

Proposed Rule Abstract

1. **Agency:** Public Education Department (PED)
2. **Rule Citation:** 6.32.2 NMAC
3. **Rule Action:** Repeal and Replace
4. **Register issue and Date of NPRM:** Volume 28, Issue 20, October 31, 2017
5. **Effective date of rule:** July 1, 2018
6. **Specific Legal Authority:** Sections 22-2-1, and 22-23-1 through 22-23-6 NMSA 1978
7. **Purpose of Rule:** Realign the evaluation and renewal sections of Part 2 of 6.32 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, to conform to the Bilingual Multicultural Education Act, and include program accountability for academic and language proficiency in English and a second language for all participating students. The proposed rule would also clarify program approval requirements and align instruction with local implementation.
8. **Rulemaking Contact:** Jamie Gonzales, 505-827-7889
9. **Comment Period:** Submit to rule.feedback@state.nm.us or to Jamie Gonzales, Policy Division, PED, Room 101, 300 Don Gaspar Avenue, Santa Fe, NM 87501, through 5 p.m. on Tuesday, December 5, 2017. Additionally, the NPRM states “[t]he public comment period reopened on September 1, 2017 to December 5, 2017 at 5 p.m. (MDT).”
10. **Rule Hearing:** December 5, 2017, 9 a.m. to 12 p.m., Jerry Apodaca Education Building, 300 Don Gaspar Avenue,

Summary of Proposed Rule

The proposed amendments to the October 31, 2017 draft of 6.32.2 NMAC, for implementing bilingual multicultural education programs (BMEP) make changes to the following: BMEP approval, content areas required to be included in BMEPs, changes to definitions of program models, and BMEP evaluation and program renewal requirements. See **Attachment 1, Title 6, Chapter 32, Part 2, Proposed Rule for Implementing Bilingual Multicultural Education Programs, Third Draft**. If adopted, the proposed amendments will be effective July 1, 2018.

Background

PED held a public hearing on the second draft of the bilingual multicultural education program (BMEP) rule changes on August 9, 2017, which continued to eliminate the maintenance and enrichment models. See **Attachment 2, Title 6, Chapter 32, Part 2 Proposed Rule for Implementing Bilingual Multicultural Education Programs, Version 2**. Stakeholders continued to voice concerns about limited stakeholder engagement and elimination of the two models. The All Pueblo Council of Governors remained opposed to the proposed changes of the second draft due to the failure of PED to comply with the State Tribal Collaboration Act. Additionally, stakeholders

requested PED rescind the proposed changes and start over by conducting proper stakeholder engagement and tribal consultation. In response to stakeholder concerns, PED will hold another full-day consultation with tribal leaders on November 20, 2017 in addition to stakeholder engagement meetings around the state throughout November 2017. Since September, PED has held four stakeholder engagements, one each in Albuquerque, Las Cruces, and Santa Fe, and one in October through a webinar in which PED provided a review of stakeholder recommendations received at prior engagements. Some of the recommendations included clarifying the role of tribal nations in the approval process and maintaining all five program models. A notice that a third draft of the regulation has been released appears to address the significant concerns voiced by stakeholders. On October 31, 2017, PED submitted a third draft of the proposed rule for Part 2 of 32.6 NMAC, Proposed Rule for Implementing Bilingual Multicultural Education Programs.

Analysis

This LESC analysis reviews the changes from the second draft to the third draft of the proposed rule; PED drafted a third version in response to public comment given at the August 9 hearing and from stakeholder engagements on the second draft. See **Attachment 3, LESC Brief, Guidelines for Implementing Bilingual Multicultural Education Programs of 6.32.2 NMAC**.

PED states the purpose of the proposed rule change is to realign the evaluation and renewal sections of 6.32.2 NMAC with the Bilingual Multicultural Education Act, and regulatory goals, and also include program accountability for academic and language proficiency in English and a second language for all students, not just English learners (ELs). Additionally, the proposed changes aim to further clarify the program approval requirements and align the program element of instruction with local implementation.

While draft two included an explanation for each the changes in the proposed rule, PED did not provide an explanation for each of the proposed changes in the third draft.

Definitions

In the third draft of the proposed changes, PED eliminated the definition of “target language.” PED added “target language” in the second draft because the use of “home or heritage language” did not clearly capture reference to the non-English language of a BMEP and it reflected the language other than English.

Program Approval

In addition to the listed program application requirements, PED added language in Paragraph 4 of Section B requiring a plan for allocating resources that support the implementation of the program in the initial application.

Instruction of Programs

In the third draft of 6.32.2.12 NMAC, PED added new language in subsections A and B, professional development, and Native American language programs, respectively, to include instruction to attain high academic achievement in two languages, one of which is English, and culturally and linguistically responsive instruction designed to develop cross-cultural skills. Additionally, in Subsection B, PED added language allowing Native American programs to use a department-approved alternative curriculum as long as it satisfies the goals of the Indian Education Act. PED also added language in Subsection C, “as appropriate” for content areas that are required to be taught in a program and changed content area of instruction to be conducted in “the home or heritage language of the program” from “the target language of the program” in the second draft.

Program Models

In the third draft of the proposed changes, PED reinstated enrichment and maintenance models in their entirety. Stakeholders, including legislators, consistently voiced concerns over PED’s lack of an explanation related to how the elimination of the maintenance and enrichment models would impact ELs and fully and initially English proficient students’ opportunity to participate in a BMEP.

Program Evaluation and Renewal

In the third draft of 6.32.2.15 NMAC, PED added language to Subsection A requiring verification that professional development was provided to teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents, other instructional personnel, and financial officers in the evaluation of programs.

Technical Issues

In a July LESC brief it was noted in Chapter 137, Laws 2017, definitions should not be included in regulation if they are outlined in statute. However, new definitions that are not outlined in statute may be included in regulation. PED may want to consider eliminating definitions in 6.32.2.7, sections A through I that are outlined in statute.

In Subsection A of 6.32.2.15, paragraphs need to be numbered and not listed with letters. PED may wish to consider changing it back to the format listed in the second draft of the proposed changes or change the letters to numbers. LESC staff have notified PED of this issue.

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~~Strikethrough~~ represents original language being taken out

Underline represents new language

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 32 EDUCATIONAL STANDARDS - BILINGUAL MULTICULTURAL EDUCATION
PART 2 GUIDELINES FOR IMPLEMENTING BILINGUAL MULTICULTURAL EDUCATION
PROGRAMS

6.32.2.1 ISSUING AGENCY: Public Education Department herein after the department
 [6.32.2.1 NMAC - Rp, 6.32.2.1 NMAC, 7-1-2018]

6.32.2.2 SCOPE: This regulation applies to public schools receiving bilingual state funding, K-12.
 [6.32.2.2 NMAC - Rp, 6.32.2.2 NMAC, 7-1-2018]

6.32.2.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-2-1, 22-23-1 through 22-23-6, NMSA, 1978.
 [6.32.2.3 NMAC - Rp, 6.32.2.3 NMAC, 7-1-2018]

6.32.2.4 DURATION: Permanent
 [6.32.2.4 NMAC - Rp, 6.32.2.4 NMAC, 7-1-2018]

6.32.2.5 EFFECTIVE DATE: July 1, 2018, unless a later date is cited at the end of a section.
 [6.32.2.5 NMAC - Rp, 6.32.2.5 NMAC, 7-1-2018]

6.32.2.6 OBJECTIVE: This regulation provides requirements for developing and implementing bilingual multicultural and language revitalization programs (in accordance with Section 22-23-4, NMSA 1978 and standards for excellence, Subsection B of 6.30.2.11 NMAC and supports the state of New Mexico's long-standing policy in furthering bilingual multicultural education.
 [6.32.2.6 NMAC - Rp, 6.32.2.6 NMAC, 7-1-2018]

6.32.2.7 DEFINITIONS: As used in the Bilingual Multicultural Education Act ~~[22-23-1, NMSA 1978]~~,
 Section 22-23-1 NMSA 1978:

- A. "bilingual multicultural education program" means a program using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process;
 - B. "culturally and linguistically different" means students who are of a different cultural background than mainstream United States culture and whose home or heritage language, inherited from the student's family, tribe or country of origin, is a language other than English;
 - C. "department" means the public education department;
 - D. "district" means a public school or any combination of public schools in a district;
 - E. "English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak or understand English at a level comparable to grade-level English proficient peers and native English speakers;
 - F. "heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin;
 - G. "home language" means a language other than English that is the primary or heritage language spoken at home or in the community;
 - H. "school board" means a local school board; and
 - I. "standardized curriculum" means a district curriculum that is aligned with the state academic content standards, benchmarks and performance standards.
- [6.32.2.7 NMAC - Rp, 6.32.2.7 NMAC, 7-1-2018]

6.32.2.8 DEPARTMENT DUTIES: The department shall be responsible for carrying out the powers and duties as provided in the Bilingual Multicultural Education Act, Sections 22-23-1 through 22-23-6 NMSA 1978.
 [6.32.2.8 NMAC - N, 7-1-2018]

6.32.2.9 PROGRAM GOALS: The state's bilingual multicultural education program goals are for all students, including English language learners, to:

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A. **Become** become bilingual and biliterate in English and a second language, including Spanish, a Native American language (with appropriate approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children) or another language. 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; and

B. **Meet** meet state academic content standards and benchmarks in all subject areas.
[6.32.2.9 NMAC - N, 7-1-2018]

6.32.2.10 PROGRAM ELIGIBILITY: To be eligible for financial support, each program shall:

A. provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades kindergarten through twelve, with priority to be given to programs in grades kindergarten through three, in any public school or any combination of public schools in a district;

B. fund programs for culturally and linguistically different students in the state in grades kindergarten through three, for which there is an identifiable need to improve the language capabilities of both English and the home language of these students, before funding programs at higher grade levels;

C. use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;

D. establish a parent advisory committee, representative of the language and culture of the students, to assist and advise in the development, implementation, and evaluation of the program;

E. provide procedures to ensure that parental notification is given annually prior to program placement; and

F. provide personnel endorsed in bilingual education, TESOL, or certified in Native American language and culture. The secretary of education may authorize other personnel to implement programs if qualified personnel are not available by the submission of an approved program design that addresses recruitment, professional development, and staffing patterns.

[6.32.2.10 NMAC - Rp, 6.32.2.8 NMAC, 7-1-2018]

6.32.2.11 PROGRAM APPROVAL:

A. A public school district shall submit an initial application to the department by the date of the preceding school year as specified by the department for each school requesting program approval. A proposed bilingual multicultural education program shall be eligible pursuant to 22-23-1 NMSA 1978 and 6.32.2 NMAC.

B. The initial application shall include:
(1) projected number of students to be served; ~~and~~
(2) ~~signatures of superintendent, bilingual education/title III coordinator, and school principal; assurances that all district and school personnel are knowledgeable of the requirements to comply with 22-23-1 NMSA 1978 and 6.32.2 NMAC; signatures of school board president, superintendent, bilingual multicultural education director, school principal, and a parent advisory committee representative who shall not be employed by the district or school.~~

(3) description of proposed program;

(4) **resource allocation plan that supports program implementation;** and

(5) evidence of tribal consultation to satisfy the goals of Article 23A; public schools providing a Native American language program shall obtain approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children.

C. The department shall review initial applications for approval. Districts with ~~initially~~ approved applications shall submit by the ~~20th fortieth~~ day of the target school year the following:

(1) ~~annual measurable achievement objectives (AMAOs) for English and home language;~~

(2)(1) instructional plan; and

(3)(2) actual number of students to be served.

[6.32.2.11 NMAC - Rp, 6.32.2.13 NMAC, 7-1-2018]

6.32.2.12 PROGRAM ELEMENT - INSTRUCTION:

A. Public schools providing an approved bilingual multicultural education program shall include:

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(1) instruction to attain language proficiency and literacy skills in two languages, one of which is English;

~~(2) instruction to attain high academic achievement in two languages, one of which is English;~~

~~(2)(3) sheltered content instruction;~~
~~(3)(4) standardized curriculum that is aligned with the state academic content standards, benchmarks and performance standards; and~~

~~(4)(5) instruction in the history and cultures of New Mexico; and~~
~~(6) culturally and linguistically responsive instruction designed to develop cross-cultural skills.~~

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~~ areas or domains of listening, speaking and comprehension;

~~(2) instruction to attain high academic achievement in English and a Native American language;~~

~~(2)(3) sheltered content instruction;~~
~~(3)(4) standardized curriculum that is aligned with the state academic content standards, benchmarks and performance standards; unless otherwise agreed to in writing by the department to satisfy the goals of Article 23A;~~

~~(4)(5) instruction in the history and cultures of New Mexico Native American tribes; and~~
~~(6) culturally and linguistically responsive instruction designed to develop cross-cultural skills; and~~

~~(5)(7) 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 as appropriate:

(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 English language development – English language instruction to develop the English language proficiency of English language learners based on the student's English language proficiency level; instruction shall be distinct from English language arts;~~

(3) depending on the time allotted for 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;~~

(3) 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~~

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~~Native American children; designed to support students in revitalizing, developing or maintaining their home or heritage language while gaining a deeper understanding of their cultural heritage.~~

(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;

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

[6.32.2.12 NMAC - Rp, 6.32.2.10 NMAC, 7-1-2018]

6.32.2.13 PROGRAM ELEMENT - PROFESSIONAL DEVELOPMENT:

A. Public school districts shall provide professional development to teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents, other instructional personnel, and financial officers in the areas of:

- (1) research-based bilingual/multicultural and/or language revitalization programs and implications for instruction;
- (2) best practices of English as a second language (ESL); English language development (ELD) and bilingual/multicultural and/or language revitalization programs; and
- (3) principles of language acquisition.

B. Bilingual/multicultural education or language revitalization programs shall be part of the district's professional development plan as required in Subsection E of Section 22-23-5 NMSA 1978. Bilingual educators, including teachers, instructional support personnel, principals, and program administrators, will participate in professional development. Principals and program administrators shall participate in training that addresses program supervision.

[6.32.2.13 NMAC - Rp, 6.32.2.12 NMAC, 7-1-2018]

6.32.2.14 PROGRAM ELEMENT - ASSESSMENT:

A. Trained personnel shall administer state-approved language proficiency assessments in English and the home or heritage language annually until proficiency in each language is achieved.

B. Public school districts shall comply with federal assessment requirements, including Titles I and III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as amended and office for civil rights requirements.

C. Students enrolled in this program shall participate in the New Mexico standards-based assessment (NMSBA) program.

D. In those grades that students do not participate in the New Mexico standards-based assessment program, the public school district shall develop and implement an assessment and evaluation program.

[6.32.2.14 NMAC - Rp, 6.32.2.11 NMAC, 7-1-2018]

~~6.32.2.15 EVALUATION:~~

~~A. To evaluate bilingual multicultural education program effectiveness and use of funds 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 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 language) and academic achievement;~~
 - ~~(b) a current analysis of assessment results by school and by model(s);~~
 - ~~(c) data demonstrating that participating students have met the state targets for annual measurable achievement objectives (AMAOs); and~~
 - ~~(d) an expenditure report from the general ledger on use of funds 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, 6.32.2.15 NMAC, 11-30-05]~~

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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.

6.32.2.15 PROGRAM EVALUATION AND RENEWAL:

A. Program Evaluation. Bilingual multicultural education programs shall be evaluated by the department annually for effectiveness and for the appropriate use of funds generated by the bilingual cost differential in the funding formula. For the purposes of such evaluation, each district shall maintain academic achievement and language proficiency data for each school year of each program, which shall be updated annually. This data shall be provided to the department in an annual progress report submitted to the department by September 30 of the following school year. The annual report shall include the following, by school and by model(s):

- (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 language and academic assessment results demonstrating that participating students have made measurably significant progress in meeting the state targets for language and academic proficiency;
- (c) specific and attainable goals for the following school year;
- (d) verification that the program has provided professional development to teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents, other instructional personnel, and financial officers; and
- (e) 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. Program Renewal. Based on program monitoring and review of the annual report, the Department will determine whether the bilingual multicultural education program is compliant pursuant to 22-23-1 NMSA 1978 and 6.32.2 NMAC.

- (1) If the department determines that a program is compliant, the public school district may continue the program as authorized in the approved application.
- (2) If the department determines that a program is not compliant, the department shall notify the district of such non-compliance.

(a) Upon receipt of a notice of non-compliance from the department, the district shall develop a program improvement plan, with technical assistance from the department, to address the non-compliance. This plan shall include provisions to adjust the curriculum, program or method of instruction, as necessary. The plan must be submitted to the department within thirty days, or, with prior written approval of the department, additional time not to exceed ninety days, of receipt by the district of the notice of non-compliance. The district shall implement this plan during the school year in which the district received the notice of non-compliance.

(b) A district in the process of implementing a program improvement plan shall submit its annual report to the department and will be evaluated by the department for compliance based on the standards articulated previously in this rule, and not solely on the basis of whether they have fully implemented and complied with the program improvement plan.

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(c) If upon review, after receipt of the annual report submitted by a district with a program improvement plan, the department determines that the district remains non-compliant; the department shall so notify the district. If the district remains non-compliant after the first year of implementation of the program improvement plan, the district will be required to re-evaluate the program improvement plan and make necessary adjustments. The district must report the results of this evaluation and any revisions to the original program improvement plan to the department within thirty days of receipt of the notice of non-compliance. If a program is determined to be non-compliant after receiving three consecutive notices of non-compliance, the department shall notify the district and shall discontinue the program at the end of the third school year unless the district can verify compliance to the satisfaction of the department. If the department determines that a district has become compliant, the district may continue the program as approved by the department.

(d) A district may not apply for approval for a bilingual multicultural education program for the school year immediately following a discontinuation by the department.

(e) All districts, regardless of any discontinuation by the department, shall submit the annual report to the department, for any year in which the district has provided assurances to the department.

C. The department shall compile and analyze the data submitted by public school districts and shall report annually to the appropriate interim legislative committee.

[6.32.2.16 NMAC - Rp, 6.32.2.15 NMAC, 7-1-2018]

HISTORY OF 6.32.2 NMAC:

PRE-NMAC HISTORY: The material in this regulation is derived from that previously filed with the State Records Center and Archives under: State Board of Education Regulation 73-21, Guidelines for Submitting Bilingual-Multicultural Education Proposals, filed June 18, 1973 and State Board of Education Regulation No. 75-19, Guidelines for Implementing Bilingual-Multicultural Programs, filed January 22, 1976.

HISTORY OF REPEALED MATERIAL: 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Programs, repealed effective 07-01-03; 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, repealed effective 11-30-05; 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, repealed effective 7-1-2018.

(DRAFT) Proposed Version 2

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 32 EDUCATIONAL STANDARDS - BILINGUAL MULTICULTURAL EDUCATION
PART 2 GUIDELINES FOR IMPLEMENTING BILINGUAL MULTICULTURAL EDUCATION
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 [6.32.2.2 NMAC - Rp, 6.32.2.2 NMAC, 7-1-2018]

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B. "culturally and linguistically different" means students who are of a different cultural background than mainstream United States culture and whose home or heritage language, inherited from the student's family, tribe or country of origin, is a language other than English;

C. "department" means the public education department;

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G. "home language" means a language other than English that is the primary or heritage language spoken at home or in the community;

H. "school board" means a local school board; and

I. "standardized curriculum" means a district curriculum that is aligned with the state academic content standards, benchmarks and performance standards.

J. "target language" means the home or heritage language or language other than English of a bilingual multicultural education program.

[6.32.2.7 NMAC - Rp, 6.32.2.7 NMAC, 7-1-2018]

6.32.2.8 DEPARTMENT DUTIES: The department shall be responsible for carrying out the powers and duties as provided in the Bilingual Multicultural Education Act, Sections 22-23-1 through 22-23-6 NMSA 1978.
 [6.32.2.8 NMAC - N, 7-1-2018]

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(DRAFT) Proposed Version 2

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B. **Meet** state academic content standards and benchmarks in all subject areas.
[6.32.2.9 NMAC - N, 7-1-2018]

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B. fund programs for culturally and linguistically different students in the state in grades kindergarten through three, for which there is an identifiable need to improve the language capabilities of both English and the home language of these students, before funding programs at higher grade levels;

C. use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;

D. establish a parent advisory committee, representative of the language and culture of the students, to assist and advise in the development, implementation, and evaluation of the program;

E. provide procedures to ensure that parental notification is given annually prior to program placement; and

F. provide personnel endorsed in bilingual education, TESOL, or certified in Native American language and culture. The secretary of education may authorize other personnel to implement programs if qualified personnel are not available by the submission of an approved program design that addresses recruitment, professional development, and staffing patterns.
[6.32.2.10 NMAC - Rp, 6.32.2.8 NMAC, 7-1-2018]

6.32.2.11 PROGRAM APPROVAL:

A. A public school district shall submit an initial application to the department by the date of the preceding school year as specified by the department for each school requesting program approval. A proposed bilingual multicultural education program shall be eligible pursuant to 22-23-1 NMSA 1978 and 6.32.2 NMAC.

B. The initial application shall include:
(1) projected number of students to be served; ~~and~~
(2) ~~signatures of superintendent, bilingual education/title III coordinator, and school principal.~~ assurances that all district and school personnel are knowledgeable of the requirements to comply with 22-23-1 NMSA 1978 and 6.32.2 NMAC; signatures of school board president, superintendent, bilingual multicultural education director, school principal, and a parent advisory committee representative who shall not be employed by the district or school.

(3) description of proposed program; and
(4) evidence of tribal consultation to satisfy the goals of 22-23A NMSA; public schools providing a Native American language program shall obtain approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children.

C. The department shall review initial applications for approval. Districts with ~~initially~~ approved applications shall submit by the ~~20th~~ 40th day of the target school year the following:

(1) ~~annual measurable achievement objectives (AMAOs) for English and home language;~~
(~~2~~)(1) instructional plan; and
(~~3~~)(2) actual number of students to be served.

[6.32.2.11 NMAC - Rp, 6.32.2.13 NMAC, 7-1-2018]

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;

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(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;

(2) sheltered content instruction;

(3) standardized curriculum that is aligned with the state academic content standards, benchmarks and performance standards;

(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 English language development – English language instruction to develop the English language proficiency of English language learners based on the student’s English language proficiency level; instruction shall be distinct from English language arts.~~

(3) depending on the time allotted for program model:

(a) content area instruction in ~~two languages~~ the target language of the program that utilizes the student’s language, history, and/or culture; ~~and/or~~

(b) fine arts instruction in ~~two languages~~ the target 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;~~

~~(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 support students in revitalizing, developing or maintaining their home or heritage language while gaining a deeper understanding of their cultural heritage.~~

~~(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;~~

~~(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 and culture while introducing, maintaining, and developing skills in English.~~

[6.32.2.12 NMAC - Rp, 6.32.2.10 NMAC, 7-1-2018]

6.32.2.13 PROGRAM ELEMENT - PROFESSIONAL DEVELOPMENT:

A. Public school districts shall provide professional development to teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents, other instructional personnel, and financial officers in the areas of:

(1) research-based bilingual/multicultural and/or language revitalization programs and implications for instruction;

(2) best practices of English as a second language (ESL); English language development (ELD) and bilingual/multicultural and/or language revitalization programs; and

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(3) principles of language acquisition.

B. Bilingual/multicultural education or language revitalization programs shall be part of the district's professional development plan as required in Subsection E of Section 22-23-5 NMSA 1978. Bilingual educators, including teachers, instructional support personnel, principals, and program administrators, will participate in professional development. Principals and program administrators shall participate in training that addresses program supervision.

[6.32.2.13 NMAC - Rp, 6.32.2.12 NMAC, 7-1-2018]

6.32.2.14 PROGRAM ELEMENT - ASSESSMENT:

A. Trained personnel shall administer state-approved language proficiency assessments in English and the home or heritage language annually until proficiency in each language is achieved.

B. Public school districts shall comply with federal assessment requirements, including Titles I and III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as amended and office for civil rights requirements.

C. Students enrolled in this program shall participate in the New Mexico standards-based assessment (NMSBA) program.

D. In those grades that students do not participate in the New Mexico standards-based assessment program, the public school district shall develop and implement an assessment and evaluation program.

[6.32.2.14 NMAC - Rp, 6.32.2.11 NMAC, 7-1-2018]

6.32.2.15 EVALUATION:

~~A. To evaluate bilingual multicultural education program effectiveness and use of funds 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 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 language) and academic achievement;~~

~~(b) a current analysis of assessment results by school and by model(s);~~

~~(c) data demonstrating that participating students have met the state targets for annual measurable achievement objectives (AMAOs); and~~

~~(d) an expenditure report from the general ledger on use of funds 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, 6.32.2.15 NMAC, 11-30-05]~~

~~**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.~~

6.32.2.15 PROGRAM EVALUATION AND RENEWAL:

A. Program Evaluation. Bilingual multicultural education programs shall be evaluated by the department annually for effectiveness and for the appropriate use of funds generated by the bilingual cost

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differential in the funding formula. For the purposes of such evaluation, each district shall maintain academic achievement and language proficiency data for each school year of each program, which shall be updated annually. This data shall be provided to the department in an annual progress report submitted to the department by September 30 of the following school year.

(1) The annual report shall include the following, by school and by model(s):

(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 language and academic assessment results demonstrating that participating students have made sufficient progress in meeting the state targets for language and academic proficiency;

(c) 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. Program Renewal. Based on program monitoring and review of the annual report, the Department will determine whether the bilingual multicultural education program is compliant pursuant to 22-23-1 NMSA 1978 and 6.32.2 NMAC.

(1) If the department determines that a program is compliant, the public school district may continue the program as authorized in the approved application.

(2) If the department determines that a program is not compliant, the department shall notify the district of such non-compliance.

(a) Upon receipt of a notice of non-compliance from the department, the district shall develop a program improvement plan, with technical assistance from the department, to address the non-compliance. This plan shall include provisions to adjust the curriculum, program or method of instruction, as necessary. The plan must be submitted to the department within thirty days of receipt by the district of the notice of non-compliance. The district shall implement this plan during the school year in which the district received the notice of non-compliance.

(b) A district in the process of implementing a program improvement plan shall submit its annual report to the department and will be evaluated by the department for compliance based on the standards articulated previously in this rule, and not solely on the basis of whether they have fully implemented and complied with the program improvement plan.

(c) If upon review, after receipt of the annual report submitted by a district with a program improvement plan, the department determines that the district remains non-compliant; the department shall so notify the district. If the district remains non-compliant after the first year of implementation of the program improvement plan, the district will be required to re-evaluate the program improvement plan and make necessary adjustments. The district must report the results of this evaluation and any revisions to the original program improvement plan to the department within thirty days of receipt of the notice of non-compliance. If a program is determined to be non-compliant after receiving three consecutive notices of non-compliance, the department shall notify the district and shall discontinue the program at the end of the third school year unless the district can verify compliance to the satisfaction of the department. If the department determines that a district has become compliant, the district may continue the program as approved by the department.

(d) A district may not apply for approval for a bilingual multicultural education program for the school year immediately following a discontinuation by the department.

(e) All districts, regardless of any discontinuation by the department, shall submit the annual report to the department, for any year in which the district has provided assurances to the department.

C. The department shall compile and analyze the data submitted by public school districts and shall report annually to the appropriate interim legislative committee.

[6.32.2.16 NMAC - Rp, 6.32.2.15 NMAC, 7-1-2018]

HISTORY OF 6.32.2 NMAC:

PRE-NMAC HISTORY: The material in this regulation is derived from that previously filed with the State Records Center and Archives under: State Board of Education Regulation 73-21, Guidelines for Submitting Bilingual-Multicultural Education Proposals, filed June 18, 1973 and State Board of Education Regulation No. 75-19, Guidelines for Implementing Bilingual-Multicultural Programs, filed January 22, 1976.

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HISTORY OF REPEALED MATERIAL: 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Programs, repealed effective 07-01-03; 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, repealed effective 11-30-05; 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs, repealed effective 7-1-2018.

Proposed Version 2 (DRAFT)



Date: July 26, 2017

Prepared By: McCorquodale

Notice of Proposed Rulemaking (NPRM): *Guidelines for Implementing Bilingual Multicultural Education Programs*

Proposed Rule Abstract

1. Agency: Public Education Department (PED)
2. Rule Citation: 6.32.2 NMAC
3. Rulemaking Action: Repeal and replace
4. Register Issue and Date of NPRM: Version 1: Volume 28, Issue 6 March 28, 2017; Version 2: Volume 28, Issue 12, June 27, 2017
5. Effective Date: July 1, 2018
6. Specific Legal Authority: Sections 22-23-1 through 22-23-6 NMSA 1978
7. Technical Information: N/A
8. Purpose of Rule: Realign the evaluation and renewal sections of Part 2, 6.32 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs to conform to the Bilingual Multicultural Education Act of 2004, and include program accountability for academic and language proficiency in English and a second language for all students. The proposed rule would also clarify program approval requirements and align instruction with local implementation.
9. Rulemaking Information: Matt Ortiz, 505-476-7941
10. Comment Period: Submit written comments to rmd.cpr@state.nm.us through 5:00 p.m., August 9, 2017. Written comments may be submitted at the hearing with two copies for the hearing officer.
11. Rule Hearing: Wednesday, August 9, 2017, 9:00 a.m. at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, NM 87501-2786

Rule Summary

The proposed amendments to Part 2 of 6.32 NMAC, for implementing Bilingual Multicultural Education Programs (BMEP) make changes to the following: BMEP approval, content areas required to be included in BMEPs and available BMEP models, and BMEP evaluation and program renewal requirements (see **Attachment 1, Title 6, Chapter 32, Part 2 Proposed Rule for Implementing Bilingual Multicultural Education Programs, Version 2**). If adopted, the proposed amendments will be effective July 1, 2018.

Background

At the July 2017 LESC interim meeting, members heard from PED and stakeholders about PED's proposed changes to BMEPs. Stakeholders and legislators voiced concern over limited stakeholder engagement in the development of the first draft, PED's failure to consult with tribal nations as required by statute, and programmatic and fiscal implications of the proposed amendments. Because of stakeholder concerns, PED extended the public comment period to August 9, 2017 and submitted



a second draft of the proposed rule for Title 6, Chapter 32, Part 2 Proposed Rule for Implementing Bilingual Multicultural Education Programs.

Analysis

This LESC analysis reviews the changes from Version 1 to Version 2 of the proposed rule; PED drafted Version 2 in response to public comment on Version 1 (see **Attachment 2, LESC Brief, New Mexico Bilingual Multicultural Education Programs and Version 1 of 6.32.2 NMAC**).

PED states the purpose of the proposed rule change is to realign the evaluation and renewal sections of 6.32.2 NMAC with the Bilingual Multicultural Education Act, and regulatory goals, and also include program accountability for academic and language proficiency in English and a second language for all students, not just English learners (ELs). Additionally, the proposed changes aim to further clarify the program approval requirements and align the program element of instruction with local implementation.

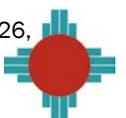
Definitions

In Version 2, PED adds a definition of “target language” defined as the home or heritage language or language other than English of a bilingual multicultural education program. In response to public input, PED included a definition of “target language” because the use of “home or heritage language” does not clearly capture reference to the non-English language of a BMEP. PED indicated the non-English “target language” reflects the language other than English of bilingual multicultural education programs.

Program Approval

If enacted, an initial application for a BMEP will be required to include assurances that all school district personnel are knowledgeable of the requirement to comply with the statutory and regulatory requirements for BMEPs and includes the signature of a parent advisory committee representative and a school board president in addition to the currently required signatures of the superintendent, school principal, and bilingual director. The signature of a school board president was added to Version 2 of the proposed rule change because PED indicated it would ensure alignment with the local approval process of BMEPs.

Additionally, in Version 2 of the proposed changes, if a proposed program is going to provide a Native American language program, the initial application will be required to include a description of the proposed program and evidence of collaboration with tribal representatives to satisfy Section 22.23.1 NMSA 1978. In response to nations, tribes, and pueblos, the proposed change requires evidence of tribal consultation pursuant to the Indian Education Act. In Version 1, PED cited Subsection C of Section 11-18-3 NMSA 1978 as a statutory requirement for tribal collaboration. Currently, evidence of tribal collaboration is not required by regulation to be



included in the initial application but is required as an element of any BMEPs that provide a Native American heritage language revitalization program.

Additionally, data currently required to be submitted by the 20th school day during the first year of the program will now be required to be submitted by the 40th school day and the requirement to establish annual measurable achievement objectives for English and home languages is eliminated. PED may want to consider changing reference to the 40th school day to the “first reporting date,” as the 40th day will not be consistent statewide because of different school start dates.

Instruction of Programs

In Version 2 of the proposed changes, PED restored the provision that requires public schools providing a Native American language program to obtain approval from tribal councils or from other appropriate tribal entities with authority to make education decisions on behalf of Native American children. PED indicated that although stated in the program approval section, the requirement in this section will further underline the need for tribal consultation.

Version 1 included two options for delivering English language development (ELD) instruction depending on a student’s level of language proficiency: 1) the instruction is distinct from English language arts and addresses the English language development of an EL; or 2) ELD is integrated with the instruction of English language arts. Public input noted this was too prescriptive and in response PED proposed a general description of the required ELD content area that is aligned to reflect current research and effective instructional practice in Version 2. English language instruction is required to be distinct from English language arts to develop the English language proficiency of ELs at their current level of language proficiency.

In Version 2, PED changed reference to “time allotted” for programs from “program model” in Paragraph 3 of Section C of 6.32.2.12 NMAC to reflect program intensity, or number of program hours triggers content area and fine arts instruction in the target language. PED emphasized the funding amount generated by the bilingual cost differential depends on program intensity and not on the model or target language of instruction

Program Models. Version 2 of the proposed rule change maintains repealing the maintenance and enrichment BMEP models. Stakeholders, including legislators, voiced concerns over PED’s lack of an explanation regarding how the elimination of the maintenance and enrichment models would impact ELs and fully and initially English proficient students’ opportunity to participate in a BMEP. According to PED, if the proposed amendments are adopted, ELs and heritage speakers of a language other than English, including fully and initially fluent English proficient students, will be eligible to participate in a heritage or dual language immersion model. School districts and charter schools can continue to support the target language and English language development of ELs in a transitional model if they choose. PED also indicated Native American students and other heritage language learners will receive the support they need through other available models.



In Version 2 of the proposed rule, PED included language in the heritage and transition models to reflect supporting students in revitalizing, developing or maintaining their home or heritage language while gaining a deeper understanding of their cultural heritage while developing English. During public input, there appeared to be confusion regarding the language domains that must be addressed during instruction within the available program models that address non-applicable domains to some Native American languages (i.e. reading and writing for oral languages). Also, stakeholders emphasized the importance of honoring the long-standing history of heritage languages in New Mexico. Additionally, stakeholders emphasized the need to ensure both language and culture is leveraged for effective language learning. In response, PED indicated the proposed definition of “target language” honors both the heritage languages of the state while also aligning the definition to current heritage learner research and included “culture” in both available models.

Program Evaluation and Renewal

In Version 2 of the proposed rule changes, PED eliminates language currently in 6.32.2.15 NMAC, Evaluation and 6.32.2.16, Program Renewal and replaces 6.32.2.15 with language in the proposed Version 2 that combines the two sections. PED indicated the program evaluation and program renewal sections are combined into one section with additional detail included to clarify expectations with a timeline. Changes proposed in the rule align accountability for BMEPs to stated program goals that students become bilingual and biliterate while also meeting academic expectations as outlined in Section 22.23.1 NMSA 1978.

Version 2 shortens the evaluation period from four years to three years and eliminates annual measurable objectives (AMOs) to determine progress of ELs in a BMEP and replaces it with evidence of sufficient progress toward meeting state targets for English language and academic proficiency. Version 2 continues the use of the school district annual progress report and is now required to be evaluated by PED. If PED determines a program is compliant, the school district may continue the program. However, if after three consecutive years of failing to make sufficient progress toward meeting state targets for language and academic proficiency, PED is required to notify the school district and require the district to develop an action plan to address non-compliance for the program and to adjust the curriculum, program, or method of instruction, or discontinue the program. Additionally, a school district may not apply for program approval for a school year immediately following discontinuation of a program and PED is required to compile and analyze data submitted by school districts and report annually to LESC.

Technical Issues

As noted in Chapter 137, Laws 2017, definitions should not be included in regulation if they are outlined in statute. However, new definitions that are not outlined in statute may be included in regulation. PED may want to consider eliminating definitions in 6.32.2.7, Sections A through I that are outlined in statute.

