



**Testimony of the President,  
Patricia Whitefoot  
on behalf of the National Indian Education Association  
Submitted to the Department of Education**

**June 27, 2016**

**INTRODUCTION**

Thank you for the opportunity to provide testimony at the Department of Education's (ED's) tribal consultation on the Every Student Succeeds Act (ESSA). Founded in 1969, The National Indian Education Association (NIEA) represents Native students, educators, families, communities, and tribes. NIEA's mission is to advance comprehensive, culture-based educational opportunities for American Indians, Alaska Natives, and Native Hawaiians. As the premiere organization advocating for Native students, NIEA works to achieve education equity and excellence, to ensure all students are provided a high-quality academic and culture-based education.

**Consultation must be Meaningful and Ongoing**

In order for ESSA be effectively implemented, ED and the Administration step up its commitment to a new level of engagement and dialogue with tribes. Two parts of the lead up to this meeting concern me. First, ED announced today's tribal consultation on its website only after repeated reminders. By not publicizing this meeting earlier, the Department has missed an opportunity to engage tribal leaders and Native education stakeholders on the recently passed education law.

Second, the suggested topics for today's consultation point toward a discussion that does not include critical topics that are important for Native students. Although discussing grant programs, along with reports on Native language immersion and suicide prevention are important, we believe that key content areas have been overlooked by the Department. Specifically, ED has a clear responsibility based on its federal trust relationship to engage tribal communities on assessment and supplement not supplant—the topics of the Department's negotiated rulemaking process—and the recently released accountability regulations. All of these topics are critical for Native students and need immediate tribal input due to the upcoming deadline for submitting comments to ED. Further, written input from local leaders and communities, who work directly with our students, is the type of input that ED desperately needs

to hear from. These comments will help lay a foundation for Native students for the next decade (and possibly longer).

As we move forward, I would like to note that we are grateful that tribal leadership was engaged in the negotiated rulemaking process. We respectfully request that ED look at implementation of ESSA as an ongoing dialogue with open communication and full consideration of assessment, supplement not supplant, accountability and all the parts of the law that will impact Native students.

## **RECOMMENDATIONS**

NIEA wishes to highlight four areas of the regulations where we support some of the Department's draft, but would like important changes to better serve Native students: (1) effective communication and sharing of school report cards; (2) adequate representation of Native students in accountability systems through a lower n-size; (3) incorporate culturally appropriate interventions for comprehensive and targeted support schools in order to be effective; and (4) ensure that tribal leaders are consulted with when local education agencies make decisions regarding support and intervention in schools with Native students.

### **Communicating with Native Communities: Report Cards**

NIEA supports the draft regulations that seek to ensure greater transparency for parents and community members regarding their children's academic progress. Specifically, we support draft regulation section 200.30—"Annual State Report Card", which requires a state to prepare a state report card and share it to the extent practicable in a language that parents can understand. Native parents will benefit from this provision as they learn the results for all students broken down by subgroups, the state's academic assessments in core subjects, and for each indicator. Similarly, we commend the Department for regulation section 200.31—"Annual LEA Report Card", which requires school districts and other local education agencies report information for each group of students with more than the state's n-size.

NIEA has one critical recommendation for both state and local report cards. While sharing state report cards on the state education agency's (SEA) website may effectively communicate in some communities, Native parents and communities may often need in-person or written communication since less than 10% of Indian Country has access to broadband internet technology. Distance and the cost of installing equipment are particularly challenging in Native communities.

We suggest that the Department explicitly identify other mechanisms for sharing state and local report cards in Section 200.30 and 200.31. In communities where such additional outreach is clearly appropriate we suggest the Department require additional outreach, including, but not limited to:

- Face-to-face meetings at the local, regional, and national levels
- Roundtables
- Mailings (both electronically and by postal mail)

By including these added means of communication, the Department would better engage tribal leaders, Native parents, communities, and students. Reporting via the web in a community with 10% broadband, simply will not work. Further, taking the above steps is consistent with “widely disseminating” report cards as required by ESSA and the federal trust relationship codified in Title VI.

### **Making Sure Native Students Count—Limiting N Size to 20 Students**

The proposed regulation in Section 200.17—“Disaggregation of Data”—builds on language in ESSA that requires each state to determine the minimum number of students to form a subgroup, otherwise known as n-size, in consultation with educational stakeholders. NIEA supports the requirement in 200.17 that states consult with tribal representatives to establish an n-size, but we are concerned that schools with Native student populations of less than 30 will not have to report academic achievement. With due respect to student privacy concerns, we believe any school with more than 20 Native students should be counted as part of our accountability systems. Parents, educators, communities and students should be informed regarding their academic progress. Further, even schools with relatively small Native populations should have to intervene when a group of Native students is not showing the progress they need.

NIEA recommends that the Department lower its n-size so that schools serving low Native student populations between 20 and 30 are accounted for. Lowering this critical measure will help ensure that American Indian, Alaska Native and Native Hawaiian students do not fall through the cracks.

### **Interventions and Supports Should Consider Native Culture in Order to Be Effective**

NIEA supports the Department’s draft regulations in Section 200.21 titled “Comprehensive Support and Improvement” and Section 200.22 titled “Targeted Support and Improvement”, but asks that effective culturally-based interventions be included as a means for best improving Native student achievement.

Specifically, we applaud the language in 200.21 and 200.22 that requires that notice be provided in a language that parents can understand. Language is critical to our culture and traditions. In addition, we respectfully request that the Department consider adding culturally responsive interventions in school interventions for Native students to the non-exhaustive list in 200.21(d)(3) of interventions that schools may use.

Culturally appropriate interventions should be included in 200.21 for two reasons. First, under NCLB and now under ESSA, the Department has a federal trust responsibility to tribes and Native students to provide a high quality education. This trust responsibility is supported through treaties, executive orders, and U.S. Supreme Court decisions and as such, the Department carries a unique responsibility to ensure that Native youth have access to an adequate education.

Second, providing culturally appropriate interventions is effective in supporting the social, emotional, and cultural learnings of Native students. Through resolutions, NIEA has consistently heard from members that a strong cultural foundation is critical to helping students learn new and unfamiliar topics easier and acquire new information at faster rates than without providing roots

in Native traditions.

### **Consultation with Tribal Leaders**

NIEA respectfully recommends that the Department include consultations with tribal leaders when local education agencies submit plans for Comprehensive Support and Improvement under Section 200.21 and Targeted Support and Improvement Under 200.22. Inclusion of tribal leaders at this stage is clearly envisioned by ESSA in Section 8538 “Consultation with Indian Tribes and Tribal Organizations” which requires that tribal leaders must be consulted “on issues affecting American Indian and Alaska Native students.”

Specifically, we recommend that the Department add tribal leaders to the list of school leaders, teachers, and parents who must receive notice that a school is in need of comprehensive support and improvement under Section 200.21 (b) and to the stakeholder engagement requirement for improvement plans in Section 200.21(d). For targeted support and improvement schools, tribal leaders should also be included under 200.22 (c) (1). Each of these steps is consistent with ESSA and critical to ensuring that tribal leaders and Native communities are meaningfully consulted when schools are in need of improvement.

### **CONCLUSION**

For several generations Indian leaders and Native education stakeholders have urged policy makers to work collaboratively with our tribes. Now that ESSA has passed, tribes and states have a fresh opportunity to coordinate efforts to provide a quality and culturally appropriate education. NIEA will be submitting more comprehensive comments to ED by the August 1, 2016 deadline. The recommendations listed above highlight issues that tribal leaders and Native education advocates should be aware of and also provide comments on. In the upcoming weeks, NIEA will be sharing comments regarding accountability for members to use as a template for their own comments. In the meantime, NIEA looks forward to working alongside with ED to successfully implement ESSA at the federal, state, and tribal level.

For additional information, please contact Tribal and State Policy Associate, Dimple Patel @ [dpatel@niea.org](mailto:dpatel@niea.org).