

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

REPRESENTATIVES

Dennis J. Roch, Chair
Nora Espinoza
Tomás E. Salazar
Sheryl M. Williams Stapleton
Christine Trujillo
Monica Youngblood

ADVISORY

Alonzo Baldonado
Jim Dines
David M. Gallegos
Stephanie Garcia Richard
Jimmie C. Hall
D. Wonda Johnson
Timothy D. Lewis
G. Andres Romero
Patricia Roybal Caballero
James E. Smith
James G. Townsend

State Capitol North, 325 Don Gaspar, Suite 200
Santa Fe, New Mexico 87501
Phone: (505) 986-4591 Fax: (505) 986-4338
<http://www.nmlegis.gov/lcs/lesc/lescdefault.aspx>



SENATORS

John M. Sapien, Vice Chair
Craig W. Brandt
Gay G. Kernan
Howie C. Morales

ADVISORY

Jacob R. Candelaria
Carlos R. Cisneros
Lee S. Cotter
Daniel A. Ivey-Soto
Linda M. Lopez
Michael Padilla
John Pinto
William P. Soules
Mimi Stewart
Pat Woods

Frances Ramirez-Maestas, Director
Ian M. Kleats, Deputy Director

May 28, 2015

MEMORANDUM

TO: Legislative Education Study Committee

FR: Heidi L. Macdonald

**RE: ADMINISTRATIVE RULEMAKING: IMPLEMENTING THE INDIAN
EDUCATION ACT**

Proposed Rule:

- **6.35.2 NMAC, Implementing the Indian Education Act**

Proposed Rule

In the January 30, 2015 issue, the Public Education Department (PED) published in the *New Mexico Register* a Notice of Proposed Rulemaking introducing the adoption of a rule regarding implementation of the *Indian Education Act*. The Notice solicited comments on the rule and announced three public hearings on the proposed rulemaking, to be held:

- on March 4, 2015, in the Gallup-McKinley County Schools Board Room in Gallup;
- on March 5, 2015, in the Farmington Municipal Schools Board Room in Farmington; and
- on March 9, 2015, in Mabry Hall of the Jerry Apodaca Education Building in Santa Fe.

(See Attachment 1, *PED, Implementing the Indian Education Act, 6.35.2 NMAC, 1/30/15*, and Attachment 2, *Proposed Rule, Implementing the Indian Education Act, 1/30/15*).

Among its provisions, the rulemaking includes:

- the rule’s objective (6.35.2.6), which is to implement the *Indian Education Act* (the Act or the IEA);
- the Act’s purposes (6.35.2.8), which among its purposes include:
 - cultivating equitable and culturally relevant learning environments, opportunities, and instructional materials for tribal students in public schools;
 - maintaining Native American languages;
 - establish partnership between PED and the tribes to increase tribal involvement and control over tribal schools and students on reservation land;
 - encouraging outreach to American Indian urban students, which will increase participation in educational initiatives; and
 - promoting parental involvement in the education of tribal students;
- the rule’s postsecondary education collaboration (6.35.2.9), which requires PED to work in partnership with the Higher Education Department and New Mexico’s postsecondary institutions to aid in the transition efforts for tribal students pursuing postsecondary education and training;
- the rule’s Tribal Education Status Report (6.35.2.11), which requires school districts located on tribal lands to submit a district-wide tribal education status report to PED’s Indian Education Division by July 15th annually and then the tribes will receive the report by November 15th of each year, and the pertinent information submitted from the school districts include:
 - student achievement data;
 - graduation rates;
 - parental and community involvement;
 - “current status of federal Indian education policies and procedures”; and
 - “school district consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal, and Indian organizations”; and
- the rule’s awards (6.35.2.12), which describe how PED’s Indian Education Division will work in collaboration with the Indian Education Advisory Council regarding priorities for funding and the application process, with the Assistant Secretary of the division having the final approval authority for funding.

More notably, the rulemaking also proposes the section specifically dealing with implementing the IEA (6.35.2.10). PED’s Secretary and Assistant Secretary of Indian Education are required to work in collaboration with the Indian Education Advisory Council, state and federal departments, and tribal governments to identify ways that these particular entities can assist in implementing the Act. PED’s Indian Education Division is required to host semi-annual government-to-government meetings with tribal governments to receive input on the education of tribal students.

Among its provisions, the Assistant Secretary of Indian Education is tasked with:

- conducting “indigenous research and evaluation for effective curricula for tribal students”;
- establishing, supporting, and maintaining an Indian Education Advisory Council;
- entering “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”;
- seeking funding to develop and implement culturally relevant support services that increase the number of Native American teachers, administrators, and principals;
- developing curricula based on tribal history and government that can be integrated through school districts in the state; and
- requiring “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.”

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
NOTICE OF PROPOSED RULEMAKING

The Public Education Department (“Department”) hereby gives notice that the Department will conduct public hearings to consider adoption of proposed new rule 6.35.2 NMAC (IMPLEMENTING THE INDIAN EDUCATION ACT).

The public hearings are scheduled as follows:

Date of Hearing	Location of Hearing	Time of Hearing
March 4, 2015	Gallup-McKinley County Schools Board Room 640 S. Boardman Gallup, NM 87503	1-3 p.m.
March 5, 2015	Farmington Municipal Schools Board Room 20th Street Conference Room 1400-B East 20th Street Farmington NM 87401	10 a.m. to noon
March 9, 2015	Public Education Department, Mabry Hall 300 Don Gaspar Santa Fe, New Mexico 87501	1 to 3 p.m.

Interested individuals may provide comments at the public hearing and/or submit written comments to DeAlva Calabaza, Acting Director, Indian Education Division, via email at rule.feedback@state.nm.us, fax (505) 827-6464, or directed to Ms. Calabaza, Acting Director, Indian Education Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Written comments must be received no later than 5:00 p.m. on the date of the final hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department’s website (<http://ped.state.nm.us/>) under the “Public Notices” link, or obtained from Ms. Laura Calvert by calling (505) 476-0545.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms. Calvert as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

Proposed Rule, Implementing the Indian Education Act
1/30/15

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 35 INDIAN EDUCATION
PART 2 IMPLEMENTING THE INDIAN EDUCATION ACT

6.35.2.1 ISSUING AGENCY: Public Education Department
[6.35.2.1 NMAC – N, xx-xx-xx]

6.35.2.2 SCOPE: This rule applies to public school districts and the public education department.
[6.35.2.2 NMAC – N, xx-xx-xx]

6.35.2.3 STATUTORY AUTHORITY: Sections 9-24-8(D), 22-2-1 and 22-23A-1 et seq. NMSA 1978
[6.35.2.3 NMAC – N, xx-xx-xx]

6.35.2.4 DURATION: Permanent
[6.35.2.4 NMAC – N, xx-xx-xx]

6.35.2.5 EFFECTIVE DATE: [month] [day], [year], unless a later date is cited at the end of a section.
[6.35.2.5 NMAC – N, xx-xx-xx]

6.35.2.6 OBJECTIVE: The objective of this rule is to implement the Indian Education Act, Sections 22-23A-1 et seq. NMSA 1978.
[6.35.2.6 NMAC – N, xx-xx-xx]

6.35.2.7 DEFINITIONS:

A. "Advisory council" means the Indian education advisory council established pursuant to Section 22-23A-6 NMSA 1978.

B. "Assistant secretary" means the assistant secretary for Indian education of the public education department.

C. "Department" means the public education department.

D. "Division" means the Indian education division of the public education department.

E. "Fund" means the Indian education fund created in the state treasury.

F. "Secretary" means the secretary of education.

[6.35.2.7 NMAC – N, xx-xx-xx]

6.35.2.8 INDIAN EDUCATION ACT PURPOSES: The department shall endeavor to support and advance the purposes of the Indian Education Act 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 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;

F. provide the means for a formal government-to-government relationship between the state and New Mexico tribes and pueblos and the development of relationships with the education division of the bureau of Indian education 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, 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;

Proposed Rule, Implementing the Indian Education Act
1/30/15

- J. encourage an agreement regarding the alignment of the bureau of Indian education 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.

[6.35.2.8 NMAC – N, xx-xx-xx]

6.35.2.9 POST SECONDARY EDUCATION: The department shall collaborate with the higher education department and New Mexico post-secondary institutions, to coordinate transition efforts for American Indian students in public schools pursuing post-secondary education and training, including sharing aggregate data on:

- A. test scores, including ACT, SAT, PSAT, and Accuplacer;
- B. graduation rates;
- C. end-of-course examinations; and
- D. scores in the New Mexico Partnership for the Assessment of Readiness of College and Careers (NMPARCC) measuring mastery of the New Mexico Common Core State Standards (NMCCSS) in reading, writing, and mathematics.

[6.35.2.9 NMAC – N, xx-xx-xx]

6.35.2.10 IMPLEMENTATION OF THE INDIAN EDUCATION ACT:

- A. The secretary and the assistant secretary shall:
 - (1) collaborate, in cooperation with the Indian education advisory council, 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; and
 - (2) convene semiannual government-to-government meetings for the purpose of receiving input on education of tribal students.
- B. The assistant secretary shall:
 - (1) work to expand appropriate Indian education for tribal students in preschool through grade twenty;
 - (2) coordinate with appropriate administrators and divisions to ensure that department administrators make implementation of the Indian Education Act a priority;
 - (3) 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:
 - (a) 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;
 - (b) 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;
 - (c) 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;
 - (d) 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;
 - (e) conduct indigenous research and evaluation for effective curricula for tribal students;
 - (f) collaborate with the department to provide distance learning for tribal students in public schools to the maximum limits of the department's abilities;
 - (g) establish, support and maintain an Indian education advisory council;
 - (h) 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;
 - (i) 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;

Proposed Rule, Implementing the Indian Education Act
1/30/15

(j) 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, including training in cultural competency, for educational assistants, teachers and principals serving tribal students. In conjunction with the Indian education advisory council, the assistant secretary shall:

(i) support recruitment and retention of highly qualified teachers and administrators;

(ii) identify academic transition programs;

(iii) identify academic financial support;

(iv) support teacher preparation;

(v) support teacher induction; and

(vi) support professional development;

(k) 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;

(l) 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;

(m) encourage participation in cultural competency training by educational assistants, teachers and principals serving tribal students; and

(n) develop a plan to establish a post-secondary investment system for tribal students to which parents, tribes and the state may contribute.

(4) 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.

(a) If the district is unable to obtain the required signature(s), the district must submit a written, signed explanation of the reason(s).

(b) Tribal governments declining to provide a signature of approval will be afforded the opportunity to submit a written, signed explanation of the reason(s) for the refusal.

(c) A tribal leader or authorized designee of a tribe that has students attending a school district's schools may file a written complaint with the United States department of education regarding any action of the school district pursuant to, or relevant to, the school district's Indian policies and procedures in accordance with subpart G of 34 CFR Part 222.

[6.35.2.10 NMAC – N, xx-xx-xx]

6.35.2.11 TRIBAL EDUCATION STATUS REPORT (TESR)

A. No later than July 15th of each year, each 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. Copies of the reports must be provided to the assistant secretary at the time the reports are provided to the respective tribes.

B. The report must include the following information based upon data from the immediately preceding school year:

(1) student achievement as measured by a statewide test approved by the department, with results disaggregated by ethnicity. Any cell with an n of 9 or fewer must be masked;

(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.

Proposed Rule, Implementing the Indian Education Act
1/30/15

C. The division shall submit a statewide tribal education report to all New Mexico tribes on or before November 15 of each year. The report will incorporate data submitted to the assistant secretary in accordance with subsection A of this section and will further include reports by organizational units within the department regarding activities they are engaged in with tribes and pueblos related to the education of American Indian students.
[6.35.2.11 NMAC – N, xx-xx-xx]

6.35.2.12 AWARDS:

A. The fund shall consist of all appropriations, gifts, grants, donations, and income from investment of the fund.

B. Awards from the fund shall be used to support and advance the purposes of the act.

C. At least annually, the department will establish and disseminate procedures for submission of requests for information/applications for grants from the fund, including the requirements that:

(1) requests for information/applications identify the program/goal to be achieved relevant to the act;

(2) requests for information/applications describe how the program will be sustained beyond the fiscal year(s) being funded; and

(3) requests for information/applications describe how the effectiveness of the program(s) supported by the grant will be measured and reported to the department.

D. The assistant secretary will consult with the advisory committee regarding priorities for funding and the request for information/application process.

E. The recommendations of the advisory council, together with the recommendations of the assistant secretary, will be provided to the secretary. The secretary will make the final determination of projects approved for grant awards.

F. The grant agreements must include provisions for periodic expenditure reports to the division, including a final expenditure report, and for reports measuring the effectiveness of the program(s) supported by the grants.

G. All activities must be completed no later than June 30th of the fiscal year for which the award is made available. Recipients must submit requests for reimbursement or invoices for accounts payable no later than July 7th following the close of the fiscal year for which the award is made available.

[6.35.2.12 NMAC – N, xx-xx-xx]