

LESC bill analyses are available on the New Mexico Legislature website ([www.nmlegis.gov](http://www.nmlegis.gov)). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 2nd Session, 2020**

<b>Bill Number</b>	<u>HJM5</u>	<b>Sponsor</b>	<u>Dow/Martinez, J./Lara/Ramos</u>
<b>Tracking Number</b>	<u>.217234.1</u>	<b>Committee Referrals</b>	<u>HEC;SRC</u>
<b>Short Title</b>	<u>School Cultural Relevance Index &amp; Units</u>		
<b>Analyst</b>	<u>Simon</u>	<b>Original Date</b>	<u>2/11/2020</u>
		<b>Last Updated</b>	<u>2/17/2020</u>

---

---

**BILL SUMMARY**

Synopsis of Joint Memorial

House Joint Memorial 5 (HJM5) requests the LESC and the Legislative Finance Committee (LFC) to convene representatives of school districts and charter schools to study refinements to the public school funding formula, including consideration of a cultural and linguistic responsive index.

**FISCAL IMPACT**

Memorials do not carry appropriations.

**SUBSTANTIVE ISSUES**

HJM5 requests LESC and LFC to convene a working group including school districts and charter schools that have significant populations of at-risk students and rural school districts and charter schools. The memorial cites changes to the public school funding formula made by Laws 2019, Chapters 206 and 207 (SB1 and HB5), specifically the phasing out of the small school size adjustment and the increase to the at-risk index. Additionally, the memorial requests the working group consider the addition of a “cultural and linguistic responsive index” based on the number of economically disadvantaged students, Native American and Hispanic English learners and class C and class D special education students. The memorial requests the group report to LESC and LFC no later than November 1, 2020.

**Consolidated *Martinez* and *Yazzie* Lawsuit.** HJM5 addresses issues included in the 1st Judicial District Court’s rulings in the consolidated *Martinez* and *Yazzie* lawsuit and may help the state resolve the ongoing litigation. In both the initial decision and the findings and conclusions, the court cited evidence highlighting areas where funding levels, financing methods, and the Public Education Department (PED) oversight were deficient in ensuring at-risk students were provided with the services they need to promote educational success. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the Legislature and executive.

The decision in the consolidated *Martinez* and *Yazzie* lawsuit generally found the state failed to provide a sufficient education for at-risk students, which the court defined as low-income students, English learners, Native American students, and students with disabilities, based on evidence of inadequate inputs and low educational outputs in the form of low reading and math proficiency rates, significant disparities in test score performance between student groups, low high school graduation rates, and high college remediation rates. Evidence of low student academic performance was based in large part on PARCC test results. The cultural and linguistic relevance index proposed by HJM5 would be targeted to at-risk students, as defined by the court.

In response to the findings, the Legislature enacted SB1 and HB5, which:

- Allowed school districts and charter schools to receive formula funding if they choose to participate in programs to extend instructional time, including K-5 Plus and a new extended learning time program;
- Increased the multiplier used to calculate the at-risk index from 0.13 to 0.25 to provide additional funding for at-risk students;
- Clarified the kinds of programs that could be funded with dollars generated through the at-risk index;
- Amended the School Personnel Act to increase minimum salaries for teachers, level 3-A counselors, principals, and assistant principals;
- Set a maximum age of 21 for students to generate public school funding;
- Eliminated size adjustment program units over three years to public schools within the boundaries of school districts with more than 2,000 students and create a new funding formula factor for school districts and charter schools in rural areas; and
- Clarified and expand upon the information school districts and charter schools must include in their annual budget submissions, including new requirements for performance-based budgeting.

HJM5 requests the working group to consider refinements to the public school funding formula, specifically citing changes to the small school size adjustment and the at-risk index, as well as the inclusion of a new cultural and linguistic responsive index.

**Cultural and Linguistic Responsive Index.** HJM5 requests the working group assembled by LESC and LFC consider the addition of a cultural and linguistic responsive index, which would generate funding based on the number of economically disadvantaged students, Native American and Hispanic English learners, and class C and D special education students. This request appears to be based on House Bill 361, Public Education Changes, which would create the new program unit in the public school funding formula. The addition of this program unit would allocate additional funds to school districts and charter schools to meet the needs of at-risk students, but would likely have a significant fiscal impact.

**Small School Size Adjustment.** The public school funding formula has for many years recognized the rural nature of New Mexico by allowing school district-operated schools that are unable to take advantage of economies of scale to generate additional formula funding. However, research from LESC and LFC prior to the enactment of SB1 and HB5 found that the number of size adjustment program units had increased, with most of the growth concentrated in urban areas. While much of this growth was related to charter schools, large school districts had also increased the number of size adjustment program units.

Prior to the enactment of SB1 and HB5, statute had only allowed a school district to generate small school size funding. Despite the plain language of the statute, previous administrations had allowed charter schools to generate small school size adjustment. While SB1 and HB5 expanded eligibility to charter schools, any school located in a school district with more than 2,000 students would become ineligible to generate these program units after a five year phase out of these program units. The law also created a new rural population program unit for school districts with a high percentage or rural residents.

The court in the consolidated *Martinez* and *Yazzie* lawsuit found the small school size adjustment “allowed some school districts and charter schools to take advantage of the factor when its application is questionable, at best.” The court further agreed with testimony that criticized the funding formula’s small school factor, “which allows charter schools to take advantage of the factor’s weighted funding and has the effect of diverting funds away from the needs of other school districts’ at-risk students.”

**At-Risk Index.** Enactment of SB1 and HB5 also increased the multiplier used to calculate a school district’s at-risk index from 0.13 to 0.25. A school district’s at-risk index is based on the three-year average rate of three indicators: the percentage of student membership used to calculate a school district’s Title I allocation, the percentage of students that are English learners, and student mobility. These indicators are added together and the number of program units is calculated as follows:

$$\begin{aligned} \text{Three-Year Average Rate} * \text{At-Risk Multiplier} &= \text{At-Risk Index} \\ \text{At-Risk Index} * \text{Total Student Membership} &= \text{At-Risk Program Units} \end{aligned}$$

Because the public school funding formula uses data from the U.S. Census Bureau for Title I eligibility, it is only possible to calculate an at-risk index at the school district level. Under current law, charter schools receive the at-risk index of the school district in which they are geographically located. Although each charter school receives its own at-risk funding, the at-risk index is based on the overall demographics of the school district and not their unique circumstances. This can advantage charter schools with students from relatively high socio-economic backgrounds, while disadvantaging charter schools with students from relatively low socio-economic backgrounds or with a large number of English learners.

## **RELATED BILLS**

House Bill 59, At-Risk Program Units & Index Calc. Change, which increases the multiplier used to calculate the at-risk index to 0.30.

House Bill 361, Public Education Changes, creates a new cultural and linguistic relevance index in response to the findings in the consolidated *Martinez* and *Yazzie* lawsuit.

House Memorial 12, Cultural Diversity and Bilingual Education Working Group, requests the secretary of public education to convene a working group to share best practices for implementing bilingual and multicultural programs.

## **SOURCES OF INFORMATION**

- LESC Files
- Indian Affairs Department (IAD)