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Indian Education Fund Review and Analysis

With the passage of the Indian Education Act in 2003, New Mexico was the first state in the country to establish in state law that Native American students have the right to equitable and culturally relevant learning environments and instructional materials. The Indian Education Act provides a systematic framework for improving educational outcomes for Native American students and outlines how state and local education officials should partner and consult with New Mexico's 23 recognized tribes and pueblos. A 2008 amendment to the law ensured the Public Education Department (PED) uses funds appropriated from the Indian education fund for the purposes stated in the Indian Education Act.

However, the Indian Education Act has never been fully implemented, and Native American students have struggled to keep up with their peers. According to the 2021-2022 Tribal Education Status Report, proficiency rates for Native American students were considerably lower than those of students of other ethnicities:

- In reading, half as many proficient Native American students were proficient compared to the percentage of proficient Asian American students;
- In math, one-fifth of Native American students were proficient; and
- In science, just under one-third of Native American students were proficient.

The court's ruling in the consolidated *Martinez* and *Yazzie* lawsuit—which found significant achievement gaps between economically disadvantaged students, English learners, special education students, Native American students, and their non-disadvantaged peers—noted that the state had consistently failed to comply with the provisions of the Indian Education Act. For example, the court noted the state has failed to provide school districts with sufficient technical assistance, guidance, or oversight on the implementation of the New Mexico Indian Education Act. Since the court's findings, the Legislature has significantly increased appropriations to the Indian education fund, which rose from \$1.8 million in FY19 to \$20 million in FY24. However, questions remain regarding the administration of the Indian education fund, and if more or fewer guardrails are needed for PED, tribal entities, and school districts and charter schools.

Key Takeaways

The Legislature has appropriated \$1.3 million to the Indian education fund since FY04.

Page 2

Historically, carryover balances have been high, rising from \$1.3 million in FY19 to \$4.3 million in FY24, raising questions about administration of the fund and if more could be done to get money spent.

Page 2

Stakeholders have shared the need to build capacity at tribal education departments, and that ability to spend Indian education fund awards depends on capacity.

Page 3

Although more school districts and charter schools have been able to spend down their awards than tribal entities, this still raises questions about the process.

Page 4

Indian Education Fund

Administration of the Fund

Historically, PED has allocated Indian education funds through grants to tribal education departments and school districts and both state and locally-chartered charter schools. Since FY04, the Legislature has appropriated \$102,708,400 million to the Indian education fund to support the implementation of the Indian Education Act. According to PED, allocations from the Indian education fund are based on priorities established by the PED Secretary and the Assistant Secretary of Indian Education, in collaboration with tribal leaders, Tribal Education Directors, Indian Education Advisory Council members, and school personnel serving Native American students.

PED awards these grants to recipients to develop programs in priority areas, and while priority areas are in alignment with the Indian Education Act, those areas have varied year to year and presumably reflect the priorities of PED leadership at the time. For example, grants awarded in 2016-2017 were awarded to develop curriculum and instructional materials, including a teacher certification and assessment process, but grants awarded in 2017-2019 were awarded to recipients to develop programs in one or more of the five priority areas: 1) attendance and truancy, 2) cultural competency and culturally responsive learning environments, 3) college and career readiness, 4) supporting Native language programs and English learners, and 5) school systems alignment between PED/Bureau of Indian Education operated schools/tribally controlled schools.

The Indian education fund is statutorily a nonreverting fund, which means PED carries over fund balances not spent at the end of each fiscal year. Historically, carryover balances have been high, and have risen from \$1.3 million in FY19 to \$4.3 million in FY22, raising questions about the administration of the fund and if more could be done to reduce carryover. The table below shows legislative appropriations, expenditures, and carryover for the Indian education fund from FY19 to FY24.

Indian Education Fund Appropriations, Expenditures, and Carryover FY19-FY24

	FY19	FY20	FY21	FY22	FY23	FY24
Legislative Appropriation	\$1,824,600	\$6,000,000	\$5,250,000	\$5,250,000	\$14,988,600	\$20,000,000
Total Expenditures	\$2,170,682	\$5,267,812	\$4,191,112	\$4,064,039	¹	¹
Total Carryover/Remaining Balance	\$1,294,650	\$2,026,838	\$3,085,726	\$4,271,687	¹	¹

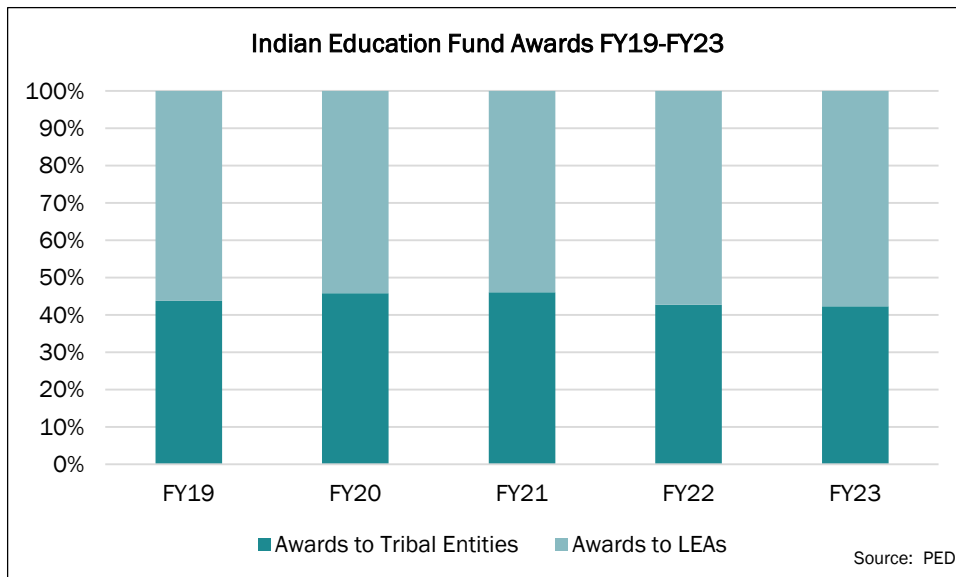
Source: DFA and PED

¹ Expenditures and carryover for FY23 are not available before the end of the fiscal year, and only the legislative appropriation is available for FY24.

Award Letter Process. To attempt to address high carryover balances, over the past two years PED has transitioned to an award letter process to award grants from the Indian education fund to entities that receive the funding for tribal education priorities and programs. The award letter process replaced the prior process where PED entered an intergovernmental agreement (IGA) with each tribe, nation, or pueblo, a process which took a considerable amount of time for both parties. Sometimes, according to PED, tribes, nations, and pueblos could not complete the signature process in time for the grant to be awarded, resulting in a loss of funds for that fiscal year. To remedy this situation, PED began to utilize the award letter process because it was a less complicated process. However, tribal representatives have noted the award letter process places new requirements on local programs, limiting flexibility.

Funding for Tribal Entities

The Indian education fund has been an important source of funding for tribal education departments. While there have historically been federal grants for tribal education departments, those funds have usually been allocated through a competitive grant process for use in schools funded by the federal Bureau of Indian Education. However, as shown by the graph below, tribal entities typically receive less than half of Indian education fund awards, receiving between 42 percent and 46 percent of total awards from FY19 to FY23, while local education agencies (LEAs), that is school districts and charter schools, receive the remainder of funds.



Despite tribal education departments need for Indian Education Act funding, a lack of local capacity has hindered tribal education department's ability to spend those funds. While ability to spend varies significantly, most tribal entities that received an Indian education fund grant have not been able to spend the entire award amount (see **Attachment 1**). As Indian education fund award amounts and award parameters vary year to year, they do not provide the predictable, recurring funding needed to increase staffing and build capacity. As the Indian Education Act requires PED to partner with tribes to increase tribal involvement and control over schools and the education of students located on tribal land, building capacity at tribal education departments is paramount to enable collaboration.

Funding for School Districts and Charter Schools

In addition to awards for tribal entities, PED provides Indian education fund awards to school districts and both state and locally-chartered charter schools that serve a significant portion of Native American students through programs and services aligned to the Indian Education Act. School districts and charter schools typically receive a larger portion of Indian education fund grants as a whole than tribal entities, receiving 54 percent to 58 percent of total awards from FY19 to FY23.

The chart below illustrates PED is not using all Indian education fund appropriations for grant awards. The percentage of the appropriation used for awards has varied from 32 percent to 90 percent from FY19 to FY23. It is unclear how this funding is currently being used to support tribal entities and school districts and charter schools.

Percentage of Indian Education Fund Awards to Tribal Entities and School Districts and Charter Schools FY19-FY23

	FY19	FY20	FY21	FY22	FY23
Legislative Appropriation	\$1,824,600	\$6,000,000	\$5,250,000	\$5,250,000	\$14,988,600
Total Amount of Awards	\$1,088,247.70	\$3,719,409.44	\$4,747,601.78	\$4,518,369.80	\$4,857,022
Percentage of Appropriation Used for Awards	60%	62%	90%	86%	32%
Awards to tribal entities	44%	46%	46%	43%	42%
Awards to LEAs	56%	54%	54%	57%	58%

Source: DFA and PED

Ability to spend varies significantly by school district or charter school (see **Attachment 2**). Most school districts and charter schools have not been able to spend the entire award amount, similar to tribal entities. Although more school districts and charter schools have been able to spend down their awards than tribal entities, this still raises questions about the process, and if PED’s award letter process has adequately addressed issues that began with the prior IGA process to administer Indian education fund awards. Some stakeholders have suggested the issue is the administration of funding in short-term, reimbursable grants, and no matter the process, spending issues will remain until award parameters are loosened and awardees are able to carry over funding from year to year.

Next Steps

The administration of the Indian education fund in the form of a PED-directed grant process to tribal entities and school districts and charter schools has led to unspent funds and high carryover balances. In addition, award parameters have prevented award recipients from using awards to increase capacity by hiring staff, and more broadly, to choose how to spend funds to best serve Native American students.

LESC attempted to remedy parts of these issues by endorsing legislation that would have directed a larger portion of the Indian education fund directly to tribes and would have created a more stable and sustainable source of revenue for tribal initiatives. That legislation did not pass. During the interim and beyond, LESL staff will continue to examine issues related to the Indian Education Act, including possible funding mechanisms, evaluation of Indian education initiatives, and whether student outcomes improve with funding increases. This will enable staff to elevate bright spots and best practices around the state. Staff will also study the possibility of using state funds to support capital outlay on tribal schools.

Indian Education Act Grants for Tribal Entities, 2019-2023

Tribe, Pueblo, or Nation	2019-2020 Award Amount	2019-2020 Reimbursements	2019-2020 Remaining Balance	2020-2021 Award Amount	2020-2021 Reimbursements	2020-2021 Remaining Balance	2021-2022 Award Amount	2021-2022 Reimbursements	2021-2022 Remaining Balance	2022-2023 Award Amount
Acoma	\$75,471.53	\$19,877.71	\$55,593.82	\$77,665.00	\$29,815.83	\$47,849.17				
Cochiti	\$85,616.00	\$83,991.94	\$1,624.06	\$89,036.85	\$41,364.00	\$47,672.85	\$78,608.00	\$62,600.98	\$16,007.02	\$103,150.00
Isleta	\$60,046.00	\$3,602.63	\$56,443.37	\$92,209.95	\$80,518.77	\$11,691.18	\$99,999.99	\$99,706.90	\$293.09	\$100,000.00
Jemez	\$100,000.00	\$99,999.99	\$0.01	\$99,999.99	\$99,999.99	\$0.00	\$100,000.00	\$100,000.00	\$0.00	\$108,355.00
Jicarilla				\$100,000.00	\$0.00	\$100,000.00	\$99,999.99	\$99,999.99	\$0.00	\$100,000.00
Laguna	\$90,640.00	\$80,643.60	\$9,996.40	\$84,000.00	\$80,442.47	\$3,557.53	\$93,450.00	\$92,869.97	\$580.03	\$113,650.00
Mescalero	\$98,875.00	\$51,415.19	\$47,459.81	\$98,875.00	\$11,254.12	\$87,620.88	\$98,875.00	\$95,779.47	\$3,095.53	
Nambé	\$70,501.00	\$50,701.24	\$19,799.76	\$75,509.70	\$71,316.30	\$4,193.40	\$75,166.35	\$75,166.35	\$0.00	\$97,669.00
Navajo				\$200,000.00	\$114,232.50	\$85,767.50	\$99,999.99	\$0.00	\$99,999.99	
Owingeh	\$86,445.00	\$81,291.84	\$5,153.16	\$77,853.30	\$54,580.33	\$23,272.97	\$95,587.80	\$39,986.30	\$55,601.50	\$97,230.00
Picuris	\$61,876.00	\$61,740.57	\$135.43	\$95,513.88	\$82,426.20	\$13,087.68	\$99,645.00	\$87,934.25	\$11,710.75	\$100,485.00
Pojoaque	\$95,483.00	\$44,892.00	\$50,590.98	\$99,939.00	\$58,702.38	\$41,236.62	\$99,999.12	\$82,118.10	\$17,881.02	
Sandia	\$4,688.55	\$3,410.40	\$1,278.15	\$100,000.00	\$89,666.69	\$10,333.31	\$100,000.00	\$98,931.87	\$1,068.13	\$99,300.00
San Felipe	\$99,911.13	\$96,187.95	\$3,723.18	\$99,715.13	\$64,512.25	\$35,202.88	\$99,787.80	\$92,256.80	\$7,531.00	\$100,885.00
Ildefonso	\$100,000.00	\$93,682.89	\$6,317.00	\$100,000.00	\$45,886.17	\$54,113.83	\$100,000.00	\$63,364.43	\$36,635.57	\$100,000.00
Santa Ana	\$100,000.00	\$70,877.86	\$29,122.14	\$99,750.00	\$76,970.59	\$22,779.41	\$99,999.90	\$88,031.89	\$11,968.01	\$102,535.00
Santa Clara	\$100,000.00	\$70,034.77	\$29,965.23	\$100,000.00	\$0.00	\$100,000.00	\$100,000.00	\$69,015.11	\$30,984.89	\$102,010.00
Domingo	\$93,032.52	\$90,164.44	\$2,868.08	\$99,750.00	\$95,966.63	\$3,783.37	\$99,206.10	\$98,451.78	\$754.32	\$113,000.00
Taos	\$99,617.76	\$99,617.76	\$0.00	\$100,000.00	\$95,964.28	\$4,035.72	\$100,000.00	\$92,359.18	\$7,640.82	\$104,605.00
Tesuque	\$80,768.00	\$78,767.68	\$2,000.32	\$99,179.85	\$47,292.18	\$51,887.67				
Zia	\$100,000.00	\$100,000.00	\$0.00	\$100,000.00	\$100,000.00	\$0.00	\$99,306.90	\$99,306.00	\$0.90	\$99,991.00
Zuni	\$99,832.99	\$71,243.08	\$28,589.91	\$98,280.00	\$90,048.50	\$8,231.50	\$94,460.88	\$82,935.51	\$11,525.37	\$110,312.00
Total	\$1,702,804.48	\$1,352,143.56	\$350,660.92	\$2,187,277.65	\$1,430,960.18	\$756,317.47	\$1,929,330.80	\$1,620,814.88	\$308,515.94	\$2,053,177.00

Source: PED