



# **Tribal Education Departments National Assembly's Education Priorities**

## **Summary of Priorities**

**2015**

The following is a list of the Tribal Education Departments National Assembly's ("TEDNA") top education priorities:

1. Authorize state and tribal co-governance agreements to strengthen tribal participation in education;
2. Establish the "Tribal Education Agency Project" to provide for the authorization of Indian tribes to be eligible to operate title programs;
3. Make Indian tribes the preferred eligible entity in rural areas on or near Indian reservations to receive NCLB, Title VII, Indian Education Formula Grants, and authorize Indian tribes to be eligible for technical assistance to develop such grant applications;
4. Retain the tribal education department appropriation authorizations; and
5. Provide Indian tribes access to tribal member student data by amending FERPA.

### **Priorities**

*(Listed in Rank Order)*

#### **1. Authorize Tribal-State Education Co-governance Agreements to Strengthen Tribal Participation in Education**

An authorization of co-governance agreements regarding education between Indian tribes and SEAs or LEAs would make Indian tribes meaningful partners with the States and Federal governments in Indian education. This flexible approach would facilitate better use of limited tribal, state, and federal financial and human resources and improve program administration and student outcomes by providing the best possible education, in a culturally relevant way, for Native students.

#### **2. Establish the "Tribal Education Agency Project" to provide for the authorization of Indian tribes to be eligible to operate title programs**

The "Tribal Education Agency Project" will authorize Indian tribes to be eligible to operate title programs and receive title program funding authorized under the ESEA for schools that meet the eligibility criteria described. Tribal Education Agencies have proven that

they can improve student outcomes, and this project will allow them to continue to build and strengthen education for all students.

### **3. Make Indian Tribes the Primary Eligible Entity on Indian Reservations to Receive ESEA, Title VII, Indian Education Formula Grants, and Technical Assistance to develop such Grant Applications**

ESEA Title VII Indian Education Formula Grants is one of the only grant programs that specifically support the academic and cultural needs of AI/AN students. Indian tribes should be the primary eligible entity to receive such funds for schools within LEAs located on or in proximity to an Indian reservation. LEAs with boundaries within Indian reservations remain eligible to apply if an Indian tribe declines to do so. LEAs also remain the primary eligible entity off Indian lands. This priority furthers Indian self-determination in education.

### **4. Retain the Tribal Education Department/Agency (“TEDs/TEAs”) Appropriation Authorizations**

The Every Child Ready for College or Career Act of 2015 does not appear to include the two TEDs/TEAs funding authorizations. Funding is currently authorized in § 7135 and § 1140 of the Elementary and Secondary Education Act (“ESEA”). These authorizations should remain intact, as they are critical to tribal self-determination in education.

### **5. Provide Indian Tribes Access to Data on Tribal Member Students by Amending FERPA**

The Family Educational Rights and Privacy Act (“FERPA”) should be amended to authorize Indian tribes, consistent with local education agencies (“LEA”) and state education agencies (“SEA”), to receive the academic records of tribal member students from schools and LEAs without advance parental consent. Indian tribes will use this data to create data-driven education programs to improve AI/AN student achievement.

## **TRIBAL-STATE EDUCATION Co-governance AGREEMENTS**

### **SEC. 7124. TRIBAL EDUCATION AGENCIES Co-governance AGREEMENTS**

(a) PURPOSE. Tribes may enter into co-governance agreements with the state education agency and/or the local education agency(s) operating a school or schools within Indian lands.

(1) for purposes of this section, " Indian land" has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(b) CO-GOVERNANCE AGREEMENT. If requested by the Indian tribe, the state education agency and/or the local education agency(s) shall enter into a co-governance agreement

with the Indian tribe. Among other things, the co-governance agreement entered into with the state education agency and/or the local education agency(s) may:

(1) authorize the tribal education agency to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the state education agency and/or the local education agency(s); and

(2) authorize the tribal education agency to reallocate funds for such programs, services, functions, and activities, or portions thereof as necessary.

(A) each agreement entered into shall confer a benefit upon the parties commensurate with the burden assumed.

(B) the Indian tribe and the state education agency or local education agency(s) shall determine the terms of the agreement.

(c) DISAGREEMENT. The Indian tribe, state education agency, and local education agency(s) is permitted to create a dispute resolution mechanism in their co-governance agreement. If an Indian tribe and state education agency and/or local education agency(s) cannot reach an agreement, the tribe may submit to the Secretary information that it deems relevant to make a determination and the Secretary may make the determination utilizing the procedure outlined in 20 U.S.C. 7704(e) as modified for this section.

(d) CONSORTIUM OF TRIBES. Nothing in this section shall preclude the development and submission of a single tribal education agencies project by the participating Indian tribes of an intertribal consortium.

(e) DEFINITION. For the purposes of this subpart-

(1) the term Indian Tribe means any Indian tribe, band, nation, other organized group or community, including any Native village or Regional Corporation or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

## **TRIBAL EDUCATION AGENCIES PROJECT**

*Title VII, Part A, Subpart 2 is amended by inserting at the end the following new section 7125:*

### **SEC. 7125 .TRIBAL EDUCATION AGENCIES PROJECT**

(a) PURPOSE AND AUTHORIZATION.—

(1) There is established a project to be known as the ‘Tribal Education Agency Project’ that authorizes Indian tribes to be eligible to operate title programs and receive title program funding authorized under this Act for schools that meet the eligibility criteria described in subsection (e). These title programs may include all grants, including grants

allocated through formulas and discretionary grants allocated on a competitive basis, that are awarded under this Act.

(2) Reporting Requirements.—

(A) Indian tribes are required to comply with the reporting requirements of each title they administer pursuant to this Project.

(B) State educational agencies are not required to report on title programs operated by Indian tribes pursuant to this Project.

(b) PLANNING PHASE.—

(1) IN GENERAL.—Each Indian tribe seeking to participate in the Tribal Education Agencies Project shall complete a planning phase. The planning phase shall include—

(A) the development of an education plan for the schools that meet the eligibility criteria described in subsection (e) and that will be served under the project; and

(B) demonstrated coordination and collaboration partnerships, including cooperative agreements with each local educational agency that serves a school meeting the criteria described in subsection (e).

(2) EXEMPTION.—The Secretary may waive the planning phase, upon the application of an Indian tribe, if the Indian tribe has—

(A) been operating a tribal education agency successfully for 2 or more years; and

(B) can demonstrate compliance with the fiscal accountability provision of 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

(c) FUNDING AGREEMENT.—After an Indian tribe has successfully completed the planning phase, the Secretary shall award a grant to and enter into a funding agreement with the Indian tribe to enable the tribal education agency of the tribe to administer all title programs described in subsection (a) for the schools that meet the eligibility criteria described in subsection (e). All the funding in the agreement will be distributed to the Indian tribe's tribal education agency. Each funding agreement shall—

(1) identify school(s) to be served by the Indian tribe; and

(2) identify the title programs, services, functions, and activities that the tribal education agency will be administering for such schools; and

(3) determine the amount of funds to be provided to the Indian tribe by the allocations or grant amounts that would otherwise be provided to the State educational agency, as appropriate; and

(4) assurances that the Indian tribe will comply with the reporting requirements of each title for which it receives funding; and

(5) ensure that the Secretary provides such funds directly to the tribe to administer such programs.

(d) ELIGIBILITY.—In order to serve school(s) through a funding agreement under this section, the Indian tribe shall demonstrate—

(1) that the school meets 1 or more of the following criteria:

(A) The school is funded by the Bureau of Indian Affairs, whether directly or through a contract or compact with an Indian tribe or a tribal consortium.

(B) The school receives Impact Aid funding from the Department of Education because of students living on Indian land.

(C) The school is located on Indian land.

(D) The school is located in an Alaskan community where the Alaska Native /American Indian student population (alone or in any combination) is greater than 5,000 or at least 10% of the student population, whichever is less, as according to the U.S. Census.

(2) that the Indian tribe—

(A) has the capacity to administer the functions for which the Indian tribe applies for such school, including compliance with the fiscal accountability provision of 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code; and

(B) satisfies such other factors that the Secretary deems appropriate.

(e) SPECIAL RULE. – Notwithstanding anything else in this section, in the case where a majority of the students in the school are American Indian or Alaska Native, the Indian tribe that represents a plurality of eligible Indian children who are served by a local educational agency for this project shall have first priority in submitting an application.

(f) GEOGRAPHICAL DIVERSITY.—In awarding grants under this section, the Secretary shall ensure that grants, to the extent practicable, are provided and grant amounts are used in a manner that results in national geographic diversity among Indian tribes applying for grants under this section.

(g) CONSORTIUM OF TRIBES.—Nothing in this section shall preclude the development and submission of a single tribal education agencies project by the participating Indian tribes of an intertribal consortium.

(h) REPORTING REQUIREMENTS.—The Secretary shall submit to Congress a written report 3 years after the date of enactment of this Act that—

(1) identifies the relative costs and benefits of tribal education agencies, as demonstrated by the grants;

(2) identifies the funds transferred to each tribal education agency and the corresponding reduction in the Federal bureaucracy; and

(3) includes the separate views of each Indian tribe participating in the project.

(i) DEFINITIONS.—In this section:

(1) INDIAN LAND.—The term ‘Indian land’ has the meaning given that term in section 8013.

(2) INDIAN TRIBE.—The term ‘Indian tribe’ means any Indian tribe, band, nation, other organized group or community, including any Native village or Regional Corporation or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) TRIBAL EDUCATION AGENCY.—The term ‘tribal educational agency’ means an authorized governmental agency of an American Indian tribe, an Alaska Native tribe, or tribal organization (as defined in the Indian Self-Determination and Education Assistance

Act, 25 U.S.C 450b) that is primarily responsible for regulating, administering, or supervising the formal education of tribal members. 'Tribal educational agency' includes tribal education departments, tribal divisions of education, tribally sanctioned education authorities, tribal education administrative planning and development agencies, tribal education agencies, tribal administrative education entities, and Alaska Native organizations operating education programs for Alaska Native students.

(4) FUNDING AGREEMENT. – The term 'funding agreement' means any agreement by which the Secretary awards grants authorized in this Act to an Indian tribe to administer in schools meeting criteria in subsection (e).

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section up to \$5 million per tribe for the planning phase only.

**Make Indian Tribes the Primary Eligible Entity on Indian Reservations to Receive ESEA, Title VII, Indian Education Formula Grants, and Technical Assistance to develop such Grant Applications**

**SEC. 7112. GRANTS TO LOCAL EDUCATIONAL AGENCIES AND TRIBES.**

(a) IN GENERAL-

(1) The Secretary may make grants, from allocations made under section 7113, to local educational agencies and Indian tribes, in accordance with this section and section 7113.

(2) Two or more local educational agencies may form a consortium to apply for and carry out a program under this subpart, provided that each local educational agency participating in such a consortium –

(A) shall assure that the eligible Indian children served by such local educational agency receive the services of the programs funded under this subpart; and

(B) shall be subject to all requirements, assurances, and obligations applicable to local educational agencies under this subpart.

(b) LOCAL EDUCATIONAL AGENCIES-

(1) ENROLLMENT REQUIREMENTS-

(A) Subject to subparagraph (B), a local educational agency shall be eligible for a grant under this subpart for any fiscal year if the number of Indian children eligible under section 7117 who were enrolled in the schools of the agency, and to whom the agency provided free public education, during the preceding fiscal year —

(i) was at least 10; or

(ii) constituted not less than 25 percent of the total number of individuals enrolled in the schools of such agency.

(B) If an Indian tribe that represents a plurality of the eligible Indian children who are served by such local educational agency requests that the local educational agency enter into a cooperative agreement with such tribe to assist in the planning and operation of the program funded by such grant, the local educational agency shall enter into such an agreement as a condition for receiving funds under this subpart.

(2) EXCLUSION- The requirement of paragraph (1) shall not apply in Alaska, California, or Oklahoma, or with respect to any local educational agency located on, or in proximity to, an Indian reservation.

(c) INDIAN TRIBES-

(1) Where Indian children eligible under Section 7427 of this title are served by local education agencies located on, or adjacent or contiguous to, an Indian reservation, any other lands held in trust by the United States for Indians, or former Indian reservations in Oklahoma, Indian tribes shall be eligible and have priority for grants under this subpart for any fiscal year.

(2) If one or more Indian tribes represent Indian children eligible under section 7427, the Indian tribe that represents a plurality of the eligible Indian children shall have priority to receive such grant.

(3) SPECIAL RULE- The Secretary shall treat each Indian tribe or consortium of Indian tribes applying for a grant pursuant to paragraph (1) as if such Indian tribe or such consortium were a local educational agency for purposes of this subpart, except that any such tribe or consortium is not subject to section 7114(c)(4), section 7118(c), or section 7119.

(d) INDIAN COMMUNITY BASED ORGANIZATION—If neither a local educational agency pursuant to subsection (b), nor an Indian tribe or consortium of Indian tribes pursuant to subsection (c), applies for a grant under this subpart, an Indian community based organization serving the community of the local educational agency may apply for such grant. The Secretary shall apply the special rule in subsection (c)(2) to such organization in the same manner as such rule applies to an Indian tribe or consortium of Indian tribes.

(1) The term “Indian community based organization” means any organization that is composed primarily of Indian parents and community members, tribal government education officials, and tribal members from a specific community that--

(A) Assists in the social, cultural, and educational development of Indians in that community;

(B) Serves the best interests of Indians in that community;

(C) Incorporates Indian perspectives, values, language, culture, and tradition into the core function of the organization; and

(D) Demonstrates organizational capacity to manage the grant.

## **FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT**

### Access to Native Student Data

- This proposed language would provide tribes and the tribal education agencies that serve Native students with access to tribal citizen student records in the same way that local educational agencies have access.

*Section 1232g of the Family Educational Rights and Privacy Act [20 U.S.C. 1232g] is amended by adding a new subsection (iii) to paragraph (b)(1)(C):*

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

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(C)(i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3); or (iii) authorized representatives of Indian tribes, Alaska Natives, or Alaska Native organizations.