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Tribal Education Departments National Assembly

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REPORT to the NATIONAL INDIAN EDUCATION ASSOCIATION
Regarding Recommendations for Tribal Education Department Provisions in
the reauthorization of the Elementary and Secondary Education Act,
also known as the No Child Left Behind Act
February 12, 2006

A. INTRODUCTION

Since it was first enacted in 1965, Pub. L. No. 89-10, the Elementary and Secondary Education Act (ESEA) has come to encompass most of the federal education programs that serve tribal students. The ESEA also has several provisions that are specific to "Tribal Education Departments (TEDs)." The current incarnation of the ESEA is of course known as the No Child Left Behind (NCLB) Act of 2001, Pub. L. No. 107-110.

The Tribal Education Departments National Assembly (TEDNA) appreciates the very dedicated and capable work of the National Indian Education Association (NIEA) over the years in protecting and improving all of the many ESEA / NCLB provisions regarding Indian education, and in particular the provisions regarding TEDs. As we all prepare for the next reauthorization of the ESEA / NCLB, TEDNA supports generally the recommendations of NIEA, and offers NIEA the following four specific recommendations regarding TED provisions.

B. RECOMMENDATIONS

1. RETAIN THE TWO AUTHORIZATIONS FOR TRIBAL EDUCATION DEPARTMENT APPROPRIATIONS, INCREASE THE BIA AUTHORIZATION'S AMOUNT TO \$5 MILLION, AND REINSTATE AN AMOUNT OF \$5 MILLION IN THE U.S. DEPARTMENT OF EDUCATION'S AUTHORIZATION

The programs authorizing appropriations for TEDs are among the most recent and innovative efforts of Congress to provide for and support tribal sovereignty over education. Congress has authorized TED appropriations in two separate laws:

- 1) In 1988 Congress authorized appropriations for TEDs within the BIA budget of the U.S. Department of the Interior (Pub. L. No. 100-297, Section 5199);
and
- 2) In 1994 Congress authorized appropriations for TEDs in the budget of the U.S. Department of Education (Pub. L. No. 103-382, Section 9125).

Both of these authorizations are retained in NCLB. The BIA authorization is in NCLB Title X, Section 1140, currently codified at 20 U.S.C. Sec. 2020(a). The Department of Education authorization is in NCLB Title VII, Section 7135, currently codified at 20 U.S.C. Sec. 7455.

The best reason to keep these program authorizations is stated aptly in the authorizations themselves. In the authorizations, Congress envisions TEDs as facilitating tribal control over education; coordinating education programs; developing and enforcing tribal education codes, policies, and standards; and, providing support services and technical assistance to schools and programs. Although no appropriations have been made to date under these authorizations, well over one hundred federally recognized tribes today have TEDs.

Both TED appropriations authorizations should be retained in the next ESEA reauthorization. The only amendments should be to the authorization amounts. The amount in NCLB for the BIA authorization is \$ 2 million; ***this should be increased to \$5 million***. NCLB eliminated any amount for the Department of Education authorization, but the original amount in 1994 was \$3 million. ***This authorization amount should be reinstated and increased to \$5 million***. The increased amounts better reflect the current needs of TEDs.

2. INCREASE THE ELIGIBILITY OF TRIBES TO BE GRANTEES FOR TITLE VII FORMULA GRANTS

The Formula Grant Program was the cornerstone of the original Indian Education Act (IEA) in 1972, Pub. L. No. 92-318. Today the IEA Formula Grant Program is in NCLB at Title VII, Sections 7111 -7119, currently codified at 20 U.S.C. Secs. 7401-7546. It is a \$96 million supplemental discretionary grant program administered by the Office of Indian Education within the U.S. Department of Education.

Eligible applicants for the IEA Formula Grants program primarily are state public school districts, also known as "Local Education Agencies (LEAs)." BIA-supported schools are eligible under a Formula Grants special set aside allocation. In addition, since 1994, with the passage of Pub. L. No. 103-382, tribes have been eligible to receive Formula Grants directly where they represent at least fifty percent (50 %) of the eligible Indian children served by an LEA and the LEA does not establish an elected parent committee under this program. See Section 7112(c) of NCLB, Title VII, codified at 20 U.S.C. Sec. 7422(c).

The eligibility of tribes to receive Formula Grants should be increased by lowering the representation percentage to thirty-three percent (33%) at least

where a tribe has a functioning TED or a suitable equivalent tribal education authority (TEA). NCLB most recently has affirmed that the Formula Grants are intended to benefit the unique educational and culturally related academic needs of tribal students, and as between LEAs and tribes, common sense dictates that tribes are in the better position to identify, understand, and address these needs. Hence there is little reason to continue to by-pass or avoid so many TEDs or TEAs in favor of LEAs.

3. AUTHORIZE TRIBES TO BE ELIGIBLE GRANTEEES FOR TITLE VIII IMPACT AID GRANTS.

The Impact Aid Basic Support Program for Eligible Federally Connected Children was originally authorized by the Act of September 30, 1950, Pub. L. No. 81-874. Portions of it are in NCLB Title VIII, Sections 801-805, and it is currently codified at 20 U.S.C. Secs. 7701-7713a. Over \$1 billion in Impact Aid grants are administered by the Impact Aid Program Office within the U.S. Department of Education.

Impact Aid grants are available only to eligible LEAs; they are not available to tribes. Impact aid grants go directly into the general operating budgets of LEAs and are to be used for basic education programs. Since 1978, however, LEAs who claim children residing on Indian lands under this program must establish "Indian Policies and Procedures (IPPs)." The IPPs must ensure that there is equal participation by tribal students in; consultation with Indian parents and tribes regarding; and, opportunities of Indian parents and tribes to make recommendations about the LEAs' education programs and activities. A statutory administrative complaint process allows tribes a federal agency (U.S. Department of Education) hearing and determination if they feel the LEAs are not in compliance with the IPP provisions.

Almost thirty years ago (1977) the American Indian Policy Review Commission recommended that Impact Aid funds should go directly to eligible tribes. It is time for the Administration and Congress to consider seriously this recommendation. Tribes with functioning TEDs or TEAs could administer directly the Impact Aid funds; other tribes could enter into cooperative agreements with LEAs to administer them, or they could subcontract their administration to LEAs.

Under this arrangement, tribes would have leverage in addition to or beyond the underutilized (and therefore ineffective) Impact Aid administrative complaint provisions to achieve the goals of the law as stated in the IPP provisions. It would also bring this over fifty-year-old program in line with the modern federal policy of Indian self-determination and control over education.

4. CONGRESSIONAL AUTHORIZATION FOR TRIBAL-STATE COMPACTS IN EDUCATION GOVERNANCE

Controversies and differences between tribes and states about governance over various matters -- from non-renewable natural resources to taxation and law enforcement - - are a familiar chapter in tribal-state relations. In many such instances, tribes and states have successfully resolved governance and other issues through negotiated inter-governmental compacts or agreements.

For example, at this time there are about 250 tribal-state gaming compacts. There are about eighteen tribal-state water rights compacts, with another eighteen in active negotiations. There are perhaps hundreds of taxation and law enforcement compacts between tribes and states or tribes and state local units of government.

But there are only a handful of tribal-state compacts in education, such as those between the State of New Mexico and various tribes regarding the teaching of tribal languages in the public schools there. The agreements in New Mexico are quite recent and were prompted by the cutting-edge New Mexico Indian Education Act of 2001.

If the Administration and Congress are serious about improving Indian education, let alone achieving the goals of Indian self-determination and tribal sovereignty, it is time for them to consider authorizations and guidelines for Tribal -- State Compacts in Education Governance. Good possible pilot projects in this area would include fashioning authorizations and guidelines for such agreements between tribes and the LEAs that receive large amounts of Impact Aid as discussed above under Recommendation Three, or in the matter of teaching native languages and the certification of native languages perhaps pursuant to the policies and provisions of the Native American Languages Acts of 1990 and 1992 (Pub. Ls. Nos. 101-477 and 102-524).

The federal government need not wait for states such as New Mexico to take the lead on this. Rather, as federal reports including *The Indian Nations at Risk Task Force Report* (1991) and *The White House Conference on Indian Education Final Report* (1992) have recommended, the national government should play a leadership role in encouraging and providing for such intergovernmental partnerships. Surely tribal students are no less an important resource to this country than are economic revenues and natural resources.

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