



USET Sovereignty Protection Fund, Inc.

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Submitted via [regulations.gov](https://www.regulations.gov)

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Re: DOCKET ID: ED-2016-OESE-0032-0001

Dear Secretary King,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide comments on the proposed regulations to hold states, districts, and schools accountable for ensuring educational equity for American Indian, Alaska Native, and Native Hawaiian students under the Every Student Succeeds Act (ESSA). For too long, states that have Indian lands within their geographic boundaries have not been required—or even encouraged—to collaborate with Tribal Nations to meet the educational needs of Native children. However, Tribal governments can offer essential insight into addressing the unique educational needs of Native students because they know their children and communities best. It is with this in mind that we offer the below recommendations.

USET SPF is a non-profit, inter-Tribal organization representing 26 federally recognized Indian Tribes from Texas across to Florida and up to Maine.¹ USET SPF is dedicated to enhancing the development of Tribal Nations, to improving the capabilities of Tribal governments, and assisting member Tribal governments in dealing effectively with public policy issues and in serving the broad needs of Indian people.

The Federal Trust Relationship

The federal government has long had a special federal trust responsibility to Tribal Nations. Established and upheld through treaties, federal law, and U.S. Supreme Court decisions, this relationship includes a fiduciary obligation to provide parity in access and equal resources to all American Indian and Alaska Native students, regardless of where they attend school. Under the federal government's trust corpus in the field of Indian education, it is important to state that the obligation is a shared trust among the Administration, Congress, and judicial branch for federally-recognized Tribal Nations.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

As the country transitions to ESSA, states will take on some of the responsibility for educating Native students in exchange for greater transparency regarding how policy decisions are made. This exchange—and the unique and continuing federal trust obligation to Native students—makes the Department of Education’s (Department) regulatory role more essential than ever before. And, for Native students, no area of regulation is more important than how states consult with Tribal Nations.

Our Priorities

We ask that the Department’s regulations make Native students and Tribal consultation top priorities. We agree with the comments submitted by the National Indian Education Association (NIEA). Specifically, we urge the Department to ensure all Native students are considered alongside Native parents and communities in holding schools accountable under ESSA. The regulations the Department proposed in May are a good first step. Below, we highlight the specific parts of the regulations where we think the Department took important steps to protect the interests of Native students, and identify areas where the Department should go further:

Among the features in the draft regulations we support are:

- Requiring states to consult in a timely and meaningful way with Tribal governments, parents, Native education advocates, community-based organizations, teachers, and school leaders by requiring public notice, outreach, and 30 days for comment.
- Ensuring that Native parents and communities have access to data regarding multiple school quality measures to support their efforts to strengthen and improve schools.
- Reinforcing the inclusion of Native students in the states’ assessment system through the 95 percent participation rate requirement.
- Reinforcing the focus on student academic achievement and high school graduation, even while multiple measures of school performance are used.
- Clarifying important guardrails around the meaningful use of the ‘other indicator of school quality or student success.’
- Defining ‘consistent underperformance’ as no more than two years.

We believe the draft regulations fall short in these areas:

- The lack of requirement that adequate Tribal consultation include shared agendas and reporting to stakeholders. Based on our extensive experience with consultation, we specifically recommend [Executive Order 13175—Consultation and Coordination with American Indian and Alaska Native Tribal Governments](#) as a guide to ensuring Tribal consultation is properly outlined in the regulations. We further recommend that the Department engage in Tribal-specific consultation on this issue, in order to ensure the best outcome for Native students and encourage a meaningful relationship between state and Tribal governments.
- We also seek clarification that Tribal consultation goes above the realm of stakeholder engagement as outlined in the ESSA and these regulations due to the federal trust responsibility that the U.S government has to Tribal Nations. We support NIEA’s recommendation that Tribal governments must be consulted by local education agencies on supports, interventions, and other decisions that impact schools with Native students. Additionally, we urge the Department, in recognition of the trust responsibility, to condition state plan approval upon proof of meaningful consultation with Tribal Nations.

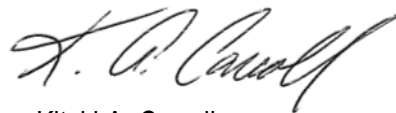
- Although setting an upper limit for 'N-size' (the minimum number of students needed to include a subgroup of students) is critically important for Native students, a maximum 'N-size' of 30, as allowed in the draft regulations, is far too high.
- The regulations should include a time period for English language acquisition which, in order to be consistent with the definition of 'long-term' English learners, should be five years.
- A state's 'regular high school diploma' should only be one that is fully aligned with state standards and should not be based on meeting Individualized Education Program.

Effective and inclusive implementation of ESSA is impossible without frequent and meaningful consultation from Tribal leaders and Native communities. We look forward to working with the Department to strengthen this regulation, so that states, districts, schools, and advocates have the information they need to comply with the ESSA and improve education for Native students. Should you have questions or require further information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (202) 624-3550 or by e-mail at lmalerba@usetinc.org.

Sincerely,



Brian Patterson
President



Kitcki A. Carroll
Executive Director

CC: USET Executive Officers
Wanda James, USET Deputy Director
Kathy Brown, USET Education Committee Co-chair
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“Because there is strength in Unity”