

Date: May 30, 2025

Prepared By: Natasha Davalos

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

Overview of Proposed Rule

Agency: Public Education Department

Rulemaking Action: Amendment

Date of Notice: April 22, 2025

Public Comment Period: April 22, 2025, to May 23, 2025

Rule's Purpose: The proposed 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 proposed rule formalizes tribal consultation, outlines funding mechanisms, and institutes accountability measures for funding awardees.

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

The Public Education Department (PED) is proposing amendments to NMAC 6.35.2 to strengthen processes for tribal consultation and educational reporting and to update how funding is distributed under the Indian Education Act. The proposed rule cites law that gives the department general rulemaking power and [Chapter 22, Article 23A NMSA 1978](#) (the Indian Education Act) as its authority for the proposed amendments to existing rule.

The rule amendment proposes updates to consultation and reporting provisions. School districts would be required to consult with all pueblos, tribes, and nations whose students are enrolled in the district, not only those located within its boundaries. Charter schools with enrolled Native American students would 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 proposed rule clarifies TESRs are due annually, by September 30.

The proposed rule amendment would also establish two funding mechanisms for awards from the Indian education fund: 1) an allocation-based award; and 2) a competitive award program. Both mechanisms would 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.

Allocation-Based Awards

Allocation-Based Awards for Pueblos, Tribes, and Nations. The proposed amendment would provide 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 80th-day reporting period. The proposed amendment would require 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 would be required to be made available no later than September 1 of each award year and would not be subject to reimbursement procedures. Allocation-based awards made to pueblos, tribes, and nations would not revert. Pueblos, tribes, and nations would be required to submit an implementation plan detailing how funds would 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 proposed rule would require submission of an application detailing goals aligned to the Indian Education Act, program sustainability, and program evaluation measures. These awards would be subject to deadlines as specified by the assistant secretary, who would also determine the award amounts. These entities would also be 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 would revert to PED's Indian Education Division at the end of the fiscal year, unless otherwise provided by state law.

Competitive Awards

The proposed rule would authorize PED's Indian Education Division to offer competitive awards each fiscal year, subject to the availability of funds. Eligible applicants would include pueblos, tribes, nations, school districts, charter schools, BIE schools, tribally controlled schools, tribal colleges, and state universities. Competitive awards would be disbursed on a reimbursement basis, and applicants would be required to include goals tied to the Indian Education Act, sustainability plans, and program evaluation measures. These awards would be required to include a factor for students with disabilities and may include other factors determined by the assistant secretary. Unspent competitive award funds to any recipient would 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 proposed rule, all recipients of competitive funding would be required to submit implementation plans and enter into grant assurances. At a minimum, these assurances would require periodic expenditure reports to PED's Indian Education Division and reports evaluating the effectiveness of grant-supported programs. Recipients of competitive awards would also be required to 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 proposed 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 proposed 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 and clarifying the distribution of the Indian Education Fund to support programs consistent with the act.

Authority Granted to Department

The proposed amendment to NMAC 6.35.2 would grant 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. The proposed language does not specify how such factors would be selected or calculated.

Special Education and Other Factors

PED's proposed rule amendment includes language authorizing the inclusion of a factor for students with disabilities and other factors in allocation-based and competitive awards. It is unclear what criteria would be used to create these factors for distributing funding related to the Indian Education Act.