

### Proposed Rulemaking Abstract

1. **Agency:** Public Education Department (PED)
2. **Rule citation:** 6.32.2 NMAC
3. **Rulemaking Action (Amend, Repeal, Repeal and Replace, New):** Repeal and replace
4. **Register issue and Date of NPRM:** Volume 28, Issue 6, March 28, 2017
5. **Effective date:** Undetermined in 2017
6. **Specific legal authority:** 6.32.2 NMAC – Sections 22-2-1, 22-23-1 through 22-23-6 NMSA 1978.
7. **Purpose of rule:** Obtain input on the proposed repeal and replace of 6.32.2 NMAC.
8. **Rulemaking information Contact:** Jamie Gonzalez, 505-827-7889
9. **Comment period:** Submit to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us) or to Jamie Gonzalez, Policy Division, PED, Room 101, 300 Don Gaspar Avenue, Santa Fe, NM 87501, through 5 p.m. on August 9, 2017.
10. **Rule hearing:** May 2, 2017, from 9:00 a.m. to 11:00 a.m. (comment period has been extended to August 9, 2017), Jerry Apodaca Education Building , 300 Don Gaspar Avenue, Santa Fe, NM 87501

### New Mexico 2015-2016 BMEP Descriptive Statistics

- Number of school districts and charter schools with BMEPs: **71**
- Number of schools with BMEPs: **465**
- Number of students statewide: **338,608**
- Number of ELs statewide: **48,238**
- Number of ELs in a BMEP: **20,811**
- Number of Hispanic students statewide: **207,452**
- Number of Hispanic students in a BMEP: **40,033**
- Number of Native American students statewide: **34,696**
- Number of Native American students in a BMEP: **8,302**
- Number of “other” students statewide: **96,460**
- Number of “other” students in a BMEP: **4,030**

See Attachment 2 for more descriptive statistics.

Source: PED

### Rule Summary

**6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs.** The proposed amendments make changes to bilingual multicultural education programs (BMEPs) for program approval, required content areas to be included in BMEPs, available BMEP models, program evaluation, and renewal requirements. See Attachment 1.

### Background

In statute, the state’s bilingual multicultural education program (BMEP) goals are for all students, including English learners (ELs), to become bilingual and biliterate in English as a second language, including Spanish, a Native American language, or another language. The program aims to ensure students participating in a BMEP meet and achieve all academic standards. The Bilingual Multicultural Education Act of 2004 provides funds for school districts and charter schools to implement BMEPs that use two languages, including English and the home, heritage, or target language, as a medium of instruction in the teaching and learning process.

Statute requires PED to issue rules for the development and implementation of BMEPs. Statutes were originally promulgated in 2005 and have not been amended since initial implementation. On May 2, 2017, PED held a hearing on proposed rule changes for guidelines implementing BMEPs. The public comments during the hearing had overarching concerns that include: limited stakeholder engagement; lack of clarification from PED regarding how the changes would impact student eligibility and participation; fiscal implications; and lack of tribal consultation.

In a meeting with LESC staff, PED indicated the purpose of the proposed amendments to 6.32.2 NMAC was to streamline BMEP models to best meet the needs of ELs and students wishing to maintain a heritage language or learn a second language other than English. PED also indicated the proposed amendments for using English language proficiency as an added indicator aligns with the new accountability measure under the federal Every Student Succeeds Act (ESSA).

## Analysis

### 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 the signature of a parent advisory committee representative in addition to the currently required signatures of the superintendent, school principal, and bilingual director. Statute requires the establishment of a parent advisory committee in schools with a BMEP, though PED indicated many school districts and charter schools either lack a parent advisory committee or use a school district employee who has children participating in a BMEP to meet the requirement to have a parent advisory committee. PED indicated this change is intended to ensure high-quality parent involvement. 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 (AMOs) for English and home languages is eliminated. Additionally, the initial application will be required to include a description of the proposed program and evidence of collaboration with tribal representatives required by Subsection C of Section 11-18-3 NMSA 1978 if a proposed program is going to provide a Native American language program. Currently, evidence of tribal collaboration is not required to be included in the initial application but is required as an element of any BMEP that provides a Native American heritage language revitalization program.

### Program Instruction

Currently, all BMEPs are required to teach language arts in the home or heritage language and instruction in the home language must be equivalent to the time provided for English language arts. Also, modifications of instruction in English language arts must address the linguistic and academic needs of students. The proposed rule incorporates new language relating to instruction for BMEPs. The new requirements include using the level of language proficiency of an EL to support meeting the needs of academic English language development instruction in two ways: 1) the instruction is distinct from English language arts and addresses the English language development of an EL; or 2) English language development is integrated with the instruction of English language arts. Depending on the program model, content area and fine arts instruction will be in the home or heritage language that utilizes the student's language, history, and culture.

**Program Models.** The proposed rule repeals the maintenance and enrichment models used in BMEPs and redefines the heritage language and transition models. Currently, a maintenance model is designed to develop and maintain academic proficiency in the first language while developing a student's literacy and oral skills in English. According to PED's current Bilingual Multicultural Education Annual Report, there were 109 maintenance models statewide in the 2015-2016 school year. Maintenance models provide support for ELs in schools where the EL population may not be significant enough to implement a dual language immersion model. However, components of the definition of the maintenance model are integrated into the transitional model that may provide a similar opportunity. In the proposed rule, a heritage language model is defined as a model that is designed to revitalize and support the home or heritage language and culture of the student through oral and written language; and a transitional model is defined as a model designed to develop skills in the primary language or home language while introducing, maintaining, and developing skills in English. In current PED guidance, a transitional model is designed specifically for ELs to prepare them to transition to the district's all-English general education program and a heritage language model is designed to revitalize and support the home or heritage language and culture of the student through oral and written language.

Currently, an enrichment model is designed to instruct students whose primary home language is a language other than English, who are fluent English proficient (former ELs, and students initially English proficient), and who are achieving academically in the general curriculum. The enrichment model also integrates the history and cultures of the state of New Mexico. Statewide, there were 149 enrichment models in the 2015-2016 school year. PED indicated the enrichment model is not designed for identified ELs. Furthermore, English language development or English as a second language instruction is not provided in an enrichment model. According to PED, components of the enrichment model can be found in the dual language immersion and heritage language models including instruction in the history and cultures of New Mexico. Additionally, current guidance indicates former ELs and students who are initially English proficient are eligible to participate in a dual language immersion or a heritage language model, but may not participate in a maintenance or transitional model.

Students are not funded by the model they participate in but by the number of hours the student qualifies for in a BMEP. Each full-time equivalent student participating in a PED-approved BMEP generates 0.5 units. The full-time equivalency status of students is determined by program intensity, or the number of hours a student participates in an approved BMEP. A student participating in three hours of bilingual programming is considered 1 FTE and generates 0.5 units while students participating in two-hour programs generate 0.333 program units and students participating in one-hour programs generate 0.167 program units. During the 2016-2017 school year, a student participating in a one-hour program generated \$663, a student participating in a two-hour program generated \$1327, and a student participating in a three-hour program generated \$1990. PED indicates the funding amount generated does not depend on the BMEP model or home or heritage language of instruction.

More than 52.2 thousand students generated \$35.1 million in bilingual funding statewide during the 2016-2017 school year; almost 16 percent of the total kindergarten through 12th grade student population participated in a BMEP during the 2016-2017 school year.

New Mexico tribal and pueblo representatives voiced concern that tribal nations were never consulted regarding the proposed changes pursuant to the State Tribal Collaboration Act. The State Tribal Collaboration Act requires "a reasonable effort to collaborate with Indian nations, tribes or pueblos in the development and implementation of policies, agreements and programs of the state agency that directly affect American Indians or Alaska Natives." See Attachment 3, Section 11-18-3 (C)

NMSA 1978. In a letter to the Bilingual Multicultural Education Bureau, the Pueblo Council of Governors indicated the proposed repeal and replacement of certain sections will directly impact the education of Native American students. The New Mexico Indian Education Act ensures maintenance of native languages and further requires coordination and consultation with tribal and pueblo leaders in the implementation of provisions directly affecting Native American students. See Attachment 4.

Additionally, stakeholders, including legislators, voiced concerns over PED's lack of an explanation regarding how the elimination of the maintenance and enrichment models could impact ELs and the fully and initially English proficient students' opportunity to participate in a BMEP. See Attachment 5. 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 home or heritage 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 not experience an impact of program loss because other available models will provide the support they need. The Bilingual Multicultural Education Bureau indicated they will support school districts and charter schools with program models that are being phased out to help support their transition into the appropriate model(s) for the 2018-2019 school year that best meet the needs of students. If adopted, PED indicated updated guidance will reflect the new changes. PED's Bilingual Multicultural Education Bureau provides a technical assistance manual for school districts and charter schools to use as guidance in choosing the best BMEP model that supports meeting the needs of their students.

***Fiscal Implications.*** Public comment from the hearing included concerns of an uncertain fiscal impact the elimination of the maintenance and enrichment models could have on school districts and charter schools. However, PED advised LESC staff the changes are not intended to have any fiscal impact because students in maintenance and enrichment models will be able to transfer to a dual language immersion, heritage language, or a transitional model. PED advised LESC staff that a number of existing programs appeared to be claiming funding for student participation in courses that are not BMEP approved courses. PED does data validation audits for funding formula compliance and this may result in some currently funded programs losing funding. However, PED reiterated this is independent of the rule change.

## **Program Evaluation**

The amendments remove reference to AMOs for English and home language development that was required under the federal No Child Left Behind Act. Instead, the proposed rule replaces AMOs with accountability measures that include an EL's progress in meeting the state target for language and academic proficiency. The federal Every Student Succeeds Act (ESSA) requires states to include English language proficiency (ELP) in their statewide accountability system indicating the percent of ELs making progress in achieving ELP. In New Mexico's Title I state plan, the ELP growth targets are a measure of the extent to which students are gaining ELP over a reasonable period of time with the expectation that ELs gain proficiency in English within five years.

## **Program Renewal**

Currently, the school district annual report provides information about the effectiveness a BMEP and the need for program renewal or modification. Within four years, school districts submit a report comprising: baseline data after the first year of starting a BMEP; progress report of how schools with BMEPs are meeting AMOs from first year to the second year; and based on data of AMOs, determine

if the BMEP program needs modifications or may continue as is. If a BMEP fails to make progress after four consecutive years, the BMEP is required to modify the curriculum or instruction, redesign the program, or discontinue the program.

The proposed rule shortens the evaluation period from four years to two years and eliminates 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. The proposed rule continues the use of the 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 two 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.

### **Next Steps**

Because of the concerns raised at the May 2, 2017 rulemaking hearing, PED extended the public comment period to August 9, 2017. In the interim, PED indicated the department will reach out to stakeholders for consultation and feedback, including tribal consultation. PED explained the plan is to revise the proposed rule and guidelines for implementing a BMEP based on stakeholder input.



**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  
 [6.32.2.1 NMAC - Rp, 6.32.2.1 NMAC, 11-30-05]

**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, 11-30-05]

**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, 11-30-05]

**6.32.2.4            DURATION:** Permanent  
 [6.32.2.4 NMAC - Rp, 6.32.2.4 NMAC, 11-30-05]

**6.32.2.5            EFFECTIVE DATE:** November 30, 2005, unless a later date is cited at the end of a section.  
 [6.32.2.5 NMAC - Rp, 6.32.2.5 NMAC, 11-30-05]

**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, 11-30-05]

**6.32.2.7            DEFINITIONS:** As used in the Bilingual Multicultural Education Act [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, 11-30-05]

**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, 11-30-05]

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

- A. 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 state academic content standards and benchmarks in all subject areas.

[6.32.2.9 NMAC - N, 11-30-05]

**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, 11-30-05]

**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 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 pursuant to Subsection C of Section 11-18-1 NMSA 2009; 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, 11-30-05]

**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;

(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.

(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;~~

~~(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;~~

~~(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.~~

[6.32.2.12 NMAC - Rp, 6.32.2.10 NMAC, 11-30-05]

### **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, 11-30-05]

**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, 11-30-05]

**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;

(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]

**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:

(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]

**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.



New Mexico Students Enrolled in 2016-2017 Bilingual Programs Statewide

ATTACHMENT 2

School District or Charter School	Student Counts by Program Length			Total Students Enrolled	Student Counts by Program Model				
	1-Hour Program	2-Hour Program	3-Hour Program		Dual Language Immersion Model	Maintenance Model	Enrichment Model	Heritage Language Model	Transitional Model
1 ALBUQUERQUE	2,713 (23%)	2,597 (22%)	6,517 (55%)	11,827	6,177 (52%)	1,439 (12%)	3,714 (31%)	482 (4%)	15 (0%)
2 ARTESIA	207 (55%)	171 (45%)		378			207 (55%)		171 (45%)
3 BELEN		164 (74%)	58 (26%)	222		131 (59%)			91 (41%)
4 BERNALILLO	448 (46%)	243 (25%)	288 (29%)	979	288 (29%)	68 (7%)	105 (11%)	518 (53%)	
5 BLOOMFIELD	303 (73%)	114 (27%)		417		40 (10%)	294 (71%)	83 (20%)	
6 CARLSBAD		250 (81%)	59 (19%)	309					309 (100%)
7 CENTRAL	1,278 (67%)	581 (30%)	46 (2%)	1,905	46 (2%)			1,859 (98%)	
8 CHAMA	167 (78%)	48 (22%)		215			165 (77%)	50 (23%)	
9 CLOVIS	40 (8%)	71 (14%)	395 (78%)	506	355 (70%)			151 (30%)	
10 COBRE	129 (13%)	760 (79%)	75 (8%)	964			880 (91%)	84 (9%)	
11 CUBA	295 (68%)	141 (32%)		436			295 (68%)	141 (32%)	
12 DEMING	107 (7%)	101 (7%)	1,319 (86%)	1,527	1,420 (93%)		107 (7%)		
13 DEXTER	128 (42%)	39 (13%)	137 (45%)	304	130 (43%)	40 (13%)	134 (44%)		
14 DULCE	296 (77%)	89 (23%)		385				385 (100%)	
15 ESPAÑOLA	1,601 (85%)	285 (15%)		1,886			24 (1%)	1,862 (99%)	
16 EUNICE		48 (100%)		48					48 (100%)
17 FARMINGTON	1,034 (64%)	551 (34%)	39 (2%)	1,624		39 (2%)	1,043 (64%)	542 (33%)	
18 FLOYD		23 (100%)		23		15 (65%)			8 (35%)
19 GADSDEN		216 (6%)	3,177 (94%)	3,393	2,346 (69%)				1,047 (31%)
20 GALLUP	2,031 (90%)	213 (9%)	19 (1%)	2,263	19 (1%)			2,244 (99%)	
21 GRANTS	229 (92%)	20 (8%)		249				249 (100%)	
22 HAGERMAN	7 (12%)	53 (88%)		60			7 (12%)		53 (88%)
23 HATCH	64 (17%)	97 (26%)	209 (56%)	370			64 (17%)		306 (83%)
24 HOBBS		229 (52%)	213 (48%)	442	206 (47%)				236 (53%)
25 JEMEZ MTN.	28 (46%)	33 (54%)		61			27 (44%)	34 (56%)	
26 JEMEZ VALLEY	39 (41%)	47 (49%)	9 (9%)	95	14 (15%)		4 (4%)	77 (81%)	
27 LAS CRUCES		364 (13%)	2,347 (87%)	2,711	2,352 (87%)	359 (13%)			
28 LAS VEGAS CITY	817 (75%)	121 (11%)	147 (14%)	1,085	147 (14%)			938 (86%)	
29 LOS LUNAS		131 (43%)	174 (57%)	305	174 (57%)	32 (10%)			99 (32%)
30 LOVING	82 (58%)	60 (42%)		142		61 (43%)	81 (57%)		
31 LOVINGTON	27 (7%)	57 (14%)	310 (79%)	394	310 (79%)		27 (7%)		57 (14%)
32 MAGDALENA	28 (67%)	14 (33%)		42				41 (98%)	1 (2%)
33 MESA VISTA-MM	144 (75%)	47 (25%)		191				191 (100%)	
34 MORA	318 (94%)	22 (6%)		340		1 (0%)	4 (1%)	335 (99%)	
35 MORIARTY-EDGEWOOD									
36 PECOS	444 (90%)	52 (10%)		496				496 (100%)	
37 PEÑASCO	252 (91%)	25 (9%)		277				277 (100%)	

New Mexico Students Enrolled in 2016-2017 Bilingual Programs Statewide

ATTACHMENT 2

	School District or Charter School	Student Counts by Program Length			Total Students Enrolled	Student Counts by Program Model					
		1-Hour Program	2-Hour Program	3-Hour Program		Dual Language Immersion Model	Maintenance Model	Enrichment Model	Heritage Language Model	Transitional Model	
38	POJOAQUE	1,031 (83%)	207 (17%)		1,238			639 (52%)	599 (48%)		38
39	PORTALES		50 (15%)	276 (85%)	326	276 (85%)				50 (15%)	39
40	QUESTA		3 (100%)		3				3 (100%)		40
41	RATON										41
42	RIO RANCHO	1,168 (81%)	140 (10%)	129 (9%)	1,437	129 (9%)	140 (10%)	1,168 (81%)			42
43	ROSWELL	836 (82%)	188 (18%)		1,024				1,024 (100%)		43
44	RUIDOSO		39 (19%)	162 (81%)	201	162 (81%)	39 (19%)				44
45	SANTA FE	429 (16%)	361 (13%)	1,950 (71%)	2,740	1,778 (65%)	110 (4%)	750 (27%)	102 (4%)		45
46	SANTA ROSA	447 (96%)	18 (4%)		465			465 (100%)			46
47	SILVER CITY										47
48	SOCORRO	110 (93%)	8 (7%)		118			3 (3%)	115 (97%)		48
49	TAOS	717 (65%)	101 (9%)	278 (25%)	1,096	275 (25%)	77 (7%)	744 (68%)			49
50	TRUTH OR CONSEQUENCES	48 (36%)	84 (64%)		132	5 (4%)		1 (1%)	91 (69%)	35 (27%)	50
51	TUCUMARI		5 (100%)		5		3 (60%)			2 (40%)	51
52	VAUGHN										52
53	WAGON MOUND	30 (75%)	10 (25%)		40				40 (100%)		53
54	WEST LAS VEGAS	476 (42%)	598 (53%)	59 (5%)	1,133			187 (17%)	946 (83%)		54
55	ZUNI	584 (68%)	183 (21%)	97 (11%)	864				864 (100%)		55
56	<b>STATE-CHARTERED CHARTER SCHOOLS</b>										
57	Albuquerque Sign Language Academy			97 (100%)	97	97 (100%)					57
58	Carinos de Los Ninos Charter School			93 (100%)	93	93 (100%)					58
59	Cien Aguas International School			368 (100%)	368	368 (100%)					59
60	Dream Diné Charter School			22 (100%)	22	22 (100%)					60
61	La Academia Dolores Huerta			164 (100%)	164	164 (100%)					61
62	La Promesa Early Learning Center			367 (100%)	367	367 (100%)					62
63	La Tierra Montessori School (new)	37 (65%)	20 (35%)		57				57 (100%)		63
64	Monte Del Sol Charter School	83 (67%)	41 (33%)		124		41 (33%)		83 (67%)		64
65	Taos International Charter School			162 (100%)	162	162 (100%)					65
66	Tierra Adentro	69 (36%)	113 (59%)	8 (4%)	190		22 (12%)	168 (88%)			66
67	Tierra Encantada Charter School			46 (100%)	46	46 (100%)					67
68	Turquoise Trail Charter School		75 (100%)		75				75 (100%)		68
69	<b>STATEWIDE TOTAL</b>	<b>19,321 (39%)</b>	<b>10,321 (21%)</b>	<b>19,816 (40%)</b>	<b>49,458</b>	<b>17,928 (36%)</b>	<b>2,657 (5%)</b>	<b>10,092 (20%)</b>	<b>16,151 (33%)</b>	<b>2,630 (5%)</b>	69

Total number of schools: 487

Source: PED

**11-18-1. Short title.**

This act may be cited as the "State-Tribal Collaboration Act".

History: Laws 2009, ch. 15, § 1.

**Emergency clauses.** — Laws 2009, ch. 15, § 7 contained an emergency clause and was approved March 19, 2009.

**Severability.** — Laws 2009, ch. 15, § 6 provided for the severability of the act if any part or application thereof is held invalid.

**11-18-2. Definitions.**

As used in the State-Tribal Collaboration Act:

A. "American Indian or Alaska Native" means:

(1) individuals who are members of any federally recognized Indian tribe, nation or pueblo;

(2) individuals who would meet the definition of "Indian" pursuant to 18 USC 1153;  
or

(3) individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States public health service, the bureau of Indian affairs or other federal programs;

B. "Indian nation, tribe or pueblo" means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico; and

C. "state agency" means an agency, department or office of the state of New Mexico that is cabinet-level.

History: Laws 2009, ch. 15, § 2.

**Emergency clauses.** — Laws 2009, ch. 15, § 7 contained an emergency clause and was approved March 19, 2009.

**Severability.** — Laws 2009, ch. 15, § 6 provided for the severability of the act if any part or application thereof is held invalid.

**11-18-3. Collaboration with Indian nations, tribes or pueblos.**

A. By December 31, 2009, every state agency shall develop and implement a policy that:

(1) promotes effective communication and collaboration between the state agency and Indian nations, tribes or pueblos;

(2) promotes positive government-to-government relations between the state and Indian nations, tribes or pueblos;

(3) promotes cultural competency in providing effective services to American Indians or Alaska Natives; and

(4) establishes a method for notifying employees of the state agency of the provisions of the State-Tribal Collaboration Act and the policy that the state agency adopts pursuant to this section.

B. In the process of developing the policy set forth in Subsection A of this section, state agencies shall consult with representatives designated by the Indian nations, tribes or pueblos.

C. A state agency shall make a reasonable effort to collaborate with Indian nations, tribes or pueblos in the development and implementation of policies, agreements and programs of the state agency that directly affect American Indians or Alaska Natives.

D. The Indian affairs department shall maintain for public reference an updated list of the names and contact information for the chief executives of the Indian nations, tribes or pueblos and for the state agency tribal liaisons.

E. Every state agency shall designate a tribal liaison, who reports directly to the office of the head of the state agency, to:

(1) assist the head of the state agency with developing and ensuring the implementation of the policy as set forth in Subsection A of this section;

(2) serve as a contact person who shall maintain ongoing communication between the state agency and affected Indian nations, tribes or pueblos; and

(3) ensure that training is provided to the staff of the state agency as set forth in Subsection B of Section 4 [11-18-4 NMSA 1978] of the State-Tribal Collaboration Act. Nothing in this subsection shall preclude tribal liaisons from providing or facilitating additional training.

History: Laws 2009, ch. 15, § 3.

**Emergency clauses.** — Laws 2009, ch. 15, § 7 contained an emergency clause and was approved March 19, 2009.

**Severability.** — Laws 2009, ch. 15, § 6 provided for the severability of the act if any part or application thereof is held invalid.



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  
Isleta State Director  
Jemez Bilingual Multicultural Education Bureau  
Laguna New Mexico Public Education Department  
Jerry Apodaca Public Education Building  
300 Don Gasper  
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  
Zuni enacted as Title I, Native American Languages Act of 1990, which state laws mirrors,  
(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

April 21, 2017

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

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

Dear Dr. Pelayo:

We write to object to the proposed repeal and replacement of 6.32.2 NMAC, GUIDELINES FOR IMPLEMENTING BILINGUAL MULTICULTURAL EDUCATION PROGRAMS. Our objections to the proposed revisions to the bilingual multicultural program guidelines are both procedural and substantive.

### **Procedural Objections**

The current Bilingual Multicultural Education Program Guidelines (BMEP) which would be modified by the Notice of Proposed Rulemaking (NPRM) were promulgated in 2005, a year after the most recent statutory modifications of the New Mexico Bilingual Multicultural Education Act (BMEA). Because no changes have been made to the BMEA in recent years, the NPRM is not occasioned by the need to realign program regulations with changed statutory requirements.

Moreover, the NPRM is not needed to ensure the state's compliance with the recent federal Every Student Succeeds Act (ESSA). Indeed, New Mexico's ESSA implementation plan recently submitted to the U.S. Department of Education does not address BMEA programs.

The Notice of Proposed Rulemaking (NPRM) offers no information as to why the regulatory changes are being proposed. The NPRM does not identify any problems that would be solved through the regulatory revisions nor does it explain how the

NPRM would advance implementation of the BMEA or improve instruction for New Mexico students.

### **Substantive Objections**

The purpose of the BMEA is straight forward: to help **all** New Mexico students become bilingual and biliterate in English and a second language and meet all academic content standards and benchmarks in all subject areas. The law further requires that bilingual multicultural education programs be delivered as part of the regular academic program and not have the effect of segregating students by ethnic group, color or national origin.

Since 2005, New Mexico PED has recognized five instructional program models (BMEPs) eligible for state funding and support under the BMEA. Choice of which model(s) are implemented by school or district is a collaborative **local** decision made by **local** parents and educators to best meet **local** conditions, needs, and resources.

According to the Bilingual Multicultural Education Annual Report For School Year 2015-2016 published in January 2017, more than 52,000 or 15 percent of New Mexico students are enrolled in a bilingual multicultural education program (BMEP). There are 653 state-funded BMEP authorized programs across 465 schools (some schools are implementing more than one BMEP model).

The current five BMEP models and the proportion of all BMEA programs they represent is as follows:

- Dual Language -20%
- Heritage-27%
- Enrichment-23%
- Maintenance-17%
- Transitional-13%

The NPRM would eliminate two of the recognized models-Enrichment and Maintenance programs. While the NPRM does not specify how many students are enrolled in these programs, it is quite likely that approximately 20,000 students would be affected by the rule change.

The NPRM cites no data or facts to support PED's desire to eliminate Enrichment and Maintenance instructional programs. The NPRM does not specify any problems that would be solved by the elimination. Indeed, the NPRM is mute on the student impact of these two instructional programs or research evidence regarding their relative effectiveness when compared with other program models.

The NPRM does not specify an effective date when affected schools and districts must act to ensure continued funding under the BMEA. Because the NPRM would require a change in instructional models for 40 per cent of all current programs, the amount of time and effort to accomplish its mandates are considerable. For schools and districts required to change their instructional BMEP model, major work by local parents and educators would be needed to review, modify and implement new instructional plans, materials, evaluations, and staffing.

### **Statutory Deviation**

Here in New Mexico, the executive, judicial and legislative branches of government, together with the twenty two sovereign nations have developed policies and enacted laws acknowledging the government-to-government principles and articulation of appropriate protocols to be followed where any proposed actions by the state and its agencies may impact our Native American citizens. 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 reflect the expressed desire in the conduct and engagement of the respective sovereign nations and the state.

The New Mexico Indian Education Act, NMSA 1978 Section 22-23A through 22-23A-8, is explicit to ensure the maintenance of native languages and further, requires coordination and consultation with tribal and pueblo leaders in the implementation of the provisions.

The New Mexico State Tribal Collaboration Act, NMSA 1978 Section 11-18-1 through 11—1815 promotes positive government -to-government relations and effective communication and collaboration between the state agencies and Indian nations, tribes or pueblos.

Public Law 101-477 enacted as Title I, Native American Languages Act of 1990, enacted by congress almost one hundred years to the date when the United States policies and laws (1890) was to kill native languages. The NALA Act reversed these policies and laws. The newly enacted law defines the role of government to preserve, protect, and promote the rights and freedoms of Native Americans to use, practice, and develop Native American languages.

Our recognition of native languages as essential to promote, preserve, and maintain indigenous ways is at the heart of our mutual efforts to strengthen our resolve to extend such fundamental rights in state policies and laws. It is our intent to maintain the commitment as demonstrated by our enactment of these policies and laws that you are deviating from violating these long established principles.

Educational rulemaking *must* be fact based and comprehensive *with* a reasonable calculation of the time and effort required to achieve compliance as well as

completing objectives and resource limitations. Given these procedural and substantive concerns, we respectfully *request* that PED withdraw the instant NPRM.

Respectfully,

Representative Sheryl Stapleton  
Majority Floor Leader  
New Mexico House of Representatives

Representative Stephanie Garcia Richards  
Chair, House Education Committee  
New Mexico House of Representatives

Representative Tomas Salazar  
Member, House Education Committee  
New Mexico House of Representatives

Representative Derrick Lente  
New Mexico House of Representatives