplary) in providing a range of program options that respond to local community and school district conditions with respect to students’ bilingual and multicultural language learning needs. Recent comprehensive reviews of the research show clearly that bilingual program options for a variety of student populations are legitimate and typically more effective than monolingual English-only options (Francis et al., 2006; National Academies of Sciences, Engineering, and Medicine, 2017). This research is summarized by the National Academies of Sciences, Engineering, and Medicine as follows:

Conclusion 7-1: Syntheses of evaluation studies that compare outcomes for ELs instructed in English-only programs with outcomes for ELs instructed bilingually find either that there is no difference in outcomes measured in English or that ELs in bilingual programs outperform ELs instructed only in English. Two recent studies that followed students for sufficient time to gauge longer-term effects of language of instruction on EL

outcomes find benefits for bilingual compared with English-only approaches. (2017, p. 7-23)

The research has also identified very clearly the major mechanism through which these positive bilingual education outcomes are realized. This research was summarized by Dressler and Kamil (2006) as part of the Report of the National Literacy Panel on Language-Minority Children and Youth (August & Shanahan, 2006):

In summary, all these studies provide evidence for the cross-language transfer of reading comprehension ability in bilinguals. This relationship holds (a) across typologically different languages ...; (b) for children in elementary, middle, and high school; (c) for learners of English as a foreign language and English as a second language; (d) over time; (e) from both first to second language and second to first language; (p. 222)

In short, there is no longer any scientific debate about the legitimacy of bilingual approaches to developing strong literacy skills in English (and ideally in students' home languages). Those who argue that "bilingual education doesn't work" have simply not read the research or are drawing on ideological considerations rather than scientific evidence. Any reduction in the range of program options currently offered in New Mexico that would reduce students' opportunities to participate in bilingual and/or heritage language programs is thus inconsistent with what we know about effective instruction,

## ***2. How should the effectiveness of programs for ELLs and heritage language learners be assessed?***

The proposed changes to the implementation of Bilingual Multicultural Education specify that student progress will be evaluated after two years and programs that do not demonstrate student progress are at risk of termination. I am concerned with this proposed provision both because of its vagueness (What criteria of student progress will be applied? In English-only or in both languages?) and because it appears to ignore the well-established trajectories for the development of English academic skills discussed above and acknowledged by the New Mexico PED (2014).

The pattern of outcomes in many bilingual programs (dual language, maintenance, enrichment etc.) is that students from minority language and/or cultural backgrounds attain or come close to attaining grade norms in English literacy skills in the latter grades of elementary school (grades 5-6). This is exactly what we would expect from the well-established academic language trajectories outlined above. It would be scientifically indefensible for policy-makers or researchers to declare a program (bilingual or English-only) ineffective on the basis of standardized achievement tests administered only in English at the grade 1 or 2 level.

The absurdity of these expectations can be seen in the academic outcomes of English-only programs in California in the era post-Proposition 227 (the English-only referendum passed in 1998). Large-scale research on the effects of this Proposition reported that after 3 years of instruction, only 12 percent of ELLs in California had acquired sufficient academic English to be re-designated as English-proficient (Parrish, Merickel, Perez, Linquanti, et al., 2006). The authors estimated that after 5 years of instruction only 25 percent of English language learners were redesignated as English-proficient, and even after 10 years the probability of English learners being redesignated to fluent English proficient was less than 40 percent.

These English-only programs were clearly not meeting their own stated goals (Proposition 227 claimed that no more than one year of English-only instruction would suffice for ELL students to ‘learn English’). In light of the research evidence outlined above, it is reasonable to conclude that one reason for these disappointing outcomes is that these monolingual programs ignored the evidence that “instruction in the ELL student’s primary language provides the foundation upon which to build English proficiency” (Pelayo Cervantes et al., 2014, p. 8).

The point to be emphasized here is that evaluation of any program—bilingual or English-only—requires a much longer period than just 2 years to assess ‘effectiveness’.

In short, I completely endorse the principle of monitoring programs to ensure that instruction is effective in promoting student progress. However, expectations regarding what constitutes ‘student progress’ must be established on rational and scientific grounds that take into account what we know about the trajectories of students’ academic growth in English literacy skills.

## **Conclusion**

As I noted above, New Mexico’s current set of program options are enlightened compared to those of many other states insofar as they respect the principle of community choice and provide a range of options that respond to the realities of community language profiles and aspirations. I see no defensible rationale for restricting the range of program options nor for reducing the time period available to schools to demonstrate effective student progress (however this is defined) from four to two years.

In order to improve academic outcomes for ELL and minority group students, regardless of what instructional program they attend, it is necessary to take account of the fact that a large proportion of these students are also from low-income backgrounds. These students typically have far less access to print in their homes, neighborhoods (e.g., community libraries) and schools than is the case for more affluent students. A massive amount of research evidence demonstrates that print access and literacy engagement are powerful determinants of literacy achievement. Thus, if the goal is to reduce the achievement gap between social groups, my assessment of the scientific evidence is that policy-makers should (a) implement effective

bilingual/biliteracy or heritage language programs tuned to specific community needs and aspirations, and (b) ensure that students become actively engaged with literacy by means of immersion in a rich reading and writing (L1 and L2) classroom environment from their earliest schooling experiences.

cc. Senator Mimi Stewart, Chair Legislative Education Study Committee

Representative Stephanie Garcia Richards, Co-chair Legislative Education Study Committee

Representative Sheryl W. Stapleton, Majority Leader

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GRADUATE SCHOOL OF EDUCATION  
Lily Wong Fillmore, Professor Emerita

BERKELEY, CALIFORNIA 94720

June 8, 2017

Dr. Julia Rosa Lopez-Emslie, Co-chair  
Coalition for the Majority

Dear Dr. Lopez-Emslie,

I am writing as a researcher to register my deep concern over the Public Education Department's proposed rule changes in New Mexico's bilingual education guidelines. I am particularly concerned with the proposed elimination of maintenance bilingual programs and programs of heritage and indigenous language education. Equally concerning is the proposal that allows the PED to terminate other types of bilingual instruction programs after two years if they do not demonstrate positive outcomes in meeting state targets for language and academic achievement!

This latter is an absurdly high standard for many reasons. The most salient arguments against this proposed change are based on nearly a half-century of research on second language acquisition conducted by linguists, psycholinguists, and educators in the United States, Canada and in Europe. That research was most recently summarized in a consensus study conducted under the auspices of the National Academies of Sciences, Engineering and Medicine (NASEM, 2017)<sup>i</sup>. In addition, I will offer research based arguments from studies of language and literacy development conducted by New Mexico experts such as Professors Rebecca Blum-Martinez and Christine P. Sims of the University of New Mexico, and researchers like myself who have worked with tribal communities and public schools over the past several decades.

What does research on second language learning among school-aged students say about the PED's proposed requirement for programs to demonstrate "positive outcome in meeting state targets for language and academic achievement?" The state strategic plan for 2017-2020 is an ambitious one, which calls for 50% of students being academically proficient in ELA and mathematics by 2020. Does this mean that students in bilingual instructional programs lose their programs if they do not make expected progress after two years towards the state's goals standardized testing programs such as PARCC, SBA and ACCESS for ELLs? Given the considerable variability among children in language learning, two years are simply too short a time for any meaningful demonstration of the overall effectiveness of any language instruction program.

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<sup>i</sup> National Academies of Sciences, Engineering, and Medicine. (2017). *Promoting the Educational Success of Children and Youth Learning English: Promising Futures*. Washington, DC: The National Academies Press. DOI: 10.17226/24677.

Research in second language learning has shown that it takes children from five to seven years, on average, to gain proficiency in a new language, even when they are provided instructional support in that language for three to five hours per day (see NASEM, 2017, Chapter 6). To expect a second language instruction program to make a difference in standardized testing on academic subjects such as English reading or math, within two years is quite unreasonable. Compelling evidence for the consideration of time as a factor in judging the relative effectiveness of educational programs was cited in the NASEM study on the education English learners. When learning outcomes of students in various models of bilingual and dual language (BL/DL) programs were compared with those of students in English-only (EO) programs, it was found that although EO students might have fared somewhat better in the first few years of school, the BL/DL students had a higher long-term likelihood of becoming proficient in English and achieving proficiency in English language art. Two years would simply not be enough time to tell whether or not a program was effective or not.

And why should the state continue supporting heritage language and bilingual programs? What is the purpose and rationale for language revitalization programs for the state's indigenous students especially? Answers to those questions begin in how language loss affects members of New Mexico's indigenous groups, for whom language, culture, and heritage are inseparable. Unique among America's indigenous peoples, New Mexico groups, because of their strong tribal governments have managed to hang onto their languages and cultural practices longer than many other groups, but in the past half-century, they too have seen the rapid erosion of their languages and cultures and the effect these shifts have had on children and youth. Community leaders recognize the long-term cultural, emotional, and psychological cost of language loss on families and the educational participation of their young people.

In the NASEM 2017 study that examined the research on the education of immigrant and indigenous students, the consensus was this:

Students' indigenous heritage languages are crucial to their social, cultural, and emotional well-being and to the continuation of their communities' ways of life, just as English is crucial to their participation in the economic and political life of the larger society. Both languages are necessary for American Indian and Alaska Native youth to become productive members of their communities. (Chapter 9, NASEM, 2017).

Recognition that the goals of language revitalization was sometimes viewed as being in conflict with the school's main objectives led the committee to draw the following conclusion and recommendation:

Conclusion 9-2: The reclamation of indigenous heritage languages is an important goal for many American Indian and Alaska Native communities. Some school systems see this goal as being in conflict with the school's efforts to promote English language and literacy. However, the evidence indicates that participation in strong language revitalization programs can have a positive impact on student achievement in school. (Chapter 9, NASEM, 2017)  
Chapter 9)

Recommendation 7: LEAs serving American Indian and Alaska Native communities that are working to revitalize their indigenous heritage languages should take steps to ensure that schools' promotion of English literacy supports and does not compete or interfere with those efforts. (Chapter 13, NASEM, 2017)



These moves are tantamount to a proposal to end the state's long-term commitment to provide linguistically and culturally appropriate education for its most vulnerable students—the Native American and immigrant background children. This is especially worrisome given the current discriminatory public rhetoric over race, identity, and immigration. Children are not immune to public wrangling over language in education. When their languages are not supported in school, they are inclined to internalize the message that those languages are not worth preserving. We have seen how quickly children come to prefer English over their home languages, and how rapidly their home languages are lost. What is lost when a family language is lost is nothing short of family intimacy and the ability of parents to communicate with their children.

There is no support in the research literature for the change to the New Mexico's bilingual education programs proposed by the PED. If approved, the proposed changes would enable the state to abnegate responsibility for supporting the revitalization and retention of New Mexico's indigenous and heritage language resources, as well as its responsibility to serve its diverse school population.

I urge you and your Coalition for The Majority colleagues to do all in your power to convince the legislature not to approve the proposed changes to the legislation, and I stand ready to support you in any way I can.

Yours truly,



Lily Wong Fillmore,  
Professor Emerita  
University of California at Berkeley  
<l.w.fillmore@gmail.com>

cc: Senator Mimi Stewart, Chair Legislative Education Study Committee  
Representative Stephanie Garcia Richards, Co-chair Legislative Education Study Committee  
Representative Sheryl W. Stapleton, Majority Leader



TO: Dr. Julia Rosa Lopez Emslie, Co-chair of the Coalition for the Majority

CC: Senator Mimi Stewart, LESC Chair  
Representative Stephanie Garcia Richard, LESC Co-Chair  
Representative Sheryl Williams Stapleton, Majority Floor Leader

DATE: June 12, 2017

We write to offer professional comments on the proposed rule changes from the Public Education Department (PED) that would reduce the program options available to New Mexico school districts to address the needs of English learners in the state. We base our comments on research results from the National Assessment of Educational Progress (NAEP) from the U.S. Department of Education and on extensive research results from our own national English learner research from the past 32 years.

First, the legislature should note that the average NAEP scores of New Mexico's overall student population now rank the state as lowest in the nation among the 52 U.S. jurisdictions tested, including the 50 U.S. states plus DC Public Schools and the Dept. of Defense Dependents Schools (DoDDS). In addition, New Mexico's NAEP scores are significantly lower than those of #51, the D.C. Public Schools.

Nationally, we have found that two factors tend to determine much of the differences among NAEP rankings by state. These are (1) average per-pupil expenditure for education and (2) percentage of English learners in the schools of that state. For New Mexico, we find that NM's per-pupil funding is #32 among the states, leading one to expect higher-than-observed state test scores. However, NM's percentage of English learners is high, and places it at #4 among the states. Since the needs of English learners are typically not met extensively in any of the states, it is almost certainly the high percentage of English learners with unmet needs that is an important factor driving New Mexico's test scores downward. This makes it very important for the legislature to make certain that it takes appropriate actions to fully meet the needs of its English learners with the best and most effective programs possible and with the maximum funding possible.

Second, we wish the legislature to know that the English learner programs proposed for elimination by PED are very similar to the programs our research has found to be most successful nationally at achieving the goal of full gap closure for English learners. When ranked from highest to lowest nationally in achieving gap closure for English learners, these programs are (1) Two-way dual language (2) One-way dual language (3) Late-exit transitional bilingual education, (4) Early-exit transitional bilingual education, (5) English as a Second Language (ESL) taught through content, (6) ESL-only, and (7) ESL Pullout.

Maintenance and enrichment bilingual education, the programs proposed by PED for consolidation, are most similar to one-way dual language (DL) programs, one of the most successful program types in achieving English learner gap closure nationally. If all NM English learners were offered well-implemented dual language education (the most effective program alternative in either one-way or two-way form), then future English learner achievement would increase across time because most students would be receiving a significantly more effective program than at present. However, under the PED proposal, the programs to be substituted, transitional bilingual education and the various ESL

program types, have been found nationally to be less effective in achieving gap closure for English learners than maintenance and enrichment bilingual education. Thus, if the PED proposal is implemented, the future achievement of NM English learners can be expected to be even lower than it is now, because these future English learners would be receiving less effective programs than they are receiving now.

Third, New Mexico's Indian groups represent a special set of educational needs that must be considered. These groups are highly desirous that their children preserve, and become fully proficient in, their native languages, while also becoming fully proficient in English. They also strongly want their children to master the curriculum in both English and their native languages. These requirements can only be met by program alternatives that encourage full bilingualism in both languages (dual language, maintenance and enrichment bilingual education). These important tribal goals are not met by programs whose goal is monolingualism in English (transitional bilingual education and English as a Second Language). Thus, it is necessary that these native groups be provided with program alternatives that allow their students to become fully bilingual, and the PED proposal would work against this important goal.

Fourth, PED proposes program consolidation not only to reduce the number of program alternatives for English learners, but also in order to cut the budget. However, cutting the budget for English learner programs will only make things worse. In order for New Mexico to raise its test scores, and to attain a significantly higher relative position among the U.S. states than at present, the legislature must provide New Mexico educators and students with more financial support for implementing more effective programs, not less money for less effective programs.

In summary, the PED proposal is highly likely to achieve outcomes that are seriously detrimental to the educational well-being of New Mexico's English learners, and as a result, highly likely to drive New Mexico's test scores further downward. Legislators should reject the PED proposal as not addressing the gap closure needs of New Mexico's students and thus not in the best interests of the people of New Mexico. Instead, NM legislators should fully fund English learner services by emphasizing two-way dual language programs (the most effective alternative) wherever possible, and also by encouraging maintenance and enrichment programs, which are equivalent to one-way dual language (the second most effective alternative). With this step, the legislature can enable New Mexico's English learner needs to be much more fully met than at present. As a result, this large and important group of New Mexico students can lead the resulting statewide resurgence in New Mexico NAEP scores, as well as in general educational achievement, to the lasting benefit of all New Mexicans.

Wayne P. Thomas, Ph.D., Professor Emeritus, Program Evaluation and Research Methodology,  
George Mason University

Virginia P. Collier, Ph.D., Professor Emerita, Bilingual and ESL Education,  
George Mason University

May 24, 2017

To Whom It May Concern:

As an expert on quality education for bilingual learners and on two-way immersion programs in particular, I would like to express my deep concerns about the proposed regulation changes in New Mexico. I have been in the field of dual language education and English as a second language teaching for over 20 years. As a practitioner and researcher, I have worked with a wide range of programs, including self-contained English as a Second Language programs, two-way immersion programs, and transitional bilingual education programs. I have published extensively on this topic in major journals in the field and have published a book, *Foundations of Multilingualism in Education: From Principles to Practice*, which lays out a framework for quality education for all learners, including English language learners.

In my book, I emphasize that the contexts of education today are too complex to mandate one model for all learners. A 'one size fits all' approach is doomed to fail to successfully meet the educational needs of heritage language learners, English language learners, and other bilingual learner groups. To be responsive to contextual differences, we need *principled* decision-making that responds with *flexibility* to the diverse contexts of schooling for bilingual learners. These principles must be research-informed, not merely common sense or established practice. Based on a long history of research, I identified four basic principles that should drive programs, policies, and practice: affirming students' identities, supporting additive and dynamic bilingualism, and structuring schools for meaningful integration. These three principles support the foundational principle of striving for educational equity for all learners. The Lucas & Villegas article that is being used for professional development clearly underscores the importance of these practices within any program, regardless of medium of instruction. Linguistically and culturally responsive teaching needs to occur in English and any other language used for instructional purposes in order to effectively support student learning.

To meet the needs of our linguistically and culturally diverse students, we need to respect and acknowledge local expertise, encourage flexibility of programmatic approaches within a principled framework of decision-making. I encourage you to continue the long tradition in New Mexico to provide this type of infrastructure and the financial support that allows local educators and communities to make the decisions that best fit their context.

Sincerely,



Ester de Jong

Expert, ESOL/Bilingual Education





# ALL PUEBLO COUNCIL OF GOVERNORS

Officers:  
E. Paul Torres, Chairman  
Governor Val Panteah, Sr., Vice Chair  
Governor J. Michael Chavarria, Secretary

Acoma April 21, 2017

Cochiti Dr. Icela Pelayo  
State Director  
Isleta Bilingual Multicultural Education Bureau  
New Mexico Public Education Department  
Jemez Jerry Apodaca Public Education Building  
300 Don Gasper  
Laguna Santa Fe, New Mexico 87501

Nambe Re: [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us)

Ohkay Owingeh Dear Dr. Pelayo:

Picuris We write to strongly object to the proposed repeal and replacement of 6.32.2 NMAC,  
Pojoaque **GUIDELINES FOR IMPLEMENTING BILINGUAL MULTICULTURAL EDUCATION**  
Sandia **PROGRAMS.** Our objections to the proposed revisions to the bilingual multicultural  
San Felipe program guidelines are procedural, substantive and for us as Pueblo leaders,  
representing the 19 Pueblo sovereign nations, a fundamental departure from  
established policies and laws.

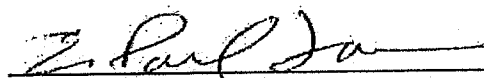
San Ildefonso In New Mexico, the executive, and the legislative branches of government, together with  
Santa Ana the 22 sovereign nations, have developed policies and enacted legislative provisions to  
Santa Clara acknowledge and articulate the highest mutual respect to be accorded to one another to  
Santo Domingo fulfill the government-to-government principles as a matter of policy and law. It  
Taos requires consultation prior to any proposed state action and proposed programmatic  
changes that will impact or effect Native American citizens on all matters. In this  
instance, the proposed repeal and replacement of certain sections and provisions will  
directly impact the education of Native American students. This runs contrary and  
fundamentally deviates from those explicit provisions set forth in statute that reflects  
the expressed desire in the conduct and engagement of the respective sovereigns.

Tesuque The New Mexico Indian Education Act, NMSA 1978 Section 22-23A through 22\_23A-8,  
Ysleta Del Sur is explicit to ensure maintenance of native languages and further requires coordination  
and consultation with tribal and pueblo leaders in the implementation of the provisions.  
Zia The Indian Education Division's own mission statement references the important role  
of native languages in the education of Native American students. Public Law 101-477  
enacted as Title I, Native American Languages Act of 1990, which state laws mirrors,  
Zuni (Section 102) defines the role of government by stating the need to preserve, protect,  
and promote the rights and freedoms of Native Americans to use, practice and develop  
Native American languages. The New Mexico State Tribal Collaboration Act, NMSA 1978

Section 11-18-1 through 11-18-15, promotes positive government-to-government relations and effective communication and collaboration between the state agencies and Indian nations, tribes or Pueblos. The Public Education Department's own Strategic Plan highlighted in your own website, includes various strategies to facilitate academic achievement, including the importance of teaching native languages as critical to the learning process for native students. The New Mexico Bilingualism-Biliteracy State Seal Statute and Rule (6.32.3 NMAC) supports not only an important piece of New Mexico history but the seal of bilingualism-biliteracy on a New Mexico diploma of excellence certifying that the recipient is proficient in meaningful use for college and/or a career to meet a local language need. For Native Americans and their respective nations, meeting the local need goes far beyond the purposes delineated, as language is the means by which all aspects of the continuance of indigenous cultures, indigenous customs, laws, jurisprudence and governance systems is dependent upon. It is this precise recognition and acknowledgement in federal policies and laws, mirrored in state policies and laws in regard to the treatment of native languages that is problematic in the proposed revisions. It is contrary and a fundamental departure.

This effort unfortunately flies in the face of years of efforts by so many within the executive, the legislative and judicial branches of state government working collaboratively with the leadership of the respective 22 sovereign nations to develop policies and laws to strengthen the relations to protect and preserve the uniqueness of the cultures, traditions and governance characteristics that make New Mexico such an extraordinary place in the United States. At the heart of our uniqueness, are the oldest indigenous languages in the world that were incorporated into the Bilingual and Multicultural Education Act which you now threaten to dismantle, lacking any degree of respect for all those who labored to epitomize and exemplify the value of language to be at the heart of our vision for education for our children. We vigorously oppose these proposed changes and we will do everything within our means to defeat these measures as they blatantly threaten all progress to date. This misguided effort is very unfortunate.

Respectfully,



Chairman E. Paul Torres  
All Pueblo Council of Governors

Cc: Jamie Gonzales, Policy Division, PED  
Latifah Phillips, Assistant Secretary  
Kelly Zuni, Secretary, Indian Affairs Department