

U.S. Department of Education Tribal Consultation
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Comments of Quinton Roman Nose,
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Introduction

Good afternoon. I am Quinton Roman Nose, the Executive Director of the Tribal Education Departments National Assembly ("TEDNA") and a member of the Cheyenne-Arapaho Tribes of Oklahoma. There is no more important federal law that applies to tribal students than the Elementary and Secondary Education Act ("ESEA"). As Congress prepares to reauthorize the entire ESEA or enact "Indian-specific" ESEA legislation such as the bill introduced in the last Congress called the Native Culture, Language, and Access for Student Success Act ("Native CLASS Act"), we have a chance to help many or all of the tribal elementary and secondary students nationwide in some new ways.

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. Whatever form the reauthorized ESEA or a Native CLASS Act takes, the important thing to understand is that tribal students are served by ALL of the ESEA programs; whether they attend Bureau of Indian Education ("BIE") funded schools or state public schools. And ALL of the programs could do more to help tribal students by recognizing a role, or by enhancing the role or roles, in formal education, including public school education, of tribal governments. Tribal governments are a major untapped resource in education, and this needs to change. I'm going to give a few examples of how tribal governments through their Tribal Education Departments or Agencies ("TEAs") can help.

TEAs in the ESEA

The ESEA already provides for TEAs. The provisions, one in Title VII and one in Title X, contemplate that 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. Without specific annual federal appropriations for TEAs, however, these things are not happening. The

Department of Education ("Department") should push to retain the TEA provisions, increase the funding authorization levels for TEAs, and request funding for TEAs. The Department also should seek to strengthen TEAs along the lines of the newly authorized State-Tribal Education Partnerships ("STEP") program. Over 200 tribes in 32 states now have TEAs. Moreover, the Department should advocate for every ESEA Title to be amended to better connect TEAs with states, public school districts, BIE-funded schools, and the various federal education programs.

Title I

Title I is and always has been the biggest ESEA program providing over \$15 billion annually. States 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 tribes. For this, we have two recommendations:

1) Where a Tribe has a significant geographic territory and where that territory includes a high percentage of tribal students served by Title I, instead of being part of a state's Title I education plan, the TEA should be allowed to develop a reservation-wide or a tribal-wide plan for Title I funds, which the Tribe should submit directly to the Department. If the Department approves the Tribe's plan, the Tribe should get Title I funds and coordinate the use of those funds with the states. Alternatively, Tribes should receive a portion of State Education Agency ("SEA") administrative funds available to SEAs under Title I to develop a reservation-wide or a tribal-wide plan for the Title I funds on behalf of the SEA.

2) In other instances where there are TEAs located within states, the ESEA should, at a minimum, require those states to identify the 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 Department and the Interior Department as a condition of receiving Title I funds.

These Title I changes will better connect states and tribes. Additionally, where tribes do get Title I funds under an approved reservation-wide or tribal-wide plan, tribes should have the option of sub-granting the Title I funds to the public schools that serve tribal students. Alternatively, the tribes should have the

option, with the public school's agreement, of co-administering Title I funds with the public schools, or even directly administering the Title I funds. This last recommendation may sound radical, but BIE-funded schools have long been able to administer Title I grants directly. The most recent ESEA Reauthorization – the No Child Left Behind Act – went even further to allow 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.

Remember, TEAs can help with the most fundamental education improvement and accountability functions like data collection, reporting, evaluation, and analysis. In particular, TEAs are in a unique position to coordinate data on tribal students that is generated by various and sometimes multiple sources, including supplemental federal education programs, public school systems, states, and BIE-funded schools. This would be something that has never happened before. Right now we can only imagine accurate and current tribe-wide, state-wide, or nationwide data-based reports on tribal students. If we had these reports, it would help agencies, Congress, and tribes make data-driven decisions regarding tribal students consistent with Title I standards.

TEAs can help in other areas as well, including teacher training; research; and specific local initiatives like truancy intervention, drop-out prevention, and tutoring programs. There is a wide range of possibilities. Another suggestion for the Title I program would be to encourage those states receiving Title I funds that have TEAs operating within their borders to enact state laws that mandate the teaching of tribal sovereignty in their K-12 curriculum on a regular basis if they do not already have one. There are at least five states that already have such laws – California, Maine, Montana, Oregon, and Wisconsin. Washington State has also developed a good sovereignty curriculum. If a state chooses not to enact such a law, tribes with students served by Title I funding must be allowed to develop a curriculum mandate that the public schools must follow.

Titles II and III: Native Language Curricula and Teacher Certification

Fourteen states – Arizona, California, Colorado, 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 the role of tribes as sovereigns in the development and implementation of these laws. The reauthorized ESEA should require the states and the 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 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 and teacher certification, and authorize appropriate funding to implement such compacts or agreements. Activities that TEAs could undertake under such agreements could include: working with Institutions of Higher Education and high need Local Education Agencies (“LEAs”) to focus on culturally sensitive professional development for teachers under Part A, Subpart 3; working with local LEAs to provide culturally sensitive professional development under Part A, Subpart 2; promoting native speakers to become certified paraprofessionals under Part A, Subpart 2; and assisting the state in reforming or creating teacher certification standards for native languages under Part A, Subpart 1.

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

In the ESEA reauthorization, tribes should be eligible or increasingly eligible to directly receive Indian Education Act Formula Grants and Impact Aid funding if a tribe has a 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.

If the reports and statistics are correct, states and public schools need help from tribes in this area. Significantly, a growing number of states are taking this direction on their own, without any federal mandate to do so, because it helps tribal students and it makes sense. Recent state education laws show that tribes and states have found ways for tribes as governments to have a role in public school education. They're working together on tribal language curricula and teacher certification. They're working together to

incorporate into public school curricula tribal history, culture, and sovereignty. The Department and Congress need to support these efforts in the ESEA reauthorization or in a Native CLASS Act.

STEP Program

The seeds for this are already there. The Department's fiscal year 2012 appropriation included new funding for a pilot program under the Indian Education Act National Activities Section authority called the STEP program. Under the STEP program, the Department awarded competitive grants to four TEAs to increase their role in the education of tribal students, including meeting the unique educational and culturally related academic needs of tribal students and improving their academic achievement. The purpose of the STEP program grants are to (a) promote increased collaboration between TEAs and SEAs in the administration of certain State-administered formula grant programs; and (b) build the capacity of TEAs to conduct certain State-level administrative functions under those programs for schools located on the tribe's reservation. The Department should continue to promote and fund the STEP program. The Department should also encourage the Department of the Interior to adopt a similar program as it is authorized to do, but has never done.

FERPA

Finally, the Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C. § 1232g; 34 CFR Part 99) generally protects the privacy of student education records. FERPA, however, has been read to preclude tribes and TEAs from obtaining student records without parental consent, unlike SEAs or LEAs. Because of FERPA's lack of clarity, many public school districts and states will not allow TEAs access to the protected records and information of their tribal students unless the requisite parental or student consent is obtained in advance. The difficulty of accessing -- or the inability to access -- these records and information on tribal students, most of whom attend public schools nationwide, has hampered the efforts of TEAs to plan and coordinate education programs; to develop education codes; to provide support services and technical assistance to schools; and to work with LEAs and SEAs. Most importantly, FERPA's unclarity and disparities have made it hard for TEAs to make data-based decisions in planning for and addressing the educational progress and needs of tribal students that would help close tribal student achievement gaps.

It has become clear that the use of data is central to how many educators evaluate their practices and monitor students' academic progress. See generally Hamilton et al., Using Student Achievement Data to Support Instructional Decision Making (2009). Student achievement data, discipline data, and attendance records, etc. are vitally important to evaluating educational practices, success, and student improvement. *Id.* As one scholar has noted, "better access to data offers an unprecedented opportunity for educators to become problem solvers; using hard evidence to analyze student performance and craft data-driven school improvement plans. But information is just a tool, and like any tool, it is only as powerful as the use to which it is put. . ." Faircloth, Susan C., & Tippeconnic, III, John W, The Dropout/Graduation Rate Crisis Among American Indian and Alaska Native Students: Failure to Respond to Places the Future of Native Peoples at Risk 8 (2010). Despite this understanding, Tribes and TEAs face uphill challenges in accessing this data in the first place.

The Department should push for FERPA to be clarified by an amendment that includes TEAs as being among the education agencies, authorities, and officials to who 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 TEA provisions authorized and reauthorized by Congress in the ESEA since 1988 and thus would bring FERPA up to date and in accord with the ESEA. Such an amendment would also help all education agencies, authorities, and officials -- federal, state, local, and tribal -- implement the ESEA.

Conclusion

Thank you for the Consultation and the opportunity to provide these comments. TEDNA is happy to answer any questions the Department might have or submit further information the Department might need to further the educational progress of the students of our sovereign tribal nations.