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August 27, 2015

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Kevin Force

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

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**Adopted Rule**

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

The July 30, 2015 issue of the *New Mexico Register* contained the final adoption of rules implementing the provisions of the *Indian Education Act*.<sup>1</sup> The Notice of Proposed Rulemaking was published in the *Register* on January 30, 2015 and, soliciting comments on the proposed rule, noted that the Public Education Department (PED) was to have conducted several public hearings regarding this rule:

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

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<sup>1</sup> Please see Chapter 22, Article 23A NMSA 1978

The rulemaking promulgates new rules for the implementation of the Act (see **Attachment, Adopted Rule, Implementing the Indian Education Act, 7/30/15**) including:

- definitions, such as:
  - “Advisory council,” which means the Indian Education Advisory Council, as established by the Act;<sup>2</sup>
  - “Assistant secretary,” which means the Assistant Secretary for Indian Education at PED; and
  - “Fund,” which means the Indian Education Fund established in the state treasury;<sup>3</sup>
- the Act’s purposes,<sup>4</sup> such as:
  - cultivating equitable and culturally relevant learning environments, opportunities, and instructional materials for tribal students in public schools;
  - maintaining Native American languages;
  - establishing partnerships 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;
- a requirement that PED collaborate<sup>5</sup> with the Higher Education Department (HED) and New Mexico postsecondary educational institutions (including teacher education programs, as well as tribal colleges and education departments) to aid in transition efforts for tribal students who choose to pursue postsecondary education, including the sharing of aggregate data on placement test scores and dropout rates;
- beginning with the close of school year 2015-2016, a requirement that school districts whose boundaries include tribal lands provide a district-wide “tribal education status report”<sup>6</sup> (TESR) to the Indian Education Division at PED by July 30 following the end of the school year, to include such information as:
  - student achievement data;
  - graduation rates;
  - parental and community involvement;
  - the 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;
- a requirement that the Indian Education Division submit a statewide tribal education report to all New Mexico tribes by November 15 of each year;<sup>7</sup> and

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<sup>2</sup> Please see Section 22-23A-6 NMSA, “Advisory council”

<sup>3</sup> Please see Section 22-23A-8 NMSA, “Fund created”

<sup>4</sup> 6.35.2.8 NMAC, “Indian Education Act Purposes”

<sup>5</sup> 6.35.2.9 NMAC, “Postsecondary Education”

<sup>6</sup> 6.35.2.11 NMAC, “Tribal Education Status Report”

<sup>7</sup> Id.

- provisions detailing the dissemination of awards from the Indian Education Fund,<sup>8</sup> which describe how the Indian Education Division will collaborate with the Indian Education Advisory Council regarding priorities and procedures for the award and application process, with the Secretary having final authority over grant awards.

In addition to these requirements, the rules also include provision for the specific implementation of the Act,<sup>9</sup> requiring the Secretary of Public Education and the Assistant Secretary of Indian Education to collaborate with the Indian Education Advisory Council, as well as state and federal departments and tribal governments, to identify ways that they might assist with the proper implementation of the Act. Specifically, among other duties, the Assistant Secretary for Indian Education shall:

- work to expand appropriate Indian education for tribal students, preschool through grade 20; and
- in accordance with PED rules and in consultation with Indian Education Advisory Council, after determining available departmental resources:
  - assist school districts and tribes in the development of native language curricula and the allocation of resources, based upon current published indigenous best practices in education;
  - conduct indigenous research and evaluation for effective curricula for tribal students;
  - establish, support, and maintain an Indian Education Advisory Council;
  - enter into agreements with each tribe or its authorized educational entity to share information and coordinate technical assistance for school districts that serve tribal students;
  - seek funding for the development and implementation of culturally relevant support services to increase the numbers of Native American teachers, administrators, and principals; and
  - require school districts to obtain a signature of approval by the New Mexico tribal governments, or their designees residing within school district boundaries, to verify that the tribes agree to Indian education policies and procedures pursuant to federal requirements.

Finally, it should be noted that the adopted rule includes several relatively minor differences from the rule as proposed, such as:

- the expansion of the requirement of collaboration between PED, HED, and postsecondary institutions to specifically include teacher education programs, tribal colleges and tribal education departments, for the sharing of aggregate data on placement test scores and dropout rates, whereas the proposed rule prescribed the sharing of such data regarding:
  - specific tests, such as ACT, PSAT, SAT and Accuplacer;
  - graduation rates;
  - end-of-course exams; and

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<sup>8</sup> 6.35.2.12 NMAC, “Awards”

<sup>9</sup> 6.35.2.10 NMAC, “Implementation of the *Indian Education Act*”

- scores in the New Mexico Partnership for Assessment of Readiness of College and Careers, measuring mastery of the New Mexico Common Core State Standards in reading, writing, and mathematics;<sup>10</sup> and
- changes to several of the dates and deadlines pertaining to the TESR, so that:
  - the requirement to submit the report will begin with the close of the school year 2015-2016; and
  - the TESR must be reported by July 30 following the close of each school year, rather than simply by July 15 of each calendar year.<sup>11</sup>

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<sup>10</sup> Please see 6.35.2.9 NMAC.

<sup>11</sup> Please see 6.35.2.11 (A) NMAC

**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, 07-30-15]

**6.35.2.2            SCOPE:** This rule applies to public school districts and the public education department.  
 [6.35.2.2 NMAC - N, 07-30-15]

**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, 07-30-15]

**6.35.2.4            DURATION:** Permanent  
 [6.35.2.4 NMAC - N, 07-30-15]

**6.35.2.5            EFFECTIVE DATE:** July 30, 2015, unless a later date is cited at the end of a section.  
 [6.35.2.5 NMAC - N, 07-30-15]

**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, 07-30-15]

**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, 07-30-15]

**6.35.2.8            INDIAN EDUCATION ACT PURPOSES:** The department will 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;

**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, 07-30-15]

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

**A.** placement test scores; and

**B.** drop-out rates.

[6.35.2.9 NMAC - N, 07-30-15]

**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 20;

(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 12;

(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;

(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:

administrators;

- (i) support recruitment and retention of highly qualified teachers and

- (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, 07-30-15]

#### **6.35.2.11 TRIBAL EDUCATION STATUS REPORT (TESR):**

**A.** Beginning at the close of school year 2015-2016, 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. The report(s) must be provided no later than July 30th following the close of the previous school year. 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.

**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, 07-30-15]

**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, 07-30-15]

**HISTORY OF 6.35.2 NMAC: [RESERVED]**