

## The Congressional Authorizations for TED Funding

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Congress has enacted two separate authorizations for direct federal funding for Tribal Education Departments (TEDs). In 1988 Congress authorized funding for TEDs through the Bureau of Indian Affairs (BIA) within the U.S. Department of the Interior.

In 1994 Congress authorized direct federal funding for TEDs through the U.S. Department of Education. Largely due to the successful advocacy efforts of tribes and Indian organizations such as the National Indian Education Association and the National Congress of American Indians, both of these authorizations were retained in the No Child Left Behind Act of 2001 (NCLB), Pub. L. No. 107-110, 115 Stat. 1425 (2001).

The current authorization for direct federal funding for TEDs through the BIA provides that

(a) In general

Subject to the availability of appropriations, the Secretary 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.

(b) Applications

For a tribe to be eligible to receive a grant under this section, the governing body of the tribe shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) Diversity

The Secretary shall award grants under this section in a manner that fosters geographic and population diversity.

(d) Use

Tribes that receive grants under this section shall use the funds made available through the grants--

- (1) to facilitate tribal control in all matters relating to the education of Indian children on reservations (and on former Indian reservations in Oklahoma);
- (2) to provide for the development of coordinated educational programs (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) on reservations (and on former Indian reservations in Oklahoma) by

encouraging tribal administrative support of all Bureau-funded educational programs as well as encouraging tribal cooperation and coordination with entities carrying out all educational programs receiving financial support from other Federal agencies, State agencies, or private entities; and (3) to provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applicable to curriculum, personnel, students, facilities, and support programs.

(e) Priorities

In making grants under this section, the Secretary shall give priority to any application that--

(1) includes--

(A) assurances that the applicant serves three or more separate Bureau-funded schools; and

(B) assurances from the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools;

(2) includes assurances that all education programs for which funds are provided by such a contract or grant will be monitored and audited, by or through the tribal department of education, to ensure that the programs meet the requirements of law; and

(3) provides a plan and schedule that--

(A) provides for--

(i) the assumption, by the tribal department of education, of all assets and functions of the Bureau agency office associated with the tribe, to the extent the assets and functions relate to education; and

(ii) the termination by the Bureau of such functions and office at the time of such assumption; and

(B) provides that the assumption shall occur over the term of the grant made under this section, except that, when mutually agreeable to the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

(f) Time period of grant

Subject to the availability of appropriated funds, a grant provided under this section shall be provided for a period of 3 years. If the performance of the grant recipient is satisfactory to the Secretary, the grant may be renewed for additional 3-year terms.

(g) Terms, conditions, or requirements

A tribe that receives a grant under this section shall comply with regulations relating to grants made under section 450(a) of this title that are in effect on the date that the tribal governing body submits the application for the grant under subsection (b) of this section. The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$2,000,000.

Title X, NCLB Section 1140, Pub. L. No. 107-110, currently codified at 25 U.S.C. § 2020.

The current authorization for direct federal funding for TEDs through the Department of Education provides that

(a) In general

The Secretary may make grants to Indian tribes, and tribal organizations approved by Indian tribes, to plan and develop a centralized tribal administrative entity to--

- (1) coordinate all education programs operated by the tribe or within the territorial jurisdiction of the tribe;
- (2) develop education codes for schools within the territorial jurisdiction of the tribe;
- (3) provide support services and technical assistance to schools serving children of the tribe; and
- (4) perform child-find screening services for the preschool-aged children of the tribe to--
  - (A) ensure placement in appropriate educational facilities; and
  - (B) coordinate the provision of any needed special services for conditions such as disabilities and English language skill deficiencies.

(b) Period of grant

Each grant awarded under this section may be awarded for a period of not more than 3 years. Such grant may be renewed upon the termination of the initial period of the grant if the grant recipient demonstrates to the satisfaction of the Secretary that renewing the grant for an additional 3-year period is necessary to carry out the objectives of the grant described in subsection (c)(2)(A) of this section.

(c) Application for grant

(1) In general

Each Indian tribe and tribal organization desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, containing such information, and consistent with such criteria, as the Secretary may prescribe in regulations.

(2) Contents

Each application described in paragraph (1) shall contain—

(A) a statement describing the activities to be conducted, and the objectives to be achieved, under the grant; and

(B) a description of the method to be used for evaluating the effectiveness of the activities for which assistance is sought and for determining whether such objectives are achieved.

(3) Approval

The Secretary may approve an application submitted by a tribe or tribal organization pursuant to this section only if the Secretary is satisfied that such application, including any documentation submitted with the application—

(A) demonstrates that the applicant has consulted with other education entities, if any, within the territorial jurisdiction of the applicant who will be affected by the activities to be conducted under the grant;

(B) provides for consultation with such other education entities in the operation and evaluation of the activities conducted under the grant; and

(C) demonstrates that there will be adequate resources provided under this section or from other sources to complete the activities for which assistance is sought, except that the availability of such other resources shall not be a basis for disapproval of such application.

(d) Restriction

A tribe may not receive funds under this section if such tribe receives funds under section 2024 of Title 25.

Title VII, NCLB Section 7135, Pub. L. No. 107-110, currently codified at 20 U.S.C. § 7455.

These funding authorizations are extremely strong statements by Congress about the roles and responsibilities of TEDs in Indian education. Unfortunately, to date there have been no appropriations made by Congress for funding TEDs.

Since at least 1992, tribes and organizations such as NIEA and NCAI have

repeatedly requested these authorizations from Congress, but without success. NIEA in particular is now trying to work more closely with the BIA and the Department of Education to ensure that the requests for the appropriations for TEDs are contained in the annual budget request developed by the agencies and the White House and submitted to Congress.