

ARTICLE 23A

Indian Education

22-23A-1. Short title.

Chapter 22, Article 23A NMSA 1978 may be cited as the "Indian Education Act".

History: Laws 2003, ch. 151, § 1; 2005, ch. 299, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, added the statutory reference to the act.

22-23 A-2. Purpose of act.

The purpose of the Indian Education Act is 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 of education [public education 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 the development of relationships with the education division of the bureau of Indian affairs 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 of education [public education 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 affairs 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.

History: Laws 2003, ch. 151, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

22-23 A-3. Definitions.

As used in the Indian Education Act:

A. "assistant secretary" means the assistant secretary for Indian education;

B. "government-to-government" means the relationship between a New Mexico tribe and a state government;

C. "indigenous" means native or tribal groups of the Americas that maintain a cultural identity separate from the surrounding dominant cultures;

D. "tribal" means pertaining to urban Indians who are residents of New Mexico or to an Indian nation, tribe or pueblo located within New Mexico;

E. "New Mexico tribe" means an Indian nation, tribe or pueblo located within New Mexico; and

F. "urban Indian" means a member of a federally recognized tribe or an Alaskan native who lives in an off-reservation urban area and is a New Mexico resident.

History: Laws 2003, ch. 151, § 3; 2007, ch. 295, § 2; 2007, ch. 296, § 2.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, added Subsections A through D and F. Laws 2007, ch. 295, § 2 and Laws 2007, ch. 296, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 2. See 12-1-8 NMSA 1978.

22-23 A-4. Rulemaking.

A. The secretary shall ensure that the duties prescribed in the Indian Education Act are carried out and that each division within the department is collaborating to fulfill its responsibilities to tribal students.

B. The secretary shall consult on proposed rules implementing the Indian Education Act with the Indian education advisory council and shall present rules for review and comment at the next semiannual government-to-government meeting pursuant to Section 22-23A-5 NMSA 1978.

History: Laws 2003, ch. 151, § 4; 2007, ch. 295, § 3; 2007, ch. 296, § 3.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, rewrote this section. Laws 2007, ch. 295, § 3 and Laws 2007, ch. 296, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 3. See 12-1-8 NMSA 1978.

22-23A-4.1. Post-secondary education.

The department shall collaborate and coordinate efforts with the higher education department and institutions of higher education, including tribal colleges and teacher education institutions and tribal education departments, to facilitate the successful and seamless transition of American Indian students into post-secondary education and training.

History: Laws 2007, ch. 295, § 1; 2007, ch. 296, § 1.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 295, § 1 and Laws 2007, ch. 296, § 1 enacted identical sections, effective June 15, 2007.

Cross references. — For the department referred to in the section, see the public education department, 22-2-1 NMSA 1978.

22-23 A-5. Indian education division; created; assistant secretary; duties.

A. The "Indian education division" is created within the department. The secretary shall appoint an assistant secretary for Indian education, who shall direct the activities of the division and advise the secretary on development of policy regarding the education of tribal students. The assistant secretary shall also coordinate transition efforts for tribal students in public schools with the higher education department and work to expand appropriate Indian education for tribal students in preschool through grade twenty.

B. The assistant secretary shall coordinate with appropriate administrators and divisions to ensure that department administrators make implementation of the Indian Education Act a priority.

C. The secretary and the assistant secretary, in cooperation with the Indian education advisory council, shall collaborate 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.

D. The secretary and assistant secretary shall convene semiannual government-to-government meetings for the express purpose of receiving input on education of tribal students.

E. 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, the assistant secretary shall:

(1) 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;

(2) 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;

(3) 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;

(4) 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;

(5) conduct indigenous research and evaluation for effective curricula for tribal students;

(6) collaborate with the department to provide distance learning for tribal students in public schools to the maximum limits of the department's abilities;

(7) establish, support and maintain an Indian education advisory council;

(8) 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;

(9) 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;

(10) 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;

(11) 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 for educational assistants, teachers and principals serving tribal students, in conjunction with the Indian education advisory council:

(a) recruitment and retention of highly qualified teachers and administrators;

(b) academic transition programs;

(c) academic financial support;

(d) teacher preparation;

(e) teacher induction; and

(f) professional development;

(12) 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;

(13) 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; and

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

History: Laws 2003, ch. 151, § 5; 2005, ch. 299, § 2; 2007, ch. 295, § 4; 2007, ch. 296, § 4.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, required the assistant secretary to advise the secretary on policy regarding education of tribal students and to coordinate transition efforts for tribal students in public schools with the higher education department and to work to expand Indian education for tribal students in preschool through grade twenty; and added Subsections B through D and Paragraphs (5) and (6) of Subsection E. Laws 2007, ch. 295, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 4. See 12-1-8 NMSA 1978.

22-23 A-6. Advisory council.

A. The "Indian education advisory council" is created and shall advise the secretary and assistant secretary on implementation of the provisions of the Indian Education Act. The council consists of sixteen members as follows:

- (1) four representatives from the Navajo Nation;
- (2) two representatives, one from the Mescalero Apache Tribe and one from the Jicarilla Apache Nation;
- (3) four representatives, two from the southern pueblos and two from the northern pueblos;
- (4) three urban Indians representing urban areas, including Albuquerque, Gallup and Farmington; and
- (5) three at-large representatives, one from the federal bureau of Indian affairs, one from a head start organization and one from the general public, at least one of whom shall be nontribal, but all of whom shall have knowledge of and involvement in the education of tribal students.

B. Members shall be appointed by the secretary with input from New Mexico tribes and organizations involved in the education of tribal students for staggered terms so that the terms of the at-large members and of one-half of each of the tribal

representatives end on December 31, 2009 and the terms of the remaining members end on December 31, 2011. Thereafter, appointments shall be for terms of four years. The terms of existing members shall expire on the effective date of this 2007 act.

C. A majority of the members of the Indian education advisory council constitutes a quorum. The advisory council shall elect a chair from its membership.

D. On a semiannual basis, representatives from all New Mexico tribes, members of the commission, the office of the governor, the Indian affairs department, the legislature, the secretary, the assistant secretary and the Indian education advisory council shall meet to assist in evaluating, consolidating and coordinating all activities relating to the education of tribal students.

E. Members of the Indian education advisory council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 2003, ch. 151, § 6; 2007, ch. 295, § 5; 2007, ch. 296, § 5.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, required the council to advise the secretary and assistant secretary on implementation of the Indian Education Act; changed the number of members of the council to sixteen members; changed the number of urban Indian members to three; provided for three at-large representatives; and added Subsections B and C. Laws 2007, ch. 295, § 5 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 5. See 12-1-8 NMSA 1978.

22-23 A-6. Advisory council. (Effective July 1, 2020.)

A. The "Indian education advisory council" is created and shall advise the secretaries of early childhood education and care and public education and the assistant secretaries for Native American early childhood education and care and for Indian education on implementation of the provisions of the Indian Education Act. The council consists of sixteen members as follows:

- (1) four representatives from the Navajo Nation;*
- (2) two representatives, one from the Mescalero Apache Tribe and one from the Jicarilla Apache Nation;*
- (3) four representatives, two from the southern pueblos and two from the northern pueblos;*

(4) three urban Indians representing urban areas, including Albuquerque, Gallup and Farmington; and

(5) three at-large representatives, one from the federal bureau of Indian affairs, one from a head start organization and one from the general public, at least one of whom shall be nontribal, but all of whom shall have knowledge of and involvement in the education of tribal students.

B. Members shall be appointed by the secretary with input from New Mexico tribes and organizations involved in the education of tribal students for staggered terms so that the terms of the at-large members and of one-half of each of the tribal representatives end on December 31, 2009 and the terms of the remaining members end on December 31, 2011. Thereafter, appointments shall be for terms of four years. The terms of existing members shall expire on June 15, 2007.

C. A majority of the members of the Indian education advisory council constitutes a quorum. The advisory council shall elect a chair from its membership.

D. On a semiannual basis, representatives from all New Mexico tribes, members of the commission, the office of the governor, the Indian affairs department, the legislature, the secretary, the assistant secretary and the Indian education advisory council shall meet to assist in evaluating, consolidating and coordinating all activities relating to the education of tribal students.

E. Members of the Indian education advisory council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

History: Laws 2003, ch. 151, § 6; 2007, ch. 295, § 5; 2007, ch. 296, § 5; 2019, ch. 48, § 15.

ANNOTATIONS

The 2019 amendment, effective July 1, 2020, required the Indian education advisory council to advise the secretaries of early childhood education and care and public education and the assistant secretaries for Native American early childhood education and care and for Indian education on the implementation of the provisions of the Indian Education Act; and in Subsection A, after "shall advise the", deleted "secretary" and added "secretaries of early childhood education and care and public education", and after "assistant", deleted "secretary" and added "secretaries for Native American early childhood education and care and for Indian education".

22-23 A-7. Report.

A. The Indian education division in collaboration with the education division of the federal bureau of Indian affairs and other entities that serve tribal students shall submit

an annual statewide tribal education status report no later than November 15 to all New Mexico tribes. The division shall submit the report whether or not entities outside state government collaborate as requested.

B. A 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.

C. The status reports shall be written in a brief format and shall include the following information, through which public school performance is measured and reported to the tribes and disseminated at the semiannual government-to-government meetings held pursuant to Section 22-23A-5 NMSA 1978:

- (1) student achievement as measured by a statewide test approved by the department, with results disaggregated by ethnicity;
- (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.

History: Laws 2003, ch. 151, § 7; 2007, ch. 295, § 6; 2007, ch. 296, § 6.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, required submission of the report no later than November 15 and that the report include information about consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal and Indian organizations and information about indigenous research and evaluation measures and results of effective curricula for tribal students. Laws 2007, ch. 295, § 6 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 6. See 12-1-8 NMSA 1978.

22-23 A-8. Fund created.

A. The "Indian education fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations and income from investment of the fund. Money in the fund shall not revert. The fund shall be administered by the department, and money in the fund is appropriated to the department to distribute awards to support the Indian Education Act.

B. The department shall ensure that funds appropriated from the Indian education fund shall be used for the purposes stated in the Indian Education Act and shall not be used to correct for previous reductions of program services.

C. The department shall develop procedures and rules for the award of money from the fund. Disbursement of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary of public education.

History: Laws 2003, ch. 151, § 8; 2007, ch. 295, § 7; 2007, ch. 296, § 7.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, added Subsection B. Laws 2007, ch. 295, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 7. See 12-1-8 NMSA 1978.

22-23A-9. Indian education; school district responsibilities; needs assessments; use of data; prioritizing budgets; reports.

A. As used in Sections 1 through 3 [22-23A-9 through 22-23A-11 NMSA 1978] of this 2019 act, "school district" includes charter schools.

B. Historically defined Indian impacted school districts are required to conduct a needs assessment to determine what supports are needed in public school, at home and in the community to help Indian students succeed in school, graduate with a diploma of excellence and be prepared to enter post-secondary education or the workplace.

C. After the needs assessment, the school district shall meet with the local tribes to prioritize the needs to be addressed. The school district shall make meeting the needs of Indian students and closing the achievement gap between Indian students and all other student groups a priority in the school district budget, including applying state and federal funding for Indian students, disadvantaged students, at-risk students, students in poverty and other categories of state and federal funding to help disadvantaged students.

D. The school district shall apply for appropriate state, federal and private grants to help it carry out the provisions of Sections 1 through 3 of this 2019 act. When approving budgets, the department shall consider whether a school district's budget accomplishes the prioritized needs from the Indian students needs assessment.

E. The school district shall develop an accountability tool that measures public school efforts pursuant to the systemic framework provided for in Sections 2 and 3 of this 2019 act and the success or failure of those efforts.

F. The school district shall hold a public meeting with members of the Indian students' tribal leaders, parents and the Indian education division at least twice in the school year to report on the needs assessment and the school district's evaluation of progress.

History: Laws 2019, ch. 16, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

22-23A-10. Systemic framework for improving educational outcomes for Indian students.

Historically defined Indian impacted school districts shall develop and publish a systemic framework for improving educational outcomes for Indian students. The school district shall develop the framework in collaboration with school employees, tribal leaders, Indian students and families, social service providers and community and civic organizations. The Indian education division shall assist the school district as required during the development and implementation of the framework. The school district may request assistance from schools of education at state educational institutions to identify best practices in collecting and using student-centered data to inform teaching strategies and schoolwide efforts to close the achievement gap between Indian students and all other student demographic groups.

History: Laws 2019, ch. 16, § 2.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

22-23A-11. Systemic framework elements.

A. The systemic framework shall include programs, services, culturally relevant activities and professional development that need to be provided to improve Indian education in the state. Based on the priorities developed through the needs assessment and the priorities set in the budget for the school year, the systemic framework may include some or all of the elements provided in this section.

B. Academic and other programs may include, 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:

- (1) innovative programs designed to meet the educational needs of educationally disadvantaged Indian students;
- (2) high-quality professional development for teaching professionals and paraprofessionals;
- (3) 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 screening and referral and provide services to Indian children with developmental delays or disabilities;
- (4) educational programs that are not usually available in sufficient quantity or quality, including remedial instruction, to raise the achievement of Indian students in one or more of the subjects of English, mathematics, science, foreign languages, art, history and geography;
- (5) bilingual and bicultural programs and projects;
- (6) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging state academic standards;
- (7) programs designed to encourage and assist Indian students to work toward, and gain entrance into, institutions of higher education;

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

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

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

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

C. Culturally related activities may include:

(1) culturally related activities that support the academic program of the public school;

(2) activities that support Indian language programs and 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;

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

(4) activities to educate students about the prevention of violence, suicide and substance abuse.

D. Services to be provided may include:

(1) early interventions to help struggling students, such as after-school programs, tutoring and mentoring and school and community interventions to prevent truancy and reduce dropout rates;

(2) comprehensive guidance and counseling services;

(3) integrated educational services in combination with other programs that meet the needs of Indian students and their families, including programs that promote parental involvement in school activities and increase student achievement;

(4) special health- and nutrition-related services and other related activities that address the special health, social and psychological problems of Indian students and their families; and

(5) family literacy services, including New Mexico even start and adult basic education programs.

History: Laws 2019, ch. 16, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.