

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, hereinafter the department.
[6.35.2.1 NMAC - Rp, 6.35.2.1 NMAC, 7/1/2020]

6.35.2.2 SCOPE: This rule applies to school districts, state-chartered charter schools, locally chartered charter schools, Indian nations, tribes, pueblos, state post-secondary institutions, the New Mexico higher education department, and the department.
[6.35.2.2 NMAC - Rp, 6.35.2.2 NMAC, 7/1/2020]

6.35.2.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 9-24-8, 22-2-1, and 22-23A-1 et seq. NMSA 1978.
[6.35.2.3 NMAC - Rp, 6.35.2.3 NMAC, 7/1/2020]

6.35.2.4 DURATION: Permanent.
[6.35.2.4 NMAC - Rp, 6.35.2.4 NMAC, 7/1/2020]

6.35.2.5 EFFECTIVE DATE: July 1, 2020, unless a later date is cited at the end of a section.
[6.35.2.5 NMAC - Rp, 6.35.2.5 NMAC, 7/1/2020]

6.35.2.6 OBJECTIVE: The objective of this rule is to implement the Indian Education Act.
[6.35.2.6 NMAC - Rp, 6.35.2.6 NMAC, 7/1/2020]

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 department.

C. “Culturally relevant” means learning environments, instructional materials, curriculum, support services, activities, and professional development that inform culturally and linguistically responsive pedagogy; reflect the cultures, languages, and lived experiences of tribal society; address tribal descriptions, tribal interpretations, or tribal perspectives of events and experiences; and encourage critical pedagogy.

D. “Division” means the Indian education division of the department.

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

F. “Historically defined Indian impacted school district” means a school district, a state-chartered charter school, or locally chartered charter school that meets at least one of the following criteria:

(1) serves at least 175 American Indian or Alaska Native students and is located wholly or partially on tribal land; or

(2) identifies at least ten percent of its overall student population as American Indian or Alaska Native and is located wholly or partially on tribal land; or

(3) identifies at least forty-five percent of its overall student population as American Indian or Alaska Native.

G. “Secretary” means the secretary of education.
[6.35.2.7 NMAC - Rp, 6.35.2.7 NMAC, 7/1/2020]

6.35.2.8 INDIAN EDUCATION ACT PURPOSES: The department shall 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 and Alaska Native 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 and Alaska Native students;

D. ensure that the department partners with Indian nations, tribes, and pueblos 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 Indian nations, tribes, and pueblos in New Mexico and the development of relationships with the education division of the bureau of Indian education and other entities that serve American Indian and Alaska Native students;

G. provide the means for a relationship between the state and urban American Indian and Alaska Native community members in New Mexico to participate in initiatives and educational decisions related to American Indian and Alaska Native 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 and Alaska Native students;

I. ensure that Indian nations, tribes, and pueblos 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 Indian nations, tribes, and pueblos; and

K. encourage and foster parental involvement in the education of American Indian and Alaska Native students.

[6.35.2.8 NMAC - Rp, 6.35.2.8 NMAC, 7/1/2020]

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 and support for American Indian and Alaska Native 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 - Rp, 6.35.2.9 NMAC, 7/1/2020]

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, 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 American Indian and Alaska Native students.

B. The assistant secretary shall:

(1) work to expand appropriate Indian education for American Indian and Alaska Native 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 Indian nations, tribes, and pueblos to improve services to meet the educational needs of American Indian and Alaska Native students based on current published indigenous best practices in education;

(b) provide assistance to school districts and Indian nations, tribes, and pueblos in New Mexico in the planning, development, implementation, and evaluation of curricula in native languages, culture, and history designed for all students, including American Indian and Alaska Native students, as approved by Indian nations, tribes, and pueblos in New Mexico;

(c) develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to American Indian and Alaska Native 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, post-secondary institutions, and Indian nations, tribes, and pueblos in New Mexico 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 Indian nation, tribe, or pueblo;

(e) conduct indigenous research and evaluation for effective curricula for American Indian and Alaska Native students;

(f) collaborate with the department to provide distance learning for American Indian and Alaska Native 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 Indian nation, tribe, or pueblo in New Mexico or its authorized educational entity to share programmatic information and to coordinate technical assistance for public schools that serve American Indian and Alaska Native 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 Indian nation, tribe, or pueblo in New Mexico or its authorized educational entity; monitor the progress of American Indian and Alaska Native students; and coordinate technical assistance at the public pre-kindergarten to post-secondary institutions that serve American Indian and Alaska Native students;

(j) seek funds to establish, develop, and implement culturally relevant support services for the purposes of increasing the number of American Indian and Alaska Native teachers, administrators, and principals and providing continued professional development, including training in cultural competency, for educational assistants, teachers, and principals serving American Indian and Alaska Native 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 American Indian and Alaska Native students; and

(n) develop a plan to establish a post-secondary investment system for American Indian and Alaska Native students to which parents, Indian nations, tribes, pueblos, and the state may contribute.

(4) require school districts to obtain a signature of approval by the tribal governments in New Mexico or their government designees residing within school district boundaries, verifying that the Indian nations, tribes, or pueblos agree to Indian education policies and procedures pursuant to federal requirements.

(a) If the district is unable to obtain the required signatures, the district shall submit a written, signed explanation of the reasons.

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

(c) A tribal leader or authorized designee of an Indian nation, tribe, or pueblo 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 - Rp, 6.35.2.10 NMAC, 7/1/2020; A, 6/24/2025]

6.35.2.11 AMERICAN INDIAN/ALASKA NATIVE STUDENT NEEDS ASSESSMENT:

A. Beginning in the 2020-2021 school year, a historically defined Indian impacted school district shall:

(1) by October 15, and every three years thereafter, conduct an American Indian/Alaska Native student needs assessment to determine what supports are needed in school, at home, and in the community to

help American Indian and Alaska Native students succeed in school, graduate with a diploma of excellence, and be prepared to enter post-secondary education or the workplace;

(2) seek best practices for conducting an American Indian/Alaska Native student needs assessment that is appropriate for localized needs, to include school, home, and the community;

(3) conduct a tribal consultation with all Indian nations, tribes, and pueblos located within the boundaries of the state of New Mexico whose students are enrolled in the district to prioritize and address the needs identified in the American Indian/Alaska Native student needs assessment;

(4) prioritize in its school district budget the needs of American Indian and Alaska Native students and closing the achievement gap between American Indian and Alaska Native students and all other student groups through the use of state and federal funding for American Indian and Alaska Native students, at-risk students, or economically disadvantaged students;

(5) apply for appropriate financial assistance, which may include state, federal, or private grants, to assist with meeting the requirements of 6.35.2.11 NMAC;

(6) develop an accountability tool, which shall be reevaluated annually, that measures the success or failure of a public school's efforts pursuant to the systemic framework provided for in 6.35.2.12 NMAC;

(7) hold a public meeting with members of the district's American Indian and Alaska Native students' tribal leadership, parents, and the Indian education division at least twice during each school year, once by November 30 and once by April 30, to report on the American Indian/Alaska Native student needs assessment and the historically defined Indian impacted school district's evaluation of progress; and

(8) conduct, submit to the department, and publish on its website an annual review on the evaluation of progress to determine if amendments are needed to the systemic framework or accountability tool.

B. A historically defined Indian impacted school district or an Indian nation, tribe, or pueblo may request amendments to the systemic framework or accountability tool as the result of the annual review on the evaluation of progress.

C. A historically defined Indian impacted school district shall reevaluate the American Indian/Alaska Native student needs assessment every three years, or more frequently if determined necessary because of a change in American Indian or Alaska Native student enrollment within the historically defined Indian impacted school district.

D. The American Indian/Alaska Native student needs assessment may be incorporated into a historically defined Indian impact school district's existing school improvement structure.

E. Annually, the department shall:

(1) when approving school district budgets, consider whether a historically defined Indian impacted school district's budget accomplishes the prioritized needs from the American Indian/Alaska Native student needs assessment; and

(2) require the historically defined Indian impacted school district to submit a written statement to the department, which will be published on the department's website, detailing the ways in which the historically defined Indian impacted school district's budget successfully met or failed to meet the prioritized needs from the most recent American Indian/Alaska Native student needs assessment. The historically defined Indian impacted school district shall also submit the written statement to any Indian nation, tribe, or pueblo located within the exterior boundaries of the historically defined Indian impacted school district. Prior to April 15 of each year, the historically defined Indian impacted school district shall submit to the department the written statement, along with its operating budget, for the ensuing fiscal year. The date for the submission of the written statement for each historically defined Indian impacted school district as required by this paragraph may be extended to a later date by the secretary.

[6.35.2.11 NMAC - N, 7/1/2020; A, 6/24/2025]

6.35.2.12 SYSTEMIC FRAMEWORK FOR IMPROVING EDUCATIONAL OUTCOMES FOR AMERICAN INDIAN AND ALASKA NATIVE STUDENTS:

A. Beginning in the 2020-2021 school year, a historically defined Indian impacted school district shall:

(1) develop and publish on its website by January 15, a systemic framework for improving educational outcomes for American Indian and Alaska Native students, in collaboration with:

(a) school employees;

(b) American Indian and Alaska Native students and families;

(c) social service providers;

(d) community and civic organizations;

(e) the school district's or charter school's equity council; and
(f) any other entities, including a consultant, identified by the historically defined Indian impacted school district; and

(2) conduct a tribal consultation with local Indian nations, tribes, and pueblos on the development and implementation of the systemic framework for improving educational outcomes for American Indian and Alaska Native students.

B. A historically defined Indian impacted school district may request assistance from schools of education at post-secondary institutions in New Mexico to identify best practices in collecting and using student-centered data to inform teaching strategies and school-wide efforts to close the achievement gap between American Indian and Alaska Native students and all other student demographic groups.

C. The Indian education division shall assist a historically defined Indian impacted school district as required during the development and implementation of the systemic framework.

D. The systemic framework for improving educational outcomes for American Indian and Alaska Native students shall include programs, services, culturally relevant activities, and professional development required to improve Indian education in the state.

E. Based on the priorities developed through the American Indian/Alaska Native student needs assessment and the priorities established in the historically defined Indian impacted school district's budget for the school year, the systemic framework may include any of the following elements:

(1) academic and other programs within the context of the Indian education division's development or selection of culturally relevant curricula and instructional materials as provided in Subsection E of Section 22-23A-5 NMSA 1978:

(a) innovative programs designed to meet the educational needs of disadvantaged American Indian and Alaska Native students;

(b) high-quality, culturally relevant professional development for teaching professionals and paraprofessionals;

(c) the identification of early childhood, pre-kindergarten, and family programs in the school district that emphasize school readiness and that are effective in preparing young children to make sufficient academic growth by the end of grade three, including family-based early childhood programs that provide culturally relevant screening and referral and provide services to American Indian and Alaska Native children with developmental delays or disabilities;

(d) educational programs that are not usually available in sufficient quantity or quality, including remedial instruction, to close the achievement gap of American Indian and Alaska Native students in one or more of the subjects of English, mathematics, science, American Indian/Alaska Native tribal languages, foreign language, art, history, and geography;

(e) bilingual and bicultural programs and projects, including appropriate educational support for American Indian/Alaska Native English learner students;

(f) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging state academic standards;

(g) programs designed to encourage and assist American Indian and Alaska Native students to work toward, and gain entrance into, post-secondary institutions;

(h) special compensatory and other programs and projects that are designed to assist and encourage American Indian and Alaska Native students to enter, remain in, or reenter school, and to increase the rate of high school graduation for American Indian and Alaska Native students;

(i) career preparation activities that enable, encourage, and support American Indian and Alaska Native students to participate in programs supported by the federal Carl D. Perkins Career and Technical Education Act of 2006, including programs for technology preparatory education, mentoring, and apprenticeship;

(j) partnership projects between public schools and local businesses for career preparation programs designed to provide American Indian and Alaska Native students with the knowledge and skills needed to make an effective transition from school to a high-skill career;

(k) rigorous and meaningful curricula and educational opportunities that will lead to lifelong success for all students; and

(l) any other academic programs identified by the historically defined Indian impacted school district or local Indian nations, tribes, and pueblos;

(2) culturally related activities that:

(a) support the academic program of the public school;

(b) support American Indian language programs and American Indian language restoration programs that may be taught by traditional leaders and that qualify for the state seal of bilingualism-biliteracy on a student's diploma of excellence as provided in Section 22-1-9.1 NMSA 1978;

(c) promote the incorporation of culturally responsive teaching and learning strategies into the public school's educational program;

(d) educate about the prevention of violence, suicide, and substance abuse;

(e) promote the incorporation of land-based learning, student identity development, and holistic wellness; and

(f) any other culturally related activities identified by the historically defined Indian impacted school district or local Indian nations, tribes, and pueblos; and

(3) additional educational services focused on the holistic well-being of the whole child, including:

(a) early interventions to help struggling students, such as:

(i) after-school programs;

(ii) tutoring and mentoring; and

(iii) school and community interventions to prevent truancy and reduce dropout rates;

(b) comprehensive guidance and counseling services;

(c) integrated educational services in combination with other programs that meet the needs of American Indian and Alaska Native students and their families, including programs:

(i) that promote parental involvement in school activities; and

(ii) increase student achievement;

(d) special health- and nutrition-related services and other related activities that address the special health, social, and psychological concerns of American Indian and Alaska Native students and their families; and

(e) family literacy services, including:

(i) New Mexico even start; and

(ii) adult basic education programs; and

(f) any other educational services identified by the historically defined Indian impacted school district or local Indian nations, tribes, and pueblos.

[6.35.2.12 NMAC - N, 7/1/2020]

6.35.2.13 TRIBAL EDUCATION STATUS REPORT (TESR):

A. Annually, by September 30, each school district with tribal lands located within its boundaries shall provide an annual districtwide tribal education status report to all Indian nations, tribes, and pueblos located within the school district boundaries and to the assistant secretary.

B. Annually, by September 30, each school district adjacent to tribal lands may provide an annual districtwide tribal education status report to all Indian nations, tribes and pueblos with tribal lands adjacent to the school district's boundaries and to the assistant secretary.

C. A charter school with enrolled Native American students shall follow the same TESR provisions as the school district in which the charter school is physically located.

D. A report provided in accordance with Subsections A, B, or C, of this section shall 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-size of 9 or fewer shall be masked;
- (2) school safety;
- (3) the graduation rate;
- (4) attendance;
- (5) parent and community involvement;
- (6) educational programs targeting American Indian or Alaska Native 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;

(12) indigenous research and evaluation measures and results for effective curricula for American Indian and Alaska Native students; and

(13) access to native language programs.

E. The division shall submit a statewide tribal education report to all New Mexico Indian nations, tribes, and pueblos on or before November 15 of each year. The report will incorporate data submitted to the assistant secretary in accordance with Subsections A and B of this section and will further include reports by organizational units within the department regarding activities they are engaged in with Indian nations, tribes, and pueblos related to the education of American Indian and Alaska Native students.

[6.35.2.13 NMAC - Rp, 6.35.2.11 NMAC, 7/1/2020; A, 6/24/2025]

6.35.2.14 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 provisions of the Indian Education Act. Awards may include allocation-based and competitive funding.

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

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

E. Allocation-based awards to pueblos, tribes, and nations shall not revert. If allocation-based awards are made available to school districts, charter schools, BIE schools, and tribally controlled schools, then any unspent funds shall revert to the division at the end of the fiscal year in which the grant was awarded, unless otherwise prescribed in New Mexico state law.

F. If allocation-based awards are made available, then school districts, charter schools, BIE schools, and tribally controlled schools seeking an allocation-based award from the fund shall submit to the department applications that include information on the goals to be achieved relative to the Indian Education Act, program sustainability, and program evaluation measures. Applications shall be submitted in the manner and time specified by the assistant secretary. Allocation-based awards for school districts, charter schools, BIE schools, and tribally controlled schools shall be determined by the assistant secretary.

G. Allocation-based awards to pueblos, tribes, and nations shall consist of a fixed award amount and an amount dependent on the counts of students in pre-K-12 public schools from the 80-day reporting period of the previous year. Eighty percent of allocation-based funds shall be reserved for fixed award amounts; twenty percent of allocation-based funds shall be dependent on student counts. Allocation-based awards shall include a factor for students with disabilities and may include other factors as determined by the assistant secretary. Funding will be made available no later than September 1 and shall not be on a reimbursement basis. Pueblos, tribes, and nations shall submit to the department an implementation plan that describes in detail how funds shall be spent to improve educational outcomes for students in a manner consistent with the Indian Education Act.

H. School districts, charter schools, BIE schools, and tribally controlled schools receiving an allocation-based award from the fund shall complete all grant activities no later than June 30 of the fiscal year for which the award is made available, unless otherwise prescribed in New Mexico state law.

I. The division may offer competitive awards each fiscal year, subject to the availability of funds. Pueblos, tribes, nations, school districts, charter schools, BIE schools, tribally controlled schools, tribal colleges, and state universities may be eligible for competitive awards. Competitive awards shall be on a reimbursement basis. Any qualified entity seeking a competitive award from the division shall submit to the department an application that includes information on the goals to be achieved relative to the Indian Education Act, program sustainability, and program evaluation measures. Applications shall be submitted in the manner and time specified by the assistant secretary. Competitive awards shall include a factor for students with disabilities and may include other factors as determined by the assistant secretary. Pueblos, tribes, and nations that receive a competitive award shall submit to the department an implementation plan that describes in detail how funds shall be spent to improve educational outcomes for students in a manner consistent with the Indian Education Act.

J. Unspent competitive award funds shall revert to the division at the end of the fiscal year in which the grant was awarded, unless otherwise prescribed in New Mexico state law.

K. Pueblos, tribes, nations, school districts, charter schools, BIE schools, tribally controlled schools, tribal colleges, and state universities that receive funding shall be required to complete grant assurances, as determined by the assistant secretary. Grant assurances shall include, but are not limited to, provisions of periodic expenditure reports to the division, including those reports required under Subsection K of this section, and provision of reports measuring the effectiveness of the programs supported by the grants.

L. Pueblos, tribes, nations, school districts, charter schools, BIE schools, and tribally controlled schools that receive award funding will submit to the assistant secretary a mid-year report no later than January 30 and a final report no later than June 30 of each year. The report shall address efforts made by grantees to improve educational outcomes for American Indian and Alaska Native students. The report shall meet the guidelines set forth by the assistant secretary, consistent with the provisions of the Indian Education Act.
[6.35.2.14 NMAC - Rp, 6.35.2.12 NMAC, 7/1/2020; A, 6/24/2025]

6.35.2.15 SEVERABILITY: In the event that any one or more of the sections of this rule, in whole or in part, should be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining sections of this rule shall not in any way be affected or impaired.
[6.35.2.15 NMAC - N, 6/24/2025]

HISTORY OF 6.35.2 NMAC:

6.35.2 NMAC, Implementing the Indian Education Act, filed 7/30/2015, was repealed and replaced by 6.35.2 NMAC, Implementing the Indian Education Act, effective 7/1/2020.