



NATIONAL INDIAN EDUCATION ASSOCIATION

June 7, 2019

Angeline Boulley, Director  
Office of Indian Education  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202

**Re: U.S. Department of Education Tribal Consultation on the Demonstration Grants for Indian Children Program**

Dear Director Boulley:

On behalf of the National Indian Education Association (NIEA), I respectfully submit the following written comments in response to the U.S. Department of Education's (Department) tribal consultation regarding the Office of Indian Education's Demonstration Grants for Indian Children Program (Demonstration Grants) under the Section 6121 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESSA).

NIEA is the nation's most inclusive organization advocating for improved educational opportunities for American Indians, Alaska Natives, and Native Hawaiians. Our mission centers on ensuring that Native students have access to a high-quality academic and cultural education, a goal that is only possible if the Department of Education (Department) upholds the federal trust responsibility, a moral obligation towards tribes.

Through formal tribal consultation, the Department has requested Tribal leader recommendations on the best ways to design and implement a proposed additional priority to the Demonstration Grants. As currently described, this priority would provide "opportunities for grantees to give students and their families more choice in deciding which educational services will better help their children become ready to succeed in college and careers."<sup>1</sup> NIEA comments on both the process the Department has undertaken to carry out tribal consultation as well as the substance of the proposal.

**Federal Trust Responsibility**

Established through treaties, federal law, and U.S. Supreme Court decisions, the Department has a federal trust responsibility to provide excellent education options for Native students. The federal trust responsibility includes a fiduciary obligation to provide parity in access to all American Indian and Alaska Native students, regardless of where they attend school. As the lead agency for education within the public school system, the Department has a unique responsibility to ensure the

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<sup>1</sup> Department of Education. (2019). Announcing the U.S. Department of Education (ED) Tribal Consultation on the Office of Indian Education's Demonstration Grants for Indian Children program under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act. Retrieved from <https://files.constantcontact.com/d8137653601/b28dad7d-f7a5-40c0-92a8-e01461a18653.pdf>.

644,000 Native students in schools across the country have access to culturally-relevant education options which prepare them for success.

### **Meaningful Tribal Consultation**

NIEA appreciates the Department set forth to consult with tribes regarding the Demonstration Grants. However, we remain deeply concerned that the Department has yet to consult on the need for an additional priority, or gaps in the current priority. Instead, the Department developed a pre-determined priority for consultation. Such a process does not constitute meaningful tribal consultation. Meaningful consultation requires the Department to engage with tribes in a government-to-government capacity at each stage in the process to identify critical needs, develop new priorities, and implement new priorities for the use of Demonstration Grant dollars, rather than having the Department dictate this process.

In conducting consultation in this manner, the Department has not adhered to the core principles of its own tribal consultation policy, which states that “ED should respect tribal sovereignty and self-determination in the development and implementation of departmental policies and programs that have tribal implications.”<sup>2</sup> The Department has circumvented its own process to “develop policy” through consultation and skipped forward to implementation. As such, the Department has overlooked a critical and important step in bringing the new priority under the Demonstration Grants forward. In keeping with the consultation policy, implementing a new priority for Demonstration Grants, the Department must first consult with tribes regarding the need for change to current priorities. NIEA urges the Department correct this misstep and add the following questions for consultation:

- What are existing gaps in the current priority, known as Native Youth Community Projects (NYCP); and,
- Based on these gaps, is there a need in the Demonstration Grants for a new priority; and,
- If so, what should the priority be?

### **NIEA Recommendations and Response to Questions**

The supporting materials for this consultation include nine questions. Despite our concerns with the consultation process, NIEA provides the following recommendations and responses to address the Department’s questions.

*Question 1. Do you support a priority to permit grantees to operate a project through which parents of eligible Indian students could choose educational services for their child, from a list of Tribally-chosen educational services?*

The Department has raised this question prematurely without appropriate tribal consultation to support the introduction of such a proposal. The Department should examine such a priority only after it has been established through consultation that such a priority is the best option to meet existing gaps in the current program. Given that the Department has engaged and has posed the question without meaningful consultation occurring, NIEA remains wary of such a priority.

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<sup>2</sup> Department of Education. U.S. Department of Education Consultation and Coordination with American Indian and Alaska Native Tribal Governments. Retrieved from <https://www2.ed.gov/about/offices/list/oese/oie/tribalpolicyfinal.pdf>.

As proposed, the Department's model does not support tribal sovereignty and tribal authority in Native education systems. Under the current NYCP priority, tribes directly administer programs funded by Demonstration Grants. By introducing a portal or portal administrator and forcing tribes to subcontract services already provided by tribes under current grants, the new proposed priority adds a layer of bureaucracy that would undercut tribal authority to work with and directly to serve its Native children and families.

Tribal schools have always been schools of choice. For tribes across the country, the concept of choice is one that is consistent with tribal sovereignty. Mainstream options for school choice remove Native students from tribal communities, echoing policies of forced removal and assimilation during the boarding school era. Such schools and programs often fail to address intergenerational trauma and lack protections for Native students with disabilities

In addition, the Department's model is based on state models for implementing voucher programs and similar choice mechanisms that, to date, have failed to support student success or expand accessible learning options in rural and reservation areas. NIEA firmly opposes any mechanism that diverts critical federal resources and funding from tribal programs, schools, and communities. Such mechanisms undermine tribal authority to build capacity and invest in Native education systems, and create barriers to equitable education supports for Native students. In October 2016, NIEA membership approved a resolution to oppose the diversion of federal funds from tribal schools and programs to those that require less tribal oversight or consultation.<sup>3</sup>

If the Department moves forward with this priority, NIEA encourages the Department to consider complications that remain unaddressed in the design of the current model. For example, tribes are not the only eligible grantees for Demonstration Grants as authorized under statute. Though NIEA supports the requirement for tribes to approve any list of potential education services, we recommend clarification of this process for approving a list for non-tribal grantees. Such clarification will prove critical for grantees that are located in urban areas or serve significant proportions of students from many tribes.

The Department has failed to engage in meaningful tribal consultation to support consideration of this question at this time.

*Question 2. Which of the following possible services would your Tribe be interested in including in such a project:*

- a. Native language, history, or culture courses;*
- b. Advanced, remedial, and elective courses, including those offered exclusively online;*
- c. Apprenticeships and industry certifications;*
- d. Concurrent and dual enrollment;*
- e. Private or home education;*
- f. Special education services and therapies;*
- g. Education technology, including learning software or hardware;*
- h. Transportation related to supplemental school services, such as after-school or summer services;*
- i. Tutoring, especially for students in low-performing schools;*

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<sup>3</sup> National Indian Education Association. (2016). Opposition to Voucher Programs in Bureau of Indian Education Schools. Retrieved from <http://www.niea.org/2016/08/13/opposition-voucher-programs-in-bureau-of-indian-education-schools/>

- j. Summer and afterschool education programs; and*
- k. Testing preparation and fees and application fees.*

Nearly all of the activities listed above constitute eligible uses of funds under the current NYCP priority for Demonstration Grants, except for “private or home school.” It is both disingenuous and misleading for the Department to obfuscate this fact as it undertakes consultation with tribes. Tribal leaders and educators are busy and typically under-resourced, which the Department knows. Yet, the Department has chosen to bury the one addition to the list [private or home school] and create confusion for tribes about the current grant authority and the potential impact of a new priority. By taking this approach, the Department fails to uphold the federal government’s trust responsibility to Native students. This is unacceptable.

NIEA has significant concerns regarding the addition of “private or home school” options to this list. Federal funding to support tribal capacity building and excellence in Native education programs remains limited. By diverting federal funding from a priority that directly supports grantees, the Department’s new proposed priority would stretch funding that directly supports capacity building and delivery of education services to Native students. Without proper consultation on the current grant program, such a drastic change in the program represents a rupture in the federal trust responsibility to Native students.

The Department has failed to engage in meaningful tribal consultation to support the addition of new eligible uses of funds at this time.

*Question 3. Are there any other educational services that you would be interested in including in a project?*

NIEA recommends that any proposed additions to educational services be included following tribal consultation that indicates a gap in the current priority for Demonstration Grants. However, the proposed list of possible uses of funds fails to address gaps in social and emotional learning at schools located in and near tribal communities. Each day, Native students attend schools that are not equipped to address the continued impact of a historical trauma. NIEA recommends the addition of educational services to address historical trauma and adverse childhood experiences to ensure all Native students have access to healthy and supportive learning environments where they can thrive.

The Department must engage in ongoing, meaningful tribal consultation to address gaps in the current priority and develop proposals to add new educational services for projects that serve tribal communities.

*Question 4. From the list in Question 2 above, which are currently available in your area? Are the current options adequate, and are there adequate secular options in your area?*

NIEA remains concerned that there is not adequate access to many of the types of services outlined above. According to a 2019 report from the Government Accountability Office, 84 percent of Native students in school districts with at least 25 percent Native students enrolled do not have any choice options available to students outside of the traditional public school. In addition, many tribal communities have extremely limited access to high-quality, culturally relevant education services administered by non-tribal providers.

Many tribes have addressed these gaps by developing critical programs that build capacity and provide culturally relevant education services directly to tribal students. As a result, tribes are best positioned to directly administer funds and run programs that serve Native students. Nevertheless, the current proposed model limits direct tribal administration of programs, diverting responsibility for such services to third-party providers. The Department should continue to support direct tribal capacity building and use of funds for programs, as allowed under the current NYCP priority.

Finally, NIEA strongly urges the Department to limit the use of federal funds by non-secular schools and organizations in tribal communities. Native students and communities continue to recover from a painful history of government-funded boarding schools operated by religious institutions that utilized brutal methods to assimilate Native children, tear apart Native communities, and erase Native cultures. Native students today continue to grapple with the effects of this legacy. Any proposal to utilize federal funds for religious schools in tribal communities recalls this shameful period in American history.

Ongoing, meaningful tribal consultation is critical to ensuring that any program effectively serves tribal students and communities. The Department has failed to appropriately engage with tribes to fully address the development, implementation, and potential impact of proposed priorities.

*Question 5. To ensure accountability and allowability of expenses, should the Tribe be responsible for approving providers of the educational services? Do you have other ideas for how to ensure that funds are spent on allowable expenses?*

NIEA advises the Department to ensure that tribes have the opportunity to approve providers of educational services under a potential new priority. Tribes are the experts on culturally relevant academic programs and services in tribal communities. Under the Department's proposed priority, there is high possibility that current funding may be diverted to non-tribal services providers that are not equipped to address the unique culture-based academic needs of Native students. Tribes must have a voice in the education of their citizens. This includes the approval of service providers.

The Department must reconsider the current priority and engage in meaningful consultation with tribes and communities to determine the most effective ways to improve accountability and ensure that service providers are those best equipped to serve Native students.

*Question 6. The Department is considering incentivizing or requiring grantees to establish a website (which could be managed through a contractor) that would allow families to choose how to apply an allotted stipend to certain pre-approved education expenses, so that families would not receive payments directly. Do you support the inclusion of such an incentive or requirement for a website in the new priority? Would families have internet access to make that feasible?*

NIEA firmly opposes incentivizing or requiring grantees to establish a website for the administration of funds for education services. Nearly 90 percent rural residents on tribal lands do not have access to broadband internet technology. As a result, families in many tribal communities would not have access to adequate internet access to make such a website feasible. Due to this lack of access, a requirement or incentive for a website would disproportionately favor some communities and unduly limit access to federal funds in others.

In addition, this same lack of broadband access severely limits tribal access to consultation located outside of tribal communities. Many tribal communities remained unaware of the consultation because information was not published in the federal register or lacked sufficient technology to connect virtually to the meetings. The Department must ensure all tribes have the opportunity to provide oral and written comments through meaningful consultation. This threshold has yet to be met.

*Question 7. Should the new priority require eligible entities that are not Tribal (e.g., LEA, SEA) to partner with a Tribe, Indian organization, or TCU?*

Tribes are the best situated to develop and manage effective culture-based education programs that fully serve the unique needs of Native students. In many tribal communities, non-tribal eligible entities do not have the tools, resources, and knowledge to support the unique needs of Native students. Strong tribal partnerships are key to equitable education systems in tribal communities. Any funding, program or activity carried out in Native communities must include tribes and/or tribal organizations. NIEA urges the Department to engage in meaningful tribal consultation to support tribal sovereignty in all programs that impact Native students and education systems.

*Question 8. How should grant amounts be determined?*

- a. Should the grant amounts for projects planning to fund a full-time education program be based on a percentage of the per-pupil expenditure in your area or State multiplied by the number of students to be served?*
- b. How should grant amounts for applicants who propose to provide supplemental services be calculated?*
- c. On what other factors should the budget be based?*

Tribal leaders and educators will have diverse responses to this question based on where they are located, the type of school a per-pupil expenditure is based on, and the individual characteristics of each community. Many states with high Native student populations do not have high average per-pupil expenditures for public schools, which can vary wildly based on the type of school and where it is located. In addition, per-pupil expenditures often fail to measure the total need in a school or community. The Department should engage in tribal consultation to consider these questions with current and proposed priorities.

*Question 9. What other considerations should go into the design of this priority?*

The Department has yet to engage in meaningful tribal consultation to support the addition of a new priority. As proposed throughout our comments we encourage the Department to first undertake meaningful tribal consultation with the intent of examining the question of whether a new priority is needed. And, after having examined this question, then pursue what tribal experts recommend. NIEA does not believe the Department has exercised due diligence in this effort nor has it met its own requirements to conduct meaningful consultation.

## **Conclusion**

Tribes are best equipped to provide high-quality, culturally relevant education services and programs to their citizens. School choice in tribal communities means elevating tribal sovereignty and building tribal capacity. NIEA opposes the proposed priority and urges the Department to

engage in meaningful consultation regarding current gaps and opportunities to support Native students through Demonstration Grants.

For more information or inquiries, please contact Adrienne Elliott, NIEA Legislative Analyst, at [aelliott@niea.org](mailto:aelliott@niea.org).

Sincerely,

A handwritten signature in black ink that reads "Robin A. Butterfield". The signature is written in a cursive style with a large initial "R".

Robin Butterfield  
President