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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**53rd Legislature, 1st Session, 2017**

<b>Bill Number</b>	<u>HB484/aHEC</u>	<b>Sponsor</b>	<u>Lente</u>
<b>Tracking Number</b>	<u>.207258.2</u>	<b>Committee Referrals</b>	<u>HEC;SEC</u>
<b>Short Title</b>	<u>School Indian Student Needs Assessments</u>		
<b>Analyst</b>	<u>Macdonald</u>	<b>Original Date</b>	<u>2/26/17</u>
		<b>Last Updated</b>	<u>3/13/17</u>

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**BILL SUMMARY**

Synopsis of HEC Amendment

The House Education Committee amendment to House Bill 484 (HB484/aHEC) changes provisions requiring a needs assessment in “every school district in which Indian students are enrolled” and provisions requiring the development of a systemic framework in “every school district located on or near tribal lands or that has at least twenty-five urban Indian students” to “historically defined Indian impacted school districts.”

Synopsis of Original Bill

House Bill 484 (HB484) proposes to create new sections of the Indian Education Act that require every school district and charter school in which Indian students are enrolled 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 school district and charter school is required to meet with the 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 budget. Additionally, school districts and charter schools are required to develop and publish a systematic framework for improving educational outcomes for Indian students.

**FISCAL IMPACT**

HB484/aHEC does not contain an appropriation. However, this could pose a significant financial burden on school districts, charter schools, and the Public Education Department (PED) Indian education division to implement the provisions of the bill with the limited funding from the Indian education fund.

The Senate Finance Committee amendment to the House Appropriations and Finance Committee Substitute for House Bills 2 and 3 includes the following appropriations to the Indian education fund: approximately \$1.8 million in general fund revenue and approximately \$675 thousand in other state funds, which are from the Indian education fund. Additionally, there is an earmark in the general fund appropriation for \$400 thousand to a national nonprofit organization that

recruits recent college graduates and professionals who have demonstrated a record of achievement to teach in low-income urban and rural public schools to provide teaching support in schools with a high proportion of Indian students.

For the 2015-2016 school year, the Indian education division provided \$525 thousand to 21 school districts, or \$25 thousand per school district, to fund school districts with a significant number of Indian students, for the purpose of providing effective, culturally relevant programs, opportunities, and practices which contribute to the academic and cultural success of Indian students.

HB484/aHEC is an unfunded mandate that requires significant activities and dedication of resources for school districts or charter schools to take the required steps to make Indian students' needs a priority in their budget. During the 2015-2016 school year, the 23 school districts with the largest Indian student populations received approximately \$31.4 million, including federal and state funds, to fund the Indian student programs within their respective school districts (Attachment 1). According to the Legislative Finance Committee (LFC) fiscal impact report, most of these funds have been used to provide services and resources at school districts with consultation from local tribal governments, and many eligible uses are aligned with provisions of this bill.

## **SUBSTANTIVE ISSUES**

HB484/aHEC requires 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 will be developed in collaboration with school employees, tribal leaders, Indian students and families, social service providers, and community and civic organizations. Additionally, the framework is 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 120-day student count from PED, there were 35,507 Indian students attending public schools (school districts, state-chartered charter schools, and locally chartered charter schools) in New Mexico during the 2015-2016 school year.

According to PED's analysis, there are 23 school districts and six charter schools that have schools on or near tribal lands that are required to provide local data for the PED's Tribal Education Status Report (TESR) and are eligible for the school district Indian Education Act grants.

According to the TESR for the 2015-2016 school year, Indian students consistently scored below their counterparts in reading, math, and science. Indian students who are identified as non-economically disadvantaged are performing at the state average in these assessments, while Indian students identified as economically disadvantaged consistently perform below their peers. There is a gender performance gap in reading, with Indian female students outperforming males; however, both genders are performing at the same achievement levels for math and science.

**Statewide Assessments by Ethnicity.** Specifically, an average of 27 percent of Indian students are proficient in reading, 10 percent in math, and 22 percent in science. The average proficiency rate of Indian students in the 2015-2016 school year increased slightly from the 2014-2015 school year. Proficiency rates for Indian students are considerably lower than other students,

especially students of Caucasian backgrounds. As compared to the percentage of proficient Caucasian students, there are fewer than half as many proficient Indian students who are proficient readers, fewer than one-third as many Indian students proficient in math, and nearly one-third as many Indian students proficient in science.

**Graduation Rates.** New Mexico’s 5-year cohort graduation rates are accompanied by outcomes for students who did not graduate, including those who left to get a GED, dropped out, or continue to be enrolled. Currently, far too many students drop out or graduate from high school without the knowledge and skills required for success in the 21st century workplace and postsecondary education. Minority groups continue to profit most from an extra year (5-year cohort), with African-American, Indian, and economically disadvantaged students making the greatest gains. The Indian graduation rate is consistent with these other two student demographics, increasing their 5-year graduation rates 9 percent over the past three years. TESR reported that 62.9 percent of Indian students graduated in the 2014 cohort.

School districts that claim federally-identified Indian students residing on Indian lands for Title VII (formerly Title VIII) impact aid funding are required to develop and implement policies and procedures in consultation with tribal officials and parents. The Indian Education Act requires school districts to obtain a signature of approval by the New Mexico tribal governments residing within school district boundaries, verifying that New Mexico tribes agree to Indian policies and procedures pursuant to federal Title VII impact aid funding requirements. According to LFC, 20 school districts received federal Title VII impact aid funding in FY16.

## TECHNICAL ISSUES

It is unclear what is meant by the term: “historically defined Indian impacted school districts.” The sponsor may wish to define this term.

On page 2, lines 18-21, it states “when approving school 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, HB484/aHEC 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 3, line 12, the sponsor may wish to define “urban Indian student.”

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 quasi-sovereign 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 the HB484/aHEC, there is not a timeframe for when the needs assessment by the school district or charter schools is required to be finished.

## **ADMINISTRATIVE IMPLICATIONS**

Under HB484/aHEC, PED’s Indian education division is required to assist, as needed, the 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 Indians 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.

## **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.

Under Section 11-18-4 NMSA 1978, the State-Tribal Collaboration Act requires all cabinet-level state agencies to develop policies that promote beneficial collaboration between the state and tribal governments. Under PED’s state-tribal collaboration and community policy, it solidifies a process for consultation with tribal governments when developing programs, policies, and activities that affect Native American students, and the policy reflects the department’s commitment to work with tribal leaders on a government-to-government basis and provides guidance for the implementation of the Indian Education Act. PED’s state-tribal collaboration and community policy can be found at <http://www.ped.state.nm.us/ped/IEDDocuments/2016/TESR%20reports/STCR-Policy.pdf>.

Indian Education in New Mexico 2025, is a study that sheds insight into where cultural responsiveness exists, how it has been fostered, how it is practiced, and how to inform those schools who aspire to become more culturally responsive for the benefit of their Indian students

and the tribal communities. The study can be found at <http://ped.state.nm.us/ped/IEDDocuments/2016/Indian%20Education%20in%20New%20Mexico%202025%20Report.pdf>.

## **RELATED BILLS**

Relates to HB340, Education Strategic Planning Task Force, which proposes to create the education strategic planning task force to develop a strategic plan for education from early childhood through college graduation.

Relates to HB343, Add Fort Sill Apache to Advisory Councils, which proposes to change the voting memberships on two advisory councils to allow representatives from the Fort Sill Apache Tribe to participate on the Indian Education Advisory Council and the Native American Suicide Prevention Advisory Council.

Relates to \*HB461, Education Commission Strategic Plan, which requires the Public Education Commission to work with PED to develop the strategic plan for public elementary and secondary education in the state by convening advisory panels and engaging stakeholders with interest in early childhood, public, and higher education.

Relates to SB209/aSFC, Additional Student Data Reporting, which enacts a new section of the Public School Code requiring school districts to provide specific, additional data in the school district's annual accountability.

## **SOURCES OF INFORMATION**

- LESC Files
- LFC Files
- PED

**HLM/rab**

District Funding 2015–2016: Funds Generated by American Indian Students<sup>1</sup>

# of AI funding sources used	Districts	Total Enrollment 80D (N)	AI Enrollment 80D (N)	AI (%)	Total Dist. Budget	Fund:					TOTAL		
						Indian Ed Formula Grant Title VII	Impact Aid Indian Ed. Title VIII	JOM	NM IEA	Navajo Program		Native American Programs	TOTAL Indian Programs
						25184	25147	25131	27150	25201	25209		
4	APS	91,816	4,357	5%	\$1,362,979,345	1,059,323	8,164	159,051	25,000			1,251,538	\$287
3	Aztec	3,226	437	14%	\$56,356,882	90,019		22,339	25,000			137,358	\$314
3	Bernalillo	3,139	1,358	43%	\$76,024,874	250,404	1,313,512		25,000			1,755,830	\$1,293
4	Bloomfield	3,023	1,088	36%	\$49,489,563	187,156	172,070	66,210	25,000			450,436	\$414
5	Central	6,380	5,578	87%	\$144,455,750	962,486	7,207,719	473,855	25,000	338,000		8,669,060	\$1,554
4	Cuba	563	343	61%	\$15,198,352	63,918	327,545	35,133	25,000			451,596	\$1,317
2	Dulce	699	664	95%	\$20,444,298		1,005,248		25,000			1,030,248	\$1,552
3	Española	3,941	196	5%	\$61,379,607	44,918	35,834		25,000			105,752	\$540
5	Farmington	11,623	3,612	31%	\$167,669,902	799,527	18,889	208,369	25,000		32,485	1,051,775	\$291
4	Gallup	11,947	9,375	79%	\$192,727,057	1,599,227	8,826,693	593,981	25,000			11,161,058	\$1,191
3	Grants	3,812	1,745	46%	\$54,154,471	268,360	722,942		25,000			1,016,302	\$582
4	Jemez Mtn.	267	86	33%	\$8,369,649	15,917	57,661	5,132	25,000			97,680	\$1,136
2	Jemez Valley	413	290	70%	\$13,385,936		542,166		25,000			567,166	\$1,956
3	Los Lunas	8,578	536	6%	\$117,605,384	81,260	66,181		25,000			172,441	\$322
4	Magdalena	372	171	46%	\$8,155,714	32,357	113,116	11,671	25,000			182,144	\$1,065
2	Peñasco	359	30	8%	\$8,964,545	4,812	47,908		0			53,377	\$1,779
3	Pojoaque	1,900	276	15%	\$28,100,488	61,926	204,802		25,000			291,728	\$1,057
1	Rio Rancho	16,880	597	4%	\$231,116,327	0			25,000			25,000	\$42
3	Ruidoso	1,993	355	18%	\$35,075,940	79,973	143,961		25,000			248,934	\$701
3	Santa Fe	13,494	284	2%	\$311,760,928	77,919		23,198	25,000			126,117	\$444
3	Taos	2,870	189	7%	\$47,100,029	50,680	15,774		25,000			91,454	\$484
2	Tularosa	929	288	31%	\$18,983,496	42,285	209,153					251,438	\$673
4	Zuni	1,340	1,314	98%	\$24,942,077	241,574	1,776,864	199,571	25,000			2,243,009	\$1,707
<b>TOTAL</b>		<b>189,564</b>	<b>33,169</b>	<b>17.5%</b>	<b>3,054,440,614</b>	<b>6,022,865</b>	<b>22,969,411</b>	<b>1,914,165</b>	<b>525,000</b>			<b>31,431,441</b>	<b>\$948</b>
						<b>% of Indian program funds</b>			21.88%	6.18%	1.29%		
						<b># Districts funded</b>			20	11	21		

<sup>1</sup> Table sorted by the amount per student column