



National Indian Education Association

Strengthening Tribal Participation in Education

KEY POINTS

- Current federal law unfairly prohibits tribal participation in education by excluding tribes and tribal education agencies (TEAs) from eligibility to receive funds and operate federal Elementary and Secondary Education Act (ESEA) title programs.
- Tribes and TEAs are in the best position to create meaningful cultures of learning for tribal citizens on reservations.
- The proposed language would authorize tribes to operate ESEA title programs in schools serving Native students that are located on Indian reservations.
- The project authorizes tribes to receive ESEA title funding—not other sources of state or local funding—for education purposes. As a result, this language would grant tribal involvement in only approximately 10 percent of schools' funding.
- The Department of Education (ED) would then work with tribes to identify appropriate title programs for tribal administration.
- Tribes would likewise collaborate with the local educational agency (LEA) on their respective Indian reservations to implement the title program(s) where applicable.

BACKGROUND

The ESEA reauthorization should include a project that would allow tribes, acting through TEAs, to operate ESEA title programs in public or Bureau of Indian Education (BIE) schools serving Native students on Indian reservations. The project would grant tribes, upon approval by ED, eligibility to operate ESEA title programs in eligible schools. The steps in the project are as follows:

1. The tribe would complete a planning phase that would include the development of cooperative agreements with LEAs involved in the project to ensure the development of an education plan for participating schools.
2. ED would then enter into a funding agreement with the participating tribe in order to clarify which schools are joining the project, the ESEA title programs the tribe would administer in such schools, and assurances that the tribe would comply with federal reporting requirements for the title(s) the tribe is administering.
3. ED would submit a report identifying the relative costs and benefits of the project to Congress within three (3) years of signing the agreement.

The project authorizes tribes to receive ESEA title funding, not other sources of state or local funding, for education purposes. In this way, tribes would only operate ESEA title programs in a school or schools that include specific programmatic professional development, teacher training, and/or culturally-relevant curriculum development, among other services to benefit Native students. States and LEAs would continue to control the use of state education funding and federal funding not administered by the tribe in the participating schools.

The Tribal Education Departments National Assembly (TEDNA) has consulted the Council of Chief State School Officers (CCSSO) on this project, and they remain neutral to the proposition. CCSSO noted that states would be more comfortable with the project if it includes explicit language requiring tribes to comply with all federal reporting requirements associated with the title programs administered by the tribe as well as an explicit provision that relieves states from responsibility for reporting on title programs administered by a tribe. The proposed language incorporates such recommendations.

ASSOCIATED COSTS

- Appropriations to carry out this project should be authorized in sums up to \$5 million per tribe for the planning phase only.

POSITIONAL SUPPORT

- No entities or states have officially opposed the project.
- The CCSSO is neutral to the proposed language.
- ED has demonstrated its support for this proposal through the State-Tribal Education Partnership (STEP) program that strengthens tribal self-determination and tribal-state cooperation in education but does not grant a tribe to carry out ESEA title programs. However, ED notes that it cannot directly grant ESEA funds to TEAs without explicit legislative authority from Congress.

For questions or concerns, please contact Clint J. Bowers, National Indian Education Association Policy Associate, at cbowers@niea.org.

PROPOSED LANGUAGE

Title VII, Part A, Subpart 2 is amended by inserting at the end the following new section 7124:

SEC. 7124. TRIBAL EDUCATION AGENCIES COOPERATIVE AGREEMENTS

(a) PURPOSE. Tribes may enter into cooperative 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) COOPERATIVE AGREEMENT. If requested by the Indian tribe, the state education agency and/or the local education agency(s) shall enter into a cooperative agreement with the Indian tribe. Among other things, the cooperative 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. 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.

(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.

PROPOSED LANGUAGE

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.”