

Public Comments on Proposed Rulemaking: 6.35.2 NMAC

Tribal Education Alliance, May 23, 2025

The Tribal Education Alliance (TEA), chaired by Regis Pecos, works in partnership with New Mexico's Pueblos, Tribes, and Nations to ensure an equitable, culturally relevant education for Native children within the state's public school system.

TEA has reviewed NMPED's proposed revisions to 6.35.2 NMAC, Implementing the Indian Education Act. We appreciate that several of the revisions respond to long-standing tribal proposals (also reflected in HB 135, 2024) to simplify access to Indian Education Act funding, in particular by shifting to allocation-based, non-reverting, upfront funding for Pueblos, Tribes, and Nations.

However, we urge NMPED to respect and protect the framework of tribal self-determination and self-governance, as manifest in federal and state law, including in the New Mexico Indian Education Act (IEA), the State Tribal Collaboration Act, the Early Childhood Education and Care Department Act, and the Government-to-Government principles. To avoid perpetuating the state's history of dominating and subordinating Tribes, and to address persistent systemic and institutional racism, NMPED must allow sovereign Tribes to self-determine the administration, use, and outcomes of their IEA funding.

The intent and purpose of tribal awards from the Indian Education Fund is to enable Tribes to address their own educational priorities, which may not be related to the state's understanding of educational outcomes and cannot be measured by Western evaluation models and standards. By allocating funds to Tribes, the Indian Education Fund can and must pursue the implementation of those IEA purposes that the state's public school system has failed to achieve – notably, to enhance sovereign tribal control over the education of their children and provide culturally and linguistically relevant learning environments for Native students. Tribal IEA funding is not meant to do the work of public schools, and it cannot be presented, reported, and assessed as such. Rather, tribal IEA funds help balance public education with tribally determined, community-based education spaces, systems, and practices.

The revised rule, as proposed by NMPED, risks negating the self-determination framework of the IEA and related laws, all of which were enacted to empower sovereign Tribes in the face of a long history of impositions, oppression, and discrimination. If NMPED were to go forward with the rule as proposed, it would compromise the IEA's purpose of increasing tribal control over education and advancing tribal self-determination over educational investments in their communities.

Specifically, the proposed rule imposes restrictive requirements on Tribes related to obtaining and reporting on the use of IEA funding; in fact, NMPED's proposed revisions increase and intensify tribal reporting requirements compared to the status quo. This infringes on tribal self-determination, especially since IEA funding for Tribes is designated, de facto, for community-based education, which largely prioritizes self-determined cultural and language learning. These and other tribal education priorities and practices cannot be subjected to state-imposed plans, measurements, or outcomes.

The proposed rule would also erect new and additional barriers to the uptake and use of IEA funding by Tribes. It would make the funding process more burdensome rather than less – contrary to the purpose of revising the rule. This would come at a time when some Tribes are already discouraged by the process of seeking and reporting on IEA funding, and when Tribes get blamed for reversions of awards processed in an untimely and bureaucratic manner.

Finally, TEA is concerned that NMPED’s proposed revisions shift too much discretionary authority to the assistant secretary, thereby diminishing the collaborative process statutorily mandated in 22-23A-5. C. NMSA 2978. The statutory role of the assistant secretary is merely to provide assistance and “advice on the allocation of resources” (22-23A-5. E.1), in accordance with the statute and departmental rules.

To address the concerns outlined above, TEA respectfully asks NMPED to incorporate the following line-by-line suggestions.

6.35.2.14 Awards

Paragraphs D, E, G, H, J, and K:

The proposed revisions refer to “school districts” throughout, yet the correct terminology should be “historically defined Indian impacted school districts”, as per 6.35.2.7. F. The Indian Education Act requires those districts to meet specific responsibilities (including providing annual reports, conducting needs assessments, developing a systemic framework), and efforts related to those responsibilities may merit awards from the Indian Education Fund.

TEA suggestion: Change “school districts” to “historically defined Indian impacted school districts” throughout 6.35.2.14.

Paragraph E

“E. [...] Allocation-based awards for school districts, charter schools, BIE schools, and tribally controlled schools shall be determined by the assistant secretary.”

TEA concern: Given that NMPED proposes to strike paragraph D. (“~~D. The assistant secretary shall consult with the advisory committee regarding priorities for funding and the request for information and application process.~~”), we are concerned that decision-making is shifted from a collaborative process with the Indian Education Advisory Council to a unilateral, wholly discretionary, and non-transparent action by the assistant secretary. Yet the IEA, as amended in 2019, requires school districts to use needs assessments and systemic frameworks, collaboratively prepared with Tribes, to guide their budgeting and programming to meet Native students’ needs (22-23A-9., 22-23A-10.). Therefore, the statutorily correct process for determining IEA awards for school districts must be based on these assessments and frameworks. Funding applications by a school district should only be considered if they are centered on a needs assessment and systemic framework that shows evidence of meaningful tribal consultation and collaboration, as required by law.

TEA suggestion: *“E. [...] Allocation-based awards for historically defined Indian impacted school districts and charter schools, BIE schools, and tribally controlled schools shall be determined by the ~~assistant secretary~~ priorities formally agreed to between such a district and a pueblo, nation, or tribe, based on a Native student needs assessment pursuant to 6.35.2.11. Allocation-based awards for BIE schools and tribally controlled schools shall be determined by the assistant secretary in consultation and collaboration with the advisory council.”*

Paragraph F

“F. 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.”

TEA suggestion: We appreciate that paragraph F introduces a tribal allocation formula that has a robust fixed factor, which may help ensure the fair and equitable treatment of smaller Tribes. We also welcome

that funding shall not be on a reimbursable basis. We propose adding clarifying language to avoid misunderstandings: *“F. Allocation-based awards to pueblos, tribes, and nations shall consist of a fixed award amount and an amount dependent on the counts of their respective students in pre-K-12 pre-K through 12th grade public schools from the 80-day reporting period of the previous year.”*

“F. [...] 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.”

TEA concern: We are concerned about the reintroduction of a quasi-application process. The main reason for making allocation-based awards available for Tribes is to replace the burdensome use of applications, which infringe on sovereignty and strain capacity, with simplified, easy-to-access, automatic allocations. Yet by mandating the submission of “an implementation plan that describes in detail” how educational outcomes will be improved, Tribes would be subjected to NMPED’s standards, expectations, and vetting. It erases any meaningful difference between allocation-based and competitive awards; the requirement for allocation-based awards is the same as the requirement for receiving competitive awards (see paragraph H.). Moreover, the “details” required in the “implementation plan” are much too narrow. The statutory provisions in the IEA reach far beyond academic “educational outcomes”: they include community and cultural practices, collaborative activities, and education governance capacities – all of which are statutorily eligible for IEA funding and reflect the purpose of allocating funding directly to Tribes, not just to school districts.

TEA suggestion: We propose striking this sentence: *“F. [...] 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.”*

Paragraph J

“J. 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.”

TEA concern: The requirement for Tribes to provide multiple reports as “assurances,” which are solely determined by the assistant secretary, is not aligned with the Government-to-Government nature of state-tribal relationships. The appropriate way to obtain assurances between sovereign governments is a negotiated intergovernmental agreement (IGA). An IGA allows a Tribe and a state agency, as an agent of the State, to negotiate and agree on funding purposes and outcomes. Importantly, an IGA is **not** a one-sided contract drawn up by a state agency for tribal signature. We ask that NMPED remove Tribes from the requirement of completing grant assurances that are determined by the assistant secretary or specified in the rule. Instead, we ask that tribal grant assurances be provided through a negotiated intergovernmental agreement.

TEA suggestion: *“J. ~~Pueblos, tribes, nations,~~ Historically defined Indian impacted school districts and 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. Grant assurances from pueblos, tribes, and nations shall consist of a negotiated intergovernmental agreement between the department and a pueblo, tribe, or nation, which shall respect and protect state and tribal sovereign immunity.”

Paragraph K

“K. 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.”

TEA concern: Parallel to paragraph J, any parameters for tribal reporting should be developed jointly by the department and a Tribe in a negotiated intergovernmental agreement, rather than in a one-sided way that gives sole discretionary decision-making powers to the assistant secretary. The assistant secretary is statutorily required to collaborate with tribal governments in the implementation of the IEA (22-23A-5. C. NMSA 2978). Any and all provisions of the implementing rule must conform with the statute.

TEA suggestion:

“K. ~~Pueblos, tribes, nations,~~ Historically defined Indian impacted school districts and 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. Pueblos, tribes, and nations 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 meet the guidelines set forth in a negotiated intergovernmental agreement between the department and a pueblo, tribe, or nation.”