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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 2nd Session, 2018

Bill Number	<u>HB151/aHEC</u>	Sponsor	<u>Lente</u>
Tracking Number	<u>.209567.1</u>	Committee Referrals	<u>HRC/HSIVC/HEC</u>
Short Title	<u>Indian Students Needs Assessments</u>		
Analyst	<u>Macdonald</u>	Original Date	<u>1/29/18</u>
		Last Updated	<u>2/8/18</u>

BILL SUMMARY

Synopsis of HEC Amendments

The House Education Committee amendments to House Bill 151 (HB151/aHEC) include the following:

- 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.

Synopsis of Original Bill

House Bill 151 (HB151) 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 are 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 are required to develop and publish a systematic framework for improving educational outcomes for Indian students.

FISCAL IMPACT

HB151/aHEC does not contain an appropriation.

SUBSTANTIVE ISSUES

HB151/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 would be developed in collaboration with school employees, tribal leaders, Indian students and families, social service providers, and community and civic organizations. 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.

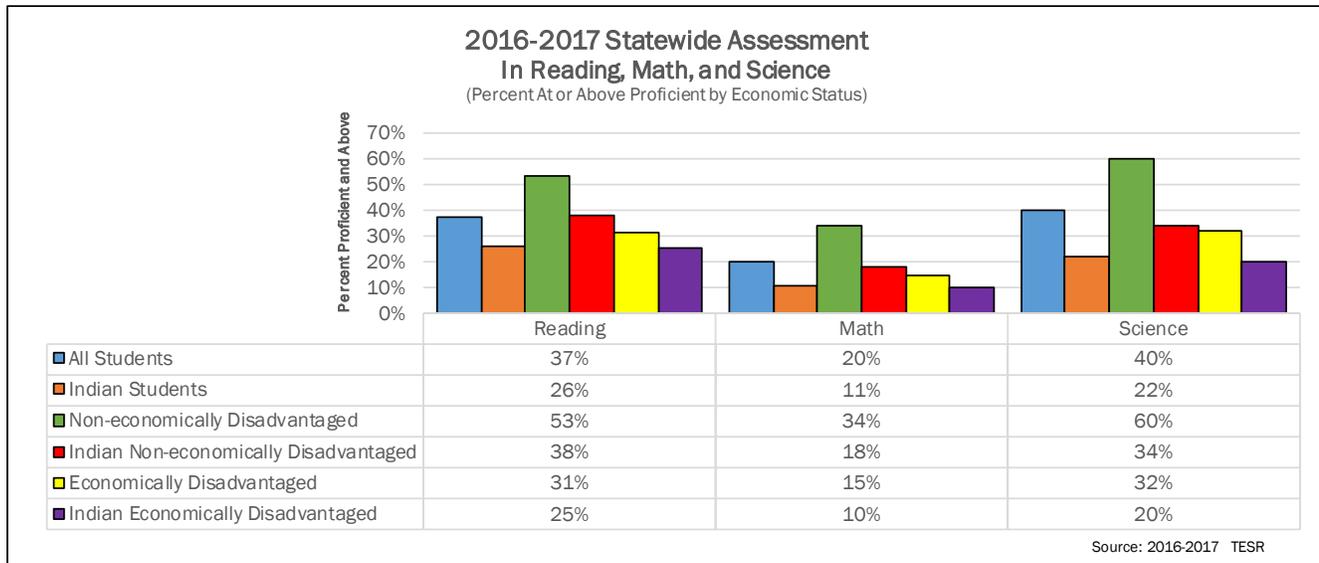
According to the 120-day student count from the Public Education Department (PED), there were 35,472 Indian students attending public schools (school districts, state-chartered charter schools, and locally chartered charter schools) in New Mexico during the 2016-2017 school year.

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.

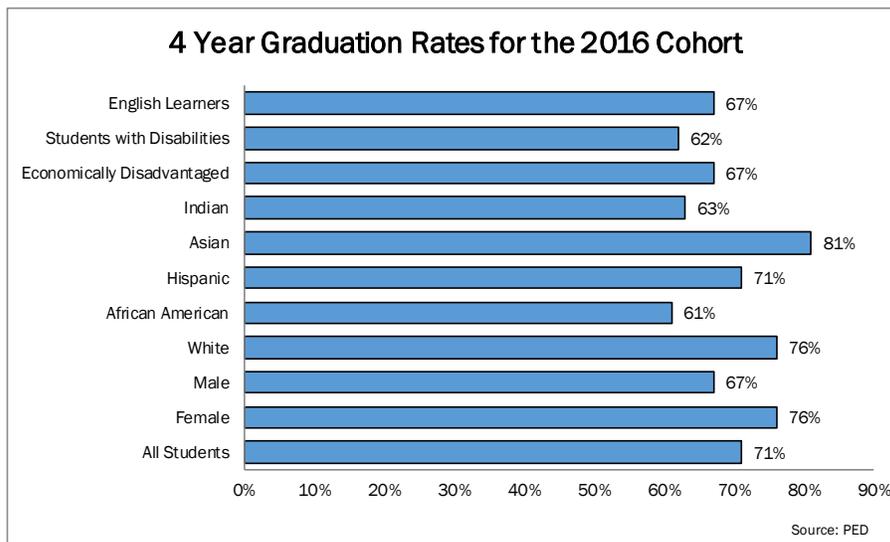
Existing Resources for Indian Education. HB151/aHEC would require a significant dedication of resources by school districts and charter schools to take the required steps to make Indian students' needs a priority in their budget. During the 2016-2017 school year, 23 school districts and four charter schools with the largest Indian student populations received approximately \$31.4 million, including federal and state funds to fund Indian student programs (Attachment 1). Most of the funds in Attachment 1 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.

According to PED's Tribal Education Status Report (TESR) for the 2016-2017 school year, the Indian Education Division provided \$575 thousand to 22 school districts and one charter school, or \$25 thousand per school district and charter school, to fund school districts and charter schools 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.

Indian Student Achievement. An achievement gap persists between Indian students and all other students. According to the TESR for the 2016-2017 school year, 26 percent of New Mexico's Indian students were proficient in reading, 11 percent in math, and 22 percent in science. The proficiency rates of Indian students in the 2016-2017 school year increased by 1 percentage point from the 2015-2016 school year in math, decreased by 1 percentage point in reading, and remained unchanged in science. Additionally, Indian students in New Mexico identified as economically disadvantaged are performing far worse than students who are not economically disadvantaged. Indian students who are not economically disadvantaged perform slightly better than the statewide average in reading, slightly below the statewide average in math, and below the statewide average in science. Moreover, Indian girls significantly outperform Indian boys in reading in New Mexico; however, Indian boys are slightly outperforming Indian girls in science. Both boys and girls are performing at the same achievement levels in math.



Indian Graduation Rates. The four-year graduation rate for Indian students beginning ninth grade in the 2012-2013 school year and graduating in the 2015-2016 school year was 63 percent, 8 percentage points below the statewide average for all students.



ADMINISTRATIVE IMPLICATIONS

Under HB151/aHEC, PED’s Indian Education Division is required to assist 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 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 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, HB151 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 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 HB151, 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.

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 is located at <http://www.ped.state.nm.us/ped/IEDDocuments/2016/TESR%20reports/STCR-Policy.pdf>.

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.

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 that aspire to become more culturally responsive for the benefit of Indian students and tribal communities. The study can be found at <http://ped.state.nm.us/ped/IEDDocuments/2016/Indian%20Education%20in%20New%20Mexico%202025%20Report.pdf>.

POSSIBLE QUESTIONS

- Why does PED give the same amount of funding to all public schools regardless of the number of Indian students?
- Are there statewide programs or other state's efforts that are effective in improving Indian student academic outcomes?

SOURCES OF INFORMATION

- LESC Files
- Higher Education Department
- Indian Affairs Department

HM/rab

School District and Charter School 2016-2017: Funds Generated by Indian Student Enrollment

School District or Charter School	Total Enrollment	Indian Student Enrollment	Indian (%)	Total School District Budget	Fund:				New Mexico Indian Education Act	TOTAL Indian Programs	Amount per Student
					Indian Education Formula Grant Title VII	Impact Aid Indian Education Title VIII	Johnson-O'Malley (JOM)	25131			
APS	91,112	4,906	5%	\$ 1,343,717,818	\$ 1,051,910	\$ 6,781	\$ 159,051	\$ 25,000	\$ 1,242,742	\$ 253	
Aztec	3,187	485	15%	\$ 49,358,024	\$ 86,382	-	\$ 27,487	\$ 25,000	\$ 138,869	\$ 286	
Bernalillo	3,189	1,369	43%	\$ 61,444,344	\$ 250,404	\$ 1,313,512	-	\$ 25,000	\$ 1,588,916	\$ 1,161	
Bloomfield	2,963	1,130	38%	\$ 47,898,951	\$ 196,391	\$ 169,581	\$ 66,792	\$ 25,000	\$ 457,764	\$ 405	
Central	6,177	5,536	90%	\$ 109,784,357	\$ 966,101	\$ 5,154,643	\$ 318,537	\$ 25,000	\$ 6,464,281	\$ 1,168	
Cuba	567	365	64%	\$ 14,609,577	\$ 66,817	\$ 255,096	\$ 31,714	\$ 25,000	\$ 378,627	\$ 1,037	
DEAP	22	22	100%	\$ 409,101	\$ -	-	\$ -	\$ -	\$ -	\$ -	
Dream Dine	25	25	100%	\$ 521,630	\$ -	-	\$ -	\$ -	\$ -	\$ -	
Dulce	777	732	94%	\$ 19,614,404	\$ -	\$ 10,782,998	-	\$ 25,000	\$ 10,807,998	\$ 14,765	
Espanola	3,771	209	6%	\$ 51,463,469	\$ 76,232	\$ 74,451	-	\$ 25,000	\$ 175,683	\$ 841	
Farmington	11,613	3,769	32%	\$ 168,001,563	\$ -	-	-	\$ 25,000	\$ 25,000	\$ 7	
Gallup	11,659	9,200	79%	\$ 196,881,391	\$ 1,729,448	\$ 9,597,728	-	\$ 25,000	\$ 11,352,176	\$ 1,234	
Grants	3,825	1,791	47%	\$ 54,597,357	\$ -	\$ 632,996	-	\$ 25,000	\$ 657,996	\$ 367	
Jemez Mountain	251	75	30%	\$ 6,669,378	\$ 6,058	-	\$ 4,640	\$ 25,000	\$ 35,698	\$ 476	
Jemez Valley	402	284	71%	\$ 7,964,730	\$ -	\$ 222,904	-	\$ 25,000	\$ 247,904	\$ 873	
Los Lunas	8,509	600	7%	\$ 112,025,409	\$ 82,875	\$ 66,500	-	\$ 25,000	\$ 174,375	\$ 291	
Magdalena	345	148	43%	\$ 7,539,810	\$ 30,271	\$ 89,434	\$ 10,954	\$ 25,000	\$ 155,659	\$ 1,052	
Penasco	349	31	9%	\$ 7,666,400	\$ 5,168	\$ 12,154	-	\$ -	\$ 17,322	\$ 559	
Pojoaque	1,920	287	15%	\$ 24,781,958	\$ 61,140	\$ 370,661	-	\$ 25,000	\$ 456,801	\$ 1,592	
Rio Rancho	17,058	834	5%	\$ 228,729,908	\$ 32,616	-	-	\$ 25,000	\$ 57,616	\$ 69	
Ruidoso	2,007	336	17%	\$ 33,879,413	\$ 33,011	\$ 96,832	-	\$ 25,000	\$ 154,843	\$ 461	
Santa Fe	13,224	327	2%	\$ 265,984,445	\$ -	-	\$ 21,315	\$ 25,000	\$ 46,315	\$ 142	
Six Directions	50	48	96%	\$ 419,847	\$ -	-	-	\$ -	\$ -	\$ -	
Taos	3,843	221	6%	\$ 37,430,631	\$ 47,437	\$ 18,062	-	\$ 25,000	\$ 90,499	\$ 409	
Tularosa	870	268	31%	\$ 18,910,088	\$ 43,376	\$ 176,668	-	\$ 25,000	\$ 245,044	\$ 914	
Walatowa	57	53	93%	\$ 1,822,242	\$ -	-	-	\$ 25,000	\$ 25,000	\$ 472	
Zuni	1,432	1,369	96%	\$ 21,104,418	\$ 24,866	\$ 1,546,345	\$ 118,704	\$ 25,000	\$ 1,714,915	\$ 1,253	
TOTAL	189,204	34,420	18%	\$ 2,893,230,663	\$ 4,790,503	\$ 30,587,346	\$ 759,194	\$ 575,000	\$ 36,712,043	\$ 1,067	