



NATIONAL INDIAN EDUCATION
Advancing Excellence for All Native Students

September 9, 2016

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

***Re: Secretary's Proposed Regulations on the Innovative Assessment and Accountability
Demonstration Authority***

Dear Secretary King,

Thank you for the opportunity to provide feedback on the Department of Education's (the Department) Proposed Regulations on the Innovative Assessment and Accountability Demonstration Authority. The National Indian Education Association (NIEA) works to ensure that all Native students receive a high-quality academic and cultural education. NIEA looks to the Department as an extension of the federal government charged with fulfilling the federal trust responsibility to tribes. This includes making sure that Native students are served, wherever possible, by tribal leaders and tribal education departments and that the 90 percent of Native students who attend schools that are not served by the Department of Interior receive a high quality education.

The Federal Trust Relationship

Since its inception, NIEA's work has centered on reversing negative trends within Native education, a feat that is possible only if the federal government upholds its trust responsibility to tribes. Established 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 and Congress for federally-recognized Indian tribes.

The Innovative Assessment Pilot Must Respect Tribal Sovereignty

The Innovative Assessment Pilot is based on statutory language in Section 1204 of the Elementary and Secondary Education Act (ESEA) that allows state education agencies to apply for innovative assessments. NIEA believes that tribes, as sovereign nations, should also be allowed to apply for innovative assessment pilots. Our experience as the leading advocates for and experts on Native education is that tribes are uniquely qualified to help improve Native

National Indian Education Association
1514 P Street, Suite B Washington, DC 20005
Ph. (202) 544-7290 Fax (202) 544-7293
Email: NIEA@niea.org
NIEA.org

education and should be integrally involved in alternative assessments. This is a particularly reasonable request in light of the federal trust obligation and the fact that consortia are allowed.

Specifically, NIEA respectfully requests that the draft regulations be revised throughout to include tribes as eligible participants in consortia, along with state education agencies. We recommend a new Section 200.76 that allows tribes to be added participants in consortia along with state education agencies. NIEA requests that tribes be added to Section 200.76(d)(2) as entities that can be included in consortia but don't count against the limitation. Doing so would be consistent with the limitations in Section 1204(a) of ESSA on the number of pilots that would be permitted, along with the established federal trust responsibility and the respect due tribes as sovereign nations.

Section 200.76: Tribal Leaders and Native Communities Must be Included in the Development of Innovative Assessment Systems

NIEA urges inclusion of tribes in consideration of pilots, consortia, and the entire process of developing innovative assessments mentioned in the draft regulations for Section 200.76. Under No Child Left Behind, several tribes sought approval from the Departments of Education and Interior for alternative assessment systems, without success. Inclusion of tribal leadership in the peer review process outlined in Section 200.76(c) would effectively include Native communities in the development of demonstration systems. NIEA requests inclusion in the process leading to next-generation assessments as a reasonable step to make sure Native students are considered and provided the education they deserve.

Section 200.77: Applications for Pilots Must Include Consultation With Tribal leaders

The consultation process in draft regulation Section 200.77(a) must include tribal leaders. Including tribal representatives is consistent with Section 1111(a) of ESSA, which requires that tribal leaders are included, along with the other stakeholders identified in Section 277(a). The local consultation requirement in Section 8538 of ESSA supports inclusion and tribal consultation in the course of applications for authority. Civil rights organizations, while some of our closest allies, are distinct from tribal nations, which the federal government has long-recognized as owed a fiduciary duty as part of the federal trust obligation. NIEA requests that tribes are added to the final rule to ensure Native students are considered in the course of assessment innovations in states with high Native populations.

Conclusion

Through the recommendations on the innovative demonstration authority, the final regulations, and the implementation of the transition to ESSA, NIEA looks forward to working alongside the Department to drive federal resources to the only students that the federal government has a direct responsibility to educate—Native students. If you have any questions, please contact Ahniwake Rose, NIEA Executive Director, at arose@niea.org.

Sincerely,



Patricia L. Whitefoot
President