INDIAN EDUCATION REFORM

The 19th Annual Tribal Law and Government Conference
The Future of Indian Education
University of Kansas
March 13, 2015

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US Department of Education
Office of the General Counsel
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Indian Education Reform

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Agenda

I. Overview
   ED and AI/AN students, schools
   Trust responsibility, new education focus

II. Legal Issues with ED grants
   Formula (Impact Aid, Title VII), discretionary

III. Recent ED Initiatives for AI/AN students
   A. STEP, Demo - NYCP
   B. Title VII Formula Grant changes
   C. TA and Comp Centers

IV. Non-grant Legal Issues
   Jurisdictional, civil rights, FERPA
1. ED’s Mission: to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

93% of AI/AN students attend public schools

Source: GAO Report 15-121 (Nov. 2014)

7% attend 185 BIE-funded schools

www.ed.gov
Funding Sources for Schools

Source: GAO Report 15-121 (Nov. 2014)
Trust Responsibility for Education

Treaties


Statutes (20 USC § 7401, 25 USC §§2000, 2501(b), 3302)

Executive Orders: EO 13592 (2/2/11) (specific to education); EO 13175 (11/6/00)

Govt-to-Govt relationship is political: see Morton v. Mancari, 417 US 535 (1974)
New Focus on Education of AI/AN students


Issues Raised by Tribes:
- native language and culture
- need for teachers, and professional development on cultural competence
- how to fund tribal non-BIE schools (e.g., charters)
- self-determination for tribes to run public schools
II. Legal Issues with ED Grants: Formula funds for AI/AN students in public schools

Impact Aid to LEAs (for any students residing on Indian lands) – approx 600 LEAs

Title VII formula grants to LEAs – approx 1300 LEAs

ESEA Title VIII
sections 8001-8014
(20 USC 7701-7714)

ESEA Title VII
sections 7101-7119
(20 USC 7401-7429)
Legal Issues: Impact Aid

- **Indian Policies and Procedures**: parents and tribes must be consulted and involved in planning
  - ESEA sec.8004 (20 USC 7704), 34 CFR 222.90-.122
- **25% supplement** for children residing on Indian lands (1.25 per child) – sec. 8003(a)(2)(B) – funds to LEAs – purpose to replace lost tax revenue/increased expense - no required use of funds
- **What is “Indian lands”** for Impact Aid –
  - Sec.8013(5), (7) (20 USC 7713 (5), (7)), 34 CFR 222.2, .35
Legal Issues: Title VII Formula Grants

- **Parent Committee** authority – program developed with participation and written approval of committee (ESEA sec.7114(c))

- **Public hearing** requirement (ESEA sec.7114(c))

- **Non-supplanting** rule (ESEA Sections 7114(c)(1), 7115)
ED Discretionary funds for AI/AN Students in public schools

- Perkins Act (Native American Career and Technical Education Program and Native Hawaiian Career and Technical Education Program).
- ESEA Title III “NAM” program for English learners (OELA)
- ESEA Title VII Demo, PD, STEP programs (OESE)
- ESEA Title VII Part B Native Hawaiian Program
- ESEA Title VII Part C Alaska Native program
ED Discretionary funds cont’d


http://findyouthinfo.gov/youth-topics/reconnecting-youth/performance-partnership-pilots

Promise Neighborhoods

Promise Zones
ED Discretionary funds for AI/AN Postsecondary Students and Adults

- American Indian Vocational Rehabilitation Services program (Title I of the Rehab Act)
- HEA Title III (the American Indian tribally controlled colleges and universities program, the Alaska Native and Native Hawaiian-serving institutions program, and the Native American-serving, non-tribal institutions program)
- Perkins Act (Tribally Controlled Postsecondary Career and Technical Institutions Program)
- ESEA Title VII - Indian Education Professional Development Program
Common Issues with ED Grants

- Allowable costs
- Sub-recipient monitoring
- Cash management
- Reporting & Internal controls
- Property & procurement

Audit findings
(audit required if get ≥ $750,000 in fed $ annually)

Indirect cost rate problems

Note: variety/diversity of tribes makes generalizations impossible
Issues with ED Grants:

Be familiar with the **new federal-wide** Uniform Administrative Requirements, Audit Requirements, Cost Principles

In **2 CFR part 200**

www.cfo.gov/COFAR
(Council on Financial Assistance Reform)

Link to part 200 regs:
http://www.ecfr.gov/cgi-bin/text-idx?SID=704835d27377ef5213a51c149de40cab&node=2:1.1.2.2.1&rgn=div5

ED Funding to BIE Schools

Through ED-BIE MOU

- ESEA: Title I, SIG, II, IV (21st Cent), VI (Rural), VII (Indian Ed)
- McKinney-Vento Homeless Assistance

IDEA (ED to BIE)

Largest ED source is Title I, second-largest is IDEA
III. Recent ED Initiatives for AI/AN students

- STEP grants
- Title VII Demo grants - NYCP for FY 15
- OIE’s Title VII formula grant initiatives
- TA, Comp Centers
- Native Language Summit w/DOI, HHS
- ED’s supplemental priorities: priority for high-need students includes students who are members of federally recognized Indian tribes.
A. STEP

- Purpose: to build capacity of TEA, build relationships w/SEA, LEA
- FY 12 grants – 4 grants, 3 years each, now in final year
- FY 15 grants – new awards September 2015
  See NPP 10/31/14 (NIA, NFP publishing soon)

- Chickasaw, Cheyenne, Arapaho + OK
- Nez Perce + Idaho
- Umatilla + Oregon
- Navajo + NM
Tribal leaders, teachers, and parents are best suited to identify and address the needs of their children, and tribal communities deserve to play a greater role in providing American Indian and Alaska Native students with the tools and support they need to be successful in school and beyond.

— Secretary of Education, Arne Duncan

Video Press Release, Secretary Arne Duncan, U.S. Dep’t of Educ., Secretary Duncan Announces the Launch of the STEP Pilot Program (May 7, 2012), at http://youtu.be/R0IJgmPIQf0
STEP
SUCCESES

- Data-sharing
- Tribal PD for teachers in LEAs, and for SEA staff — cultural competence, native language, history, culture
- Parental involvement
- Development/integration of cultural standards with State academic standards
Native Youth Initiative Objective: Support Tribal communities in developing a comprehensive approach to College and Career Readiness (CCR).

Local assessment of pre-existing efforts, barriers, and successes related to student success

Select one or more barriers as a focus.

Identify strategies to address barrier(s) with clear and measurable objectives.

ED plans TA for applicants and grantees

See 12/3/14 NPRM – Final regs and Demo NIA soon
NYCP: FOCUS ON THE COMMUNITY
BUILDING RELATIONSHIPS -- WORKING TOGETHER

- Tribes (TEA, tribal orgs, tribal IHE, etc.)
- Schools (public, private, BIE)
- Families, elders, cultural supports
- Service providers (nonprofits, other government entities, etc.)
- Students
C. Title VII Formula Grant Focus

I. Ability to set four-year objectives

II. Objectives towards Culturally-Responsive Education (ESEA Sections 7102, 7111, 7114)

III. Local assessment and prioritization of the needs of the AI/AN student population (ESEA Section 7114(c))

IV. Coordination of Services for AI/AN Students (ESEA 7114(b))

V. Annual Performance Reports (EDGAR, 34 CFR 75.590)
IV. Non-grant Legal Issues: LEAs and Tribes

- Jurisdictional questions
- Civil rights (OCR) – bullying, symbols, mascots
- FERPA
Jurisdictional issues:
Public schools on tribal lands

8th Circuit - 2 federal district court decisions (in ND) held that the *tribal court has jurisdiction* over LEA employee lawsuits against the LEA.

9th Circuit - a federal district court held in two separate cases that the *Navajo courts do not have jurisdiction* to hear cases brought by LEA employees against the LEA.
Red Mesa Unified S.D. v Yellowhair, 2010 WL 3855183 (D.Ariz. Sept.28, 2010) (after Navajo Nation Supreme Court ruled that the Navajo Nation Labor Commission did have jurisdiction)
Window Rock Unified S.D. v. Reeves, 2013 WL 1149706 (D. Ariz. Mar. 19,
FERPA: 3 ways that tribes or tribal schools can access data

1. Get consent

2. Use de-identified records - with no personally-identifiable information (PII)

3. Become an authorized representative

FERPA = 20 USC 1232g
Regs at 34 CFR Part 99
How can a tribe, TEA, or tribal school become an authorized rep?

Purpose: to audit or evaluate Federal- or State-supported education programs

Representative must use reasonable methods to protect data from further disclosure, and destroy when finished

Must create a written agreement

See 34 CFR 99.35
FERPA cont’d:

FERPA can’t make schools share data

So...

Building relationships is key
ED-specific Resources

• Office of Indian Education
  http://www2.ed.gov/about/offices/list/oese/oie/index.html

• White House Initiative on American Indian and Alaska Native Education
  http://www.ed.gov/edblogs/whiaiane/

• Education Department General Administrative Regulations (EDGAR) – see Parts 75, 80

• ED’s supplemental priorities:
ED Resources cont’d: FERPA

ED’s Family Policy Compliance Office
Website: www.ed.gov/fpco
Email: FERPA@ed.gov

Privacy Technical Assistance Center:
PTAC.ed.gov
Telephone: (855) 249-3072
Email: privacyTA@ed.gov

http://www.aperfec tworld.org
Other Resources

• Native Youth Report (Dec. 2014)
  [link: http://www.whitehouse.gov/sites/default/files/docs/20141129nativeyouthreport_final.pdf]

• EO 13175 (Consultation and Coordination with Indian Tribal Governments)

• EO 13592 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities)
Questions?

. . . . .Thanks very much