

Indian Education Act Implementation

Summary

New Mexico's Indian Education Act, passed in 2003 and updated in 2019, lays out goals and requirements for providing Native American students an equitable, culturally relevant education through collaboration between tribes, schools, and the state. However, Native American students, who make up 10 percent of enrollment in New Mexico's public schools, continue to perform well below their peers on state and national measures of achievement, and state courts have ruled Native American students are not receiving a sufficient and equitable education in the *Martinez-Yazzie* consolidated lawsuit.

The Evaluation: *Quick Response Review of Implementation of Indian Education Act (March 2006)* examined the provisions and implementation of the state Indian Education Act. The program evaluation found the act to be "vague, overly ambitious, and extremely difficult to implement." Nineteen of the report's 26 recommendations, or 73 percent, have been completed or are in progress.

The state is investing significant financial resources in addressing these shortcomings, with state funds conservatively making up \$90 million of \$147 million in combined state and federal funds available in FY21 for districts, charter schools, and institutions of higher education to devote to purposes aligned with the Indian Education Act. Nevertheless, a history of

understaffing in the Public Education Department's Indian Education Division, difficulties with utilizing funding including the Indian education fund, and with local collaboration at the district level, and challenges with ensuring funds are aligned to specific, targeted outcomes have resulted in a system that has not served Native American students in a comprehensive and coordinated manner.

Recent actions by the state place a high priority on Native American education, including 2019 legislation to amend the Act, added flexibility to use funding for at-risk students, and PED's efforts to fully staff the Indian Education Division. More work is needed to ensure PED tracks and assesses financial reporting of at-risk funds for Native American students, Indian education fund grants are not left unspent, and these dedicated funds are more closely linked to student outcomes.

Progress Reports foster accountability by assessing the implementation status of previous program evaluation reports, recommendations and need for further changes.



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Background: New Mexico’s Indian Education Act Aims to Address the Unique Needs of Indigenous Students

- LFC Progress Report Objectives**
1. Review state and local compliance with the Indian Education Act.
 2. Examine related state efforts to meet *Martinez-Yazzie* court requirements for Native American students.
 3. Review effectiveness of efforts to close the achievement gap for Native American students.

The Legislature passed the Indian Education Act in 2003 to provide Native American students in New Mexico with opportunities for an equitable and culturally appropriate education in public schools. The law establishes the Indian Education Division of the Public Education Department (PED) as well as the Indian Education Advisory Council (IEAC), and lays out systems for the state and school districts and charter schools to collaborate with tribal governments on matters related to curricula, teaching, support services, and other programs to meet the needs of Native American students.

The objectives of this progress update were to review compliance with the act, examine how PED is addressing provisions of the *Martinez-Yazzie* litigation pertinent to Native American students, and determine if the act’s provisions and resultant PED and Indian Education Division (IED) implementation and uses of the Indian education fund are addressing the Native American achievement gap. The purposes of the act are to ensure equitable and culturally relevant learning systems; maintenance of Native languages; and tribal involvement and control over schools.

The act is meant to ensure equitable and culturally relevant education for Native American students through state oversight and local implementation.

Decision-making over public school instruction is shared across state and local entities. The Legislature defines the academic subjects that students must be taught in different grade levels.ⁱ PED sets content standards and student learning objectives for each of those academic subjects.ⁱⁱ Local school districts and charter schools are then responsible for developing and implementing curricula (daily lesson plans and instructional content) that align to state standards (See Appendix A).ⁱⁱⁱ

In 2003, the Legislature enacted the state Indian Education Act to ensure that Native American public school students receive an equitable and culturally relevant education. The Legislature defined the various purposes and goals of the act in state law, including maintenance of native languages and providing for the study, development, and implementation of educational systems that positively affect the educational success of Native American students.^{iv} To achieve

Figure 1. State and Local Responsibilities Under the New Mexico Indian Education Act

Entity	Goals/Responsibilities
State of New Mexico	<ul style="list-style-type: none"> • Ensure equitable and culturally relevant learning environments for Native American students in public schools
PED Indian Education Division	<ul style="list-style-type: none"> • Provide technical assistance to local districts about IEA implementation, • Administer the state Indian Education Fund, • Collaborate with relevant stakeholders, • Report on educational trends, and • Conduct research and evaluation.
Indian Education Advisory Council	<ul style="list-style-type: none"> • Advise PED and the Early Childhood Education and Care Department on Native American education policies
Local School Districts and Charters	<ul style="list-style-type: none"> • Provide instruction and other services, • Meet with local tribal stakeholders, • Conduct student needs assessments to prioritize budgets, and • Develop a systemic framework for IEA implementation

Source: LFC staff review of the state Indian Education Act (22-23A NMSA 1978).

Figure 2. New Mexico Indian Education Act Timeline



Source: LFC files.

these goals, the act created the PED Indian Education Division, led by an assistant cabinet secretary for Indian education, to provide oversight and technical assistance to local districts and charter schools in providing culturally relevant instruction and services to Native American students. The act also created an Indian Education Advisory Council, comprising 16 New Mexico tribal stakeholders, to advise the PED cabinet secretary on Native American education policies. With state oversight and assistance, local school districts and charter schools are then responsible for providing culturally relevant instruction and student services. The act also established the Indian education fund to provide grants to school districts, charter schools, and tribal governments to implement the goals of the act.^v

The Legislature amended the Indian Education Act in 2019 to enhance accountability. In 2019, the Legislature amended the act to require “historically defined Indian impacted” school districts and charter schools to provide more information to the state about their efforts (Laws 2019, Chapter 16; House Bill 250).¹ These include 23 school districts and nine charter schools that are on or include tribal lands or whose student population is at least 45 percent Native American (see Table 1; see Appendix C for the full definition). Specifically, the new provisions require Native American-serving school districts and charter schools to conduct needs assessments, prioritize needs in their budgets based on those assessments, and implement systemic frameworks for improving Native American student educational outcomes. Under administrative rules promulgated by PED, these provisions are effective starting with school year 2020-2021 (SY21).

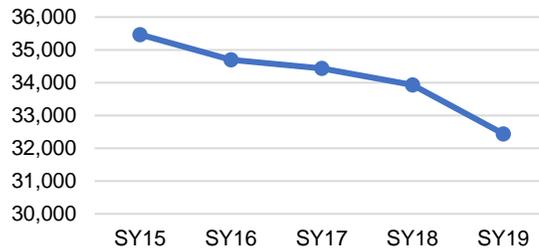
Fewer Native American students are attending New Mexico public schools. Native American students make up about 10 percent of public school enrollment, roughly the same as the Native American share of the total state population. However, the number of Native American students in New Mexico public schools has decreased by 8.5 percent over the last five years, from 35.5 thousand in SY15 to 32.4 thousand in SY19.

Table 1. 32 Native American-Serving School Districts and Charter Schools*

School Districts	
Albuquerque	Jemez Valley
Aztec	Los Lunas
Bernalillo	Magdalena
Bloomfield	Peñasco
Central Consolidated	Pojoaque Valley
Cuba	Rio Rancho
Dulce	Ruidoso
Española	Santa Fe
Farmington	Taos
Gallup McKinley	Tularosa
Grants	Zuni
Jemez Mountain	
Charter Schools	
Dził Dít'ooí School of Empowerment Action and Perseverance (DEAP)	
Dream Diné	
Hozho Academy	
La Tierra Montessori	
Middle College High School	
Native American Community Academy (NACA)	
San Diego Riverside	
Six Directions	
Walatowa Charter High	
* Note: These districts and charter schools are those that meet the definition of “historically defined Indian-impacted school district” under 6.35.2.7 NMAC as determined by PED.	
Source: PED	

¹ This report uses the term “Native American-serving” in lieu of the statutory term “historically defined Indian impacted.”

Chart 1. Native American Students in New Mexico Public Schools



Source: PED SY15-SY19 80th day counts

Table 2. New Mexico Native American Tribes, Pueblos, and Nations

Pueblos
Acoma
Cochiti
Isleta
Jemez
Laguna
Nambé
Ohkay Owingeh
Picuris
Pojoaque
Sandia
San Felipe
San Ildefonso
Santa Ana
Santa Clara
Santo Domingo (Kewa)
Taos
Tesuque
Zuni
Zia
Other Tribes and Nations
Fort Sill Apache Tribe
Jicarilla Apache Nation
Mescalero Apache Tribe
Navajo Nation

Source: LFC Files

New Mexico has 23 sovereign Native American governments, a state funded public education system, and a federally funded Bureau of Indian Education (BIE) system. There are 23 Native American tribes located in New Mexico - 19 Pueblos, three Apache tribes, and the Navajo Nation. Each tribe is a sovereign nation with its own government, traditions, and culture, and each tribe has a separate and unique relationship with the state public education system and the federal Bureau of Indian Education system. The state Indian Education Act applies to PED and New Mexico’s public and charter schools, but relates to BIE schools only insofar as it requires PED to develop a relationship with BIE and encourage alignment of assessments.

Tribal education departments (TEDs) are federally and tribally funded executive branch agencies within sovereign tribal governments. The roles and responsibilities of TEDs vary according to each Tribe’s government, laws, and resources. TEDs are not schools but are the primary contact for their tribal governments regarding education policy issues. Tribal education departments may be involved in curriculum development, teacher training, grant administration, student support services, advocacy, or other education initiatives. Because TEDs are part of sovereign nations, the Indian Education Act does not place any statutory requirements on them, but includes them among entities with which PED must collaborate on matters related to identifying educational opportunities for Native American students, including transitioning to postsecondary education.^{vi}

About 6,000 Native American students in New Mexico attend schools on tribal land funded by the federal Bureau of Indian Education.^{vii} In some ways, BIE acts like a school district, directly controlling staffing and budgets. In other cases, BIE operates like a state oversight agency, providing funds and technical assistance for schools operated by sovereign tribal governments or local school boards. In New Mexico, the BIE system consists of 44 schools, which includes 22 tribally controlled schools and 22 schools operated directly by BIE. Most are elementary and middle schools, and 12 are high schools (see Appendix D for the list of all BIE schools in New Mexico). Students living on tribal land may have access to both BIE and state-supported public schools at various points in their schooling. BIE has administrative offices in both Washington, D.C. and Albuquerque.

In 2018, the 1st Judicial District Court ruled New Mexico does not provide at-risk students, including Native Americans, with an equitable and sufficient education.

In 2014, students, parents, and school districts filed two lawsuits, *Martinez v. State of New Mexico* and *Yazzie v. State of New Mexico*, alleging the state is

not providing students with a sufficient education, especially Native American students, English language learners, students with disabilities, low-income students, and other students at risk of poor outcomes. In July 2018, a district judge agreed, ruling on the consolidated lawsuits that the state’s public education inputs, oversight, and outcomes did not meet the state’s constitutional obligation to provide a sufficient education. Overall, the court found student achievement and attainment “dismal” and attributed these poor educational outputs to insufficient educational inputs and state oversight.^{viii} The court did not specifically define what levels of student achievement or funding would be sufficient, but instead deferred to the policymaking roles of the legislative and executive branches of government.

From FY18 to FY21, the Legislature increased its state public school funding formula appropriation by \$544 million (or 22 percent) from \$2.5 billion in FY18 to \$3 billion in FY21.² The Legislature also modified the public education funding formula to allocate more funding for at-risk students (Laws 2019, Chapter 207, House Bill 5; Laws 2019, Chapter 271, House Bill 1; Laws 2020 1st Special Session, Chapter 5, House Bill 1), added flexibility for the use of at-risk funding, and required school districts and charter schools to provide educational plans and report more on the services provided to at-risk students (Laws 2019, Chapter 207, House Bill 5).

Tribal leaders proposed a framework for \$95 million in funding to support Native American education initiatives in response to the court’s ruling.

During the 2020 legislative session, Legislators introduced three bills to expand programs at higher education institutions to further research and development of Native language, curriculum, and teacher training programs; fund capital projects at tribal libraries and education departments; and expand funding for curriculum and materials for Native students. These bills would have provided funding to support some activities aligned with the act, but would not have amended the act itself. Rather, these proposals were based on recommendations from tribal leaders for measures to address issues and violations identified in the *Martinez-Yazzie* ruling.

Across three bills, House Bills 134, 137, and 138, these proposals totaled approximately \$95 million, primarily encompassing higher education initiatives and capital outlay on tribal lands. These bills were not passed during the 2020 legislative session. However, funding appropriated from existing sources in FY21 could support much of this total. Tribal leaders are proposing similar measures with a phased approach for the 2021 legislative session.

Table 3. Funding Proposed in 2020 Tribal Remedy Framework Bills

Bill	Purpose	Amount (in Thousands)
HB 134	Expansion of Native student support and Native education development programs	\$19,807.5
HB 137	Capital appropriations for tribal libraries, broadband, and education resource centers	\$59,193.1
HB 138	Programs to develop curricula, materials, and IT support at tribal education departments	\$16,200.0
	Total	\$95,200.7

Source: LFC files

² For FY21, the Legislature also appropriated an additional \$108 million in nonrecurring federal CARES Act emergency relief funding for public schools. This \$108 million in federal funding is not reflected in the \$544 million state appropriation increase from FY18 to FY21.

Despite efforts under the act and other public education initiatives, Native American students continue to perform below their peers, although some metrics show recent improvement.

While there have been some modest improvements in Native American student performance, the overall achievement gap continues. A 2006 LFC report, *Quick Response Review of Implementation of the Indian Education Act*, highlighted the importance of closing the achievement gap to improve Native American student achievement in New Mexico.

Native American students have improved performance on several key outcomes, including high school graduation. Native American students saw an 11-point increase in the four-year high school graduation rate during the decade between 2009 and 2019, from 58 percent to 69 percent. This is higher than the nine-point increase statewide. Native American third-graders also improved in reading and math proficiency by 8 and 7 percentage points, respectively, between 2015 and 2019, but still remain below statewide proficiency rates. Native American students also increased their bilingual proficiency rates from 30 percent to 47 percent between 2015 and 2019.

Table 4. Key Native American Student Outcomes and Conditions

Native American Population			
New Mexico	230,651	11%	11% → SAME
US	3,282,395	1.5%	1% →
		2006	2019
Students in New Mexico Public Schools			
Native American Student:	32,439	10%	10% → SAME
Total Number of Students	322,776		
		2015	2019
4-Year High School Graduation			
Native American Students		58%	69% → BETTER
Statewide		66%	75%
		2009	2019
Third Grade Reading Proficiency*			
Native American Students		11%	19% → BETTER
Statewide		26%	30%
		2015	2019
Third Grade Math Proficiency*			
Native American Students		14%	21% → BETTER
Statewide		26%	32%
		2015	2019
Eighth Grade Reading Average Score**			
Native American Students		246	237 → WORSE
Statewide		258	252
		1998	2019
Percentage of New Mexico College Enrollment			
Native American		9%	9.4% → BETTER
White		42%	29%
Hispanic		36%	48%
		2006	2019
Limited Proficiency and Fluent Proficiency in Students' Language			
Native American Students		30%	47% → BETTER
Hispanic Students		58%	54%
		2015	2019

Source: U.S. Census, 2018-2019 PED 80th Day Count, *PED PARCC data, **NAEP, HED, PED 2018-2019 Multicultural Education Annual Report

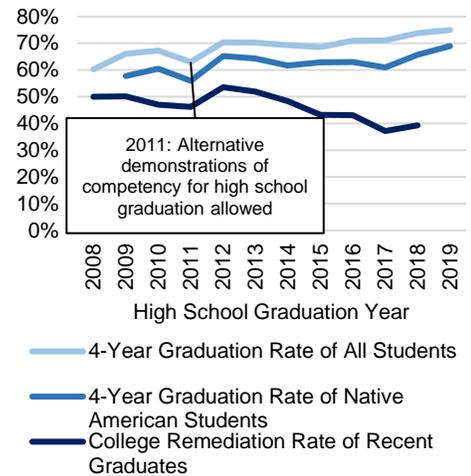
A 2011 statutory change in high school graduation requirements likely contributed to increased graduation rates. Beginning in the 2010-2011 school year, students were allowed to demonstrate competency for high school graduation through alternative demonstrations of competency such as end-of-course exams or learning portfolios rather than a high school competency exam.^{ix} After the change to high school graduation requirements, graduation rates increased, college remediation rates decreased, and average ACT college entrance exam scores slightly decreased for all students (3 percent) and for Native American students (4 percent).³

Although the act does not specify an acceptable level of academic outcomes, the 2018 *Martinez-Yazzie* court decision ruled the state constitution requires New Mexico to “ensure all at-risk students are provided an education that sufficiently prepares them for college and career.”^x If the state’s metrics for assessing college and career readiness are not consistent over time, monitoring state and local adherence to the *Martinez-Yazzie* court decision and the act becomes more complicated.

Native American students continue to perform behind their peers on state and national proficiency assessments. On state assessments between SY17 and SY19, the percentage of Native American students proficient in key subjects trailed that of all New Mexico students by an average of 10 percentage points in reading, 9 percentage points in math, and 17 percentage points in science. Additionally, economically disadvantaged Native American students perform worse than their economically disadvantaged peers as a whole. In SY19, 17 percent of economically disadvantaged Native American students scored proficient in reading, 9 percent scored proficient in math, and 21 percent scored proficient in science. This compares with proficiency rates among all economically disadvantaged students of 28 percent in reading, 15 percent in math, and 28 percent in science.

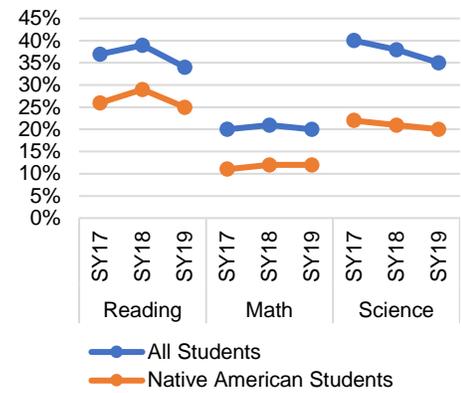
On the National Assessment of Educational Progress (NAEP) – a nationwide assessment in place for decades as opposed to the three different assessment approaches the state has used since 2006 – New Mexico Native American students’ proficiency has decreased in reading and remains below NAEP basic proficiency levels (see Appendix F). From 1992 to 2019, the average NAEP reading score for New Mexico Native American fourth-graders decreased 7 percent from 200 to 193. In comparison the average for fourth-grade students in New Mexico was 208, and the average for students across the nation was 219. Among Native American eighth-graders, the average reading score decreased by an average of 9 percent from 1998 to 2019. The average of all eighth-grade students in New Mexico was 252, and the average score for students across the nation was 262. Again, both the New Mexico average and the average for New Mexico’s Native American students were below the national average (see Appendix G).

Chart 2. New Mexico High School Graduation and College Remediation Rates



Source: LFC analysis of PED and HED data

Chart 3. Percent of Students Proficient in Reading, Math, and Science on State Assessments



Source: 2018-2019 Tribal Education Status Report

³ Since 2012, New Mexico colleges have been implementing strategies to reduce traditional pre-requisite remediation courses since evidence emerged about the ineffectiveness of traditional remediation models. The implementation of these strategies helps explain why New Mexico’s college remediation rate has declined since 2012 even while New Mexico average ACT college entrance exam scores have slightly declined.

The 2006 LFC evaluation found the Indian Education Act was vague, overly ambitious, and extremely difficult to implement.

A 2006 LFC evaluation found the act was difficult to implement and PED experienced significant challenges in doing so.

A March 2006 LFC report, *Quick Response Review of the Indian Education Act*, set out to determine if the 2003 Indian Education Act provisions and resultant PED and Indian Education Division (IED) implementation activities and uses of the Indian education fund were appropriate to address the Native American achievement gap. The major finding of the review was that the Indian Education Act was vague, overly ambitious, and extremely difficult to implement given the limitations of PED at the time.

The evaluation found the initial implementation of the act was slow, and PED's strategy did not adequately account for the resources needed to coordinate with and increase the capacity of tribal education departments and school districts to meet the needs of Native American students (see Appendix H for additional key findings).

Of 26 recommendations from the evaluation, 19 (73 percent) have been fully or partially implemented. Among those completed include the incorporation of Native languages into the state's bilingual and multicultural education program and the enactment of a requirement for school districts to adopt a strategic framework for the education of Native American students in 2019's House Bill 250. However, many of the concerns identified in 2006 continue to be relevant in light of the *Martinez-Yazzie* decision and chronic understaffing in PED's Indian Education Division.

Among the 2006 recommendations not adopted are legislation that would require instruction on Native American culture for all students, legislation to balance academic standards with Native American cultural standards, and the establishment of an Indian Affairs Task Force to address representation issues. Another unadopted recommendation identified by the Tribal Education Alliance in its December 2020 report would allow tribal education departments to be categorized as local education agencies (LEAs). (See Appendix I for further discussion of the potential considerations related to this recommendation.)

Over \$147 Million Is Available in FY21 for Purposes Aligned With the Indian Education Act

Schools may draw on numerous sources of state and federal funding to implement the Indian Education Act, and recent changes to how schools may use certain components of state equalization guarantee (SEG) funds – funds distributed to schools through a formula based on needs – have further expanded the resources available. LFC staff identified over \$147 million in state and federal funds that can be directed toward the purposes and requirements of the act in FY21, of which less than 5 percent comes from the state Indian education fund, the only source the act explicitly identifies to carry out its purposes. Over \$53.3 million (48 percent) of this total is available from the estimated portion of certain SEG formula components serving Native American students, including allocations for at-risk students, bilingual and

Table 5. Inventory of Funding for Purposes Aligning with the State Indian Education Act, FY21

Recipients	Category	Detailed Category	FY21 Funding
Part A: \$143.3 million Native American Student Population of 32 Native American Serving School Districts and Charter Schools (See Table 1)	State Public Education Funding Formula <small>Note 1</small>	At-Risk Student Funding for Native American Students	\$35,399,333
		Bilingual/Multicultural Funding for Native American Students	\$3,410,539
		Instructional Materials for Native American Students	\$2,790,247
		Extended Learning Time Programs for Native American Students	\$7,132,155
		K-5 Plus Programs for Native American Students	\$4,641,832
		Subtotal	\$53,374,106
	State Public Education Capital Outlay	PSCOC Capital Funding for Tribal Impact Aid Districts	\$18,867,000
		Federal Public School Funding for Native Americans	Uncredited Operational Impact Aid <small>Note 2</small>
	Uncredited Native American Impact Aid <small>Note 2</small>		\$35,961,932
	Federal Indian Education Formula Grants		\$2,587,348
	Johnson O'Malley Funding		\$390,099
	Subtotal		\$57,389,717
	PED Categorical and Below-the-Line Funding	Other Special and Categorical Appropriations <small>Note 3</small>	\$1,883,730
		Culturally and Linguistically Relevant Instructional Materials and Curricula (Other State Funds) <small>Note 4</small>	\$2,000,000
		Indian Education Fund	\$5,250,000
		Bilingual, Multicultural, and Indigenous Education Initiatives	\$4,567,900
		Subtotal	\$13,701,630
Part B: \$4.2 million Higher Education Institutions	Higher Education Line-Items	UNM Native American Studies	\$188,000
		UNM Native American Intervention and Retention	\$362,600
		UNM Grow Your Own Teachers Network	\$376,000
		NMSU Indian Resources Program	\$261,226
		HED Tribal College Dual Credit	\$253,344
		NMHU Native American Social Work Institute	\$164,500
		NMHU Minority Student Services	\$430,000
	Subtotal	\$2,035,670	
	Higher Education Other	NMSU Indian Resources Program (Other State Funds)	\$1,700,000
		UNM College of Education Native American Institutes/Initiatives	\$180,000
W.K. Kellogg Foundation	UNM Native American Budget and Policy Institute	\$300,000	
Grand Total			\$147,548,123

Note 1: State public education funding formula amounts were adjusted based on the percent of Native American students at each Native American-serving district and charter.

Note 2: Excludes uncredited Impact Aid for special education.

Note 3: Other special and categorical appropriations include early literacy, science, technology, engineering, arts, and math (STEAM) initiatives, computer science, community school initiatives, teacher professional development and recruitment, principals professional development, career technical education, college and career readiness, teacher residencies, bilingual framework study, and grow your own teacher fund. Estimated amounts based on serving Native American student population of 10 percent.

Note 4: Of the \$9 million special appropriation for culturally and linguistically appropriate curricula and materials in Laws 2020, Chapter 83 (House Bill 2), PED allocated \$2 million for curricula in Indigenous communities.

Source: LFC Files.

Figure 3. PED's Four-Part Strategy for Revising the Budget Process in Response to the Martinez-Yazzie Consolidated Lawsuit

School district and charter schools are required to:

1. Create local equity councils comprising community members,
2. Complete *Martinez-Yazzie* readiness assessment tool,
3. Develop a culturally and linguistically responsive framework for providing instruction and other services, and
4. Submit and implement educational plans with a specific focus on serving at-risk students.

Source: PED

Figure 4. Potential Uses for SEG Formula Funding for At-Risk Students

1. Case management, tutoring, reading interventions and after-school programs delivered by social workers, counselors, teachers or other professional staff;
2. Culturally relevant professional and curriculum development, including that necessary to support language acquisition, bilingual and multicultural education;
3. Additional compensation strategies for high-need schools;
4. Whole school interventions, including school-based health centers and community schools;
5. Educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical education, guidance counseling services and coordination with post-secondary institutions; and
6. Services to engage and support parents and families in the education of students.

Source: Section 22-8-23.3(D) NMSA 1978.

multicultural education, instructional materials, and programs to support additional learning time. Another \$13.7 million in PED special program appropriations can support certain targeted purposes of the act, and \$18.9 million in capital outlay funds is distributed to specific Native American-serving districts. Another \$4.2 million in state and other funding supports higher education initiatives for Native American students. Overall, funding aligned with the act totals roughly \$143.3 million for Native American-serving districts and charter schools and \$4.2 million for higher education institutions. State funds make up just under \$90 million of the total.

One-time federal funding through the Coronavirus Aid, Relief, and Economic Security (CARES) Act and other stimulus programs provides additional amounts schools may draw from, and modifying New Mexico's system for crediting federal Impact Aid payments could also support districts and tribes in funding activities and infrastructure that tribal leaders identified in 2020 as potential remedies to issues in the *Martinez-Yazzie* litigation.

Importantly, districts and charter schools have the ultimate authority to prioritize the use of much of these funds within their own budgets. PED is currently implementing a new budget development and monitoring process for school districts and charter schools to focus resources on at-risk and Native American students as part of a four-part strategy for responding to the *Martinez-Yazzie* court decision.^{xi} Specifically, PED's plans call for multiple bureaus to collaborate in overseeing districts and charter school educational plans to ensure they address the needs of at-risk students.⁴ PED, school districts, and charter schools are currently in the process of implementing this new budget development and monitoring system in FY21.

The Legislature recently increased flexibility for instructional materials and funding for at-risk students to support culturally and linguistically relevant education.

School districts and charter schools receive most of their operational funding from the SEG, which includes a component that allocates funds to help at-risk students. In 2019, the Legislature specified in state law that funding for at-risk students could be spent on various categories of evidence-based interventions for at-risk students. The law included culturally relevant professional development, curriculum development, language acquisition, and bilingual and multicultural education among the interventions that school districts and charter schools could support with funding for at-risk students.

At-risk funding has increased by 183 percent since 2006. The 2006 LFC program evaluation recommended the Legislature should increase at-risk funding in the formula to assist high-poverty Native American students. Since then, the Legislature has increased the weighting of the at-risk multiplier within the SEG public school funding formula four times (Laws 2014, Chapter 55, House Bill 19; Laws 2018, Chapter 55, House Bill 188; Laws 2019, Chapter 207, House Bill 5; Laws 2020, Chapter 23, House Bill 59), more than doubling it from 0.1 to 0.3. Due to these changes and overall increased funding

⁴ School district and charter school educational plans are submitted to PED through an online portal called the New Mexico Data, Accountability, Sustainability, and High Achievement (NM DASH) platform. The educational plans are not single documents but are multiple documents and worksheets completed by districts and charter schools and then reviewed by different PED bureaus.

to the SEG, total statewide funding for at-risk students in the funding formula was \$71 million in FY06 and \$255 million in FY20. According to the Bureau of Labor Statistics, when adjusted for inflation, the \$71 million in FY06 at-risk dollars represent \$90.2 million in FY20 dollars; this represents an inflation-adjusted increase in at-risk allocations of 183 percent.

The 32 Native American-serving districts and charters budgeted \$35.4 million in FY21 for at-risk student services aligned with the purpose of the state Indian Education Act.

In 2019, the Legislature passed Laws 2019, Chapter 207 (HB5 and SB1), which required school districts and charter schools to develop annual educational plans and budget reports for at-risk student services beginning in FY21. For the 23 school districts and nine charter schools that PED designates as “historically defined Indian impacted” districts and charters, LFC staff analyzed their FY21 budgeted at-risk student services alongside their FY21 preliminary funding formula allocations and adjusted these based on the estimated proportion of their student populations who are Native American.⁵

Table 6. Budgeted FY21 Spending of At-Risk Funds in Native American Serving Districts and Charter Schools

Services for At-Risk Students Category	Example Activities	FY21 At-Risk Services Budgets (September 2020)	Percent of FY21 At-Risk Services Budgets
Whole School Interventions	School Based Health Centers, Community Schools, Nurses, Counselors, Reading Specialists.	\$15,799,192	45%
Case Management	Targeted Tutoring and Afterschool Programs Delivered by Social Workers, Counselors, or Other Professional Staff	\$9,788,263	28%
College and Career Readiness Programs	Guidance Counseling, Computer Lab Resources, Life Skills Classes, Dual Credit Stipends, Career Technical Education.	\$3,612,307	10%
Parental and Family Engagement Services	Family Liasons, Teacher-Parent Team Meetings, Community Outreach.	\$2,455,930	7%
Culturally Relevant Practices	Curricula Development, Instructional Materials, Professional Development, Bilingual Teachers	\$2,164,332	6%
Other Evidence-Based Strategies	Professional Development, Data Driven Instruction Support, Trauma Informed Instruction, Class Size Reduction.	\$1,098,138	3%
Additional Compensation Strategies	Bilingual/TESOL Teacher Stipends, Professional Development, Compensation Differentials	\$481,172	1%
Grand Total		\$35,399,333	100%

Note: Excludes \$24 thousand in at-risk funds from Dream Diné Charter School because no FY21 at-risk services budget was available as of December 2020.

Source: LFC analysis of FY21 Educational Plans, At-Risk Budget Funding Reports, and Preliminary Funding Formula.

⁵ In early 2020, Native American-serving school districts and charter schools initially submitted FY21 at-risk services budgets to PED which totaled \$166 million. However, in September 2020, PED released its preliminary State Equalization Guarantee (SEG) funding formula scenario for FY21, which included \$158 million in funding for at-risk student services at Native American-serving districts and charters. When estimating how Native American-serving districts and charter budgeted their \$158 million in at-risk services funding, LFC staff assumed the same budget proportions as the initially

Of the \$35.4 million that these districts and charter schools budgeted, 73 percent (\$25.6 million) was for whole-school interventions (such as school-based health centers) or targeted case management for students (such as afterschool tutoring). About \$2.2 million from at-risk allocations is attributable to culturally relevant professional and curricula development for Native American students.

Available funding can be aligned with elements the Legislature identified for inclusion in Native American education frameworks. Laws 2019, Chapter 16 (HB 250) requires historically defined Indian impacted school districts to implement a strategic framework for the education of Native students beginning in the 2020-2021 school year. Statute requires the framework to include “programs, services, culturally relevant activities and professional development” based on priorities developed in each district’s needs assessment.^{xii}

The law enumerates several specific elements of academic programs, culturally relevant activities, and other services that districts may choose to include in their frameworks, but does not require the inclusion of any specific elements or number of elements (see Appendix J).

Table 7. Alignment Between At-Risk Student Services and Native American Education Framework Elements

Services for At-Risk Students (Section 22-8-23.3(D) NMSA 1978)	Elements of a Systemic Framework for Native American Education (Section 22-23a-11 NMSA 1978)
Case management, tutoring, reading interventions and after-school programs that are delivered by social workers, counselors, teachers or other professional staff;	Innovative programs designed to meet the educational needs of educationally disadvantaged Indian students;
	Comprehensive guidance and counseling services;
	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;
Culturally relevant professional and curriculum development, including those necessary to support language acquisition, bilingual and multicultural education;	Rigorous and meaningful curricula and educational opportunities that will lead to lifelong success for all students;
	Bilingual and bicultural programs and projects;
Additional compensation strategies for high need schools;	High-quality professional development for teaching professionals and paraprofessionals;
Whole school interventions, including school-based health centers and community schools;	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;
Educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical education, guidance counseling services and coordination with post-secondary institutions;	Programs designed to encourage and assist Indian students to work toward, and gain entrance into, institutions of higher education;
Services to engage and support parents and families in the education of students;	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;

Source: LFC staff review of state law.

submitted at-risk budgets from early 2020. Estimated at-risk funding totals in tables 5 and 6 are based on prorating these totals to the estimated proportion of each district’s students who are Native American.

Bilingual and multicultural education funding supports 113 Native American language programs at 102 schools, but Native American student participation in these programs is declining.

Bilingual and multicultural education programs (BMEPs) are among those that can have an impact on Native American students, particularly programs focusing on Native American languages. According to PED's Language and Culture Division, BMEPs are intended to help students become bilingual and biliterate in English and a second language as well as meet all academic content standards and benchmarks in all subject areas. The 32 Native American-serving school districts and charters received \$19.5 million in bilingual and multicultural education (BME) funding through the formula in FY20 and another \$18.8 million in FY21. Schools may receive these funds if they implement a bilingual and multicultural education program (BMEP) that meets PED approval. According to the most recent state BMEP annual report for the 2018-2019 school year (SY19), 102 schools around the state offered programs in Native American languages, 101 of which are in designated historically defined Indian-impacted school districts.

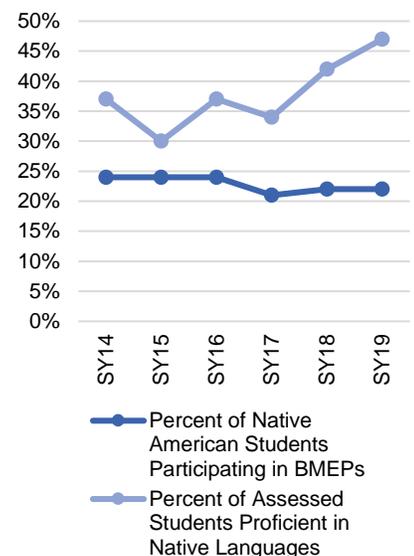
Native American student participation in BMEPs has decreased by 17 percent over the past five years while proficiency has increased by 10 points. According to the latest PED Bilingual Multicultural Education Report, roughly 22 percent of all Native American students in New Mexico participated in BMEPs in school year 2018-19 (SY19). Over the past six years of available data, Native American participants in BMEPs decreased by roughly 1,400 (17 percent) from about 8,500 students in SY14 to 7,000 students in SY19. The decline in participation outpaces the decline in Native American student population statewide (6 percent). Meanwhile, statewide student participation in BMEPs decreased by 6,800 students (13 percent) over the same timeframe, outpacing the 6-percent decline in the state's total Native American student population over the same timeframe.

Students from Native American communities participating in BMEPs are assessed for proficiency in Native American languages. According to PED, these beginning-of-year assessments are developed by each tribe or by Native American leaders and educators. The languages for which data are available are Jicarilla Apache, Keres, Navajo (Diné), Tiwa, Tewa, Towa, and Zuni. From SY14 through SY19, proficiency in Native American language assessments increased from 37 percent proficient in SY14 to 47 percent proficient in SY19. Over the same timeframe, the number of students tested in Native American languages decreased by 36 percent (2,700 students). Whether the increase in proficiency is due to the effects of educational programs or a smaller sample of students participating in assessments is unclear. Participation in BMEPs and Native American language assessments are important factors for measuring progress toward the maintenance of Native American languages.

Existing sources of funding could potentially support much of the \$95.2 million proposed in 2020 tribal remedy framework bills.

During the 2020 legislative session, a series of bills (House Bills 134, 137, and 138) proposed \$95.2 million in general fund appropriations for various programs to support Native American education initiatives. These include higher education programs supporting Native American students, teacher recruitment efforts, and curriculum development; capital and broadband

Chart 4. Native American Student BMEP Participation and Proficiency Rates, SY14-SY19



Source: 2019 PED BMEP Report

projects at tribal libraries and schools; and support for tribal education resource centers, governance, curricula and materials, and information technology.

Funding appropriated from existing state sources in FY21 could support up to \$14.1 million of this total, including \$8.3 million from the general fund. General fund support includes roughly \$2.2 million awarded to tribal departments of education from the Indian education fund, which can support many purposes sought under the framework; namely, development of curricula and materials and purchases of technology and equipment aligned with the needs of tribal education departments, including information technology staff and support. Other state funds include \$2 million of a \$9 million special appropriation for culturally and linguistically relevant instructional materials from the public education reform fund, which PED is using for curriculum development in Indigenous communities. Capital appropriations for tribal library and broadband projects include unspent balances of about \$365 thousand from 2016 and \$748 thousand from 2018. (Appendix K contains a detailed breakdown of all identified funds potentially supporting Tribal Remedy Framework elements.)

Table 8. Estimated FY21 Funding for Tribal Remedy Framework Elements

Bill	FY21 Proposed (General Fund)	Purpose	Estimated FY21 Funding		
			General Fund	Other State Funds	Federal Funds
HB 134	\$19,807.5	Higher education line items targeting services for Native American students and research and public service projects focused on Native American curriculum development, teacher recruitment and training, and Native communities.	\$3,221.5	\$1,700.0	\$326.7
HB 137	\$38,893.1	Tribal Libraries Capital Outlay	-	\$1,613.1	-
	\$8,300.0	Tribal Community, School, and Library Broadband	-	\$500.0	\$257,366.3
	\$5,500.0	Tribal Curriculum Materials Development	\$1,917.8	\$2,000.0	-
	\$6,500.0	Tribal Early Childhood and Education Resource Centers	-	-	\$1,219.1
HB 138	\$3,650.0	Tribal Government Education Blueprints	-	-	-
	\$3,400.0	TEDs - Early Childhood CLR curricula, assessment, facilities	-	-	-
	\$5,750.0	Tribal Libraries - CLR afterschool and summer programs	\$3,159.6	-	-
	\$3,400.0	TEDs - IT and broadband support	\$22.9	-	\$50.0
Total	\$95,200.6		\$8,321.8	\$5,813.1	\$258,962.1

Note: This is a conservative estimate based on documentation of amounts budgeted in FY21 toward the specific, targeted purposes outlined in the 2020 Tribal Remedy Framework bills. Excludes amounts in higher education institution base budgets that may serve Native American students because specific amounts cannot be disaggregated.

Source: LFC analysis of PED, HED, higher education institution, and federal data and LFC files

Substantial federal funding supports broadband development that can support education on tribal lands. During the Covid-19 pandemic, broadband access has become critical for ensuring access to remote learning. The Tribal Education Alliance reported in December 2020 that many Native American students are unable to engage in remote learning due to a lack of internet connectivity, with over half of rural tribal families lacking broadband connections.^{xiii}

The \$259 million in federal funds identified in table 8 largely consists of CARES Act support for broadband development on the Navajo Nation. Additionally, the omnibus Consolidated Appropriations Act, 2021 passed in December 2020 included \$1 billion in grants for tribal broadband programs and \$3.2 billion for a \$50-per-month emergency broadband benefit for low-income households and those that have suffered a significant loss of income in 2020, and a \$75-per-month rebate for those living on tribal lands. The portion of the tribal broadband funding available to tribes in New Mexico has yet to be determined, but LFC staff estimate New Mexico could receive approximately \$200 million, depending on final award allocations. Additionally, LFC staff estimate New Mexico will receive approximately \$16 million of the \$3.2 billion for internet subscription subsidies. That \$16 million could cover over 200 thousand households for a year at the higher \$75/month tribal rebate level.

The LFC budget recommendation for FY22 includes \$20 million for broadband infrastructure, including a \$10 million special appropriation and a \$10 million capital appropriation for broadband infrastructure.

The Impact Aid credit affects Native American-serving school districts.

Federal Impact Aid funding compensates school districts and charter schools for the loss of property tax revenue from the presence of federal or Native American lands. Since the 1970s, New Mexico has taken partial credit for Impact Aid payments when allocating state funding through the public education funding formula, resulting in a reduction in state general fund payments to school districts that receive Impact Aid. The public education funding formula has historically taken credit for Impact Aid and local property taxes to equalize funding across school districts and charter schools through the state funding formula. However, some Impact Aid districts are significantly affected by the credit because of how much Impact Aid they receive. For example, the FY21 preliminary funding formula takes credit for 75 percent of the \$30 million, \$20 million, and \$7 million in operational Impact Aid that Gallup, Central, and Zuni are anticipated to receive in FY21.⁶ In the first special session of 2020, the Legislature added \$31 million to the SEG for FY21 to cover potential changes to the Impact Aid credit.

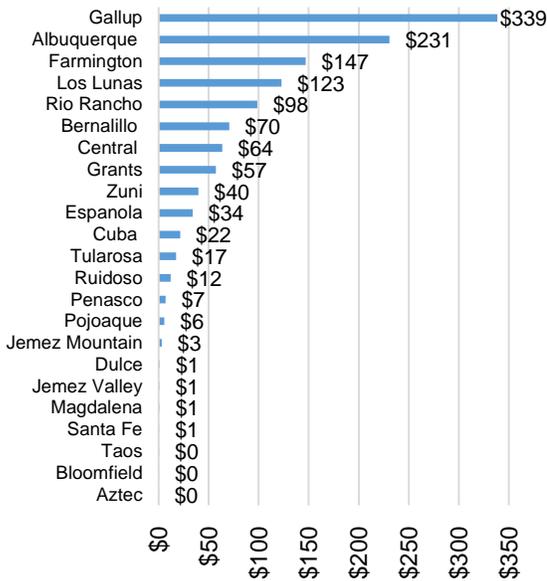
Federal law generally prohibits states from taking credit for Impact Aid payments unless the U.S. Department of Education (USDE) annually certifies that the state has an equalized funding formula. For FY20 and FY21, Gallup, Central, and Zuni have contested PED's methodologies for demonstrating that the state has an equalized funding formula to the USDE. So far, USDE has denied PED's request to take credit for Impact Aid in FY20 and granted preliminary approval for an Impact Aid credit in FY21.

The Legislature decides whether an Impact Aid credit should be taken and local districts decide how Impact Aid dollars are spent. The state

⁶ The public education funding formula takes credit for operational Impact Aid, but does not take credit for other categories of Impact Aid for special education or Native American education. Operational budgets for FY21 indicate that Gallup, Central, and Zuni budgeted \$18 million, \$12 million, and \$3.7 million in uncredited other categories of Impact Aid.

Chart 6. Total PSCOC Funding Awarded, 1999-2019 (in millions)

(Statewide Total = \$2.5 billion; Native American Serving Districts Total = \$1.3 billion)



Source: LFC analysis of Legislative Education Study Committee (LESC) data.

Table 9. Change in District Average FCI Scores
(Lower FCI Percentages = Better Facility Conditions)

Native American Serving District	FY09	FY18	Change
Gallup	37%	26%	-11.3%
Albuquerque	62%	36%	-26.7%
Farmington	45%	28%	-17.1%
Los Lunas	51%	33%	-18.2%
Rio Rancho	38%	26%	-12.3%
Bernalillo	45%	19%	-25.6%
Central	51%	30%	-21.3%
Grants	28%	30%	1.4%
Zuni	31%	28%	-3.6%
Espanola	47%	33%	-13.7%
Cuba	19%	15%	-3.7%
Tularosa	32%	36%	4.2%
Ruidoso	51%	37%	-14.2%
Penasco	55%	36%	-18.6%
Pojoaque	37%	29%	-8.1%
Jemez Mountain	39%	45%	5.3%
Dulce	33%	17%	-16.0%
Jemez Valley	28%	36%	8.1%
Magdalena	49%	48%	-1.3%
Santa Fe	46%	20%	-25.6%
Taos	50%	25%	-24.7%
Bloomfield	58%	39%	-19.0%
Aztec	55%	33%	-21.6%
Statewide Average	49%	32%	-17.3%

Note: In January 2018, the Public School Capital Outlay Council altered the methodology for calculating FCI, so FY19 and later scores are not directly comparable to prior year scores. The statewide average FCI of 32 percent for FY18 is equal to approximately 50 percent using the new methodology. The comparison in this table is based on the older methodology only.
Source: LFC analysis of archived Public School Facilities Authority (PSFA) data.

Public School Finance Act defines the calculations of the public education funding formula, including the Impact Aid credit.^{xiv} If the Legislature were to remove the Impact Aid credit from the public education funding formula, Impact Aid districts could locally decide to spend the additional operational funding on added supports for facility needs, instruction, tribal collaboration activities, or tribal education departments.

The Legislature appropriated additional capital outlay funding for districts receiving Impact Aid related to Native American lands to address facility needs.

In FY20, the Legislature appropriated \$34 million to the Public School Facilities Authority (PSFA) for schools receiving federal Impact Aid for tribal lands, including \$24 million for school facilities and \$10 million for teacher housing facilities.^{xv} In FY21, the Legislature appropriated \$18.9 million for school facilities in these districts.^{xvi}

Native American-serving school districts received \$1.3 billion in state capital outlay funding over the past twenty years. In response to a 1999 ruling in the *Zuni Public District v. State of New Mexico* lawsuit, the state established a Public School Capital Outlay Council (PSCOC) process for allocating funds to help school facilities reach adequacy standards. This process includes a local-

state match component based on districts' local capacity to pay. Over the past two decades, the state has invested \$2.5 billion into matching awards to build school facilities to adequacy across the state. Of this state funding, \$1.3 billion (50 percent) went to Native American-serving school districts, including \$339 million for Gallup and \$40 million for Zuni.

Eighty-three percent of Native American-serving school districts had improved facility conditions from FY09 to FY18. The state uses a facilities condition index (FCI) for measuring the condition of school buildings. The FCI is calculated based on the cost of repairs relative to the cost of building replacement. For the 23 school districts that are Native American-serving, 19 school districts had improved Facility Condition Index (FCI) scores from FY09 to FY18.⁷ These FCI data indicate that the PSCOC funding provided to Native American-serving school districts helped to improve the condition of school facilities.

⁷ Native American-serving charter schools were not included in this analysis because some charters did not exist in FY09 and charter school facilities are supported through a PSCOC lease assistance program.

Unspent Funds Could Further Support the Indian Education Act

A number of funding sources are potentially underutilized as evidenced by unspent Indian education fund awards, unused extended learning time program money, a 163-percent increase in unrestricted fund balances at the 32 Native American-serving districts and charter schools, and unspent capital appropriations.

While the Indian education fund (IEF) is a relatively small component of state funding, it is the only one explicitly established to support the purposes of the Indian Education Act. About 30 percent of awards from the fund have gone unspent since FY18, contributing to schools' and tribes' inability to achieve roughly half of deliverables tied to their grants. School district cash balances also represent a potential source to draw on for activities to implement the act, having grown significantly over the past decade. Finally, the Legislature appropriated \$1.5 million for capital projects at tribal libraries in 2016 and 2018, three-quarters of which remain unspent even as tribal leaders identify millions of dollars in unmet needs.

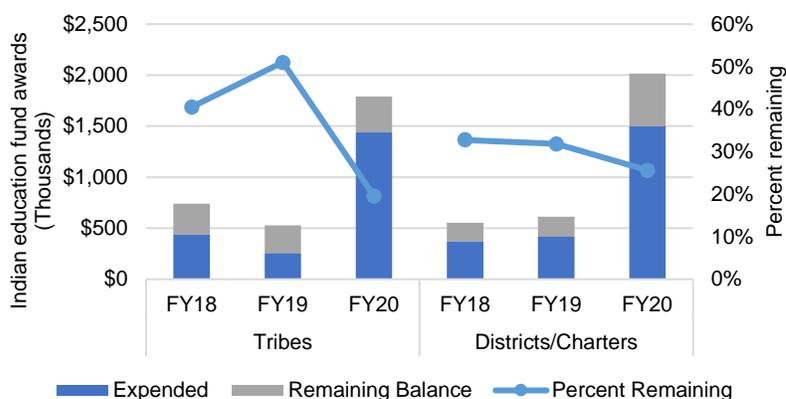
Schools and tribes met about half of Indian education fund grant deliverables in FY20.

Three quarters of capital appropriations for tribal libraries remain unspent.

Almost 30 percent of Indian education fund awards went unspent over the last three fiscal years.

Between FY18 and FY20, 29 percent of awards allocated from the Indian education fund remained unspent: about 30 percent of all tribal awards and 28 percent of awards to school districts and charter schools. At the end of FY20, just under 20 percent of tribal awards and 26 percent of district and charter awards remained unspent, totaling \$868 thousand, or 23 percent of \$3.8 million awarded.

Chart 7. Indian Education Fund Award Expenditures and Remaining Balances, FY18-FY20



Source: LFC analysis of PED and SHARE data

The Legislature established the nonreverting Indian education fund to support the purposes of the Indian Education Act. Between FY16 and FY19, the Legislature appropriated \$10 million to the fund, including roughly \$7.3 million from the general fund and \$2.7 million from unspent fund balances. The department's inability to spend down these fund balances is a persistent issue identified by LFC staff since at least FY10, when PED reported a \$2.9

million fund balance in the IEF^{xvii}; in FY13, fund balances accounted for 45 percent of the increase in the division’s budget.^{xviii}

In part to address issues of educational disparities under the *Martinez-Yazzie* consolidated education sufficiency lawsuit, the Legislature more than doubled appropriations to \$6 million in FY20, entirely from the general fund, with the expectation that funds will be used for initiatives that improve Native American student outcomes. The General Appropriation Act for FY21 included another \$6 million, but this was reduced to \$5.25 million following the 2020 special session to address fiscal constraints resulting from the Covid-19 pandemic.

Most Indian education fund awards to schools and tribes support personnel costs for instruction and administration of programs serving Native American students (see Appendix N). These often include full or partial salaries for teachers or educational assistants focusing on Native language and culture programs, or additional compensation for participating in training and professional development around culturally relevant instruction. Districts and tribes may also use funds for other costs such as technology and equipment. In FY20, PED used \$1.1 million from the fund for the purchase of computers, including 6,282 Chromebooks for Native American students to participate in remote learning during the Covid-19 pandemic.

Slow processing of funds by PED can lead to grant recipients having less time to spend their awards and implement programming. LFC staff analysis of purchase orders associated with FY20 Indian Education grants found they were dated between October 22 and October 30, 2019. This is more than three months into the fiscal year and two months after the first day of school in most districts around the state, contributing to compressed timelines for achieving grant goals and deliverables.

While the Indian education fund is nonreverting at the state level, intergovernmental grant agreements between PED and award recipients require documentation and invoices before state funds are released and require any unspent amounts to be returned to the state. As such, districts, charter schools, and tribal governments receiving funds do not keep grant amounts they do not spend. As noted in a 2020 report by the Tribal Education Alliance, tribal education departments are more dependent on grants than school districts, and high turnover and an attendant lack of administrative infrastructure makes being able to use these funds to effectively ramp up programming particularly challenging.^{xix}

An LFC program evaluation from 2018, *Federal Funding in New Mexico Public Schools*, and another from 2009, *PED State and Federal Reimbursement Timeliness*, identified the need for PED to improve the efficiency of its grant approval and management processes. However, school districts and charter schools are also partially responsible for unspent Indian education fund dollars. Some school districts and charter schools (such as Cuba school district and the Native American Community Academy) were able to spend all of their IEF allocations within the available time, while some school districts (such as Bernalillo and Taos) spent less than half of their FY20 grant allocations.

School districts and charter schools are also responsible for unspent Indian education fund awards.

Indian education fund grantees did not achieve half of funding deliverables and grant requirements in FY20.

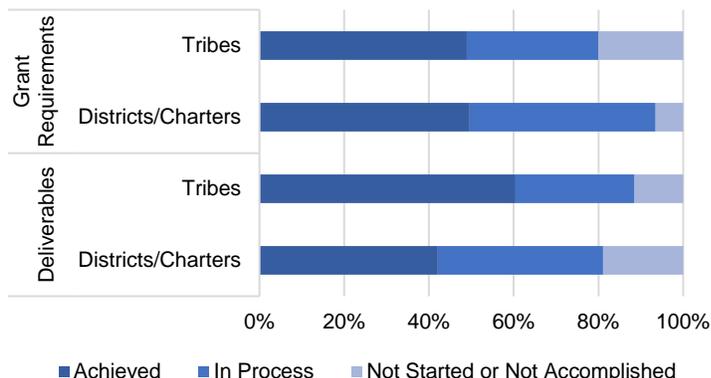
School districts, charter schools, and tribal governments and education departments receiving Indian education fund awards provide annual end-of-year reports to the Public Education Department detailing whether and how grant deliverables and requirements were achieved. Deliverables may be tasks or activities tied to individual projects detailed in each recipient’s grant agreement, while the same 10 grant requirements apply across all districts, charter schools, and tribes.

In FY20, grantees achieved 51 percent of their stated deliverables and met 49 percent of grant requirements, according to these self-reports. Another 34 percent of deliverables and 38 percent of grant requirements were in process. Tribal grantees reported achievement of 60 percent of deliverables and 49 percent of grant requirements, while school districts and charter schools reported they achieved just 42 percent of their deliverables and 50 percent of grant requirements.

Seven school districts or charter schools (Dulce, Española, Grants/Cibola County, Gallup/McKinley County, Hozho Academy, Ruidoso, and San Diego Riverside Charter) reported achieving none of their stated deliverables in FY20. All of these except one reported some or all deliverables were in process; Ruidoso Municipal Schools reported having no deliverables whatsoever, simply stating “N/A; COVID closure.”

Grantees with deliverables in process but not achieved noted the Covid-19 pandemic as a key reason for not being able to achieve all their goals, citing the need to suspend certain courses, cancel conferences and trainings, or modify schedules.

Chart 8. Percentage of FY20 Indian Education Fund Grant Deliverables and Requirements Achieved



Source: LFC analysis of IEF grantee end-of-year reports

Beginning in FY20, PED is experimenting with a multi-year funding initiative targeting innovative practices. Unlike regular grants from the Indian education fund, which are for a year at a time, the Indigenous Education Initiative (IEI) is issuing grants to four districts over a period of three years. These awards are intended to focus on innovation and community engagement to promote academically excellent and culturally relevant educational opportunities that can prepare students for college, career, community leadership, identity development, and holistic health, and serve as models for future funding and replication. The initial awards made in FY20 totaled \$800 thousand across four districts (Bernalillo, Cuba, Santa Fe, and Taos) and included partnerships with tribes and charter schools. Funding continued at the same level in FY21.

Table 10. Indigenous Education Initiative Awards, FY20-FY21

Recipient	FY20	FY21
Bernalillo Public Schools (partnership with Santo Domingo Pueblo)	\$200,000	\$200,000
Cuba Independent Schools	\$250,000	\$250,000
Santa Fe Public Schools	\$200,000	\$200,000
Taos Municipal Schools (partnership with Vista Grande High School)	\$150,000	\$150,000
Total	\$800,000	\$800,000

Source: PED

Indian education fund reporting does not directly tie deliverables to measurable milestones or outcomes. PED’s template for end-of-year reporting for IEF grantees does not require the inclusion of specific quantitative or qualitative metrics of achievement of grant deliverables, only including space for grantees to self-report activities and whether or not each was achieved, in process, or not started/not accomplished. Because of this, grantees may report they achieve no deliverables even though they may be using funds to support ongoing implementation of certain programs over a longer period of time, in effect reporting all deliverables as “in process.”

For example, Gallup-McKinley County Schools reported nine Navajo language and culture teachers provided 35 parent language sessions attended by 230 parents and 114 students, but did not explain whether there were any targets for participation in these sessions or if the reported figures met them, thus marking this deliverable as “in process.” Some deliverables are even more vague and do not include specific targets or milestones for achievement, making it difficult to assess whether or how they are being met. For example, Española Public Schools’ lone deliverable for FY20 is “language and cultural development,” serving 120 students but with no specific targets and outcomes, only stating student acquisition of the Tewa language and teacher professional development are “coming along.”

PED should consider redesigning the template to assist districts, tribes, and itself in ensuring recipients are able to make the most of IEF funding. The addition of a requirement for each deliverable to include at least one measurable goal against which achievement can be determined can be a useful tool for tracking the progress and success of funded initiatives.

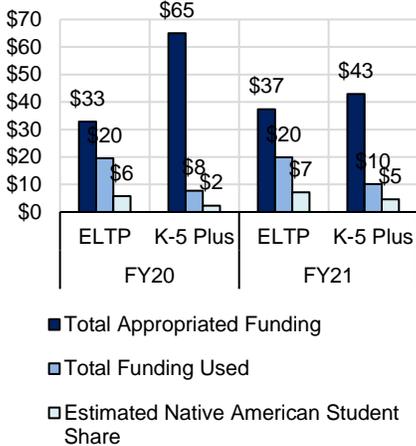
Millions in appropriations for K-5 Plus and Extended Learning Time Program (ELTP) interventions has gone unused statewide and at Native American-serving districts and charters.

In FY20, the Legislature included \$119.9 million for K-5 Plus programs and \$62.5 million for Extended Learning Time Programs in the public school funding formula. If districts and charter schools had applied for all this funding, the appropriations could have covered 58 percent statewide participation in K-5 plus and 38 percent statewide participation in ELTPs. However, K-5 Plus participation was 11 percent (15.9 thousand students) of all kindergarten to fifth-grade students and ELTP participation was 26 percent (83.3 thousand student) of all kindergarten through 12th-grade students. In FY20, \$118.2 million (or 65 percent) of the total \$182.4 million appropriated for K-5 Plus and ELTP programming went unused and reverted to the state public education reform fund.

Of the 32 Native American-serving school districts and charter schools, 11 districts and charters (or 39 percent of the 28 eligible districts and charters) did not apply for K-5 Plus funding and 16 districts and charters (or 50 percent of the 32 eligible districts and charters) did not apply for ELTP funds. In FY20, Native American-serving districts and charters used \$27 million of the potential \$98 million for K-5 Plus and ELTP programming. In FY21, \$30 million of the potential \$80 million was used for K-5 plus programming.

The state expects significant investments in extended learning opportunities to improve educational outcomes. Previous LFC reports have recommended the state promote the use of blended and braided funding to maximize resources and provide wraparound services for students. New

Chart 9. K-5 Plus and ELTP Funding for 32 Native American-Serving Districts and Charters, FY20 and FY21
(in millions)



Note: Share of funding for Native American students estimated based on share of enrollment at each district and charter.
Source: LFC analysis of PED data.

Mexico implemented the evidence-based K-3 Plus program – an extended school year program for kindergarten through third-grade students – in 2007 to address the achievement gap of at-risk students. The Legislature later expanded the program to fourth and fifth grades (K-5 Plus). Both Extended Learning Time and “Plus” programs seek to supplement classroom time, especially for at-risk students who tend to start kindergarten developmentally and academically behind their peers. When coupled, LFC analysis has found, the two programs seem to be amplifying students' academic performance over time.^{xx}

In FY20, the state significantly grew its appropriations for K-5 Plus as well as Extended Learning Time Programs. These, along with after school care programs (also expanded under extended learning time), should serve many school-age children. Specifically, districts were budgeted to serve an additional 3,000 students in K-5 Plus in FY20, and Extended Learning Time Programs were added to the budget for the first time, with districts budgeting enough slots to serve an estimated 84 thousand students. However, in FY20, Extended Learning Time Programs are expected to be in 30 percent of the school districts, and K-5 Plus is expected to be in 45 percent of school districts, while about half of districts (44 of 89) will not have either program.^{xxi} PED expects these numbers budgeted by school districts will grow by around 200 percent in FY21, but with the coronavirus pandemic, this remains to be seen. In May 2020, the Public Education Department canceled all K-5 Plus leading into the 2020-2021 school year, despite plans already in place in several districts, including Albuquerque Public Schools, to run K-5 Plus programs starting late summer.

Unrestricted cash balances for Native American-serving districts and charters grew to \$142 million in FY20, a 163 percent increase from FY10.

As with all school districts in New Mexico, cash balances for Native American-serving school districts have grown over the past 10 years. At the end of FY20, the 32 Native American-serving school districts and charters held \$142 million in cash balances, a \$39 million (or 38 percent) increase from FY15 and over 1.5 times the amount in FY10; nine districts and charters had decreases in cash balances. School districts need to have some cash balance to maintain cash flow in emergencies, save money for large purchases, or make upfront payments for programs, but excess cash balances in some cases could also be redirected toward instruction and programming that directly benefits students.

Notably, Albuquerque Public Schools’ (APS) FY20 cash balance of \$53.8 million (or 8 percent of FY20 formula funding) comprises 37 percent of the \$142 million total for all Native American-serving districts and charter schools. However, APS’s student population is just 5 percent Native American. Rio Rancho Public Schools had the next largest cash balance at \$16.6 million (or 12 percent of formula funding), with a Native American student population of 4 percent. Excluding APS and Rio Rancho, the largest unrestricted cash balances among Native American-serving districts were Gallup (\$13.3 million or 13 percent of formula funding), Central Consolidated (\$10.6 million or 21 percent of formula funding), and Bloomfield (\$7.4 million or 33 percent of formula funding) (see Appendix O).

Among Native American-serving districts and charter schools with the largest unrestricted cash balances in FY20, several also left substantial amounts of

Chart 10. Unrestricted, End-of-Year Operational Cash Balances for Native American Serving Districts and Charters
(in millions)



Source: LFC analysis of PED data.

their Indian education fund grants unspent. For example, Gallup did not spend \$33 thousand, or 37 percent, of its IEF grant. Bloomfield Public Schools left 67 percent (\$35 thousand) of its grant unspent.

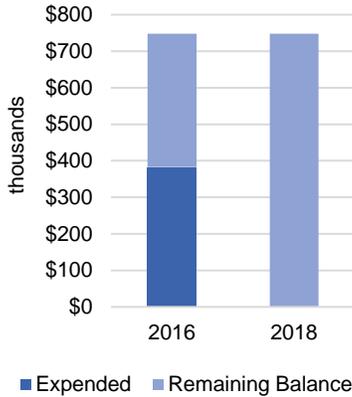
Previous LFC evaluations have noted the continuing rise in school district cash balances. A 2019 report on North Central New Mexico school districts found balances varied widely among districts, and it was unclear if districts with high unrestricted balances had plans to spend them on needed items and services. The evaluation recommended PED should set target cash balance thresholds to prevent districts from having balances that are too low or too high.^{xxii}

Three quarters of capital outlay appropriations for tribal libraries remain unspent.

Tribal leaders identified almost \$39 million in potential capital projects for tribal libraries proposed in 2020 legislation (HB 137). As noted in the 2020 Tribal Education Alliance framework report, tribal libraries serve as a central site in tribal communities and can support educational needs through programming and acting as a place for extended learning time.^{xxiii}

The Legislature appropriated a total of \$1.5 million in capital outlay for tribal libraries across the 2016 and 2018 general obligation (GO) bond cycles, but of \$748 thousand appropriated for 19 tribal library projects from 2016 GO bonds, about \$383 thousand, or 51 percent, has been spent. No expenditures have been made for projects at four pueblos (Acoma, Ohkay Owingeh, Santa Clara, and Zuni). Of \$748 thousand appropriated for 19 tribal libraries from 2018 GO bonds, no funds have been spent.

Chart 11. Unspent Capital Outlay Appropriations for Tribal Libraries from 2016 and 2018 General Obligation Bonds



Source: LFC Files

PED and Some Local Education Agencies Continue to Struggle With Capacity and Collaboration

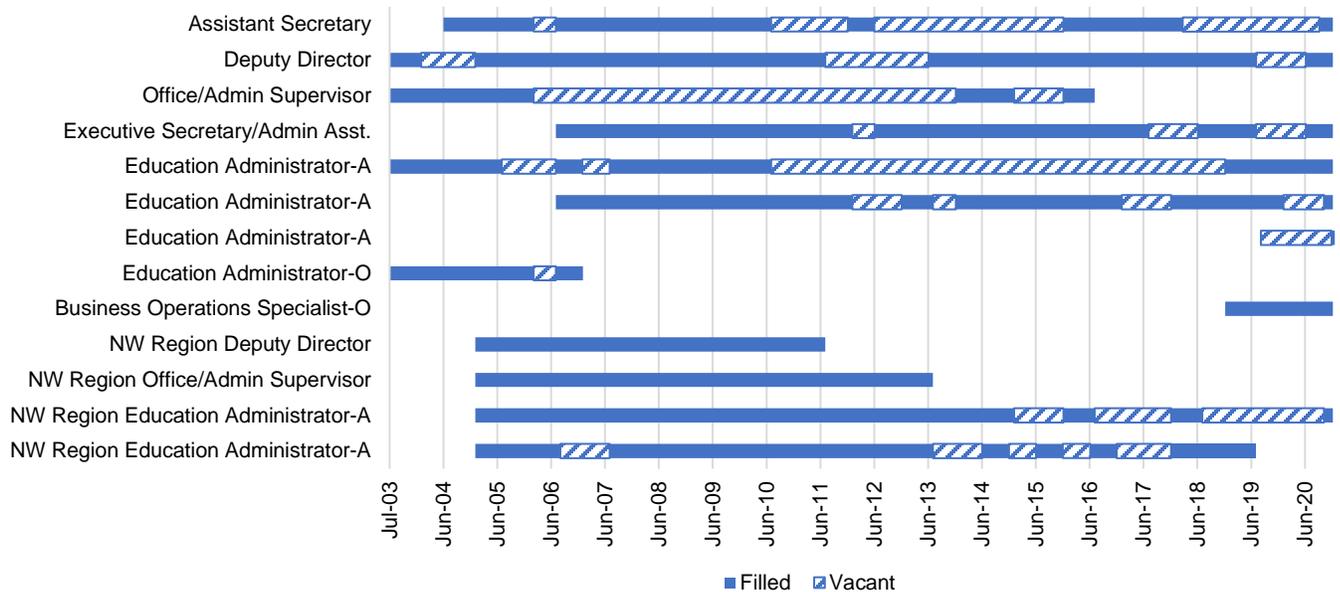
The Indian Education Act requires a high level of collaboration and coordination among the state, school districts and charter schools, and tribal governments. High turnover and long leadership gaps in PED’s Indian Education Division have made implementing the act a challenge from the state level, hindering its ability to conduct oversight of district implementation through tribal collaboration requirements and data reporting. Recent initiatives to fully staff the division and respond to the *Martinez-Yazzie* lawsuit offer a path for PED to collaborate internally as well as with tribal partners to ensure the act is fully implemented.

PED’s Indian Education Division has a history of understaffing and vacant leadership, limiting capacity to implement the act.

The 2006 LFC evaluation found PED was slow to fully staff the Indian Education Division in its early years, leading to delays in funding and technical assistance. Since then, the division has seen substantial turnover among program staff and the elimination of several positions, including those posted in a statutorily required northwestern regional office.

The 1st Judicial District Court, in its *Martinez-Yazzie* findings, noted the division’s lack of full staffing and PED’s admission that full staffing would be necessary to fully implement the Indian Education Act.^{xxiv} The 2020 Tribal Education Alliance report further notes that turnover in the division had contributed to a lack of institutional capacity, neglect of essential duties, and insufficient expertise in Indigenous content, tools, and assessment.^{xxv}

Chart 12. Indian Education Division Staffing Timeline



Note: All start and end dates and durations are approximate to within six months based on available personnel data. Source: LFC analysis of SPO data

The assistant secretary position has been vacant almost half the time since its creation, with one vacancy term lasting four years. The Indian Education Act requires the secretary of education to appoint an assistant secretary for Indian education to run the Indian Education Division and implement key requirements of the law. Since FY04, the first full fiscal year after the enactment of the Indian Education Act, five individuals have served in this position. Prior to the most recent appointment in October 2020, there was a gap of about two and a half years, and there was a gap of roughly four years prior to the position's previous holder. During these gaps, other individuals served in the role in an interim or acting capacity, leaving the division without full-time, permanent leadership for significant stretches.

The Indian Education Division has had at least one vacancy roughly 30 percent of the time since FY04, with average tenure of around two and a half years. Since its establishment in 2003, the Indian Education Division has experienced substantial turnover, with the average employee remaining in their position roughly 2.4 years. Turnover has increased in the past decade, with a marked decline in employee tenure roughly corresponding to the departure of the longest-tenured assistant secretary following FY10. On average, staff tenure in the division was nearly four years for those starting between FY03 and FY10, while tenure for those starting after FY10 has averaged under a year and a half.

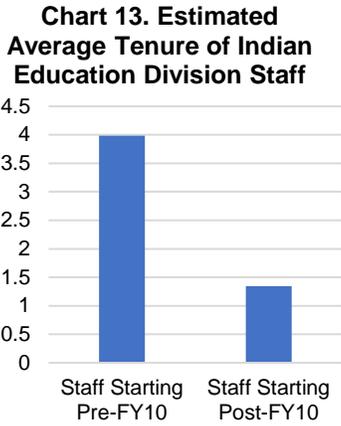
As of December 2020, the division has filled all but one of its current budgeted positions. Four of five educational administrator positions are filled, including a data analyst, Navajo Nation specialist, curriculum and instruction specialist, and tribal consultation specialist, with interviews being conducted for a school design specialist.

The division has not consistently staffed satellite offices in the northwestern region of the state since FY15. The act requires the division to “seek funds to establish and maintain an Indian education office in the northwest corner of the state” to implement agreements with tribes, monitor tribal student progress, and coordinate technical assistance.^{xxvi} PED began operating a satellite division office in Gallup in FY05, with one staff member later positioned in Shiprock. PED staff use office space at Gallup-McKinley County Schools and Central Consolidated Schools to provide these regional services.

The northwestern region was consistently staffed from FY05 through FY14, but has had several vacancies since then. No division personnel served in these locations between mid-2019 and November 2020, when the division hired a new Navajo Nation specialist. According to the division, this individual will split time between the offices in Gallup and Shiprock, having office hours in both locations.

PED’s draft strategic plan recognizes the need to completely staff the Indian Education Division and fully implement the act, but does not speak to action plans to implement the act.

Among the priorities identified in PED’s draft strategic plan is a focus on whole-child education, including community-based culturally and linguistically responsive (CLR) curriculum and pedagogy. The plan recognizes that to accomplish this, the department needs to fully staff the Indian Education Division and ensure the availability of regional technical assistance and oversight.



Source: LFC analysis of SPO data

However, the draft plan does not include specific steps or action plans to tie full staffing and implementation of the act and CLR instruction to the larger goals of improved academic outcomes. As it finalizes its strategic plan and further develops responses to the *Martinez-Yazzie* consolidated lawsuit, PED should not limit the role of IED only to CLR matters, but also specify how it should integrate with other divisions to achieve improved academic outcomes for all students. IED has recently presented material to legislative committees regarding future plans, but these are not necessarily reflected in PED’s overall strategic plan.

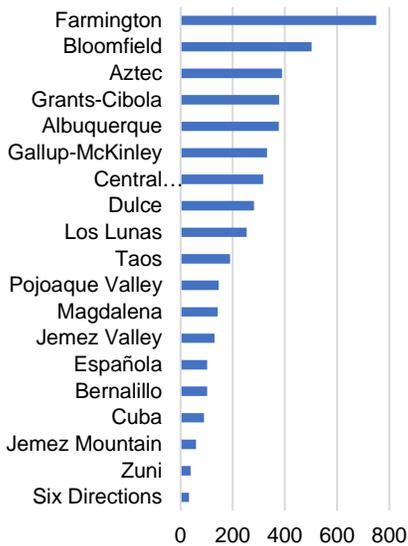
PED is working to identify internal needs and opportunities for collaboration to implement each provision of the Indian Education Act under its jurisdiction. The 2006 LFC evaluation recommended PED increase the capacity of the division to provide technical assistance and interventions to tribal education departments, school districts, and schools. Furthermore, the act requires the assistant secretary for Indian education to “coordinate with appropriate administrators and divisions to ensure that department administrators make implementation of the Indian Education Act a priority.”^{xxvii} To this end, the division has developed a crosswalk table tying the act’s requirements to staff resources. For each requirement and responsibility the act places on the division, the division has identified the position or positions with responsibility to carry it out, as well as positions or units in other PED divisions with whom division staff need to collaborate.

Indian Education Division efforts to train, recruit, and retain Native American teachers are limited.

The act requires the Indian Education Division, in collaboration with the Indian Education Advisory Council, to “seek funds to establish, develop and implement culturally relevant support services” to increase the number of Native American teachers and public school administrators.”^{xxviii} These efforts supplement existing programs for teacher recruitment and retention with a focus on Native American language and culturally relevant instruction, such as through grants from the Indian education fund to existing teacher education programs or special certifications for nondegreed teachers of Native American languages.

A 2020 publication from the Learning Policy Institute, a public education research organization, reports that 3 percent of teachers and 10 percent of public school students in New Mexico identify as Native American.^{xxix} That same report notes enrollment in teacher preparation programs declined 76 percent between 2011 and 2018, while increasing numbers of teachers are entering through alternative certification programs.^{xxx} Additionally, the Tribal Education Alliance reported in December 2020 that a lack of teacher diversity and appropriate teacher training in New Mexico can produce negative classroom experiences for Native American students.^{xxxi} According to the latest state *Educator Accountability Reporting System Report* (published in March 2020), 5 percent of the 1,500 students enrolled in state educator preparation programs in SY18 identified as Native American.^{xxxii} These data indicate New Mexico still has room to improve its recruitment and retention of Native American teachers to serve Native American students.

Chart 14. Estimated Number of Native American Students per 520-Certified Teacher by District and Charter School



Source: LFC analysis of PED data

The state offers a specialized Native American language and culture teaching certificate for tribal members to teach in public schools, but employment of persons with these certificates varies locally. The Native language and culture certificate, also known as the 520 certificate, is unique to New Mexico and authorizes tribal members to teach their native language and culture in public schools in prekindergarten through high school.^{xxxiii} Each tribe develops the standards and criteria needed for teaching certification in their Native American language and culture. Teachers certified under the 520 program may be, but are not required to be, licensed teachers and as such are not subject to the same requirements as other public school teachers unless they already hold another state teaching license. School districts and charter schools may employ certified, nondegreed individuals to teach native language and cultures through a formal agreement between a tribe or pueblo and PED.

In 2019, there were 131 Native language and culture teachers teaching in 19 New Mexico public school districts and charter schools through agreements with 14 tribal governments. The extent to which different districts and charters employed persons with 520 teaching certificates varied, ranging from five teachers in Farmington to 32 teachers in Zuni.

Structured interviews with tribal education leaders indicate that in some cases, instruction may be provided by individuals with knowledge of tribal culture and traditions, but who lack formal teacher training. Moreover, the Tribal Education Alliance notes that 520-certified teachers are often “not treated as equal teachers with equal pay.”^{xxxiv} Providing 520-certified teachers with additional access to professional development in classroom management and instructional practices could further enhance the incorporation of culturally and linguistically relevant education into Native-serving districts.^{xxxv}

Table 11. IED Native Language Grants, FY20-FY21

Recipient	FY20 Award	FY21 Award
University of New Mexico Diné Language Teacher Institute	\$80,679	\$267,531
Santo Domingo Pueblo	\$44,058	\$160,775
Keres Children’s Learning Center	\$50,000	\$75,000
Diné College	-	\$250,430
Total	\$174,737	\$753,736

Source: PED

PED funding for Native American teacher preparation programs grew by \$579 thousand in FY21. In FY20, PED awarded three grants totaling almost \$175 thousand from the Indian education fund to Native language teacher preparation programs to support educational opportunities in New Mexico districts and schools. Awards in FY21 for the same purpose grew fourfold to over \$750 thousand. Activities include funding the first 15-teacher cohort of the Diné Language Teacher Institute at the University of New Mexico and the development of a five-year strategic plan and Native language teacher preparation program at Santo Domingo Pueblo. Additionally, several districts and tribes receiving Indian education fund grants use their awards for professional development for teachers and administrators.

Grow-your-own teacher efforts have shown successes in other states. Beginning in FY21, the Legislature appropriated \$362.6 thousand for a new line-item appropriation to the University of New Mexico’s Grow Your Own Teachers Network. The University of New Mexico Grow Your Own Teachers Network is intended to support CLR teacher education and increase the number of New Mexico Native American educators and public school administrators. The Learning Policy Institute notes the success of similar efforts in other states, including partnerships between tribes and tribal and community colleges. One such partnership between Blackfeet Community College and the University of Montana allows teacher candidates to complete preparation on the reservation through online classes and has resulted in increased Native American teacher representation and reduced turnover in a predominantly Native American school district.

The act sets a goal for PED to enter into an agreement with the Bureau of Indian Education to align assessments and share data.

The Indian Education Act requires PED to develop a relationship with the federal Bureau of Indian Education (BIE) and includes the goal of encouraging an agreement between the state and BIE on alignment of state and federal assessments and data. In an August 2019 report, the Legislative Education Study Committee identified challenges with collaboration of BIE Schools and PED.^{xxxvi} Specifically, the report pointed out that since BIE schools are not eligible for PED funded initiatives, they are not required to implement PED initiatives to serve Native American students, creating inconsistencies in instruction, data, and reporting when students transfer between BIE schools and public schools. Additionally, BIE interventions do not align with PED public school districts and charter schools interventions. Without such alignment in place, implementing systemic change is challenging.

A recent report by the Learning Policy Institute (LPI), recommends tribal government departments of education and PED complete memoranda of understanding for the sharing of student data encompassing public school, BIE, and tribally controlled school data.^{xxxvii} These memoranda could serve as templates for local districts to further strengthen data sharing by also entering into agreements with local tribal governments. This would be a step toward the collaboration and communication the Indian Education Act requires. Additionally LPI recommends PED support districts, tribally controlled schools, and Bureau of Indian Education schools to blend and braid education-related funds to support community schools, including state funding for at-risk students, expanded learning time, and state grants through the Indian Education Act, as well as federal 21st Century Community Learning Center grants and federal Title I school improvement funding.^{xxxviii} This could include permitting combined applications, budgets, and reporting requirements. For this to occur, the Legislature would have to remove any statutory constraints to such consolidation and alignment.

Districts are inconsistent in conducting required tribal engagement, and PED oversight is limited.

Tribal input into district decisions, especially regarding curricula, services, and outcomes of Native American students, is vital to maintaining sovereignty and representing the interests of tribal communities. A December 2020 Learning Policy Institute report noted accountability and improvement processes at Native American-serving districts and schools should integrate with existing requirements around tribal collaboration.^{xxxix} The Indian Education Act requires state and district tribal education status reports (TESRs) to report on the extent to which districts consult and collaborate with tribal organizations, including required federal consultations.^{xl}

In a review of SY20 district and charter school TESRs, LFC staff found district reporting and documentation of meetings with tribes is not standardized and often vague, with no requirement to specify when meetings and consultations were held, with whom, and what subjects were discussed. PED requires TESRs to follow a general template, but districts vary widely in the quality of information they provide. Of 24 TESRs reviewed by LFC staff, 13 did not provide any documentation on when required consultations and meetings were held. Action plans are often nonspecific, such as one district stating it “will continue to communicate/collaborate with the Navajo Nation in the interest of

success for all Navajo students.” By contrast, a separate district provided extensive lists of tribal meetings, dates, and action plans in its SY20 TESR.

Table 12. Examples of TESR Reporting on Tribal Consultations

	Bernalillo Public Schools	Farmington Municipal Schools
Reports on meetings conducted	Listing and dates provided for: <ul style="list-style-type: none"> • 13 Impact Aid meetings • 2 Title VII meetings • 1 tribal leaders meeting (second canceled due to Covid-19) • 10 tribal consultation meetings with 7 Pueblos • 4 community meetings in tribal communities • 1 government-to-government meeting 	“Monthly Indian Parent Committee meetings were conducted. The meetings were announced on the district website and other venues as well. Public Hearings were also held in the Fall and Spring to inform the community of Indian Education programs. The district has consulted with all Navajo Chapter houses and provided copies of the IPP (see addendum).”
Action Plan	Sets forth 7 goals, each with multiple detailed sub-objectives: <ol style="list-style-type: none"> 1. Improve communication with parents, students, and tribal communities 2. Develop and implement a BPS Indian Education Dept. policy/procedural manual 3. Develop an official BPS Indian Education Dept. calendar for 2019-2020 4. Complete and implement a culturally relevant, community-based curriculum 5. Increase the graduation rate of BPS Native American students 6. Create a space for IED to serve its students: a Native American Resource Center 7. Implement this strategic plan with a clear, focused, and complete understanding 	“Farmington Municipal Schools will continue to communicate/collaborate with the Navajo Nation in the interest of success for all Navajo students.”

Source: LFC analysis of tribal education status reports

PED published a draft guidance document on conducting tribal consultations that lays out strategies for districts to hold effective consultation meetings with tribal communities. These include consulting and sharing information early and often; establishing and agreeing on priorities, issues, and challenges; providing cultural awareness and diversity training for local education agency leadership and staff; understanding tribal authority and sovereignty; and planning consultation and meetings to avoid conflicts with tribal cultural calendars, feast days, and holidays. PED should consider requiring districts to include in their TESRs the extent to which their tribal consultations follow such guidance, especially around addressing priorities, issues, and challenges relevant to the educational outcomes of Native American students.

Moreover, the State-Tribal Collaboration Act requires state agencies to report annually on programs and services for Native Americans and the funding dedicated to those programs. PED’s most recent report denotes all meetings and tribal consultations it has conducted, as well as notes spending from the Indian education fund. PED should consider requiring TESRs to include similar reporting detailing these actions at the district level.

School boards of Native American-serving districts vary on inclusion of agenda items dedicated to Native American education issues. Twelve percent of school board agenda items in five districts with significant shares of Native students were devoted to issues specific to Native American education. Of 72 agenda items identified as pertaining to Native education issues, 37 (51 percent) dealt with matters related to funding, including Impact Aid, Indian education fund grants, and other sources of revenue. Thirteen items dealt with Native language instruction, while just one related to other culturally relevant curricula: the approval of a Diné/Navajo curriculum in Cuba

Independent Schools. No agenda items in the districts examined pertained to a discussion of Native American student outcomes.

Table 13. School Board Agenda Items Devoted to Native American Education Issues in Five Native-Serving Districts, SY20

District	Native American Share of Student Population	Total Number of Agenda Items	Number of Items Related to Native Education Issues	Percent Related to Native Education Issues
Gallup	79%	85	10	12%
Cuba	65%	77	14	18%
Jemez Valley	73%	98	3	3%
Central	87%	220	33	15%
Zuni	98%	98	12	12%
Total		578	72	12%

Source: LFC analysis of school board agendas and minutes

Of 32 Native American-serving districts and charters, only five have not had any superintendent turnover over an eight-year period.

Superintendent turnover can negatively impact student performance and school district stability, while research also suggests superintendent longevity can improve student academic achievement. Research articles from the American Association of School Administrators' *Journal of Scholarship and Practice* found statistically significant positive associations between superintendent longevity and experience with measures of student achievement in Kentucky, New Jersey, and North Carolina.

A previous LFC evaluation found a small negative correlation between the number of superintendent transitions in New Mexico school districts, from SY13 through SY18, and a district's student proficiency on the SY18 PARCC exam on English language arts, which suggests superintendent turnover may have an effect on student performance.^{xii} In the 23 school districts and nine charter schools defined as historically Indian impacted, five (16 percent) have had no change in superintendent over an eight-year period, with more than four superintendent changes at four school districts in that timeframe. A previous LFC evaluation found 13 of the 89 districts in the state (15 percent) had no change in superintendent between FY13 and FY18.^{xiii}

Table 14. Superintendent or Lead Administrator Changes in Native-Serving Districts and Charter Schools, SY13-SY20

Number of Superintendent/Lead Administrator Changes	Number of School Districts/Charter Schools	School Districts/Charters
0	5	Aztec, Rio Rancho, Tularosa, DEAP, Hozho Academy
1	7	Bloomfield, Jemez Mountain, Ruidoso, Santa Fe, Taos, La Tierra Montessori
2	8	Bernalillo, Farmington, Gallup, Los Lunas, Magdalena, Pojoaque, NACA, Zuni,
3	6	Albuquerque, Central Consolidated, Grants, Jemez Valley, Middle College High School, Peñasco
4	4	Cuba, Dulce, Española, Six Directions Indigenous School

* Note: Information unavailable for Walatowa, Dream Diné, and San Diego Riverside charter schools

Source: LFC analysis

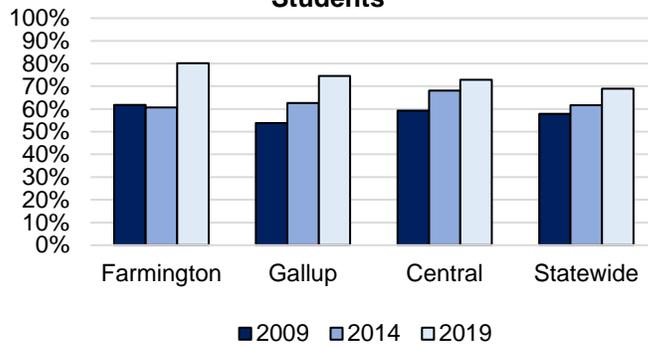
Effective Practices Can Promote Native American Student Achievement

The Indian Education Act was intended to provide for the study, development, and implementation of practices that positively affect the educational success of Native American students.^{xliii} However, the achievement gap between Native American students and their peers remains prevalent. Local school districts and charter schools have discretion over how to provide instruction and support services to students. LFC research indicates that at-risk and Native American student achievement can improve with the local implementation of evidence-based practices and interventions. The implementation of high-impact, low-cost interventions (such as data-driven instruction or attendance initiatives) can improve academic outcomes for at-risk and Native American students.

Districts with high Native American graduation rates implement interventions focused on attendance and student engagement.

The statewide high school graduation rate for Native American students increased from 58 percent in 2009 to 69 percent in 2019. Three of the state’s school districts with the highest number of Native American students (Gallup, Central, and Farmington) had higher increases in graduation rates over this timeframe and higher Native American graduation rates in 2019 than the statewide average.

Chart 15. Increases in High School Graduation Rates for Native American Students



Source: LFC analysis of PED data.

According to SY19 tribal education status reports, the three school districts that implemented interventions focused on increasing Native American student attendance and engagement in learning. Specifically, the districts implemented attendance monitoring, mentorship, counseling, and academic remediation to reduce dropout rates and increase graduation rates. A 2014 LFC program evaluation on high school graduation rates identified these practices as having research evidence of effectiveness.^{xliv}

Figure 5. Sample of Practices to Increase Attendance and Graduation, SY19

Gallup:

- Early warning systems identifying truant students
- Student assistance teams
- Home-visits for habitually truant students

Central:

- Attendance secretaries and coaches
- School counselors conducting transcript audits
- High school afterschool tutoring and summer school

Farmington

- Native American youth advisors and mentors
- Credit recovery programs to aid graduation
- Navajo bilingual teachers and a language coach

Source: District Tribal Education Status

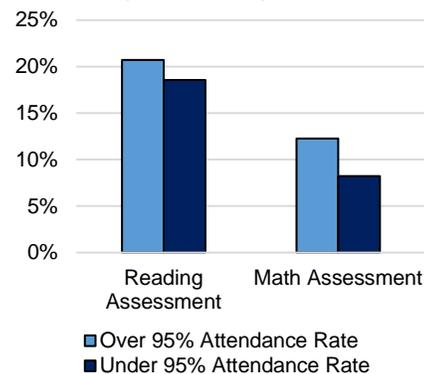
Attendance rates are positively associated with increased academic proficiency for Native American students. According to PED tribal education status reports, Native American students have consistently attended school at a lower rate than their peers. LFC staff analyzed the relationship between attendance rates and proficiency rates for Native American students in sixth through eighth grade using available SY18 data. Native American students who had attendance rates above 95 percent had higher proficiency rates in reading and math than Native American students with attendance rates below 95 percent.⁸ These data parallel previous LFC research that found increased student absences in the eighth grade were associated with decreased performance on assessments of reading and math.^{xlv}

These data suggest that school districts and charter schools will need to support increased learning time for Native American students (through attendance, extended learning time, or other interventions) while also respecting necessary absences for Native American cultural and community events. State law and PED rules require school districts and charter schools to respect tribal traditions and count absences from tribal obligations as excused absences (Section 22-12A-2 NMSA 1978 and Section 6.10.8.9 NMAC). As a potentially low-cost, high impact practice, Native American-serving districts and schools could structure school calendars around tribal events to reduce absences, increase cultural relevance, and improve performance.

Schools implementing the characteristics of high-performing schools achieve results above the statewide average.

Past LFC research identified specific characteristics of high-performing schools that can help at-risk students succeed and reduce the achievement gap. These include high expectations and standards, curriculum and instruction aligned with core standards, and a data-driven focus and frequent monitoring of student achievement.

Chart 16. Percent of Native American Students Proficient (Grades 6-8), SY18



Source: LFC analysis of PED data.

Figure 6. Eight Characteristics of High-Performing Schools



Source: LFC. (2014). "Program Evaluation: Performance and Improvement Trends." Report #14-11. P.12.

⁸ The differences in proficiency rates between groups were statistically significant.

Chart 17. Performance Comparison of Miyamura High School and the Statewide Average, SY19

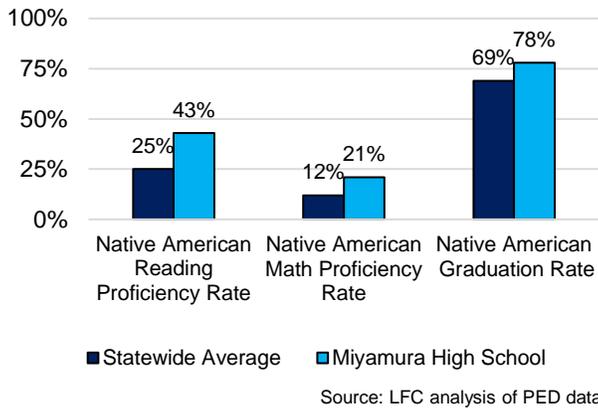


Figure 7. Miyamura High School DASH Plan Practices, SY19

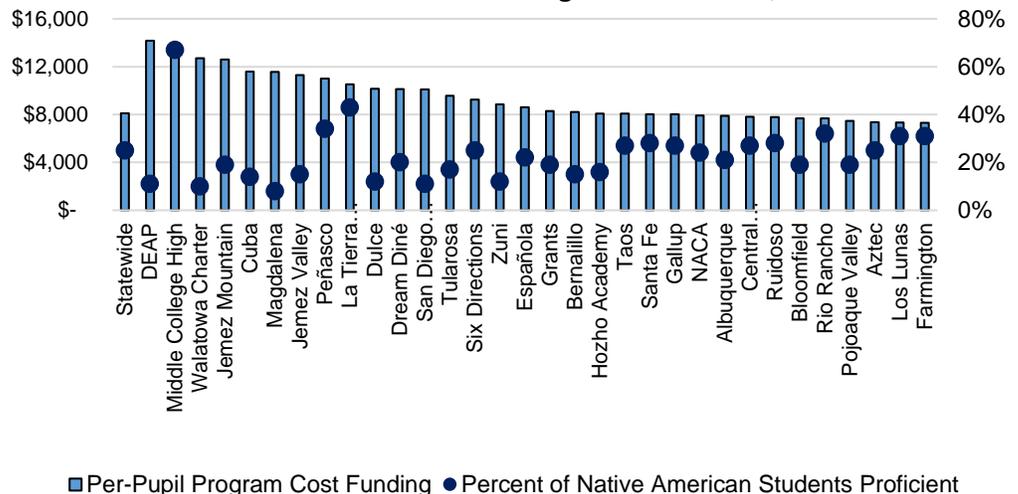
- Action plans based on student data
- Alignment of instruction to standards
- Monthly teacher collaboration meetings to share successful strategies.

Source: PED

Case Study: Miyamura High School is a high-performing school serving at-risk students where evidence-based practices are helping Native American students achieve above the statewide average. A majority of Miyamura High School’s 1,200 students in Gallup were Native American (65 percent) and economically disadvantaged (99 percent) in 2019. Miyamura High School’s Native American students achieved higher proficiency rates and graduation rates than the statewide average for Native American students. According to the school’s SY19 *Data Accountability Sustainability, and High Achievement (DASH) plans*, the school’s three main focus areas were (1) data-driven instruction, (2) standards alignment, and (3) teacher collaboration. Specifically, teachers regularly used student data to identify what concepts to re-teach in small groups and met monthly to discuss student needs and successful teaching strategies. Additionally, 59 percent of Miyamura High School’s teachers had over 10 years of experience compared with 44 percent of teachers statewide. Previous LFC research has found high performance is linked to data-driven instruction, focused professional development, teacher experience, and high expectations and standards.^{xlvi}

Per-pupil funding was not predictive of Native American academic proficiency levels, which highlights the importance of local programming. LFC staff compared per-pupil funding amounts from the state public education funding formula with the percentage of Native American students who achieved proficiency on the PED’s Transition Assessment of Math and English Language Arts (TAMELA). For the reviewed Native American-serving school districts and charter schools, per-pupil program cost funding was not strongly correlated with the percent of Native American students achieving proficiency on the FY19 TAMELA exams in English

Chart 18. Per-Pupil Funding and Percent of Native American Students Proficient on Reading TAMELA Exam, SY19



Source: LFC analysis of PED data

language arts (-0.02). Past LFC research has found similar weak relationships between per-pupil funding and academic proficiencies.^{xlvii} These data suggest the statistical relationship between per-pupil funding and Native American academic proficiency is a nonlinear relationship and, in part, depends on other local factors.

PED can leverage the requirements of 2019 amendments to the Indian Education Act to encourage effective practices for improving Native American student performance.

In Laws 2019, Chapter 16 (HB 250), the Legislature amended the Indian Education Act to include a series of tools for districts and charter schools to prioritize the needs of Native American students and maintain accountability for meeting those needs. These include the use of needs assessments to drive district budgets and the requirement for districts to detail to PED how their budgets meet those needs, as well as biannual public meetings with tribal leadership to assess progress.

Table 15. Key Deadlines for Native-Serving Districts and Charter Schools Under Laws 2019, Chapter 16 (HB 250)

Date	Requirement
October 15, 2020 and every three years thereafter	Conduct an American Indian/Alaska Native student needs assessment to determine what supports are needed in school, at home, and in the community to help American Indian and Alaska Native students succeed in school, graduate with a diploma of excellence, and be prepared to enter post-secondary education or the workplace.
November 30, 2020 and April 30, 2021, and twice annually thereafter	Hold a public meeting with members of the district's American Indian and Alaska Native students' tribal leadership, parents, and the Indian Education Division to report on the American Indian/Alaska Native student needs assessment and the district's evaluation of progress.
January 15, 2021	Develop and publish on its website a systemic framework for improving educational outcomes for American Indian and Alaska Native students, in collaboration with: (a) school employees; (b) American Indian and Alaska Native students and families; (c) social service providers; (d) community and civic organizations; (e) the school district's or charter school's equity council.
April 15, 2021 and annually thereafter	Submit a written statement to PED and any tribe, nation, or pueblo located within the district's boundaries detailing the ways in which the district's budget successfully met or failed to meet the prioritized needs from the most recent American Indian/Alaska Native student needs assessment.

Source: NMAC 6.35.2.11 and 6.35.2.12

In implementing these provisions, PED should develop its own accountability tool to track district and charter adherence to all requirements around budgeting, prioritization of needs, and tribal consultation, and the extent to which those districts fulfill the act's requirements and their stated obligations. A straightforward way to do this would be incorporating an assessment of district progress into its annual tribal education status report (TESR), along with an overview of the district's budgeted priorities and independent PED analysis of whether or not those priorities meet the needs in the district's needs assessment. PED can also use its role in reviewing and approving district budgets to enforce the provisions of the act, such as by not approving budgets for districts that have not conducted required tribal consultations.

A 2020 Learning Policy Institute report notes similar ways PED can leverage needs assessments to improve accountability and performance, including incorporating local indicators of need into its existing data dashboard and continuous monitoring and sharing of data and best practices.^{xlviii}

All but three districts have completed required needs assessments for SY21. Under Laws 2019, Chapter 16 (HB 250) and administrative rules adopted to implement the law, Native American-serving district and charters must begin conducting needs assessments and developing systemic frameworks in the 2020-2021 school year. As of December 2020, three districts and charters (Jemez Valley Public Schools, La Tierra Montessori, and Six Directions Indigenous School) had not submitted their needs assessment. The deadline for completion under administrative rule was October 15, 2020.

Tribal education status reports are not required for three Native American-serving charter schools, and PED lacks authority to enforce TESR compliance. The act lays out the requirements for what must be included in state-level and district-level TESRs, and administrative rule specifies which districts must submit them. This definition does not align precisely with the definition of “historically defined Indian-impacted school district” established elsewhere in the administrative code, creating a disconnect in which certain districts subject to new requirements for needs assessments and systemic frameworks for Native American students do not have to submit a TESR.

TESRs are required for districts and charter schools that have tribal lands within their boundaries, or that are located on tribal lands, but are optional for those adjacent to tribal lands.^{xlix} Of the 23 districts and nine charter schools subject to HB 250 requirements, three charter schools were not required to, and did not, submit a TESR for SY20. These are Hozho Academy, La Tierra Montessori, and Middle College High School.

One school district (Jemez Valley) failed to submit a TESR for SY20. While PED can follow up with districts and note they failed to submit the report, neither the act nor administrative rule vests the department with authority to enforce submission of TESRs. One option for doing so would be to require submission of the prior year’s TESR to be eligible for Indian education fund awards the following year.

Culturally and linguistically relevant education can help student outcomes but quantitative research is limited.

Emerging quantitative evidence indicates culturally and linguistically relevant (CLR) practices can increase student engagement and outcomes. For example, a randomized controlled trial found Alaskan second graders performed significantly better in math than a control group after participating in a supplemental math curriculum developed by researchers, Yup’ik teachers, and Yup’ik elders.¹ Additionally, at-risk eighth grade students assigned to ethnic studies courses in high schools at San Francisco Unified School District increased their attendance by 21 percent and GPA by 1.4 points in the ninth grade.ⁱⁱ

However, the overall quantitative research on CLR practices and programs is limited. In a review of the academic literature on public school professional development in culturally relevant practices from 1998-2014, only two articles

out of 179 articles quantitatively studied the impacts of CLR training on outcomes and no articles met the research design standards recommended by the U.S. Department of Education’s *What Works Clearinghouse*, an inventory of evidence-based interventions.^{lii} More quantitative, empirical research on CLR education could help assess the success of local CLR implementation efforts and potentially increase access to federal Title I school improvement funds based on the federal Every Student Succeeds Act’s tiers of evidence requirements.

Incorporating CLR curricula and materials in schools requires a coordinated approach and greater tribal input.

The court’s ruling in the *Martinez-Yazzie* consolidated lawsuit found districts in New Mexico were not engaging in systematic adoption of culturally relevant learning environments, curricula, and educator training.^{liii} Research into adoption of CLR practices in New Mexico conducted by an independent consultant in partnership with LFC staff revealed similar results through structured interviews with tribal education leaders, district and charter school administrators, and educators involved with Native American education in the state.

This work resulted in the identification of five overarching factors that matter in sustaining and revitalizing Native cultures that can be incorporated into a strategy for adopting CLR curricula and materials in Native-serving districts statewide. Key among these is recognizing tribal sovereignty and self-determination, particularly with regard to the role of tribal entities as the drivers and caretakers of language and culture instruction. One way to achieve this is by drawing on models of tribally-driven curriculum development, such as the Navajo Nation’s Diné content standards or the Indian Pueblo Cultural Center’s “100 Years” curriculum, designed to reflect the input and experience of the tribes that designed them. Although some Native American CLR

Figure 8. Five Factors that Matter in Sustaining and Revitalizing Native Cultures

In November 2020, LFC staff contracted with a specialist in Native American education policy to (1) conduct a policy analysis of culturally relevant education and (2) facilitate structured interviews with a sample of 7 Tribal Education Department leaders, 9 school district and charter school administrators, and three educators. From these activities, five factors were identified that matter in sustaining and revitalizing Native cultures:

- 1.) Sovereignty and Self-Determination:** Tribal sovereignty and involvement in education with school districts and teacher preparation programs can help connect Native American students with their cultures.
- 2.) Community-to-Teacher Collaboration:** Districts, schools, and teachers can collaborate with families and collect feedback through surveys gauging community satisfaction with the student’s holistic development.
- 3.) Teachers Designing Curriculum:** Teachers can help sustain and revitalize cultures through curricula development. School districts, teacher preparation programs, and tribal education department can help teachers foster and use these skills.
- 4.) Models of Excellence in Curricula Development:** Numerous local initiatives have developed cultural curricula for Native American students. Cataloging and sharing cultural lessons and instructional practices can help expand access to cultural instruction.
- 5.) A Systemic Approach across State, Local, and Tribal Stakeholders:** A collaborative approach across all stakeholders, including Tribes, Pueblos, state agencies, local school districts, charter schools, and regional educational cooperatives will help sustain and revitalize Native American cultures.

Source: Bobroff, K. (2020). “Report to the Legislative Finance Committee on the Indian Education Act and Culturally and Linguistically Responsive Education.”

curricula are available, the state does not track all the Native American CLR curricula available or needed for compliance with the act.

Doing so, however, requires close collaboration between districts, charter schools, and tribal governments, as well as training and professional development for teachers to implement these curricula. Tribal representatives noted a need for more formal collaboration between their governments and school districts beyond the pro forma processes around approving required policies and procedures in order to facilitate meaningful tribal input, adoption, and training on culturally relevant instruction.^{liv}

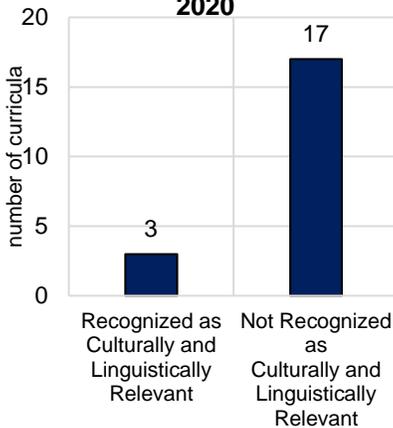
Teachers also have a significant role in driving CLR curriculum development. Because of a general lack of available “off-the-shelf” curricula and materials for instruction in Native language and culture, each of the 22 Native American tribes and pueblos in New Mexico are involved in driving the development of these curricula for their students. Because of local resource constraints and the absence of a single curriculum on which to draw, teachers may be involved in developing and implementing Native language and culture curricula specific to their tribal students, requiring them to be knowledgeable in areas particular to an individual tribe.^{lv}

Ensuring access to CLR instructional materials is complicated by their specialized nature.

Culturally and linguistically relevant instructional materials are developed by publishers, recommended by the state, and adopted by local districts and charters. PED's Instructional Materials Bureau recommends new instructional materials for specific subjects on a six-year cycle. School districts and charter schools are not required to adopt new instructional materials on the same cycle as PED. State law requires at least 10 percent of the instructional materials in social studies or language arts recommended by PED for local adoption to be culturally relevant,^{lvi} and the state has recently increased flexibility in funding for instructional materials through the SEG formula. However, in the *Martinez-Yazzie* ruling, the First Judicial District Court found PED “does not appear to have a functioning method of evaluating” whether culturally responsive learning environments and educational opportunities are being provided to Native American students^{lvii}, and a December 2020 Learning Policy Institute report finds the state’s requirements around culturally and linguistically appropriate instruction have not been “resourced or implemented sufficiently.”^{lviii}

Fifteen percent of high school English language arts materials reviewed by PED in 2020 were CLR. PED has recently developed a systematic approach to assess whether instructional materials are CLR. In summer 2020, PED's Instructional Materials Bureau reviewed the instructional materials for 20 high school English language arts curricula. Out of the 20 high school English language arts instructional materials reviewed, three curricula (15 percent) were recognized by PED as being culturally and linguistically relevant. These data indicate PED compliance with this provision of the Instructional Materials Law and a low proportion of available instructional materials in the market are culturally and linguistically relevant.

Chart 19. High School English Language Arts Instructional Materials Reviewed by PED in 2020



Source: LFC analysis of PED Instructional Materials Bureau data

PED has implemented guidelines for CLR curricula and materials, but can do more to track depth and quality.

PED published the CLR Guidance Handbook in June of 2020 to assist school districts and charter schools in implementing culturally and linguistically responsive practices. In response to the *Martinez-Yazzie* lawsuit, the court ruled that PED was not fully monitoring school districts and charter schools in the implementation of existing laws. In response, PED now requires all school districts and charter schools to implement a culturally and linguistically responsive framework.

The handbook also cites research on the development of four approaches to CLR education, ranging from the surface (contributions) level to social action, and includes a framework of four focus areas (academic success, cultural integrity, critical consciousness, and equity). The Indian Education Division can work with PED’s Language and Culture and Instructional Materials divisions to act as a repository and coordinator of efforts to implement CLR curricula among districts and tribes statewide by cataloging instructional materials and curricula based on the extent to which they adopt the four approaches and satisfy the four focus areas. Such work can provide meaningful context for assessing the extent to which districts and charter schools fulfill their obligations under the Indian Education Act.

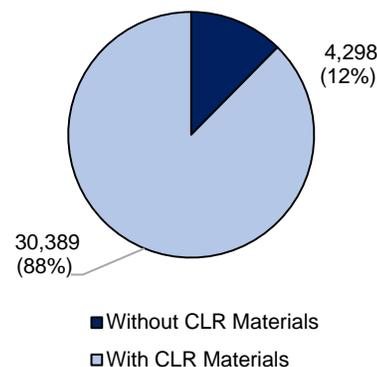
A majority of districts and charter schools report having some level of culturally and linguistically relevant materials in place. Most school districts and charter schools reported to PED they provided culturally and linguistically relevant (CLR) instructional materials for Native American students in SY19. PED’s Instructional Materials Bureau collects information each year from school districts and charter schools regarding the instructional materials that were locally selected or developed. In SY19, 71 percent of school districts (61 out of 89 school districts) and 64 percent of charter schools (63 out of 98 charter schools) reported to PED they provide culturally and linguistically relevant instructional materials for Native American students. LFC staff examined this information alongside student demographic data by school district and charter school from the third reporting date of SY19 (i.e. February 2019).^{lix} Of the 34.7 thousand Native American students counted on the third reporting date of SY19, 30.4 thousand Native American students (88 percent) were in school districts or charter schools that reported providing some level of culturally relevant instructional materials.⁹

Table 16. CLR Curriculum Approaches and Focus Areas

PED-Identified Research-Based Approaches to CLR Curricula	
Approach	Description
Contributions	Basic knowledge about cultural/ethnic groups’ roles and contributions to U.S. society and culture.
Additive	Integration of ethnic content, concepts, themes, and perspectives into curriculum without changing its basic structure, purposes, and characteristics.
Transformative	Students view concepts and issues from multiple perspectives; requires changes in foundations and perspectives of mainstream curriculum.
Social Action	Incorporates research and decision making skills and requires students to make decisions and take actions related to curriculum content.
PED CLR Curriculum Focus Areas	
Focus Area	Description
Academic Success	Literacy, numeracy, technological, social, and political skills.
Cultural Integrity	Use of students’ culture as a vehicle for learning.
Critical Consciousness	Student development of a broader consciousness to critique aspects of society and culture.
Equity	Opportunities for all students to learn regardless of cultural and linguistic background.

Source: PED Culturally and Linguistically Responsive Guidance Handbook

Chart 20. Native American Students in Districts/Charter Schools With or Without CLR Instructional Materials, SY19



Source: LFC analysis of PED and LESC data.
 Note: Student counts are from the third reporting date of SY19.

⁹ The Jemez Valley, Rio Rancho, Ruidoso, Tularosa, and Zuni school districts each had more than 100 Native American students in the third reporting date of SY19 and reported not having culturally relevant instructional materials in SY19.

The Indian Education Act requires evaluation of curricula for tribal students, but reporting focuses on activities rather than outcomes.

Statute requires PED to conduct “Indigenous research and evaluation for effective curricula for tribal students” and requires school districts and charter schools to report measures and results on research and evaluation of curricula to PED as part of their annual tribal education status reports (TESRs).^{ix} PED compiles district reporting on these measures in the annual statewide TESR, which includes the figure below outlining nine goals for curricula for tribal students and the research and evaluation thereof, including, “promote effective teaching and effective teachers,” “collect data and track American Indian student success,” and “promote culturally responsive instruction.”

Figure 9. PED Goals for Indigenous Research and Evaluation



Source: PED 2019-2020 Tribal Education Status Report

Of 24 available district and charter school TESRs for SY20 reviewed by LFC staff, just three reported substantial information on outcomes. Largely, however, reporting by districts simply summarizes activities in which the districts or charter schools have engaged to create or further curricula targeted at Native American students. Five districts list trainings and professional development. Others discuss language or cultural curricula, but do not report on the outcomes of these programs or measure the extent to which they meet the nine goals.

Because of the costs of engaging with independent researchers, many districts are not likely to perform regular, rigorous evaluations on their own. However, statute requires PED to conduct such activities. PED’s statewide TESR provides summary information from district TESR reports and does not make note of any Indigenous research and evaluation measures undertaken by the department itself. Recent

staffing shortages in PED’s Indian Education Division have contributed to a lack of capacity for many activities implementing the act at the state level, but PED reports to LFC staff it plans to revisit this requirement when the division is fully staffed.

Key Recommendations

The Legislature should consider

- Reducing or eliminating the Impact Aid credit from the state’s public education funding formula, thereby freeing Impact Aid districts to use that funding for evidence-based interventions aimed at closing the achievement gap for Native American students.
- Investing in broadband infrastructure in unserved and underserved tribal communities and requesting a plan from the Department of Information Technology prioritizing funding for these communities.

The Public Education Department’s Indian Education Division should

- Require Indian education fund grant recipients to include at least one measurable metric of achievement for each grant goal or deliverable.
- Consider, with input from districts and tribes, basing Indian education fund awards for school districts and charter schools on the size of the district or charter school’s Native American student population and identified needs in a district or charter school’s Native American student needs assessment.
- Prioritize reducing unspent balances in the Indian education fund, including by ensuring awards are processed and issued before the start of the school year and allowing retroactive reimbursement with proper documentation to discourage grantees leaving funds unspent.
- Ensure permanent staffing of an Indian Education Division office in the northwestern region of the state.
- Work with the Language and Culture Division to catalog culturally and linguistically relevant curricula and materials adopted or proposed for adoption for Native American students according to whether they correspond to each level of approach (contributions, additive, transformative, social action) listed in the CLR guidance handbook.
- Develop a plan to conduct Indigenous research and evaluation pursuant to 22-23A-5 NMSA 1978 that identifies potential programs to select for evaluation in FY22, including outcome measures to be targeted and a plan and budget for identifying independent evaluators to conduct the evaluation.

The Public Education Department should

- Annually assess the implementation and success of the four-part strategy for addressing the *Martinez-Yazzie* consolidated lawsuit, including measuring progress toward meeting key milestones for each objective.
- Annually assess the implementation and success of its more detailed financial reporting system for at-risk funding, including analysis and

reporting of the use of at-risk funds for Native American students and to fulfill the purposes of the Indian Education Act.

Native American-serving school districts and charter schools should

- Improve collaboration with tribal communities by formalizing engagement opportunities beyond required consultations, including regular representation at board meetings and through memoranda of understanding.
- Develop meaningful criteria for evaluating and reporting outcomes of initiatives for Native American students in tribal education status reports.
- Take full advantage of K-5 Plus and extended learning time programs for Native American students.
- Identify available unrestricted cash balances to prioritize for Native American education initiatives in line with the Indian Education Act.

Other Recommendations

The Public Education Department's Indian Education Division should

- In addition to posting on the department's website pursuant to NMAC 6.35.2.11, report to the Legislative Finance Committee, Legislative Education Study Committee, and Indian Affairs Committee the extent to which school district budgets met or failed to meet the prioritized needs from the needs assessment.
- Develop a rubric to quantify the quality and implementation of school American Indian and Alaska Native Needs Assessments and provide feedback to the districts on ways to improve the education of Native students.
- Change administrative rule to require all school districts and charter schools subject to the requirements of Laws 2019, Chapter 16 (House Bill 250) to submit a tribal education status report (TESR) and require receipt of a TESR for Indian education fund eligibility the next fiscal year.
- With consultation and input from the Indian Education Advisory Council, support data sharing agreements between tribal governments tribal departments of education that include data from public, tribally controlled, and Bureau of Indian Education schools and pursue efforts to share with the state and public school districts.
- Ensure documentation of all Indian Education Advisory Committee meetings is posted publicly on the PED website within 30 days of each meeting.

-
- With tribal and Native teacher input, develop a challenging, sequential culturally relevant curriculum framework for pre-kindergarten through sixth grade pursuant to section 22-23A-5(E)(3) NMSA 1978 that allows sufficient flexibility for addressing the unique needs and differences between the variety of tribes and pueblos in New Mexico.

Status of 2006 LFC Evaluation Recommendations

Finding

The Indian Education Act is vague, overly ambitious, and extremely difficult to implement

Recommendation	Status			Comments
	No Action	Progressing	Complete	
The Legislature should consider clearly defining and setting performance standards for PED and the Indian Education Division to act as the responsible lead agencies for implementing the critical elements of the culturally based educational model in Native American impacted school districts in the language of the Act.				In 2019, the Legislature passed House Bill 250 (Laws 2019, Chapter 16). The legislation amended state law to require school districts and charter schools to conduct needs assessments for Native American students and prioritize budgets based on those assessed needs. The legislation requires PED to monitor and consider whether local budgets are being used to meet the assessed needs of Native American students.
The Legislature should consider replacing the Indian Education Act's vague terminology of "culturally relevant learning environment" and "educational systems" with the critical elements of the culturally based education model to provide a blueprint for implementation.				In 2019, the Legislature passed House Bill 250 (Laws 2019, Chapter 16). The legislation amended state law to require historically defined Indian impacted school districts and charter schools to develop systemic frameworks for improving educational outcomes for Native American students (Section 22-23A-10 NMSA 1978). The legislation outlines elements of culturally relevant educational academic programs and activities.
The Legislature should consider expanding the language of the Indian Education Act to include all New Mexico students in receiving instruction in Native American culture throughout the curriculum.				The Legislature has not expanded the language of the Indian Education Act to include all New Mexico students. However, PED added standards in English Language Arts in 2010 regarding responsiveness to Native American cultures (6.29.13 NMAC).
The Legislature should consider requiring the development of an implementation plan framework overseen by the Indian education advisory council and carried out by the Indian education division and PED as a feature of the Act.				In 2019, the Legislature passed House Bill 250 (Laws 2019, Chapter 16). The legislation amended state law to require historically defined Indian impacted school districts and charter schools to develop systemic frameworks for improving educational outcomes for Native American students (Section 22-23A-10 NMSA 1978).
The Legislature should consider increasing tribal/pueblo involvement and control over education by expanding Indian education advisory council funding, membership/participation, and authority.				The Legislature expanded the statutory number of council members from 14 members to 16 members (Laws 2007, Chapter 295, House Bill 892), which also increased per diem funding for the council. The Legislature also expanded the authority of the

Recommendation	Status			Comments
	No Action	Progressing	Complete	
				council to advise the cabinet secretary of the state Early Childhood Education and Care Department as well as the PED cabinet secretary (Laws 2019, Chapter 48, Senate Bill 42).
PED should hold another New Mexico Indian Education Summit over two days to facilitate the development of the New Mexico tribal/pueblo/nation perspective on implementation of the Indian Education Act and increased involvement and control of education.				Indian Education Summits occur during each of the government-to-government meetings. These meetings are held twice yearly and include a process where Native American educational leaders provide PED with written recommendations and PED provides regular updates.
PED, the Indian Affairs Department, and other stakeholders should form an Indian Affairs Task Force to make policy recommendations to the governor and the Legislature regarding representation issues and their effect on the delivery of state agency services to tribes and pueblos.				There is not an Indian Affairs Task Force specifically for making policy recommendations to the governor and the Legislature regarding representation issues.

Finding

Research indicates that low achievement of Native American children is largely due to irrelevant (culturally inappropriate) content standards, school organization, instruction, and testing.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
The Legislature should consider adjusting New Mexico content standards and tests to include language and cultural competencies relevant to Native American students for the purpose of measuring adequate yearly progress.				State law gives PED the authority to “prescribe standards for all public schools in the state” (Section 22-2-8 NMSA 1978). The Legislature has not changed this law since 2006. However, PED has added state standards to focus on responsiveness to Hispanic and Native American cultures.
The Legislature should consider expanding the language of the Act to address differences between its purposes and the requirements of federal law with reference to <ul style="list-style-type: none"> - Balancing the federal emphasis on English reading/math standards with the inclusion of Native language and culture standards; - Complimenting traditional academic teaching/testing practices with the inclusion of Native language and cultural standards; 				The Legislature has not modified the language of the Indian Education Act to address differences between its purposes and the requirements of federal law.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
- Expanding the focus on academic achievement with broader development of the whole child in the Native cultural context.				
PED should increase tribal involvement and control over education by assisting school districts serving Navajo students in complying with the requirements of the Navajo Sovereignty in Education Act of 2005.				PED and the Navajo Nation are in the process of entering into a new MOU. IED hired a Navajo Nation specialist position in early October 2020. Navajo Nation Department of Diné Education (DODE) hosts tribal leadership calls every Tuesday with state leaders from New Mexico, Arizona, Utah, and the Bureau of Indian Education (BIE).
PED should develop Native American cultural content standards on the same level as math, English, science and social studies for curriculum and test development				In 2010, PED added standards in English Language Arts regarding responsiveness to Native American cultures (6.29.13 NMAC). According to PED's <i>2020 State-Tribal Collaboration Act Report</i> , PED is developing a Social Studies curriculum (as part of an Indian Education Curriculum Initiative) that is inclusive of Native American history and culture.
PED should provide for the development and dissemination of a New Mexico Indian education K-12 curriculum binder, scope and sequence curriculum, model lessons, supplemental resource materials and resource guide by PED in the Indian Education Act.				In 2020, PED produced a "Culturally and Linguistically Responsive Guidance Handbook" to provide guidance to local school districts and charter schools on how to make culturally and linguistically relevant processes, policies, programs, systems, and instruction. According to PED's <i>2020 State-Tribal Collaboration Act Report</i> , PED is developing a Social Studies curriculum (as part of an Indian Education Curriculum Initiative) that is inclusive of Native American history and culture.

Finding

The current strategy for developing relevant curricula shifts most responsibility from the PED to school districts and outside contractors and does not provide a blueprint and technical assistance to school districts.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
<p>PED should provide an incentive to school districts to implement culturally relevant curricula through the development and testing of culturally based educational competencies and as a requirement of the accreditation process.</p>				<p>In 2010, PED added standards in English Language Arts regarding responsiveness to Native American cultures (6.29.13 NMAC).</p>
<p>PED should increase the capacity of the PED and Indian Education Division to provide more technical assistance and interventions to tribal education departments, school districts, school districts, and schools in implementing culturally based education by using money being given to school districts, schools, and contractors to find additional PED staff with expertise in tribal/pueblo culture and education.</p>				<p>In October 2020, PED hired an assistant secretary of Indian Education. PED is in the process of hiring a curriculum and instruction specialist to assist the Indian Education Division. PED has prioritized hiring for the Indian Education Division among hiring freezes. As of November 2020, PED is in the process of filling the two vacant positions in the Indian Education Division.</p>
<p>PED should develop a strategy and focus resources on implementing the Indian Education Act, based on the extensive research already conducted on culturally based education for Native American students rather than conducting another study.</p>				<p>In October 2019, PED issued a memo outlining a four-part strategy for addressing the Martinez-Yazzie education lawsuit's requirements and better implementing the state Indian Education Act. The four-part strategy includes requiring each school district and charter school to (1) establish an equity council, (2) create a framework for culturally and linguistically responsive education, (3) complete a readiness assessment for serving at-risk students, and (4) complete an educational plan with an emphasis on serving at-risk students.</p>
<p>PED, school districts, and charter schools should set targets to improve Native American student dropout and graduation rates.</p>				<p>School districts and charter schools have the opportunity to set targets to improve Native American educational outcomes in their educational plans (Section 22-8-6 NMSA 1978) and Indian Education Act systemic frameworks (Section 22-23A-10 NMSA 1978).</p>

Finding

The issues of poverty and low-performing schools serving tribes/pueblos/nations has not been addressed through focused programs and resources on a scale that will have significant impact on closing the Native American achievement gap.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
The Legislature should consider ensuring that the funding formula task force addresses the adequacy of at-risk unit values to assist high-poverty Native American impacted school districts in meeting the purposes of the Act.				The Legislature has increased the weighting of the at-risk multiplier within the public school funding formula three times since the 2008 funding formula task force convened (Laws 2014, Chapter 55, House Bill 19; Laws 2018, Chapter 55, House Bill 188; Laws 2019, Chapter 207, House Bill 5; Laws 2020, Chapter 23, House Bill 59). Funding for at-risk students in the funding formula was \$71 million in FY06 and \$255 million in FY20.
The Legislature should consider making tribal/pueblo education departments Local Education Agencies eligible for state funding as a foundational step in increasing tribal capacity, involvement and control over the education of their students.				The Legislature has not designated tribal/pueblo education departments as Local Education Agencies eligible for state funding. PED reports that tribal communities can apply for state technology funds.
School districts and charter schools should address the special needs of high poverty students with needed health/mental health services and supplemental educational programs and fewer students per teacher.				PED is requiring school districts and charter schools to create educational plans and readiness assessments detailing how they will address the needs of all at-risk students, including low-income students, special needs students, and Native American students.
PED and school districts should implement the recommendations of the August 11, 2005 LFC program evaluation, <i>Evaluation of School Improvement Framework and Funding to Close the Achievement Gap</i> .				The 2005 LFC report recommended focusing PED resources on schools with the most identified improvement needs. As part of the federal Every Student Succeeds Act (ESSA), PED now conducts determinations to identify and direct resources to schools with improvement needs.

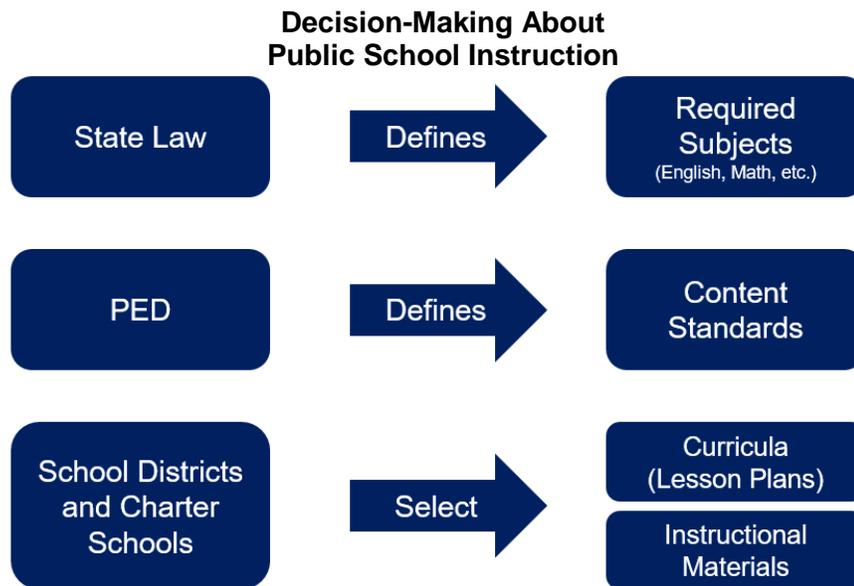
Finding

Native American languages have not been part of the PED bilingual education program nor has an effective alliance between school districts and university teacher preparation programs been facilitated to meet Native language and culturally based education teacher supply needs.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
PED should coordinate Native language maintenance and revitalization activities with the program activities of the PED bilingual program and hire additional Native language speaking staff to ensure agency				PED awarded grants in FY20 and the current FY21 to address Native American language maintenance and revitalization activities, including with the Pueblo of Jemez, the Navajo

Recommendation	Status			Comments
	No Action	Progressing	Complete	
proficiency in each of the nine Native languages.				Nation, Keres Children's Learning Center, and UNM.
PED should require colleges of education teacher preparation programs to incorporate the culturally based education model and provide accelerated teacher training, certification/endorsement, and professional development programs customized to the needs of each tribe/pueblo/nation and delivered in the regional quality centers proposed by PED throughout the State as a feature of the Act.				According to PED's <i>Comprehensive State Accreditation Manual for Educator Preparation Program Renewal</i> , educator preparation programs must ensure that "[teacher] candidates are prepared to address the needs and academic language development of culturally and linguistically diverse students, including English learners, in New Mexico." (p.8)
PED should establish an Indian education teacher corps, along the lines of the Governor's 2004 State of the State proposed teacher corps program, that recruits and develops highly qualified teachers to live and work in Native communities and the school districts that serve them as a feature of the Act.				In late 2006 (after the LFC program evaluation), PED promulgated rules creating a teaching certification system whereby school districts may employ non-degreed individuals to teach the native language and cultures of specific tribes and pueblos in any grade K through 12 (6.63.14 NMSA).
School districts and charter schools should provide expanded bilingual programs to increase Native language proficiency and improve the English acquisition and academic achievement of Native American students.				According to PED Bilingual Multicultural Education Reports, the number of Native American students in bilingual multicultural education programs was 9.3 thousand in SY08 and 7.4 thousand in SY18.
Higher education institutions should ensure culturally relevant instruction at the post-secondary level by developing closer affiliations between New Mexico two-year campuses and tribal communities to increase Native American attendance, retention and graduation rates by increasing the number of Native American governing board members.				Historical data on the number of Native American higher education institution governing board members is unavailable.
Higher education institutions should implement more innovative teacher education programs to get more Native and certified culturally based educators in the pipeline using the tribal college and the regional teacher education/training quality center approaches.				According to the latest PED and Higher Education Department <i>Educator Accountability Reporting System Report</i> (published in March 2020), 5 percent of the 1.5 thousand students enrolled in state teacher education programs in SY18 were Native American (p.61).

Appendix A. Decision Making Authority for Public Education



Source: LFC staff review of the Public School Code and PED rules.
Note: PED also reviews and recommends instructional materials.

Appendix B. Overview of Purposes and Requirements of the Indian Education Act

Purpose and Requirements of the Indian Education Act

Purposes	Key Requirements
<p>A. ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools;</p> <p>B. ensure maintenance of native languages;</p> <p>C. provide for the study, development and implementation of educational systems that positively affect the educational success of American Indian students;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>I. ensure that tribes are notified of all curricula development for their approval and support;</p> <p>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</p> <p>K. encourage and foster parental involvement in the education of Indian students.</p>	<p>Secretary of PED to appoint an assistant secretary for Indian education to:</p> <ul style="list-style-type: none"> • 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.

Source: 22-23A NMSA 1978

Appendix C. Definition of Historically Defined Indian Impacted School District

F. “Historically defined Indian impacted school district” means a school district, a state-chartered charter school, or locally chartered charter school that meets at least one of the following criteria:

(1) serves at least 175 American Indian or Alaska Native students and is located wholly or partially on tribal land; or

(2) identifies at least ten percent of its overall student population as American Indian or Alaska Native and is located wholly or partially on tribal land; or

(3) identifies at least forty-five percent of its overall student population as American Indian or Alaska Native.

Source: NMAC 6.35.2.7.

Appendix D. Bureau of Indian Education Schools in New Mexico

Bureau of Indian Education Schools in New Mexico

Bureau of Indian Education Schools	City	County
Alamo Navajo School Board	Alamo, NM,	Socorro
Atsá Biyáázh Community School	Shiprock, NM	San Juan
Baca /Dlo' Ay Azhi Community School	Prewitt, NM	Cibola
Beclabito Day School	Shiprock, NM	San Juan
Bread Springs Day School	Vanderwagen, NM	McKinley
Ch'ooshgai Community School	Tohatchi, NM	McKinley
Chi Chil'tah Community School	Vanderwagen, NM	McKinley
Crystal Boarding School	Navajo, NM	McKinley
Dibe Yazhi Habitiin Olta, Inc (Borrego Pass)	Crownpoint, NM	McKinley
Dzilth-Na-O-Dith-Hle Community School	Bloomfield, NM	San Juan
Haak'u Community Academy	Acoma Pueblo, NM	Cibola
Hanáádli Community School/Dormitory Inc.	Bloomfield, NM	San Juan
Isleta Elementary School	Albuquerque, NM	Bernalillo
Jemez Day School	Jemez Pueblo, NM	Sandoval
Jicarilla Dormitory	Dulce, NM	Rio Arriba
Kha'p'o Community School	Espanola, NM	Rio Arriba
Kinteel Residential Campus, Inc.	Aztec, NM	San Juan
Laguna Elementary School	Laguna, NM	Cibola
Laguna Middle School	Laguna, NM	Cibola
Lake Valley Navajo School	Crownpoint, NM	McKinley
Marinao Lake Community School	Crownpoint, NM	McKinley
Mescalero Apache School	Mescalero, NM	Otero
Na'Neelzhiin Ji'Olta (Torreon)	Cuba, NM	Sandoval
Navajo Preparatory School	Farmington, NM	San Juan
Nenahnezad Community School	Fruitland, NM	San Juan
Ohkay Owingeh Community School	Ohkay Owingeh, NM	Rio Arriba
Ojo Encino Day School	Cuba, NM	Sandoval
Pine Hill Schools	Pine Hill, NM	Cibola
Pueblo Pintado Community School	Cuba, NM	Sandoval
San Felipe Pueblo Elementary School	San Felipe Pueblo, NM	Sandoval
San Ildefonso Day School	San Ildefonso, NM	Santa Fe
Sanostee Day School	Sanostee, NM	San Juan
Santa Fe Indian School	Santa Fe, NM	Santa Fe
Shiprock Northwest High School	Shiprock, NM	San Juan
Shiprock Reservation Dormitory	Shiprock, NM	San Juan
T'iis Ts'ozí Bi'Olta' (Crownpoint Community School)	Crownpoint, NM	McKinley
T'siya Day School	Zia Pueblo, NM	Sandoval
Taos Day School	Taos, NM	Taos
Te Tsu Geh Oweenge Day School	Santa Fe, NM	Santa Fe
Tohaali Community School	Newcomb, NM	McKinley
Tse'ii'ahi' Community School	Crownpoint, NM	McKinley
TóHajiilee Community School	ToHajiilee, NM	Bernalillo
Wingate Elementary School	Ft. Wingate, NM	McKinley
Wingate High School	Ft. Wingate, NM	McKinley
Southwestern Indian Polytechnic Institute	Albuquerque, NM	Bernalillo

Source: BIE

Appendix E. Overview of Federal Funding for Native American Education

Sources of Federal Funds for the Education of Native American Students

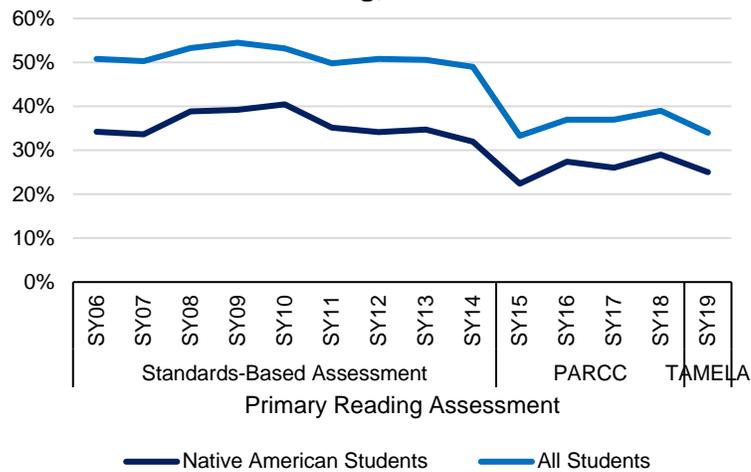
Source of Funding	Description
<p>Title VI (Part A of the Elementary and Secondary Education Act)</p>	<p>It is the purpose of this part to support the efforts of local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities—</p> <ul style="list-style-type: none"> *To meet the unique educational and culturally related academic needs of Indian students, so that such students can meet the challenging State academic standards; *To ensure that Indian students gain knowledge and understanding of Native communities, languages, tribal histories, traditions, and cultures; and *To ensure that teachers, principals, other school leaders, and other staff who serve Indian students have the ability to provide culturally appropriate and effective instruction and supports to such students.
<p>Title VII/Impact Aid</p>	<p>The purpose of this title to provide financial assistance to local educational agencies that:</p> <ul style="list-style-type: none"> *Experience a substantial and continuing financial burden due to the acquisition of real property by the United States; *Educate children who reside on Federal property and whose parents are employed on Federal property; *Educate children of parents who are in the military services and children who live in low-rent housing; *Educate heavy concentrations of children whose parents are civilian employees of the Federal Government and do not reside on Federal property; or *Need special assistance with capital expenditures for construction activities because of the enrollments of substantial numbers of children who reside on Federal lands and because of the difficulty of raising local revenue through bond referendums for capital projects due to the inability to tax Federal property.
<p>The Johnson O'Malley Act of 1934/JOM Modernization Act 2018</p>	<p>This Act authorizes contracts for the education of eligible Indian students enrolled in public schools and previously private schools.</p> <ul style="list-style-type: none"> *Operates under an educational plan, approved by the BIE, which contains educational objectives to address the needs of the eligible American Indian and Alaska Native students. * Johnson O'Malley programs offered to American Indian and Alaska Native students vary and may include such programs as culture, language, academics, and dropout prevention. * The Johnson-O'Malley Supplemental Indian Education Program Modernization Act (JOM Modernization Act) became Public Law 115-404 on December 31, 2018.

Source: Bureau of Indian Education

Appendix F. Reading Proficiency Across Previous and Current Assessments for Native American and All Students

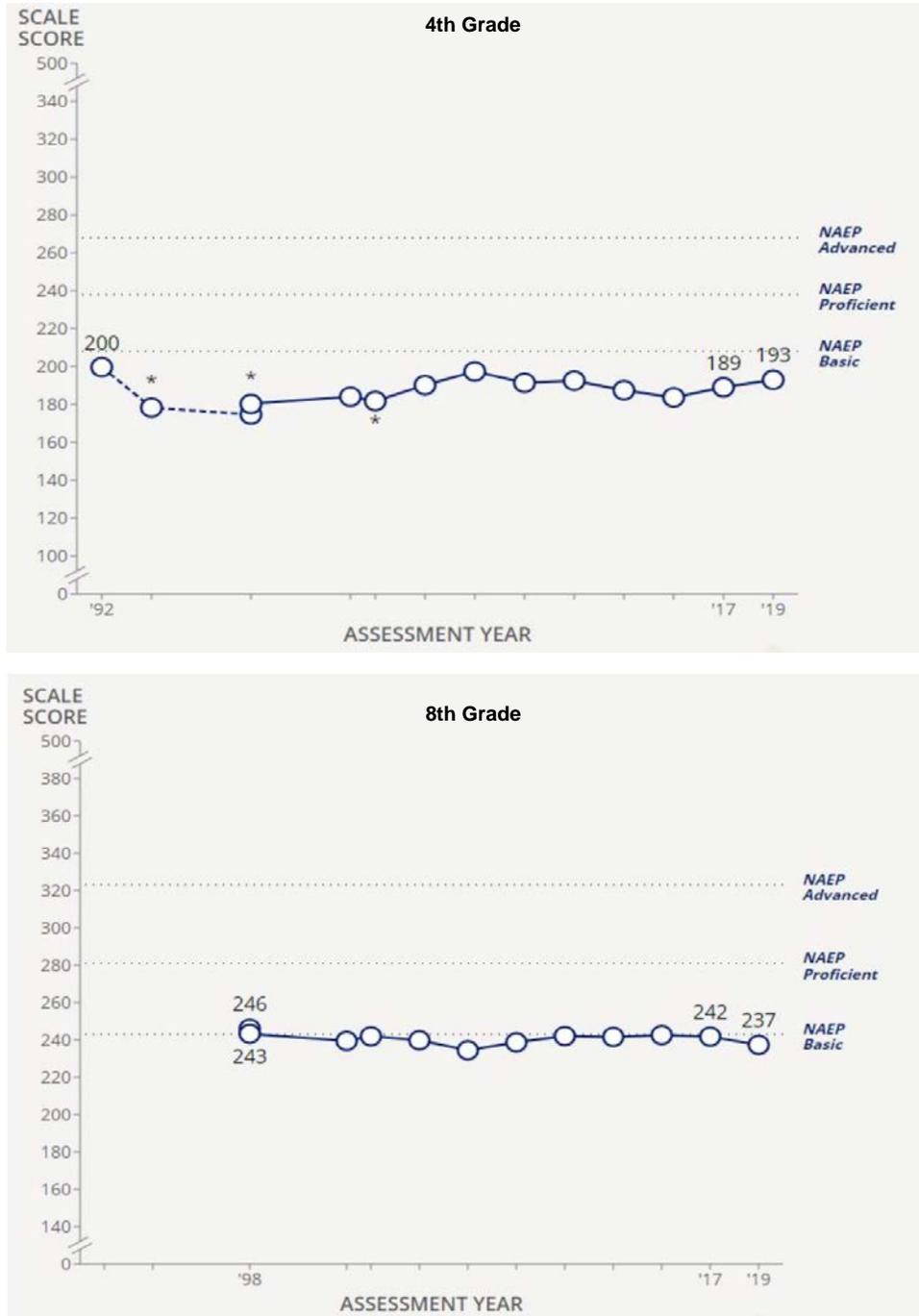
Since the enactment of the Indian Education Act, New Mexico has used the standards-based assessment (SBA), the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment, and the Transition Assessment in Math and English Language Arts (TAMELA) to assess academic proficiency in English and math. Changes in assessments can affect proficiency rates as content and scoring methodologies change. For example, reading proficiency among Native American students and all students declined precipitously between SY14 and SY15, when the previous Standards-Based Assessment was replaced with the PARCC.

Chart X. New Mexico Students Proficient in Reading, SY06-SY19



Appendix G. NAEP Reading Scores of New Mexico Native American Fourth- and Eighth-Grade Students

**Chart XX. NAEP 4th Grade and 8th Grade Reading Scores
New Mexico Native American Students**



Source: NAEP (2019)

Appendix H. Key Findings from 2006 LFC Evaluation of the Indian Education Act

Key Findings of the 2006 LFC Report

- New Mexico's 22 tribes/pueblos/nations require government to government procedures making implementation of the Act initially complex and slow as evidenced by the pattern of expenditures of the Indian education fund from FY04 to FY06.
- The issues of poverty and low-performing schools serving tribes/pueblos/nations has not been addressed through focused programs and resources on a scale that will have significant impact on closing the Native American achievement gap.
- Research indicates that low achievement of Indian children is largely due to irrelevant (culturally inappropriate) content standards, school organization, instruction and testing.
- The current strategy for developing relevant curricula shifts most responsibility from the PED to school districts and outside contractors and does not provide a blueprint and technical assistance to school districts.
- The PED has not developed a strategy and working relationship to develop the capacity of tribes/pueblo/nations education departments and coordinate efforts.
- There is an abundance of Indian education research and the critical elements of culturally based education provide a blueprint for what schools must do and be held accountable for by the PED.
- Native languages have not been part of the PED bilingual education program nor has an effective alliance between school districts and university teacher preparation programs been facilitated to meet Native language and culturally based education teacher supply needs.
- The New Mexico Indian Education Summit held on December 19, 2005 provided New Mexico tribes/pueblos/nations with a one day forum to present their concerns but no priorities, targets or actions were formally identified. At the Summit the Governor announced his request for a \$500,000 study on the status of Indian education in New Mexico that does not appear likely to add to existing research based practices and approaches that should be implemented under the Act.
- The 2005 House Memorial 3 directive to analyze means to elevate the status of the Indian education division with the purpose of enhancing its authority, funding, scope, staffing, and responsibilities is critical to the effective implementation of the Indian Education Act. The report was not presented in October 2005 to the Legislative Indian Affairs Committee as stipulated.

Source: Legislative Finance Committee (2006), *Quick Response Review of the Indian Education Act*.

Appendix I. Considerations for Making Tribal Education Departments Local Education Agencies

The 2006 LFC evaluation recommended amending statute to allow tribal education departments to qualify as local education agencies (LEAs). In theory such categorization could increase the resources available to tribal education departments, including allowing them to access State Equalization Guarantee (SEG) formula dollars. While there are existing avenues for tribal education departments to receive state funding, particularly via the Indian education fund, the Legislature has not enacted changes that would allow tribal education departments to qualify as LEAs or receive state public education formula funds.

Doing so would require policymakers to consider a number of additional policy questions, including the extent to which state funds could duplicate existing sources of federal funds, how state funds would be distributed or expanded across 23 new LEAs, and how state content standards and accountability measures would apply to sovereign tribal governments. Additionally, including tribal education departments would result in increased competition among school districts and charter schools for SEG allocations.

Appendix J. HB 250 Systemic Framework Components

Elements of District Systemic Frameworks for Native American Education

Academic and Other Programs	Culturally Related Activities
<ul style="list-style-type: none"> • Innovative programs designed to meet the needs of educationally disadvantaged Indian students • High-quality professional development for teaching professionals and paraprofessionals • Identification of district early childhood, pre-kindergarten, and family programs effective in preparing young children to make sufficient academic growth by the end of third grade • Educational programs that are not usually available in sufficient quantity or quality • Bilingual and bicultural programs and projects • Enrichment programs focused on problem-solving and cognitive skills development supporting the attainment of challenging state academic standards • Programs designed to encourage and assist students to work toward and gain entrance to institutions of higher education • Special compensatory and other programs and projects designed to assist and encourage Indian students to enter, remain in, or reenter school and increase high school graduation rates • Career preparation activities, including technology preparatory education, mentoring, and apprenticeship • Career preparation partnership projects between public schools and local businesses • Rigorous and meaningful curricula and educational opportunities leading to lifelong success for all students 	<ul style="list-style-type: none"> • Culturally related activities supporting the school's academic program • Activities supporting Indian language programs and Indian language restoration programs • Activities promoting culturally responsive teaching and learning strategies • Activities educating students about prevention of violence, suicide, and substance abuse
	<p style="text-align: center;">Other Services</p> <ul style="list-style-type: none"> • Early interventions such as afterschool programs, tutoring and mentoring, and community interventions to prevent truancy and reduce dropout rates • Comprehensive guidance and counseling • Integrated educational services in combination with other programs, including those promoting parental involvement and student achievement • Special health- and nutrition-related services addressing the health, social, and psychological needs of Native students and their families • Family literacy services

Source: 22-23A-11 NMSA 1978

Appendix K. Detailed Overview of FY21 Funding Aligned with Tribal Remedy Framework Components

FY21 Tribal Remedy Framework Budget Requests and Estimated Amounts Funded

Estimated Amounts Funded in FY21								
2020 House Bill	Agency (Requested)	FY21 Request	Purpose	FY21 - GF	FY21 - OSF	FY21 - Fed	FY21 - Other	Notes
1	UNM	\$ 316.0	Hispanic Studies	\$ -				
2	UNM	\$ 316.0	African American STEM	\$ 5.9				12 percent of African American Student Services RPSP based on estimate of students served.
3	UNM	\$ 550.0	COE - American Indian Ed. Institute	\$ -				
4	UNM	\$ 500.0	AI Language Policy Research and Teacher Training Center	\$ 643.5				FY21 Indian Education Fund language grant for UNM Diné Language Teacher Institute (\$267.5); RPSP for Grow Your Own Teacher Program (\$376.0)
5	UNM	\$ 550.0	AI Curriculum and Material Development Center	\$ -				
6	UNM	\$ 450.0	NA Leadership Doctoral Cohort	\$ 19.2				HED Minority Doctoral Assistance Funding
7	UNM	\$ 1,300.0	NA Educational Leadership Programs	\$ -				
8	UNM	\$ 545.0	Bilingual Ed. Degree Programs (English/Navajo; English/Spanish)	\$ -				
9	UNM	\$ 170.0	Gallup Branch - Dual License in SPED/Elem.	\$ -				
10	UNM	\$ 946.2	AI Student Services	\$ 362.6				Minority Student Services RPSP Detail from HED data.
11	UNM	\$ 928.7	NA Studies program - Indigenous leadership, studies, etc.	\$ -				
12	UNM	\$ 316.0	NA Studies program - Projects of Excellence	\$ 188.5				Native American Studies RPSP
13	UNM	\$ 696.0	School of Medicine - Center for NA Health	\$ 245.6				Native American Health Center RPSP
14	UNM	\$ 450.0	School of Medicine - Community BH division	\$ 89.7				Native American Suicide Prevention RPSP
15	UNM	\$ 393.0	School of Law	\$ 188.5				Southwest Indian Law Clinic RPSP
16	UNM	\$ 725.0	School of Architecture	\$ -				
17	NMHU	\$ 625.0	Ben Lujan leadership institute	\$ 166.3				Minority Student Services RPSP Detail from HED data.
18	NMHU	\$ 775.0	Center for Education and Study of Diverse Populations	\$ 166.3				Minority Student Services RPSP Detail from HED data.
19	NMHU	\$ 250.0	School of Social Work	\$ 164.5				Native American Social Work Institute RPSP
20	NMHU	\$ 250.0	AI Student Services	\$ -				
21	HB134	NMHU	\$ 100.0	AI parent programs	\$ -			
22	NMSU	\$ 337.0	COE - AI program	\$ -				
23	NMSU	\$ 58.5	Career Exploration Camp	\$ -				
24	NMSU	\$ 259.0	Outreach and Recruitment	\$ 261.2	\$ 1,700.0			Indian Resources Development RPSP
25	HED	\$ 800.0	NTU - Public School Literature	\$ -				
26	HED	\$ 727.4	NTU - Education Outreach	\$ -				
27	HED	\$ 1,795.8	NTU - Early Childhood Practicum	\$ -				
28	HED	\$ 422.0	NTU - Nursing Program	\$ 216.0				Flow-through funding in HED budget listed in LFC files.
29	HED	\$ 210.0	NTU - Dual Credit	\$ 182.4				LFC files indicate \$263.3 thousand in flow-through funding in HED budget for tribal college dual credit. Funding split between NTU and SWIFI based on relative enrollment size.
30	HED	\$ 1,500.0	Dine College - BMEP teacher recruitment	\$ -		\$ 326.7		The estimated funding for the College of Dine Studies and Education at Dine College based on enrollment and budget data.
31	HED	\$ 500.0	Dine College - Navajo curriculum and IM	\$ -				
32	HED	\$ 500.0	Dine College - Dual language teacher education center	\$ 250.4				FY21 Indian Education Fund language grant (\$250.4 thousand) for Diné College for Native Language teacher prep program development/redesign.
33	HED	\$ 800.0	Dine College - CLR education and ELTP	\$ -				
34	HED	\$ 245.9	SWIFI - Teacher prep	\$ -				
35	HED	\$ 200.0	SWIFI - Outreach and recruitment (Behavioral Health and Social Work Students)	\$ -				
36	HED	\$ 200.0	SWIFI - Outreach and recruitment (High School Students)	\$ -				
37	HED	\$ 100.0	SWIFI - Dual credit and scholarships	\$ 70.9				LFC files indicate \$263.3 thousand in flow-through funding in HED budget for tribal college dual credit. Funding split between NTU and SWIFI based on relative enrollment size.
38	SUBTOTAL		\$ 19,807.5	\$ 3,221.5	\$ 1,700.0	\$ 326.7	\$ -	

FY21 Tribal Remedy Framework Budget Requests and Estimated Amounts Funded

Estimated Amounts Funded in FY21								
2020 House Bill	Agency (Requested)	FY21 Request	Purpose	FY21 - GF	FY21 - OSF	FY21 - Fed	FY21 - Other	Notes
HB137	IAD	\$ 38,893.1	Tribal Libraries Capital Outlay		\$ 1,613.1			Tribal libraries have the entirety of their 2018 GO capital outlay appropriating for tribal libraries remaining (\$747.99945) as well as half (\$365.12631) of 2016 GO capital outlay. FY21 GO capital outlay appropriation of \$500 thousand to DCA for tribal libraries and broadband (SB 270) (counted in line 40).
	IAD	\$ 4,600.0	Broadband - Tribal schools and libraries		\$ 500.0			\$500k DCA GO capital outlay for tribal libraries and broadband (SB 270) DoIT provided Cochiti with \$2.9 million in emergency CARES funding for broadband this summer. CARES Act funding of \$53.2 million for Navajo Nation broadband. Estimated \$200 million (1/5 of \$1 billion) for tribal broadband under Consolidated Appropriations Act, 2021. E-Rate budget share of \$276 thousand for tribal libraries in FY21 based on 5-year average discount of 0.86 (from USAC data). NM GEER and ESSER Fund total allocation of \$990.3 thousand to TEDs.
	IAD	\$ 3,200.0	Broadband/IT - Navajo Nation					
	IAD	\$ 500.0	Broadband - Jicarilla Apache Nation			\$257,366.3		
	IAD	\$ 2,500.0	Curriculum Materials Development - NTU					IFCC developed Indigenous Wisdom curriculum as a free resource for all K-12 teachers. There was a \$9m special appropriation (reform fund) for culturally and linguistically appropriate instructional material development in FY21, of which \$2 million PED allocated for CLR curricula in indigenous communities. Another \$5.5m below the line approp for indigenous, multilingual, multicultural and special education includes \$1.9 million for indigenous initiatives including curriculum.
	IAD	\$ 1,500.0	Curriculum Materials Development - Zuni					
	IAD	\$ 1,500.0	Curriculum Materials Development - Mescalero Apache	\$1,917.8	\$ 2,000.0			
	IAD	\$ 1,500.0	Early Childhood Practicum - NTU				\$ 728.0	Navajo Tech offers a BS in Early Childhood Multicultural Education with 52 students enrolled in 2016. HB2 authorized funding to a NTU program for the first time in FY20 (nursing at \$225.0). The university operating budget is close to \$28 million annually, almost all of which is provided by the federal government. Estimated amount is the proportion of total budget represented by 52 students (52 * \$28 m / 2000).
	IAD	\$ 1,500.0	Education Resource Center - DEAP					PED Indian Ed Fund grant to DEAP does not include support for an education resource center. Not sure the funding, but BIE already operates two education resource centers in Shiprock and Crownpoint for tribal and BIE Schools.
	IAD	\$ 2,500.0	Education Resource Center - Jemez Pueblo					PED Indian Ed Fund grant to Jemez Pueblo does not include support for an education resource center. BIE already operates two education resource centers close to Jemez: one in Albuquerque and another in Espanola for tribal and BIE Schools. The Albuquerque center covers Jemez Pueblo.
IAD	\$ 1,000.0	Early Childhood Center - Jemez Pueblo				\$ 491.1	Jemez Pueblo has a Two immersion Head Start (Walatowa) that serves 68 children (2018). FY21 obligations of \$431.3 thousand (\$382.2 + \$49.1) + \$59.8 CARES Head Start Funding.	
SUBTOTAL		\$ 59,193.1		\$ 1,917.8	\$ 4,113.1	\$ 258,585.4	\$ -	
HB138	IAD	\$ 3,650.0	Tribal Government - Education Blueprints					Amount of FY21 IEF grants to tribes (\$2,182.5) - \$22.9 million IT allocation (noted below) + \$1 million transfer from PED to IAD for indigenous/multicultural/multilingual ed support to TEDs
	IAD	\$ 3,400.0	Tribal DOE - early childhood culturally and linguistically relevant curricula, assessment, facilities					
	IAD	\$ 5,750.0	Tribal Libraries - CLR afterschool and summer programs	\$3,159.6				
	IAD	\$ 3,400.0	Tribal DOE - IT departments and broadband	\$ 22.9		\$ 50.0		
SUBTOTAL		\$ 16,200.0		\$ 3,182.5	\$ -	\$ 50.0	\$ -	
Grand Total		\$ 75,393.1		\$ 5,100.3	\$ 4,113.1	\$ 258,635.4	\$ -	

Sources: LFC files and analysis.

Note: More funding that aligns with the tribal remedy framework is likely built into the base budgets of public schools, higher education institutions, state agencies, or capital projects.

Appendix L. Detail of FY21 Special Appropriation for CLR Instructional Materials and Curricula

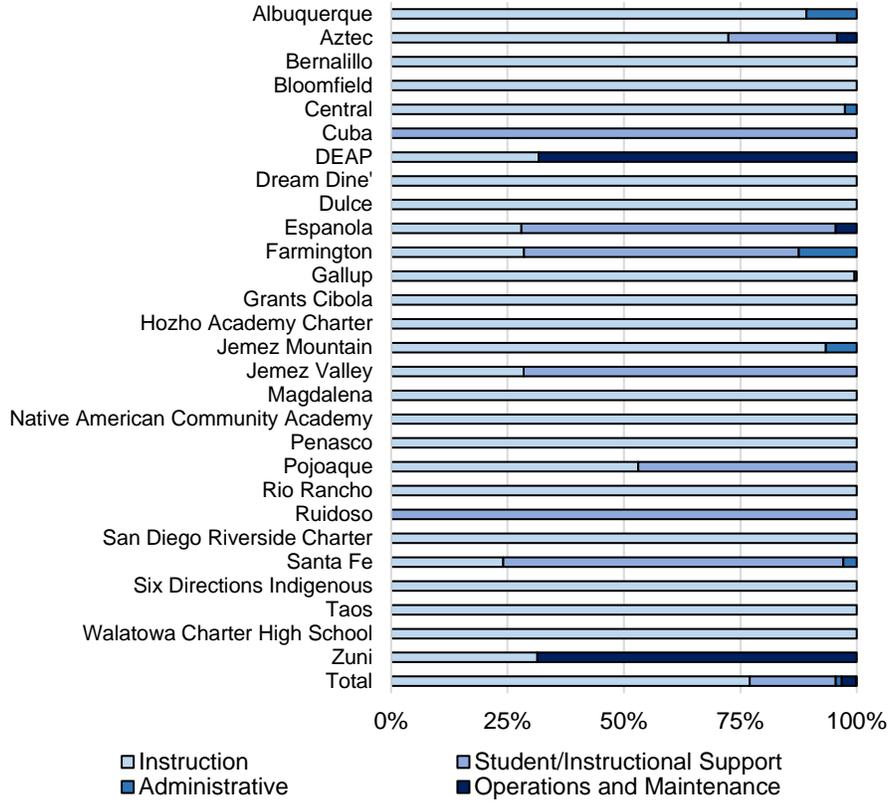
Uses of FY21 Special Appropriation for Culturally and Linguistically Appropriate Instructional Materials and Curricula

Purpose	Amount (in thousands)
Social Emotional Learning	\$1,000
Multi-Layered System of Supports	\$1,000
Professional development and curriculum supports for re-entry, acceleration, and New Mexico instructional scope implementation	\$650
Professional development in language arts	\$1,650
Professional learning coordination	\$300
Equitable access with Learning Management System	\$200
Support mechanisms for high-quality instructional materials	\$200
Redevelopment of social studies standards	\$2,000
Curriculum for Indigenous communities	\$2,000
Total	\$9,000

Sources: PED; Laws 2020, Chapter 83 (House Bill 2)

Appendix M. FY20 Indian Education Fund Spending by District and Charter School

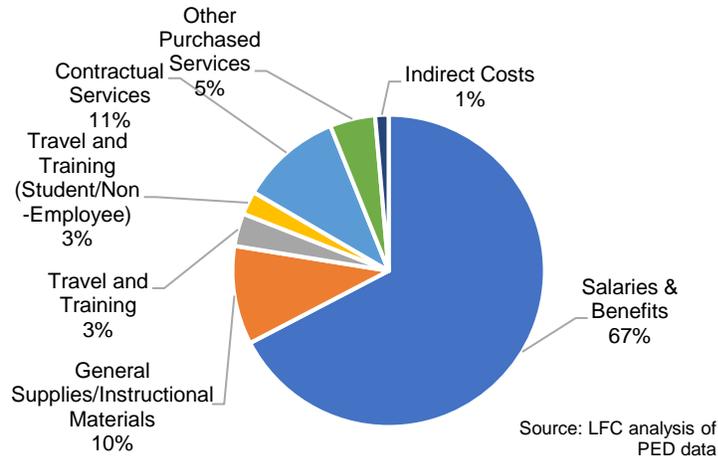
School District and Charter School Spending of Indian Education Fund Dollars, FY20 Actuals



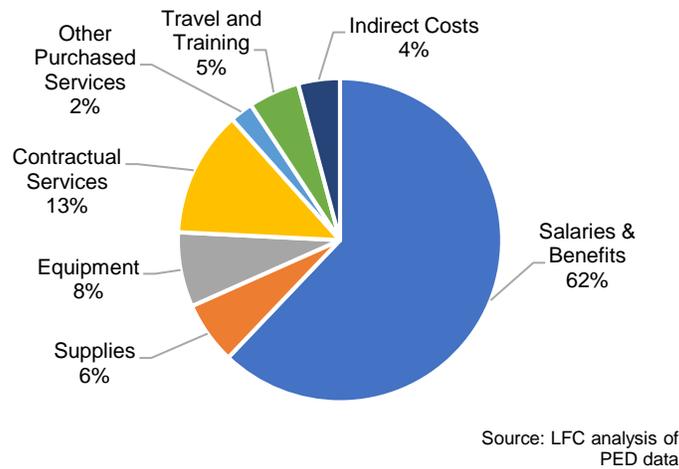
Source: LFC analysis of PED data.

Appendix N. FY21 Indian Education Fund Grant Awards by Category

FY21 Indian Education Fund Awards to School Districts and Charter Schools by Category
(Total: \$2,650,323)



FY21 Indian Education Fund Awards to Tribes by Category
(Total: \$2,186,809)



Appendix O. FY15-FY20 Unrestricted Cash Balances of Native American Serving School Districts and Charter Schools

Change in End-of-Year Unrestricted Cash Balances of Native American Serving School Districts and Charter Schools, FY15-FY20				
District/Charter	FY15	FY20	Change	% Change
Albuquerque	\$ 40,567,220	\$ 53,838,352	\$ 13,271,132	33%
Aztec	\$ 3,481,256	\$ 2,237,553	\$ (1,243,703)	-36%
Bernalillo	\$ 3,358,209	\$ 5,208,586	\$ 1,850,377	55%
Bloomfield	\$ 2,504,451	\$ 7,435,487	\$ 4,931,036	197%
Central Consolidated	\$ 9,966,659	\$ 10,626,844	\$ 660,185	7%
Cuba	\$ 433,987	\$ 13,414	\$ (420,573)	-97%
Dulce	\$ 1,190,621	\$ 1,688,653	\$ 498,032	42%
Espanola	\$ 1,858,562	\$ 1,185,980	\$ (672,582)	-36%
Farmington	\$ 7,301,692	\$ 300,346	\$ (7,001,346)	-96%
Gallup	\$ 5,801,915	\$ 13,339,603	\$ 7,537,688	130%
Grants	\$ 2,915,732	\$ 5,222,764	\$ 2,307,032	79%
Jemez Mountain	\$ 1,028,102	\$ 236,231	\$ (791,871)	-77%
Jemez Valley	\$ 649,049	\$ 689,845	\$ 40,796	6%
Los Lunas	\$ 1,920,552	\$ 5,505,600	\$ 3,585,048	187%
Magdalena	\$ 446,316	\$ 719,662	\$ 273,346	61%
Penasco	\$ 977,559	\$ 355,285	\$ (622,274)	-64%
Pojoaque	\$ 274,996	\$ 960,296	\$ 685,300	249%
Rio Rancho	\$ 5,421,425	\$ 16,819,158	\$ 11,397,733	210%
Ruidoso	\$ 2,435,349	\$ 4,221,997	\$ 1,786,648	73%
Santa Fe	\$ 6,310,019	\$ 4,316,825	\$ (1,993,194)	-32%
Taos	\$ 1,247,303	\$ 1,756,447	\$ 509,144	41%
Tularosa	\$ 1,878,525	\$ 828,721	\$ (1,049,804)	-56%
Zuni	\$ 149,879	\$ 1,276,301	\$ 1,126,422	752%
DEAP	\$ -	\$ 15,433	\$ 15,433	-
Hozho Academy	\$ -	\$ 37,614	\$ 37,614	-
La Tierra Montessori School	\$ -	\$ 189,953	\$ 189,953	-
Middle College High School Charter	\$ 296,200	\$ 744,000	\$ 447,800	151%
Six Directions Indigenous School	\$ -	\$ 140,000	\$ 140,000	-
Walatowa Charter High	\$ 561,568	\$ 1,732,192	\$ 1,170,624	208%
Native American Community Academy	\$ 100,000	\$ 358,297	\$ 258,297	258%
Dream Dine	\$ -	\$ 358,297	\$ 358,297	-
San Diego Riverside	\$ 201,082	\$ 79,261	\$ (121,821)	-61%
Total	\$ 103,278,228	\$ 142,438,997	\$ 39,160,769	38%

Source: PED

Appendix P. Persons Interviewed by LFC Staff

Daniel Benavidez, Superintendent, Central Consolidated Schools
Dr. Eugene Schmidt, Superintendent Farmington Municipal Schools
Karen Garcia Brown, Director of Multicultural Education, Farmington Municipal Schools
Dr. Shawl Iron Moccasin, Director of Indian Education, Farmington Municipal Schools
Dr. Christine Sims, University of New Mexico
Dr. Shawn Secatero, University of New Mexico
Dr. Pauletta White, Indian Education Advisory Council
Dr. Pandora Mike, Indian Education Advisory Council
Jeremy Oyenque, Indian Education Advisory Council
Dr. Matthew Martinez, Deputy Director, Museum of American Indian Arts and Culture
LaShawna Tso, Assistant Secretary of Indian Education, PED
Dr. Allison Briceño, Managing Director, PED
Rebecca Reyes, Deputy Director of Indian Education, PED
Mayra Valtierrez, Director of Language and Culture Policy, PED
Heidi McDonald, Deputy Director, Policy, Innovation, and Measurement, PED
Judith Harmon, Indian Education Bureau, PED
Cassandra Garcia, Indian Education Bureau, PED
Ta-Shana Taylor, Indian Education Bureau, PED
Alray Nelson, Indian Education Bureau, PED
Dr. Vickie Bannerman, Deputy Secretary of Identity, Equity, and Transformation, PED
Joshua Krause, Native American Community Academy
Valerie Siow, Native American Community Academy
Aileen Lopez, Director of Education, Ohkay Owingeh Pueblo
Patricia Coriz, Director of Education, Kewa Pueblo
Berdine Largo, Director of Special Education, Mescalero Apache Schools
Geraldine Jojola, Director of Education, Cochiti Pueblo
Rachel Altobelli, Director of Library Services, Albuquerque Public Schools
Jessica Villalobos, Senior Director of Language and Cultural Equity, Albuquerque Public Schools
Heather Bassett, Legislative Affairs, Albuquerque Public Schools
Daisy Thompson, Senior Director of Indian Education, Albuquerque Public Schools
Dr. Roy Tracy, Program Manager for Research and Statistics, Department of Diné Education
Azella Humetewa, Head of School, Native American Community Academy
Zane Rosette, Head of School, Native American Community Academy
Raphaelita Phillips, Director of Indian Education, Cuba Public Schools

Endnotes

- ⁱ Sections 22-13-1 and 22-13-1.1 NMSA 1978
- ⁱⁱ Section 22-2-2.C NMSA 1978 and Title 6, Chapter 29 NMAC.
- ⁱⁱⁱ Section 22-13-1.5 NMSA 1978; Section 6.29.1.9(A)(d)(8) NMAC, and Section 6.29.1.9(B)(8) NMAC
- ^{iv} Section 22-23A-2 NMSA 1978
- ^v Section 22-23A-8 NMSA 1978
- ^{vi} Sections 22-23A-2 and 22-23A-4.1 NMSA 1978.
- ^{vii} Oakes, J., Espinoza, D., Darling-Hammond, L., et al. (2020). “Improving Education the New Mexico Way: An Evidence-Based Approach.” Learning Policy Institute. p. 6.
- ^{viii} New Mexico First Judicial District Court. (2018). “Court’s Findings of Fact and Conclusions of Law and Order Regarding Final Judgement.” Case No. D-101-CV-2014-00793. P.195, 589.
- ^{ix} Laws 2007, Chapter 307, House Bill 584
- ^x New Mexico First Judicial District Court. (2018). p.589.
- ^{xi} PED. (October 22, 2019). “Memorandum Regarding Yazzie and Martinez Consolidated Lawsuit.” P.2. Retrieved from <https://webnew.ped.state.nm.us/bureaus/yazzie-martinez-updates/>
- ^{xii} Section 22-23A-11 NMSA 1978
- ^{xiii} Rudiger, A. (2020). “Pathways to Education Sovereignty: Taking a Stand for Native Children.” Tribal Education Alliance, New Mexico. p. 27.
- ^{xiv} Section 22-8-25 NMSA 1978.
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