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Rule Citation: [NMAC 6.35.2, Implementing the Indian Education Act](#)

Overview of Adopted Rule

Agency: Public Education Department

Rulemaking Action: Amendment

Date Adopted: June 12, 2025

Effective Date: June 24, 2025

Rule's Purpose: The rule revises requirements and responsibilities for the Public Education Department (PED), school districts, charter schools, and tribal entities to implement the Indian Education Act and improve educational outcomes for American Indian and Alaska Native students. The rule formalizes tribal consultation, outlines funding mechanisms, and institutes accountability measures for funding awardees.

Summary of Adopted Amendment to NMAC 6.35.2: Implementing the Indian Education Act

The Public Education Department (PED) adopted amendments to NMAC 6.35.2 to strengthen processes for tribal consultation and educational reporting and update how funding is distributed under the Indian Education Act. The adopted rule cites law granting the department general rulemaking power and [Chapter 22, Article 23A NMSA 1978](#) (the Indian Education Act), which directs PED to administer the Indian education fund, as its authority for the creation and adoption of the amendments.

The rule amendment updates consultation and reporting provisions. School districts will be required to consult with all pueblos, tribes, and nations whose students are enrolled in the district, not only those located within the district's boundaries. Charter schools with enrolled Native American students will be required to comply with the same Tribal Education Status Report (TESR) requirements as the school district in which the charter school is physically located. The rule clarifies TESRs are due annually by September 30.

The rule amendment establishes two funding mechanisms for awards from the Indian education fund: 1) an allocation-based award; and 2) a competitive award program. Both mechanisms will be available to pueblos, tribes, and nations, as well as school districts, charter schools, Bureau of Indian Education (BIE) schools, tribally controlled schools, tribal colleges, and state universities.

The only substantive change from the proposed amendment for NMAC 6.35.2 is the restoration of language requiring the assistant secretary of PED's Indian Education Division to consult with the [Indian Education Advisory Council](#) on funding priorities and processes governing requests for information and applications.

Allocation-Based Awards

Allocation-Based Awards for Pueblos, Tribes, and Nations. The adopted rule provides allocation-based awards to pueblos, tribes, and nations, with 80 percent of funding distributed as a fixed base amount, and 20 percent based on prekindergarten through 12th grade student counts from the prior year's 80-day reporting period. The amendment requires a funding factor for students with disabilities. Additional factors may be incorporated at the discretion of the assistant secretary of PED's Indian Education Division. These awards are required to be made available no later than September 1 of each award year and are not subject to reimbursement procedures.

Allocation-based awards made to pueblos, tribes, and nations will not revert. Pueblos, tribes, and nations will be required to submit an implementation plan detailing how funds will be used to improve educational outcomes consistent with the Indian Education Act.

Allocation-Based Awards for School Districts and Schools. If allocation-based awards are extended to school districts, charter schools, BIE schools, or tribally controlled schools, the rule requires submission of an application detailing goals aligned to the Indian Education Act, program sustainability, and program evaluation measures. These awards are subject to deadlines as specified by the assistant secretary of PED's Indian Education Division, who will also determine award amounts. These entities are required to complete all grant activities no later than June 30 for each fiscal year the award is made. Any unspent allocation-based awards made to school districts, charter schools, BIE schools, or tribally controlled schools will revert to PED's Indian Education Division at the end of the fiscal year, unless otherwise provided by state law.

Competitive Awards

The adopted rule, in line with statutory authority granted to the department, authorizes PED's Indian Education Division to offer competitive awards each fiscal year, subject to the availability of funds. Eligible applicants include pueblos, tribes, nations, school districts, charter schools, BIE schools, tribally controlled schools, tribal colleges, and state universities. Competitive awards will be disbursed on a reimbursement basis, and applicants will be required to include goals tied to the Indian Education Act, sustainability plans, and program evaluation measures. These awards are required to include a factor for students with disabilities and may include other factors determined by the assistant secretary of the Indian Education Division. Unspent competitive award funds to any recipient revert to PED's Indian Education Division at the end of each fiscal year the grant was awarded, unless otherwise provided for in state law.

Under the rule, all recipients of competitive funding are required to submit implementation plans and enter into grant assurances. At a minimum, these assurances mandate periodic expenditure reports to PED's Indian Education Division and reports evaluating the effectiveness of grant-supported programs. Recipients of competitive awards must provide mid-year reports by January 30 and final reports by June 30 each year addressing progress toward improving educational outcomes for Native American students.

Impact

The rule amendment to NMAC 6.35.2 outlines how New Mexico's Indian Education Act must be carried out and directly impacts school districts, charter schools, BIE schools, tribally controlled schools, tribal colleges, state universities, PED, pueblos, tribes, and nations. The amendment aligns with the Indian Education Act by updating consultation and reporting requirements with pueblos, tribes, and nations whose students are enrolled in a district or charter school and clarifying the distribution of the Indian Education Fund to support programs consistent with the act.

Authority Granted to Department

Chapter 22, Article 23A NMSA 1978 grants PED authority to administer the Indian education fund. To that end, the adopted amendment to NMAC 6.35.2 provides the assistant secretary of the Indian Education Division broad authority to establish additional factors determining the level of funding received by schools serving tribally enrolled students.

Special Education and Other Factors

PED's rule amendment includes language authorizing the inclusion of a factor for students with disabilities and other factors in allocation-based and competitive awards. In practice, PED indicates the funding determined by student count (20 percent) will include a greater per-pupil amount for students with individualized education

programs (IEPs). The standard per-pupil amount for Indian Education Act funding is \$108.94 per student, while students with IEPs would generate \$217.88. Currently, it does not appear PED has applied any other factors beyond the 80/20 funding mechanism and the increased support for students with IEPs. Under the adopted rule's language, the assistant secretary of the Indian Education Division could choose to include additional factors in the Indian education funding formula going forward.

Tribal Consultation

[Chapter 22, Section 23A-4 NMSA 1978](#) outlines the responsibilities of PED in the rulemaking process for implementation of the Indian Education Act. The secretary is directed to consult with the Indian Education Advisory Council on proposed rules and submit these proposed rules for review and comment at the next semiannual government-to-government meeting.

[Chapter 22, Section 23A-5 NMSA 1978](#), the portion of statute creating PED's Indian education division and laying out its duties, further directs PED to convene semiannual government-to-government meetings to receive input from tribes, nations, and pueblos on the education of tribal students.

PED undertook additional consultation efforts beyond those statutorily required for Indian Education Act-related rulemaking. According to PED, the proposed amendments to NMAC 6.35.2 were shared with tribal leaders during the Fall 2024 government-to-government Indian education summit and the department requested feedback from tribal leaders on the proposed revisions by February 27, 2025.

On February 27, 2025, PED reports the Indian Education Division met with the Indian Education Advisory Council to review the amendments and solicit feedback. That same day, Indian Education Division staff also presented the amendments to the All Pueblo Council of Governors. PED also reports the amendments were shared during each monthly call with tribal partners, school districts and charter schools, and other partners. On April 16, 2025, PED presented to these same groups on the proposed amendments and announced the public comment period and in-person public comment hearing.