

**THE FUTURE OF LEGAL REFORM
RELATED TO INDIAN EDUCATION**

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TRIBAL GOVERNANCE IN EDUCATION 1984 – 2015

I. TRIBAL EDUCATION GOVERNANCE TODAY

- A. Today an estimated 200 tribes in 32 states have TEAs. *Hearing Before the Senate Committee on Indian Affairs on S. 1948, the Native Language Immersion Student Achievement Act* (June 18, 2014) (Testimony of Quinton Roman Nose, Executive Director, Tribal Education Departments National Assembly), available at <https://tribaleddepartmentsna.files.wordpress.com/2013/09/00043792.pdf>.
- B. The National Indian Law Library On-Line Tribal Law Collection contains about twenty Tribal Education Codes. *See* <http://www.narf.org/nill/resources/education/education-laws.html>.
- C. In 2011 TEDNA reported specifically on the TEAs of seven tribes: Cherokee Nation; Chickasaw Nation; Eastern Band of Cherokee Indians; Hoopa Valley Tribe; Oglala Sioux Tribe; Pueblo of Jemez; and Seminole Tribe of Florida, available at <http://www.narf.org/nill/resources/education/reports/tefnareport2011.pdf>.
- D. In 2009 Mid-Continent Research for Education and Learning International, a private, nonprofit, nonpartisan education research and development corporation founded in 1966, reported on the roles and responsibilities, organization, and funding of TEAs in the Central Region states. Mackety, D. M., Bachler, S., Barley, Z., & Cicchinelli, L., *American Indian Education: The Role of Tribal Education Departments* (2009), available at http://www.mcrel.org/products-and-services/products/product-listing/01_99/product-41.

II. FEDERAL LAW SUPPORT FOR TRIBAL EDUCATION GOVERNANCE

A. Authorizations for Direct Federal Funding for TEAs

1. Indian Self Determination and Education Assistance Act of 1975

...The Secretary [of the Interior] may approve applications for funding tribal divisions of education and the development of tribal codes of education from funds appropriated pursuant to ... this title.

25 U.S.C. § 2010(c).

This language was added by Section 506(b) of the Education Amendments of 1984, Pub. L. No. 98-511, 98 Stat. 2366 (1984), and Section 6(b) of the Indian Education Technical Amendments, Pub. L. No. 99-89, 99 Stat. 379 (1985).

2. Elementary and Secondary Education Act (ESEA) of 1965

a. Through Department of the Interior (ESEA Reauthorization of 1988)

Subject to the availability of appropriations, the Secretary [of the Interior] shall make grants and provide technical assistance to tribes for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe.

25 U.S.C. § 2020.

This section, along with an appropriation authorization of \$2 million, was added by the 1988 reauthorization of the ESEA, the Elementary and Secondary School Improvement Amendments of 1988, Pub. L. No. 100-297, 102 Stat. 130 (1988). Funding priority is given to tribes that, *inter alia*, have Bureau of Indian Education (BIE) (formerly BIA) funded schools. This authorization originated in the Senate, and the House agreed to it only if the funding priority factors were added.

b. Through Department of Education (ESEA Reauthorization of 1994)

The Secretary [of Education] may make grants to Indian tribes, and tribal organizations approved by Indian tribes, to plan and develop a centralized tribal administrative entity to [*inter alia*:] 1) coordinate all education programs operated by the tribe or within the territorial jurisdiction of the tribe; [and] 2) develop education codes for schools within the territorial jurisdiction of the tribe

20 U.S.C. § 7455.

This section, along with an appropriation authorization of \$3 million, was added by the 1994 reauthorization of the ESEA, the Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994). There is a restriction that tribes receiving TEA funding through Interior may not also receive TEA funding through Education. The House agreed to the new authorization only if this restriction was added.

c. ESEA Reauthorization of 2001 (NCLB) retains both

The most recent ESEA reauthorization is the No Child Left Behind Act (NCLB), Pub. L. No. 107-110, 115 Stat. 1425 (2002). NCLB retains both authorizations for TEA funding (through Interior in Title X and Education in Title VII). The Interior authorization was amended to require that a tribe serve three or more BIE funded schools. 25 U.S.C. § 2020(e)(1)(A). The Education appropriation authorization amount was eliminated. 20 U.S.C. § 7455.

B. Appropriations

1. FY 2012 Department of Education STEP Program

In FY 2012 the Department of Education announced \$2 million in competitive discretionary grants for TEAs under a new State Tribal Education Partnership (STEP) Program. The STEP Program is a pilot project and part of the Obama Administration's ESEA reauthorization proposal.

The STEP Program aims to build TEA capacity and promote collaboration between TEAs and SEAs. It funds projects created through collaborative agreements between TEAs and SEAs that allow for TEAs to perform some state-level functions for certain ESEA programs in public schools located on tribally controlled lands.

STEP Program grants are three-year awards, and the four tribal grantees and their SEA partners are: Nez Perce Tribe and Idaho; Navajo Nation and New Mexico; Chickasaw Nation and Oklahoma; and, Confederated Tribes of Umatilla Indian Reservation and Oregon.

<http://www2.ed.gov/programs/step/index.html>

2. FY 2014 Department of the Interior SIE Program

In FY 2014, the Department of the Interior announced \$1.2 million in competitive discretionary grants for TEAs under a new Sovereignty in Education (SIE) Program. The SIE Program arose from the June 2014 Blueprint for Reform issued by the American Indian Education Study Group convened by Interior and Education.

SIE Program grants are to promote full tribal capacity through TEAs to manage and operate tribally controlled BIE funded schools with the goals of improved efficiencies and effectiveness in school operation and improved student educational outcomes.

Grantee tribes will research, assess, and develop implementation plans to establish tribally managed school systems. Tribes will conduct a comprehensive analysis and an aligned implementation plan of their TEAs and school systems in four areas of school reform: Finance; Academics; Governance; and Human Resources.

BIE also will provide a forum for grantee tribes to work collaboratively with each other to gain insights and develop or share tribal and BIE-problems solving strategies.

The six SIE Program grantees are: Gila River Indian Community; Standing Rock Sioux Tribe; Turtle Mountain Band of Chippewa; Tohono O'Odham Nation; Navajo Nation, and Oglala Sioux Tribe.

<http://www.bie.edu/cs/groups/xbie/documents/document/idc1-027407.pdf>

C. Other Selected Federal Law Provisions re TEAs

1. **25 U.S.C. § 2505(c)** (1988), prohibits the BIE from revoking a tribal grant school's eligibility for grant school status and assistance if the school has made proper annual reporting and has been accredited by a state or federal recognized tribal education agency.
2. **20 U.S.C. § 6311(m)** (2001), provides that, regarding ESEA Title I plan assessments for BIE funded schools, if a school is accredited by a TEA the assessment must be developed by the TEA.
3. **25 U.S.C. § 2001** (2001), directs the Secretaries of the Interior and Education to consult with tribes and submit to Congress a report on the desirability and feasibility of establishing a tribal accreditation agency that would recognize qualified and credible TEAs as accrediting bodies for tribal schools.
4. *See also* more NCLB provisions re TEAs at http://www.narf.org/nill/resources/education/no_child_left_behind.html

III. SUPPORT FOR TRIBAL EDUCATION GOVERNANCE IN STATE LAW

A. Wisconsin

1. **Parent Advisory Committees.** Since 1995, Wisconsin has required school districts that establish an American Indian Language and Culture Education Program under the state law governing such programs, to establish a parent advisory committee appointed by the school board but with the recommendations of any affected TEAs. TEA representatives may serve on the committees as long as a majority of committee members are parents or guardians of students enrolled in the program. Wis. Stat. Ann. § 115.735 (2014).
2. **Language Revitalization.** In 2009, Wisconsin provided that school boards may apply for state tribal language revitalization grants in conjunction with TEAs. Wis. Stat. Ann. § 115.745 (2014).

B. Montana

1. **American Indian Studies.** Since 1999, Montana has defined American Indian studies instruction as including in-service training provided by school boards developed in cooperation with TEAs, tribal colleges, or other recognized Indian education specialists. Mont. Code Ann. § 20-1-502 (2013).

C. New Mexico

1. **Post-secondary Education.** Under its 2003 Indian Education Act, as amended, New Mexico requires its State Higher Education Department to collaborate and coordinate with post-secondary institutions, including tribal colleges, and with TEAs, to facilitate the successful and seamless transition of American Indian students into post-secondary education. N.M. Stat. Ann. § 22-23A-4.1 (2014).

D. Oklahoma

1. **Advisory Council on Indian Education.** Oklahoma created an eighteen member Advisory Council on Indian Education in 2010. Four members appointed by the Governor from nominations submitted by tribes in the state must represent TEAs of tribes in the state. Okla. Stat. Ann. § 3-173 (2014).

E. Washington

1. **State-Tribal Education Compacts Authority.** In 2013, Washington authorized State-Tribal compacts in education. Wash. Rev. Code. § 28A.715.005 (2014).

F. Other

Several states have formalized roles for tribes in their school laws or administrative codes, most often in connection with state laws allowing the teaching of tribal native languages in schools, and the certification or licensing of teachers for such languages. *See, e.g.,*

- Arizona, Ariz. Admin. Code §§ R7-2-607 & 615 (2013)
- California, Cal. Educ. Code § 44262.5 (2014)
- Idaho, Idaho Code Ann. § 33-1280 (2014)
- Michigan, Mich. Comp. Laws § 380.1531f (2014)
- Minnesota, Minn. Stat. § 124D.75 (2015)
- Montana, Mont. Admin. R. § 10.57.436 (2014)
- Nebraska, Neb. Rev. Stat. § 79-802.01 (2014)
- Nevada, Nev. Admin. Code § 391.233 (2014)
- New Mexico, N.M. Admin. Code § 6.64.10.9 (2015)
- Oregon, Or. Rev. Stat. § 342.144 (2014)
- Washington, Wash. Admin. Code § 180-78A-700 (2014)
- Wisconsin, Wisc. Admin. Code § PI 34.34 (2014)
- Wyoming, Wyo. Rules and Regs. AI TSB Ch. 6, § 2 (2014)