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HOUSE BILL 125

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Ray Begaye

AN ACT

**RELATING TO INDIAN EDUCATION; REQUIRING ADVANCE NOTICE FOR
TERMINATIONS OF CERTAIN NATIVE AMERICAN STAFF IN SCHOOL
DISTRICTS WITH A PATTERN OF INADEQUATE NATIVE AMERICAN
STAFFING; PROVIDING FOR MONITORING BY THE ASSISTANT
SUPERINTENDENT OF INDIAN EDUCATION; AMENDING SECTIONS OF THE
NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 22-5-4 NMSA 1978 (being Laws 1967,
Chapter 16, Section 28, as amended) is amended to read:**

**"22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.-- A local
school board shall have the following powers or duties:**

**A. subject to the rules of the department, develop
educational policies for the school district;**

B. employ a local superintendent for the school

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1 district and fix ~~[his]~~ the superintendent's salary;

2 C. review the annual school district Native
3 American staffing pattern report of the Indian education
4 advisory council and work in consultation with the assistant
5 superintendent for Indian education to improve an identified
6 inadequate staffing pattern;

7 ~~[C.]~~ D. review and approve the school district
8 budget;

9 ~~[D.]~~ E. acquire, lease and dispose of property;

10 ~~[E.]~~ F. have the capacity to sue and be sued;

11 ~~[F.]~~ G. acquire property by eminent domain pursuant
12 to the procedures provided in the Eminent Domain Code;

13 ~~[G.]~~ H. issue general obligation bonds of the
14 school district;

15 ~~[H.]~~ I. provide for the repair of and maintain all
16 property belonging to the school district;

17 ~~[I.]~~ J. for good cause and upon order of the
18 district court, subpoena witnesses and documents in connection
19 with a hearing concerning any powers or duties of the local
20 school board;

21 ~~[J.]~~ K. except for expenditures for salaries,
22 contract for the expenditure of money according to the
23 provisions of the Procurement Code;

24 ~~[K.]~~ L. adopt rules pertaining to the
25 administration of all powers or duties of the local school

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1 board;

2 ~~[L-]~~ M accept or reject any charitable gift,
3 grant, devise or bequest. The particular gift, grant, devise
4 or bequest accepted shall be considered an asset of the school
5 district or the public school to which it is given;

6 ~~[M-]~~ N. offer and, upon compliance with the
7 conditions of such offer, pay rewards for information leading
8 to the arrest and conviction or other appropriate disciplinary
9 disposition by the courts or juvenile authorities of offenders
10 in case of theft, defacement or destruction of school district
11 property. All such rewards shall be paid from school district
12 funds in accordance with rules promulgated by the department;
13 and

14 ~~[N-]~~ O. give prior approval for any educational
15 program in a public school in the school district that is to be
16 conducted, sponsored, carried on or caused to be carried on by
17 a private organization or agency. "

18 Section 2. Section 22-5-14 NMSA 1978 (being Laws 2003,
19 Chapter 153, Section 25) is amended to read:

20 "22-5-14. LOCAL SUPERINTENDENT-- POWERS AND DUTIES. --

21 A. The local superintendent is the chief executive
22 officer of the school district.

23 B. The local superintendent shall:

24 (1) carry out the educational policies and
25 rules of the state board and local school board;

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1 (2) administer and supervise the school
2 district;

3 (3) employ, fix the salaries of, assign,
4 terminate or discharge ~~all~~ employees of the school district;

5 (4) prepare the school district budget based
6 on public schools' recommendations for review and approval by
7 the local school board and the department. The local
8 superintendent shall tell each school principal the approximate
9 amount of money that may be available for ~~his~~ the principal's
10 school and provide a school budget template to use in making
11 school budget recommendations; ~~and~~

12 (5) perform other duties as required by law,
13 the department or the local school board; and

14 (6) in a school district that the Indian
15 education advisory council determines has a pattern of
16 inadequate Native American staffing, the local superintendent
17 shall notify the assistant superintendent of Indian education
18 or the assistant superintendent's designee five days in advance
19 of terminating or discharging a Native American administrator,
20 teacher or licensed support staff member.

21 C. The local superintendent may apply to the state
22 board for a waiver of certain provisions of the Public School
23 Code relating to length of school day, staffing patterns,
24 subject area or the purchase of instructional materials for the
25 purpose of implementing a collaborative school improvement

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1 program for an individual public school."

2 Section 3. Section 22-10A-27 NMSA 1978 (being Laws 1986,
3 Chapter 33, Section 24, as amended) is amended to read:

4 "22-10A-27. DISCHARGE HEARING--PROCEDURES. --

5 A. A local school board or the governing authority
6 of a state agency may discharge a certified school employee
7 only for just cause according to the following procedure:

8 (1) the local superintendent shall serve a
9 written notice of [~~his~~] intent to recommend discharge on the
10 certified school employee in accordance with the law for
11 service of process in civil actions; and

12 (2) the local superintendent shall state in
13 the notice of [~~his~~] intent to recommend discharge the cause for
14 [~~his~~] the recommendation and shall advise the certified school
15 employee of [~~his~~] the employee's right to a discharge hearing
16 before the local school board or governing authority as
17 provided in this section.

18 B. The local superintendent of a school district
19 identified by the assistant superintendent of Indian education
20 as having an inadequate Native American staffing pattern shall
21 notify the assistant superintendent of Indian education or the
22 assistant superintendent's designee five days in advance of
23 terminating a Native American administrator, teacher or
24 licensed support staff.

25 [~~B.~~] C. A certified school employee who receives a

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1 notice of intent to recommend discharge pursuant to Subsection
2 A of this section may exercise [~~his~~] the employee's right to a
3 hearing before the local school board or governing authority by
4 giving the local superintendent or administrator written notice
5 of that election within five working days of [~~his~~] the
6 employee's receipt of the notice to recommend discharge.

7 [~~C.~~] D. The local school board or governing
8 authority shall hold a discharge hearing no less than twenty
9 and no more than forty working days after the local
10 superintendent or administrator receives the written election
11 from the certified school employee and shall give the certified
12 school employee at least ten days written notice of the date,
13 time and place of the discharge hearing.

14 [~~D.~~] E. Each party, the local superintendent or
15 administrator and the certified school employee, may be
16 accompanied by a person of his choice.

17 [~~E.~~] F. The parties shall complete and respond to
18 discovery by deposition and production of documents prior to
19 the discharge hearing.

20 [~~F.~~] G. The local school board or governing
21 authority shall have the authority to issue subpoenas for the
22 attendance of witnesses and to produce books, records,
23 documents and other evidence at the request of either party and
24 shall have the power to administer oaths.

25 [~~G.~~] H. The local superintendent or administrator

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1 shall have the burden of proving by a preponderance of the
2 evidence that, at the time of the notice of intent to recommend
3 discharge, ~~[he]~~ the local superintendent had just cause to
4 discharge the certified school employee.

5 ~~[H-]~~ I. The local superintendent or administrator
6 shall present ~~[his]~~ evidence first, with the certified school
7 employee presenting ~~[his]~~ evidence thereafter. The local
8 school board or governing authority shall permit either party
9 to call, examine and cross-examine witnesses and to introduce
10 documentary evidence.

11 ~~[I-]~~ J. An official record shall be made of the
12 hearing. Either party may have one copy of the record at the
13 expense of the local school board or governing authority.

14 ~~[J-]~~ K. The local school board shall render its
15 written decision within twenty days of the conclusion of the
16 discharge hearing. "

17 Section 4. Section 22-23A-5 NMSA 1978 (being Laws 2003,
18 Chapter 151, Section 5) is amended to read:

19 "22-23A-5. INDIAN EDUCATION DIVISION--CREATED--ASSISTANT
20 SUPERINTENDENT--DUTIES.--

21 A. The "Indian education division" is created
22 within the department ~~[of education]~~. The ~~[state~~
23 ~~superintendent]~~ secretary of education shall appoint an
24 assistant superintendent for Indian education, who shall direct
25 the activities of the division.

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B. The Indian education division shall:

(1) provide assistance to school districts and tribes to meet the educational needs of American Indian students;

(2) provide assistance to school districts and tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for American Indian students;

(3) provide assistance to school districts and tribes to develop curricula and instructional materials in native languages, culture and history in conjunction and by contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe;

(4) establish an Indian education advisory council;

(5) by January 2006, enter into agreements with each tribe or authorized tribal educational entity to share programmatic information and to coordinate technical assistance for public schools that serve American Indian students;

(6) seek funds to establish an Indian education office in the northwest corner of the state to implement agreements with each tribe or authorized tribal educational entity, monitor the progress of American Indian

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1 students and coordinate technical assistance at the public
2 schools that serve American Indian students;

3 (7) require school districts to obtain a
4 signature of approval by the tribal governments or tribal
5 government designees residing within school district
6 boundaries, verifying that the tribes agree to Indian education
7 policies and procedures pursuant to federal requirements; and

8 (8) seek funds to establish, develop and
9 implement the following support services for the purposes of
10 increasing the number of American Indian teachers and
11 principals and providing continued professional development for
12 educational assistants, teachers and principals serving
13 American Indian students, in conjunction with the Indian
14 education advisory council:

- 15 (a) recruitment and retention;
- 16 (b) academic transition programs;
- 17 (c) academic financial support;
- 18 (d) teacher preparation;
- 19 (e) teacher induction; and
- 20 (f) professional development;

21 (9) develop curricula to provide instruction
22 in tribal history and government and develop plans to implement
23 these subjects into history and government courses in school
24 districts throughout the state;

25 (10) ensure that native language bilingual

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1 programs are part of a school district's professional
2 development plan, as provided in Section 22-2-2 NMSA 1978;
3 [~~and~~]

4 (11) develop a plan to establish a post-
5 secondary investment system for Indian students to which
6 parents, tribes and the state may contribute;

7 (12) review the Indian education advisory
8 council's annual school district staffing patterns report for
9 Native American administrators, teachers and support staff and
10 consult with and monitor school districts whose Native American
11 staffing is inadequate; and notify local school boards of
12 needed corrections to inadequate Native American staffing
13 patterns; and

14 (13) oversee Native American bilingual
15 language programs and ensure that Native American language
16 programs are properly implemented, administered, monitored and
17 evaluated. "

18 Section 5. Section 22-23A-6 NMSA 1978 (being Laws 2003,
19 Chapter 151, Section 6) is amended to read:

20 "22-23A-6. ADVISORY COUNCIL. --

21 A. The "Indian education advisory council" shall
22 consist of fourteen members as follows:

23 (1) four representatives from the Navajo
24 Nation;

25 (2) two representatives, one from the

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1 Mescalero Apache Tribe and one from the Jicarilla Apache
2 Nation;

3 (3) four representatives, two from the
4 southern pueblos and two from the northern pueblos; and

5 (4) four members representing urban areas, the
6 bureau of Indian affairs, head start organizations and the
7 general public, at least one of whom shall be non-Indian, but
8 all of whom shall have knowledge of and involvement in the
9 education of Indian students.

10 B. On a semiannual basis, representatives from all
11 tribes, members of the state board, the governor's office, the
12 New Mexico office of Indian affairs, the legislature, the state
13 superintendent and the Indian education advisory council shall
14 meet to assist in evaluating, consolidating and coordinating
15 all activities relating to the education of American Indian
16 students.

17 C. On an annual basis, the members of the Indian
18 education advisory council shall request from the department a
19 report based on forty-day figures summarizing school district
20 staffing patterns for Native American administrators, teachers
21 and licensed support staff.

22 D. Annually in December, members of the Indian
23 education advisory council shall make a report to the assistant
24 superintendent for Indian education with recommendations on
25 strategies to improve identified patterns of inadequate Native

1 American staffing and shall provide the leadership of the
2 legislative Indian affairs committee with a copy of the report.

3 [E.] E. Members of the Indian education advisory
4 council may receive per diem and mileage as provided for
5 nonsalaried public officers in the Per Diem and Mileage Act. "

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