



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Education Interim Committee

68th Montana Legislature

SENATE MEMBERS

DANIEL EMRICH
JOHN FULLER
EDIE MCCLAFFERTY - Vice Chair
DANIEL SALOMON - Chair

HOUSE MEMBERS

LINDA REKSTEN
MELISSA ROMANO
KERRI SEEKINS-CROWE
SUE VINTON

COMMITTEE STAFF

PAD MCCRACKEN, Lead Staff
LAURA SANKEY KEIP, Staff Attorney
VACANT, Secretary

TO: Education Interim Committee and Education Interim Budget Committee
FROM: Pad McCracken, Committee Staff
RE: HB 338 – Indian Education for All overview
DATE: March 7, 2024

Let's start where we always should, with the Montana Constitution. Here's subsection (2) of Article X, Section 1:

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

Currently, I see three educational programs that support this commitment:

1. Indian Education for All under [Title 20, chapter 1, part 5, MCA](#). It was this program that was amended in [HB 338](#) (2023, Windy Boy).
2. Indian Language Immersion Programs under [Title 20, chapter 7, part 14, MCA](#) (known as the "Cultural Integrity Commitment Act").
3. Montana Indian Language Preservation Program under [20-9-537, MCA](#).

The significant changes to the Indian Education for All (IEFA) program under HB 338 include:

1. Making IEFA a statutory requirement on all school districts to provide to "all certified personnel and all students." Prior to HB 338, IEFA was *encouraged* by the Legislature, and the IEFA statutes stated that districts *may require* certified personnel to "satisfy the requirements for instruction in American Indian studies."
2. Ensuring that the Board of Public Education incorporate IEFA in its content standards and that the Superintendent of Public Instruction include representatives of Montana Indian tribes in the development of those content standards.
3. Increasing the accountability for school districts in how they expend IEFA funds by:
 - a. enhancing the reporting requirements for IEFA expenditures; and
 - b. providing that failure to meet the reporting requirements results in ineligibility for payments (or a portion of payments) in the subsequent year.

HB 338 was effective July 1, 2023, and provided that the enhanced reporting requirements applied to funds distributed after that date. A copy of the bill is included with this memo for your reference.

The implementation questions I have received pertain entirely to the reporting and funding provisions of the bill.

Prior to HB 338, statute prohibited the diversion of IEFA funds for any purpose other than providing IEFA. This prohibition is maintained under HB 338. There has also been a required annual report to OPI specifying how districts expended IEFA funds. HB 338 enhanced these reports requiring expenditure reporting in "sufficient detail" to ensure that all the funds were properly spent" and "detailed descriptions" of the IEFA provided to students and certified personnel and how the instruction was developed in cooperation with the tribes.

It's not clear to me whether the reporting requirements described in OPI's reporting guidance (also included) fully meet the new requirements of the law, but again these reporting requirements apply to money distributed and still being expended this school year, FY 24. Perhaps the Trustee Financial Summary includes the necessary level of detail about the expenditure of funds and the "assurance form" mentioned will include the "detailed descriptions" required.

OPI has also communicated to the Board of Public Education (BPE) that the BPE will need to determine whether to withhold funding for IEFA payments for FY 25 under its authority in [20-9-344, MCA](#) (subsections (2) and (3)). This is confusing *ineligibility* for a funding component (or portion thereof) of a school district's budget with the *withholding* of distribution of funds for which a district is otherwise eligible.

The idea/hope with HB 338 is that all districts provide meaningful IEFA and provide sufficient evidence that they have done so, so that IEFA payments continue to be part of district's budgets, but HB 338 added a consequence for failure to report: ineligibility for the IEFA payment, similar to a district being ineligible for a quality educator payment (QEP) for a teacher who is not certified. The BPE does not withhold that QEP; it is simply not part of the district's budget for that year. That is the methodology HB 338 clearly describes; the BPE has no role in the reporting or payment portions of the bill. If the legislature intended otherwise, it would've been quite easy to state in the bill.

The ineligibility for funds in FY 25 based on reporting for funds distributed in FY 23 (*prior to the effective date of the bill*) is also problematic. The bill could've been clearer in stating that the applicability was for both subsections (4) and (5) of section 4, but a logical interpretation of the bill is that the ineligibility for funding under subsection (5) is based on the new level of detail in the reporting under subsection (4). If OPI feels that the reporting "prescribed by the superintendent of public instruction" prior to HB 338 provides sufficient detail to determine ineligibility or reduction of the IEFA payment for FY 25, that is OPI's determination.



AN ACT REVISING INDIAN EDUCATION FOR ALL; PROVIDING A DEFINITION OF EDUCATIONAL AGENCY; REQUIRING SCHOOL DISTRICTS TO PROVIDE INDIAN EDUCATION FOR ALL; REQUIRING THE BOARD OF PUBLIC EDUCATION AND SUPERINTENDENT OF PUBLIC INSTRUCTION TO INCORPORATE THE DISTINCT AND UNIQUE CULTURAL HERITAGE OF MONTANA AMERICAN INDIANS INTO CONTENT STANDARDS WITH INVOLVEMENT FROM THE TRIBES; ENHANCING THE REPORTING REQUIREMENTS FOR INDIAN EDUCATION FOR ALL FUNDS DISTRIBUTED TO SCHOOL DISTRICTS; AMENDING SECTIONS 20-1-501, 20-1-502, 20-1-503, AND 20-9-329, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-1-501, MCA, is amended to read:

"20-1-501. Recognition of American Indian cultural heritage -- legislative intent. (1) It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.

(2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution:

(a) every Montanan, whether Indian or non-Indian, ~~be encouraged to~~ learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and

(b) every educational agency ~~and all educational personnel will~~ work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

(3) It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational ~~personnel~~ agencies provide means by which school personnel will gain an understanding of and appreciation for the American Indian people."

Section 2. Section 20-1-502, MCA, is amended to read:

"20-1-502. American Indian studies -- definitions. As used in this part, the following definitions apply:

(1) "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, language, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) "Educational agency" means:

(a) the Montana university system;

(b) professional educator preparation programs accredited by the board of public education;

(c) the board of public education;

(d) the office of public instruction; and

(e) school districts.

~~(2)~~(3) "Instruction" means:

(a) a formal course of study or class, developed with the advice and assistance of Indian people, that is offered separately or that is integrated into existing accreditation standards by a unit of the university system or by an accredited tribal community college located in Montana, including a teacher education program within the university system or a tribal community college located in Montana, or by the board of trustees of a school district;

(b) inservice training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts;

(c) inservice training provided by a local board of trustees of a school district, which is developed and conducted in cooperation with tribal education departments, tribal community colleges, or other recognized Indian education resource specialists; or

(d) inservice training developed by professional education organizations or associations in cooperation with educators of Indian descent and made available to all certified and classified personnel."

Section 3. Section 20-1-503, MCA, is amended to read:

"20-1-503. ~~Qualification in Indian studies -- trustees and noncertified personnel~~ Indian education for all. (1) ~~The board of trustees for an elementary or secondary public school district may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies. Pursuant to Article X, section 8, of the Montana constitution, this requirement may be a local school district requirement with enforcement and administration solely the responsibility of the local board of trustees. Pursuant to this part and 20-9-329 and the definition of basic system of free quality public elementary and secondary schools under 20-9-309, the board of trustees of a school district shall require that all certified personnel and all students receive instruction in American Indian studies.~~

(2) Members of boards of trustees and all noncertified personnel in public school districts are encouraged to satisfy the requirements for instruction in American Indian studies.

(3) (a) Pursuant to Article X, section 1(2), of the Montana constitution, 20-1-501, 20-7-101, and 20-9-309, the board of public education shall incorporate the distinct and unique cultural heritage of Montana American Indians in the content standards that schools must implement as a requirement for school accreditation.

(b) The superintendent shall include representatives of Montana Indian tribes on negotiated rulemaking committees formed pursuant to 20-7-101 addressing the development or revision of content standards under subsection (3)(a)."

Section 4. Section 20-9-329, MCA, is amended to read:

"20-9-329. Indian education for all payment. (1) ~~The~~ Except as provided in subsection (5), the state shall provide an Indian education for all payment to public school districts, as defined in 20-6-101 and 20-6-701, to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) The Indian education for all payment is calculated as provided in 20-9-306 and is a component of the BASE budget of the district.

(3) The district shall deposit the payment in the general fund of the district.

(4) (a) A public school district that receives an Indian education for all payment may not divert the funds to any purpose other than curriculum development of an American Indian studies program, providing curriculum and materials to students for the program, and providing training to teachers about the program's curriculum and materials.

(b) A public school district shall file an annual report with the office of public instruction, in a form prescribed by the superintendent of public instruction, in a form and by a date prescribed by the superintendent of public instruction, that specifies how the Indian education for all funds were expended in the prior school fiscal year in sufficient detail to ensure that all the funds were properly spent for the purposes under subsection (4)(a). In addition to the expenditure reporting, the report must include detailed descriptions of:

(i) the instruction provided to certified personnel and students as required under 20-1-503; and

(ii) how this instruction was developed cooperatively with the advice and assistance of Montana tribes pursuant to Title 20, chapter 1, part 5.

(5) (a) A school district that fails to file the annual report required under subsection (4) is ineligible for the funding under this section for subsequent school fiscal years until the report is filed.

(b) If a school district files a report failing to show that all funds received under this section were spent for the purposes of subsection (4)(a), the school district's BASE budget and funding under this section for the subsequent fiscal year must be reduced by the amount of funding received that was not spent for the purposes of subsection (4)(a)."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 6. Effective date. [This act] is effective July 1, 2023.

Section 7. Applicability. The new reporting requirements under [section 4(4)] apply to Indian education for all funds distributed in fiscal years starting on or after July 1, 2023.

- END -

I hereby certify that the within bill,
HB 338, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 338

INTRODUCED BY J. WINDY BOY, C. KEOGH, T. RUNNING WOLF, D. HAWK, E. KERR-CARPENTER, A.
BUCKLEY, M. THANE, F. SMITH, M. HOPKINS, J. FITZPATRICK, K. ABBOTT, P. TUSS, S. STEWART
PEREGOY, M. ROMANO, S. HOWELL

AN ACT REVISING INDIAN EDUCATION FOR ALL; PROVIDING A DEFINITION OF EDUCATIONAL AGENCY;
REQUIRING SCHOOL DISTRICTS TO PROVIDE INDIAN EDUCATION FOR ALL; REQUIRING THE BOARD
OF PUBLIC EDUCATION AND SUPERINTENDENT OF PUBLIC INSTRUCTION TO INCORPORATE THE
DISTINCT AND UNIQUE CULTURAL HERITAGE OF MONTANA AMERICAN INDIANS INTO CONTENT
STANDARDS WITH INVOLVEMENT FROM THE TRIBES; ENHANCING THE REPORTING REQUIREMENTS
FOR INDIAN EDUCATION FOR ALL FUNDS DISTRIBUTED TO SCHOOL DISTRICTS; AMENDING SECTIONS
20-1-501, 20-1-502, 20-1-503, AND 20-9-329, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
APPLICABILITY DATE.



INDIAN EDUCATION FOR ALL PAYMENT: REPORTING GUIDE

Indian Education for All (IEFA) is a landmark provision in the Montana Constitution that “recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.” The Montana Legislature provides IEFA funding to school districts and requires school districts to report IEFA expenditures to the Montana Office of Public Instruction (OPI). In 2023, [20-9-329, MCA](#) was revised to include new reporting requirements and provide a reduction of future funding for school districts that fail to report expenditures of all IEFA revenue.

Reporting

There are **two** ways schools will report the accurate use of their IEFA funds:

1. **Integrated School Action Plan (ISAP) Components-** in the new accreditation platform.
 - a. Schools will submit evidence into the ISAP of IEFA inclusion.
 - b. Schools will submit an assurance form.
 - c. The ISAP report is generally due on the last Friday in March. SY 23-24 is due **March 29, 2024**.
 - d. Questions on the accreditation reporting process, contact the [OPI’s accreditation unit](#).
2. **Trustee Financial Summary (TFS)**, due **September 15** (reporting for the prior school year)
 - a. Recording funds received: Fund (01) General Fund, Revenue code: 3113
 - b. Recording expenditures: Fund (01) General Fund, Program code: 365
 - c. For questions on **school finance coding** or the TFS, email opischoolfinance@mt.gov

Planning and Implementation

MCA 20-9-329 (4) (a) states, “A public school district that receives an Indian education for all payment may not divert the funds to any purpose other than curriculum development of an American Indian studies program, providing curriculum and materials to students for the program, and providing training to teachers about the program’s curriculum and materials.” Districts can determine their annual IEFA amount through the [OPI School Finance Website under State School Payments](#). In addition, [OPI’s IEFA unit](#) has resources and guidance for districts to implement IEFA. Sample allowable expenses for districts could be:

Curriculum materials

- Purchasing quality instructional materials that are tribally specific, culturally authentic, and historically accurate. Curriculum materials on OPI’s website meet this requirement. Refer to the OPI’s [Evaluating American Indian Materials and Resources for the Classroom](#) guide when purchasing materials.
- Expenses associated with consultation and/or training with a qualified IEFA specialist.

Providing training to teachers

- Expenses associated with staff professional development opportunities that will enhance their knowledge of the [Essential Understandings](#), include IEFA into their teaching, build background IEFA knowledge, learn about bias and stereotypes in texts and the media, historical inaccuracies, and Indigenous perspectives.

Curriculum development of American Indian studies program

- Providing resources that bring tribal presence to the school environment, e.g., tribal flags, art supplies to paint tribal seals, tribally produced artwork or mural, posters.
- Compensation for a guest lecture, lesson, or learning activity provided by a tribal education specialist, knowledge keeper, elder, or other tribal member.
- Compensation for staff time specifically devoted to school or district IEFA coordination and planning efforts. i.e., the amount of FTE dedicated to an IEFA coordinator.
- Implementation questions? Find information and contact information on [OPI’s IEFA website](#).