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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

|                        |   |                            |                     |
|------------------------|---|----------------------------|---------------------|
| <b>Bill Number</b>     | <u>SB420</u>                              | <b>Sponsor</b>             | <u>Shendo</u>       |
| <b>Tracking Number</b> | <u>.213018.1</u>                          | <b>Committee Referrals</b> | <u>SIAC/SEC/SFC</u> |
| <b>Short Title</b>     | <u>Indian Education Needs Assessments</u> |                            |                     |
| <b>Analyst</b>         | <u>Ochoa</u>                              | <b>Original Date</b>       | <u>1/31/19</u>      |
|                        |   | <b>Last Updated</b>        | <u></u>             |

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**BILL SUMMARY**

Synopsis of Bill

Senate Bill 420 (SB420) proposes to create new sections of the Indian Education Act that require historically defined Indian impacted school districts, including charter schools, to conduct a needs assessment to determine what services are needed to assist Indian students in graduating and becoming college- or career-ready. After the needs assessment, the historically defined Indian impacted school districts and charter schools would be required to meet with local tribes to prioritize the needs of Indian students in closing the achievement gap by making Indian students' needs a priority in the school district or charter school budget. Additionally, these school districts and charter schools would be required to develop and publish a systematic framework for improving educational outcomes for Indian students.

**FISCAL IMPACT**

SB420 does not contain an appropriation.

**SUBSTANTIVE ISSUES**

SB420 would require historically defined Indian impacted school districts, including charter schools, to develop and publish a systemic framework for improving education outcomes for Indian students. The framework would be developed in collaboration with school employees, tribal leaders, Indian students and families, social service providers, and community and civic organizations. The framework would be required to include programs, services, culturally relevant activities, and professional development to improve Indian education in the state. Section 3 of the bill lists the elements that can be included in the systemic framework. According to the Public Education Department (PED), there were approximately 34 thousand Indian students attending public schools (school districts, state-chartered charter schools, and locally chartered charter schools) in New Mexico during the 2017-2018 school year. According to PED's Indian Education Division, there are 23 school districts and six charter schools that have schools with a significant enrollment of Indian students that could possibly be defined as "historically defined Indian impacted" school districts and charter schools.

Additionally, thousands of Indian students are enrolled in 44 Bureau of Indian Education (BIE)-operated and tribally controlled schools across New Mexico. Many students switch enrollment between public schools and BIE schools on a yearly basis, even more students enroll in public middle and high schools after attending BIE elementary schools, depending on school availability in their community. If BIE schools are not required to implement the systemic framework under SB420, and BIE schools' interventions are not aligned to what occurs in public school districts and charter schools, the needs of Indian students across the state will not be addressed systemically and a large percentage of New Mexico's Indian students will be overlooked.

**Existing Resources for Indian Education.** SB420 would require school districts and charter schools to take the required steps to make Indian students' needs a priority in their budget. According to PED's Tribal Education Status Report (TESR) for the 2017-2018 school year, the Indian Education Division provided \$742 thousand to 19 tribes and pueblos for implementing attendance initiatives that address truancy, providing students with culturally responsive learning environments, ensuring students are college- or career-ready, and supporting native language programs and the needs of English learners (ELs). PED's TESR usually reports the total amount of federal and state funding school districts and charter schools receive to serve Indian students. This information was not available for the 2017-2018 school year.

**Indian Student Achievement.** An achievement gap persists between Indian students and all other students. According to the TESR for the 2017-2018 school year, 27 percent of New Mexico's Indian students were proficient in reading, 11 percent in math, and 19 percent in science. The proficiency rates of Indian students in the 2017-2018 school increased by 3 percentage points from the 2016-2017 school year in reading, and by 1 percentage point in math, but decreased by 1 percentage point in science. Additionally, Indian students in New Mexico identified as economically disadvantaged are performing far worse than students who are not economically disadvantaged.

**Indian Graduation Rates.** According to PED, only 61 percent of Indian students are graduating from high school within four years of entering ninth grade. When given an extra year, an additional 8 percent graduate.

## ADMINISTRATIVE IMPLICATIONS

Under SB420 PED's Indian Education Division is required to assist school districts and charter schools during the development and implementation of the proposed systemic framework. In addition, the Indian education division would meet with each historically defined Indian impacted school district and charter school at least twice a year to hear a report on the needs assessment. After the needs assessment is conducted, the school districts and charter schools are required to meet with local tribes to prioritize Indian students' needs. Additionally, school districts and charter schools are required to apply for appropriate state, federal, and private grants to carry out the provisions of the bill. School districts and charter schools are required to develop an accountability tool that measures the public school efforts pursuant to the systemic framework. Lastly, school districts and charter schools are required to hold a public meeting with members of the Indian students' tribal leaders, parents, and the Indian Education Division at least twice in the school year to report on the needs assessment and the school district's evaluation of progress.

## TECHNICAL ISSUES

It is unclear what is meant by the phrase: "historically defined Indian impacted school districts." The sponsor may wish to define this phrase. On page 2, lines 18-21, it states "when approving

budgets, the department shall consider whether a school district’s budget accomplishes the prioritized needs from the Indian students needs assessment.” If school districts are determined to be out of compliance with this section, the bill does not describe a process by which the school district could appeal this determination. Additionally, SB420 does not provide language to PED on how to determine if a school district has met this requirement, and the bill does not provide a timeframe by which the school district is required to meet this requirement. On page 2, lines 9-15, it states the “school district shall make meeting the needs of Indian students and closing the achievement gap between Indian students and all other student groups a priority in the school district budget,” including applying for certain state and federal funding to assist disadvantaged students. The sponsor may wish to clarify this language. According to the U.S. Department of Education Office of Civil Rights (OCR), under Title VI of the Civil Rights Act of 1964, school districts and schools must not intentionally treat students differently based on race, color, or national origin in providing educational resources. OCR investigates complaints and initiates proactive reviews of schools, school districts, and states, to determine whether they are discriminating based on race, color, or national origin in their allocation of educational resources. An interesting thing to note, Indians are viewed as a “political” category, not a “racial” classification, based on the U.S. Supreme Court case of *Morton v. Mancari*, 417 U.S. 535, 553 (1974). In this case, the Supreme Court focused on the fact that the criterion benefited certain Indians not because of their racial characteristics, but because they were “members of quasisovereign tribal entities whose lives and activities are governed by the Bureau of Indian Affairs (BIA) in a unique fashion.” Thus, it is unclear if the OCR would investigate the schools and school districts if this bill was enacted based on Indians as a racial categorization. Under Section 1 of SB420, there is not a timeframe for when the needs assessment by the school district or charter schools is required to be finished.

## OTHER SIGNIFICANT ISSUES

**Current Law.** The Indian Education Act was passed in 2003 to ensure equitable and culturally relevant learning environments, educational opportunities, and culturally relevant instructional materials for Indian students enrolled in public schools; to ensure PED partners with tribes to increase tribal involvement and control over schools and the education of students located in tribal communities; to provide for the means for a relationship between the state and urban Indian community members to participate in initiatives and educational decisions related to their students residing in urban areas; and to ensure that parents, tribal departments of education, community-based organizations, universities, PED, and tribal, state, and local policymakers work together to find ways to improve educational opportunities for Indian students.

**Previous Legislation.** House Bill 151, Indian Students Needs Assessment was introduced in the 2018 legislative session. The bill passed in both chambers with the following House Education Committee amendments:

- Makes the requirement for historically defined Indian impacted school districts, including charter schools, to apply for state, federal, and private grants optional, rather than mandatory;
- Requires the use of student-centered data to inform “culturally and linguistically responsive policies” rather than “teaching strategies and schoolwide efforts” to close the achievement gap between Indian students and all other student demographic groups; and
- Changes “culturally relevant activities” to “culturally and linguistically responsive policies” for systemic framework elements, requires programs within this framework to be “culturally and linguistically” innovative programs, and changes “culturally related activities” to

“culturally and linguistically responsive activities” which may be included within the systemic framework.

After passing in both chambers, the bill was vetoed.

**RELATED BILLS**

HB250 Native American Student Needs Assessments

**SOURCES OF INFORMATION**

- LESC Files
- Higher Education Department (HED)
- Indian Affairs Department (IAD)
- Public Education Department (PED)

**AO/mc**