

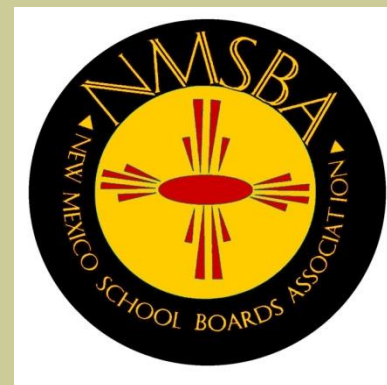
# Tribal-School District Relations: An overview of Education-based Intergovernmental Agreements



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# Objective

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- Encourage open communication, cooperation, and facilitate consultation requirements between school districts and tribes
  - Review legal authority for agreements between school districts and tribes on consultation
- Empower school districts to resolve conflicts in meaningful manner
  - Provide strategies and practical tools for school districts to initiate the consultation process

# New Mexico's 22 Tribes

1. Jicarilla Apache Nation
2. Mescalero Apache Tribe
3. Navajo Nation
4. Pueblo of Acoma
5. Pueblo of Cochiti
6. Pueblo of Isleta
7. Pueblo of Jemez
8. Pueblo of Laguna
9. Pueblo of Nambe
10. Ohkay Owingeh
11. Pueblo of Picuris
12. Pueblo of Pojoaque
13. Pueblo of Sandia
14. Pueblo of Santa Ana
15. Pueblo of Santa Clara
16. Pueblo of San Felipe
17. Pueblo of San Ildefonso
18. Pueblo of Santo Domingo
19. Pueblo of Taos
20. Pueblo of Tesuque
21. Pueblo of Zia
22. Pueblo of Zuni



Map courtesy of the NM Tourism Department

# Tribal Sovereignty



- “Indian tribes have inherent powers deriving from a sovereign status. Their claim to sovereignty long pre-dates that of our own government.”  
*McClanahan v. Arizona Tax Commission*, 411 U.S. 164 (1973).
- The basic sovereign power to the Indian tribes is still existent, but subject to restrictions which have developed through their relationship with the United States. *Iron Crow v. Oglala Sioux Tribe*, 231 F. 2d 89 (8th Cir. 1956).

# Tribal Sovereignty

- Under federal law, tribal governments cannot regulate nor impede the operations of state agencies performing state functions on reservation lands. *See Nevada v. Hicks*, 533 U.S. 353, 362 (2001) (instructing that “when state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land”).

# Tribal Sovereignty

- In the case of *MacArthur v. San Juan County*, 497 F.3d 1057, 1073-74 (10<sup>th</sup> Cir. 2007), the U.S. Court of Appeals ruled that the Navajo Nation did not possess regulatory authority over employment-related claims by terminated employees of a special health services district that was a political subdivision of the State of Utah).

# Tribal Sovereignty

- Here, the School Districts are political subdivisions of the State of New Mexico organized under State law for the purpose of operating and maintaining an educational program for the school age children residing within the State. *See* N.M. Stat. Ann. § 22-1-2(R)(2003); N.M. Stat. Ann. § 22-5-4 (2003); *see also* N.M. Stat. Ann. § 22-1-4 (2015) (the open enrollment provision of the Code mandates that any person entitled to a free public school education may enroll or re-enroll in any public school).

## Tribal Sovereignty and Public Schools

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- The actual application of the law related to the operations of public schools on the tribal lands has already been addressed conclusively by the New Mexico Supreme Court in the case of *Prince v. Bd. of Educ. of Cent. Consol. Indep. Sch. Dist. No. 22*, 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176 (N.M. 1975).



## Tribal Sovereignty and Public Schools

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- In that case, the New Mexico Supreme Court held that “[w]e fail to see how Navajo tribal self-government, or the rights granted or reserved by federal law would be in conflict with the State’s operation and exclusive control of the schools located on Reservation lands leased by the District with the approval of both the Navajo tribe and the Secretary of the Interior.” *Prince*, 1975-NMSC-068, at ¶ 25, 88 N.M. at 555, 543 P.2d at 1182.

## Tribal Sovereignty and Public Schools

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- Unless specifically waived under the applicable land leases for school facilities, public schools are not subject to regulation or control by the tribal governments in the School Districts' fulfilling the State Constitutional mandate to provide a public education to any child within the boundaries of the School District whether on or off tribal lands.

## Tribal Sovereignty and Public Schools

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- Public Schools should be absolutely committed to fully recognizing the sovereignty of the local tribes.
- As did the New Mexico Supreme Court in *Prince*, School Districts, however, should understand that its operations are not inherently in conflict with tribal self-government or the self-determination of its people or in any way infringing upon the right of members of the tribes from making their own laws and being ruled by them.

## Tribal Sovereignty and Public Schools

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- In fact, the School District should see themselves as enhancing tribal self-government and the self-determination of the tribes by providing a quality public education to all of its students and furthering its programs specifically designed to address issues related to Native American students.

## Tribal Sovereignty and Public Schools

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- The New Mexico Constitution provides that “[Native American] children are entitled to attend [New Mexico] public schools, even though Indian or federal schools might also be available in the same school district.” *Prince*, 1975-NMSC-068, at ¶ 31, 88 N.M. at 556, 543 P.2d at 1184; see N.M.Const. art. XII, § 1, and N.M.Const. art. XXI, § 4.

## Tribal Sovereignty and Public Schools

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- Although the New Mexico Supreme Court did not decide in 1975 if the federal government or if the State of New Mexico had the primary responsibility to provide education to the Native American children, the U.S. Supreme Court did so in the cases of *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 35 (1973) and in *Plyler v. Doe*, 457 U.S. 202, 221 (1982) when the Supreme Court held that there was no fundamental Constitutional right to a public education and that the right to a public education exists only as a state-derived property right.

## Tribal Sovereignty and Public Schools

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- As such, the states have the primary responsibility to provide a public education to the children in their state. See Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, (the IDEA places primary responsibility for the provision of an appropriate public education on the states and local educational agencies with no exceptions for Native American students).
- Therefore, children residing within the school district's area when even on tribal lands have a protected and State-guaranteed right to a public education at any New Mexico public school. See N.M. Stat. Ann. § 22-1-4 (2015).

# New Mexico Indian Education Act

## §22-23A-1 *et. seq.*

- The Act supports the implementation of Intergovernmental Agreements
  - Among the Act's purposes:
    - 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;
    - 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; and
    - 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.



# New Mexico Indian Education Act

## §22-23A-1 *et. seq.*

- The Act supports the implementation of Intergovernmental Agreements
  - Among the directives to the PED's Indian Education Division:
    - Provide assistance to school districts and tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for American Indian students; and
    - Provide assistance to school districts, public post-secondary schools and New Mexico tribes to develop curricula and instructional materials in native languages, culture and history in conjunction and by contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe; and

# New Mexico Indian Education Act

## §22-23A-1 *et. seq.*

- The Act supports information sharing between the school districts and local tribes
  - Requires school districts with tribal lands located within its boundaries to provide a status report to all tribes represented within the school district's boundaries which includes:
    - student achievement with results disaggregated by ethnicity;
    - school safety;
    - the dropout rate;
    - attendance;
    - parent and community involvement;
    - educational programs targeting American Indian students;
    - financial reports;
    - current status of federal Indian education policies and procedures; and
    - school district initiatives to decrease the number of student dropouts and increase attendance.

# New Mexico Indian Education Act

## §22-23A-1 *et. seq.*

- **Requirements on local school district are:**
- School districts are required to conduct a needs assessment to determine what supports are needed in school, at home and in the community to help Indian students succeed in school, graduate with a diploma of excellence and be prepared to enter post-secondary education or the workplace.
- After the needs assessment, the school district shall meet with the local tribes to prioritize the needs, and shall make meeting the needs of Indian students and closing the achievement gap between Indian students and all other student groups a priority in the school district budget, including applying for all available State and federal funding.

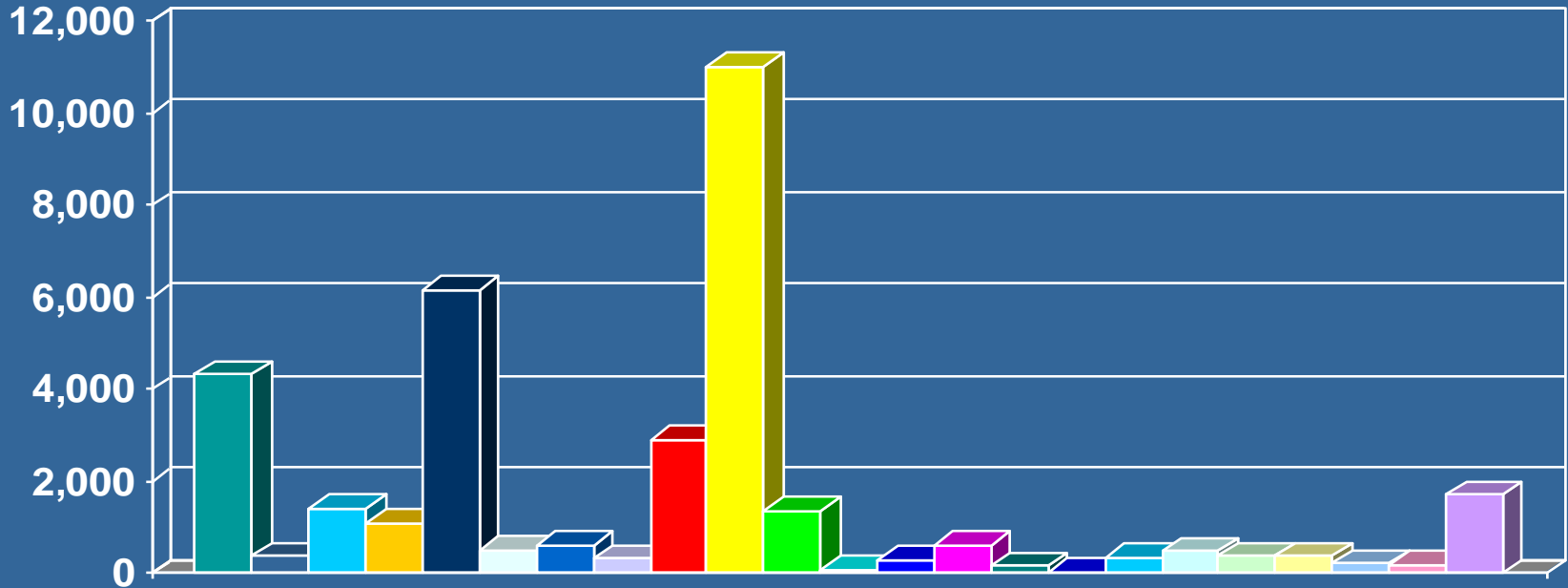
# New Mexico Indian Education Act

## §22-23A-1 *et. seq.*

- The school district shall apply for appropriate State, federal and private grants to help.
- The school district shall develop an accountability tool that measures public school efforts and the success or failure of those efforts.
- The school district shall hold a public meeting with members of the Indian students' tribal leaders, parents and the Indian education division at least twice in the school year to report on the needs assessment and the school district's evaluation of progress.

# Sample Data Report

## Native American Student Enrollment by Public School Districts



- Albuq      Aztec      Bernalillo      Blmfld      Central      Cuba
- Dulce      Espanola      Farmington      Gallup      Grants      Jemez Mtn
- Jemez Val      Los Lunas      Magdalena      Penasco      Pojoaque      Rio Rancho
- Ruidoso      Santa Fe      Taos      Tularosa      Zuni

# What is an Intergovernmental Agreement?

- An agreement between two or more public agencies for services or to exercise any powers common to the parties
  - Settles or avoids jurisdictional disputes and determines certain substantial matters
  - Public agencies include the federal government, an Indian tribe, State or the State's political subdivisions



# Why strive for Intergovernmental Agreements?

- Avoid litigation caused by:
  - Conflicting laws and court rulings that lack clarity
  - Jurisdictional and territorial imperatives that create questions of responsibility
  - Fundamental disagreements about issues
  - Evolving law governing public education and expanding tribal government
  - Tendency of governments to opt for litigation
- Clarify expectations by:
  - Creating bright lines for the murky areas
  - Openly communicating about issues arising from concurrent jurisdiction
  - Identifying mutual interests despite disagreements
  - Evolving law and expanding tribal government allowing for more alternatives to resolution
  - Prevent hollow victories achieved through litigation

# Intergovernmental Agreements can address a wide range of issues

- Tribal-State Compacts
  - Gaming
  - Taxation
  - Jurisdiction
- Tribal-County Agreements
  - Animal Services
  - Prisoner Housing
  - Information Sharing
- Tribal-School District Agreements
  - Consultation on Educational Goals and Standards



# Tribal-School District Agreements

- Can adopt agreements which identify the process and goals for consultation on:

## Academic Achievement

- Needs assessments
- Meeting to prioritize needs with school board
- Reporting Progress on meeting the needs assessment

## Parental and Community Resources

- Determine what services tribes can provide to parents
- Parental Consent and agreement to tribal resources
- Language and Culture services and resources

# Tribal-School District Agreements

- Can adopt agreements which identify process for addressing:

## Drop-Outs

- Reduced rates of drop-outs/withdrawals
- Explore programs focusing on retention

## Safe and Orderly Environments

- Consistent application of laws, policies, and guidance to Native American students when disciplinary actions are involved
- Establishing the conditions of sharing student data on aggregate level (no PII)

# Tribal-School District Agreements

## ■ Sharing of Student Education Records and Information:

### **FERPA Applies**

- Tribal education agencies are not LEA's under FERPA
- Parental permission must be given to provide tribes with student education records and information derived from student education records.

### Letter to Native American Rights Fund Regarding FERPA dated April 11, 2005

- U.S. Department of Education's Student Privacy Office Opinion on interpretation of FERPA.
- No exception to requiring parental consent under FERPA for student information to be provided to tribes or tribal agencies under FERPA

# Tribal-School District Agreements

## ■ Reference Guide

- It is parents and guardians that have standing to legally address the quality and substance of public education
- All other entities are merely stakeholders that have specific roles for providing input to local school boards on the provision of public education each set out in statute;
- The Indian Education Act, for example, allows Native American tribes and pueblos the ability to consult with local school boards before major decisions are made regarding public education at the local level;

# Tribal-School District Agreements

- Reference Guide (con't)
- The Indian Education Act does not give any other entity the ability to approve or disapprove of any decision made by a local school board in governing a public school district;

# Tribal-School District Agreements

- The Indian Education Act does not provide for any exception to the requirements of federal or State law governing the operation of local school districts—it simply compels consultation and for intergovernmental agreements where possible (Tribes are not and cannot be an LEAs under State law and only under federal law if the Pueblo itself provides educational services under JOM and it is limited to JOM requirements only);
- Neither the Indian Education Act nor any other State statute creates or permits any third party entity, including local tribes and pueblos to become education agencies or entities having any role whatsoever in the actual governance of public education with either the PED or local school boards (collaboration and consultation);

# Tribal-School District Agreements

- **Reference Guide (con't)**
- Parents have a federal and State Constitutional right and statutory rights to participate and direct and control every aspect of the education of their children, including the confidentiality of their child's student records and information;
- Only parents can allow or permit another entity to be involved in the public education of their children;

# Tribal-School District Agreements

- The best the tribes can obtain is to have parents agree to allow the tribes to assist the School District in helping families;
- There must be disclosure of the resources to be provided by the tribes to have any meaningful discussions with parents about tribal-involvement in public education—What resources is the tribe to provide (space on tribal land for School District employees to provide services does not require an agreement or tribal involvement other than making space available for use or rent)—This is just a proposal for another School District service under the control of the school board;



# Tribal-School District Agreements

- Reference Guide (con't)
- Parents, Parents, Parents control what services their children receive from SPED to Advanced Placement and it is Parents who must seek and approve all resources, even if parents seek additional resources from the tribes with regard to public education;

# Tribal-School District Agreements

- Consultation is required on any pending decision the school board is intending to make regarding Indian education;
- Agreements must be parent-approval based in sharing data, including attendance and disciplinary records; and
- Pueblo can be critics, but the gauge of success is set by the Board and by the parents

# Setting the Stage and Tone for Negotiations of an Agreement

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- Selection of representatives/participants who have “problem solving” mindset
- Equal representation from the school district and the tribe
- Select a neutral site for meetings that is readily accessible with rooms for caucuses
- Provide a set of ground rules that are the bedrock of mediation, for example:
  - A call for mutual respect
  - One person talking at a time
  - Guidelines for handling media
  - Guidelines for handling rumors
  - Expected result - a written agreement?

# Starting the Negotiations

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- Establish a team made up of tribal and school district representatives to discuss:
  - What resources will the tribe offer to parents and guardians?
  - How parental notification will happen and how parents will provide permission for services and exchange of student information?
  - Will School District programs be allowed to use or rent tribal facilities, if necessary?
  - How and when Parties will meet on needs assessment?

# Starting the Negotiations

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- How reporting on progress of needs assessment will be made?
- How to better reflect Indian culture, economic status, history in the schools programs, and curriculum?
- Indian teacher and counselor recruitment and retention?
- Partnering in after school programs?
- Partnering in grant applications?

# Implementing the Agreement

- Governing Body approval and participation – Tribal Council/School Board
- Form an Advisory Committee with representatives from the tribe and the school district
- Empower Committee and provide resources
- Track and report progress on goals
- Reward Committee when achievements are made
- Don't be afraid to change membership on Committee if there is no movement
- Report progress at public forum

# In Summary

- School districts have the power to resolve actual and potential conflicts with tribes in a meaningful manner
- Intergovernmental Agreements can lead to a more productive relationship wherein school districts and tribes work together toward a common goal.

# In Summary

- Encourage school districts and tribes to strive for:
  - Communication – establish a process by which accurate information is effectively exchanged between individuals, agencies, and organizations;
  - Cooperation – view the parties to the agreement as an association of persons and agencies acting for a common benefit; and
  - Consultation – meaningful consultation between the Parties expressed through respect, courtesy, and friendship



# Questions



# Contact Information



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