

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Specific statutory or other authority authorizing rulemaking:
Sections 9-24-8, 22-2-1, and 22-23A-1 et seq. NMSA 1978.

Rule adoption date:
06/12/2025

Rule effective date:
06/24/2025

Reasons for adopting rule:

The purpose of the proposed rulemaking is to strengthen accountability and funding mechanisms to ensure that the educational needs of American Indian and Alaska Native students are being met.

The proposed amendment does the following:

- clarifies tribal consultation requirements for historically defined Indian impacted school districts;
- revises tribal education status report (TESR) requirements to include charter schools; and
- updates the allocation-based and competitive funding process.

Reasons for any change between the published proposed rule and the final rule:

The department reviewed and considered all written and oral feedback received during the public comment period. Changes between the published proposed rule and the adopted rule include reintegrating the requirement for the assistant secretary to consult with the advisory committee regarding priorities for funding and the request for information and application process. For more detail on the changes between the proposed rule and the rule as adopted, reasons for changes, and information as to why the department may not have accepted comments or suggested changes, please see "6.35.2 NMAC, Response to Public Comment," attached.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Gregory Frostad

Check if authority has been delegated

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Title:

Assistant Secretary

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:

Gregory Frostad

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06/12/2025

Response to Public Comment
6.35.2 NMAC, Implementing the Indian Education Act

RULE CHANGES	
Section	Change
6.35.2.14	Reinsert Subsection D, which contains the statement: “The assistant secretary shall consult with the advisory committee regarding priorities for funding and the request for information and application process.”, and reorder subsequent subsections.

Response to Public Comment
6.35.2 NMAC, Implementing the Indian Education Act

Public Comment Period: April 22 – May 23

The New Mexico Public Education Department (PED) received 26 written comments and 12 verbal comments for 6.35.2 NMAC, Implementing the Indian Education Act. All substantive comments have been summarized below. Comments that are not substantive in nature or fall outside the scope of the rule have not been included.

Response to Public Comment
6.35.2 NMAC, Implementing the Indian Education Act

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

Comments	
Summary of Comments	PED Response
Comments Expressing Support	
Comments expressing strong support for the rule particularly regarding the proposed funding and consultation metrics contained within the rule.	The department concurs.
Comments expressing support regarding the simplification of the disbursement of Indian Education Act (IEA) funding.	The department concurs.
Comments expressing support for the non-reversion clause of allocation-based awards contained within the rule.	The department concurs.
Documentation and Reporting Requirements	
Comments expressing concern over additional reporting requirements on the use of Indian Education Act (IEA) funding. In particular, concern over documentation required of entities receiving funds throughout the award distribution process.	The framework in the proposed rule follows the reporting requirements in the Indian Education Act, Section 22-23A-1 et seq. NMSA 1978. These requirements are in place to ensure accountability in the use of IEA funding, which is critical to achieving the goals of the Act. The department will provide technical assistance to stakeholders to support effective implementation of these requirements.
Comments suggesting the use of intergovernmental agreements (IGAs) in lieu of assurances required through reporting process.	The awards are released via intergovernmental agreements (IGAs). Assurances within the IGA are in place to ensure accountability in the use of IEA funding.
Other	
Comments expressing concern regarding the proposed funding distribution for allocation-based awards.	The proposed funding for allocation-based awards will allow for entities of all sizes to receive equitable monetary support consistent with the IEA.
Comments requesting that the assistant secretary be required to consult with Indian Education Advisory Council (IEAC) on the distribution of grant awards.	Changes to the proposed rule include keeping language specific to the assistant secretary consulting with the advisory committee regarding priorities, and the request for information and application process.
Comments expressing concern over discretionary authority of the assistant secretary over award distribution process.	The proposed rule provides the assistant secretary of Indian education with the capacity to respond to unique circumstances and to address the diverse needs of eligible entities while maintaining program integrity and accountability.

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Comment requesting reinstatement of higher education programs within regular funding and continuation of the fall competitive awards.	The proposed awards process prioritizes funding mechanisms that ensure that the educational needs of American Indian and Alaska Native students are being met. The competitive awards process remains open to tribal colleges as well as state universities.
Comments expressing concern that the rule may adversely affect Native American students that do not live within a Pueblo, Tribe or Nation.	The proposed rule allows for awards to be distributed to entities that serve Native American and Alaska Native students residing outside of Pueblos, Tribes, and Nations.
Comment requesting restoration of nonprofit and community-based organizations under eligible entities for funds.	The proposed awards process prioritizes funding mechanisms that ensure that the educational needs of American Indian and Alaska Native students are being met. Qualified entities seeking a competitive award may submit to the department an application for consideration.
Comment expressing concern over the lack of a formal definition of Pueblos, Tribes, and Nations and that this may allow entities located outside of New Mexico to receive award funding.	The IEA pertains to Pueblos, Tribes, and Nations located within the state of New Mexico. The distribution of awards in the proposed rule is consistent with the statute's provisions.
Comments requesting that funds be made available by July 1 rather than no later than September 1 so as prevent a delay between fund distribution and the beginning of the state's fiscal year.	The proposed rule aligns with the department's administrative processes and statutory requirements. The proposed deadline ensures compliance with existing fiscal and operational timelines.
Comments expressing concern over the funding process for school districts and charter schools.	The department will continue to provide support to school districts, locally chartered charter schools, and state-chartered charter schools in the implementation of the Indian Education Act.
Comment expressing concern with regard to lack of specified requirements for allocation-based and competitive grant awards.	The proposed rule is designed to provide sufficient flexibility to meet diverse needs while ensuring accountability and alignment with statute.

Response to Public Comment
6.35.2 NMAC, Implementing the Indian Education Act

Comment requesting that school district applications reflect meaningful tribal collaboration and alignment as a condition of funding. Concern that the lack of an explicit mandate on alignment between school districts' IEA grant applications with Native student needs assessments will mean that students are at a disadvantage.	The department recognizes that collaboration with Pueblos, Tribes, and Nations is essential to meeting the educational needs of American Indian and Alaska Native students and will continue to promote alignment between these stakeholders and school districts.
Comments requesting language that explicitly denotes all Nations, Tribes, and Pueblos to be allocated funds.	The rule relies on existing language contained within the IEA and applies to all Pueblos, Tribes, and Nations located within the state of New Mexico.
Comment expressing concern over lack of explicit definition of the format, required documentation, and overall nature of tribal consultation sessions.	Additional information about tribal consultation sessions will be provided in department guidance.
Comment requesting that factors should not be considered in the competitive award distribution process.	The proposed rule includes factors to ensure that funding distributions adequately reflect the diverse needs of Native American and Alaska Native students across New Mexico.
Comment expressing concern over lack of accountability of schools to tribes if funding goes directly to schools.	Entities that receive award funding will be required to provide information to the department on the goals to be achieved relative to the IEA.