

The Elementary and Secondary Education Act Reauthorization Recommendations for TEDs / TEAs (March 2010)

The Elementary and Secondary Education Act (ESEA) is currently up for Reauthorization and it is the most important federal law that applies to American Indian and Alaska Native tribal students. The ESEA currently has 10 Titles with multiple programs. Some are general programs, like the Title I Improving Basic Programs, and some are specific to Native Americans, like the Title VII Indian Education Act programs. Tribal students, whether they attend Bureau of Indian Education (BIE) funded schools or state public schools, are served by all of the ESEA programs. And, all of the programs could do more to help tribal students by recognizing a role, or by enhancing the role or roles, including in public school education, of tribal governments as sovereign nations. Tribal governments are a major untapped resource in education, and this ESEA Reauthorization needs to change that.

Over 200 of the over 560 federally-recognized tribal governments today have education agencies. Known as "Tribal Education Departments" (TEDs) or "Tribal Education Agencies" (TEAs), these tribal governmental agencies can help the non-tribal federal and state governments serve tribal students. TEDs / TEAs can assist with the most fundamental education improvement and accountability functions like data collection, reporting, and analysis. TEDs / TEAs can help in other areas as well, including the development of curricula, standards, and assessments; teacher training; research; and, specific local initiatives like truancy intervention, drop out prevention, and tutoring programs.

In particular, TEDs / TEAs are in a unique position to coordinate data on tribal students that is generated by various and sometimes multiple sources, including federal education programs, public school systems, states, and BIE-funded schools. For tribal students, this never has happened before; right now we can only imagine accurate and current tribe-wide, statewide, or nationwide data-based reports on tribal students. But if such reports were available, agencies and legislatures of all governments could make data-driven decisions regarding tribal students as they implement the next Reauthorization of the ESEA.

For the data roles of TEDs / TEAs to reach their full potential, the Family Education Rights and Privacy Act (FERPA) needs to be clarified by an amendment that includes TEDs / TEAs as being among the education agencies, authorities, and officials to whom protected student records and information can be released without the advance consent of parents or students. Such an amendment to FERPA would be consistent with the TED programs authorized by Congress since the ESEA Reauthorizations of 1988 and 1994 and thus would bring FERPA up to date and in accord with the ESEA.

TEDs and TEAs in the ESEA

The current ESEA authorizes TEDs / TEAs in Title VII and Title X. Both Titles contemplate that TEDs / TEAs will coordinate education programs; develop and enforce tribal education codes, policies, and standards; and provide support services and technical assistance to schools and programs. Unfortunately, the funding authorized to support this work in Title VII and Title X never has been appropriated. This Reauthorization should retain both TED / TEA provisions, increase their funding levels to at least \$25 million, and strengthen them. Moreover, each ESEA Title needs to better connect TEDs / TEAs with states, public school districts, BIE-funded schools, and the various federal education programs that serve tribal students.

Title I: TEDs as SEAs, Teaching Tribal Sovereignty, and Increased Tribal-State Relations

Title I is and always has been the biggest ESEA program (over \$15 billion annually). State Educational Agencies (SEAs) can get Title I funds if they submit proper plans that address academic standards, assessments, and accountability; teaching and learning support; parental involvement; and reporting. In the development of these state education plans, which are a prerequisite for Title I funds; there is no specified role for TEDs / TEAs. This has severely limited or impaired the ability of TEDs / TEAs to work with SEAs. The following three recommendations should be incorporated into Title I:

1) TEDs / TEAs should be Authorized to Perform SEA functions within Tribal Geographic Territories

TEDs / TEAs should perform SEA functions within significantly large tribal geographic territories that include a high percentage of tribal students served by Title I. For example, twelve Indian reservations are larger than the State of Rhode Island, and nine reservations are larger than the State of Delaware. Instead of being part of a state's Title I education plan, the TEDs / TEAs that serve these large tribal geographic bases should be allowed to develop a reservation-wide or a tribal-wide plan for Title I funds, which the TED / TEA should submit directly to the U.S. Department of Education. If the U.S. Education Department approves the TED's / TEA's plan, the TED / TEA should get Title I funds and perform the SEA services within the Tribe's geographic territory.

Presumably, not every TED / TEAs would immediately seek SEA status – some TEDs / TEAs are ready and willing to perform SEA functions immediately while others will take several years to develop the necessary capacity and infrastructure. For example, the TED / TEA of the Navajo Nation is already performing SEA-like functions on the Navajo Reservation and is currently working with the BIE to seek official designation as a SEA. Another TED / TEA that is seeking SEA status is that of the Oglala Sioux Tribe. But the vast majority of TEDs / TEAs are not likely to seek SEA status in the immediate future.

Where TEDs / TEAs do get Title I funds under an approved tribal-wide plan, TEDs / TEAs should have the option of sub-granting the Title I funds to the public schools that serve tribal students, or co-administering the Title I funds with the public schools, or even administering the Title I funds themselves.

These changes will connect Title I funds and programs with states and tribes. The recommendations may sound radical, but the fact is that the BIE-funded schools have long been able to administer Title I grants directly. And the most recent ESEA Reauthorization – the No Child Left Behind Act – went even further to allow TEDs / TEAs to set standards in BIE-funded schools and even accredit BIE-funded schools. The public schools, where 92% of tribal students go, now need these same kinds of options.

2) States should be Required to Meet with TEDs or TEAs as a Condition to Receiving Title I funds

In other instances, outside of significantly large tribal geographic territories, where there are TEDs / TEAs located within states, the ESEA should, at a minimum, require the SEAs of those states to identify the TEDs / TEAs, meet with them on a quarterly basis, develop joint strategies for improving education in schools with tribal students served by Title I, and jointly report on the results of such meetings to the U.S. Education and the Interior Departments as a condition of receiving Title I funds.

3) Mandate the Teaching of Tribal Sovereignty as a Condition to Receiving Title I Funds

Yet another suggestion for the Title I program would be to encourage those states receiving Title I funds that have TEDs / TEAs operating within their borders, if they do not already have one, and there are five states that do – California, Maine, Montana, Oregon, and Wisconsin – to enact state laws that mandate the teaching of tribal sovereignty in their K-12 curriculum on a regular basis. If a state chooses not to enact such a law, TEDs / TEAs with students served by Title I funding must be allowed to develop such a curriculum mandate that the public schools must follow.

Titles II and III: Native Language Curricula and Teacher Certification

Twelve states – Arizona, Idaho, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Washington, Wisconsin, and Wyoming -- now have laws that address tribal language curriculum and the certification of teachers for these curricula in their public schools. All of these laws acknowledge a role of tribes as sovereigns in the development and implementation of these laws. The Reauthorized ESEA should require the SEAs and the TEDs / TEAs in these states to jointly track the progress made in implementing these laws and their impacts on students, and to jointly report on these matters to the Department of Education and Congress. Further, the ESEA Reauthorization should authorize, at least on a nationwide pilot project basis, other states and tribes to enter into compacts or agreements for tribal language curricula development

and provision and teacher certification, and authorize appropriate funding to implement such compacts or agreements.

Titles VII and VIII: Tribal Eligibility or Increased Eligibility as Grantees

In the ESEA Reauthorization, for the Indian Education Act Formula Grant programs and for Impact Aid funding, tribes should be eligible or increasingly eligible to receive directly these funds, if a tribe has a TED / TEA and is willing to enter into a compact with a public school district to co-manage and co-administer these funds. For the most part, public school districts have not been willing to voluntarily agree to such arrangements, and thus the ESEA should require the funding to go to eligible Tribes that then would be required to enter into cooperative agreements with public school districts.

Title IX: Definition, Tribal Consolidated Plans and Reporting, Tribal Waivers

1) Definition

The ESEA and other federal statutes at present have several different definitions of TEDs or TEAs which has caused some confusion. The following definition of TEDs / TEAs should be included in the next ESEA Reauthorization definitional section:

() Tribal educational agency

The term “Tribal educational agency” means the authorized governmental agency of a federally-recognized American Indian and Alaska Native tribe (as defined in 25 U.S.C. §450b) that is primarily responsible for regulating, administering, or supervising the formal education of tribe members. “Tribal education agency” includes tribal education departments, tribal divisions of education, tribally sanctioned education authorities, tribal education administrative planning and development agencies, tribal education agencies, and tribal administrative education entities.

2) Tribes receiving ESEA funding should be Eligible to Consolidate Administrative Funds eligible for Consolidation in accordance with Title IX

Currently, Part B of Title IX allows SEAs to consolidate administrative funds available in ESEA programs eligible for consolidation if the SEA can demonstrate that the majority of its resources are from non-Federal sources. TEDs / TEAs receiving ESEA funding should be able to consolidate administrative funds according to the same set of requirements.

Tribal students are served by programs funded from federal, private, tribal, and state sources. Potentially all of these programs contain funds to be used for administrative purposes. Consolidation of administrative funds received will reduce waste and ensure efficient program management at the tribal level.

3) Tribes should be Authorized to Submit ESEA Consolidated Plans and Consolidated Annual Reports

Currently, Title IX Part C allows SEAs to submit ESEA consolidated plans and consolidated annual reports. Consolidated plans include general information about each program and a single set of assurances applicable to each program. Consolidated annual reports replace individual annual reports for each program included in the consolidated annual report. TEDs / TEAs receiving ESEA funding similarly should be eligible to submit consolidated plans and consolidated annual reports.

The purposes of Part C are to “improve teaching and learning, by encouraging greater cross-program coordination, planning and service delivery” and to provide greater flexibility through consolidated plans, applications, and reporting. *No Child Left Behind Act*, 20 U.S.C. §7841. For tribal students, the potential need for program coordination is particularly great. Authorizing tribal consolidated plans and consolidated reports is consistent with the express purposes of Part C.

4) Tribes should be Eligible to Request Title IX Waivers for Public Schools within Tribal Geographic Territories

Currently, Title IX Part D allows for waivers by the Secretary of Education of ESEA statutory and regulatory requirements. Tribes are among the eligible entities that may request a waiver for tribally operated schools. The ESEA reauthorization should retain this option and extend the option for TEDs / TEAs to seek waivers of statutory and regulatory requirements for public schools at least within significantly large tribal geographic territories.

Such waivers have the potential to allow TEDs / TEAs the flexibility and local control needed to improve the academic performance of tribal students. Specifically, various reports have proved that tribal students perform better when taught using tribal language and culture. The Navajo Nation has requested a Title IX waiver to develop its own definition of AYP. Other Tribes could request waivers to develop their own standards, assessments, and curriculum to meet the unique cultural-academic needs and goals of their communities.

Conclusion

The drop out rate of tribal secondary and elementary students nationwide remains an alarmingly high 50%. All stakeholders that are affected by this dire statistic and other troubling statistics regarding tribal student academic achievement, test scores, and college readiness, stand to gain from enhanced roles of TEDs / TEAs in the ESEA Reauthorization. The recommendations in this report will result in crucial structural and programmatic support to develop TED / TEA roles and capacity to better-serve tribal students.