

**Imagine Sufficient Funding...Now What?**  
Linda M. Trujillo & J. Erin Torres

CELEBRATING **35** YEARS  
WALSH GALLEGOS  
TREVINO RUSSO & KYLE P.C.

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**Who Has a Right to What?**

All school age children in New Mexico have the right to a free and sufficient public education.

N.M. Const. art. XII, § 1



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**Education Clause**

"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."

N.M. Const. art. XII, § 1.



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## SLIDO.com

- ❑ Using your personal technology device
- ❑ Login to [www.slido.com](http://www.slido.com)
- ❑ Enter event code: WG01

Which Case found NM is not living up to its constitutional obligation to provide a sufficient and adequate education to at-risk students?

- A. *Yarnell v. State of New Mexico*
- B. *Yazzie v. State of New Mexico*
- C. *Yorkie v. State of New Mexico*



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## Yazzie v. State of New Mexico

- ❑ The Plaintiffs challenged as inadequate
  - The public school funding formula; and
  - Implementation of programs designed to provide a "sufficient" education
- ❑ Asked Court to decide whether the State is meeting its constitutional obligation to provide an adequate, sufficient education to ***at-risk students***
  - Economically Disadvantaged students (ED)
  - English Language Learners (ELL)
  - Native American students
  - Students with Disabilities (SWD)



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## Who Gets to Decide?

- ❑ *Yazzie* is part of the "third wave" of challenges to public school funding.
  - 1<sup>st</sup> wave: Federal Equal Protection; and 2<sup>nd</sup> wave: State Equal Protection
- ❑ Third wave adequacy theory
  - Plaintiffs rely on Education Clause in their state constitutions
  - Argue that the finance system is unconstitutional (violates Education Clause) because schools lack the money to meet minimum standards of quality
- ❑ Some state courts have refused to weigh in
  - Claim that setting educational policy is a "purely legislative decision"
- ❑ Judge Sarah Singleton disagrees
  - "The Court is of the opinion that such an approach does not fulfill the Court's duty to interpret and enforce the State Constitution."



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## Who Gets to Decide?

- The definition of "adequacy"
  - Judge Singleton noted that most courts "do not hesitate to say whether the state constitution is being met"
  - But defer to the legislature's definition of adequacy
- Twelve states have defined adequacy
  - *Rose v. Council for Better Education* (Ky, 1989)
    - Adopted by several other states
    - Sets seven specific criteria
- *Yazzie* Plaintiffs urge Court to adopt *Rose* standard
  - Court rejects the *Rose* standard
  - "[The *Rose* standard] fails to recognize the legislature's role in setting the definition of adequacy..."



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## So, "adequacy" means...?

- "The New Mexico Constitution requires the State to provide every student with the opportunity to obtain an education that allows them to become **prepared for career or college**...New Mexico has failed to meet this obligation."
- Court adopted this standard after reviewing
  - NMSA 1978 Chapter 22, Public School Code
  - Statutes regarding economically disadvantaged students and students with disabilities
  - Statutes regarding English language learners and Native American students
    - Bilingual Multicultural Education Act; Chapter 22, Article 23
    - Indian Education Act; Chapter 22, Article 23A
    - Hispanic Education Act; Chapter 22, Article 23B



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## What was Decided?

- New Mexico has violated the State Constitution's Education Clause, Due Process Clause, and Equal Protection Clause
  - Failed to provide at-risk students with programs and services necessary to make them college or career ready
  - Failed to provide sufficient funding for all districts to provide programs and services required by the Constitution
  - PED has failed to meet its supervisory and audit function to assure districts spend money to most efficiently meet needs of at-risk students
- April 15, 2019
  - Date by which the State must ensure that all schools have "the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career."



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## SLIDO.com

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG01
- The Court said the state must provide necessary resources to give at-risk students the opportunity to obtain uniform and sufficient education that prepares them for college and career.
- Question: What does your district need to provide the above?



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## Plaintiff's Guide - Martinez

- Funding and monitoring for bilingual education and English language learners
- Effective teachers – salary, T&E and evaluation system
- Smaller class size – funding and systemic reasons for waivers
- After-school and extended learning programs
- Framework for multicultural education – curriculum, pedagogy, funding, anti-racism and restorative justice
- At-risk funding – increase SEG index, include all low income students in index, funding follow students, monitor
- Instructional material – funding and culturally relevant
- Pre-K and early childhood education
- Students with disabilities
- Hispanic Education Act
- Indian Education Act
- Accountability for schools – amend A-F grading
- Overall school funding – require that funding allocated for programs to benefit at-risk students is used for those programs



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## Plaintiff's Guide - Yazzie

- Multicultural education
- Indian Education Act
- Bilingual Multicultural Education Act
- Pre-K, extended learning time and social services
- Teacher recruitment, retention and capacity building
- Funding/Resources
- At-risk funding
- Accountability



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## Current Laws – Board Responsibility

- Current laws to consider today:
  - Bilingual Multicultural Education Act; Chapter 22, Article 23
  - Indian Education Act; Chapter 22, Article 23A
  - Hispanic Education Act; Chapter 22, Article 23B
- What authority does the Board have in relation to these mandates:
  - Develop educational policies for the district; review annually; revise as needed. NMSA 1978, § 22-5-4(A); 6.29.1.9(A)(6) NMAC.
  - Review and approve the annual school district budget. NMSA 1978, § 22-5-4(C).
  - Employ and evaluate the superintendent. NMSA 1978, § 22-5-4(B); 6.29.1.9(A)(2) NMAC.



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## Bilingual Multicultural Education Act (BMEA)

- (A) "Bilingual Multicultural Education Program" means a program using two languages, including English and the home or heritage language, as a medium of instruction...
- (B) "Culturally and linguistically different" means students who are of a different cultural background than mainstream United States culture and whose home or heritage language, inherited from the student's family, tribe or country of origin, is a language other than English;
- (C) "English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak or understand English at a level comparable to grade level English proficient peers and native English speakers;
- (D) "Heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin;
- (E) "Home language" means a language other than English that is the primary or heritage language spoken at home or in the community; and
- (F) "Standardized curriculum" means a district curriculum that is aligned with the state academic content standards, benchmarks and performance standards.

NMSA 1978, § 22-23-2



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## BMEA - Legislative Findings

- (B) The state's bilingual multicultural education **program goals are for all students, including English language learners**, to:
  - (1) **become bilingual and biliterate in English and a second language**, including Spanish, a Native American language, where a written form exists and there is tribal approval, or another language; and
  - (2) meet state academic content standards and benchmarks in all subject areas;
- (D) Because inaccurate reporting on student participation in bilingual multicultural education programs has a direct impact on state and federal funding, **accountability measures are necessary to track bilingual multicultural education program funds**;

NMSA 1978, § 22-23-1.1



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## BMEA - Legislative Findings

(G) [P]rofessional development is needed for district employees, including teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents and financial officers in the areas of:

- (1) **research-based** bilingual multicultural education programs and implications for instruction;
- (2) **best practices** of English as a second language, English language development and bilingual multicultural education programs; and
- (3) **classroom assessments** that support academic and language development;

NMSA 1978, § 22-23-1.1



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## BMEA - Legislative Findings

(H) Parents in conjunction with teachers and other district employees **shall be empowered to decide** what type of [BME] program works best for their children and their community. **Districts shall also provide parents with appropriate training** in English or in the home or heritage language to help their children succeed in school;

(I) Because research has shown that it takes five to seven years to acquire academic proficiency in a second language, **priority should be given to programs that adequately support a child's linguistic development.** The state shall, therefore, fund [BME] programs for students in grades **kindergarten through three before** funding [BME] programs at higher grade levels.

(J) Standardized curriculum, including instructional materials with **scope and sequence** is necessary to ensure that the [BME] program is consistent and building on the language skills the students have previously learned. The **instructional materials for Native American** [BME] programs **shall be written, when permitted** by the Indian nation, tribe or pueblo, and if written materials are not available, an **oral standardized curriculum shall be implemented.**

NMSA 1978, § 22-23-1.1



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## BMEA - Legislative Findings

(K) Equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for all students participating in the program. For Native American students enrolled in public schools, **equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials are required** to satisfy a goal of the Indian Education Act.

(L) The [BMEA] will ensure **equal education opportunities** for students in New Mexico. Cognitive and affective development of the students is encouraged by:

- (1) using the cultural and linguistic backgrounds of the students in a [BME] program;
- (2) providing students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and
- (3) teaching students to appreciate the value and beauty of different languages and cultures.

NMSA 1978, § 22-23-1.1



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## BMEA - PED Powers and Duties

- ❑ **Issue rules** for the development and implementation of [BME] programs.
- ❑ **Administer and enforce** the provisions of the [BMEA].
- ❑ **Assist school boards...in developing and evaluating [BME] programs.**
- ❑ In the development, implementation and administration of the [BME] programs, the department **shall give preference to New Mexico residents who have received specialized training in bilingual education when hiring personnel.**

NMSA 1978, § 22-23-4



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## BMEA - Program Plan and Evaluation

- (A) A school board **may** prepare and submit to the department **a [BME] program plan** in accordance with rules issued by the department.
- (B) At regular intervals, the school board and a parent advisory committee from the district **shall review the goals and priorities of the plan and make appropriate recommendations** to the department.
- (C) [BME] programs **shall be delivered as part of the regular academic program**. Involvement of students in a [BME] program **shall not have the effect of segregating students** by ethnic group, color or national origin.
- (D) Each district or charter school **shall maintain academic achievement and language proficiency data and update the data annually** to evaluate [BME] program effectiveness and use of funds.

NMSA 1978, § 22-23-5



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## BMEA - Program Plan and Evaluation

- (E) Districts **shall provide professional development to employees**, including teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents and financial officers in the areas of:
  - (1) **research-based [BME] programs** and implications for instruction;
  - (2) **best practices** of English as a second language, English language development and [BME] programs; and
  - (3) **classroom assessments** that support academic and language development.
- (F) [BME] programs **shall be part of the district's or charter school's professional development plan**. Bilingual educators, including teachers, teacher assistants, instructional support personnel, principals and program administrators, shall participate in professional development and training.

NMSA 1978, § 22-23-5



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## BMEA - Eligibility of State Financial Support

(A) To be eligible for state financial support, **each [BME] program shall:**

- (1) **provide for the educational needs of linguistically and culturally different students** including Native American children and other students who may wish to participate, in grades kindergarten through twelve, with priority to be given to programs in grades kindergarten through three, in a district;
- (2) **fund programs for culturally and linguistically different students in the state in grades kindergarten through three** for which there is an identifiable need to improve the language capabilities of both English and the home language of these students before funding programs at higher grade levels;
- (3) **use two languages as mediums of instruction** for any part or all of the curriculum of the grade levels within the program;

NMSA 1978, § 22-23-6



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## BMEA - Eligibility of State Financial Support

- (4) **use teachers who have specialized in elementary or secondary education and who have received specialized training in bilingual education** conducted through the use of two languages. These teachers or other trained personnel shall administer language proficiency assessments in both English and in the home language until proficiency in each language is achieved;
- (5) **emphasize the history and cultures** associated with the students' home or heritage language;
- (6) **establish a parent advisory committee** representative of the language and culture of the students, to assist and advise in the development, implementation and evaluation of the bilingual multicultural education program; and
- (7) **provide procedures to ensure that parental notification is given annually** prior to [BME] program placement.

NMSA 1978, § 22-23-6



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## SLIDO.com

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG01
- Question:
- Choose all items that the Board **SHALL** implement to be in compliance with BMEA.



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**Choose all items that the Board SHALL implement to be in compliance with BMEA.**

- A. Prepare and submit a bilingual multicultural education (BME) program plan
- B. Regularly review plan goals and priorities
- C. Deliver BME program as part of the regular academic program
- D. Maintain achievement and proficiency data
- E. Provide Professional Development for employees
- F. Ensure that BME program is included in the District's professional development plan



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**Indian Education Act (IEA)**

The purpose of the Indian Education Act is to:

- A. ensure **equitable and culturally relevant** learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools;
- B. ensure **maintenance of native languages**;
- C. provide for the study, development and implementation of **educational systems that positively affect the educational success** of American Indian students;
- D. ensure that the **department of education [public education department] partners with tribes** to increase tribal involvement and control over schools and the education of students located in tribal communities;
- E. encourage cooperation among the educational leadership of Arizona, Utah, New Mexico and the Navajo Nation to address the **unique issues of educating students in Navajo communities** that arise due to the location of the Navajo Nation in those states;

NMSA 1978, § 22-23A-2



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**Indian Education Act (IEA)**

- F. provide the means for a **formal government-to-government relationship** between the state and New Mexico tribes and the development of relationships with the education division of the bureau of Indian affairs and other entities that serve American Indian students;
- G. provide the means for a **relationship between the state and urban American Indian community members** to participate in initiatives and educational decisions related to American Indian students residing in urban areas;
- H. ensure that parents; tribal departments of education; community-based organizations; the department of education [public education department]; universities; and tribal, state and local policymakers **work together to find ways to improve educational opportunities** for American Indian students;
- I. ensure that tribes are **notified of all curricula development** for their approval and support;
- J. encourage an agreement regarding the **alignment of the bureau of Indian affairs and state assessment programs** so that comparable information is provided to parents and tribes; and
- K. encourage and foster **parental involvement** in the education of Indian students.

NMSA 1978, § 22-23A-2



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## IEA - Post-secondary education

The department shall collaborate and coordinate efforts with the higher education department and institutions of higher education, including tribal colleges and teacher education institutions and tribal education departments, to facilitate the successful and seamless transition of American Indian students into post-secondary education and training.

NMSA 1978, § 22-23A-4.1



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## IEA - Indian education division; created; assistant secretary; duties.

- A. The "Indian education division" is created within the department. The secretary shall appoint an assistant secretary for Indian education, **who shall direct the activities of the division and advise the secretary on development of policy regarding the education of tribal students.** The assistant secretary shall also coordinate transition efforts for tribal students in public schools with the higher education department and work to expand appropriate Indian education **for tribal students in preschool through grade twenty.**
- B. The assistant secretary shall coordinate with appropriate administrators and divisions to ensure that department administrators make **implementation of the Indian Education Act a priority.**
- C. The secretary and the assistant secretary, in cooperation with the Indian education advisory council, shall collaborate with state and federal departments and agencies and tribal governments to identify ways such entities can assist the department in the implementation of the Indian Education Act.
- D. The secretary and assistant secretary shall convene semiannual government-to-government meetings for the express purpose of receiving input on education of tribal students.

NMSA 1978, § 22-23A-5



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## IEA - Indian education division; created; assistant secretary; duties.

- E. In accordance with the rules of the department and after consulting with the Indian education advisory council and determining the resources available within the department, the assistant secretary shall:
- (1) provide assistance, including advice on allocation of resources, to school districts and tribes to improve services to meet the educational needs of tribal students based on current published indigenous best practices in education;
  - (2) provide assistance to school districts and New Mexico tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for tribal and nontribal students as approved by New Mexico tribes;
  - (3) develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to tribal students in pre-kindergarten through sixth grade to prepare them for pre-advanced placement and advanced placement coursework in grades seven through twelve;
  - (4) provide assistance to school districts, public post-secondary schools and New Mexico 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;

NMSA 1978, § 22-23A-5



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**IEA - Indian education division; created; assistant secretary; duties.**

- (5) conduct **indigenous research and evaluation** for effective curricula for tribal students;
- (6) collaborate with the department to provide **distance learning for tribal students** in public schools to the maximum limits of the department's abilities;
- (7) establish, support and maintain an **Indian education advisory council**;
- (8) enter into agreements with each New Mexico tribe or its authorized educational entity to **share programmatic information and to coordinate technical assistance for public schools that serve tribal students**;
- (9) seek funds to **establish and maintain an Indian education office** in the northwest corner of the state or other geographical location to implement agreements with each New Mexico tribe or its authorized educational entity, monitor the progress of tribal students and coordinate technical assistance at the public pre-kindergarten to post-secondary schools that serve tribal students;

NMSA 1978, § 22-23A-5



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**IEA - Indian education division; created; assistant secretary; duties.**

- (10) **require school districts to obtain a signature of approval by the New Mexico tribal governments** or their government designees residing within school district boundaries, verifying that the New Mexico tribes agree to Indian education policies and procedures pursuant to federal requirements;
- (11) **seek funds to establish, develop and implement culturally relevant support services** for the purposes of increasing the number of tribal teachers, administrators and principals and providing continued professional development for educational assistants, teachers and principals serving tribal students, in conjunction with the Indian education advisory council:
  - (a) recruitment and retention of highly qualified teachers and administrators;
  - (b) academic transition programs;
  - (c) academic financial support;
  - (d) teacher preparation;
  - (e) teacher induction; and
  - (f) professional development;

NMSA 1978, § 22-23A-5



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**IEA - Indian education division; created; assistant secretary; duties.**

- (12) **develop curricula to provide instruction in tribal history and government** and develop plans to implement these subjects into history and government courses in school districts throughout the state;
- (13) **ensure that native language bilingual programs are part of a school district's professional development plan**, as provided in Section 22-10A-19.1 NMSA 1978; and
- (14) **develop a plan to establish a post-secondary investment system** for tribal students to which parents, tribes and the state may contribute.

NMSA 1978, § 22-23A-5



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## IEA - Indian education division; created; assistant secretary; duties.

B. A school district with tribal lands located within its boundaries shall provide a districtwide tribal education status report to all New Mexico tribes represented within the school district boundaries.

C. The status reports shall be written in a brief format and shall include the following information ...

- (1) student achievement as measured by a statewide test approved by the department, with results disaggregated by ethnicity;
- (2) school safety;
- (3) the graduation rate;
- (4) attendance;
- (5) parent and community involvement;
- (6) educational programs targeting tribal students;
- (7) financial reports;
- (8) current status of federal Indian education policies and procedures;
- (9) school district initiatives to decrease the number of student dropouts and increase attendance;
- (10) public school use of variable school calendars;
- (11) school district consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal and Indian organizations; and
- (12) indigenous research and evaluation measures and results for effective curricula for tribal students.

NMSA 1978, § 22-23A-7



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## SLIDO.com

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG01
- Question:
- List in your own words the purpose of the Indian Education Act.



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## Hispanic Education Act

The purpose of the Hispanic Education Act is to:

- A. provide for the study, **development and implementation of educational systems that affect the educational success of Hispanic students** to close the achievement gap and increase graduation rates;
- B. encourage and foster **parental involvement** in the education of their children; and
- C. provide mechanisms for parents, community and business organizations, public schools, school districts, charter schools, public post-secondary educational institutions, the department and state and local policymakers to work together to **improve educational opportunities for Hispanic students** for the purpose of closing the achievement gap, increasing graduation rates and increasing post-secondary enrollment, retention and completion.

NMSA 1978, § 22-23B-2



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### Hispanic education liaison; created; duties.

- A. The "Hispanic education liaison" is created in the department.
- B. The **liaison shall**:
  - (1) focus on issues related to Hispanic education and advise the secretary on the development and implementation of policy regarding the education of Hispanic students;
  - (2) advise the department and the commission on the development and implementation of the five-year strategic plan for public elementary and secondary education in the state as the plan relates to Hispanic student education;
  - (3) **assist and be assisted by other staff in the department to improve elementary, secondary and post-secondary educational outcomes for Hispanic students;**
  - (4) serve as a resource to enable school districts and charter schools to provide equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Hispanic students enrolled in public schools;
  - (5) support and consult with the Hispanic education advisory council; and
  - (6) **support school districts and charter schools to recruit parents on site-based and school district committees that represent the ethnic diversity of the community.**

NMSA 1978, § 22-23B-4



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### Statewide status report.

- B. The **status report shall include** the following information, by school district, by charter school and statewide, which may be compiled from data otherwise required to be submitted to the department:
  - (1) Hispanic student achievement at all grades;
  - (2) attendance for all grades;
  - (3) the graduation rates for Hispanic students; and
  - (4) the number and type of bilingual and multicultural programs in each school district and charter school.

NMSA 1978, § 22-23B-6



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### Proposed Legislation

- Amend Bilingual Multicultural Education Act, Indian Education Act, Hispanic Education Act
- Establish Assistant Secretary for BMEA and HEA
- Provide funding and accountability mechanisms
- Make implementation mandatory
- Create a statutory state bilingual advisory council
- Create a statutory multicultural education commission
- Include a student needs assessment under IEA
- Increase funding for higher education



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## Proposed Legislation

- Increase teacher salaries
- Increase professional development days to 10
- Increase parent/teacher conference days to 3
- Prohibit instructional time for professional development or parent/teacher conference
- Teacher pipeline
- Expand Pre-K
- Extended learning time
- Evidence-based literacy instruction



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## Proposed Legislation

- Social services at schools
- Community schools
- Funding formula
- Increase funding for instructional material, transportation and technology
- Increase REC's capacity



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## TICKET OUT THE DOOR

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG01
- Question:
- Provide one word that best describes a similar purpose for these three Acts.



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**Linda M. Trujillo & J. Erin Torres**  
Ltrujillo@wabsa.com      Etorres@wabsa.com



500 Marquette Avenue NW, Suite 1310  
Albuquerque, New Mexico 87102  
**Phone:** (505) 243-6864  
**Fax:** (505) 843-9318  
**Web:** www.walshgallegos.com

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The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.



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