

Tribal Education in New Mexico

Report for the LWVNM Tribal Law Study
Meredith Machen, LWVNM Education Co-Director

Tribal Sovereignty and Indian Education

Over the past two centuries, treaties, compacts, legislation, and court decisions have codified elements of tribal sovereignty. The legal and political recognition of tribal sovereignty is the basis for government-to-government relations that are strengthened through mutual respect, consultation, and collaboration. Tribal sovereignty is complicated when it comes to education policies because most funding comes from federal and state governments, which establish the rules of operation and overall management.

Federal Legislation History

Federal Indian education policy dating from the 1860s required the vast majority of Native American students to be taken from their families and communities to be educated in boarding schools run by Christian organizations and the U.S. government. Assimilation efforts included physical discipline of Native students for speaking their Indigenous languages, wearing Native clothing and long hair, and practicing their religious or cultural traditions. Two of the 25 off-reservation boarding schools established by the US Bureau of Indian Affairs in the 15 states with the largest native populations, were in New Mexico (Albuquerque and Santa Fe).

Attempts to devalue and eradicate Native identity and to educate Indigenous students for the white world resulted in intergenerational psychological trauma with long-term impacts exacerbating social and economic disparities. Though the federal government closed most of these boarding schools by 1972, the ill effects of the disastrous assimilation policy have not been forgotten. Vestiges of Manifest Destiny, colonialism, and removal from Native homelands can be seen today. Many Indians living on reservations face poverty, lack of infrastructure (electricity, clean water, sanitation, health care, and broadband), and environmental degradation from extractive industries.

In the 1970s, Indian activism about the lack of respect for tribal sovereignty forced a change in federal and state policies in numerous arenas, especially education. The activism was fueled both by anger at long-standing efforts to acculturate Native students into the mainstream and an urgency to preserve the distinct languages, traditions, and cultures that were threatened by Americanization. Indigenous and other leaders worked with education experts who advocated successfully for the federal Indian Self-Determination and Educational Assistance Act (P.L. 93-638) in 1975. The act acknowledged the inherent right to self-governance of Indigenous peoples. Soon afterwards New Mexico's All Indian Pueblo Council (AIPC) was formed, becoming the first organization in the nation to use the law to establish tribal sovereignty over education and other matters. Subsequent amendments allowed Santa Fe Indian School to become a tribally controlled school. The Santa Fe Indian School Act (2000) transferred the land to the AIPC,

which today represents the 19 Pueblo Governors of New Mexico and the Governor of Pueblo Ysleta del Sur in Texas.

In 1990, Congress passed the Native American Languages Act (P.L. 101-477), which accorded special status to Native Americans, “a status that recognizes distinct cultural and political rights including the right to continue separate identities.” The law found that, “the traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values” (P.L. 101-477 SEC. 102).

In 1992, the act was amended (P.L. 102-524) to provide grants that have supported numerous tribal language acquisition programs across the country. In March 2021, bipartisan legislation, S.989, proposing the establishment of a Native American Language Resource Center for preservation and revitalization of Indigenous languages was introduced. Representative Teresa Leger Fernández (D-NM-03) is one of the sponsors of H.R. 2271, the House companion bill. <https://www.congress.gov/bill/117th-congress/senate-bill/989?s=1&r=1>

Formula and special grant funding for K-12 Indian education flows from the federal government through the state’s public education department to local educational agencies or directly to the Bureau of Indian Education for tribal schools. The Every Student Succeeds Act, Pub. L. No. 114-95, Title I, § 1401 (2015) (ESSA) requires all elementary and secondary school students to meet the same academic achievement and content standards.

New Mexico’s Indigenous Students and Policies

Native Americans comprise about 10 percent of New Mexico’s population. Many Native students live on reservations in rural areas far from urban centers. Each of New Mexico’s 23 sovereign governments (19 Pueblos, three Apache tribes, and the Navajo Nation) has a separate relationship with the state. New Mexico’s policies and programs related to its Native population go well beyond what is required by federal legislation.

New Mexico’s extraordinary State Tribal Consultation Act (STCA), passed in 2009, requires the state to provide services to benefit its Native citizens. In terms of education, the STCA calls for regular communication and collaboration to “ensure that parents; tribal departments of education; community-based organizations; the department of education; universities; and tribal, state, and local policymakers work together to find ways to improve educational opportunities for American Indian students.”

With regard to Indian education, each of New Mexico’s sovereign nations works with the state in different ways. Some tribal governments have formal, detailed government-to-government agreements with the state defining their policies and procedures for interactions. Some communicate on a regular basis and submit detailed reports; others provide little to no evidence of collaboration. Every state agency is required to submit annual reports to the NM Indian Affairs Department in July describing the activities and outcomes related to the collaboration. The NM Public Education Department (PED) had not submitted its STCA report as of mid-August 2021.

For many years, PED has been heavily criticized for not providing public school students-- including Native students-- a sufficient education as mandated by New Mexico's Constitution. Though it has made some progress, the PED will continue to face major legal and budgetary challenges in order to comply with the STCA, the Bilingual Multicultural Education Act (1973), the Indian Education Act (2003), and the Yazzie/Martinez decision (2018), which are described later in this report.

NM's Bureau of Indian Education Schools

About 6,000 Native students in New Mexico are served by the federally funded Bureau of Indian Education (BIE), a division of the Bureau of Indian Affairs (BIA), run by the Interior Department. The BIE system in New Mexico consists of 44 schools. The BIE directly controls the staffing and budgets of 22 schools, functioning somewhat like a school district. The other 22 BIE schools are operated separately by various sovereign tribal governments.

Federal legislation authorizes the BIE to determine the use of federal Indian education dollars. The academic proficiency rates of students in New Mexico's BIE schools lag behind those of students in New Mexico's traditional public schools and the state's charter schools. Most of New Mexico's Native students living on tribal land attend both Bureau of Indian Education (BIE) and state-supported public schools at different points in their education. Because the BIE schools work under federal regulations and are not required to work with the state system, they are not the focus of this study.

NM Public Education Department (PED) and Tribal Education Departments (TEDs)

Of the many agencies with programs and services that affect Indian education, the primary one is the New Mexico Public Education Department, especially the Indian Education Bureau. Tribal Education Departments (TEDs) are federally and tribally funded executive branch agencies within sovereign nations. The roles and responsibilities of TEDs vary according to each sovereign nation's government, laws, and resources.

New Mexico was the first state in the nation to pass a Bilingual Education Act (1973). This model legislation requires instruction in English and a home or heritage language to "culturally and linguistically different" students. The law has expanded several times through the years to include more programs and services. Currently, qualified students can earn a State Seal of Bilingualism-Biliteracy on their NM high school diplomas. Criteria for the "Tribal Language Proficiency Certification" are determined by tribes and Pueblos, which communicate with districts or schools when students have met requirements. Since 2002, New Mexico has permitted "a person proficient in a Native American language and culture of a New Mexico tribe or pueblo who meets criteria" to obtain a Native American Language and Culture certificate and to instruct without a bachelor's degree and teacher certification. (NALC-520).

The New Mexico Indian Education Act (2003) [22-23A-1 to 22-23A-8 NMSA 1978] requires the state's public and charter schools to provide Native students with an equitable and culturally and linguistically relevant (CLR) education. The act also requires the system to promote the success of Native students in other ways. The 32 Native American-serving districts and charter

schools were budgeted \$35.4 million in FY21 for services aligned with the Indian Education Act. Of these, 23 school districts and nine charter schools are federally designated as “historically defined Indian impacted,” meaning they meet at least one of the following criteria: (1) serve at least 175 American Indian students who live wholly or partially on tribal land; (2) have at least 10 percent American Indians in its overall student population and are located wholly or partially on tribal land; or (3) have American Indians as 45 percent of the overall student population.

In School Year 2020-21, PED reported serving 37,899 Native students in traditional public schools and 1,133 in state charter schools.

Academic Performance and Student Learning Outcomes

Quality data is scarce. The Indian Education Advisory Council recommends establishing data-sharing agreements between tribal governments of tribally controlled and BIE-controlled Indian Education schools and the state’s public school districts and charter schools.

New Mexico’s students in the public education system, especially Native students, perform below national and state averages in all measures. Some metrics were improving before the pandemic hit in March 2020. In School Year 2019, the high school graduation rate of Native students rose to 69%, but third grade proficiency was only 19% in reading and 21% in math, and proficiency scores of Native eighth graders were lower than those of third graders. Math proficiency for Native students was 12% while the average for all students was 20%; Native reading proficiency was 25% while that of all students was 34%; and Native science proficiency was 20% while the average for all students was 35%. Data is not available for SY 20, and no assessments were given in School Year 2021 because of the pandemic, which disproportionately affected Native Americans, especially those living on tribal lands. Many Native students had little to no access to remote learning technologies because of lack of infrastructure and connectivity.

The silver lining of the pandemic was the realization of the need for universal access to broadband and technology to educate students. On April 30, 2021, the First Judicial Court ordered the state to provide digital devices and high-speed internet to students who lack the tools necessary to access remote learning. Significant investments of state and federal funds for broadband infrastructure and educational technology will help to remedy some of the disparities that Native students experience.

Increased funding for instruction and support services, K-3 Plus, extended school year, and quality teachers can all improve the academic performance of Native students and help overcome the achievement gap.

NM’s Landmark Litigation

In 2018, District Court Judge Sarah Singleton issued findings and orders in the Yazzie/Martinez case. This case garnered national attention and will forever affect policies and budgets in New Mexico. After studying the data filed in 2014 (the result of years of research, advocacy, and litigation) and hearing testimony from the 23 school districts and other plaintiffs, she determined

that approximately 70% of New Mexico’s students were not receiving an equal and sufficient education as required by the state constitution. In addition to Native students (represented by lead plaintiff, Wilhelmina Yazzie), the consolidated suit demonstrated that PED had failed to adequately educate students who are not English proficient as well as those challenged with disabilities and economic disadvantages.

Part of the research provided in the Yazzie/Martinez lawsuit demonstrated that Native students did not have access to culturally and linguistically relevant programs required by the Indian Education Act. As a result of the court order, the New Mexico legislature in 2019 allocated millions of additional dollars for programs and services to address learning needs. In June 2020, the court denied the state’s request to end court oversight of compliance and ordered PED and the Legislature to address the educational needs of the plaintiffs no matter the cost.

Native communities have been spurred into action as a result of the Yazzie/Martinez decision. Leaders and advocates are challenging the state to provide scholarships and professional development training so that Indian students may be taught by qualified Native educators and to support Native-serving districts with substantial increases in allocations. Native educators and experts are also working on a sequential, culturally relevant curriculum and developing materials appropriate for the state’s various tribes, nations, and pueblos. Efforts to build a robust Indigenous teacher pipeline are underway.

Conclusion

New Mexico clearly recognizes that culturally and linguistically relevant programs will help address the achievement gap and assist Native American students in becoming adequately prepared for college and careers. With more flexibility, funding, and support from PED, the future is bright for Native students in the future, but much needs to be done in the next few years to ensure implementation.

PED can immediately provide leadership so that school districts and charter schools serving most of the Native students collaborate meaningfully with tribal communities. Evaluation instruments can guide and measure completion of strategic objectives and accomplishments of goals. Sharing reports that document specific accomplishments and challenges will improve Indian education across the state.

Appendix I

Below is a list of some of the recent measures New Mexico has taken to support its Native American students.

Legislative Appropriations

- \$5.25 million each year for past two years to the Indian Education Fund
- \$5.5 million over two years for Indigenous, Multilingual, Multicultural, and Special Education Initiatives

- \$9 million for culturally and linguistically diverse instructional materials and curriculum development

PED

- Awarded grants to 21 nations, tribes, and pueblos and 28 school districts and charter schools serving large numbers of Native American students
- Developed culturally and linguistically diverse instructional materials
- Provided 6,252 Chromebooks to 22 tribes and schools with a significant Native American student population, 101 Cradle Point fixed and mobile hot spots to tribal schools and 22 tribes, and 700 residential hotspots to the Navajo Nation to assist in closing the digital divide
- Trained district, charter, and tribal education departments in culturally and linguistically responsive instructional and family engagement practices

Several handouts and presentations from organizations and the PED prepared for the NM legislature's Indian Affairs Committee in Gallup in August 2021 provide useful summaries and status reports.

https://www.nmlegis.gov/committee/Handouts_List?CommitteeCode=IAC&Date=8/4/2021)

Recruitment and Retention of Quality Educators

In response to the court's findings and conclusions in the consolidated Yazzie- Martinez- education sufficiency lawsuit, the state has increased its efforts to recruit, train, and retain educators who reflect the state's ethnically diverse student population. It is using evidence-based strategies to improve the quality of teacher preparation programs by providing state-funded teacher residencies and grow-your-own scholarship programs to help current school employees attain teacher credentials. Financial aid for current and prospective educators is especially important to Native New Mexicans living in tribal communities. A better trained, more representative educator workforce will help close the achievement gap between Native and non-minority students.

Having more Indigenous educators will help Native students keep their cultures alive. Students who become bilingual will help preserve Native languages that are in danger of disappearing. With targeted scholarships and financial aid, more Native students will attend and complete college and have more career opportunities. Many may choose to become teachers and administrators and future leaders of their communities.

Impact Aid for Native-Serving Districts

In 2021, the federal government ordered New Mexico to stop its long-term practice of deducting federal Impact Aid from the funding school districts receive through the State Equalization Guarantee (SEG). This was a victory hard won after many years and an important result of tribal leaders identifying the illegal/unfair practice in the Yazzie/Martinez litigation. Congress had established the Impact Aid Program through Title VII of the Elementary and Secondary Education Act of 1965 to assist local school districts that have lost tax revenue due to tax-exempt federal property or that have increased expenditures due to the enrollment of federally connected children, including children living on federal Indian reservations.

Indian Education Policy Leadership

The Santa Fe Indian School Leadership Institute, founded in 1997, has brought together Indigenous leaders from across New Mexico together and held Community Education Institutes and Convocations on Native lands to address the challenges, goals, and needs related to tribal sovereignty and self-determination in Indian education.

The Leadership Institute continues to be the principal organization working with the state's sovereign nations, supporting the Tribal Education Alliance (TEA) along with the Native American Budget and Policy Institute at UNM and the New Mexico Center on Law and Poverty are leading change. TEA includes the All Pueblo Council of Governors, the Jicarilla Apache Tribal Council, the Mescalero Tribal Council, Navajo Nation leaders, tribal education directors, language program directors, social workers, health practitioners, Native higher education faculty, and Native community members. Together they have developed a framework for Indian education that balances Indigenous knowledge with essential skills for success in today's society.

The Tribal Remedy Framework reflects years of collaborative work to reform Indian education and sustain core Indigenous cultural values and traditions. This new blueprint for New Mexico's Indian education reform promises to become a national model for Indian education reform and advancing tribal sovereignty and equality. A graphic of the Framework, which is being used to guide legislative and administrative reform efforts, can be found below.

For years, New Mexico's Congressional delegation has successfully used the Leadership Institute's work to advance federal Indian education policy.

Key Sources

"Rebuilding Native Nations and Strategies for Governance and Development" Indigenous Governance Program and Native Nations Institute, University of Arizona. Tucson, Arizona. May 27, 2020.

<https://nnigovernance.arizona.edu/webinar-rebuilding-native-nations-and-strategies-governance-and-development>

NM Public Education Department (PED), <https://webnew.ped.state.nm.us/bureaus/indian-education/>. See Indian Education Act (NMSA 1978 Section 22-23A-1 through 22-23A-8) in the Appendix. The Indian Education Bureau makes grants to tribal departments of education, districts, and charter schools serving significant numbers of Native American students. See also PED's "Memorandum Regarding Yazzie and Martinez Consolidated Lawsuit." P.2., <https://webnew.ped.state.nm.us/bureaus/yazzie-martinez-updates/> (October 22, 2019).

NM's State-Tribal Collaboration Act mandates government-to-government consultations to ensure that every NM agency collaborates with the state's Indian Tribes, Pueblos, and Nations. PED's July 2021 report included information about program administrators for Titles I, II, III, IV, VI, and VII and other areas providing training to tribal education directors and officials from 24 districts and 9 charter schools on issues that impact the state's Indian students.

NM's Higher Education Department administers a number of programs for Native students in middle and high schools and provides programmatic support and technical assistance to Tribal colleges, higher education institutions, and adult education programs aimed at serving Native American students. HED's 2020 report and PED's 2021 report are available along with other state agency reports at <https://www.iad.state.nm.us/annual-reports/>.

NM Legislative Finance Committee. "Indian Education Act Implementation." January 18, 2021. "Report to the Legislative Finance Committee on the Indian Education Act and Culturally and Linguistically Responsive Education." Bobroff, Kara. (December 2020).

<https://nmlegis.gov/Handouts/ALFC%20011821%20Item%202%20Progress%20Report%20-%20Indian%20Education%20Act%20Implementation.pdf>

NM Legislative Education Study Committee (LESC) "Policies and Practices for Native American Education in New Mexico" (2019). See also LESC's Annual Report to the Legislature (January 2020) and Post-Legislative Session Review (May 2021).

Oakes, J., Espinoza, D., Darling-Hammond, L., et al. (2020). "Improving Education the New Mexico Way: An Evidence-Based Approach." Learning Policy Institute.

New Mexico First Judicial District Court. (2018). "Court's Findings of Fact and Conclusions of Law and Order Regarding Final Judgment." Case No. D-101-CV-2014-00793. P.195, 589.

Rudiger, A. (2020). "Pathways to Education Sovereignty: Taking a Stand for Native Children." Tribal Education Alliance, New Mexico. https://nabpi.unm.edu/assets/documents/tea-full-report_12-14-20.pdf

"A History of American Indian Education." Education Week, December 4, 2013. <https://www.edweek.org/leadership/1819-2013-a-history-of-american-indian-education/2013/12>
See also <http://www.tribal-institute.org/lists/icwa.htm>.

U. S. Department of Education, Every Student Succeeds Act, Pub. L. No. 114-95, Title I, § 1401 (2015) SEC. 6121. ø20 U.S.C. 7441¿ IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN AND YOUTH

National Indian Education Association (NIEA), www.niea.org

Woods, Alden. "The Federal Government Gives Native Students an Inadequate Education, and Gets Away With It". ProPublica. The Arizona Republic, 2020-08-06. Retrieved 2021-07-29.

.....

Appendix II

Indian Education Act

Purposes

- 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.

Key Requirements

- Secretary of PED to appoint an assistant secretary for Indian education to:
- Direct the Indian Education Division and advise the secretary on native education policy.
 - Coordinate higher education transition efforts for tribal students in public schools
 - Collaborate with state and federal agencies and tribal governments on implementation of the Indian Education Act.
 - Convene semiannual government-to-government meetings to receive input on education of tribal students.
 - Provide assistance to school districts and tribes on resource allocation; services based on current indigenous education best practices; and curricula in native languages, culture, and history;
 - Develop or select a challenging, sequential, culturally relevant pre-advanced placement curriculum for tribal students in pre-kindergarten through sixth grade;
 - Conduct indigenous research and evaluation for effective curricula for tribal students;
 - Collaborate with the department to provide distance learning for tribal students in public schools;
 - Establish, support and maintain an Indian education advisory council;
 - Enter into agreements with each New Mexico tribe or its authorized educational entity to share programmatic information and coordinate technical assistance for public schools that serve tribal students;
 - Seek funds to establish and maintain an Indian education office in northwestern NM or elsewhere
 - Seek funds to establish, develop and implement culturally relevant support services to increase the number of tribal teachers, administrators and principals;
 - Develop curricula to provide instruction in tribal history and government and plans to implement these into history and government courses in school districts
 - Ensure that native language bilingual programs are part of a school district's professional development plan
 - Develop a plan to establish a post-secondary investment system for tribal students.

NM State Statute: 22-23A NMSA 1978, This table is from a [Indian Education Act Implementation report to the Legislature| January 2021](https://nmlegis.gov/Handouts/ALFC%20011821%20Item%202%20Progress%20Report%20-%20Indian%20Education%20Act%20Implementation.pdf)
<https://nmlegis.gov/Handouts/ALFC%20011821%20Item%202%20Progress%20Report%20-%20Indian%20Education%20Act%20Implementation.pdf> ,p.38.

Tribal Remedy Framework



Rudiger, A. (2020). "Pathways to Education Sovereignty: Taking a Stand for Native Children." Tribal Education Alliance, New Mexico. https://nabpi.unm.edu/assets/documents/tea-full-report_12-14-20.pdf

Meredith Machen, 9/2/21, meredith.machen@gmail.com, 505 577-6337